

International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) – Implementing Legislation in Finland

Summary

Finland accepted the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) on 13 January 2009, and it entered into force for Finland on 12 February 2009, together with the necessary implementing legislation.

The Finnish law already mostly accorded with the obligations arising from ICSANT at the time of its acceptance. In addition, the provisions of a legislative nature of ICSANT were brought into force as an act of Parliament in accordance with Section 1 of the Act Bringing into Force the Provisions of a Legislative Nature in the International Convention for the Suppression of Acts of Nuclear Terrorism, which was passed on 14 November 2008.

It was necessary, however, to ensure that the obligations to criminalize certain acts be fully implemented in the Criminal Code of Finland. As they were already to a large extent covered by the existing provisions in the Criminal Code, only a couple of additions were required. In particular, the need to complement the Criminal Code concerned the ICSANT obligations to criminalize the following acts:

- a) Possession of radioactive material with the intent to cause death or serious bodily injury or with the intent to cause substantial damage to property or to the environment (a part of Article 2, paragraph 1(a) of ICSANT); and
- b) Attempt to possess radioactive material or attempt to make or possess a device (as defined in Article 1, paragraph 4, of ICSANT) with the intent to cause death or serious bodily injury or with the intent to cause substantial damage to property or to the environment (Article 2, paragraph 3, together with a part of Article 2, paragraph 1(a)).

The necessary criminalizations were enacted by adding to Chapter 44 of the Criminal Code a new Section 12a on a radioactive material possession offence, and by amending Chapter 34, Section 9, concerning the preparation of endangerment. A technical amendment was also needed in the reference provisions relating to sanctions in Section 69 of the Nuclear Energy Act.

As to the other obligations under Article 2, paragraph 1(a), of ICSANT, they were fulfilled by the Criminal Code provisions already in force at the time when the Convention was accepted by Finland, in particular by Chapter 34a, Section 1, subsection 1(5) (or Chapter 34, Section 9, subsection 2, when no terrorist intent can be shown), Chapter 34, Section 6, subsection 1, as well as Chapter 34a, Section 2, subsection 1(3).

As to the obligations under Article 2, paragraph 1(b), they were also fulfilled by Chapter 34a, Section 1 of the Criminal Code. In respect of acts committed with no terrorist intent, provisions in Chapters 21 (Homicide and bodily injury), 34 (Endangerment), 35 (Criminal damage), 48 (Environmental offences) or Section 10 of Chapter 44 (Nuclear energy use offence) of the Criminal Code were deemed applicable.

As far as Article 2, paragraph 2 is concerned, Chapter 34a, Section 1, subsection 1(1) together with Chapter 25, Section 7 on menace, as well as Chapter 25, Section 8 on coercion, were deemed applicable.

As far as the rest of the obligations under Article 2, paragraph 3, are concerned (please note also b) above), Chapter 34a, Section 1, was again of relevance. In respect of acts committed with no terrorist intent, the other relevant criminalizations in the Criminal Code, such as an attempt to commit aggravated criminal damage (Chapter 35, Section 2), endangerment of health (Chapter 34, Section 4), aggravated endangerment of health (Chapter 34, Section 5), aggravated impairment of environment (Chapter 48, Section 2), aggravated assault (Chapter 21, Section 6) or aggravated criminal mischief (Chapter 34, Section 3), were deemed applicable.

The obligations under Article 2, paragraph 4, were fulfilled with the provisions on complicity in an offence (Chapter 5, Section 3, of the Criminal Code), instigation (Chapter 5, Section 5), abetting (Chapter 5, Section 6), participation in the activity of an organized criminal group (Chapter 17, Section 1a), directing of a terrorist group (Chapter 34a, Section 3) and promotion of the activity of a terrorist group (Chapter 34a, Section 4).

The legislation passed by Parliament when accepting ICSANT is presented below:

1. Act Bringing into Force the Provisions of a Legislative Nature in the International Convention for the Suppression of Acts of Nuclear Terrorism (No. 723/2008 in the Statute Book of Finland)

By decision of Parliament, the following is enacted:

Section 1

The provisions of a legislative nature in the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on 13 April 2005, are in force as an act in accordance with Finland's consent to be bound by them.

Section 2

In Finland, the National Bureau of Investigation is the competent authority responsible for sending and receiving information between States Parties as referred to in Article 7, paragraph 4 of the Convention.

Section 3

Provisions on the entry into force of this Act are issued by presidential decree.

2. Act Amending the Criminal Code (No. 724/2008 in the Statute Book of Finland)

By decision of Parliament, Chapter 34, Section 9, subsection 2 of the Criminal Code (39/1889) of 19 December 1889, as it stands in Act 578/1995, is amended and a new Section 12a is added to Chapter 44 as follows:

Chapter 34
Endangerment

Section 9
Preparation of endangerment

(1) A person who, in order to commit an offence referred to in section 1 – 5, has possession of a bomb, other explosives or a dangerous instrument or substance shall be sentenced for *preparation of endangerment* to a fine or to imprisonment for at most two years. (*

(2) Also a person who, in order to commit a nuclear device offence,
(1) procures or attempts to procure or has possession or attempts to have possession of substances needed for the production of a nuclear device,
(2) procures or attempts to procure, prepares or attempts to prepare or has possession of or attempts to have possession of instruments needed for the production of a nuclear device, or
(3) procures formulas or plans needed for the production of a nuclear device shall be sentenced for preparation of endangerment.

