

Imprisonment and Penal Policy in Finland

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1 Introduction	334
2 An Overview of the Finnish Sanction System	335
2.1 General Remarks	335
2.2 The Forms of Non-custodial Punishments in Finland	336
2.2.1 Fines	336
2.2.2 Conditional imprisonment	337
2.2.3 Community service	338
2.2.4 Mediation	339
3 The Prison System	340
3.1 A. Reforming the Prison Law	340
3.2 Prisons and Life in Prison	344
3.3 Release from Prison	346
4 Long-term Trends in the Finnish Prisoner Rates	347
4.1 Prisoner Rates and Political Crisis	348
4.2 The Reform-ideology of the 1960s and the 1970s	349
4.3 Legislative Reforms and Sentencing Practices	352
5 Explaining Penal Liberalization	360
5.1 Prison Rates and Crime Rates	360
5.1.1 Crimes explaining prisoner rates?	360
5.1.2 Prisoner rates explaining crime?	361
5.2 Explaining the Finnish Exceptionalism	362
5.3 Widening the Perspective to Socio-economic and Political Factors	365
6 Crime and Punishment in Finland in the 1990s and 2000s	366
6.1 Fluctuations in Prisoner Rates in 1990-2007	366
6.2 Crime and Social Change	367
6.3 Prisoners and Prisoner Groups	369
7 Concluding Remarks	373
References	378

1 Introduction

The Finnish juridical system is manifestly rooted in western, continental legal culture with strong influence from neighbouring Nordic Countries. The Nordic countries share a long legal and cultural history. The connection between Finland and Sweden has been exceptionally close. For centuries, the same laws were in force in both Finland and Sweden, as up to 1809 Finland was a part of Sweden. Between 1809 and 1917 Finland remained an autonomous Grand Duchy of the Russian Empire (but still maintaining its own laws). Finland declared independence from Russia in 1917. During the last Century, Finland has undergone three wars (the 1918 Civil War and the two wars against Soviet Union between 1939 and 1944).

The exceptional wartime and post-war conditions made their mark also on Finnish criminal policy. For instance, the dire economic circumstances were reflected in the prison administration of the time. There was little scope for the treatment ideology, so prevalent in Denmark and Sweden, to catch on in the Finnish criminal policy of the middle of the 20th Century. Instead, the postwar crime increases led to stiffer criminal legislation in the 1950's. In general terms, the criminal justice system of Finland in the 1950's and 1960's was still less resourceful, less flexible and more repressive than that of its Nordic counterparts.

In the 1960's, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). In Finland the criticism of the treatment ideology was merged with another reform ideology that was directed against an overly severe Criminal Code and the excessive use of custodial sentences. The resulting criminal political ideology was labelled as "humane neo-classicism". It stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing the principles of proportionality and predictability became the central values. Individualized sentencing, as well as sentencing for general preventive reasons or perceived dangerousness were put in the background. Between 1970 and 1990 all the main parts of the Finnish criminal legislation were reformed from these starting points. The common denominator in several law-reforms was the reduction in the use of custodial sentences. A tangible result of this policy was a long term systematic reduction of incarceration.

This essay gives an overview of this development. Chapter 2 gives a brief account of the basic structure of the Finnish sanction system. Chapter 3 has basic information of the prison system and prison law reform. Long term trends in penal policy and prisoner rates and of the factors behind these changes are discussed in chapters 4 and 5. Data of more recent developments since the early 1990s is offered in chapter 6. Conclusions and prospects for the future trends will be discussed in chapter 7.

2 An Overview of the Finnish Sanction System

2.1 General remarks

Punishments and sentencing. The Finnish constitution forbids the use of death penalty – as well as any degrading and inhuman punishments. The principal punishments are petty fine, fine, conditional imprisonment, community service, juvenile punishment (for offenders between 15-17 years of age) and unconditional imprisonment. Conditional imprisonment can be combined with three (supplementary) penalties: The fine, community service and supervision (for juveniles).

The law recognizes also a specific legal institution called the *waiving of measures*. It gives the police, the prosecutor or the judge the power to waive further measures under certain circumstances defined in greater detail in law. Accordingly, the law speaks of non-reporting, non-prosecution and withdrawal from the sentence.

In individual cases the type and amount of criminal punishment is determined by general sentencing rules and the principles defined in Penal Code chapter 6. The leading principle in sentencing is proportionality between the seriousness of the crime (harm and culpability) and the severity of the sanctions. Accordingly, the principal punishments can be arranged in an order of severity from formal warnings to unconditional imprisonment: withdrawal from the sentence, fines, conditional imprisonment/juvenile punishment, community service and unconditional imprisonment. Chapter 6 on sentencing defines further the general criteria provisions for aggravation and mitigation, as well as for the implementation of specific types of sanctions.¹

Child welfare measures. The age limit for criminal responsibility is 15 years. Children under 15 years of age at the time of the offence may be subjected only to measures taken by child welfare authorities. Juveniles from the age of 15 to 17 years are under both criminal- and the child welfare system and can be subjected to both criminal law measures and a variety of child welfare measures. The decisive criterion for all child welfare measures is the best interest of the child. Also interventions in the event of offences are predicated on the fact that the child is endangering his or her future. These measures are not used as punishments. Still, in some cases the actions taken by the child welfare authorities may serve as an argument for the courts to withdraw from punishment.

Restitution and mediation. All compensatory claims that are connected to a criminal offence are treated in criminal proceedings and following the principles of the criminal process, unless separated into a different process (which is very rare). Finland follows the systems adhesion process in full sense. Therefore decisions on punishments are, as a rule, accompanied with a decision on compensation. Compensation order is not classified as a criminal sanction. The orders are given on the basis of Tort Liability. Still, it is possible that

¹ The Finnish sanction structure and sentencing principles are described in Lappi-Seppälä 2001. A general overview of the Finnish criminal justice system is to be found in Nuotio 2003 and Joutsen, Lahti & Pölönen 2001.

compensation (especially once done voluntarily right after the offense) may also serve as an argument for the courts to withdraw from further punishment.

Part of restitutionary claims are met via mediation procedures. Experiment on voluntary and informal mediation started in Finland in the early 1980s. Since then, the movement has spread across the country. In Finland, mediation has retained its informal character. It is not a part of the penalty system, even though it operates in close connection with the police and the prosecutor.²

The system of enforcement: Prison and Probation Services. The enforcement of criminal sanctions belongs to the administrative field of the Ministry of Justice. Both the prison administration and probation service are organized under the Criminal Policy Department in the Ministry of Justice. Practical work within the enforcement of community sanctions and prison sentences is conducted by a specific agency under the ministry, *the Criminal Sanctions Agency*, divided into the Prison Service and the Probation Service.

The Prison Service enforces the prison sentences and fine conversion sentences judged by the courts of justice and detentions and apprehensions connected to trials. The Prison Service has altogether more than 30 prisons located in various parts of Finland: 17 closed institutions, 18 open institutions and two hospital units. In the 2007 the annual average number of prisoners was 3511 and the number of staff working in prisons was 2818. The total budget of prison services in 2007 was 183 million euros, corresponding 51 500 euros/prisoner.

The Probation Service is in charge of community sanctions, which include the enforcement of community service, juvenile punishment, the supervision of conditionally sentenced young offenders and conditionally released prisoners (parolees). The Probation Service has 21 district offices, and 11 local offices. In 2007, the average daily number of community sanctions clients was some 4 800: the figure includes clients under supervision and the ones under the enforcement of community service or young offender punishment. The number of staff working in probation services was 326. The total budget of probation services in 2007 was 15 million euros, corresponding 3 000 euros/client.

2.2 *The Forms of Non-custodial Punishments in Finland*

The following gives a brief account of non-custodial sanctions in Finland. Imprisonment and the prison system will be dealt separately in section C below.

2.2.1 Fines

The dayfine-system. – In Finland fines are imposed as dayfines. This system was adopted in Finland in 1921. The main objective of the dayfine-system, is to ensure “equal severity” of the fine for offenders of different income and wealth. In this system the *number* of day-fines is determined on the basis of the seriousness of the offence while the *amount* of a dayfine depends on the financial situation of the offender. The amount of the dayfine equals roughly half of the offender's daily income after taxes. The number of day-fines varies between 1 and 120.

² On the role of restitution and mediation in the Finnish legal system, see Lappi-Seppälä 1996.

An example: The typical number of dayfines for drunken driving with BAC of 1,0 o/oo would be around 40 df. The monetary value of one dayfine for a person who earns 1500 euros/months would be 20 euros. For someone with a monthly income of 6000 euros, the amount of one dayfine would be 95. Thus the total fine for the same offense would be for the former person 800 euros and for the latter 3800 euros.

If the fine is not paid it may be converted into imprisonment (default imprisonment) through separate proceedings. Two day-fines correspond to one day of imprisonment. The number of default prisoners has varied over times, reflecting also the changes in economic conditions. More recently, the problem of fine defaulters has, once again, become increasingly important.

The basic structure of the dayfine system has remained untouched since its adoption. However, technical calculating rules for the monetary amount of one dayfine, the maximum number of dayfines, and the rules concerning the use of default imprisonment have been revised several times. Also the monetary value of dayfines has been raised from time to time. The basic aims of these reforms has been to raise the “penal value” of a fine in such a ways that it would provide an credible alternative to imprisonment, especially in the middle rank offenses, and to restrict the use of default imprisonment.

Proceedings and summary-fines. A fine may be imposed either in an ordinary trial or, in the case of certain petty offences, through simplified summary penal proceedings (penalty orders given by the prosecutor, see below). The vast majority of fines are ordered in a summary process. In addition, for minor traffic offences there is a summary penal fee that is set at a fixed amount (petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

Practice. –Around 60 % of cases handled by the courts result in fines. Of all criminal cases handled by the courts and/or prosecutor, over 80 % are punished by fines.³ In numbers, this means that the courts impose some 35 000 – 40 000 fines annually, the prosecutors order some 200 000 penalty orders, and the police writes some 100 000 summary penal fees.

2.2.2 Conditional Imprisonment

Imprisonment may be imposed either for a determinate period (at least fourteen days and at most twelve years for a single offence and fifteen years for several offences) or for life.⁴ Sentences of imprisonment of at most two years may be imposed conditionally (conditional imprisonment), provided that “the seriousness of the offence, the culpability of the offender manifested in the offence, or previous convictions of the offender do not require an unconditional imprisonment”. Young offenders under the age of 18 years (at the time of the offence) may be sentenced to unconditional imprisonment only if special reasons

3 This is partly due to the fact that there is no general administrative penal law in Finland. Practically all offences are classified as crimes and treated under the label of criminal punishments.

4 A life sentence may be imposed for a very restricted number of offences – in practice only for murder. Those serving life sentence actually spend approximately 12 to 14 years in prison. On the release from life imprisonment, see 3.3. below.

call for this option. If a conditional imprisonment alone is not considered to be a sufficient sanction for the offence, an *unconditional fine* (“subsidiary fine”) may be imposed on the offender as well. This option has been used quite frequently in drunken driving. In 2001, the scope of subsidiary sanctions was expanded. If the length of the sentence is between one to two years, *short community service order* (20–90 hours) may be sentenced alongside conditional imprisonment. In addition, young offenders under the age of 21 years (at the time of the offence) may be placed under *supervision* if this is considered “justified in view of the promotion of the social adjustment of the offender and of the prevention of new offences”.

Imposing the sentence conditionally means that the enforcement will be suspended for a probation period of at least one year and at most three years. A person who has been sentenced to conditional imprisonment can be ordered to serve his or her sentence in prison if he or she commits a new offence during the probation period for which the court imposes a sentence of imprisonment. Thus, a behavioural infraction alone is not enough for enforcement of a conditional imprisonment. An additional requirement for losing the benefit of a conditional imprisonment is that the charges for the new offence have been brought within one year of the end of the probation period. It is also possible to enforce only part of the earlier conditional imprisonment or sentences. The courts impose annually some 15 000 conditional sentences. Each year around 700-800 sentences are revoked (enforced).

2.2.3 Community Service

General remarks. Community service was introduced into the Finnish penal system in 1991 on an experimental basis in four judicial districts. In 1995 the system was extended to cover the entire country and community service became a standard part of the Finnish system of sanctions.

In Finland, community service is imposed only instead of unconditional imprisonment. The duration of community service may vary between 20 and 200 hours. The prerequisites for sentencing the offender to community service are (a) that the convicted person consents to this, (b) that the sentence does not exceed eight months, and (c) that the offender is deemed capable of carrying out the community service order. Also (d) prior convictions may in some case prevent the use of this option. The offender's ability to carry out the work is evaluated on the basis of a specific *suitability report*. This report may be requested by any one of the parties, the prosecutor or the court. The suitability report is prepared by the Probation Service. If the conditions of the community service order are violated, the court normally imposes a new sentence of unconditional imprisonment.

Sentencing the community service order. In order to ensure that community service will really be used in lieu of unconditional imprisonment, a *two-step procedure* was adopted: I. First the court is supposed to make its sentencing decision by applying the normal principles and criteria of sentencing without considering the possibility of community service. II. *If* the result of this deliberation is unconditional imprisonment (and certain requirements are fulfilled), the court may commute the sentence into community service. In

principle, community service may therefore be used only in cases where the accused would otherwise receive an unconditional sentence of imprisonment.

The court should always determine the number of hours of community service to be served. The length of community service is at least twenty and at most 200 hours. In practice the length of service depends on the original sentence of imprisonment. One day of imprisonment corresponds to one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service.

Contents and the enforcement of community service orders. - Community service consists of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days each week. The intention is that this service would be performed over a period that roughly conforms to the corresponding sentence of imprisonment without release on parole (see above).

The Probation Service approves a service plan for the performance of a community service order. The plan is prepared in co-operation with the organization with whom the place of work had been arranged. The offender should be allowed an opportunity to be heard in the drafting of the service plan.

The performance of a community service order is supervised quite closely. The supervision is specifically focussed on ensuring proper performance of the work. Unlike in the other Nordic countries, community service does not contain any extra supervision aimed at controlling the offender's behaviour in general. Minor violations are dealt with reprimands, more serious violations are reported to the public prosecutor, who may take the case to court. If the court finds that the conditions of the community service order have been seriously violated, it should convert the remaining portion of the community service order into unconditional imprisonment. The hours that have already been worked should be credited in full to the offender. In this situation, the length of the imprisonment should be calculated by applying the general conversion scale.

Practical experiences. - Annually some 3500 community service orders are imposed by the courts. This represents around 35–40 % of the sentences of imprisonment which could have been converted (sentences of imprisonment of at most eight months). Over one half of the community service orders are imposed for drunken driving. Annually some 250 000–300 000 hours of community service are performed. This corresponds to around 400 prisoners (10–15 % of the prison population) in the daily prison population. A typical community service order is for 70 to 90 hours. The proportion of interrupted orders has varied between 15–18 % (of those sentences started each year).

