

**FINNISH LAW ON THE SUPERVISION
OF SAFETY AT WORK AND ITS SANCTIONS**

BY

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1. At the beginning of 1974¹ there came into force in Finland new legislation on the supervision of labour protection. It included the Labour Protection Administration Act and the Decree bearing the same name, as well as the Labour Protection Supervision Act and the corresponding Decree.² This legislation replaced the Trades Inspection Act, 1927; the trades inspection system had become inoperative because of its slowness and ineffectiveness. As the name indicates, the Labour Protection Administration Act and Decree concern the establishment of a new authority, while the Labour Protection Supervision Act and Decree lay down the procedure to be followed by this authority in supervising the observance of the labour-protection legislation.

There is no need in this context to examine the list of statutes whose application the labour-protection authorities are charged to supervise. It is enough to point out that these authorities supervise the observance of all important labour-law legislation, except the legislation relating to collective labour relations. The wording of some provisions of the labour-protection legislation seems to refer specifically to the application of the Safety at Work Act, although no such emphasis can be found in the legislative drafts; moreover, discussions upon the coming into force of the labour protection acts referred to above indicate that this was not intended. However, the phrasing of some provisions of these acts has caused problems of interpretation because it seems to point only to the provisions relating to safety at work, though such a limitation cannot otherwise be justified. I shall not deal here with this problem, which is peculiar to Finnish law.

The Safety at Work Act, the most important Finnish enactment determining the level of safety at work, was adopted in 1958.³ This act is general in nature; it applies to nearly all work in employment relations, whether

¹ The Labour Protection Administration Act had come into force already earlier: it came into effect gradually, starting from September 1972.

² Finnish Statute Book 574/1972 and 372/1973; 131/1973 and 954/1973.

³ Finnish Statute Book 299/1958.

private or public, which is one of the reasons why the concepts used in it are broad and open to interpretation. The legislation on labour-protection administration and on the supervision of labour protection has not affected the Safety at Work Act. Under the Safety at Work Act, however, the Government can—subject to certain restrictions—issue regulations concerning its application.

When the new legislation came into force, this state of affairs was intended to remain as it was: the new acts were not held to give the labour-protection authorities the power to issue such general norms. As before, the level and the content of safety at work were determined, at least in the abstract, by the Safety at Work Act itself and by regulations and other rules issued by virtue of this act by the Government or the Ministry of Social Affairs and Health. Professor Toivo Holopainen summarizes the situation as follows:

- the Labour Protection Administration Act defines *who* is to supervise,
- the Labour Protection Supervision Act defines *how* the supervision is to be carried out, and
- the Safety at Work Act lays down *what* is to be supervised.⁴

However, the discussion on the question whether the labour-protection authorities have authority to issue norms had been very lively; and after it had been established, mainly on the basis of constitutional arguments, that the situation was as now described, a committee was set up to examine whether it was possible to increase the competence of the labour-protection authorities on this point. The work of the committee, which may lead to amendments of the legislation, has not yet been completed. On the other hand, even though from a formal point of view the situation would not change and the labour-protection authorities would not be entitled to issue general norms, they nevertheless have the authority—as will be explained below—to decide on the interpretation in particular cases. It is an open question how this fact will affect the courts if and when they have the opportunity to pronounce on the matter. However, in my opinion such an effect would be only academic, in view of the system of sanctions connected with the enforcement of the regulations on safety at work.

In Finland the provisions on safety at work provide for a double system of sanctions.⁵ The same act or omission to act may be subjected to sanctions both by the labour-protection authorities (pronouncing a threat of penalty)

⁴ Advice given by Toivo Holopainen on December 30, 1975 (mimeographed).

⁵ Collective agreements have their own system of sanctions which I shall not deal with here.

and by a general court (imposing punishment). Under the Safety at Work Act an employer or his agent⁶ who has acted contrary to the provisions of this act is to be punished by a fine or by imprisonment for not more than six months. It is not required that the employer shall have prior warning that a certain procedure is illegal, nor is it necessary that the act or omission shall have consequences: it is enough that an illegal act or omission shall have occurred. If the act or the omission has caused personal injury or the death of an employee, separate punishment is to be imposed according to the provisions in the Penal Code.

