

**PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO  
IMPRISONMENT ACROSS EUROPE**

**NON-CUSTODIAL SANCTIONS AND MEASURES  
IN THE MEMBER STATES OF THE EUROPEAN UNION**

**Finland**

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## NON-CUSTODIAL SANCTIONS IN FINLAND

### I. Legal framework of Finnish penal system

#### 1. Penal sanctions

The first level of penal system consists of waiving of measures. Non-prosecution may occur in four type of cases: minor offenses, young offenders, and cases in which the offender is suspected for several offenses. The fourth case is related to reasons of equity and criminal political expediency.<sup>1</sup> If charges have been brought to court, the law defines five categories of waiving the punishment. Punishment may be waived for minor offences and young offenders, or if the act is to be deemed comparable to an excusable act. Fourth precondition concerns the mitigating factors or the actions by the social security and health authorities. Fifth case is related to imposition of a joint punishment.<sup>2</sup>

The general criminal punishments are summary penal fine, fine, conditional imprisonment, community service, monitoring sentence and unconditional imprisonment. A special punishment for the most dangerous recidivists is combination sentence.<sup>3</sup> Fine is the most used sanction. Fines may be imposed either in a trial or, in respect of petty offences, through summary penal proceedings. Summary penal fine concerns minor (usually traffic) offences and it is set at a fixed amount. Majority of fines are imposed in summary process. Fines imposed in a trial are imposed as day-fines. The day-fine system aims to ensure comparable severity for offenders differing in income and wealth. The number of day-fines is based on the seriousness of the offense, and the amount of a single day-fine depends on the daily income of the offender.<sup>4</sup>

If fines are unavailable because of the seriousness of the offense, choice is to be made between conditional and unconditional imprisonment. A sentence of imprisonment for a fixed period not exceeding two years may be conditional, unless the seriousness of the offence, the guilt of the offender as manifested in the offence, or the criminal history of the offender requires unconditional imprisonment.<sup>5</sup> When imprisonment is imposed conditionally, the enforcement of the sentence is postponed for a probation period of at least one and at most three years.<sup>6</sup> The court may order the enforcement of conditional imprisonment if the convicted person commits an offence during the probation period, where the court deems that unconditional imprisonment or combination sentence is the appropriate sanction and the charge has been brought within one year of the end of the probation period.<sup>7</sup> Furthermore, if conditional imprisonment is deemed as not sufficient sanction for the offence, it can be attached with fines, or if the conditional sentence is at least eight months, community service of at most 10 hours.<sup>8</sup>

If the court has chosen to impose unconditional imprisonment, a prison term need not be imposed (table 1). Non-custodial sanctions may be imposed instead of short sentences of unconditional imprisonment. First alternative is community service, which may be imposed instead of unconditional imprisonment of up to eight months. If community service is not available, monitoring sentence is

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<sup>1</sup> Criminal Procedure Act (689/1997) 1:7 and 1:8. See Lappi-Seppälä 2016, 35–37.

<sup>2</sup> Penal Code (39/1889) 6:12.

<sup>3</sup> Penal Code 6:1. A special punishment for offences committed by a person below the age of 18 years is the juvenile penalty. Penal system also includes special punishments for public officials (warning and dismissal from office) and for soldiers.

<sup>4</sup> Lappi-Seppälä 2019, 19.

<sup>5</sup> Penal Code 6:9.

<sup>6</sup> Penal Code 2b:3.

<sup>7</sup> Penal Code 2b:5.

<sup>8</sup> Penal Code 6:10.

the subsidiary option. Monitoring sentence may be imposed, if the unconditional prison sentence is at most six months. Community service and monitoring sentence thus come into consideration only after the court has concluded to impose an unconditional prison term.<sup>9</sup> The average length of monitoring sentences imposed in courts was 3 months in 2020.<sup>10</sup>

**Table 1.** Applicability of non-custodial sanctions.

Non-custodial sanction	Length of prison sentence
Community service	At most 8 months
Monitoring sentence	At most 6 months

Community service and monitoring sentence are not “reference sanctions”, as they are always imposed instead of unconditional imprisonment. In practice, the system is based on a two-step procedure. First, the court makes the sentencing decision within the normal sentencing principles, without considering the possibility of community service or monitoring sentence. Second, if the result is unconditional imprisonment—and the prerequisites are met—the court may convert the sentence into community service or monitoring sentence. Community service and monitoring sentence may therefore be used only in cases in which the accused would otherwise have been sentenced to unconditional imprisonment. This approach is, at least in theory, preventing net-widening.<sup>11</sup>

For instance, monitoring sentence is a typical punishment for aggravated drunken driving. According to Penal Code, “the offender shall be sentenced for driving while seriously intoxicated to at least 60 day-fines or to imprisonment for at most two years”.<sup>12</sup> As the maximum penalty for this offence is two years of imprisonment, the court may impose monitoring sentence instead of imprisonment if the prison sentence in that individual case is six months or less.

