



PRIV-WAR Report – Finland

National Reports Series 08/09

**Private Military and Security Services
in the Regulatory Context of Finland**

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PRIV-WAR

Regulating privatisation of “war”: the role of the EU in assuring the compliance
with international humanitarian law and human rights

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1. Introduction*

1.1 Scope of the Report

This is the national report on the relevant regulatory framework in Finland on private military and security companies. The report is prepared as part of the project 'Regulation of the Privatization of War: the Role of the EU in Assuring Compliance with International Humanitarian Law and Human Rights' (PRIV-WAR).

Finland lacks specific legislation on private military and security companies. Consequently the aim of this report is to present and discuss the relevant Finnish regulatory framework by examining separately the regulation of domestic security services and various legal fields that might be applicable to the industry. Much of the discussion below is, however, limited to a general presentation of the regulatory framework as the Finnish government has no outsourcing practice when it comes to private military and security services. This means that there are no official Finnish policies on outsourcing to PMCs/PSCs and no contracts available for evaluation. The lack of Finnish private military and security companies also shifts the focus of the report on individuals, and more serious crimes committed during armed conflict.

1.2. On Finnish Outsourcing in the Field of Military and Security Services

Finland has mostly been an observer in the increased practice of outsourcing military and security services. The reasons behind this are several; to start with it is important to note that Finland has traditionally a strong culture of and basis in governance by public authorities. In addition to a strong political inclination to keep certain public functions in the hands of public authorities there are constitutional limitations on the delegation of administrative tasks to private entities. Against this background it is hardly surprising that Finland has scarce, if any, practice of outsourcing military and security functions to private companies.

Furthermore, there is widespread belief that a credible Finnish defence cannot be outsourced, but must be upheld by national Defence Forces. In line with this, the expenditures for the Finnish Defence Forces have increased during the last four years,¹ and even more is budgeted for the future. Thus, although many governmental sectors in Finland are forced to cut back through, for example, outsourcing in order to achieve financial savings, the defence sector has so far circumvented large downscaling.

Another reason is the limited function of the Finnish armed forces abroad. Finland's armed forces are active abroad only in peacekeeping and crisis management which is coordinated by international actors such as the UN, EU or the NATO. In its

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¹ See information on defence data for Finland as published by the European Defence Agency (EDA), <www.eda.europa.eu/defencefacts/showvalues.aspx?CountryID=FI&Year=2007> (visited 22 February 2009).

operations abroad Finland has so far not outsourced any functions to private military or security companies in its crisis management operations. Through the operations, however, Finnish armed forces have become familiar with the functioning of private military and security companies hired by other actors. This is nevertheless limited to a few single incidents where other states or international actors have hired companies to perform guarding or repair duties during international missions.

2. The Finnish Private Military and Security Industry

The worldwide proliferation of companies selling military and security services transnationally has so far had peripheral effect on Finland, whose private military and security industry is virtually non-existent. Only one Finnish private security company has reached the headlines for acting abroad.² According to its own statements, its activities included guarding private persons, property and transportations in Iraq. The vast majority of the employees were local Iraqis; still the company had a few Finnish citizens on its payroll together with, for example, Americans and former members of the Ugandan Special Forces. The clientele consisted of private persons and companies who needed security. The employees carried guns for self-protection, but overall the company worked with a very low profile avoiding high visibility. The company was, however, sold in 2007 and thus ceased to be registered in Finland. Since then there have been no indications of comparable Finnish companies. It must, however, be taken for granted that Finnish citizens are in the capacity of employees involved in the activities of private military and security companies abroad.

3. Domestic Security and Investigation Services

3.1. Regulation on Private Security Services Operating Domestically

Finland imposes strict legislative control over private security and investigation services operating domestically. In 2002 a new law on private security services was adopted in Finland.³ The purpose of the Private Security Services Act is to guarantee the quality and reliability of companies selling such services and to ensure co-operation between state authorities and the companies. The law regulates the security services provided in Finland as is clear from the *travaux préparatoires* and some of the provisions of the Act. Although the Government Proposal recognizes that some companies have become transnational in character,⁴ the scope of application of the Act is not broadened to cover the activities of Finnish companies abroad.

The law regulates various forms of security provision; it separates between guarding and security services. It defines guarding services as guarding of person or

² See, e.g., Suomen Kuvalehti, 'Vuokrataan: suomalainen sotilas [Finnish Soldier for Hire]', 1.9.2006, pp. 34-39; YLE, 'Irakissa työsarkaa turvayrityksille [Private Security Companies have Work in Iraq]', 7.10.2007, <www.yle.fi/uutiset/ulkomaat/2007/10/irakissa_tyosarkaa_turvayrityksille_253112.html> (visited 22 February) and YLE, 'TAUSTA: Suomalaisyritys puolustautuu asein Irakissa [Finnish Company defends itself with firearms in Iraq]', 7.10.2007, <yle.fi/uutiset/ulkomaat/2007/10/suomalaisyritys_puolustautuu_asein_irakissa_253144.html> (visited 22 February 2009).

³ The Private Security Services Act [Laki yksityisistä turvallisuuspalveluista], 12.4.2002/282 (unofficial translation by the Ministry of the Interior).

⁴ See Introduction to the Government Proposal 69/2001 [Hallituksen esitys Eduskunnalle laiksi yksityisistä turvallisuuspalveluista sekä eräiksi siihen liittyviksi laeiksi, HE 69/2001 vp].

property or the uncovering of crimes committed against the client or property to be guarded (private detective activities). Furthermore, security services are explained as ‘managing security’ based on a contract.⁵ This means planning security arrangements, including the installation of monitoring systems. The Act distinguishes between the requirements for the provision of guarding services and security services.

A stricter regime is put in place for guarding services (*vartioimisliiketoiminta*); for the provision of such services natural or legal persons need a license.⁶ In order to receive the relevant license one needs to fulfill conditions on the age of maturity (18 yrs), financial stability and integrity of the person. The license is nation-wide and is issued indefinitely. The Act sets, however, further limitations on who is entitled to engage in the provision of guarding services; no member of the Finnish police forces, Frontier Guard or Customs is allowed to engage in such services.⁷ Hence, persons already working for Finnish internal security or guaranteeing public order are prohibited from engaging in guarding services so that the exercise of public and private power remains separated. It is noteworthy that members of the armed forces generally fall outside of the prohibition.⁸ The licenses are issued by the Ministry for the Interior. Natural persons selling private security services without the appropriate authorization commit an offence.⁹

In addition to the requirement of license, the guarding services supplier can only allow employees who have a valid guard certification to carry out guarding assignments. The supplier also needs (a) manager(s) with valid certifications to act as such. The Act lays down criteria for the manager and guard certifications; both need to be suitable for the job and have received training for their respective position.¹⁰

The Private Security Services Act also regulates the rights of guards, the carrying of forcible means equipment and good practices in carrying out the assignments. The rights of guards include everyman’s rights (*jokamiehenoikeus*), such as the right of self-defence, and rights that go beyond that as laid down in the Act.¹¹ Section 28 of the Private Security Services Act broadens the rights of guards to the right to remove a person from the area under guard, the right to apprehension, the right to conduct a security check on the apprehended, and Section 29 to the right to carry forcible means equipment after special training.¹² The rules on the carrying of forcible means equipment are stringent; firearms, gas sprays and telescopic batons can only be carried by guards who have received special training and have annually demonstrated sufficient skills in handling and shooting firearms.¹³ When it comes to firearms it is further stipulated that the carrying of firearms is restricted to personal guarding, security transport or ‘when guarding a person or object that is significant in terms of public

⁵ See the Private Security Services Act, 12.4.2002/282, Chapter 1, Section 2.