The Safety at Work Act, sec. 51, states:

A prosecution instituted or a punishment pronounced because of an infringement of this Act or of the rules issued on the strength of it does not prejudice the use of other coercive measures and measures of enforcement which have been provided for elsewhere.

Correspondingly, the use of the coercive measures and measures of enforcement referred to in subsection 1 does not exclude punishment imposed under the provisions of this Act.⁷

At present these coercive measures and measures of enforcement belong to the competence of the labour-protection authorities and they are provided for by the Labour Protection Supervision Act, sec. 15(2). This act also contains its own penal provisions, of which sec. 26 is the most important from the point of view of our subject:

An employer or an employer's agent or a person mentioned in sec. 15(4) who deliberately neglects to observe the directives concerning safety at work and occupational health issued by the labour-protection authorities in individual cases by virtue of statutes or decrees relating to labour protection shall be punished by a fine or by imprisonment for not more than one year because of failure to apply directives issued by the labour-protection authorities.

In this paper I shall focus my attention on the relationship between these two systems of supervision, i.e. the supervision carried out by the labour-protection authorities, which might be called antecedent supervision, and the supervision performed by the general courts, here called subsequent supervision.⁸ As will already have appeared from the presentation of the

⁶ The Safety at Work Act also imposes obligations on so-called background persons, e.g. manufacturers of machines and devices, importers of goods, sellers, etc., but I shall not treat the problems connected with this matter in the present paper.

⁷ For the history of this provision, cf. Antti Suviranta, "Rangaistuksista ja pakkokeinoista työtyrvalisuuden toteuttamisessa" (On Punishment and Coercive Measures Applied to Secure Safety at Work), *Lakimies* 1967, pp. 229–43.

⁸ The starting point for the use of these terms is the idea that the task of the labour-protection authorities is to take care that the law is not broken and the task of the courts is to punish violations of the law. However, in the light of the legal provisions this starting point does not

legislation, both systems have their own scheme of sanctions which may be applied independently. Consequently, the sanctions entailed by subsequent supervision may be based both on the Safety at Work Act and on the Labour Protection Supervision Act, sec. 26.

The present paper will not deal with the awarding of damages, which in practice may be a more important sanction than punishment. This limitation is dictated mainly by reasons of expediency. A duty to pay damages may originate from different factors, such as liability based on an agreement, liability because of a breach (in which case intent is a condition), and objective liability; and a brief treatment of this subject would not reveal any new essential features.

2. The structure of the official organs in charge of labour protection is described below. The organs are examined in the order in which they appear as antecedent supervision progresses.

2.1. The actual supervision and inspection of workplaces are performed by *inspectors* who are officers of the labour-protection authorities.⁹ There are detailed rules regulating the right of these officers to visit different workplaces, and to call for necessary information and their right to assistance from other authorities. According to sec. 15(1) of the Labour Protection Supervision Act the task of the inspector is primarily to give guidance and advice: he should show the employers how to apply the labour-protection legislation. The most important way of doing this is by giving directives in his report. The inspector notes the defects and shortcomings he has observed during his inspection. His directives are not mandatory for the employer and they cannot be enforced by coercive measures. It is rather a question of reminders and recommendations for further action to be taken by the employer. Since such directives are not mandatory they cannot be appealed against.

In one particular situation, however, the inspector has power to make mandatory his directive to the employer. Indeed, when a defect or shortcoming occurring at a workplace entails a risk of death or of serious injury to the health of an employee, the inspector has the power to forbid

hold good. Therefore the use of the terms in question has been criticized. In my view they can, nevertheless, be used to indicate which authority is competent to deal with a case. Consequently, I understand by antecedent supervision the competence of the labour-protection authorities and by subsequent supervision the competence of the courts.