In cases where the length of the sanction exceeds the maximum sentence convertible to non-custodial sanctions, or other causes constitute bar for them, an unconditional imprisonment is imposed. Sentence of imprisonment may be imposed either for a determinate period (at least fourteen days and at most twelve years) or for life. When imposing a joint sentence, maximum length is 15 years. Life imprisonment is the most severe sanction, and the average length of life imprisonment was little over 15 years in 2020. There is no “life without parole” in Finland. The release of prisoners serving life sentence is decided by the Helsinki Court of Appeal. The president may also grant a pardon. For adult prisoners, release may occur at the earliest after 12 years. Prisoners released from life imprisonment are placed on probation for three years.<sup>13</sup>

Preventive detention (e.g. *forvaring* in Norway), which allows prison authorities to continue the custody of a dangerous prisoner, was abolished in Finland in 2006. An alternative arrangement, the system of “full sentences” was introduced. It meant that for serious violent recidivists, the court could decide that the sentence will be served “in full”, without release on parole.<sup>14</sup> In 2018, the system of full sentences was replaced with a new penal sanction, combination sentence. This sanction is designated for the same category of high-risk recidivists. The rationale for combination sentence is that releasing high-risk prisoners into society without any supervision or support shall be avoided, as it may increase the risk of recidivism. Combination punishment consist of imprisonment period and an electronically monitored supervision period of one year. The supervision period may exceed the maximum penalty of the offence.<sup>15</sup>

<sup>9</sup> Hinkkanen & Lappi-Seppälä 2011, 350–351, 368–370.

<sup>10</sup> Statistics Finland 2021.

<sup>11</sup> See Lappi-Seppälä 2019, 28–32.

<sup>12</sup> Penal Code 24:4.

<sup>13</sup> Penal Code 2c:2. Lappi-Seppälä 2019, 19.

<sup>14</sup> Hinkkanen & Lappi-Seppälä 2011, 373–374.

<sup>15</sup> Lappi-Seppälä 2016, 44–48.

## 2. Non-custodial sanctions and measures in Finland

### 2.1 Development of non-custodial sanctions

The introduction of conditional sentence in 1918 was the first phase in the development of alternatives to prison. Conditional sentence had a prominent role as an alternative to imprisonment especially during the 1970s and 1980s. However, conditional sentence faced criticism for leniency, and the severity difference between conditional and unconditional sentence was also questioned. Therefore the second phase of community sanctions system was related to the adoption of community service in the early 1990s. Community service was used as an independent sanction and as an attachment sanction to conditional sentence. After a short experimental period, community service was made permanent in 1995. The annual number of community service orders rapidly increased and community service reached a central role as an alternative to short prison sentences.<sup>16</sup>

The third phase of prison alternatives occurred during the 2000s in the form of electronic monitoring. Electronic monitoring was first adopted in Sweden, and few years later in other Nordic countries. Finland introduced electronic monitoring in 2011 as an independent sanction, monitoring sentence. Electronic monitoring was also employed for prison supervision and to supervise early release (supervised probationary freedom, see chapter 2.3).<sup>17</sup> Monitoring sentence constitutes the so called “front door” model of electronic monitoring, replacing short prison sentences. Supervision probationary liberty constitutes the “back door” version. Today, also conditional imprisonment may be attached with supervision. Importantly, electronic monitoring is not used in the supervision of conditional sentence. Supervision of conditional sentence consist only of supervision meetings with probation officers and support programs.

### 2.2 Preconditions for non-custodial sanctions

**Supervised conditional imprisonment.** Conditional imprisonment may be imposed with or without supervision. In 2019, supervision of conditional imprisonment was made possible for adult offenders (at least 21 years at the time of the act). Previously supervision was used for young offenders. Adult offenders may be subjected to supervision for one year and three months in order to reinforce conditional imprisonment. Supervision may be imposed if, when taking into account the previous convictions, personal circumstances and circumstances which lead to the offence, it is deemed necessary for prevention of further offences. Alternatively, supervision may be imposed if conditional imprisonment by itself is to be deemed insufficient and the length of conditional sentence is at least eight months. Supervision is carried out by probation officers and involves both support and control. Support may include for instance drug treatment, education or work and other interventions which reduce the risk of recidivism.<sup>18</sup>

**Community service.** Penal Code sets four main preconditions for the imposition of community service.<sup>19</sup> First precondition concerns the length of the sentence, as community service may be imposed only if the unconditional prison sentence is at most eight months. Second, the offender must give his or her consent to community service. Third, the offender must be assumed to complete the community service order. The suitability is assessed with a pre-sentence report prepared by the

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<sup>16</sup> Lappi-Seppälä 2019, 43–45.