⁶ This follows the Act on the Right to Carry a Trade [Elinkeinon harjoittamisen oikeudesta], 27.9.1919/122 which enlists trades that are to be further regulated by law.

⁷ The Private Security Services Act, 12.4.2002/282, Chapter 2, Section 11.

⁸ See Government Proposal 69/2001, p. 54.

⁹ The Penal Code, 19.12.1889/39, Chapter 17 Section 6a, as amended by 12.4.2002/284.

¹⁰ The Private Security Services Act, 12.4.2002/282, Sections 20 and 24.

¹¹ Government Proposal 69/2001, Section 4.3. on the Rights of guards.

¹² Government Proposal 69/2001, Section 4.3. on the Rights of guards; Sections 28 and 29 of the Private Security Services Act.

¹³ The Private Security Services Act, 12.4.2002/282, Section 29.

interest and the circumstances of the assignment render it necessary to carry firearms'.¹⁴ Firearms as well as other forcible means equipment are further to be carried hidden from the public and if firearms are used in guarding assignments the local police must immediately be informed. Regarding good guarding practice the Act prohibits guarding services suppliers from accepting contracts which include a commitment to maintain public order and security, and further it is noted that guards shall not cause unnecessary damage or harm in their job.¹⁵

The provisions regarding security services are more lenient. The provision of security services is not subjected to a license. Some security services (*turvasuojastoiminta*) may only be provided by persons with the relevant certification. Certification is required when the security service includes access to confidential information which would facilitate trespassing into a place controlled by the client and closed from outsiders.¹⁶ A security officer certification can be issued to persons who are of the age of eighteen and have displayed suitable personal characteristics and are engaged in security assignments or are enrolled in security training. The certification is issued by the local police and remains in force for a period of maximum five years.

The issue of private security services falls under the general competence of the Ministry of the Interior, which thereby is responsible for the supervision of this sector. The police districts together with local police oversee the general activities of private security services. Each year guarding services suppliers are to report on their activities to the Ministry, which also has the right to cancel licenses granted. A new entity, the Advisory Board on the Security Sector, tasked with the issue of private security services was created by the 2002 Act.¹⁷ The Board assists the Ministry of the Interior and it consists of representatives from both the administrative sectors and the business world. Specific duties of the Board are, for example, to issue general guidelines for the industry, monitor development in the business, and to monitor and promote international cooperation in the security sector.

Finally, the Act on Private Security Services lays down penal provisions with respect to both guarding and security services. The most severe offence is a guarding services offence,¹⁸ which is committed when a supplier sells services without license or accepts assignments involving the maintenance of public order and security. The offence is regulated in detail in the Penal Code, which stipulates that a guarding services offence is to be sentenced to a fine or imprisonment for at most six months.¹⁹ A guarding services violation again can be committed by the supplier, the guarding manager and the guard when they neglect their respective duty. For example, a supplier can be sentenced to fines for engaging in business without a manager, a manager again for making an unlawful decision on carrying forcible means equipment, and a guard for *inter alia* not wearing a guard uniform.²⁰ Regarding security services providers the Act

¹⁴ The Private Security Services Act, 12.4.2002/282, Section 29.

¹⁵ The Private Security Services Act, 12.4.2002/282, Sections 9 and 12. According to Finnish law only so-called security stewards can provide public order and security. See the Security Stewards Act [Laki järjestyksenalvoijista] 22.4.1999/533.

¹⁶ The Private Security Services Act, 12.4.2002/282, Sections 35 and 2 (18); Government Proposal 69/2001 on Section 35.

¹⁷ The Private Security Services Act, 12.4.2002/282, Chapter 5.

¹⁸ The Private Security Services Act, 12.4.2002/282, Chapter 5, Section 55.

¹⁹ The Penal Code, 19.12.1889/39, Chapter 17 Section 6a, as amended by 12.4.2002/284.

²⁰ The Private Security Services Act, 12.4.2002/282, Section 56.

stipulates for instance that persons who intentionally neglect the duty to carry a security officer's identity card commit a security violation.²¹

3.2. *Planned Reforms*

The Advisory Board on the Security Sector under the Ministry of the Interior has in November 2008 launched a project with the aim of reforming the Private Security Services Act of 2002. By 2010 amendments shall be made in two phases: first, the duties of security stewards will if possible be integrated into the Act on Private Security Services, and guards would be allowed to perform assignments relating to the maintenance of public order and security. Thus, the idea is to reconsider the rights of guards as well as to evaluate whether the legal definitions with regards to guarding services need to be changed. The purpose is also to enhance supervision of the sector by means of increasing, for example, the vetting of employees. In the second phase, the division of work between on the one hand the police, and on the other hand private actors such as companies and security stewards will be re-evaluated.²²

4. Regulation of Armed Force

4.1. *Possession and Use of Arms*

Finland has one of the largest numbers of firearms per capita and generally it has been easy to acquire guns for personal recreational usage. However, recent incidents of school shootings have paved way for tighter control of small arms. The Firearms Act²³ regulates the acquisition and possession of firearms. The legislation puts in place a licensing regime which grants permission if there are acceptable reasons for granting the license and there is no reason to suspect that the firearms will be misused.²⁴ First, one must be granted a permit to acquire a firearm and, second, one must obtain a possession permit. The acquisition permit can be granted only for certain approved purposes. These purposes include, *inter alia*, hunting, target and competition shooting, and work in which a firearm is necessary.²⁵ The firearm must be suitable for the purpose and cannot be overly destructive. It is noteworthy that in Finland it is not possible to obtain a possession permit for self-protective purposes. The acquisition, possession and transfer of firearms are overseen by the local police departments.

Regarding professional usage of firearms, the carrying of a weapon related to tasks of persons employed by the state are outside the scope of the Firearms Act.²⁶ The Act is, however, applicable to persons who apply for acquisition permits for other work. In such cases the applicant must prove that he or she has received training in the safe handling of firearms and that 'he or she has an acceptable reason for carrying a firearm in his or her work'.²⁷ When a firearm is required for work the possession permit is also

²¹ The Private Security Services Act, 12.4.2002/282, Section 57.