⁹ The activities of the special inspectors of the Labour Protection Board are left out of consideration here.

the use of the device or procedure causing the danger—with immediate effect if necessary—or to prohibit the employees from working until the defect or the shortcoming has been rectified. Every year the inspectors issue about 80 interdictions of this kind.¹⁰ The interdiction must be complied with immediately, but has to be submitted to the Labour Protection Board for subsequent approval.

2.2. In addition, the *labour-protection authority*—either the state labour-protection district office or the municipal board of health, depending on the size of the workplace or on the significance of the danger it represents—may intervene. A binding decision, called the fixing of a term, may be issued if the employer is “refractory”, i.e. does not comply with the suggestions made by an inspector, or where the matter is considered urgent. The labour-protection authority must hear the parties before making a decision. The term—the length of which has varied from 12 hours to 18 months—may be sanctioned by the threat of a fine, a threat that the necessary measures will be performed by an outsider at the employer’s expense, or a threat of an interdiction. The threat of a fine is used far more often than the other sanctions. Each year there have been a little less than a hundred instances of fixing a term, either with or without sanctions (the number of directives by inspectors varies from 90 000 to 100 000 a year).

I shall not go into the question on what grounds a certain form of threat is chosen in preference to another, nor shall I deal with the amount of the threatened fines. The officials have discretionary power to make both kinds of decisions, and there is for example no maximum or minimum limit to the fine an employer can be threatened with. In some cases when the fine concerned has been exceptionally large, the advice of the Chancellor of Justice has been taken.

The decision to enforce the threatened sanction is taken by the same authority which has pronounced the threat. According to Sinisalo’s investigation into the practice of the Supreme Administrative Court¹¹ one out of 7–8 threats of a fine is ordered to be enforced. The same ratio seems to apply where labour-protection supervision is concerned.

2.3. The highest body performing labour-protection supervision tasks is the *Labour Protection Board*, which is subordinate to the Ministry of Social

¹⁰ However, during the first year the legislation was in force 132 interdictions were issued.

¹¹ Kari Sinisalo, *Uhkasakko työsuojelun valvonnassa* (The Threat of Fine in the Supervision of Labour Protection), Jyväskylä 1977, p. 78, 3.

Affairs and Health. The Board directs the activities of the district and local authorities and issues rules concerning the interpretation of labour-protection legislation; it has some direct supervisory tasks and, moreover, it acts as an instance of appeal. Appeal against decisions of the labour-protection authorities (except decisions pronouncing a threat of a fine) lies with the Labour Protection Board, whose decisions are final. An interdiction imposed by an inspector has—as we have seen above—to be submitted to the Labour Protection Board for approval. If the interdiction is approved it can still be appealed against, and this time appeal lies with an instance not belonging to the labour-protection authorities. Indeed, the employer can lodge an appeal against the decision of the Labour Protection Board with the Supreme Administrative Court, but only on grounds of law.

We may note here that the labour-protection supervision forms quite a closed system; in other words, it is self-sufficient. Only decisions containing an interdiction can be appealed against to an instance other than an authority belonging to its own sphere. Other decisions lie ultimately in the hands of the Labour Protection Board, which is also in charge of the issuance of administrative directives and the establishing of authoritative interpretation of the law. Although the Board is not considered to have any power to give norms in the sense that it would have power to issue general norms directly binding on third parties, i.e. on the employers, its ability to influence the interpretation of the legislation relating to its own field of administration and to ensure observance of its line of interpretation is very significant. This is further emphasized by the fact that the Safety at Work Act contains many provisions which are broad and open to interpretation; the Act does not really give unambiguous, concrete directions which should be applied to secure safety at work.

3. What is the role of the general courts?

The general courts do not deal with many cases relating to infringement of the provisions of the Safety at Work Act. Employers who have acted contrary to the provisions of the Act can be prosecuted, or rather, should be prosecuted, since violations of the Act are subject to public prosecution. In practice, however, violation of the Act seems to be prosecuted only when someone has suffered injury or death. There are various factors that account for this: the public prosecutor's knowledge of this field of law may be limited, it may be difficult to find a "guilty party", particularly when the employer is a company or other juridical person, there may be problems of proof, etc. This explains why there have been only 50–100 prosecutions a

year, despite the fact that the Chancellor of Justice has admonished the public prosecutors for their neglect to take action.