<sup>17</sup> Lappi-Seppälä 2019, 34. See also Lappi-Seppälä & Lähteenmäki 2017. The use of electronic monitoring involves also alternatives to pretrial detention.

<sup>18</sup> Lappi-Seppälä 2019, 22–23.

<sup>19</sup> Penal Code 6:11.

Criminal Sanctions Agency before sentencing. Fourth, previous convictions may rule out the possibility for community service. The court has the discretion to decide whether the criminal history of the accused is too excessive for community service.

**Monitoring sentence.** Penal Code sets also the qualification criteria for monitoring sentence. Monitoring sentence may be imposed if the prison sentence is at most eight months. The defendant and persons living in the same household must consent to monitoring sentence. The possibility of community service must also have been excluded.<sup>20</sup> Previous monitoring sentences or unconditional imprisonments may exclude monitoring sentence.<sup>21</sup> Furthermore, the nature of the offence in question may prevent the imposition, for instance in cases of domestic violence. An important precondition refers to special preventive aspects, as monitoring sentence must promote the social adaptation of the offender, for instance by work or support programs. The central aims of monitoring sentence relate to prevention of the adverse effects of imprisonment, such as worsening economic situation and family life. Imposing monitoring sentence requires that the offender may be assumed to complete the monitoring sentence.<sup>22</sup> In practice, the offender must have a permanent residence and occupation. If the offender is unemployed, he or she must participate in labor market programs or education. Despite the difference in the length of the prison sentence (community service eight and monitoring sentence six months), monitoring sentence is a more severe sanction than community service. Monitoring sentence is meant for offenders who would not qualify for community service and are therefore at risk of being sentenced to prison.

When commuting prison sentence into community service, one day of imprisonment equals one hour of community service.<sup>23</sup> When monitoring sentence is imposed, one day of monitoring sentence corresponds one day in prison. This means that if the prison sentence is five months, the nominal length of monitoring sentence is five months. Offenders sentenced to monitoring sentence are eligible for conditional release.<sup>24</sup> There is no early release from community service. In Finland, a three-month (90 hour) community service also lasts three months, but a corresponding prison sentence lasts about one and a half months.<sup>25</sup>

### 2.3 Early release

**Supervised probationary liberty.** Supervised probationary liberty is designed especially for long term prisoners who need support and intensive program work for reintegration after prison release. Supervised probationary freedom takes place at most six months before regular early release. Released prisoners are monitored with GPS-technology and home visits. Supervised probationary release has significant practical relevance in Finland, and it is used more than similar programs in other Nordic countries.<sup>26</sup> Decision of supervised probationary liberty is made in the prison where the prisoners is located. Average length of supervised probationary freedom was 97 days in 2020.<sup>27</sup>

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<sup>20</sup> Usually previous convictions or personal circumstances prevent the imposition of community service, which means that monitoring sentence allows a more extensive criminal record. Monitoring sentence involves more intensive control and support than community service, and offenders which are not capable of completing community service may still have a chance to serve monitoring sentence.

<sup>21</sup> Monitoring sentence is aimed to work as a last step before prison, and it would not be rational to impose it in cases with extensive previous convictions. Penal Code does not define the limits for criminal history, and it remains in the discretion of the judge. Government Proposal 17/2010.

<sup>22</sup> Penal Code 6:11a

<sup>23</sup> See Lappi-Seppälä 2019, 30. In Finland, offenders convicted to community service are never first-timers. The same concerns monitoring sentence.

<sup>24</sup> Penal Code 6:11a.

<sup>25</sup> Lappi-Seppälä 2019, 33.

<sup>26</sup> Lappi-Seppälä 2019, 34.

<sup>27</sup> Criminal Sanctions Agency 2020.

**Parole.** Adult prisoners are normally released on parole after serving two-thirds of the sentence. If the prisoners has not served a sentence in prison during the last five years, he or she may be released on parole after serving half of the sentence. The law has been recently amended, and the criteria for parole were made stricter. Before, offender could be released on parole earlier if he or she had not been in prison in the last *three* years. Now the limit was increased to five years. Parole conditions are more lenient for juvenile prisoners (parole is allowed after a third or half of the sentence). The minimum time to be served before parole is 14 days.<sup>28</sup> Probation periods are determined by the remaining sentence, with the usual maximum being 3 years. Revocations generally occur only following commission of a new offense during the parole period.<sup>29</sup> Offenders serving monitoring sentence are released on parole according to the normal criteria.