²² Ministry of the Interior, 'Yksityistä turvallisuusalaa koskeva lainsäädäntö uudistetaan', Press Release 19.11.2008, <www.intermin.fi/intermin/bulletin.nsf/PFBD/790BC5BFA0EE6942C22575060028834A> (visited 18 February 2009).

²³ The Firearms Act [Ampuma-ase laki] 9.1.1998/1.

²⁴ The Firearms Act, 9.1.1998/1, Chapter 2, Section 18.

²⁵ The Firearms Act, 9.1.1998/1, Chapter 5, Section 43.

²⁶ The Firearms Act, 9.1.1998/1, Chapter 1, Section 17.

²⁷ The Firearms Act, 9.1.1998/1, Chapter 5, Section 45.

restricted to a period of maximum five years at a time. The carrying of firearms for professional purpose is also restricted by the Act on Private Security Services, which stipulates that security guards are not generally entitled to carry firearms unless they have undergone special training. Further limitations depend on what is guarded; only body guards and guards protecting value transports or guards who need firearms due to special circumstances are allowed to carry guns.²⁸ The possession permit further entitles the holder only to carry a firearm for which the permit has been granted or a weapon with corresponding properties.²⁹

4.2. Arms Export

The export of firearms covered by the Firearms Act undertaken for private purposes is exempted from authorization, whereas in certain situations the transfer of firearms is, however, dependent on a private transfer license. However, export undertaken for commercial purposes and thus constituting dealing in firearms requires a trade permit.³⁰ The Ministry of the Interior which handles firearms issues grants and revokes commercial permits for the export of firearms and permits for their transit.³¹ The commercial export permit can be issued to firearms dealers who have the required firearms trade permit. In addition, the relevant issuing authority may demand that the applicant present an end-user certificate stating that there are no impediments for granting the permit.

Besides the regulation on the export of firearms for commercial purposes, Finland regulates arms export with the Act on the Export and Transfer of Defence Materiel³². The basic principle laid down is that authorization is needed for export in terms of an export license. However, an export will not be granted if it jeopardizes Finnish security or contradicts Finnish foreign policy. The authorization is further dependent on a number of factors outlined in the National Guidelines and the evaluation is made on a case-by-case basis. An assessment is made based on the following factors in addition to the general security and foreign policy criterion:

- Relevant international obligations stemming for example from the UN, EU and OSCE, including decisions on arms embargoes, multilateral restraints, principles or guidelines of multilateral control regimes;
- An analysis of the situation in the recipient country, especially regarding human rights, but also including the attitude of third States towards the recipient country;
- The characteristics of the materiel, its intended use and military significance;

²⁸ The Private Security Services Act, 12.4.2002/282, Section 29.

²⁹ The Firearms Act, 9.1.1998/1, Chapter 5, Section 56.

³⁰ The Firearms Act, 9.1.1998/1, Chapter 2, Section 19; Chapter 3, Section 20; Chapter 6,

Section

³¹ The Firearms Act, 9.1.1998/1, Chapter 4, Section 36.

³² The Act on the Export and Transfer of Defence Material [Laki puolustustarvikkeiden maastaviennistä ja kauttakuljetuksesta] 9.3.1990/242.

- The significance of the materiel to the materiel preparedness of the Finnish national defence and the development of the domestic defence industry.³³

The evaluation of an application is conducted and the decision on authorization taken by the Advisory Committee for Exports of Defence Materiel. The representation in this Committee is multifold; it includes participants from the Ministry of Defence, the Ministry for Foreign Affairs, and the Ministry of the Interior, the National Board of Customs, Defence Staff and Security Police.

The Ministry of Defence or the State Council may revoke granted licenses if new arms embargoes are imposed on the recipient country and if the products licensed are covered by the embargo, if the exporter commits an export crime, or if the situation in the recipient country fundamentally changes and might constitute a danger to human rights. The Act further stipulates that illegal arms export is to be penalized with fines or maximum of four years in prison.

4.3. Government Policy on Outsourcing of Armed Force

As was stated in the introduction to this report, Finland has a tradition of public authority governance and lacks so far any widespread general practice on outsourcing. As regards the outsourcing of armed force, the threshold would be even higher than if compared to, for example, social and health affairs. This is not only due to reluctance in the political climate to outsource armed force, but also due to existing legal limitations. The Constitution of Finland stipulates in Section 124 that the delegation of administrative tasks to others than authorities is possible if it is deemed necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered. Furthermore, the delegation may only take place by virtue of an act.

There is, however, a limit to what kind of public tasks can be delegated; a task involving the significant exercise of public powers can only be delegated to public authorities.³⁴ In line with this it is generally thought that, situations involving independent or discretionary use of force³⁵, such as for example, police functions or tasks otherwise significantly affecting basic rights of individuals cannot to begin with be given to private entities. Following this reasoning, the same might apply to the functions performed by the armed forces. Handing out tasks related to external security to private entities might fall within the scope of significant exercise of public powers and thus be unlawful.

³³ See, e.g., the National Report by Finland in 2006 On the implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, available at: <disarmament2.un.org/cab/nationalreports/2006/finland.pdf> (visited 18 February 2009).

³⁴ The Constitution of Finland [Suomen perustuslaki] 11.6.1999/731, Section 124 (unofficial translation).

³⁵ Government Proposal 1/1998 [Hallituksen esitys Eduskunnalle uudeksi Suomen Hallitusmuodoksi, HE 1/1998 vp].

5. Corporate/Commercial Law

The Finnish Constitution of 1999 guarantees in Section 18 the freedom to engage in commercial activity.³⁶ Consequently, any limitations to commercial activities must be regulated by law. Generally the right to engage in business does not require a permit, but it must be lawful and in accordance with good practice.³⁷ Some forms of commerce are, nevertheless, subjected to specific rules or, for example, licensing regimes because it is considered necessary based on, for example, reasons of health or security.³⁸ The latter is true for the domestic private security and investigation sector. Certain commercial activities are nevertheless prohibited. These include, for example, dealing in narcotic substances and pandering.³⁹

In Finland, one can engage in business as a private entrepreneur, through a partnership or a limited liability company formed of one or more individuals or legal entities, or a cooperative. A foreign entrepreneur can also establish a branch in Finland.⁴⁰ There are, however, no rules on what form of business is to be chosen. Instead, the appropriate business form is chosen on a case-by-case basis depending on the number of founders and the availability of capital. One common form of business in Finland is limited liability companies, which are regulated by the Limited Liability Companies Act of 2006.⁴¹ Every enterprise must register in the Trade register held by the National Board of Patents and Registration.⁴² The legal effect of registration is that certain forms of businesses are established only with the registration. Furthermore, the information in the register is considered to be public.

If the enterprise engages in inappropriate or harmful business a prohibition of business (*liiketoimintakiello*) can be imposed following the Act on Prohibition of Business.⁴³ The preconditions for a prohibition to engage in business are: if the person has neglected to fulfill legal obligations relating to the practice of business or if he or she has in the practicing of business committed an offence which is not considered as insignificant.⁴⁴ The offence must, however relate to the exercise of business, and hence for example neglecting standards on occupational health and safety could come into play.⁴⁵

³⁶ The Constitution of Finland, 11.6.1999/731.

