

CIVIL PROCEDURE IN FINLAND

JOHANNA NIEMI



Wolters Kluwer
Law & Business

Civil Procedure in Finland

Johanna Niemi

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Civil Procedure.

General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
Volume Editor: Piet Taelman



Wolters Kluwer

Law & Business

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3386-1

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	13
Chapter 1. General Background	13
Chapter 2. Civil Procedure and Other Forms of Procedure	16
Chapter 3. Sources of Law	18
§1. THE CONSTITUTION AND INTERNATIONAL LAW	18
§2. THE CODE OF PROCEDURE	19
§3. GENERALLY ABOUT SOURCES OF LAW	21
§4. GENERAL PRINCIPLES	22
Selected Bibliography	25
Part I. Judicial Organization	31
Chapter 1. The Courts and Their Members	31
§1. COURTS	31
I. Structure of the Court System	31
II. District courts	33
III. Appellate Courts	33
IV. The Supreme Court	34
V. The Administration of Justice	35
§2. MEMBERS OF THE JUDICIARY	35
I. Competence	35
A. The Judge	35
B. Lay Judges	36
II. Appointment of the Judges	36

Table of Contents

III. End of Functions	37
IV. Discipline	37
V. Supervision	38
Chapter 2. The Bar	39
§1. LEGAL REPRESENTATION IN GENERAL	39
§2. THE BAR ASSOCIATION	40
I. Conditions for Admission	40
II. The Rights and Responsibilities of Advocates	41
III. Discipline	41
§3. PUBLIC ATTORNEYS	42
Chapter 3. Bailiffs	43
§1. EXERCISE OF THE PROFESSION	43
I. The Writ Servers	43
II. The Enforcement Authorities	43
§2. PUBLIC INSTITUTIONS	43
Part II. Jurisdiction	45
Chapter 1. Domestic Jurisdiction	45
§1. SUBJECT MATTER JURISDICTION	45
I. Factors To Be Taken into Account	45
II. Main Claims and Ancillary Claims	45
III. Overview of the Jurisdiction	46
A. Special Courts	46
B. Boards	46
C. Special Jurisdiction for District courts	47
§2. VENUE (TERRITORIAL JURISDICTION)	48
I. Factors To Be Taken into Account	48
II. Main Claims and Ancillary Claims	49
III. Overview of the Different Rules	49
§3. RESOLUTION OF JURISDICTION CONFLICTS	50
Chapter 2. International Jurisdiction	52
§1. RULES APPLICABLE IN THE ABSENCE OF A TREATY	52
§2. INTERNATIONAL TREATIES AND EUROPEAN LAW	53
Part III. Actions and Claims	55
Chapter 1. Actions	55

Table of Contents

§1.	DEFINITIONS	55
	I. Actions by Summons	55
	II. Actions by Application	56
	III. Class Actions	57
§2.	ADMISSIBILITY	57
§3.	VEXATIOUS LITIGATION	58
Chapter 2. Claims and Defences		59
§1.	DEFINITION	59
	I. Claims for Performance	59
	II. Declaratory Claims	60
	III. Constitutive Claims	61
§2.	DISTINCTIONS	61
	I. Elements of Actions	61
	II. Amendment of Claims	61
	III. Amendment of Grounds	63
§3.	DEFENCES	64
§4.	JOINDER OF CLAIMS	64
	I. Principles	64
	II. Joinder of Causes	65
	III. Joinder of Parties	66
Chapter 3. Sanctions on Procedural Irregularities		68
§1.	FORMAL REQUIREMENTS	68
§2.	TIME LIMITS	68
Part IV. Proceedings		69
Chapter 1. Introduction		69
Chapter 2. Pre-trial Proceedings		71
Chapter 3. Proceedings in First Instance		73
§1.	ADVERSARY PROCEEDINGS	73
	I. Ordinary Proceedings	73
	A. Introduction of the Claim	73
	1. Registration by the Court	73
	2. Notice	73
	3. Summary Judgment	75
	B. Progress of Proceedings	75
	1. Preparatory Measures	75
	2. Written Procedure	77