### 3. Rationale for sentencing

The Finnish community sanctions system shall be examined in the Nordic criminal policy context. In the Nordic countries, the indirect general preventive has traditionally been the primary rationale for punishment. This approach does not rely primarily on the severity of sentence or fear of punishment, but underlines the importance of legitimacy and trust in the justice system and authorities. In order to fulfil the indirect impact, penal system must be perceived as fair and just, as it enhances the voluntary compliance with the law.<sup>30</sup>

The rationale of sentencing underlines the difference between the systemic level (the legislature) and the individual case level (the courts). Legislator is the main actor to consider criminal policy purposes and effects of legislative acts. Legislature considers the purpose of punishments when setting the penalty scales and reforming the penal system. Judge's responsibility is to enforce these norms and consider the moral assessment and blameworthiness of the individual offence.<sup>31</sup> Of course, judges may consider the effects or purposes of punishment in an individual case, when weighing the punishment between imprisonment and non-custodial sanctions (e.g. rehabilitation or social relations), but it is not the main task of the courts.

The Nordic sentencing theory, humane neoclassicism, stresses principles of proportionality, predictability, and equality. According to the Finnish general principle on determining the sentence, "the sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the offence."<sup>32</sup> The criteria refer to both the harm caused by the offence, and the culpability of the offender. In order to ensure proportionality and consistency, most offenses are graded into subtypes according to their seriousness (petty, standard, aggravated) with corresponding penalty scales for each subtype. Maximum limits are binding and with minor exceptions may not be exceeded. Minimums are not "mandatory minimums" as in common law countries. Similarly, aggravating factors are absolute, but mitigating criteria allow more discretion.<sup>33</sup>

Predictability and equality refer to the consistency of sentencing practice. The sentencing judge bases the decision on statutory rules and principles, legislative documents, higher court decisions and reasoned opinions. Courts must consider existing practice in similar or comparable cases to ensure the consistency. In Finland this has been formulated into a decision-making model called "normal

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<sup>28</sup> Penal Code 2c:5.

<sup>29</sup> Lappi-Seppälä 2016, 44.

<sup>30</sup> Hinkkanen & Lappi-Seppälä 2011, 375.

<sup>31</sup> Hinkkanen & Lappi-Seppälä 2011, 350-358, 375-376. Lappi-Seppälä 2016, 35.

<sup>32</sup> Penal Code 6:4.

<sup>33</sup> Lappi-Seppälä 2016, 35–40, 51–54. Hinkkanen & Lappi-Seppälä, 354–356.

punishment”, which means the penal sanction that is imposed most frequently in similar cases. It is merely a heuristic tool for judges. Sentencing guideline system does not exist in Finland.<sup>34</sup>

Penal system separates criminal sanctions and health care interventions. Specific treatment order (e.g. contract care in Sweden) is not used. Criminal procedure does not allow compulsory treatment. All treatment orders are issued by medical authorities and regulated by the Mental Health Act. However, there were plans to adopt a contract care order in the early 2000s, but the government proposal was never submitted. This sanction was designed mostly for offenders convicted of drunken driving, and whose drug problem was closely related to offending.<sup>35</sup>

Health conditions of the offender may mitigate the punishment or lead to waiver of punishment. If the perpetrator, due to mental illness, is not criminally responsible, the punishment is waived and compulsory treatment is imposed. If the criminal responsibility is diminished, due to mental conditions or deficiency, the sentence is determined in accordance with a mitigated penal latitude.<sup>36</sup> Also advanced age, poor health or other personal circumstances of the offender may be taken into consideration as a mitigating factor.<sup>37</sup>

The sentencing criteria of community service and monitoring sentence constitute a slight deviation from the proportionality principle. In addition to the offence, the personal circumstances and suitability of the offender must be evaluated upon sentencing. Main requirements are permanent housing, ability to abstain from substances and the ability to attend activities or work. Monitoring sentence must “uphold and promote the offender’s social skills”. These sentencing criteria means that, in practice, similar offences may lead to different type of sanctions depending on the personal situation of the defendant.<sup>38</sup> This problem was recognized in the implementation of community service already in the 1990, and the same problem concerns the implementation of monitoring sentence today. Offenders in a vulnerable social situation, who are homeless, are at risk at ending up in prison, whereas offenders with better life circumstances are more likely to receive monitoring sentences. The problem of social selectiveness is inevitable and difficult to solve. It is not expedient to impose non-custodial sanctions if the prognosis is not realistic, because these cases are at risk to be converted to prison. On the other hand, offenders’ should have a chance to receive help and support to promote their reintegration and decrease the risk of recidivism. This is an every-day dilemma for judges and prosecutors.