³⁷ The Act on the Right to Carry a Trade [Elinkeinoon harjoittamisen oikeudesta] 27.9.1919/122, Chapter 1, Section 1.

³⁸ Government Proposal 309/1993 [Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta, HE 309/1993 vp].

³⁹ See the Penal Code, 19.12.1889/39, Chapter 50 as amended by 17.12.1993/1304 and Chapter 19, Section 9 as amended by 24.7.1998/563.

⁴⁰ Enterprise Finland, 'Establishing a Business', <www.yrityssuomi.fi/default.aspx?nodeid=15325> (visited 20 February 2009).

⁴¹ The Limited Liability Companies Act [Osakeyhtiölaki] 21.7.2006/624.

⁴² The Trade Register Act [Kaupparekisterilaki] 2.2.1979/129.

⁴³ Act on Prohibition of Business [Laki liiketoimintakiellosta] 13.12.1985/1059.

⁴⁴ Act on Prohibition of Business [Laki liiketoimintakiellosta] 13.12.1985/1059, Sections 1 and 3.

⁴⁵ Government Proposal 198/1996 [Hallituksen esitys Eduskunnalle laeiksi liiketoimintakiellosta annetun lain ja eräiden muiden lakien muuttamisesta, HE 198/1996 vp].

6. Labour Law

6.1. Employment Contracts

Since Finland has not contracted out any military or security services no lessons can be learned from contractual practice. Generally employment relationships are governed by the Employment Contracts Act of 2001⁴⁶. Employment contracts can be concluded for any kind of work as long as it is not criminal or against good practice.⁴⁷ Thus, all employers are subject to labour laws irrespective of what kind of business one is engaged in, including the private military or security sector. Furthermore, many of the provisions of the Act are mandatory in nature; this means that the employer cannot reduce the rights and benefits of the employee by virtue of agreement.⁴⁸ These relate to *inter alia* safety at work, annual holiday and terms of and reasons for notice periods. However, some clauses allow for derogation either in employment contracts or collective agreements.

Regarding the specific regulation of private security services acting domestically, specific training requirements are set in place (see Section 3 above). The regulation also separates between permanent and temporary workers;⁴⁹ for every group of three guards the guarding services supplier may employ only one temporary guard. Temporary guards also have fewer rights than permanent workers in guarding services. They are not entitled to carry firearms or to be accompanied by a dog.⁵⁰

Regarding employment contracts with connections to more than one state the choice of applicable law is governed by the Treaty on the Law Applicable to Contractual Obligations.⁵¹ The parties are generally free to choose what law they wish to apply. However, in lack of such contractual agreement, the applicable law is the law of the place where the employee usually works. Thus, if a Finnish employer second an employee temporarily abroad, Finnish labour law is still applicable. On the other hand if a Finnish company hires an employee to perform work mainly in another country that country's law governs the employment relationship. If the employee again usually works in several countries, the applicable law becomes the place of the employer. Regardless of a certain extraterritorial applicability of Finnish labour law, the Occupational Safety and Health authorities lack competence to supervise the fulfillment of Finnish labour law abroad.⁵²

There is a separate law on work that is contracted out by enterprises and public organizations, namely the Act on the Contractor's Obligations and Liability when Work is Contracted Out of 2006.⁵³ The aim is thus to ensure that corporations performing outsourced work also fulfil their obligations under Finnish labour law and the entity contracting out work therefore has an obligation to check that certain labour law

⁴⁶ The Employment Contracts Act [Työsopimuslaki] 26.1.2001/55 (unofficial translation, Ministry of Labour, 2007).

⁴⁷ Government Proposal 157/2000 [Hallituksen esitys Eduskunnalle työsopimuslaiksi ja eräiksi siihen liittyviksi laeiksi, HE 157/2000 vp].

⁴⁸ The Employment Contracts Act, 26.1.2001/55, Chapter 13, Section 6.

⁴⁹ The Private Security Services Act, 12.4.2002/282, Section 25.

⁵⁰ The Private Security Services Act, 12.4.2002/282, Sections 16, 29 and 31.

⁵¹ The Employment Contracts Act, 26.1.2001/55, Chapter 11, Section 1.

⁵² Kirjallinen kysymys, KK 110/2003 vp.

⁵³ The Act on the Contractor's Obligations and Liability when Work is Contracted Out [Laki tilajaan selvitysvastuusta ja vastuusta ulkopuolista työvoimaa käytettäessä] 22.12.2006/1233.

conditions are met. The Act is, however, territorially limited to work performed in Finland.⁵⁴

6.2. Personnel Health and Safety

The prevention of occupational accidents and diseases as well as elimination of hazards from work is regulated by the Occupational Safety and Health Act of 2002.⁵⁵ Although work related to military practice and training carried out by *inter alia* persons in the service of the Defence Forces is excluded from the scope of the Act, its application nevertheless extends to employment contracts in general. The Act requires employers to take due care of the safety and health of its employees by preventing and eliminating hazards, adopting necessary safety measures and monitoring the working environment.⁵⁶ The employer is specifically required to have particularly risky work to be done by competent and suitable employees only and is further obliged to guarantee that employees are given instructions in the elimination of hazards. Further, employees are to be provided with appropriate personal protective equipment if there is risk of injury or illness.⁵⁷ As regards work where there is a threat of violence, the employer shall arrange the work and working conditions so the threat or incidents of violence are prevented as far as possible. The Act also aims at preventing or reducing the exposure to chemical, physical and biological agents.⁵⁸ The Act applies to work performed outside of Finland only in some exceptional cases, such as ships sailing under Finnish flag.⁵⁹ Hence, the regulation seems irrelevant to private military and security companies acting abroad.

7. Government Procurement

7.1. Generally on Government Procurement and Military/Security Issues

As was stated in the introductory chapter Finland has limited experience in outsourcing public functions to private entities, especially when it comes to contracting out to private military and security companies. One reason for this is Section 124 of the Constitution of Finland which hinders delegation of significant exercise of public powers to other than the authorities. This would include independent and discretionary use of force, which often is relevant in the case of private military and security companies. There are thus constitutional limitations to a widespread outsourcing policy and Finland has yet no practice in outsourcing to private military and security companies.

Government procurement is generally regulated by the Act on Public Contracts of 2007.⁶⁰ The Act stipulates that public procurement is subject to competition and that

⁵⁴ Government Proposal 114/2006 [Hallituksen esitys Eduskunnalle laiksi tilaajan selvitysvelvollisuudesta ja vastuusta ulkopuolista työvoimaa käytettäessä, HE 114/2006 vp].

⁵⁵ Occupational Safety and Health Act [Työturvallisuuslaki] 23.8.2002/738 (unofficial translation by the Ministry of Social Affairs and Health).

⁵⁶ Occupational Safety and Health Act, 3.8.2002/738, Chapter 2, Section 8.