2.2.4 Mediation

The first mediation experiment in Finland started in 1983. The starting idea was to provide an alternative to the official criminal justice system. In 2006 mediation was extended to cover the whole country. Provincial governments are obliged to arrange mediation service in their region, either in co-operation with municipal authorities or with other public or private partners.

In Finland, mediation does not constitute a part of the criminal justice system but it has frequent interrelations with that system as far as referral of cases and their further processing is concerned. The criminal code mentions an agreement

or settlement between the offender and the victim as a possible grounds for waiving of charges by the prosecutor, or waiving of punishment by the court and as a grounds of mitigating the sentence. Mediation process can start at any level between the commission of the offence and execution of the sentence and by anyone of the possible parties. Three quarters of the cases are referred to mediation either by the prosecutor or by the police.

Mediation is based on volunteer work. Participation in mediation is voluntary for all parties. The municipal social welfare authorities usually have a hand in coordinating the mediation services, but the mediators are not considered as public officials. Once the process has started it normally leads to a *written contract*. The contract contains the subject (what sort of offence), the content of a settlement (how the offender has consented to repair the damages), place and date of the restitution as well as consequences for a breach of the contract.

What happens after a successful mediation depends largely on what category the offence belongs to and how serious the offence is (see above). In complainant offenses a successful mediation automatically means that also the prosecutor drops the case. In the non-complainant offenses it is under the discretion of the prosecutor whether he/she is willing to drop the charge on a basis of a mediation. This would be possible if prosecution would seem “either unreasonable or pointless” due to a reconciliation, and if non-prosecution does not violate “an important public or private interest.” If prosecutor takes the case in court mediation may still affect on sentencing as a mitigating factor (Penal Code 6:7). In mediation cases non-prosecution is, thus, always discretionary.

In 2007 the total number of criminal offenses in mediation was 9000. 80 % of the cases consist of either minor property offence or minor forms of assault and battery. Agreement is reached in about 60 % of the referrals. In average 90 % of the contracts will be fulfilled. The majority of the contracts (3300 in 2007) contain monetary compensation. On the other hand, money is not the sole issue, as in one fifth of the cases the victim had no financial claims. Second largest group (2000 in 2007) was symbolic restitution in the form of apology. In addition there were behavioural agreements (a promise not to repeat, 350 in 2007) and the returning of the stolen property (50 in 2007). In a substantial number of cases there were no demands and demands were withdrawn (850 in 2007).⁵

Mediation clearly provides a workable channel of restitution. In addition to material compensation, mediation may serve as a means for repairing also some of the emotional and psychological damages caused by crime.

3 The Prison System

3.1 Reforming the Prison Law

Liberalization 1960-1970s. During the last decades Finnish prison law has been reformed in several phases. The first set of reforms started in the shift of the

⁵ For the latest statistics in mediation, see “www.thl.fi/fi/tilastot/rikossovittelu”.

1960/70s under the pressures of severe overcrowding (see below IV.B). The overriding aim was to reduce both the number of offenders sent prison and the length of the term served (on this see below III.C). Prison reforms in the late 1960s and in mid 1970s brought also improvements in the rights of inmates and introduced prison leaves and open facilities. Most of these reforms were carried out during the period of treatment pessimism. In Finland this disillusionment did not lead to prison warehousing or increased penal severity (as in the US or UK), but on a general emphasis in due process and legal safeguards, human neo-classicism in sentencing and the principles of normalization and minimization of harms in enforcement.

Towards the total reform of the prison law. While the reform pressures caused by overcrowding had ceased by early 1990s, new causes of concerns started to emerge. The first partial reforms after the liberalizations in the 1970s during the 1990s were initiated by the urge for increased drug control in prisons. Also the pressures towards a total reform of prison law started to grow. This was partly due to the fact that, after several partial reforms, the old law had become scattered and hard to read. Much had changed also in the enforcement philosophies, too. There were pressures to re-organize the whole enforcement process into a more pre-planned and structured process. However, the decisive impulse for a total reform came from constitutional arguments. The Constitution of Finland had been reformed in two steps in 1995 and 2000. This reform placed the standards for all legislation related to basic and fundamental rights higher than before.

Fundamental rights and the prison reform 2006. The new Constitution (section 7.3) confirms the *principle of protection by the law*: “The rights of individuals deprived of their liberty shall be guaranteed by an Act of Parliament”. This section rejects the prior “assumption of institutional powers” and the view that the fundamental rights of a particular group of people could be directly curtailed merely on the grounds that they have a special status subject to power or that they are under the power of an institution. Since the rights of persons who have been deprived of their liberty must be safeguarded by an Act of Parliament, all restrictions for these rights must also be based on such an Act.

The constitution contains also *substantive requirements as regards to the way* that these rights may be restricted. Subsection 7.2 (echoing the European Convention’s art 3) states that “no one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity.” Section 22 of the constitution, in turn, states that “public authorities shall guarantee the observance of basic rights and liberties and human rights.” In addition section 74 (on supervision of constitutionality) states that the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties. The enactment of the new constitution and the doctrine developed by the Constitutional Law Committee means in reality *a harmonization of the Finnish fundamental rights and the international human rights system*. Human rights, as defined in international treaties, have been converted into fundamental rights, as defined in the Finnish Constitution.⁶

6 See Viljanen 2007.

So by the year 2000, Finland had a constitution which in clear terms stated that (a) prisoners retain all their fundamental rights, and (b) if these rights are to be restricted, this must be done only by the powers of statutory parliamentary law, and (c) in accordance with the international human rights conventions. To turn all this in actual penal practices, a new national prison law was needed. The total reform of the Finnish prison law started in 1998 by the appointment of an expert committee. The new law came into force in October 2006. These laws include the new Prison Act (with 22 chapters and 400 paragraphs). Also provisions concerning remand and the principles for police detention were revised by enacting separate laws for both purposes.⁷

General principles of enforcement. General principles of the enforcement of prison sentences are gathered in the opening chapter of the prison act. The chapter defines the *aims and objectives* of enforcement, as well as those *fundamental rights* that must be respected once pursuing these aims. The latter include the requirements on minimum intervention and that the content of imprisonment shall be only the loss or restriction of liberty,⁸ the demands of fair and human treatment,⁹ the prohibition of discrimination,¹⁰ general principles to be followed in the use of authority,¹¹ as well as different procedural guarantees.¹² The aims and other principles in enforcement include firstly the general aim of rehabilitation: “The goal of the enforcement of imprisonment is to increase the prisoners’ preparedness for a crime free life by furthering life handling skills and adjustment into society as well as to prevent the committing of offences during the term of the sentence.” Prison Act 1:2). Further, the

7 The 2006 prison reform in Finland was in several aspects affected by the observations of the CPT during their visits in 1992, 1998 and 2003. The act was drafted also in concert with the requirements of the 2006 European Prison Rules, as the drafters of the Finnish prison law were following closely the preparations of the 2006 rules in the Council of Europe.

8 “The enforcement of imprisonment may not restrict the rights or circumstances of a prisoner in any other manner than that provided in the law or is necessary due to the punishment itself” Prison Act 1:3.1). To ensure this “the authorities in charge of the enforcement of imprisonment shall ensure that, during the imprisonment, no person will unjustifiably violate the personal integrity of the prisoner”. (Prison Act 1:3.2 §.)

9 “Prisoners shall be treated fairly and with respect for their human dignity”. (Prison Act 1:5.1) “No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity”. (Constitution, subsection 7.1.)

10 “Prisoners may not, without a justifiable reason, be placed in an unequal position due to race, national or ethnic origin, colour, language, sex, age, family status, sexual orientation, state of health, disability, religion, social opinion, political or professional activity or another reason relating to the person”. (Prison Act 1:5,1 §.)

11 “An official of the Prison Service shall: act appropriately and impartially as well as in the spirit of compromise; primarily through advice, requests and orders maintain prison order and security; attend to his official duties without unnecessarily interfering with the rights of any person and without causing greater detriment than is necessary and justifiable in order to perform the task”. (Prison Act 1:6 §.)

12 Including provisions on appeal and the general principle of hearing the prisoner: “A prisoner shall be heard when a decision is being made on his accommodation, placement in a prison and in an activity, discipline as well as on another issue regarding him in compliance with the provisions of section 34 of the Administrative Procedure Act”. (Prison Act 1:7 §.)

leading principles include the principle of normalization¹³ and the aim of harm-minimization.¹⁴ The law stresses also the values of security and safety for all parties (“A sentence of imprisonment shall be enforced so that it is safe to society, prison staff and prisoners”, Prison Act 1:3) and the specific needs of juveniles (see Prison Act 1:5.2 § and 4:8 §).

These leading principles are given more concrete contents in separate provisions of the Prison Act, dealing with issues such as arrival and placement in prison, basic care and accommodation, participation in activities, contacts with the outside world, prison order and discipline and inspections. Depending on the concrete issue at hand, the law either aims to define the *prisoners’ rights* in a manner satisfying the requirements of the constitutional reform, or *defines the obligations for the authorities* to provide prisoners with adequate facilities, activities and services (or, as in some cases, both).

The 2006 prison reform and prison practices. The new Prison Act aims to bring the prison law in accordance with the requirements of the new constitution, to define the obligations of prison authorities in more detail, to increase legal safeguards and transparency in prison administration, to reorganize the imprisonment process to a more structured and planned process and increase investments in rehabilitative program- and treatment work (and thereby also to reduce recidivism).

Fairly few of the provisions in the prison package were anticipated to have a direct impact in the scope of imprisonment and the number of prisoners. The system of preventive detention was abolished and replaced by a system that enables the courts to order serious violent offenders to serve their sentence “in full”. This option was meant to be used in an equally restrictive manner as was the earlier system of preventive detention (and thus with no actual effect on prisoner rates). A new form of early release (supervised probationary period) was designed for long-term prisoners, who need more support and more intensive program-work. Probationary liberty may be available at the earliest six months prior to normal conditional release. This was assumed to decrease the number of prisoners in the beginning/for a start by 50.¹⁵

All in all, the new prison law meets the requirements of the Rule of Law well.¹⁶ Shortcomings may, however, be found in the level of implementation and resources. A substantial part of the prisoners still remain idle, not being motivated to take part either to work or any other activity. The number of

13 “The conditions in a prison shall be arranged, to the extent possible, so that they correspond to the living conditions prevailing in society”. (Prison Act 1:3 §.)

14 “The possibilities of a prisoner to maintain his health and functional ability shall be supported. The harm that is caused by the deprivation of freedom shall, if possible, be prevented. The goal is to prevent any detriment resulting from the loss of liberty”. (Prison Act 1:3 §.)

15 The original bill, unlike the previous law, made no difference between different age groups on early release. This would have increased prisoner rates by 20-30 prisoners in younger age groups. However, during the parliament hearing juveniles were granted more generous early release rules (after 1/3 or 1/2 depending on previous criminality; leading to an anticipated decrease of approximately 30 prisoners).

16 For wider Nordic comparisons, *see* Greve 2007.

prisoners suffering from substance abuse and mental problems is alarmingly high and psychosocial treatment is available to only a small fraction of those in need. Treatment programs terminate too often after release due to the lack of co-ordination between prison service and municipal health care. One may also ask, for example, whether the placement in open facilities could be increased from the present level (of about 20 % of prisoners) and whether the new supervisory probation has been used extensively enough etc? Some of these problems are mainly a matter of policy and could be solved just by modifying present practices. Some could be helped with better co-ordination and increased co-operation between different authorities and agencies. But some of them need plain money (like providing all cells with an adequate sanitation system).

3.2 Prisons and Life in Prison

Types of prisons. There are but two types of prisons in Finland, open prisons (18 at the moment) and closed (13 at the moment) prisons. All prisons are state funded and run by the state officials. There are no private prisons in Finland, neither are there any plans on that direction. Private prisons would not meet the demands of the Finnish constitution paragraph 124, stating that any “task involving significant exercise of public powers can only be delegated to public authorities.”

Prisoners who participate in work or rehabilitative activities, who are assessed to adapt to freer conditions are allocated in open institutions. All open institutions are drug-free institutions. This means that the inmates are required to controlled commitment not to use any intoxicants. The regime in open institutions is more relaxed. Open institutions are in practice prisons without walls. Open institutions hold about one-fifth of the current prison population.

Closed prisons in Finland are not formally classified according to their security status. However, the intensity of supervision varies between closed prisons and some institutes occupy only long term prisoners (prison term over 2 years), while some prisoner occupy also first offenders. The largest closed units carry over 300 prisoners, while the smallest have a size of 40-50 prisoners.

General framework for prison life. For all prisoners an individual enforcement plan will be drafted (“sentence plan”), on the base of a structured risk and needs assessment. The plan is the backbone for the enforcement during the whole prison term. The plan will be updated and completed during the prison process by the prison where the sentence will be carried out.

Prisoners are obliged to work or to take part in vocational training or other activities unless they are relieved from that duty on the grounds of health, studies or for other reasons. Prisoners may also receive permission to pursue other studies either within or outside the institution. Part of the prison sentence may be served also outside the prison in a rehabilitation institution for substance abuse.

Prisons are obliged to arrange rehabilitative and supportive activities: “A prisoner shall, where possible, be reserved an opportunity for guidance, support and treatment given by a psychologist or for other corresponding guidance, support and treatment.” Besides group activity, psychosocial rehabilitation includes social work as well as individual work carried out by psychologists and prison chaplains.

Work. Work performed in prison is either work that maintains the vocational skills and promotes employment (professional work) or work that improves the working capacity and abilities (orientating work). On certain conditions, prisoners may be allowed to work outside the prison or remain self-employed in prison. In open institutes, prisoners receive proper taxable wages for professional work. Prisoners participating in other activities are paid a non-taxable activity allowance both in open and closed institutions. Nearly half of all prisoners (about 40%) work daily. The traditional types of prison work are wood industry, metal industry and agriculture.

Studies and training. Prisons organise versatile vocational, orientating and general education in co-operation with the nearby educational institutions. On certain conditions, prisoners may also study outside the prison in the daytime. Most studies are connected with acquiring or improving vocational skills. Over half of the prisoners attend vocational education, a fifth primary or basic education, and nearly a tenth orientating education. A small number of prisoners receive vocational qualification through apprenticeship training.

Substance rehabilitation in prisons. The rehabilitative activity in prison is mainly substance rehabilitation because the majority of the prisoners have substance problems. The Finnish prison administration has during the recent years increased their efforts on alcohol and intoxicant programs. For the moment, prison service provides the major part of all substance abuse services in Finland. Substance programmes are based either on cognitive behaviour therapy or community treatment. A prisoner who has a substance-abuse problem or who is assessed to have special problems in coping in freedom may, for a fixed period of time, be placed in an outside institution or a corresponding unit (institution), where he participates in intoxicant rehabilitation or in other goal-oriented activities improving his potential to cope (placement in an outside institution).

Psychosocial rehabilitation. Several prisons arrange Cognitive Skills courses, which develop problem solving and social skills. Programme is for convicted sex offenders whereas Anger Management Course and Cognitive Self Change Programme are for prisoners convicted of violent offences. At the moment group programmes are being developed for prisoners with a history of domestic violence. Prisons also provide comprehensive social rehabilitation: groups promoting skills needed in everyday life and social skills, family programmes and activities preparing for freedom.