The Finnish criminal procedure is mainly accusatorial, with inquisitorial elements. The prosecutor has an important role in moving cases through the process and deciding which cases should be brought to the court. This role is especially crucial in the imposition of non-custodial sanctions, as a pre-sentence report must be carried out before sentencing. Pre-sentence report is normally requested by prosecutor, but it can also be requested by court. The role of the prosecutor underlines the objectivity principle. Prosecutors should evaluate the possibility of non-custodial sanctions, even if they are considered as more lenient sanctions than imprisonment.

Criminal Sanctions Agency is responsible for drawing up the pre-sentence report. According to the law, pre-sentence report shall be requested when a suspect is charged with an offence that is likely to result in the imposition of community service or a monitoring sentence or in the imposition of conditional imprisonment with supervision on an offender aged 21 or over upon committing an offence. In the pre-sentence report, the Criminal Sanctions Agency assesses the prerequisites and ability of the suspect to serve a community sanction. The use of intoxicating substances and other

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<sup>34</sup> Hinkkanen & Lappi-Seppälä 2011, 376–378. Lappi-Seppälä 2016, 49–50.

<sup>35</sup> See Lappi-Seppälä 2016, 49. Hinkkanen & Lappi-Seppälä 2011, 361.

<sup>36</sup> Penal Code 3:4.

<sup>37</sup> Penal Code 6:7.

<sup>38</sup> Hinkkanen & Lappi-Seppälä 2011, 372.



personal and social circumstances of the suspect and his or her need for supervision and support in leading a life without crime are taken into consideration.<sup>39</sup> In 2020, 58 % of the pre-sentences reports were in the favor of imposing monitoring sentence.<sup>40</sup> The court is not bound by the statement of the pre-sentence report, but in practice courts usually follow the statements when choosing the sanction.

## II. Non-custodial sanctions in practice

### 1. Statistical overview

In 2019, the clear majority of all penalties imposed by the courts were fines (59%). The second largest group is conditional imprisonment (23%). 10% of cases in the courts lead to unconditional prison sentence, 3% to community service and 0,7 % to waiver of the sentence. In 2006–2019 the prison rates took a downward trend. Since 2005 major declines have taken place in drunken driving, property and violence offenses. The only offense category showing increase in 2005–2019 is the group “other” (increase by 46%), including i.a. sexual offenses.<sup>41</sup>

In 2020, the numbers of enforced community sanctions is lower compared to previous years due to the restrictions caused by Covid-19 pandemic. The main offence in community service and monitoring sentence is drunken driving. In 2020, 57 % of offenders convicted to monitoring sentence were convicted of drunken driving. Other large offence categories are property offences and minor violent offences. Since 2011, approximately 11 % of offenders sentenced to community sanctions were female. About less than a half of offenders serving community sanctions are employed.<sup>42</sup>

As the table 2 below indicates, the rates of monitoring sentence are fairly low in Finland. Electronic monitoring more widely used in other Nordic countries. One explanation for the difference is that in other Nordic countries the decision powers are given to the prison administration, whereas in Finland decisions are made by the courts. Based on the significant use of supervised probationary freedom in Finland (see table 3 below), it seems that the decisions taken in prison administration are more effective than court practices.<sup>43</sup> If we compare tables 2 and 3, we can notice that the revocation rate is slightly higher in supervised probationary liberty (18 % in 2020) than in monitoring sentence (12 % in 2020). Main reason for this difference is that offenders in supervised probationary liberty are prisoners with a longer prison sentence and more often they experience difficulties when reintegration into the society.

**Table 2.** Enforcement of monitoring sentence in 2012–2020.

	Enforcement started	Enforcement completed	Converted to prison terms	“Failure %”	Daily average
2012	143	110	9	8	18
2013	196	162	23	14	29
2014	229	201	43	21	45
2015	247	221	21	10	48
2016	240	241	33	14	47
2017	237	224	26	12	45
2018	183	177	25	14	33
2019	162	157	23	15	26

<sup>39</sup> The Act on the Enforcement of Community Sanctions (400/2015) 3:10.

<sup>40</sup> Criminal Sanctions Agency 2020, 20.

<sup>41</sup> Seuraamusjärjestelmä 2019, 211–214.

<sup>42</sup> Criminal Sanctions Agency 2020, 22–24.

<sup>43</sup> Lappi-Seppälä 2019, 42.

