

# Legal aspects of the nonprofit sector in Finland

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## 1 BODIES UNDER PUBLIC LAW AND UNDER PRIVATE LAW

Lawyers in Finland, as in most European States, make a distinction between public and private law. Bodies under public law are normally those belonging to the State or the Local Government organization. They may use governmental power. Their decisions are binding on the citizen. Bodies under private law have another sphere of action. They have no powers to rule over others, but function in business and other non-governmental areas.

The most important example of public law bodies is the State itself with its numerous organs. Another very important body in Finland is the local district (municipality) and the local federation. Most governmental activities are run by the State or the local government. There are many statutes concerning the State and the local government organization, the most important one being the Constitution Act 1919: 94.

There are, on the other hand, some bodies under public law other than the State and the municipalities. They have been created for special purposes. They can be divided into two categories: the public corporation and the public non-corporative body (*anstalt*). They are regarded as legal persons under public law distinct from the State and the local government bodies.

Under private law, different types of companies, nonprofit associations and foundations are considered as legal persons. The two first mentioned categories have members. The foundations are created to administer funds and property for charitable or other nonprofit purposes.

A legal person under private law must follow the rules stated in specific laws concerning this particular kind of body. For instance, a nonprofit association must comply with the rules stated in the Association Act 1989: 503, as well as with its own by-laws confirmed by the Department of Justice. A charitable foundation

obeys the statute 1930: 109; its by-laws and its actions are controlled by the Department of Justice.

The nonprofit association and the nonprofit foundation can be considered as belonging to the independent sector. As has been stated, they fall into the category of legal person under private law.

How about the legal persons under public law? Do they also fit into the concept of independency? And what does this classification of private/public law mean? Is an activity differently run when it belongs to a body under public law than when it is considered to fall under private law?

The answers to these questions are of importance, since the legal rules differ regarding these two types of bodies. Depending on the classification of the body, there are differences concerning, among other things, the decision-making process, the publicity of the decisions, the legal review of the acts of the body, the control of the Parliamentary Ombudsman, the body's liability for torts, its financial administration, its tax liability and the legal status of its employees.

## 2 THE INDEPENDENT PUBLIC LAW SECTOR

A distinction must be made between the independent sector created by the government and the independent private sector. The government, in some cases, has chosen not to enlarge its own organization by creating new offices or services within its normal administrative structure, but rather to have independent bodies taking care of certain tasks (so-called NGO's).

These independent bodies have in some cases been given a jurisdiction that does not fit well into the regular functions of a governmental body. In other cases the reason for the creation of such an independent body is purely of a practical nature. The service is simply considered to be better (more rationally) run,

not by the government itself, but by an independent body supervised by the government. It is obvious that in all these cases the government maintains a firm control of this body and that the independence may be more or less effective.

When the independent body may perform governmental functions, it is normally given a public law status.

The very important Social Insurance Institution and Bank of Finland were created as independent bodies under public law, because Parliament wanted to keep them under its surveillance. Had they not been given this position, their activities would have been only indirectly controlled by Parliament, but otherwise have been subject mainly to government supervision.

Examples of other independent bodies under public law are the Municipal Pensions Institution and certain other pension bodies included in the compulsory retirement protection system, the Municipal Labor Market body, the Labor protection Fund, the two general Forest Bodies and the Co-operation Body for the Capital Region.

### **3 THE INDEPENDENT PRIVATE LAW SECTOR CREATED BY THE GOVERNMENT**

In some other cases, however, the government may choose to create an independent body under private law. This is a logical solution, when the body will function mainly in the private law area.

But there exist two examples of State-owned companies under private law: the Finnish Broadcasting Corp. and the Alcohol Monopoly Corp. Both fulfill some governmental functions. Their semi-public status can be explained by historical as well as political reasons.

The State also runs industrial and commercial activities through companies in which the State owns all or most of the shares. Only in exceptional cases the State creates a public law body, when its functions fall outside the sphere of governmental activities. Thus the Postal Savings Bank which originally was an independent State-owned body under public law, has recently been changed into a company under private law (Act 1987: 972).

### **4 THE INDEPENDENT PRIVATE LAW SECTOR CREATED ON PRIVATE INITIATIVE**

This study, however, will deal mainly with the independent bodies created on private initiative. In these cases only the private law alternative remains. No other body but the State is entitled to create an independent body under public law, because this demands a legislative act. All privately-founded independent bodies thus belong to the private law field.