Contacts with the outside world. Prisoners have the right to be in contact with the outside world by correspondence, phone-calls, visits and prison leaves.

All prisoners have the right to correspondence and pho-calls . However, the law also contains a number of restrictions for this right, based by the practical need to ensure safety and security in prisons. The powers of the officials to inspect the letters and phone calls is graded according to the intrusiveness of control in four categories.

All prisoners are eligible for a prison leave at some point of their sentence. Prison leaves are granted on a basis of an application. *Permission of leave based on time served* is a normal part of sentence enforcement. The earliest date for such a leave is after half or two-thirds of the sentence before regular release on parole, however, not less than two months. *Prison leave due to exceptional*

reasons is not tied to the time served. The permission may be granted “for an important reason or to attend an outside event if the granting of the permission is important with regard to attending to the family, health care, subsistence, work, training, social or housing issues of the prisoner or for another corresponding reason.”

3.3 Release from Prison

Early release. In Finland all prisoners except those few dangerous violent recidivists who serve their sentence in (approximately 20 prisoners at any given day) are released on parole (see below). In practice this means that 99 % of prisoners released every year are released on parole. Release on parole is based on the decision of the director of the prison. Release practice is also quite fixed. As a rule, recidivists are released after they have served two-thirds of their sentence, and first-time prisoners are released after they have served one-half of their sentences. Offenders between 15 to 20 are released either after 1/3 (first offenders) or after 1/2 (recidivists). In all cases, a further condition is that the prisoner has served at least fourteen days.

Abolishment of preventive detention. Up till 2006 the Finnish law recognized a system of preventive detention to be used for serious violent recidivists. In practice preventive detention meant that offenders are not released before after they had served their full sentence. The use of this system has been relatively restricted (the annual number of prisoners in preventive detention has varied around 20–25). Even in its limited use preventive detention contradicts the prevailing Finnish sentencing ideology, which is very reluctant to accept assessments of dangerousness as a basis for criminal sanctions. In connection with the total reform of prison law in 2006 preventive detention was abolished and replaced by a system that allows the courts the right to order serious violent offenders to serve their sentence “in full”. This option was meant to be used in equally restrictive manner as the earlier system of preventive detention.

On certain conditions, prisoners convicted to serve the full term of the sentence can be released on parole after serving 5/6 but at least three years of the sentence. Helsinki Court of Appeal decides on the release. Prisoners sentenced to life imprisonment can also be released on parole. Helsinki Court of Appeal decides on the release. For lifers, release on parole is possible when at least 12 years of the prison sentence has been served. If the offence was committed when under 21 years of age, the corresponding time is ten years. Life sentence prisoners can also be released by the pardon of the President of the Republic.

Supervision. The duration of parole reflects the amount of time remaining in the sentence, however, at least three months and at most three years. About one fifth of those released on parole are placed under supervision. Supervision is used if the probationary period is more than one year or the offence was committed when under 21 years of age. Prisoners may also request supervision by themselves. The supervisor may be the Probation Service or a private individual appointed by the Service. In principle, the supervision involves both control and support.

If parolees are found guilty of new offences during the probationary period, a court decides whether they also lose their parole. The court decides on revocation of parole if the offender commits an offence during the period of his

or her parole and on the grounds of a behavioural infraction. In practice all parole revocations are based on new offences, and only such an offence that would normally lead to a prison sentence may serve as a reason to revoke the parole order.

Supervised probationary freedom. - New Prison law in 2006 introduced also a new form of early release program “Probationary liberty under supervision.” This new early-release program is designed especially for long term prisoners, who need more support in and more intensive program-work. Probationary liberty may be available at the most six months prior to normal conditional release (see above). The preconditions for probationary liberty are defined in detail in law. They include: 1) probationary liberty promotes fits with the pre-drafted individual plan for the term of sentence; 2) all information of the prisoner indicates that the conditions of the probationary liberty will be met; 3) the prisoner abstains from alcohol and substance use and agrees to alcohol and substance abuse control.

Probationary freedom requires a release plan which includes information on, e.g., the housing and livelihood of the released, obligation to participate in an activity, daily schedule, and supervision of the probationary freedom. As a rule, supervision will be taken care by means of GSM-positioning system. Prisoners carry with themselves a GSM mobile phone, which enables the surveillance of the prisoner from the prison. The mobile phone can be positioned at any time on the screen of the prison’s computer. Making a call to the phone verifies if the prisoner him/herself is at the place indicated by the phone. The prisoner is required to make regular calls, which also enable the location of the offenders whereabouts. Prison administration, in turn, makes random calls with similar results. The prisoner may only use the mobile phone for contacting the prison and the alarm centre. The method is less stigmatizing and considerable cheaper than the traditional EM-techniques. The prisoners have also had a positive attitude towards the experiment and no improper use has occurred.

4 Long-term Trends in the Finnish Prisoners Rates

This section examines the turbulent long-term penal changes in Finland during the 20th century. The section starts by describing how the prisoner rates in the first place reached the record levels not to be found anywhere else in Scandinavia, and how Finland managed to return back to the common Scandinavian level by the early 1990s. The changes under discussion in this section are described in figure 4.1.

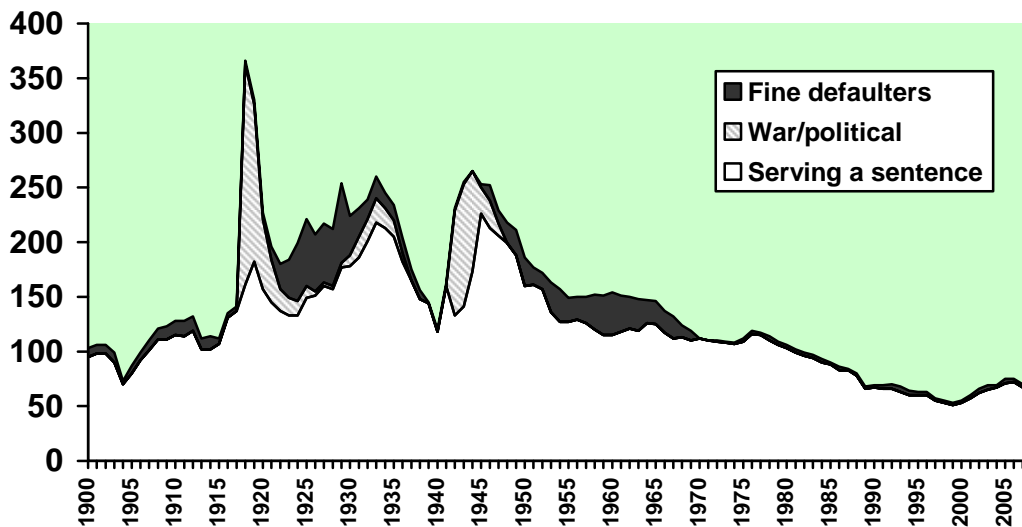


Figure 4.1. Prisoner rates in Finland 1900–2008 (annual averages). Source: Criminal Sanctions Agency

4.1 Prisoner Rates and Political Crisis

In the early 1920s the rates tripled from 100 to 350 (/100 000) as a result of the civil war. About one half of the prisoners were convicted for treason-like activities. After amnesties the rates fell in two years by one third. However, increased crime associated with the prohibition and a deep recession raised the figures back to 250 in the middle of the 1930s.

During the latter half of the 1930s the economy was recovering, the side-effects of the prohibition were vanishing and prisoner rates were falling. When the war with Russia broke out in 1939, men were needed in the war-front, and consequently about 20 % of prisoners received an amnesty. During the second war with Russia (the Continuation War) in 1941–1944 the prisoner rates rose back to 250, including also a great number of prisoners of war and those kept in isolation for reasons of national security. Early release programs were expanded to ease the overcrowding in prisons, but exceptional post-war conditions and a steep increase in crime kept the figures still high. Between 1940–45 homicide and assault rates doubled, theft offenses tripled and robberies almost ten-folded. This surge of crime was counteracted also with increased penalties.

However, the crime surge passed as the social conditions started to normalize. Also the courts started to mitigate their sentences. This mitigation was mainly the judiciary's own reaction against overly repressive policies instigated by the legislator during the exceptional post-war conditions. Consequently the prisoner rate fell within a period of 5 years some 40 % (from 250 to 150). In 1955–1965 the penalties still continued to fall in most offense categories. However, the emergency of two new offense types, drunk driving and car-thefts kept the prisoner rates fairly stable.

The extraordinary large prisoner population in Finland was to a great extent the result of exceptional political crisis. This holds especially true to the post-

1918 peak. Later developments were also affected by severe economic and social conditions. All this led to a situation where the Finns got used to measuring penalties in a different scale than our neighbors (who, with few exceptions, managed to keep their prisoner rates within the range of 40-80/100 000). There were differences in the “penal values” of prison sentences among the Scandinavian countries (as pointed out by Christie 1968). One month in Norway corresponded three months in Finland. This “prison inflation” may partly explain the sustained severity in the Finnish courts. However, there are also more technical explanations, such as strict and casuistic legal provisions for recidivists and property offenses. And there were also differences in social and economic conditions. In comparison to our neighbors, who were busy in building their welfare states Finland was in the 1950s a poor war-ridden agricultural country struggling under heavy war compensations. Not much thought was given to prison reform or social policy. However, all this – and much more – was to change during the next decades. This time the changes were also a product of conscious policy planning.

4.2 *The Reform-ideology of the 1960s and the 1970s*

Sentencing ideology. In the 1960’s, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). The criticism found a particularly apt target in the Finnish system where most of the old provisions of the Criminal Code of 1889 were still in force, representing a sharp contradiction between the values of the class-society of the 19th century and the rapidly developing social welfare state of the 1960s.

In Finland the criticism of the treatment ideology was merged with another reform ideology that was directed against the overly severe Criminal Code and the excessive use of custodial sentences. The resulting criminal political ideology was labeled as “humane neo-classicism”. It stressed both legal safeguards against coercive care and the goal of less repressive measures in general.¹⁷ In sentencing the principles of proportionality and predictability became the central values. Individualized sentencing, as well as sentencing for general preventive reasons or perceived dangerousness was put in the background. These ideological changes touched all Nordic countries. However, practical consequences were to be most visible in Finland.

Broadening the strategies of general criminal policy. This change reflects more than just a concern over the lack of legal safeguards. Behind this shift in strategies in criminal policy were more profound changes in the way the entire problem of crime was conceived. The whole theoretical criminal political framework and the conceptualization of the aims and means of criminal policy underwent a dramatic change, as the social sciences and planning strategies merged with the criminal political analysis. The aims of criminal policy were defined in par with the overall aims of general social policy. Cost-benefit analysis was introduced into criminal political thinking. In making choices

17 The topics in the following sections have been dealt with in more detail in Lappi-Seppälä 2001 and for Scandinavia in Lappi-Seppälä 2007a. On the trends and changes in Finnish penal policy see also Anttila & Törnudd 1992 and Lahti 2000.

between different strategies and means, the probable policy effects and costs – to be understood in a wide sense, including also immaterial costs for the offender – were to be assessed.

One result of all this was that the arsenal of the possible means of criminal policy expanded in comparison with the traditional penal system. The possibilities of environmental planning and situational crime prevention in controlling crime were discussed. This new ideology was crystallised in slogans such as – “criminal policy is an inseparable part of general social development policy” and “good social development policy is the best criminal policy”.

The aims and means of criminal policy redefined. The emergence of the new planning strategies, the functionalistic approach to the problem of crime and the general distrust in the effectiveness of penalties (repressive, deterrent or treatment oriented), all formed a theoretical background for the redefinition of the aims and strategies of criminal policy. The traditional main goals (such as simple prevention, the elimination of criminality or the protection of society) were replaced by more sophisticated formulae. From the 1970s onward the aims of criminal policy in Finland were usually expressed with a twofold formula: (1) the minimization of the costs and harmful effects of crime and crime control (the aim of minimization), and (2) the fair distribution of these cost among the offender, society and the victim (the aim of fair distribution).

The aim of minimization (not “elimination”) emphasizes the costs and the harmful effects of criminal behavior instead of the minimizing of the number of crimes. In so doing, it also draws attention to the means which perhaps do not affect the level of criminality, but which do lessen the harmful impact that crime has on the different parties. By stressing that not only the costs of criminality, but also the costs and suffering caused by the control of crime must be taken into account, the formula draws attention to the material and immaterial losses that arise e.g. through the operation of the system of sanctions. The aim of fair distribution brings into daylight the delicate issues of who should be responsible, and to what extent, for the costs and suffering involved in crime and crime control. The analysis of the roles and responsibilities of the different parties (state, community, offender, and victim) offers a framework for reasoned choices in the matter, identification of whom it would be fair and just to burden with the cost of different types of offences and situations, and whether the existing practices should be changed in the name of fairness and social justice.

The conceptualization of the aims of criminal policy and the conscious cost-benefit thinking had a number of practical effects. The scope of possible means of criminal policy extended far beyond the criminal justice system. One result of this new line of thinking was that the role of punishment came to be seen as relative. Once regarded as the primary means of criminal policy, it came to be regarded as only one option among many.

Indirect general prevention. After the fall of the rehabilitative ideal, also the aim and the justification of punishment was subjected to re-evaluation. The shift was once again towards general prevention. However, this concept was now understood in a different manner. It was assumed that this effect could be reached not through fear (deterrence), but through the moral creating and value shaping effect of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals.

As a result of this process, the norms of criminal law and the values they reflect are internalised; people refrain from illegal behaviour not because such behaviour would be followed by unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.¹⁸

This view of the functions of the penal system has a number of important policy implications. To put it briefly: the aim of indirect prevention is best served by a system of sanctions which maintains a moral character and which demonstrates the blameworthiness of the act. The mechanisms require a system that is enforced with “fair effectiveness” and that follows procedures which are perceived as fair and just and which respects the rights and intrinsic moral value of those involved.

Sentencing: humane neo-classicism. In sentencing this all was condensed in a new sentencing ideology (“humane neo-classicism”). The classical element in this theory was the revival of the old principle of proportionality. The humane elements were to be found in systematic efforts towards leniency. Minimisation of the suffering caused by the crime control system was among the generally accepted crime policy goals. The role and functions of the principle of proportionality were also seen in this spirit: It had its roots in the rule of law and the guarantees against the excessive use of force. The main function of the proportionality principle – as seen in the Finnish theory – was thus to impose the upper limit which the punishment may never exceed. It is much less restrictive (but still relevant) when considering the possibilities of imposing sentences that are less severe than the offender’s act would *prima facie* have deserved.¹⁹

Conclusions. From the early 1970s onwards there was a general conviction that in crime prevention, criminal law is only one means among many and that other means were often far more important. Furthermore it was also stressed that the general preventive mechanisms were more subtle and indirect than one usually thinks and that the effective functioning of the criminal law is not necessarily conditioned by severe punishments, but by legitimacy and perceived fairness. All in all, we should be realistic as regards the possibilities of achieving short-term effects in crime control by tinkering with our penal system. And what is most important, we should always weigh the harms and benefits of applied or proposed strategies of criminal policy. For the Finns the difficult question remained, why should we have three to four times more prisoners than the other Nordic neighbors. This also was the beginning of the series of legislative and criminal political reforms that started in Finland during the latter half of the 1960s.