2020	180	164	20	12	39
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Source: Criminal Sanctions Agency Statistical Yearbook 2020. Year 2011 is lacking because the first monitoring sentence orders started in 2012.

**Table 3.** Enforcement of supervised probationary freedom in 2011–2020.

	Enforcement started	Enforcement completed	Revocations	“Failure %”	Daily average number of offenders	Average length (days)
2011	426	394	69	18	113	100
2012	544	526	94	18	150	101
2013	504	513	65	13	151	108
2014	615	596	98	16	168	102
2015	702	657	104	16	209	108
2016	690	687	123	18	203	110
2017	754	774	125	16	214	104
2018	749	754	146	19	207	99
2019	854	795	137	17	216	97
2020	828	871	154	18	227	97

Source: Criminal Sanctions Agency Statistical Yearbook 2020.

Table 4 below indicates the rates for parole supervision. As stated earlier in this article, parole is enforced after supervised probationary liberty.

**Table 4.** Statistics of parole supervision 2011–2020.

	Started parole supervision orders (flow)	Parole supervision revoked	Daily average number of offenders in parole supervision
2011	768	100	1 171
2012	739	100	1 074
2013	757	103	1 036
2014	752	110	1 054
2015	733	122	1 033
2016	762	119	1 067
2017	750	117	1 093
2018	785	97	1 116

2019	817	124	1 116
2020	774	92	1 144

Source: Criminal Sanctions Agency Statistical Yearbook 2020.

As table 5 indicates, community service is the most used non-custodial sanction in Finland. Its position in the penal system is well-established and it is considered as an important sanction.

**Table 5.** Enforcement of community service in 2011–2020.

	Enforcement started	Enforcement completed	Converted to prison terms	“Failure %”	Daily average number of offenders
2011	2 751	2 330	402	15	1 490
2012	2 704	2 296	482	17	1 458
2013	2 366	2 086	373	15	1 344
2014	2 204	1 908	375	16	1 247
2015	2 136	1 832	326	15	1 217
2016	1 914	1 643	359	17	1 120
2017	1 792	1 489	321	17	1 096
2018	1 741	1 436	343	19	1 072
2019	1 821	1 445	280	16	1 154
2020	1 488	1 166	294	20	1 220

Source: Criminal Sanctions Agency Statistical Yearbook 2020.

Statistical analyses have shown lower recidivism rates of offenders who have served non-custodial sanctions, compared to prisoners. These studies have been recently presented by Lappi-Seppälä (2019). Results have been encouraging, and supported that the reconviction rate is lower for offenders who have been sentenced community sanctions. For instance, a Swedish study showed lower recidivism.<sup>44</sup> However, it must be noted that offenders serving non-custodial sanctions are a fairly selected group (they usually are not homeless, do not have severe drug problems). Their prognosis of committing new offences might be better in any case.<sup>45</sup>

## 2. Implementation and consequences of non-compliance

### 2.1 Supervision and contents of non-custodial sanctions

Criminal Sanctions Agency is responsible for the enforcement of community sanctions. Courts do not participate in the supervision of sanctions. Criminal Sanctions Agency operates under the Ministry of Justice. A public official of the Criminal Sanctions Agency assigned to the task (supervisor) is responsible for the enforcement of an individual community sanction. Supervisors work in community sanctions offices.

Implementation of non-custodial sanctions is regulated in the Act on the Enforcement of Community Sanctions (400/2015). The law includes the contents and purposes of non-custodial sanctions, supervision, obligations of the offender, responsibilities of probation officials and consequences of non-compliance. First, the primary objective of non-custodial sanctions is to promote the sentenced person’s social adjustment and improve his or her ability to lead a life without crime by supporting the person during the enforcement of the sentence. Second, community sanctions involve monitoring,

<sup>44</sup> Brottsförebyggande Rådet 2007.

<sup>45</sup> See Lappi-Seppälä 2019, 45–47.

obligations, prohibitions and other regulations imposed on a sentenced person as well as activities that are determined on the basis of the sentenced person's needs and circumstances while simultaneously maintaining the security of society.<sup>46</sup>

Persons sentenced to community sanctions shall be treated with justice and respect for their human dignity. The enforcement of community sanctions must not place any other restrictions on the rights or circumstances of a sentenced person than those provided by law or those necessary due to the sentence itself. The law includes a "harm-minimizing" principle: a community sanction shall be enforced without causing any greater detriment to the sentenced person or persons close to him or her than what is necessary in order to enforce the sanction. Furthermore, prohibition of discrimination is prescribed. Sentenced persons must not be discriminated against, without an acceptable reason, on the basis of i.a. gender, origin, nationality, religion, political activities, state of health, sexual orientation, or other reason that concerns their person.<sup>47</sup>