⁵⁷ Occupational Safety and Health Act, 3.8.2002/738, Sections 11, 14, 15.

⁵⁸ Occupational Safety and Health Act, 3.8.2002/738, Sections 37-40.

⁵⁹ Government Proposal 59/2002 [Hallituksen esitys Eduskunnalle työturvallisuuslaiksi ja eräiksi ja siihen liittyviksi laeiksi, HE 59/2002 vp].

⁶⁰ Act on Public Contracts [Laki julkisista hankinnoista] 30.3.2007/348.

the companies offering supplies or services are to be treated equally and in a non-discriminatory manner. Outside the scope of the Act are, however, contracts that are declared secret, contracts whose performance requires special security measures, or contracts that due to security interests of the state necessitate such exclusion. More specifically, contracts whose 'objective is mainly applicable to military use' are explicitly excluded from the Act of public contracts.⁶¹ Thus, for example, when the Defence Forces have procured clothing, the Act on Public Contracts has been applicable.⁶² Procurement of defence materiel falls, however, outside the ambit of the Act, and so far there is no national regulation in place for that. The repealed Decree on Contracts, which do not Fall within the Scope of the Public Procurement Act⁶³ could perhaps serve as a guideline while awaiting new legislation. This decree regulated the procurement of defence materiel or other objects applicable to military use and laid down that the procurement of such contracts can be done based on award or without it, if the latter is motivated by state security or national defence considerations.⁶⁴

The Ministry of Defence has clear guidelines and quality standards in place for the procurement of defence materiel; for instance besides the obvious principle of advantageousness, Finland must not be the sole user of foreign defence materiel and environmental considerations must be taken into account. Further, the supplier of defence materiel must have specific ISO-standardization and fulfil NATO Quality Assurance.⁶⁵ The situation is less clear when it concerns the procurement of military and security services. The procurement of military services might fall outside the scope of the Act on Public Contracts since the objective of the contract would relate to military use. Security services on the other hand fall within the scope of the Act, since the Act expressly states the applicability of certain provisions in the Act to investigation and security services.⁶⁶

7.2. Policy Limitations on Government Outsourcing

Traditionally the Finnish government has every fifth year assessed the Finnish security and defence policy as a whole by issuing a white paper on government policy in the field for consideration by the Parliament (*turvallisuus-ja puolustuspoliittinen selonteko*). The purpose of the report is to set out the principles and objectives of Finnish security and defence policy and to provide a framework for how to implement it in different sectors. In the 2004 report the Government indirectly touched upon outsourcing; it laid down that the Defence Forces were to take care themselves of direct support for combat troops, whereas maintenance and repair functions could be outsourced.⁶⁷ The latest security and defence policy report from 2009 again recognizes

⁶¹ Act on Public Contracts, 30.3.2007/348, Section 7.

⁶² The Finnish Defence Forces, 'Julkisista hankinnoista annetut lait ohjaavat puolustusvoimien vaatehankintoja', <www.mil.fi/laitokset/tiedotteet/467.dsp> (visited 17 February 2009).

⁶³ Decree on contracts, which do not fall within the scope of the Public Procurement Act [Asetus hankinnoista, joihin ei sovelleta lakia julkisista hankinnoista, 6.5.1994/342]. The decree was repealed with the entry into force of the Act on Public contracts on 1.6.2007.

⁶⁴ Asetus hankinnoista, joihin ei sovelleta lakia julkisista hankinnoista, 6.5.1994/342, Section 1.

⁶⁵ Ministry of Defence, *Puolustusministeriön materiaalipoliittinen strategia*, (2007) at 21-24.

⁶⁶ See Chapter 9 and Annex B to the Act on Public Contracts, 30.3.2007/348.

⁶⁷ *Finnish Security and Defence Policy 2004*, Government Report 6/2004, Prime Minister's Office: Publications 18/2004, at 120.

that outsourcing of know-how in maintenance and repair can lead to even greater disturbances in times of crisis.⁶⁸

In line with the general policy outlined in the government report of 2004, the Ministry of Defence has proceeded with a cautious outsourcing policy. The Finnish Defence Forces have recently introduced a so-called partnership programme through which certain functions are outsourced to private companies.⁶⁹ The purpose of the partnership programme is to ensure sufficient resources to the core function of the armed forces—to militarily defend Finland. Hence, the outsourcing concerns only supportive functions; so far it has included food services, clothing services, health care, transport services and financial administration. The purpose of outsourcing these functions through pilot projects has been to test whether outsourcing really is feasible in a larger context within the armed forces. The most recent outsourcing relates to depot maintenance and repair services for the years 2009-2016.⁷⁰

The implementation of the Defence Forces' partnership programme is guided by three principles. First, supportive functions to the Defence Forces are outsourced based on the experiences received from various implemented pilot projects and the support functions are produced together with a chosen partner. Second, the Defence Forces will maintain their own service production when it is financially or politically motivated, or when it is generally considered expedient to do so. Third, the Defence Administration will become a good and skilful service buyer. For this, it necessarily needs to develop skills in evaluation and comparison of the services as well as different quality systems.⁷¹ Regarding the private companies that are included in the partnership programme it is stated that the co-operation is strategic, meaning that the partnership should be based on a long-term relationship with common goals characterized by a wide exchange of information.⁷²

8. Criminal Responsibility of PMCs/PSCs and Their Employees

Finnish criminal law builds upon the 1889 Penal Code although the statute has been heavily revised since its first adoption. The scope of application of Finnish criminal law is in principle broad; courts can, for example, in certain cases deal with crimes committed abroad by Finnish citizens or those who are equated with Finnish citizens.⁷³ A further basis for the application of Finnish criminal law for offences

⁶⁸ *Suomen turvallisuus- ja puolustuspolitiikka 2009*, Valtioneuvoston selonteko VNS x/2009, 23.1.2009, available at: <www.valtioneuvosto.fi/tiedostot/julkinen/pdf/2009/turvallisuus-ja-puolustuspoliittinen-selonteko/selonteko.pdf> (visited 17 February 2009) at 7.

⁶⁹ See generally on the Partnership Programme, <tietokannat.mil.fi/kumppanuusohjelma/perustietoa.php> (visited 17 February 2009).

⁷⁰ See, e.g., Defence Committee Report 6/2007 [Puolustusvaliokunnan lausunto 6/2007 vp, Ministeriön selvitys maavoimien materiaalin kunnossapidon kehittämisestä]; Statement by Minister of Defence Jyri Häkämies in Parliament plenary session 16.12.2008 [Täysistunnon pöytäkirja PTK 127/2008 vp 16.12.2008]; Puolustusvoimien kumppanuusohjelma, 'Pääesikunta esittää maavoimien kunnossapidon strategista kumppanuutta Millog Oy:n kanssa', 20.12.2007 <tietokannat.mil.fi/kumppanuusohjelma/sisalto.php?a_id=114&type=utiset&project_id=9> (visited 17 February 2009).

