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**XXIV. European Congress and Colloquium of Agricultural  
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**Commission II**

National Report – Rapport national – Landesbericht

**Finland**

**Timo Tolvi**

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**Commission II**

**Jurisdiction and alternative dispute resolution in agriculture**

**Timo Tolvi**

**1. Introduction**

The purpose of the judicial system is to provide legal protection. Legal protection is one of the basic rights of citizens. The Finnish Constitution guarantees everybody the right to have their case tried in court and relevant authority without undue delay. According to the Constitution, everybody has the right to have a decision concerning their rights and obligations heard in court or other judicial body.

In Finland the District Courts serve as first instance in criminal and civil matters. A judgement by the District Court may be appealed to the Court of Appeal. A decision by the Court of Appeal may be appealed to the Supreme Court, provided that the Supreme Court grants a leave to appeal.

In Finland the appeal procedure for administrative matters is founded on a two-step system of the general administrative courts. The first instance consists of eight regional Administrative Courts. The Administrative Courts deal with appeals concerning the decisions made by different authorities as the first instance. The highest instance is the Supreme Administrative Court established in 1918 (Finland became independent on 6 December 1917). The special courts in administrative matters include the Market Court, Insurance Court and Appeals Board for Rural Industries.

Finnish agricultural administration consists of four steps. The municipal rural business authorities represent the local level. The regional level consists of the Rural Departments of the Employment and Economic Development Centres. The central administration comprises the Agency for Rural Affairs and the Ministry of Agriculture and Forestry. Decisions concerning income support for agriculture are made in the municipalities. The decisions may be appealed to the Employment and Economic Development Centres and further to the Appeals Board for Rural Industries, whose functions are dealt with in more detail in point 3.

**2. Arbitration**

By contracts between the parties concerned, a civil matter governed by private law on which an agreement may be reached may be ordered to be finally resolved through arbitration. In the same way, similar disputes which may arise later on from the legal relationship expressed in the contract may also be ordered resolved through arbitration. This has been provided in the Arbitration Act of 1992.

An agreement concerning arbitration must be made in writing. There must be at least three arbitrators, unless otherwise agreed by the parties concerned. An arbitrator may be any adult person who is legally competent and not bankrupt. The arbitrator must be impartial and independent in carrying out his/her functions.

The award by the arbitrators must be based on the law. However, if so agreed by the parties concerned, the arbitrators may base their award on what they consider fair and equitable.

The arbitration award is void to the extent that it is to be considered contradictory to the Finnish judicial system or if the award is so confused that it does not indicate what the decision on the matter is. The arbitration awards may be reversed based on action if the arbitrators have exceeded their competence or if the appropriate procedure has not been followed in appointing the arbitrators.

### 3. Appeals Board for Rural Industries

The Appeals Board for Rural Industries is an independent administrative judicial procedure body in the administrative sector of the Ministry of Agriculture and Forestry. At first the Appeals Board functioned in connection with the Ministry of Agriculture and Forestry, but since 1995 it has had a staff of its own.

The Appeals Board is chaired by a Judicial Counsellor appointed for a fixed term of five years, and it has a vice-chairperson and a full-time secretary. The degree of Master of Laws is required for all these posts. The President of the Republic of Finland appoints the chairperson and vice-chairperson.

The basic composition of the Appeals Board has three members. In addition to the chairperson and vice-chairperson, there is an alternating third person on a part-time basis, who must have knowledge on the matters dealt with at the Board.

The matters are settled at the Appeals Board upon submission of the rapporteur of the Appeals Board. The Appeals Board has seven full-time and three part-time rapporteurs.

Decisions concerning agricultural support made by regional business authorities may be appealed to the Appeals Board. The Appeals Board also deals with appeals concerning hunting licences as well as measures to restrict fishing.

In general it is characteristic to the appeals dealt with at the Board that they involve a great deal of regulation by the judicial system of the European Union, which highlights the need for expertise on the sectors and business matters concerned. About 60 per cent of the decisions concern investment aid for agriculture, which together with the income support constitute the main topics on which appeals are filed to the Board.

In 2005 the Board gave 385 decisions, of which 328 concerned the agricultural support systems. The number of decisions concerning fishing was 29 and 22 decisions related to hunting. Of the appeals 212 (61%) were rejected and 37 appeals were not examined. A fifth of the appeals (79) were approved and returned to the lower authority for retrial. Most of the matters that are returned to the lower authority are accompanied by a favourable opinion to the appeal. In 34 cases the appeal was approved either completely or partly but the matter was not returned for retrial.