18 This “redefinition” of the aim of punishment in the Nordic countries could rely on a long theoretical tradition dating back to the early Scandinavian realism of the Uppsala school of the 1920s and 1930s. In a closer analysis, this concept contains several distinct hypotheses which are based on different assumptions of why, how and through what kind of mechanisms various features of the legal system influence social values and compliance with the law. See in general Andeanes 1974 and Lappi-Seppälä 1995. Closely related trends are to be found in the German criminal law theory since the 1970s (“positive General-Prävention”, see Schünemann et al 1998) and Anglo-Saxon sociology of the 1990s (on the theory of “normative compliance” see Tyler 2003 and Bottoms 2001).

19 On the role the proportionality principle in Finnish sentencing law, *see* Lappi-Seppälä 2001.

4.3 *Legislative Reforms and Sentencing Practices*

Systematic legislative reforms started during the mid-1960s, and continued until the mid-1990s. They dealt both the general sanction system as well as specific offenses. The major law reforms affecting the number of prisoners are summarized in the table below. The table includes also a rough (and subjective) estimation of the actual impact of each reform on prisoner rates (+++ = greatly increasing the number of prisoners; --- = strongly reducing the number of prisoners). Major changes are commented in more detail in the text to follow.

Table 4.1. Leniency and severity in penal reforms in Finland 1966-2007

Effect	Law reforms
--	1966 Parole reform: Minimum time from 6 to 4 months
--	1967 Amnesty (50 years celebration of Finland's independence)
--	1969 Decriminalization of public drunkenness
-	1969 Day-fine reform: the number of day-fines reduced
-	1969 Assault reform: less emphasis on unintended harm
--	1972 Penalties for theft reduced
+	1972 Penalties for drug-offenses increased
--	1973 Restricting the use of preventive detention
-	1973 Discount rules for remand
--	1976 Reform of the prison law: Minimum time for parole reduced from 4 to 3 mths
-	1976 Conditional imprisonment (suspended sentence) expanded
--	1977 Sentencing reform; the impact of recidivism reduced
-	1977 Day-fine reform: heavier fines to replace imprisonment
---	1977 Drunk-driving reform: fines and conditional sentence instead of prison
-	1989 Fine-default rate reduced
---	1989 Minimum for parole from 3 mths -> 14 days
-	1989 The use of prison for juveniles restricted
-	1990 The length of pre-trial detention reduced
--	1991 Penalties for property offenses reduced (1988)
+	1991 Increased penalties for economic crime
-	1991 Expanding the scope of non-prosecution (1989)
--	1992 Introduction of community service
+	1993 Penalties for drug-offenses increased
+	1994 Blood-alcohol limit for aggravated drunk driving reduced 1.5 -> 1.2 ‰
-/+	1994 Experiment of (non residential) juvenile penalty
---	1995 Community service stabilized and expanded
+	1995 Extensions for police powers: Telecommunications
+	1995 Domestic violence under public prosecution
++	1999 Increased penalties for rape
+	1999 Increased control in prisons (drugs)
-	2000 Expanding the use of conditional imprisonment (conditional + community service)
+++	2000 Increased penalties for assault
+	2001 More fines for drug-users
+	2002 Extensions for police powers: Coercive measures, telecommunications
+	2002 Increased penalties for car-theft
+	2003 Participation in activities in organized crime (EU, 1999)
+	2003 Terrorism (EU, 2002)
+	2003 Zero-limits for drugs in traffic
+	2004 Extensions for police powers: Telecommunications
+	2004 Non-prosecution for domestic violence restricted
+	2005 Increased penalties for human trafficking, procuring and child-pornography

-/+	2004 Juvenile penalty made permanent
+	2006 Prohibition for purchasing sexual services (2005)
-	2006 Prison package and new prison law (2004)
--	2006 Reducing the number of fine defaulters; conversion rate (2005)
--	2007 Reducing the number of fine defaulters; exclusion of small fines (2006, prop. 2007)

-/+ = Rough (and subjective) estimation of the effects on prisoner rates/penal severity. Years in the table indicate the year when reforms entered in force. Years in parenthesis indicate the year the bill was introduced for the parliament.

General structure of sanctions 1950-1990. The general structure of sanctions system remained untouched in 1950-1990s consisting of fines, conditional sentence and imprisonment. During that period the number of imposed unconditional prison sentences remained stable. The increased number of minor offenses were sentenced to conditional prison sentences and fines. The system of summary fines was expanded in 1970. Of the total number of summary fines (150 000) 85 % were imposed for traffic violations. Still in the course of time also minor non-traffic violations (such as petty property offenses) were transferred to summary proceedings. The use of fines was further expanded in order to substitute to short-term imprisonment in the mid 1970s by raising the monetary value of day-fines (and thus making fines more severe).

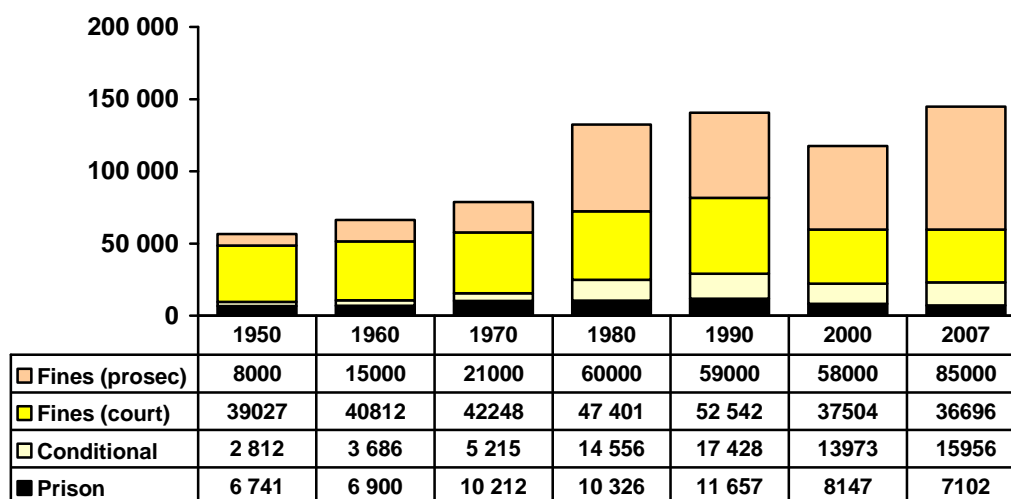


Figure 4.2. The use of different sentencing alternatives 1950 to 1990 (excluding traffic violations). Source: Statistics Finland.

From 1970s to 1990s the number of imposed penalties (traffic offenses excluded) more than doubled, while the absolute number of prison sentences remained stable. This was basically achieved by increased use of fines and conditional imprisonment.

The length of prison sentences 1950-1990. The overall decrease of prisoner rates was influenced also by the general decline in the length of prison sentences. Penalties for both traditional property offenses and drunken driving were heavily reduced. In 1950 the average length of all sentences of imprisonment imposed for theft was 12 months, in 1971 it was 7 months and in 1991 3 months. Similar changes occurred also in other major crimes, such as robbery, assaults and drunken driving.

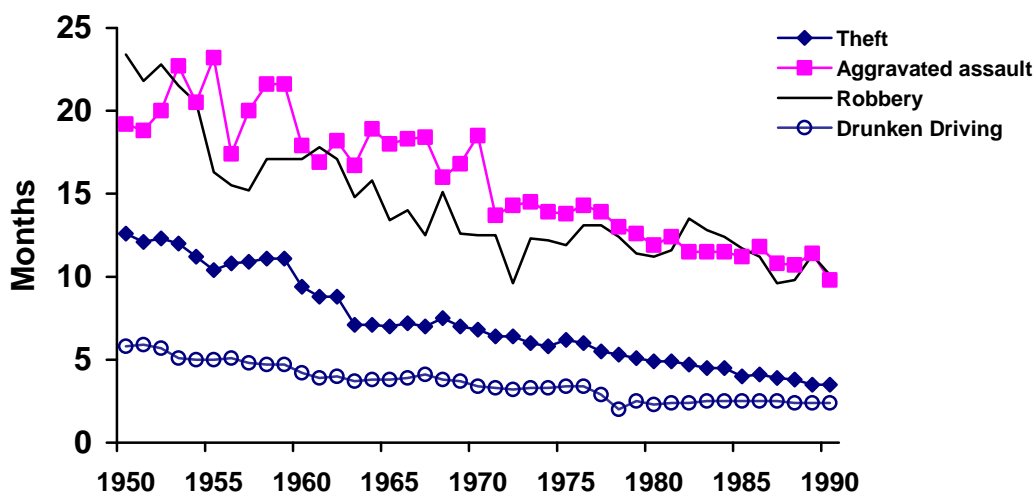


Figure 4.3. The average length of sentences of imprisonment for four different offense 1950 to 1990. Source: Statistics Finland.

Reductions in sentence lengths in the 1950s took place without any legislative changes. This was mainly a court-driven reaction against the overly severe post-war sentencing practices. From the 1970s onwards this trend was supported by a series of legislative changes dealing with both specific offenses and the general structure of the sanction system.

Property offenses and drunk driving. In the mid 1960s almost 90 % of drunk drivers received an unconditional prison sentence, in early 1970s the figure was 70 %, but ten years later the proportion had dropped under 20 %. The introduction of community service in the mid 1990s brought another drop in the use of imprisonment to 10 %.

Besides drunk drivers, Finnish prisons in the 1950-1970s were crowded also by increasing number of property offenders, especially theft. In 1972 penalties for theft were reduced for the first time. This was repeated in 1991. In this time also minimum penalties for car-theft were reduced. The latter change had immediate effect for the use of fines in this offense category. Overall these reforms decreased the share of unconditional imprisonment from 50 % to 25 %, while the share of fines increased from 20 % to 50 %.

Conditional imprisonment and sentencing reform. The scope of conditional imprisonment (suspended sentence) was extended in both sentencing practice and by law reforms. The number of annually imposed conditional sentences rose from 4,000 (1960) to 18,000 (in 1990).

Table 4.2. The use of conditional and unconditional imprisonment from 1950 to 2007

	Unconditional N	Conditional N (all with fines)		Conditional % (of all prison sentences)
1950	6 741	2 812	..	30
1960	6 900	3 686	..	35
1970	10 212	5 215	..	34
1980	10 326	14 556	5 803	59
1990	11 657	17 428	8 472	60
2000	8 147	13 974	7 146	63
2005	8 252	15 757	8 930	66
2007	7 102	15 956	9 353	69

Source: Statistics Finland

In 1950, 30 % of sentences of imprisonment were imposed conditionally. In 1990 the rate was 60 %, in 2005 66 %, and in 2007 69 %. Primary factors behind the changes in 1970-1990 were, above all, the relaxation of the conditions for imposing conditional sentences (1976), the reassessments of sentences for drunken driving (1977) and the sentencing reform (1976). The latter reform stressed the importance of uniformity in sentencing, predictability and proportionality, as well as the values of humanity and equity. One of the main aims of the 1976 sentencing reform was to restrict the role of prior record in sentencing by replacing old mechanical provisions with a more regulation which allowed aggravation only when recidivism implies increased act-oriented culpability.²⁰ The abolition of mechanical aggravation led to an overall reduction in the length of prison sentences especially in those imposed for chronic property offenders.

Fine defaulters and recidivists in preventive detention. In the 1960s two prisoner groups gain special attention. In the course of the 1960s the use of preventive detention (or secure detention) for repeat offenders had expanded to cover also large number of property offenders, lifting the size of prisoner held in prolonged custody to over 400 (5 % of overall prisoner rate). The use of default imprisonment for fines had reached even higher figures. In 1969 the use of imprisonment as a default penalty for unpaid fines, was restricted (and major cause for these fines was removed by decriminalizing public drunkenness). and the daily number of fine-defaulters fell from over 1,000 to less than 50. In 1971 the use of preventive detention was restricted only to serious violent recidivists,

²⁰ According to chapter 6, section 2(4) of the Criminal Code the previous criminality of the offender may increase the penalty “if the relation between the offences on the basis of their similarity or for another reason shows that the offender is *apparently heedless* of the prohibitions and commands of the law”. Casual or occasional repetition should, thus, not increase punishments. In considering whether the offender has shown “apparent heedlessness”, the judge must compare the new crime with the previous ones, look at the lapse of time between crimes, the amount of premeditation and the motivational connection between these crimes. See in more detail Lappi-Seppälä 2001.

and the number of people held in preventive detention fell overnight from 250 to less than 10.

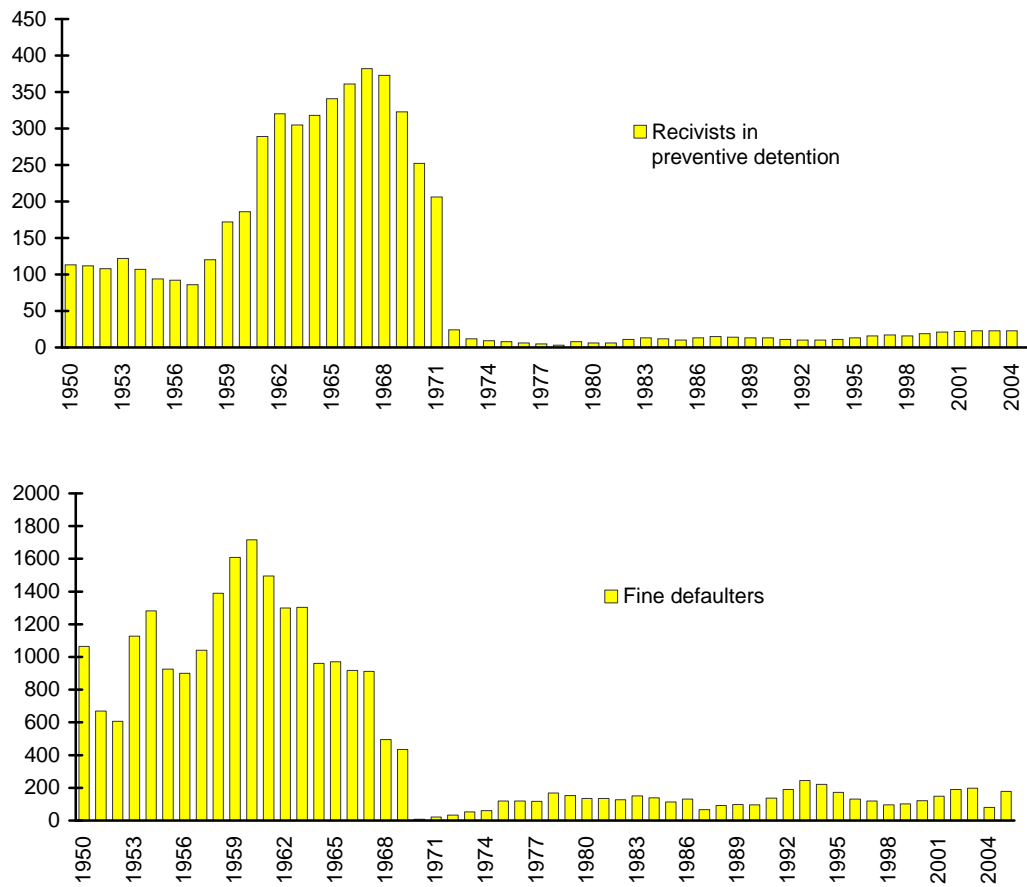


Figure 4.4. The number of recivist in preventive detention and fine defaulters 1950–2005 Source: Criminal Justice Agency.