⁷¹ See generally on the Partnership Programme, <tietokannat.mil.fi/kumppanuusohjelma/perustietoa.php> (visited 17 February 2009).

⁷² See <tietokannat.mil.fi/kumppanuusohjelma/useinkysytya.php> (visited 17 February 2009).

⁷³ The so-called active personality principle; The Penal Code, 19.12.1889/39, Chapter 1 Section 6, as amended by 16.8.1996/626 (unofficial translation by the Ministry of Justice).

committed abroad is provided by the existence of a link with the crime to Finland; if the offence is directed against Finland or if it is directed at a Finnish citizen or a Finnish corporation,⁷⁴ Finnish criminal law applies. The application of Finnish criminal law is, however, dependent on dual criminality, meaning that the offence must be punishable not only in Finland but also under the law of the place of commission.⁷⁵ Since Finnish criminal law as a principle extends to Finnish citizens abroad, there is, however, no *prima facie* need for extraterritorial laws regulating specifically on criminal jurisdiction over Finnish citizens working for PMCs/PSCs abroad. Finnish criminal law also applies regarding international crimes as defined by international treaties or by other international legal obligations that bind Finland.⁷⁶ In such cases the jurisdictional basis stems from the universality principle and hence there is no requirement of dual criminality. Such crimes are *inter alia* genocide, torture, war crimes, crimes against humanity and acts of terror.⁷⁷

8.1. Individual and Corporate Criminal Responsibility

The basis for Finnish criminal law is the principle of individual criminal responsibility. The Penal Code lists all the offences that are subjected to the threat of imprisonment. Especially relevant for crimes committed during armed conflicts is Chapter 11 of the Penal Code, which includes specific criminalizations of *inter alia* genocide, war crimes and crimes against humanity. They are considered crimes against international law under Finnish criminal law.⁷⁸ This Chapter was amended as late as in 2008 with the purpose of making Finnish criminal law correspond to the elements of the crimes of the Statute of the International Criminal Court.⁷⁹ Moreover, Finland is planning to include provisions explicitly penalizing torture into the Penal Code.⁸⁰ The criminalization of torture is motivated by the desire to respond to the global occurrence of torture in the international community by taking a definitive stance for an absolute torture ban.

For the international crimes under Chapter 11 of the Penal Code, Finnish criminal law applies regardless of territorial considerations. Thus, it appears clear that individual employees who are Finnish citizens but work for PMCs/PSCs abroad are criminally liable for the most heinous crimes. Regarding individual criminal responsibility for other offences or so-called 'ordinary' crimes committed abroad, the territorial principle governs the choice of law. This means that local criminal law is in

⁷⁴ The so-called passive personality principle; The Penal Code, 19.12.1889/39, Chapter 1 Section 5, as amended by 16.8.1996/626

⁷⁵ The Penal Code, 19.12.1889/39, Chapter 1 Section 11, as amended by 16.8.1996/626

⁷⁶ The Penal Code, 19.12.1889/39, Chapter 1 Section 7, as amended by 16.8.1996/626.

⁷⁷ Decree on the Application of Chapter 1, Section 7 in the Penal Code [Asetus rikoslain 1 luvun 7 §:n soveltamisesta], 16.8.1996/627.

⁷⁸ The Penal Code, 19.12.1889/39, Chapter 11, as amended by 11.4.2008/212.

⁷⁹ See Government Proposal 55/2007 [Hallituksen esitys Eduskunnalle sotarikoksia ja rikoksia ihmisyyttä vastaan koskevan rikoslain säännösten muuttamiseksi sekä eräiksi niihin liittyvistä laeiksi HE 55/2007 vp]; For a general overview of the Implementation of the Rome Statute in Finland, see Jussi Ohisalo, 'Implementation of the Rome Statute in Finland', XVI *Finnish Yearbook of International Law* (2005) 103-131.

⁸⁰ A working group under the Ministry of Justice was established in June 2007 with the purpose to draw up a proposal for the criminalization of torture. The proposal is currently under preparation at the Ministry of Justice. See Oikeusministeriö, työryhmämietintö 2008:1, *Kidutuksen kriminalisointi* 13.5.2008.

the first hand to be applied. However, if the crime is committed by a Finn, or has other connections to Finland due to being directed at a Finnish natural or legal person Finnish criminal law can become applicable. This concerns especially offences against life, health and property,⁸¹ such as murder and rape. Certain offences of the Finnish Penal Code are nevertheless not intended to have an extra-territorial character.⁸²

Regarding the question of corporate criminal responsibility for crimes committed abroad by Finnish PMCs/PSCs one must adopt a more cautious attitude. Traditionally Finnish criminal law has not accepted corporate criminal liability, but in 1995, a reform took place which recognizes corporate liability for a limited number of offences such as economic and environmental offences.⁸³ However, corporate criminal liability is not generally accepted and there must be a specific mention of the possibility of corporate criminal responsibility for the offence. For those offences that give rise to corporate criminal responsibility, the Penal Code lays down that a corporation or other legal entity may be sentenced to corporate fines when a person who is part of the corporation's decision-making bodies or other management and has been 'an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation'.⁸⁴ However, the relevance of corporate criminal responsibility to the activities of PMCs/PSCs as embodied in Finnish criminal law remains distant since the Finnish legal system does not recognize corporate criminal responsibility for crimes such as genocide, war crimes or crimes against humanity.

8.2. Superior Responsibility

In Finnish criminal law superior responsibility is an accepted form of responsibility which is grounded either in the superior ordering a crime to be committed or in failing to prevent subordinates from committing crimes. According to Finnish criminal law, a superior (as well as any individual) can be guilty of instigation of a crime or for the commission of an offence through an agent when he orders a crime to be committed.⁸⁵ In such cases, the superior is to be punished as the actual offender. It is also recognized that superiors can abet crimes if they, through advice, further the commission of a crime. In 2008, superior responsibility was explicitly extended also to cover situations where war crimes and crimes against humanity were perpetrated because of insufficient supervision of the subordinates by the superior. According to Section 12 of Chapter 11 in the Penal Code, a military or other superior is to be punished for the acts of his subordinates if the superior has failed to take necessary measures to hinder the subordinates from committing a crime.⁸⁶

From the perspective of PMCs/PSCs it is important to note that the stipulations on war crimes and crimes against humanity regarding superior responsibility concern

⁸¹ Kimmo Nuotio, 'Kansainvälinen ja eurooppalainen rikosoikeus' in Tapio Lappi-Seppälä et al. (eds), *Rikosoikeus. Oikeuden perusteokset* (WSOY PRO, Helsinki, 2008) 195-244 at 220.

⁸² Kimmo Nuotio, 'Kansainvälinen ja eurooppalainen rikosoikeus' in Tapio Lappi-Seppälä et al. (eds), *Rikosoikeus. Oikeuden perusteokset* (WSOY PRO, Helsinki, 2008) 195-244 at 220.