Person sentenced to a non-custodial sanction is obligated to maintain contact with the supervisor and attend the supervision appointments and fulfil the obligation to participate in activities, such as rehabilitation or other corresponding activities that maintain or promote their functioning ability and social skills. Persons serving non-custodial sanctions must attend supervision meetings with their supervisor. These meetings take place in the community sanctions offices. In practice, typically these meetings occur once in a week or every two weeks. Finland is a large country, and in sparsely populated areas, the sentenced person may not have abilities to commute to the office as often (especially as many are convicted of drunken driving and may have received a driving ban). In these cases there might be other options to arrange the supervision meetings.

Sentenced person must abstain from using intoxicating substances and comply with the obligation to remain at their place of residence. For the purposes of controlling the use of intoxicating substances, sentenced persons are under the obligation to take a breath test whenever requested. Sentenced persons carrying out community service or monitoring sentence are obliged to provide a saliva or urine sample whenever requested. If a sentenced person is found to be under the influence of alcohol or drugs, it constitutes breach of obligations.<sup>48</sup>

Community service consists of supervised unpaid work. Community service is usually carried out four to five hours at a time, two days per week. Service places are typically provided by the municipal sector and non-profit organizations.<sup>49</sup> Monitoring sentence is a more intensive and demanding sanction. It involves continuous electronic supervision. Offenders are supervised with home visits, supervision meetings in the probation office, visits at the workplace, and by telephone controls. Usually home visits are carried out two times per week, and in the course of these control visits, drug tests are conducted. Although monitoring sentence contains a strong element of supervision, the sanction has a strong focus on social reintegration. This is reflected in the contents of the sentence. Offenders must either work or take part in other activities, rehabilitation programs, labor market programs, or treatment provided by the probations services and other providers. It is worth highlighting that the idea of "passive house arrest" is rejected in Finland and other Nordic countries. This underlines the values and principles of the comparatively inclusive Nordic criminal policy.<sup>50</sup>

A detailed schedule is drawn for the offender serving monitoring sentence. It indicates the times offender is allowed to move outside the residence. The offender is required to stay at home during the night and when there is no work or program scheduled. This schedule is electronically monitored.

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<sup>46</sup> The Act on the Enforcement of Community Sanctions 1:2 & 1:3.

<sup>47</sup> The Act on the Enforcement of Community Sanctions 1:4.

<sup>48</sup> The Act on the Enforcement of Community Sanctions 5:22.

<sup>49</sup> Lappi-Seppälä 2019, 31.

<sup>50</sup> Lappi-Seppälä 2019, 36–37.

The tag sends a continuous signal to the computer in the supervision center, causing an alarm if the offender leaves the area.<sup>51</sup>

## 2.2 Non-compliance

Non-compliance may constitute of standard or serious breach of obligations. Standard breach of obligation, such as being late on schedule on a single occasion, is sanctioned with a warning by Criminal Sanctions Agency. If the breach of the obligations is found to be minor and it is not repeated, it is issued with a reprimand. In practice, if the offender used alcohol, and it was an isolated act and the intoxication was minor, it may be sanctioned with a warning. Serious non-compliance occurs if a sentenced person does not start serving community service or monitoring sentence, or discontinues this without a valid reason or, despite a written warning issued to him or her, repeatedly or otherwise intentionally and seriously breaches the obligations. Also the use of drugs is deemed as a serious non-compliance. In cases of serious non-compliance, Criminal Sanctions Agency shall take measures to refer the matter to a prosecutor and a court for consideration and prohibit the commencement of enforcement or suspend the enforcement if it has already been commenced. If the court finds that the conditions of the sentence have been seriously violated, it converts the remaining portion of the sanction into unconditional imprisonment.<sup>52</sup> Majority of revocations of community sanctions are related to the use of substances. Minor violations are usually related to running late from work or other obligations.

### III. Impact of the Covid-19 pandemic on the imposition and implementation of non-custodial sanctions

Covid-19 pandemic has impacted the enforcement of non-custodial sanctions. Finland was in state of emergency from 17 March to 16 June 2020 and from 1 March to 27 April 2021. Due to the state of emergency, several public places and institutions were closed and the movement of citizens was restricted. Majority of the places which are used in the enforcement of community sanctions (e.g. voluntary work places) were closed.<sup>53</sup> New community service orders or monitoring sentence orders will not be started between 7 June and 30 September 2021<sup>54</sup>. The Decree issued by the Ministry of Justice restricts only the enforcement of new community service sentences and monitoring sentences but does not affect the sanctions that are already being enforced.