In some case, however, these bodies under private law engage in governmental or semi-governmental activities. How does this fit in with their private law status? Do they enjoy certain advantages normally given to public law bodies only because of their nonprofit activities?

### **5 THE HISTORICAL DEVELOPMENT OF THE PRIVATE INDEPENDENT SECTOR**

In Finland, as in most other countries, there was initially an obvious need for private initiative in many fields of cultural and charitable activities, which today are considered as mainly belonging to the government's jurisdiction. Before World War I Finland was still a poor country. The State and the local districts had very limited funds at their disposal. For this reason there was not enough money to administer a satisfactory system of public welfare and education.

After Finland gained its independence in 1917, there was still a severe shortage of public funds. Many needs, some of them new ones, had to be filled by the government (such as foreign service, defense, railroad, canal and road building). Such fields as education or social and health care thus still suffered from lack of money.

Private bodies, in some cases private firms, but mostly nonprofit associations or foundations created for charitable or educational purposes, partly filled this gap. There was a certain amount of private money available for welfare. The independent sector created on private initiative contributed on a large scale to satisfy the needs for schooling, health care, children's and nursing homes. Even several private universities and colleges were founded in these years.

## 6 THE SITUATION TODAY

After World War II the situation changed in many respects. Finland has become a welfare State in the Scandinavian sense. By raising the tax level very high the government has gained sufficient financial means to take over the whole responsibility for many services which had formerly been provided by the private independent sector together with the government.

In quite a few cases, however, private bodies continue to exist. But the role of the private independent sector has become less important than it used to be.

The private sector suffered much from the high inflation rates during the after-war period. Their funds lost most of their value. Because of the high taxes, private people and firms cannot afford to donate money to private institutions on the same scale as earlier, when the taxes were lower. The wages have risen to such a level that private institutions, which operate in fields which requiring a lot of manpower, have great difficulties functioning.

To be able to continue, many private bodies have had to ask for subsidies from the government. Although the government has considerably expanded its own services, it also supports a great number of private independent bodies active in the field of welfare, art and literature. This is the case when the services produced by the private body supplement those given by the government, or the government still cannot satisfied all urgent needs for services. In some cases the subsidies have even become so important that the greater part of the revenues of the private body are covered by State grants.

In a situation where an activity run by a private body is entirely, or to a very great part financed by the government, it has happened that the government has taken over the whole operation and the private body has ceased to exist. The fields of primary, secondary and higher education are examples of such a development. Of a once very large private school and college system, there is almost nothing left today.

As for private hospitals, which have never been numerous in Finland, a few still exist, but most hospital services are run by the government. There is, on the other hand, a large network of private medical centers supplementing the municipal health centers and indirectly supported by the government.

The most important examples of private bodies are to be found in the field of social work. In Finland there are several very large associations working, for instance, in the fields of childrens' care, help to disabled persons, rehabilitation of people suffering from certain illnesses and for family planning. Another example is the Finnish Red Cross.

These bodies function on a private law basis (the status of the Red Cross is somewhat different). They are all heavily supported by the government. Some of them are even attached to certain political parties. The bid sport and athletics corporations may also be included in this context.

As an example of a private independent body for childrens' care and health education working mainly for the benefit of the Swedish-speaking community, Samfundet Folkhälsan may be mentioned. Its annual budget covers almost 18 million dollars. The government is responsible for about half of the income mainly by buying services from the association.

These bodies take the responsibility for certain important fields such as family planning, home planning, invalid care and training. They function in the fields of instruction, publishing, research, public relations and lobbying. They also administer nursing institutions for certain specialized categories and provide them with aids and appliances. They do not directly compete with social services provided by the government but can sell their services to the government. In this case the activity is included in the governmental actions.

A great number of smaller institutions for social and health care (for instance old folks homes) also exist run by private bodies. They function in the same fields as those of the government. These institutions often have great difficulties to finance their activities as their clientele cannot afford to pay the high costs of running such an institution.

The Church should also be mentioned in this context. The Finnish Lutheran Church is a body under public law. The State Church, as well as other religious communities, work in the field of social and even health care. A number of charitable associations and foundations under private law (such as the Salvation Army), function in close affiliation to the Church.