Parole. The system of parole and early release has also proven to be a very powerful tool in controlling prisoner rates. In Finland practically all prisoners are to be released on parole on a routine basis. At the moment, the minimum time to be served before the prisoner is eligible for parole is 14 days. A series of reforms have brought it down to this. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months, and finally in the late 1980s from three months to 14 days. In a system where the average stay in prison varies around 4–6 months, reductions in the minimum time to be served will have an immediate impact on the prisoner rates. The effects of 1989 change can be seen already from the general prison statistics (see figure). The relative increase in the use parole is illustrated below.

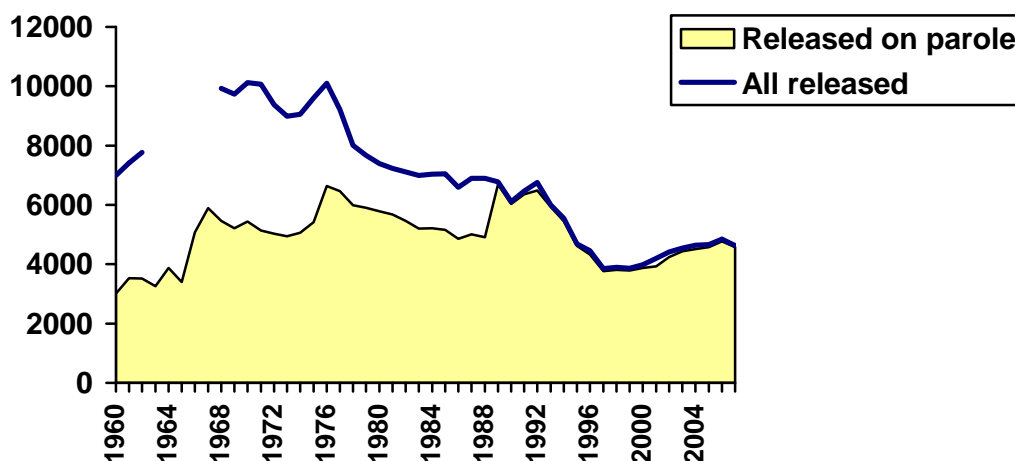


Figure 4.5. Prisoners released on parole 1960–2007. Remand and fine defaulters excluded. Source: Criminal Justice Agency.

In the late early less 40 % of annually released prisoners were released on parole. In the late 1960s their share has increased into 50 % and during the 1970s already to 75 %. After the 1989 parole reform practically all prisoners are released on parole.

Juveniles. In the course of the 1970s the use on imprisonment for young offenders started to raise increasingly critical comments. Several proposals for reforming the juvenile justice systems were put forward, but with very little practical results. However, critical notions of the harmful effects of imprisonment for younger age groups evidently had some impact on courts sentencing practices, as both the number of prison sentences and the number of juvenile prisoners decreased rapidly post the mid 1970s. Two law reforms contributed to this change in the shift of the 1990s. The Conditional Sentence Act was amended in 1989 by including a provision which allows the use of unconditional sentence for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on practice (figure 4.6). Also the reduction of minimum penalties for car-thefts (joy-riding) had impact on younger age groups as this offense is typically committed by young offenders (one third of prison sentences in the age group of 15-17 were imposed for this offense).

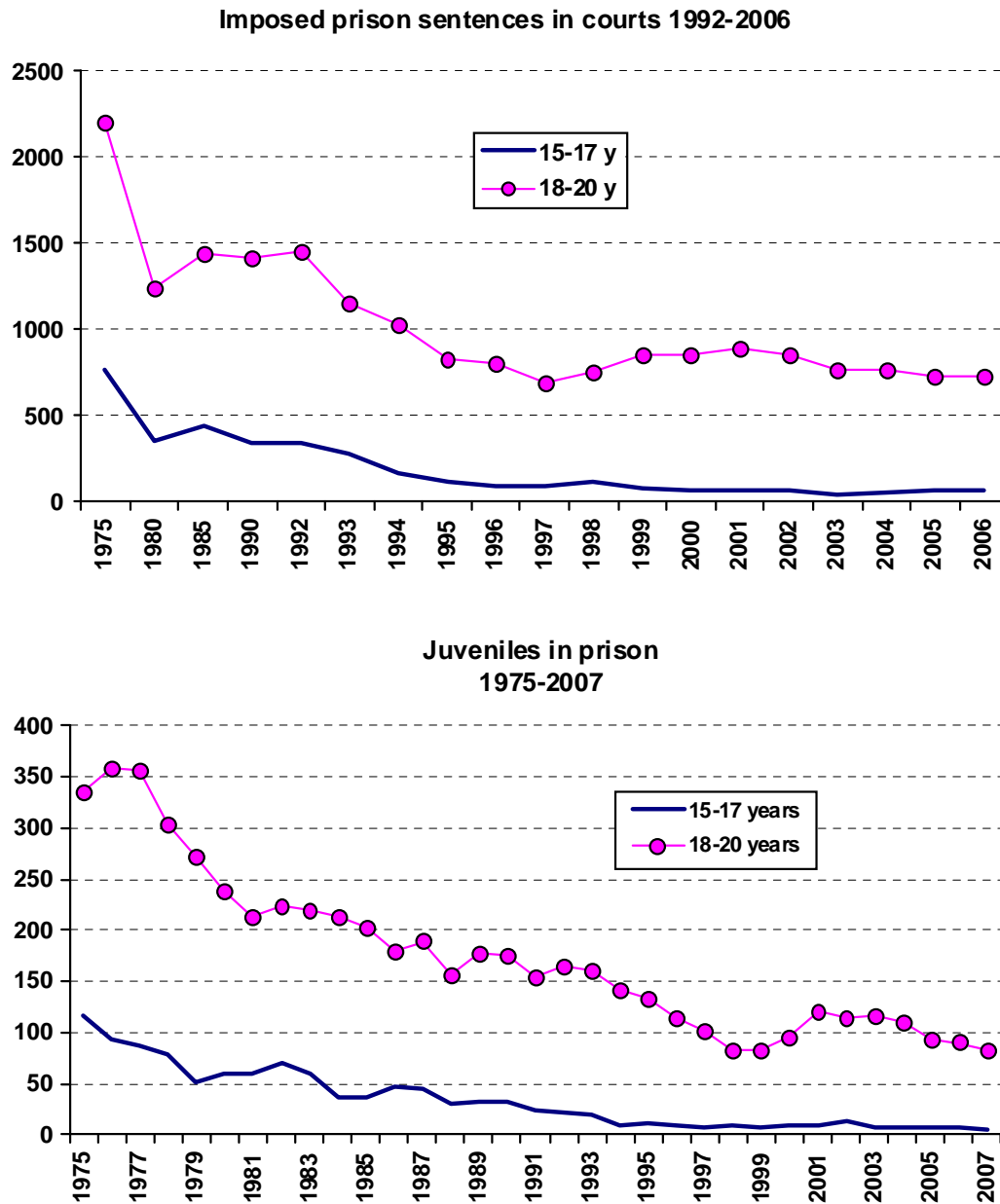


Figure 4.6. Imposed prison sentences and the number of juvenile prisoners 1975–2007 (annual averages, absolute figures, remand included). Source: Criminal Sanctions Agency

At the moment (February 2008) there are about 80 prisoners between the ages of 18 and 20 and 5 in the 15 to 17 age group, while as recently as in the mid 1970s the numbers were five to ten times higher.²¹

21 In comparative analyses one must take into account that in the age-group 15-17 child welfare bears the basic responsibility for rehabilitative actions including institutional care when necessary. Finnish juvenile justice system is discussed in more detail in Lappi-Seppälä 2006 and Marttunen 2008.

Community service. The last major reductionist reform dealt with the introduction of community service in the mid 1990s. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment (and not instead of other more lenient penalties), a specific two-step procedure was adopted. First the court is supposed to make its sentencing decision without considering the possibility of community service. If the result is unconditional imprisonment, then the court may commute the sentence into community service under certain conditions prescribed in the law. The duration of community service varies between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service.

Imprisonment and community service in the Finnish court practice 1992-2005

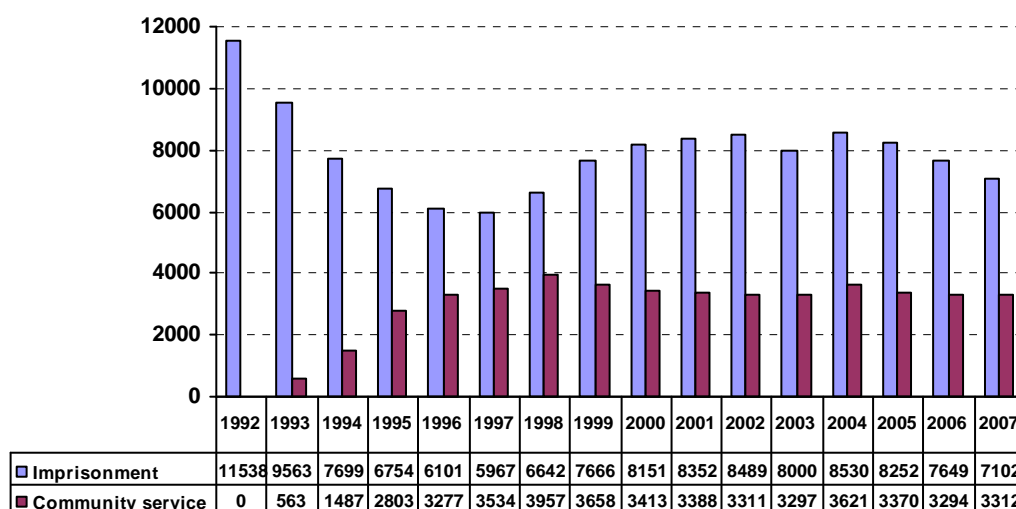


Figure 4.7. Imprisonment and community service in Finland 1992–2007 (court statistics) Source: Statistics Finland

As the statistics shows, the number of prison sentences fell together with the increase in the number of community service orders between 1992–1997. Within a short period of time, community service proved to be an important alternative to imprisonment. Today community service replaces around 35 % of short term (max 8 months) prison sentences.

Summary. The decrease in prisoner rates was a summary effect of several changes in sentencing practice and penal legislation. The courts had taken the initiative to this direction already in the 1950s. The 1967 amnesty caused first major drop. After that followed the reforms dealing with chronic recidivists, fine defaulters, property offences, drunk driving, sentencing rules and juvenile offenders, accompanied with the expansions in the use of fines. Final stage in this course of development was the introduction of community service. The reforms and their effects in prisoner rates are illustrated in figure 4.8.

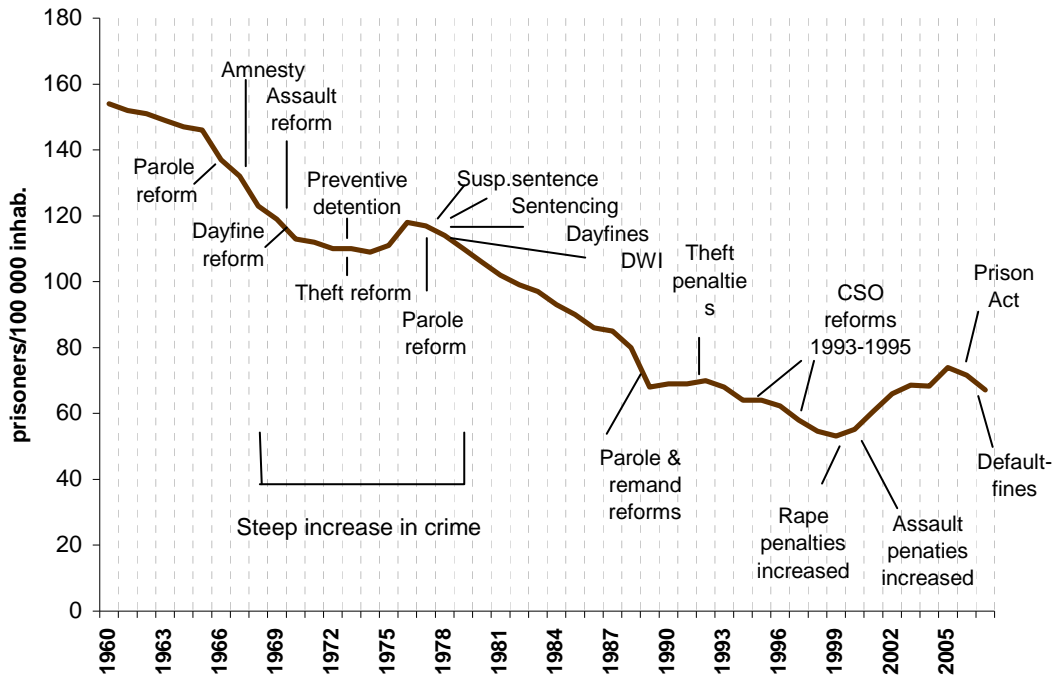


Figure 4.8. Prison rates and policy reforms in Finland 1960–2007

The list of law-reforms provides only a technical explanation for these changes. The real issue is, what made it possible to realize this policy and what were the more general factors behind these changes.

5 Explaining Penal Liberalization

5.1 *Prison Rates and Crime Rates*

5.1.1 Crimes explaining prisoner rates?

The volume of crime is a natural starting point in explaining changes in sanction structures. The fact that Finland has been – and still is – a peaceful and safe society with a low level of crime may well have made it easier to adopt liberal policies in crime control. Even so, this factor has a limited explanatory force. In fact, over a period of approximately 20 years, and especially during the 1960s, Finland experienced severe social and structural changes in its development from a rural/agricultural economy into an industrial urban welfare state. This rapid development had its impact on our crime rate. There was a steep increase in recorded crime from the mid-1960s to the mid-1970s, and again during the 1980s. Figure 5.1 compares the changes in prisoners rates and crime rates in selected offenses in 1950–2004.