Table of Contents

3.	Determination of the Trial Date	77
4.	Main Hearing	78
C.	Judgment	79
1.	Deliberation	79
2.	Different Kinds of Judgments	80
3.	Formal Aspects of the Judgment	80
4.	Delivery of the Judgment	81
5.	Res Judicata	81
6.	Interpretation and Rectification of Judgments	82
II.	Provisional Proceedings without a Main Hearing	83
§2.	DEFAULT PROCEEDINGS	83
Chapter 4.	Review Proceedings	85
§1.	GENERAL PRINCIPLES	85
§2.	APPEAL	85
I.	Ordinary Appeal to the Court of Appeal	85
II.	Appeal to the Supreme Court	88
§3.	EXTRAORDINARY REVIEW	89
I.	Relief for a Substantive Defect in a Final Judgment	89
II.	Relief for Procedural Error	90
III.	Restoration of Expired Time	91
Part V.	Incidents	93
Chapter 1.	Challenge of Judges	93
§1.	DISQUALIFICATION OF THE JUDGE IN A CASE	93
§2.	PROCEDURE	94
Chapter 2.	Intervention	95
§1.	PARTICIPATION IN THE TRIAL	95
§2.	ORDINARY AND INDEPENDENT INTERVENTION	95
Chapter 3.	Withdrawal and Termination of an Action	97
Chapter 4.	Postponement of the Main Hearing	98
Chapter 5.	Substitution of the Parties	99
§1.	GENERAL SUBSTITUTION	99
§2.	SPECIAL SUBSTITUTION	99
Part VI.	Legal Costs and Legal Aid	101

Chapter 1. Legal Costs	101
§1. TYPES OF COSTS	101
§2. COMPENSATION OF LEGAL COSTS	101
Chapter 2. Legal Aid	103
Part VII. Evidence	105
Chapter 1. General Principles	105
§1. FREE EVALUATION AND RECEPTION OF EVIDENCE	105
§2. BASIC CONCEPTS	106
§3. THE THRESHOLD OF EVIDENCE AND THE BURDEN OF PROOF	106
I. The Burden of Assertion	106
II. The Threshold of Evidence	107
III. The Burden of Proof	107
§4. THE DISPOSITIVE PRINCIPLE	109
Chapter 2. Admissibility of Evidence	110
Chapter 3. Administration of Evidence	112
§1. DOCUMENTARY EVIDENCE	112
§2. WITNESSES	113
I. Competence to Appear as a Witness	113
II. Duty to Appear as a Witness	114
III. The Right to Refuse to Testify	114
A. Relatives of a Party	114
B. Self-incrimination	115
C. The Right to Secrecy	115
D. The Obligations of Confidentiality	116
IV. Hearing the Witness	117
§3. INSPECTION ON-SITE AND IN THE COURT ROOM	119
§4. EXPERT EVIDENCE	120
§5. PARTY TESTIMONY	121
Part VIII. Special Procedures	123
Chapter 1. Summary Proceedings	123
Chapter 2. Family Law Cases	125
Chapter 3. Court Matters and Jurisdictio Voluntaria	126

Table of Contents

Chapter 4. Insolvency Proceedings	127
Part IX. Seizure for Security and Enforcement of Judgments	129
Chapter 1. Seizure for Security (with Erkki Havansi)	129
§1. PROCEEDINGS	129
§2. JUDICIAL REVIEW	132
Chapter 2. Enforcement of Judgments	134
§1. ENFORCEMENT OF DOMESTIC JUDGMENTS	134
I. Proceedings	134
II. Judicial Review	136
§2. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS	137
I. Rules Applicable in the Absence of a Treaty	137
II. International Treaties	137
Part X. Arbitration	139
Chapter 1. The Legislation	139
Chapter 2. Rights that Can be Subject to Arbitration	140
Chapter 3. Arbitration Agreement	141
Chapter 4. Arbitration Tribunal	142
Chapter 5. Arbitration Procedure	143
Chapter 6. Arbitration Award	144
Chapter 7. Review	145
Chapter 8. International Arbitration	147
Index	149