Important to note in this context are the huge private funds in Finland sponsoring science, particularly medical science, scholarly work, art

and literature. They distribute grants to persons or institutions active in these fields. In some cases these funds are attached to special institutions which they support.

For instance, the formerly private Swedish-language university Åbo Akademi, which today is run by the State, is supplemented by a private foundation. The foundation supports scientific and scholarly work done at the university. The foundation owns most of the buildings used by the university but also other real property and shares in different companies. Stiftelsen för Åbo Akademi is organized as a foundation under private law (act 1930: 109).

Another example is the Sigrid Juselius Stiftelse organized in the same way. It sponsors medical research only. A third example is Konstsamfundet, a private association under the 1989: 503 Association Act, sponsoring art and cultural activities. All these bodies are created to sponsor work done within the Swedish ethnic community in Finland. This is also the case of Svenska Litteratursällskapet, sponsoring literature and publishing scholarly works in Swedish. Through Svenska Kulturfonden other Swedish ethnic activities in Finland are supported. All these bodies dispose of large funds in real property and shares.

The independent sector thus heavily supports the Swedish community in Finland.

There are corresponding foundations taking care of the needs of the Finnish-speaking community. This community does not, however, need the same amount of extra help as the Swedish community, because of its majority position.

## **7 GOVERNMENTAL ARRANGEMENTS FAVORING PRIVATE INDEPENDENT BODIES**

The government's willingness to support the private independent sector in Finland is the most important reason for its survival. The compulsory health insurance system allows for certain refunds of fees paid to private doctors and health centers which also are allowed to work in the field of compulsory health care of employees. This governmental policy is thus indirectly supporting the private health care in Finland. As for private social welfare, the local districts may buy services produced by private bodies and thus help them to survive. This, however, depends entirely on the policy of the

local district. The situation thus differs from district to district.

Without money or other advantages coming from the government, the private independent sector engaged in welfare activities would hardly exist in Finland. The tax burden of the citizens is so high that they cannot afford to pay the real price for such services as education, social and health care. And there is no well developed private insurance system to compensate for this lack of individual funds.

## **8 THE TAX SITUATION**

A private independent nonprofit body, functioning in spheres considered to be of public utility, does not pay State taxes except for business income. It only pays local taxes for the income of real property and business activities.

It is obvious that a nonprofit body cannot engage in business activities, except to a very limited extent, without losing its nonprofit character. But, for instance, a body founded to help disabled persons may sell prostheses and other supplies and still be considered tax-exempt.

The exemption of property taxes is of a particular importance to the independent sector engaged in welfare activities. These bodies, on the other hand, do not enjoy under the present tax law the advantage of receiving donations which the donator can deduct from his taxable income.

The private independent associations and foundations are very important shareholders, because they pay no taxes. For an ordinary citizen, the income and property taxes make it less advantageous to own shares.

Private associations, according to the 1989 Act, and private foundations, under the 1930 Act, are supposed to function according to law and morals as nonprofit bodies. Their funds must be safely placed and must not be used for speculation. Only real property, shares in well-known solid corporations or government bonds are suitable for investment purposes.

## **9 HOW DOES THE INDEPENDENT SECTOR FIT INTO THE SYSTEM OF PRIVATE LAW?**

The independent sector functions in the fields of charity or sponsors cultural or other useful activities supplementing governmental

actions in the same areas. But it still remains in the private law field.

This means that the legal rules concerning bodies under public law do not apply. The employees are not considered public servants. The activities are not subject to control by the Parliamentary Ombudsman. The documents are not regarded as being public. The decisions cannot be reviewed by the administrative courts.

When private bodies function in the same fields as public bodies and many of them receive financial support from the government, it has been asked why they are not submitted to the same legal control as public bodies.

In reality, however, the differing legal rules do not constitute a serious problem. Most welfare services are provided for by the government. When the government uses a private body for certain services, the activity falls under the public law rules. The private welfare activities are controlled by the government in many ways. The legislation is being developed,

for instance, in order to guarantee the secrecy of medical documents in private medical institutions.

But there are still some gaps in the rules concerning private activities which need to be filled. It is, on the other hand, only natural that private bodies cannot be expected to be subject to exactly the same kind of governmental supervision and citizens' control as those functioning entirely within the public sector.

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