The public prosecutor can be informed of alleged breaches of the safety regulations in various ways, e.g. in connection with a police investigation of an occupational accident or by employees reporting to him. Information may also come from the labour-protection authorities as provided for in the Labour Protection Supervision Act, sec. 24:

If there are sufficient grounds for presuming that legal provisions or rules relating to labour protection have been contravened, the labour-protection authority shall lodge a complaint to this effect with the public prosecutor. If a labour-protection authority has lodged such a complaint, the authority or an official designated by the authority should be given an opportunity to be heard during the inquiry and during the trial by the court of first instance.

Thus a line of communication runs from the authorities in charge of antecedent supervision to those in charge of subsequent supervision, the public prosecutor and the court. The labour-protection authorities cannot bring an action before the court; they can only give notice to the public prosecutor and in case of prosecution make statements before the court. This implies that, where subsequent supervision is concerned, the decisions are made exclusively by the public prosecutor and the court.

Thus, the decisions relating to antecedent supervision and those concerning subsequent supervision each follow their own course. The officials who deal with subsequent supervision are not obliged to take into consideration how the labour-protection authorities interpret the Safety at Work Act—naturally, this does not preclude actual influence—and, on the other hand, the labour-protection authorities do not need to pay regard to how the general courts—the Supreme Court included—conceive the meaning of the labour-protection legislation. Each instance may interpret the same provision in the same case in a completely different way. There is no rule that the decisions in question should be coordinated and the authority concerned has no right to ask the other instance for advice.¹² Therefore there is the possibility of two different decisions concerning the same case, both of which are legally valid, one being made by the Supreme Court and the other by the Labour Protection Board; moreover, there may be an enforceable sanction attached to each of them. The only court which can intervene, so to speak, is the Supreme Administrative Court, but only

¹² Cf., on the other hand, the Labour Court Act, sec. 39, according to which the general courts may ask the advice of the Labour Court in cases which require special knowledge of collective agreements concerning the private or the public sector.

when a provision is applied which is regarded as exceptional, namely—as has been described above—when the Court has to pronounce on an interdiction which has been appealed against. However, the general courts need not follow these decisions; from this it follows that the practice of the Supreme Administrative Court has no bearing upon the application of the penal provisions of the Safety at Work Act.

This situation of conflict is only an academic one. To my knowledge there have not been any overlapping decisions. I have not been able to establish whether the Supreme Court, on the few occasions that it has ruled on the Safety at Work Act, has taken into account directives by trades inspectors. As mentioned before, numerically these constitute the most significant form of interpretation of the Safety at Work Act.

4. It is evident that there are also relevant differences between antecedent and subsequent supervision authorities with regard both to their activities and to the subjects looked into.

First, antecedent supervision—directives by trades inspectors and interdictions as well as the execution of threats—can be applied also to an employer who is a juridical person. Indeed, in most cases the measures are directed against companies. A threat of a fine can also be addressed to the agent of the employer, i.e. to a physical person, but this is only an alternative. Generally the subject is the employer, whether he is a physical person, a juridical person under private law or a statutory body. On the other hand, prosecution under the Safety at Work Act is a criminal proceeding which may result in the imposition of a personal penalty; consequently, the defendant must be a physical person. Amendments of the Act in order to make it possible to impose fines on corporate bodies have been proposed.