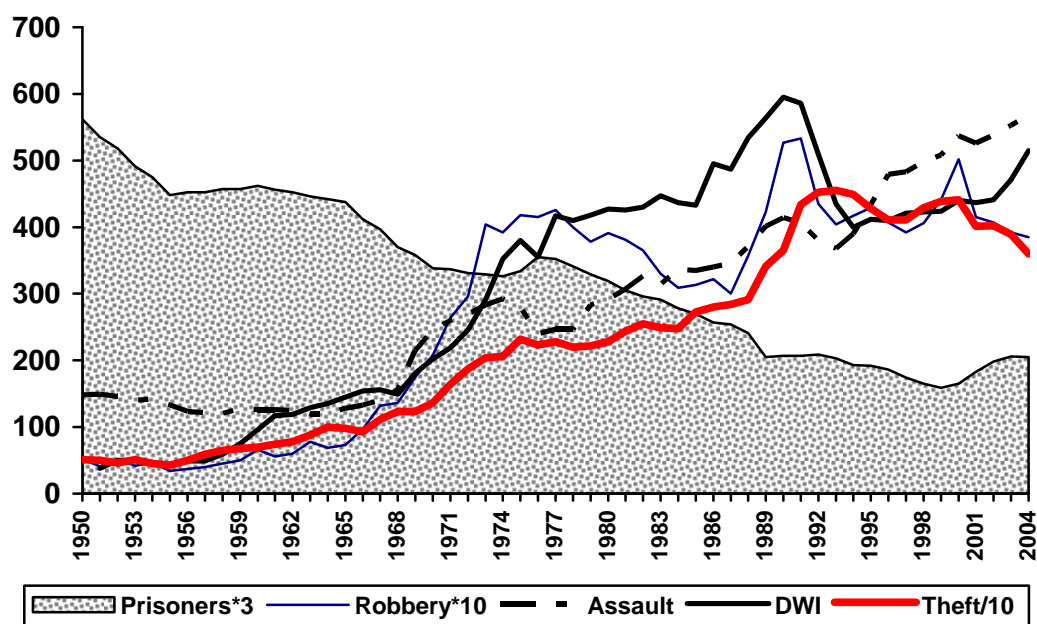


Figure 5.1. Prison rates and crime rates 1950–2004 (selected offenses) Compiled from Statistics Finland

The fairly stable prisoner rates in 1950–1965 go together with a fairly stable period of recorded crime as well. However, from the mid-1960s onwards the prisoner rates started to fall again. And this took place together with steeply increasing crime. The fall of prisoner rates in Finland cannot be explained by falling crime rates. But this leaves us with the awkward question: can rising crime rates be explained with decreasing prisoner rates? To answer this we need to expand the view to include the other Nordic countries.

5.1.2 Prisoner rates explaining crime?

The Nordic countries with strong social and structural similarities but with very different penal histories, provide an unusual opportunity to assess, how drastic changes in penal practices in one country have been reflected in the crime rates compared with countries (with similar social and cultural conditions) which have kept their penal systems more or less stable. Figure 5.2 shows incarceration and reported crime rates in Finland, Sweden, Denmark and Norway from 1950 to 2000.

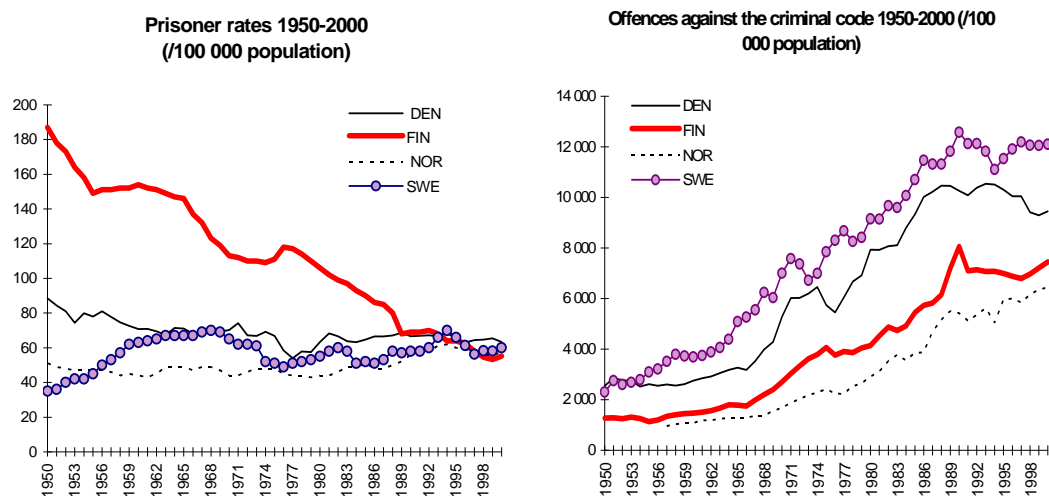


Figure 5.2. Prisoner rates and crime rates 1950–2000 Compiled from: Falck et al 2003.

There is a striking difference in the use of imprisonment, and a striking similarity in the trends in recorded criminality. That Finland has substantially reduced its incarceration rate has not disturbed the symmetry of Nordic crime rates. These figures, once again, support the general criminological conclusion that crime and incarceration rates are fairly independent of one another; each rises and falls according to its own laws and dynamics.²²

5.2 Explaining the Finnish Exceptionalism

All in all, crime seemed to be relatively irrelevant in explaining prisoner rates, nor did prisoner rates seem to have much to say in the development of crime. Given that crime is not the answer, we need to look for the explanations from elsewhere. The long list of law reforms supports the conclusion that the decrease in the Finnish prison population was a result of a conscious, long term and systematic criminal policy. An adequate account should be able to explain what made it possible to carry out these reforms during these years? We may start with certain features specific to Finnish society and the composition of Finnish political culture and proceed from there to more general social, structural and cultural factors.

Political culture. Part of the answer could be found in the structure of our political culture. The Finnish criminologist *Patrik Törnudd* has stressed the importance of the *political will and consensus* to bring down the prisoner rate. As he summarizes, “those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s comparatively high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.” (Törnudd 1993, p. 12). This conviction

²² The associations between crime and prisoner rates are discussed in more detail in Lappi-Seppälä 2007a.

was shared by the civil servants, the judiciary and the prison authorities and, as was equally important, by the politicians.²³

Another and closely related way for characterizing the Finnish criminal policy would be to describe it as *exceptionally expert-oriented*: Reforms have been prepared and conducted by a relatively small group of experts whose thinking on criminal policy, at least in the basic points, has followed similar lines. The impact of these professionals was, furthermore, reinforced by *close personal and professional contacts* with senior politicians and with academic research.²⁴ Consequently, crime control has never been a central political issue in election campaigns in Finland, unlike in many other countries. At least the “heavyweight” politicians have not relied on populist policies, such as “three strikes” or “truth in sentencing”.

Media. This takes us to another element in the Finnish criminal policy composition – *media-market and the role of the media*. In Finland the media have retained quite a sober and reasonable attitude towards issues of criminal policy. The Finns have largely been saved from low-level populism. There is a striking difference between the British and Finnish crime-reports in the media. The tone in the Finnish reports is less emotional, and reports – also when dealing with singular events -- are usually accompanied with commented research based data on the development of the crime situation.

In fact, the whole structure of the Finnish media market looks a bit peculiar. For the first, according to the information given by the World Association of Newspapers (World Press Trends 2004), the most busy newspaper-readers in Europe are to be founded in Finland and Sweden (90 % of the population read newspaper every day, while in France, Italy and the UK the figures are 44, 41 and 33 %). Secondly, the clear market leader can be classified as a quality-paper, tabloids have far less prominent role in Finland than in many other countries (including the UK). Thirdly, only small fraction (12 %) of newspapers-distribution is based on selling single copies. Almost 90 % of the newspapers are sold on the basis of subscription, which means that the papers do not have to rely on dramatic events in order to draw the reader’s attention each day. In short, in Finland the newspapers reach a large segment of the population, the market leaders are quality papers which do not have to sell themselves every day, since distribution is based on subscriptions. This all may have an effect both on the ways crime is reported, and the ways people think in these matters.

Nordic co-operation. The early 1960s was a period of intensifying Nordic co-operation in legal matters. Crime and criminal justice were among the key issues in this agenda. In 1960 The Scandinavian Research Council was established with the support of the ministries of justice. This Council became a central forum for the exchange of information between the Nordic countries. Interest in Criminological research expanded and the status and resources of

23 At least to the extent that they did not oppose the reform proposals prepared by the Ministry of Justice.

24 Several of our Ministers of Justice during the 1970s and 1980s have had direct contact with research work; indeed, one of them, Inkeri *Anttila*, was a professor of criminal law and the director of the National Research Institute of Legal Policy at the time of her appointment as Minister.

criminology were strengthened in the Nordic countries. The reform-work of the 1960s and 1970s in Finland was heavily influenced by this exchange of ideas, as well as by the legislative models offered by our Scandinavian neighbors (and especially Sweden). In many instances liberal reforms could be defended with reference to positive experiences gained from other Nordic countries and the need for Inter-Nordic harmonization. This “Nordic identity” was strengthened in Finland also by the fact that Finland was in the 1960s quickly reaching other Scandinavian partners in economical and welfare resources.

A specific feature of this co-operation was that it was not founded on conventions but on non-binding agreements between the nations.²⁵ It was not led by politicians and governments, but by Ministries of Justice and their experts. It proved to be very effective and less bureaucratic. The results of this co-operation were manifested in legislative acts that have been adopted separately in each Nordic country, but with identical contents. This concerns, for example, extradition from one Nordic country to another as well as the enforcement of sentences within these countries.

Judicial culture and sentencing structures. Also micro-level institutional arrangements and specific professional practices have contributed to this change. Co-operation with the judicial authorities – the judges and the prosecutors – and their “attitudinal readiness” for liberal criminal policies have been of great importance in Finland. In many cases, legislators have been strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before legislators had changed the law.

Also the fact that judges and prosecutors are trained career officials with training in criminology and criminal policy in the law schools, contribute to this explanation. In addition, different courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in co-operation with the universities – have also had an impact on sentencing and prosecutorial practices.

The Finnish sentencing structure, which treats sentencing as an area of normal judicial decision making, guided by valid sources of sentencing law, may also function as a shield against political pressures. Finland (and Sweden) have a highly structured system with detailed written provision on the general principles and specific sentencing criteria to be taken into account in deciding both on the type and on the amount of punishment. Arguments that affect sentencing must be presented in a form that fits to the accepted rules and standards. The specific structure of the decisions making-process, as outlined in the general sentencing provisions (the “notion of normal-punishments”) stress the importance of uniformity in sentencing (=avoiding unwarranted disparities). This places the existing sentencing patterns in a central position as starting points in sentencing. And this, in turn, gives sentencing strong inertia: rapid changes are unlikely to occur, unless these changes have not been channeled through the valid sources of sentencing law (see in general Lappi-Seppälä 2001).

25 The foundation for the co-operation is based on Helsinki Treaty (1962). The treaty obliged the contracting parties to “strive to create uniform provisions concerning crime and sanctions of crime.” A general overview is to be found in Lahti 2000.

5.3 *Widening the Perspective to Socio-economic and Political Factors*

All factors mentioned above, are more or less obvious for anyone familiar with the Finnish society in general. However, a full account of the factors behind the humanization of the Finnish should be able to explain more: For the first, it should explain the *timing*, why this all started when it did and why the liberal policies have (more or less) prevailed ever since. For the second, the explanations of this sort should be able to cover also the *patterns to be found among different countries.*, This applies particularly to the other Scandinavian countries, as the policies adopted in Finland were highly influenced by similar policies in the other Nordic countries. In short, the explanations for the Finnish exceptionalism should be able to cover also the more general Scandinavian exceptionalism.

This search for a more substantial explanation should start from the Nordic Welfare Model and the underlying social, political and cultural factors. Introducing these social and economical factors in the analyses (and the respective changes within them) helps to explain both the timing and the prevailing regional patterns. Liberal penal policies are associated with strong welfare state. The old Finnish slogan, “good social policy is best criminal policy” was just another way of saying that society will do better by investing more money in schools, social work and families than in prisons. The years of penal liberation in Finland were also a period of radical social, economic and structural changes. From 1950 to 1970 the gross domestic product of Finland increased by 125 %, while the growth in OECD was in average 75 % and in the UK and the US 55 %. Between 1960 and 1998 the total public social expenditure as a percentage of GDP increased in Finland by 18 percentage points, in OECD countries by 13, in the UK by 11 and in the US by 7. Between 1966 and 1990 the income differences, measured by GINI-index by reduced in Finland by 8,3 points (from 33,4 -> 25,1). In short, Finland was joining the Scandinavian welfare family in terms of the level of economic prosperity, welfare provision and income-equality. And that change was reflected also in our penal policies. Just the same way, as the prison expansion in the Anglo-Saxon world coincides with the concomitant general scaling down of welfare states (see Garland 2001).

Nordic Countries, still, represent a regional unity both in terms of their liberal penal model and their universalistic welfare model. This welfare model, in turn, has its own background, which also should be included in the analyses. Thus, giving a more complete explanation for those changes that occurred in Finland since the 1960s would require a wider perspective which encompasses also general social, economic, political and cultural factors.²⁶

26 The role of macro-sociological factors in explaining penal differences is analysed in more detail in Lappi-Seppälä 2008a.

6 Crime and Punishment in Finland in the 1990s and 2000s

6.1 *Fluctuations in Prisoner rates in 1990-2007*

The downward trend in prison population rates continued with only short-term interruptions in the mid-1970s up till late 1990s. However, from that point on the direction of law reforms, sentencing patterns and the number of prisoners took another course. Table V.1. summarises the changes in court practices and prison numbers in 1990-2008.

Table 6.1. Prisoners and admissions in prisons in Finland 1980-2007 (/100 000 pop).

Year	Court sentence (basic alternatives)			Prison sentences			Prisoners			
	Fines	Cond impr.	Community service	Prison	% of all	Mean months	Total years*	Total	/100 000	Prison term
1990	52537	17427		11657	14,0			3441	69	4,7
1991	51948	16311		11533	14,2			3467	69	4,7
1992	47473	15637		11538	15,1			3511	70	4,3
1993	41161	14249	563	9563	14,3			3421	68	4,4
1994	38856	12933	1487	7699	12,3			3275	64	4,5
1995	38020	13624	2803	6754	10,8			3248	64	5,0
1996	36323	13039	3277	6101	10,2			3192	62	5,8
1997	35109	12946	3533	5967	10,1			2974	58	5,8
1998	33889	12943	3957	6642	11,4	7,3	4041	2809	55	5,8
1999	34213	12543	3658	7666	13,0	7,7	4919	2743	53	5,6
2000	37504	13973	3413	8147	12,7	7,4	5024	2855	55	5,2
2001	38948	14342	3388	8352	12,6	8,3	5777	3135	60	5,5
2002	36573	14770	3313	8484	13,2	8,4	5939	3433	66	5,5
2003	36460	15074	3297	8000	12,5	8,4	5600	3578	69	5,6
2004	39420	16165	3621	8530	12,4	8,1	5758	3577	68	6,5
2005	38290	15757	3370	8252	12,3	8,8	6051	3888	74	6,2
2006	36813	15513	3310	7262	11,7	8,6	5482	3778	72	6,2
2007	36696	15956	3312	7102	11,0	9,3	5505	3551	67	5,8

Source: Compiled from Statistics Finland and Criminal Sanctions Agency

* Counted as (Imposed prison sentences mean in months*number of prison sentences)/12

The number of prison sentences fell from 11 5000 to 6000 in 1992-1997. Also the share of prison sentences of all sentences passed in courts fell from 15 to 10 %. At the same time the average length of a prison term increased from 4,3 to 5,8 months. All these changes resulted from the fact that short term prison sentences were replaced by community service orders, which increased from zero to 3500 (see on this 4.3 above).