⁸³ See the Penal Code, 19.12.1889/39, Chapter 9 on Corporate criminal liability, as amended by 21.4.1995/743.

⁸⁴ The Penal Code, 19.12.1889/39, Chapter 9, Section 2, as amended by 21.4.1995/743.

⁸⁵ See Sections 4 and 5 of Chapter 5 in the Penal Code; see also Government Proposal 55/2007, Section 12.

⁸⁶ The Penal Code, 19.12.1889/39, Chapter 11, Section 12, as amended by 11.4.2008/212.

not only military superiors but also civilian superiors. Although there is no differentiation between the responsibility of military and civilian superiors, the latter's responsibility must be assessed based on the character of the organization and his or her position in it. Consequently, although superiors in a company also could fall under the regulations of superior responsibility the same level of supervision cannot be required from civilian superiors as from military superiors.⁸⁷ Further, it is notable that no government official or superior is immune from Finnish criminal law when it comes to genocide, crimes against humanity or war crimes; even the President of the Republic of Finland is liable for his or her acts with respect to these crimes.⁸⁸

The allocation of responsibility between the superior and his or her subordinate is also regulated in the Penal Code. The main rule follows the Statute of the International Criminal Court and lays down that a subordinate is not relieved from criminal responsibility because the unlawful act was committed based on superior order—regardless of the superior being military or civilian or a government official. According to the stipulations on military offences a soldier is to be punished for his or her unlawful acts in accordance with superior order only if the offender could have realized that his or her act was unlawful or that the superior order was unlawful.⁸⁹ For definitional purposes, a soldier is understood also as temporary personnel of the armed forces when appointed for military duties. Any exemption from criminal responsibility of a subordinate is, however, stricter when it regards crimes under Chapter 11 of the Penal Code; with respect to war crimes the perpetrator following governmental directives or superior orders is also subject to punishment unless three conditions simultaneously are fulfilled: 1) the perpetrator was under legal responsibility to follow the order; 2) the perpetrator did not know that the order was unlawful; and, 3) the order was not manifestly unlawful.⁹⁰ For genocide and crimes against humanity there can, however, be no exemptions from criminal responsibility of the subordinate.⁹¹

8.3. *Mercenarism and Other Military Activity*

Mercenarism is not a crime under Finnish law; Finland has no legislation prohibiting mercenarism and Finland has not joined and is not planning on acceding to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries from 1989.⁹² However, the Penal Code acknowledges that some forms of military activity can constitute treasonable offences. First, the crime of treason (*maanpetos*) includes the enlistment by Finnish citizens into foreign armies during armed conflict or imminent threats thereof. The prohibition includes not only joining the armed forces of an enemy to Finland, but also Finnish citizens or equivalents who 'participates in military operations or other military activities against Finland'; or

⁸⁷ Government Proposal 55/2007, Section 12.

⁸⁸ The Constitution of Finland [Suomen perustuslaki] 11.6.1999/731, Section 113; For a detailed discussion see also Government Proposal 55/2007 Sections 2.2 and 3.

⁸⁹ The Penal Code, 19.12.1889/39, Chapter 45, Section 26b, as amended by 13.6.2003/ 515.

⁹⁰ The Penal Code, 19.12.1889/39, Chapter 11, Section 14, as amended by 11.4.2008/212.

⁹¹ Government Proposal 55/2007, Section 14; *Rikosoikeus. Oikeuden perusteokset* (WSOY PRO, Helsinki, 2008) Ari-Matti Nuutila & Kimmo Nuotio, 'RL 11 luku. Sotarikokset ja rikokset ihmisyyttä vastaan' in Tapio Lappi-Seppälä et al. (eds), *Rikosoikeus. Oikeuden perusteokset* (WSOY PRO, Helsinki, 2008) 247-278 at 277.

⁹² International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, entered into force 20 October 2001, 29 *International Legal Materials* 91.

‘serves the enemy in a military or civilian capacity immediately furthering the military operations against Finland’.⁹³ The former—participating in military operations—includes activities undertaken also from outside the armed forces such as destroying communication lines or occupying military targets. The latter—serving the enemy in a military or civilian capacity— includes activities such as conducting intelligence operations for, or planning or manufacturing weapons to an enemy of Finland.⁹⁴ Clearly, these provisions are relevant to the legislative framework that affects the functioning of Finnish PMCs/PSCs or their individual employees; however, their practical relevance is limited by the requirement of an ongoing armed conflict involving Finland. Thus, during peacetime there is nothing that restricts Finnish citizens from enlisting into foreign armies or equivalent organizations, or participating in military activities abroad.

Whereas the crime of treason relates to international conflicts involving Finland, there are also stipulations on high treason (*valtiopetos*), meaning situations in which civil war or internal armed conflict threatens the country. In Chapter 13 of the Penal Code, Section 4, conducting unlawful military operations is criminalized to be punished by fines or a maximum of two years imprisonment.⁹⁵ As participation in unlawful military operations is understood acts to found, organize or equip a military association, with the aim to exert political influence. Executing or providing military training is also recognized as unlawful military activity.

All of the above stipulations might during situations of internal strife or external conflicts become relevant for the private military and security industry including Finnish citizens working in the business. The only explicit provision in Finnish criminal law on private security companies is, however, found in the Penal Code on offences against public order, which in Section 6a says that ‘a person who engages in private security company operations without a permit or in private security company operations accepts a commission referred to in section 9(1) of the Private Security Services Act for the maintenance of public order and security’ commits a private security company offence punishable with fines or imprisonment for at most six months.⁹⁶ Since the Private Security Services Act from 2002 nevertheless is limited to companies operating within the national borders of Finland, this provision of the Penal Code appears relevant only for such companies.

9. Civil Liability

9.1. Contractual and Tort Liability

The lack of Finnish outsourcing practice in the field of military and security services to private companies makes an evaluation of how damages arising out of outsourcing are compensated a theoretical discussion on the various forms of civil liability. Liability for damages is based either on contractual relations or tort. Tort liability is regulated by the Tort Liability Act from 1974 and contractual liability is based on the terms of the specific contract in question as well as general principles of liability.

⁹³ The Penal Code, 19.12.1889/39, Chapter 12, Section 3, as amended by 21.4.1995/578.

⁹⁴ Ari-Matti Nuutila, ‘RL 12 luku. Maanpetosrikokset’ in Tapio Lappi-Seppälä et al. (eds), *Rikosoikeus. Oikeuden perusteokset* (WSOY PRO, Helsinki, 2008) 279–298 at 286.

⁹⁵ The Penal Code, 19.12.1889/39, Chapter 13, Section 4, as amended by 21.4.1995/578.

⁹⁶ The Penal Code, 19.12.1889/39, Chapter 17 Section 6 a, as amended by 12.4.2002/284.