Secondly, when directives are registered by trades inspectors the question of guilt is irrelevant. Having observed a failure, the inspector states his recommendations as to how the labour-protection legislation shall be applied. If the matter is urgent (“allows of no delay”, as the Labour Protection Supervision Act, sec. 15(1) puts it), a term can be fixed, possibly sanctioned by a threat of penalty. According to sec. 15(1) a term may also be fixed and threats attached to it if “the employer is refractory”, i.e. if he has failed to observe earlier directives by trades inspectors. The term “refractory” refers to some kind of deliberate intent: the employer must have done or omitted to do something though being aware that he has acted against the norms. However, as trades inspectors’ directives are not

mandatory for the employer,¹³ mere failure to comply with such recommendations does not constitute refractoriness. Thus, non-complicance does not autonomically lead to the fixing of a term and the threat of a penalty. Such an effect of trades inspectors' directives would be contrary to the principle also to be found in the Safety at Work Act that the employer is free to choose the means he will employ to achieve the standard determined in the legislation. The problem of what "refractoriness" means in the administration of labour protection would require a separate study. It may be significant that in this context it is only a matter of issuing a threat of penalty.

However, the Labour Protection Supervision Act, sec. 24, should be taken into account. Obviously at least in these cases of refractoriness the labour-protection authorities may, when fixing a term, report the case to the public prosecutor. Indeed, according to the strict meaning of the law, they should have the duty to do so. Thus, as a matter of principle it is possible to initiate the sanctions connected with subsequent supervision at the same time as the sanctions relating to antecedent supervision. In fact the former can be initiated even before the latter, because the application of the provision in the Safety at Work Act concerning punishment does not presuppose previous notice or other measure taken by the labour-protection authorities.

When the labour-protection authorities pronounce the execution of the threat they have to take the question of intent into consideration. Sinisalo claims—without giving any reason for this view—that the ordering of the execution of a threat of a fine has the "nature of enforcement".¹⁴ He states, however, that execution may take place only when the party concerned had no valid excuse for his failure of observance. In Sinisalo's opinion factual or juridical impossibility are examples of such valid excuses.¹⁵

As has already been stated, imposing punishment as provided for in the Safety at Work Act requires that the defendant shall have acted deliberately or with intent. Consequently, we can distinguish between three degrees of intent:

- (i) fixing a term and issuing a threat of penalty require "refractoriness", except where the matter allows of no delay;

¹³ Cf. above, sec. 2.1.

¹⁴ Kari Sinisalo, *op. cit.*, p. 74.

¹⁵ *Ibid.* Cf. also Tauno Ellilä, *Täytäntöönpanokeinoista hallinnon alalla* (On the Means of Enforcement in the Field of Administration), *Scandinavian Journal of Law* 1957, 207.

- (ii) the ordering of the execution of a threat requires at least the absence of a factual or juridical impossibility preventing the fulfilment of the obligation sanctioned by the term and the threat; and
- (iii) the imposition of a punishment requires a deliberate or intentional action.

The Labour Protection Supervision Act, sec. 26, makes deliberate non-compliance with the directives concerning safety at work and occupational health issued by the labour-protection authorities a criminal offence. We are here concerned with the fourth degree of intent. As contrasted with the cases where punishment is inflicted by virtue of the Safety at Work Act, this non-compliance requires that the labour-protection authorities shall have already reacted to the defect or shortcoming and issued the necessary directives. It is not clear what we should understand here by directives issued by the labour-protection authorities. The committee which produced the report on which the provision was based speaks of the intervention of the labour-protection authorities in general and that they should issue an explicit advance warning.¹⁶ The committee did not treat the subject in detail. In view of the fact that directives given by the inspector are not binding on the employer, it seems clear that even deliberate failure to comply with such directives does not constitute a sufficient ground for punishment. On the other hand, an interdiction issued by the inspector is, in my view, such a directive as is referred to in sec 26: the interdiction must be observed at once, it is immediately binding, and no threats or other sanctions have been provided for in the law to make it more effective. The term fixed by the labour-protection authorities is also a binding decision, and the punishment mentioned in the Labour Protection Supervision Act, sec. 26, may be considered also in cases where a term has been fixed.

5. The report of the committee referred to earlier recommends that a distinction should be made between the punishment dealt with above and the penal sanction laid down by the Safety at Work Act.¹⁷ The report says:

This provision would differ from the Safety at Work Act, sec. 49, in the sense that according to the latter mere failure to observe provisions concerning safety at work is a sufficient ground for punishment, while the former would require the intervention of the labour-protection authorities and their explicit advance warning. This provision is meant to supplement the labour-protec-

¹⁶ Committee Report 1971: B 86, *Työsuojelulakitoimikunnan mietintö. Ehdotus laiksi työsuojelun valvonnasta* (Report of the Labour Protection Act Commission. Labour Protection Supervision Bill), Helsinki 1971, pp. 12 f.