*) This subsection was not part of the amendment but is reproduced here as it contains the applicable penal scale.

Chapter 44 Offences endangering health and safety

Section 12a Radioactive material possession offence

(1) A person who possesses radioactive materials without the intended use of the radiation fulfilling the criteria provided in Section 16, subsection 2 of the Radiation Act for a safety licence, shall be sentenced, unless a more severe punishment is decreed elsewhere in law for the act, for a *radioactive material possession offence* to a fine or to imprisonment for at most six months.

(2) An attempt is punishable.

Provisions on the entry into force of this Act are issued by government decree.

* * *

As a consequence of a comprehensive reform of radiation legislation, Section 12a, subsection 1, has since been updated by Act No. 861/2018, with due regard to the obligations under ICSANT, and Section 12a currently reads as follows:

Section 12a Radioactive material possession offence

(1) A person who, without a safety licence referred to in Section 48 of the Radiation Act, possesses radioactive materials, the possession of which is subject to a safety licence, shall be sentenced, unless a more severe punishment is decreed elsewhere in law for the act, for a *radioactive material possession offence* to a fine or to imprisonment for at most six months.

(2) An attempt is punishable.

* * *

3. Act Amending Section 69 of the Nuclear Energy Act (No. 725/2008 in the Statute Book of Finland)

By decision of Parliament,

Section 69, subsection 3 of the Nuclear Energy Act (990/1987) of 11 December 1987, as it stands in Act 593/1995, is amended as follows:

Section 69

Reference provisions relating to sanctions

Provisions on punishment for nuclear device offences involving procurement, possession and preparation of substances, instruments and formulas or plans relating to the production of a nuclear device are laid down in Chapter 34, Section 9 of the Criminal Code.

Provisions on the entry into force of this Act are issued by government decree.

Current central provisions of the Criminal Code already in force when ICSANT was accepted by Finland:

(the English translation of the Criminal Code, including all the provisions referred to above, is available at <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>; please note that the translation does not yet contain amendments that have entered into force in 2016 or later)

Chapter 34

Endangerment

Section 6

Nuclear device offence

(1) A person who imports, produces or detonates a nuclear device in Finland or has one in his or her possession shall be sentenced for a nuclear device offence to imprisonment for at least two and at most ten years.

(2) Also a person who detonates a nuclear device in Antarctica shall be sentenced for a nuclear device offence. (29/1996).

(3) An attempt is punishable.

Chapter 34a

Terrorist offences (17/2003)

Section 1

Offences made with terrorist intent

(1) A person who, with terrorist intent and in a manner that is conducive to causing serious harm to a State or an international organisation

(1) makes an unlawful threat, a false report of a danger, the aggravated invasion of public premises referred to in Chapter 24, section 4, subsection 2, or the nuclear energy use offence referred to in Chapter 44, section 10, shall be sentenced to imprisonment for at least four months and at most three years, (1370/2007)

(2) intentionally commits the offence of imperilment, an intentional explosives offence, a violation of the provisions on dangerous objects, or the public incitement to an offence referred to in Chapter 17, section 1, shall be sentenced to imprisonment for at least four months and at most four years, (1370/2007)

(3) commits an aggravated theft or an aggravated theft for temporary use directed against a motor vehicle suitable for public transport or the transport of goods, sabotage, traffic sabotage, endangerment of health, aggravated damage to property, aggravated firearms offence or a defence supplies export offence shall be sentenced to imprisonment for at least four months and at most six years, (283/2012)

(4) violates a ban on chemical weapons, violates a ban on biological weapons or engages in intentional aggravated pollution of the environment committed in the manner referred to in Chapter 48, section 1, subsection 1(1) shall be sentenced to imprisonment for at least four months and at most eight years,

(5) commits aggravated assault, aggravated trafficking in human beings, the taking of a hostage, aggravated sabotage, aggravated endangerment of health, a nuclear weapon offence or hijacking shall be sentenced to imprisonment for at least two and at most twelve years, (1161/2005)

(6) commits the offence of killing shall be sentenced to imprisonment for at least four and at most twelve years, or

(7) commits homicide shall be sentenced to imprisonment for at least eight years or for life.

(2) A person who commits murder with terrorist intent shall be sentenced to life imprisonment.

(3) An attempt is punishable.

Section 2

Preparation of an offence to be committed with terrorist intent

A person who, in order to commit an offence referred to in section 1, subsection 1(2)-(7) or subsection 2,

(1) agrees with another person or prepares a plan to commit such an offence,

(2) prepares, keeps in his or her possession, acquires, transports, uses or gives to another an explosive, a chemical or biological weapon or a toxin weapon, a firearm or a dangerous object or substance, or

(3) acquires equipment or materials for the preparation or a nuclear explosive, a chemical or biological weapon or a toxin weapon or acquires formulas or diagrams for their production,

shall be sentenced for preparation of an offence to be committed with terrorist intent to a fine or to imprisonment for at most three years.