Civil Procedure in Finland

Johanna Niemi

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Civil Procedure.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Piet Taelman



Wolters Kluwer

Law & Business

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3386-1

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

The Author



Johanna Niemi (Niemi-Kiesiläinen), Professor of Law, University of Helsinki, received her doctorate in law at University of Helsinki in 1995. She was professor of law at Umeå University in Sweden in 2004–2007. She was a visiting Fulbright scholar at University of Wisconsin in 1997–1998 and visiting professor at University of Lund in 2009.

She teaches criminal and civil procedure, including trial advocacy courses, and bankruptcy law and courses on law and gender. She has written extensively on Finnish and comparative insolvency law, procedural law, human rights and violence against women. She has led a research project called 'Violence in the Shadow of Equality: Hidden Gender in the Legal Discourse in 2001–2004'. She was co-editor of

several journals and books; most notably *Responsible Selves. Women in the Nordic Legal Culture* (Ashgate 2001; with Nousiainen, Gunnarsson and Lundström), *Consumer Bankruptcy in Global Perspective* (Hart Publishing, 2003; with Iain Ramsay and William Whitford), *Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives* (Hart Publishing 2009; with Ramsay and Whitford) and *Nordic Equality at a Crossroads. Feminist Legal Studies Coping with Difference* (Ashgate 2004; with Eva-Maria Svensson and Anu Pylkkänen).

Acknowledgement

Professor Erkki Havansi first introduced me to this project and I am grateful for his support in this as well as in earlier projects. Erkki Havansi and district court judge Satu Seppänen were co-authors of a paper presented in a conference on provisional measures in Athens in 1998 that was the basis of Part IX Chapter 1. Four sources made my work much easier and more pleasant than it would have been otherwise. The book *Law of Procedure* (in Finnish; WSOY), which has been a common project for several Finnish procedural scholars, was a great help. I am especially indebted to Professor Juha Lappalainen who wrote its chapters on civil procedure and Professor Jyrki Virolainen who wrote about general principles. Professor Antti Jokelas's chapter on the law of procedure in the book *Introduction to Finnish Law* was helpful in finding the English terminology. I have also used the translation of central laws into the English language that can be found in Finlex. Finally, the English language book on

The Author

Swedish civil procedure by Professor Bengt Lindell helped me to structure the presentation. Students Andreas Philipsson, Johan Högberg and Anna Svedjevik helped me with the pictures and technicalities of the text. Head of Department, Judge Kari Kiesiläinen has read the manuscript and commented on the administration of justice. I wish to thank all of them.

Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	13
Chapter 1. General Background	13
Chapter 2. Civil Procedure and Other Forms of Procedure	16
Chapter 3. Sources of Law	18
§1. THE CONSTITUTION AND INTERNATIONAL LAW	18
§2. THE CODE OF PROCEDURE	19
§3. GENERALLY ABOUT SOURCES OF LAW	21
§4. GENERAL PRINCIPLES	22
Selected Bibliography	25
Part I. Judicial Organization	31
Chapter 1. The Courts and Their Members	31
§1. COURTS	31
I. Structure of the Court System	31
II. District courts	33
III. Appellate Courts	33
IV. The Supreme Court	34
V. The Administration of Justice	35
§2. MEMBERS OF THE JUDICIARY	35
I. Competence	35
A. The Judge	35
B. Lay Judges	36
II. Appointment of the Judges	36