From late 1990s to mid 2000s the absolute number of court imposed prison sentences increased from 6000 to 8500. The relative share of prison sentences grew from 10 to 13 percentages. Also the average length of prison sentences grew from 7,3 months to 8,8 months. As a total result of these changes the absolute number of imposed prison years in the courts increased from 4000 to 6000. This all was reflected also in the prison figures. In 1999 -- 2005 the total

number of prisoners increased by 40 % (from 53→74 relative to population and by 2700 → 3900 in absolute numbers).

However, in the mid 2000s the things seem to have taken another turn. The absolute number of prison sentences has decreased from 8500 to 7100. Also the relative share of imprisonment has slightly declined. However, the length of prison sentences has increased by approximately one month (which may well be in connection with the fact that fewer offenders receive prison sentences). All in all, the dramatic increase in the number of imposed prison years halted in 2005 and took a slight downward trend (from 6000 to 5500 years). The decline in the number of prisoners is, however, more substantial. In 2005-2007 the annual average number of prisoners fell about 10 % from 3900 to 3500 (74 to 67 / 100 000). The following comments the background of some of these changes in more detail.

6.2 Crime and Social Change

Recession and alcohol. During the first half of 1990s Finland underwent the deepest recession in the Western world since the 1930s. The GDP fell in 1990-1993 by 14 % and unemployment jumped from 3 % to the record level of 16 %. The state adopted extremely strict financial politics. Wages were frozen and public expenditures were cut down. In three years time the economy recovered and economic growth rose from minus 7 % to plus 5 %. However, welfare state suffered from these cut-backs. Social expenditures remained in real terms roughly on the same level but fell in relative terms and income differences started to grow after a long-term period of decline.

Recession had both direct and indirect impact on criminality. The decrease of daily income and economic resources of large segments of the population reduced also the consumption of alcohol which, in turn, is closely associated in most forms of traditional crime in Finland. While in the latter half the 1980s alcohol consumption was in a steep increase, in 1990-1994 the overall consumption fell by 10 %. This was accompanied by a similar drop in most forms of alcohol related crime, including robberies, assault and drunk driving. Also property crime took a downward trend after the shift of the 1990s.

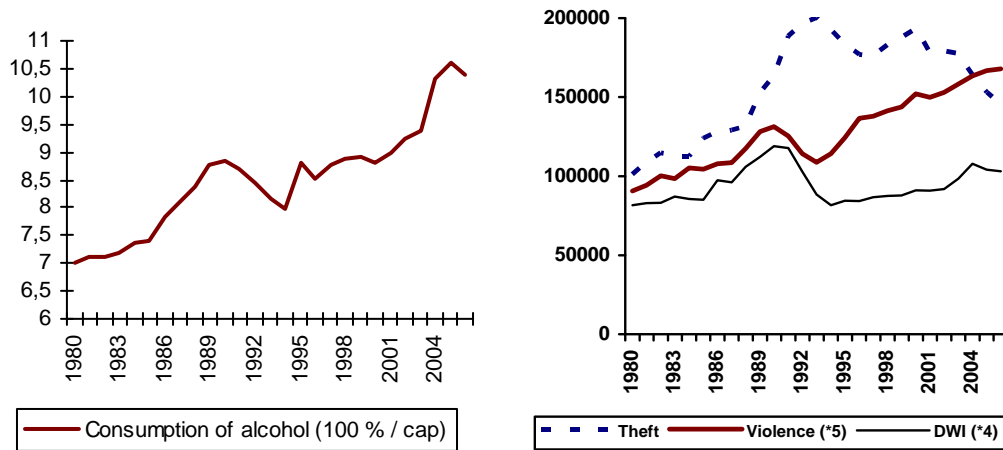


Figure 6.1. Crime and the consumption of alcohol 1980-2007. Source: Compiled from National Statistics

However, during the latter half of the 1990s things changed. In 1995 Finland carried out a major liberalization in alcohol policy, as a result of joining the EU. The state alcohol-monopoly was partially repealed, public drinking was allowed without restrictions, and medium beer could be bought now everywhere, also in kiosks and service stations. The trends in alcohol consumption took a sharp upward trend (figure above left). Also reported violent crime changed its course (above right). However, this was also partly due to legislative changes. Third alcohol liberalization took place in 2004. Alcohol taxes were reduced in order to avoid massive vodka-tourism between Finland and Estonia, now joining the EU.²⁷

Drugs and demographics. Recession coincided -- and was also partly boosted -- with another major change, the fall of the Soviet Union and the opening of the eastern border. This had visible impact on demographic composition, as well as crime profile. The share of foreigners in Finland increased from the level below 0,5 % quickly to 2 % (see below figure IV.3 left scale). The opening of the Russian border produced suspicious estimates and fears of the Russian Mafia invading Finland. In the course of the 1990s these fears turned out to be grossly exaggerated, and worst fears disappeared.

However, cross border crime increased and during the 1990s Finland experienced its second drug-wave (the first had taken the place in the early 1970s). The number of reported drug offenses as well as convicted drug offenders five to ten-folded in the 1990s. Throughout the 1990s drugs remained the major concern in criminal policy. Drug-offenses were about the only offense type showing real increase in crime statistics. Also the concerns of organized cross-border crime were related to drugs. Drugs and drug treatment became also a major issue for the prison administration. However, in the latter half of the decade, both violent and sexual offenses started to raise increased attention.

²⁷ The obvious adverse health effects made the government to change its course, and in 2008 the alcohol taxes were raised by 10-15 %.

6.3 Prisoners and Prisoner Groups

Demographic changes. As it seems, part of this change was caused by external factors, unrelated to policy decisions. These include the increase of foreigners and expanded drug markets. Both were partly related to the opening of the eastern border between Finland, Russia and the Baltic countries.

During the 1990s foreign population living in Finland increased by some 250 %. This was reflected also in the prisoner rates. The number of foreign prisoners increased from a near zero to a figure that corresponds to about 9 % of the Finnish prisoner rates.

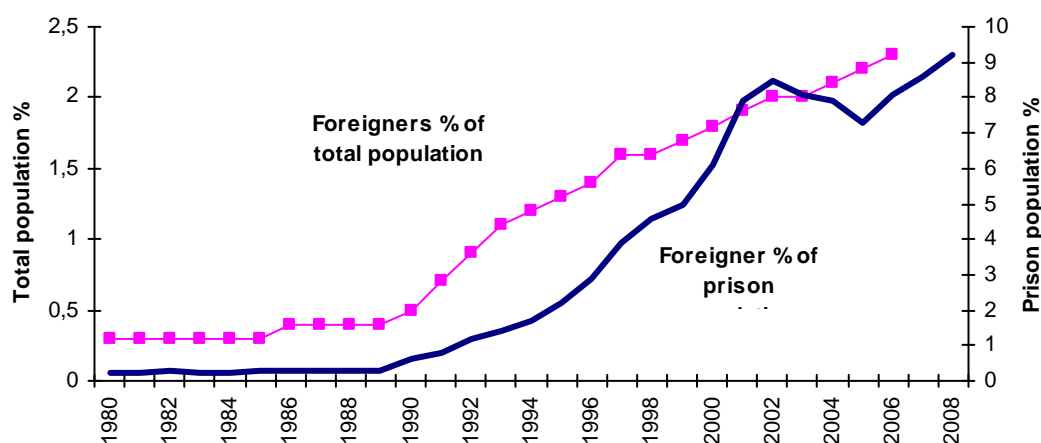


Figure 6.2. Foreign prisoners and prisoner serving a sentence for drug offenses in Finland 1975-2007. Source: Criminal Sanctions Agency

A clear majority of foreign prisoners serve their sentence for drug offenses.²⁸ In the early 1990s there were less than 100 prisoners serving a sentence for drug offenses. This represented about 2 % of the prison population. In 10 years time the number of drug offenders has five folded, being at their highest in 2004 (550 representing 18 % of prisoners serving their sentence). Since then the figures have been stabilized.

Policy changes in violent and sexual offenses. Part of the increased use of imprisonment was clearly policy driven. This period of toughening penal policy was opened by an assault reform in 1995 which placed domestic violence (and other assault offenses committed in private locations) under public prosecution. This change increased quickly crime reporting. House calls doubled in a short period of time. Also the number of court-imposed penalties increased. Prosecutorial rules of domestic violence were further reformed in 2004 as the scope of non-prosecution was restricted in these cases.

Next major reform increased penalties for rape in 1999. This took place by dividing rape offenses in three categories of gravity and by increasing the

²⁸ Issues related to foreign prisoners in Finland are dealt with in more detail in Lappi-Seppälä 2007b.

minimum penalty for basic crime from 6 months to one year. As a result, the length of prison sentences increased in average by 6 months.

The most influential aggravating reform concerned assault. In 2000 the minimum penalty for aggravated assault was doubled from 6 months to one year. As substantial part of court imposed sanctions are situated fairly close to the minimum penalty, a considerable increase in sentence severity could be expected. In a short period of time the average length of prison terms for aggravated assault increased by 6 months. Also penalties for normal assault became more severe.

The effects of the reforms in 1995-2005 can be traced both from sentencing and prison statistics (although both indicators are affected by other factors too). Key-figures from the court statistics are gathered in table 6.2 below.

Table 6.2. Court imposed prison sentences for violent, sexual and drug offenses 1998-2004

COURTS	1998	2004	Change %
The length of unconditional prison term imposed for...	Months	Months	
	17,3	23,7	+ 37 %
- aggravated assault	3,7	4,4	+ 19 %
- basic assault	19,3	23,9	+ 23 %
- sexual offenses (all offenses)	31,0	39,9	+ 29 %
- aggravated drug offenses			
Total volume of prison years imposed for...*	Years	Years	
	1378	2361	+ 71 %
- violence (all offenses)	90	199	+ 121 %
- sexual offenses (all offenses)	558	958	+ 71 %
- drugs (all offenses)	4018	6080	+ 51 %
All offenses			+ 51 %

Source: Compiled from Statistics Finland

*) Counted by multiplying the number of imposed prison sentences by the length of the prison term (in years).

The average length of unconditional prison sentence for aggravated assault increased from 17 to 24 months in 1998-2004. For normal assault the increase was from 3,4 to 4,4 months (however with 2/3 of the cases still punished with fines). This change was accompanied with increased penalties also for lethal violence. Similar increases apply also to sexual offenses, however, with much less impact on the overall use of imprisonment. Third category was drugs. Longer prison sentences reflect mainly changes in the nature of the crime (increased amount of drugs). All in all, the total volume of annually imposed prison years (counted as, average length in years multiplied by the number of imposed prison sentences) increased in Finland by 51 % in 1998-2004.

Same changes can be traced in the prison statistics. Figure describes the number of prisoners serving a sentence for violent offenses 1976-2008.

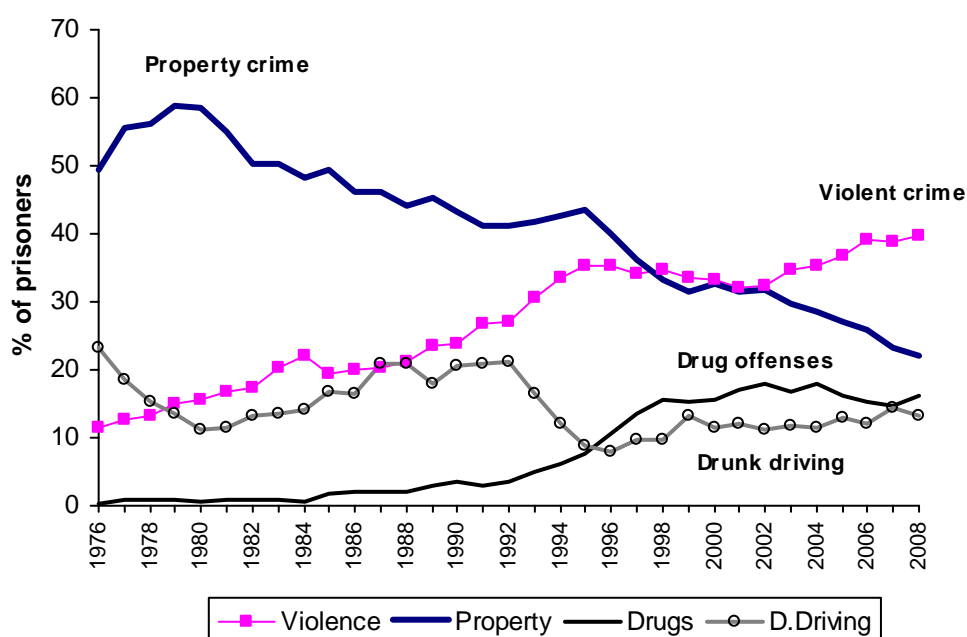


Figure 6.3. Prisoners serving a sentence for different offenses in Finland 1976-2008. Source: Criminal Sanctions Agency

The figure reveals also a long-term trend in the increase of violent offenders in prisons. Even though much of this increase was affected by the legislative changes in the late 1990s, the overall increase of violent offenders among prisoners is a part of a longer trend, started already in the 1970s.

This long-term increase in violent offenders had been partly neutralized by a decrease in two other major offence categories, property offenses and drunk driving. The share of property offenders has fallen from around 60 % in late 1970s to little over 20 % in 2008.

Third major category is drunken driving. Their share was peaking during the 1960s. In 1976 – 1980 the share drunk drivers among prisoners was more than halved (from 25 to little over 10 %). By the early 1990s their share had again climbed to around 20 %. From there it again fell below 10 % as a result of the adoption of community service in 1992. The development in drug offences has been commented already above.

All in all, the composition of prisoners serving their sentence has undergone a marked change. In the 1980s and still in the early 1990s around half of prisoners were serving for property crime. Drunk drivers and violent offenders were of roughly equal importance, while drug offenders played only marginal role (if any in the late 1970s). In the 2000s violent offenders have become the major prisoner group. And while property offenders still are the second largest group, it looks that drug offenders are bound to occupy that position in the near future.

Remand and fine defaulters. Changes in two other groups of prisoners have also made their impact in the overall prisoner statistics: prisoners in remand and fine defaulters. Both have increased both in numbers and their relative shares

since the late 1990s. Remand prisoners doubled their share from 7 to 14 % (in number increased from 250 to 500) 1993-2003. Since then the remained fairly stable, but took an upward trend in 2006-2008.