¹⁷ *Ibid.* Cf. also Committee Report 1974: 123, *Työsuojelukomitean mietintö. Ehdotus työsuojelulaiksi* (Report of the Labour Protection Committee. Labour Protection Bill), Helsinki 1974, p. 69.

tion legislation and the provisions of the penal code and its application would be limited to the cases where there is no other legal provision penalizing the act or omission in question.

Although this distinction clarifies the matter, it does not, in my view, constitute a sufficient justification for the existence of such a manifold system of sanctions—coercive measures which can be used by the antecedent—supervision authorities, punishment provided for in the Safety at Work Act, and the penal sanction treated here. The committee should, though admittedly this problem did not directly belong to its tasks, also have dealt with the question whether, after the new legislation had come into force, there was any need for the penal provision in the Safety at Work Act. Before the reform of the legislation the application of antecedent coercive measures was a slow and difficult procedure and the failure to observe directives issued by the trades inspectors was not separately penalized, and so the penal sanction provided for in the Safety at Work Act could be justified.¹⁸ It is true that this provision and in particular the system of double sanctions laid down in sec. 51 were criticized already at that time. A reform was proposed aiming at a change in the direction of the system then prevailing in Sweden. That system made a clear distinction between the application of coercive measures and punishment and it required a previous intervention by the authorities before punishment could be pronounced.¹⁹ Actually this kind of reform was implemented in Finland when the Labour Protection Supervision Act was enacted, but part of the old system persisted, namely the provision concerning punishment included in the Safety at Work Act, sec. 49, and also sec. 51, which form the basis of the double sanctioning. In my view, however, the functions and spheres of application of these sanctions cannot nowadays be clearly distinguished from one another, but something—especially the Safety at Work Act, sec. 49—seems to be superfluous and to lack a role of its own. Indeed, it would seem that the Labour Protection Supervision Act, sec. 26, is hardly applied at all; thus it has in practice been considered unnecessary, an attitude which may also have resulted from the interpretative difficulty explained above.²⁰

¹⁸ Tauno Ellilä comments also that punishment has another function than coercive measures and measures of enforcement and that, consequently, as a matter of principle these measures need not exclude one another but can be applied simultaneously. Tauno Ellilä, *op. cit.*, p. 109. This line of thinking seems to be the philosophy on which the enactment of sec. 49 of the Safety at Work Act was based.

¹⁹ Cf. Antti Suviranta, *Lakimies* 1967, p. 243.

²⁰ The publication *Työsuojeluhallinto 1977* (Labour Protection Administration 1977), Tampere 1978, appendix 7, reports that in 1977 five complaints were lodged concerning violations of the Labour Protection Supervision Act, including complaints concerning violations of the Labour Protection Supervision Act and of other legislation committed as a single act. The complaints relating to sec. 26 are not mentioned separately in the statistics.

The system now prevailing in Finland is also peculiar in the sense that double sanctioning creates the possibility that several conflicting decisions which are legally valid may exist at one and the same time. This anomaly could be eliminated either by abolishing the double sanctioning or, if the legislator is determined to maintain this system for “philosophical reasons”,²¹ by coordinating the sanctioning adequately. A right to submit the decisions of the labour-protection authorities to outside bodies by means of appeal would increase the confidence felt in the soundness of the decisions made by the labour-protection administration. The self-sufficiency which has been referred to above has led to suspicion. Further, it has resulted in a practice whereby complaints are frequently made to the Chancellor of Justice. It is evident that the best and broadest expert knowledge of the practice of labour protection is concentrated in the labour-protection administration, and this fact cannot be overlooked in possible future arrangements. Nevertheless, certain reassessments of the system are appropriate.

²¹ Cf. Tauno Ellilä, note 18 above.