In 2005 the average time for processing an appeal was about six months. About 5 per cent of the appeals were submitted in the Swedish language.

In Finland the general appeal procedure in administrative matters is founded on a two-step system of administrative courts. The first instance consists of eight regional Administrative Courts, and the highest instance is the Supreme Administrative Court. The current appeal procedure for rural business matters differs from the general appeal procedure for administrative matters and, unlike the Administrative Courts, the Appeals Board for Rural Industries also operates within the administrative sector of the Ministry of Agriculture and Forestry. The Administrative Courts operate under the Ministry of Justice. This is why a joint working group of the Ministry of Agriculture and Forestry and Ministry of Justice proposed on 16 February 2007 that the appeals in matters that now fall within the competence of the Appeals Board be transferred to the regional Administrative Courts. Because the processing of support payment matters relating to the practising of agriculture requires special knowledge on agricultural issues, the working group proposes that the appeal concerning these be concentrated to one Administrative Court.

#### 4. Independent evaluators

In Finland all municipalities are obligated to organise municipal consumer advice. The purpose of consumer advice is to assist the consumer in individual disputes between the consumer and business operator. The advice may focus on clarifying the matter between the consumer and business operator and aim for amicable settlement and, where necessary, direct the consumer to the appropriate legal protection body.

The Consumer Dispute Board is an impartial and independent expert body, whose members represent the consumers and business operators equally. The Board gives recommendations on disputes concerning the consumers and buying and selling of housing. The Board may also give statements to the courts and provide guidance to the municipal consumer advisers.

The Board has a full-time chairperson. The other members who represent the consumers and business operators work in the Board on a part-time basis. They are appointed by the Government for a term of four years. The matters are resolved in sections or, the most significant ones, in plenary sessions. The matters are prepared by the staff, which has expertise in both legal matters and commodities. The preparation aims to resolve the matters, which can be promoted by a resolution proposal.

In 2006 about 4 000 appeals were filed to the Consumer Dispute Board, while in 2001 the number of appeals was only 2 800. Of the 3 850 decisions made in 2006 about half recommended that the business operator pay compensation to the consumer. The recommendation was followed in about 70 per cent of the cases.

In 2006 the ten most common business operations on which appeals were filed ranked by frequency were: buying and selling of housing and real estate business, buying and selling of cars, building and renovation, household appliances, insurances, car repairs, telephone services, package trips, air, rail and other transport services and furniture.

In recent years the processing times at the Consumer Dispute Board have varied from six to 14 months, depending on the nature of the matter.

According to the law, the municipalities must organise financial and debt advice for the municipal residents. Through this advice the municipal residents may be assisted in reaching an agreement with their debtors.

The municipal social services and discussion centres for family matters run by the church assist in the mediation of family affairs. The purpose of the mediation is to also deal with legal questions relating to the custody and access rights regarding children and maintenance payments. In practice a vast majority, about 90 per cent, of legal arrangements concerning children's custody, access rights and maintenance are resolved by agreements confirmed by the municipal social service. Provisions on the mediation on family matters are laid down in the Marriage Act. Mediation is available to all family members should any disputes arise. The aim of the mediation in family matters is to assist the spouses to consider whether separation or a divorce is really necessary and to make amicable decisions in questions involved in separation or a divorce.

The Finnish Bar Association introduced a mediation procedure based on specific rules in 1998. This should be used in cases where bilateral negotiations between the parties concerned and their representatives fail, but they do not wish to take the matter to the court as yet. The procedure starts when the parties concerned notify the mediation association that they wish to initiate the mediation procedure to settle their dispute. They may also turn directly to the person they have nominated as the mediator. The mediator is a member of the Bar Association who has been educated for the task and entered to the list kept by the mediation board. A major share of the members of the legal profession have received the basic education for acting as mediators. So far, however, quite few matters have been dealt with by this procedure. In most cases the fee of the mediator has been about 1 500 euros and the mediation procedure has taken one day.