Community sanctions offices are open normally during office hours in all phases of the coronavirus epidemic. The community sanctions offices pay attention to safety and hygiene measures. However, especially in areas where the coronavirus is spreading rapidly, supervised persons are asked to contact the on-duty officials primarily by telephone. Safety instructions must be followed in all meetings. Actual meetings with the offender may be arranged at the office, the service place, or the offender's home if the safety instructions are followed. The supervision appointments can also be arranged by means of remote communication (Skype, Lync). Supervision patrols still carry out home visits in cases it is safe. When supervising the homes of the supervised people and installing the ankle tags,

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<sup>51</sup> Lappi-Seppälä 2019, 37–38.

<sup>52</sup> The Act on the Enforcement of Community 5:26.

<sup>53</sup> Ministry of Justice 2021.

<sup>54</sup> Law on temporary actions in the enforcement of sanctions and pre-trial detention due to covid19 (452/2021) entered into force 7 June 2021 and stays in force until 31 October 2021. A decree on temporary restriction of the starting of enforcements of community service and monitoring sentence (462/2021) entered into force 7 June 2021 and stays in force until 30 September 2021.

probation officers follow the instructions drawn up based on the recommendations of the health and welfare authorities. Electronic monitoring, other supervision and substance-use control of non-custodial sanctions are carried out despite the Covid-19. The use of substances leads to punitive measures just as in a normal situation. Substance tests are carried out safely by using protective equipment and following hygiene instructions.<sup>55</sup>

The obligatory activities of community service (e.g. voluntary work) might be restricted or replaced with other content. Due to the coronavirus, the activities can be, among others, written assignments, online assignments provided by substance abuse and mental health services, or discussions with and programmes held by the supervisor. The activities replacing community service work can be continued until the actual work can be started.<sup>56</sup>

Covid impacted also prison meetings, leaves and prison transfers. Many prisoners are vulnerable to the coronavirus, and prisons aim to ensure the conditions for those in the risk groups are as safe as possible. The admission of persons, who were sentenced to a conversion sentence for unpaid fines or to unconditional imprisonment of six months at most, was restricted due to the pandemic. The number of short-term prisoners entering prisons was reduced to avoid the risk of coronavirus spreading among the prisoners and the staff. The Ministry of Justice submitted a decree on the restriction, which entered into force on 4 December 2020 and remained in force till 3 March 2021. This caused a backlog of enforcement cases and Criminal Sanctions Agency aims to clear the backlog of enforcement cases in a controlled manner.<sup>57</sup>

#### IV. Prospects for the future of alternatives to imprisonment in Finland

The use of electronic monitoring is likely to expand in the future in Europe. Technical development is rapid. Developing alternatives to prison remains as an important objective in Finnish criminal policy. However, community sanctions are not the only means to reduce the use prison. Other criminal law reforms, such as aggravations made in the severity of sanctions, lead to reverse impacts. The penal system shall be examined as a whole, and non-custodial sanctions shall be primarily targeted for lenient and middle-range offences. In Finland, it would be possible to replace more short-term imprisonments with non-custodial alternatives. Especially the use of monitoring sentence is low, and it has faced some challenges in the criminal procedure. Wider use of front-door electronic monitoring in Finland may require legislative acts and changes in the sentencing practice.

It shall be considered whether, instead of the current maximum limit of six months, unconditional prison sentences of one or two years may be enforced with electronic monitoring. There should be principled discussions about the limits of prison alternatives: when do the severity of the offence exclude the possibility of non-custodial sanctions? For instance, the minimum penalty for aggravated assault is one year of unconditional imprisonment in Finland. The problem of social selectiveness shall also be taken into consideration. Currently, Finland does not have a treatment order, but drug problems constitute major challenges in the application of non-custodial sanctions. It would be rational if prior convictions had lesser role in sentencing, and rehabilitation and preventive prospects slightly greater significance. This leads back to the question of the rationale of sentencing, and whether it shall be preventive-oriented or more punitive-oriented.

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<sup>55</sup> Criminal Sanctions Agency 2021.

<sup>56</sup> Criminal Sanctions Agency 2021.

<sup>57</sup> In Prisons, the Health Care Services of Criminal Sanctions Agency are responsible for the health care of prisoners. The staff of the prison polyclinic examines the prisoner's health in the prison. If needed, prisoners are transferred to health care outside prisons used by all other citizens (e.g. university hospitals and communal health care centers). Offenders serving non-custodial sanctions are in the scope of communal health care services and institutions as all other citizens. See Criminal Sanctions Agency 2021.

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