Contractual liability often arises in cases where the terms of the contract are not fulfilled or they are implemented in the wrong way or late in time. The basis for liability is thus the non-performance of contractual obligations. The party causing the injury or damage to another contracting party is liable to compensate since the basic rule regarding liability is that contracts are to be kept. However, there are possibilities to limit liability in contracts. For example, there can be limitations of damages to a maximum sum or limitation of liability for misbehaviour of the party's own suppliers or subcontractors. Although such limitations of liability must not put one of the parties in an inappropriate disadvantage, the balance of the contract in whole must be evaluated as well.

Tort liability is regulated by the Tort Liability Act of 1974.⁹⁷ The Act regulates the liability of persons causing injury or damage to another person by stating that there is liability for damages both when it comes to deliberate and negligent behaviour. In situations where the injury or damage has been caused by two or more persons, they become jointly liable for the damages. The damages can be adjusted if the liability is considered to be unjustly burdensome in view of the financial situation of the person causing the injury, if the damage has been caused by a minor, or if the person causing the damage is, for example, mentally disturbed.⁹⁸ The vicarious liability of employers and public corporations is also established by the Act. The basic principle is that an employer is liable in damages for injury or damage caused by its employees through an error or negligence at work. The main objective of awarding damages is to have the party causing the harm compensate for personal injury and damage to property. Thus, the person who has suffered injury should not unduly benefit from having suffered injury.

9.2. *On Arbitration and Civil Litigation*

Arbitration is a common method of resolving commercial disputes. The Arbitration Act of 1992⁹⁹ regulates arbitration meant to take place in Finland, the effects of an arbitration agreement concerning arbitration in a foreign state as well as the recognition and enforcement in Finland of an arbitral award made in a foreign state.¹⁰⁰ The Act lays down that an arbitral award made in a foreign state shall be recognized in Finland on the condition that it is not contrary to the Finnish legal system.¹⁰¹ Other grounds for non-recognition of foreign arbitral awards are, for example, present when the arbitral tribunal has exceeded its authority or when the composition of the arbitral tribunal deviated from the arbitration agreement. In order to enforce a foreign arbitral award in Finland, an application for enforcement shall be submitted to the court of first instance.

The Code of Judicial Procedure of 1734¹⁰² regulates civil litigation in Finland. It lays down that the general courts of Finland, which are organized into a three-tiered hierarchy, deal with matters concerning relations between natural or private legal persons. Thus, civil litigation takes place first in District courts, then in Courts of

⁹⁷ The Tort Liability Act [Vahingonkorvauslaki] 31.5.1974/412.

⁹⁸ The Tort Liability Act, 31.5.1974/412, Chapter 2, Sections 1-3.

⁹⁹ The Arbitration Act [Laki välimiesmenettelystä] 23.10.1992/967

¹⁰⁰ The Arbitration Act, 23.10.1992/967, Section 1.

¹⁰¹ The Arbitration Act, 23.10.1992/967, Section Sections 51-55.

¹⁰² The Code of Judicial Procedure [Oikeudenkäymiskaari] 1.1.1734/4.

Appeal and finally in the Supreme Court. The District Courts are the court of first instance in all civil and criminal cases. Jurisdiction of the respective courts is determined based on territory, subject-matter and the stage of appeal. The general rule is that claims against a natural person are brought where the person is domiciled, and if the claim is raised against a legal person the action needs to be filed where the legal person has its seat.

10. Case Law on Mercenaries or PMCs/PSCs

There are no criminal or civil cases in Finnish jurisprudence where alleged mercenaries or private military or security companies or their employees operating abroad would have been indicted or consequently convicted.

The closest to criminal charges was the investigation in 1999 into the mercenary activities of two Finnish citizens during the Balkan war.¹⁰³ At least the other had served in the Serbian army during the war. The central criminal police launched an investigation into their activities and one of the alleged mercenaries was even arrested, but there was no decision to indict them due to lack of evidence.¹⁰⁴ Since according to Finnish criminal legislation being a mercenary is not a crime, the investigation was directed towards genocide charges - they allegedly had participated in the killings of civilians in Kosovo.

11. Government Policy on the Status of PMCs/PSCs and Other International Legal Aspects

Finland has adopted a pragmatic approach to private military and security companies and their employees recognizing that many states use their services and that any general prohibition of such companies or their use would be unrealistic. Although Finland has not herself been confronted with many problems regarding private military and security companies it is well acknowledged that there is a need to explore and re-state the relevant applicable international legal rules due to situations that emerge in conflict zones. One effort undertaken by the Ministry for Foreign Affairs on the national level was to commission a study in 2005 exploring the industry and how to protect international human rights and humanitarian law.¹⁰⁵

From an international legal standpoint Finland considers it important to point out that a state cannot escape its international obligations with respect to human rights and international humanitarian law by outsourcing its functions. In line with this, Finland has welcomed and supported, for example, the recently adopted Montreux Document¹⁰⁶

¹⁰³ For the background and an analysis, see, Petra Hagelstam, 'Soldiers of Fortune in Bosnia – The Casagrande Incident', VIII *Finnish Yearbook of International Law* (1997) 259-284.

¹⁰⁴ MTV, 24.8.1999, 'Suomalaisten palkkasotilaiden esitutkinta jatkuu', available at: <www.mtv3.fi/uutiset/arkisto.shtml/arkistot/kotimaa/1999/08/1859> (visited 16 February 2009) ; MTV, 9.8.1999, 'Kosovon palkkasotilas vapautettiin', available at: <www.mtv3.fi/uutiset/arkisto.shtml/arkistot/kotimaa/1999/08/1061> (visited 16 February 2009).

¹⁰⁵ The study resulted in the following publication: *Transnational Privatised Security and the International Protection of Human Rights* by Katja Creutz (The Erik Castrén Institute Research Reports 17/2006).

¹⁰⁶ The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, September

as a balanced articulation reminding each participant of their obligations. Second, Finland emphasizes that the norms of international humanitarian law apply to the employees of private military and security companies, and in line with this their status is determined. Thus, their status is defined according to the specific tasks they perform in the conflict. Preferably the employees of private military and security companies should not be performing combat services.

12. Conclusions

Finland is a country without a private military and security sector business, although one such company is known to have existed. Neither does Finland employ the services of such foreign companies in its limited participation in international operations involving its armed forces. Although Finland internationally welcomes initiatives clarifying international legal standards applicable to private military and security companies and their employees, there is no outspoken governmental policy on outsourcing to private military and security companies. The privatized security phenomenon has not caused problems domestically, and consequently there is no national legislation on these companies acting in various conflict zones.

The lack of a Finnish private military and security industry does not, however, leave the issue irrelevant for Finland. It is very likely that foreign companies employ also Finnish citizens and as such it is possible that Finns could be implicated in situations where human rights or international humanitarian law is violated. The investigation into two Finnish mercenaries in the 1990s demonstrates that the issue is not merely theoretical. If such cases appear, Finnish criminal law has means to tackle also crimes committed abroad so that impunity can be fought.

2008, available at: <[www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/\\$FILE/Montreux-Dokument-eng.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/$FILE/Montreux-Dokument-eng.pdf)> (visited 23 February 2009).