## 5. Conciliation board for the sugar beet sector

The functions of the conciliation board are founded on the common organisation of the markets in the sugar sector of the European Union. In the national sectoral agreement implementing the common market organisation the sugar producers and manufacturers have agreed that any disputes arising from the content of the sectoral agreement be primarily settled by the conciliation board. The sectoral agreement covers, among other things, the contract terms for the cultivation of sugar beets, harvesting, quality requirements for the raw material, reception of sugar beets and sampling.

The conciliation board has, besides the chairperson, one member appointed by the producer organisation and one appointed by the sugar manufacturing industry. The board may hear the different stakeholders, witnesses and experts and carry out examinations in the location where the processing takes place as agreed on by the parties concerned.

A decision by the conciliation board has no legal power, but it has a status of a recommendation. This also means that a decision by the conciliation board is no obstacle to judicial proceedings later on. The aim of the board is, however, to reach a unanimous resolution on the matter.

In 2004 the conciliation board for the sugar beet sector dealt with five disputes concerning the supply and quality of sugar beets. No appeals were lodged on the decisions taken by the board.

## 6. Mediation

Finland introduced a new, less formal mediation procedure for civil matters on 1 January 2006. The act on this (Act on Court-annexed Mediation 663/2005) was adopted on 26 August 2005. The Act is based on Directive of the European Parliament and of the Council SEC(2004)1314.

Civil matters may be mediated in District Courts (the first instance for processing civil matters in Finland). The dispute may concern, for example, a controversial agreement, inheritance or compensating for damages. Mediation may also be applied in civil matters concerning children's custody, access rights and maintenance. There is a separate mediation procedure for criminal matters.

Each of the parties concerned, or the parties together, may request the initiation of the mediation procedure. Usually the mediation takes place in the District Courts of the place of domicile of either party, but it may also take place in another District Court if the parties so desire.

Mediation may be requested before the court proceedings are started. The party who desires the mediation must file an application for mediation to the court. The application is informal, and it must give a short description of what and whom the dispute concerns and what in the opinion of the applicant are the preconditions for the mediation.

Mediation may also be requested for judicial proceedings that are already pending in court. In this case no separate application is needed. The court may also introduce the possibility to mediate a matter that is pending.

The judge of the court functions as the mediator. Mediation takes place as part of the official functions. If the matter requires special expertise, the mediator may, upon the consent of the parties, use an expert assistant, whose fees are to be paid by the parties to the mediation. Charges are collected for the mediation in the same way as for other matters dealt with at the court.

In order for the mediation to succeed, it is important that the parties have a true aspiration to reach an agreement. The mediator does not resolve the matter, but this must be done by the parties themselves. However, upon the consent of the parties the mediator may present a proposal for a resolution.

The mediation proceeds as negotiations, which the judge may carry out with both parties together or separately with each party. The mediation must proceed quite rapidly so that the negotiations can be held on a tight schedule in one or two days. No minutes are kept on the mediation and the content of the discussions is not recorded in any way.

Mediation ends when one of the parties notifies the desire not to continue the mediation. The judge may also end the mediation if he or she comes to the conclusion that real preconditions for the mediation do not exist

If a resolution is reached, its conditions can be written down as an agreement document. The resolution may imply, for example, financial compensation, work performance or transfer of property. Upon request of the parties concerned the court may confirm the resolution agreement, in which case it becomes an enforceable decision.

The expenses of mediation to the stakeholders are lower than the expenses of judicial proceedings. Each party is responsible only for its own expenses, and the expenses of the other party need not be compensated for. Legal counsel may be used if the parties so desire.

## 7. Appeal

This point is concerned with the appeal to a decision by the Appeals Board for Rural Industries, which is a special court in the agriculture sector. Point one presents the appeal procedure in general.

A decision by the Appeals Board for Rural Industries may be appealed to the Supreme Administrative Court, unless otherwise provided by law. Such matters may be fishing and hunting matters and recovery and discontinuation of support payments. About a third of the decisions by the Appeals Board for Rural Industries may be appealed directly to the Supreme Administrative Court.

In other case processing an appeal in the Supreme Administrative Court requires a leave to appeal granted by the Supreme Administrative Court. A leave to appeal may be granted if it is considered important to bring the matters to be processed at the Supreme Administrative Court due to the application of the law in other similar cases or for the consistency of the application of the law, there is a special cause to bring the matter to be resolved by the Supreme Administrative Court due to an obvious error in the matter, or there is some other weighty reason for granting the leave to appeal.