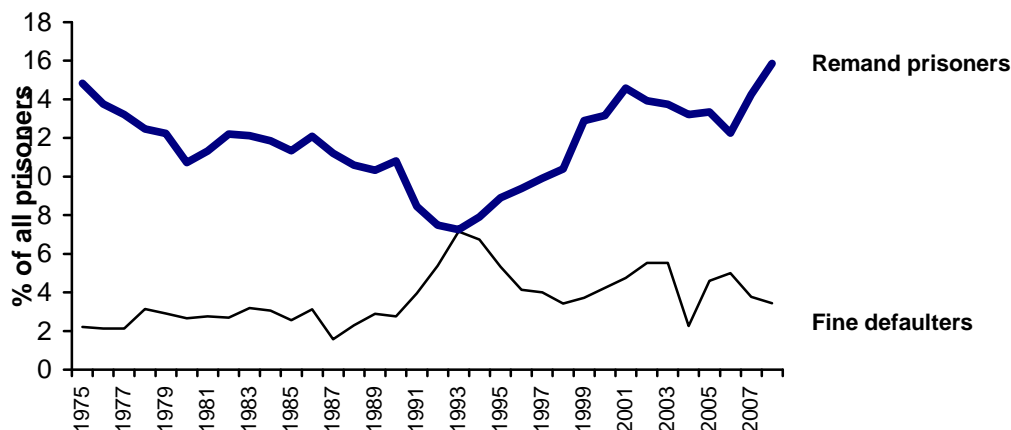


Figure 6.4. Fine defaulters and remand prisoners in Finland 1975-2008. Source: Criminal Sanctions Agency

Fine defaulters were peaking (7 % and around 200 in numbers) in 1992-1994 as a result of recession. By the late 1990s the number of fine defaulter got halved, but took another upward trend mainly as a result of the day-fine reform which increased the monetary value of fines.²⁹ In 2006-2008 bills were passed in order to restrict the use of default fines for minor offenses. Consequently the annual average of fine defaulter dropped from little below 200 to 120.³⁰

Stabilization and declining trends in 2005-2008. The increase of prisoner rates in Finland in 1999–2005 was a summary effect of five major factors, each affecting in slightly different times: (1) An increase in the number of foreign prisoners (mainly from Russia and the Baltic countries), (2) an increase in drug

29 The short-term decline in 2004 is explainable by the fact due to a computer program failure (!) the enforcement of fine-default penalties was interrupted for most part of the year 2004. Unfortunately the programs were fixed, and the number of fine-defaulters rose back to their original level. To these figures we must add those prisoners who serve combination sentences of both ordinary prison terms and default fines. This increases the annual prisoner rates by about 100-150 prisoners, meaning that 6-7 % of prison resources are used as a back up system for fines.

30 In 2006 the conversion rate between day-fines and imprisonment was changed from $\frac{1}{2}$ to $\frac{1}{3}$ (three day-fines equals one day in prison). Also the maximum duration of default imprisonment was reduced from 90 days to 60 days. One year later smaller fines (prosecutor fines under 20 day-fines and court-ordered fines under 12 day-fines) were excluded from the default system. The predicted overall effect of these two reforms was a reduction of around 100 prisoners. In spring 2008 a bill was passed which excluded all summary fines ordered by prosecutor (over 200 000 in numbers) from the fine default system. The effects of this reform have not all materialised, but hopeful estimates report a decline into a level of round 30-50 default prisoners. The law reforms in 1995-2007 are discussed in more detail in Lappi-Seppälä 2008b.

trafficking (often linked with the former groups), an increase in the number of (3) fine defaulters and (4) prisoners in remand, and (5) an increase in violent offenders.

The post 2005 development seems to have taken a different course, as most of the indicators behind the increase in prisoner rates seem to have been stabilized or in decline. Table 3 gives an updated summary of the most recent changes in prisoner rates in different prisoner groups in 1999-2005 as opposed to 2005-2007.

Table 6.3. Prisoners in 1.5. and 16.12. by prisoner group and the type of offense

	16.12. 1999	16.12. 2005	16.12. 2008	Change % 1999 2005	Change % 2005 2008
A. Prisoners by prisoner group					
- total	2775	3977	3549	+ 43 %	- 11 %
- serving a sentence	2268	3256	2883	+ 43 %	- 13 %
- remand	378	523	544	+ 38 %	+ 4 %
- fine defaulters	129	198	116	+ 55 %	- 41 %
- foreigners (included in above)	150	286	330	+ 91 %	+ 15 %
	1.5.	1.5.	1.5.	Change % 1999 2005	Change % 2005 2008
B. Prisoners serving a sentence by the type of offense:					
- total	2361	3173	2865	+ 34 %	-10 %
- violence	794	1172	1137	+ 48 %	-3%
- drugs	360	512	461	+ 42 %	-10 %
- property	552	667	473	+ 21 %	-29 %
- drunk driving	312	409	376	+ 31 %	-8 %

Source: Criminal Sanctions Agency

In 1999–2005 (16.12.) the total number of prisoners increased by 43 % (see section A). Fine defaulters increased by 55 % and foreigners 91 %. Section B shows the changes by the type of offense (in 1.5.). In 1999–2005 the number of prisoners increased in all offence categories (+ 34 %) with the steepest increase in violence (+ 48 %) and drug offenses (+ 42 %).

In 2005-2008 the total number fell by 11 % and the number of fine defaulters fell by 41 %. Property offenders fell by 29 %, drugs by 10 % and drunk drivers by 8 %. The number of violent offenders remained on the same level. Foreigners, in turn, increased by 15 %.

7 Concluding Remarks

Politicization and punitive populism? All in all, the crime policy of the past decades in Finland may well be characterised as both rational and humane. It

reflects the values of the Nordic welfare-state ideal and emphasizes that measures against social marginalization and equality work also as measures against crime. It stresses the view that crime control and criminal policy are still a part of social justice, not just an issue of controlling dangerous individuals.

But as has been seen, the international trends in criminal policy have gone to an opposite direction. Crime policy has become more and more “a tool of general policy”, and with quite unhappy results. The measures adopted are often influenced by motives other than rational criminal policy, to say nothing of considered analysis of goals, means and values. In the hands of politicians, criminal policy is often just another tool of general Argumentation remains far from the cool and evidence-based criminal political analyses, where criminal law should be treated as *Ultima Ratio* – to be used only in cases where other means do not apply and only, when it produces more good than harm. Instead, criminal justice interventions are often determined just by a political need to “do something”. The rule of thumb seems to be that the higher the level of political authority, the more simplistic the approaches advocated. The results can be seen in programmes and slogans that are compressed into two or three words, along the lines of “three strikes”, “prison works”, “truth in sentencing”, “war on drugs” and so on.³¹

This seems, unfortunately, to be the case also, when one looks at that penal policy in the EU-level. The expansion of the EU and the politically driven efforts to harmonize penal legislation have both damaged the quality of the law drafting processes and increased the amount of penal repression. This is the basic reason why a large segment of Nordic scholars have remained quite critical towards political attempts to harmonise criminal law.³²

Signs of such more punitive approach could be seen also in the Finnish debate in the shift of the millennium. It is difficult to conclude whether this short-term rise in Finland’s prison population is only a “natural step backwards” after a long-term decrease, an adaptation to “new circumstances” and changes in the nature of crime, or a sign of new punitive policies, finally entering Finland too.

The safest guess might be that all these three elements have been involved. The increase of drug offenders in prison would have been hard to avoid (for example, mitigating sentences during rapid growth of organised drug-smuggling from the Russian Federation and the Baltic countries was hardly a political option). The short-term decline in the use of community service, in turn, was at least partly an expected move “backwards” after a rapid increase in the use of this new sanction.

The punitive turn in Finland 1999-2005. But there were also changes in the criminal political “climate”, most visible during the years 1999-2001. The keywords of the past decades – “humane and rational criminal policy” – disappeared from political rhetoric and official statements. The Ministry of

31 On the manifestations of penal populism in English-speaking countries see Roberts et al 2003. The social and political forces behind these changes are analysed in Garland 2001 and Tonry 2004. For broader comparative aspects see the collection of essays in Tonry 2007.

32 See for example Jareborg 1998, Greve 1995, Träskman 1999 and Nuotio 2003.

Justice took the initiative – for the first time for decades – to increase the penalties for violent offenses. Also policy initiatives by the police for greatly extended investigative powers have been defended with keywords such as “transnational organised crime” which requires a “new kind of criminal policy”.³³ During the latter half of the 1990s, the discussions took another route, as the newly pointed Minister of Justice and the new Prosecutor General demanded increased penalties especially for sexual and violent offenses. Also the media (and some professors) joined the criticism according to which criminal political discussions of the past decade has been dominated by a “Criminal Political Mafia”, which has “lost its touch on social reality” and is unfamiliar with the new forms of organized transnational crime”.

In a small country politics can all too easily be personalized to a small number of individuals. If the criminal policy of the 1970s was dominated by the “Infamous Mafia”, the heated criminal political debate in the shift of the millennium was dominated by an even smaller number of politicians and high-profile actors in the media.³⁴ But that does not explain why these individuals ever got their voices heard. The change in the mid 1990s certainly reflected something more than a mere personal influence of a small number of colourful key figures – just as did the humanization of criminal justice in the 1960s and 1970s. The punitive turn of the mid- 1990s had, too, its own background conditions. There were changes both in the media culture, public sentiments as well as in social and economic circumstances.

Fears and frustrations. The 1990s was a decade of increased subjective insecurity and fears. National victim surveys report a steady increase of fears of violence through 1988-1997 in Finland. These changes in social sentiments had fairly little to do with the reality of crime, as actual victimization rates remained either stable or were in decline. There is a lot speaking for the conclusion that the growth of fear in Finland (as elsewhere) was associated with more fundamental socio-economic changes including deep recession and the consequential social and economic insecurities. In Finland this all was boosted by the opening of the Eastern border, the fears of Russian mafia invading Finland and also Finland joining the EU in 1995. Changes in crime-media need to be added to the list as well. Crime reporting in tabloids (but not on TV-news) underwent substantial growth during the 1990s. There is also a remarkable convergence between trends in fears and the visibility of front-page violence: as the amount of tabloid reports on violent crime grew by 50 %, fears increased by one third while the overall victimization remained on the same level.³⁵ On cross-

33 Policy changes in Scandinavian countries are discussed more extensively in Lappi-Seppälä 2007a.

34 See the interview of the (then resigned) Minister of Justice Kari Häkämies (Iltalehti 14.3.1998). The newly appointed Prosecutor General was lifted into a visible role as a principal critic of the “official criminal policy”. Extensive interviews in the leading newspaper Helsingin Sanomat were commented usually also in the subsequent editorials, in subjects such as stiffer penalties for rape (interview 16.12.1997, editorial 19.12.1997), critics of community service and the excessive use of mediation (4.2. and 6.2.2001), and critics on excessive leniency in assault cases (15.7.2001 and 17.7.2001).

35 See in more detail Kivivuori et al. 2002.

national level fears and feelings of insecurity, in turn, associate with penal severity. In the most simplified form: What the punitive critics really did, was just to give an expression for those anxieties, frustrations and fears following the deep recession, the opening of the borders and the growing social distances among people.

In the end, this all boils down to changes in the society's value system and the underlying socio-economic structures. Internationally the Nordic countries are profiled as having a higher level of social and economic security and equality, lower levels of fears, higher levels of mutual trust and political legitimacy – and lower levels of penal repression. Many of these elements got damaged or distorted during the 1990s. Nordic Welfare States were not saved from the cutbacks in the public sector and the general scaling down of welfare provisions, increases in income differences and growing social distances.

Terms like the “hardening of social values”, “loss of the sense of shared responsibility”, and the distinctions between “those who have and those who haven't” became standard expressions in social policy analyses in the 1990s. -- They still are. The concern over the growing welfare differences was also the key message in the President of the Republic's new years speech in Finland for the year 2008.

Social change and the foundations of inclusive welfarist penal policy. In the long run, penal policy is dependent on larger scale social and economic conditions, negotiating political cultures which value consistency (instead of conflict and quick fixes) and give heed also for expert knowledge and professionalism (instead of common sense and street credibility). The question whether Finland will also face similar growth in penal severity and prison populations as is found in so many other countries should be viewed from these premises.

Here different observers may share different views. An optimist would point out that very few of the social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the United States and United Kingdom apply to Finland. The social and economic security granted by the Nordic welfare state model may still function as a social backup system for tolerant criminal policy. Political culture still encourages negotiations and appreciates expert opinions. Social security, equality, trust and legitimacy granted by an affluent, universalistic welfare state will damper public fears, punitive projections and reactive populist posturing.

True enough, might the pessimist reply, but look at the growing welfare differences, the hardening of the social divisions, and the triumph of individualistic values among juveniles. Not to mention the ever increasing aggressiveness of the competitive media. For a pessimist, neo-liberalism has gained firm footing in Finland already from the early 1990s, and will tighten its grip also in the coming years. Punitive and populist trends that have taken over both Sweden and Denmark will invade also Finland.³⁶ “Elitist and undemocratic decision making processes” will be opened for the public, penal experts and criminological analyses will be replaced by street credible policemen and

36 For this, see von Hofer 2003, Tham 2001 and Victor 1995.

common sense, criminal policy will be subjected to other more general (or personal) political aims and values (or just to winning the elections), the rights of victims will be acknowledged by longer prison sentences as the politicians finally show the long-awaited decisiveness in the war against crime.

To this, the optimist might argue that it, still, is a long way from Finland to the U.S. – or even to the U.K. Examples of expressive justice, public humiliation and the denial of individual's social and political rights are conspicuously absent in the Finnish (and Nordic) penal policy. The issues of crime control are discussed in governmental level more often than before, but, much of these discussions take place in the form of crime prevention programs which focus on social and situational prevention -- not on criminal law. The first National program for Preventing Violence in Finland in 2006 defines in measures against social marginalisation as key factors and hardly mentions criminal law at all. In general, penal issues have been totally absent from all elections during the early 2000s. The increase in the prison populations in 1999-2005 gained also general political concern. Plans have been prepared to extend the scope of non-custodial sanctions and to reduce the use of remand and default imprisonment and the Ministry of Justice defines the "control of prisoner rates" as one the key strategic aims for the period of 2007-2011.

For an optimist, the news of the death of the Nordic Welfare State are still either premature or grossly exaggerated. In more general perspective, Nordic Welfare Model may be under threat, but it certainly is not denied nor rejected. On the contrast, it has become a part of Common Nordic Identity, and it is widely supported across the whole political field. Uncontested as this model is, it may well prove to be one of the cornerstones for the argument for a more social and human penal policy. For those Scandinavian politicians, who otherwise are strongly devoted to welfare values but who, at the same time, are tempted by the strong rhetoric and powerful gestures of Anglo-Saxon penal politics, this fact may put forward the difficult question: When we, in all other respects, defend policies based on social equality, full citizenship, solidarity, respect for reason and humanity, why should we choose to carry out criminal policy which shows so little appreciation to these very same values and principles?

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