Table of Contents

III. End of Functions	37
IV. Discipline	37
V. Supervision	38
Chapter 2. The Bar	39
§1. LEGAL REPRESENTATION IN GENERAL	39
§2. THE BAR ASSOCIATION	40
I. Conditions for Admission	40
II. The Rights and Responsibilities of Advocates	41
III. Discipline	41
§3. PUBLIC ATTORNEYS	42
Chapter 3. Bailiffs	43
§1. EXERCISE OF THE PROFESSION	43
I. The Writ Servers	43
II. The Enforcement Authorities	43
§2. PUBLIC INSTITUTIONS	43
Part II. Jurisdiction	45
Chapter 1. Domestic Jurisdiction	45
§1. SUBJECT MATTER JURISDICTION	45
I. Factors To Be Taken into Account	45
II. Main Claims and Ancillary Claims	45
III. Overview of the Jurisdiction	46
A. Special Courts	46
B. Boards	46
C. Special Jurisdiction for District courts	47
§2. VENUE (TERRITORIAL JURISDICTION)	48
I. Factors To Be Taken into Account	48
II. Main Claims and Ancillary Claims	49
III. Overview of the Different Rules	49
§3. RESOLUTION OF JURISDICTION CONFLICTS	50
Chapter 2. International Jurisdiction	52
§1. RULES APPLICABLE IN THE ABSENCE OF A TREATY	52
§2. INTERNATIONAL TREATIES AND EUROPEAN LAW	53
Part III. Actions and Claims	55
Chapter 1. Actions	55

§1.	DEFINITIONS	55
	I. Actions by Summons	55
	II. Actions by Application	56
	III. Class Actions	57
§2.	ADMISSIBILITY	57
§3.	VEXATIOUS LITIGATION	58
Chapter 2. Claims and Defences		59
§1.	DEFINITION	59
	I. Claims for Performance	59
	II. Declaratory Claims	60
	III. Constitutive Claims	61
§2.	DISTINCTIONS	61
	I. Elements of Actions	61
	II. Amendment of Claims	61
	III. Amendment of Grounds	63
§3.	DEFENCES	64
§4.	JOINDER OF CLAIMS	64
	I. Principles	64
	II. Joinder of Causes	65
	III. Joinder of Parties	66
Chapter 3. Sanctions on Procedural Irregularities		68
§1.	FORMAL REQUIREMENTS	68
§2.	TIME LIMITS	68
Part IV. Proceedings		69
Chapter 1. Introduction		69
Chapter 2. Pre-trial Proceedings		71
Chapter 3. Proceedings in First Instance		73
§1.	ADVERSARY PROCEEDINGS	73
	I. Ordinary Proceedings	73
	A. Introduction of the Claim	73
	1. Registration by the Court	73
	2. Notice	73
	3. Summary Judgment	75
	B. Progress of Proceedings	75
	1. Preparatory Measures	75
	2. Written Procedure	77

Table of Contents

3. Determination of the Trial Date	77
4. Main Hearing	78
C. Judgment	79
1. Deliberation	79
2. Different Kinds of Judgments	80
3. Formal Aspects of the Judgment	80
4. Delivery of the Judgment	81
5. Res Judicata	81
6. Interpretation and Rectification of Judgments	82
II. Provisional Proceedings without a Main Hearing	83
§2. DEFAULT PROCEEDINGS	83
Chapter 4. Review Proceedings	85
§1. GENERAL PRINCIPLES	85
§2. APPEAL	85
I. Ordinary Appeal to the Court of Appeal	85
II. Appeal to the Supreme Court	88
§3. EXTRAORDINARY REVIEW	89
I. Relief for a Substantive Defect in a Final Judgment	89
II. Relief for Procedural Error	90
III. Restoration of Expired Time	91
Part V. Incidents	93
Chapter 1. Challenge of Judges	93
§1. DISQUALIFICATION OF THE JUDGE IN A CASE	93
§2. PROCEDURE	94
Chapter 2. Intervention	95
§1. PARTICIPATION IN THE TRIAL	95
§2. ORDINARY AND INDEPENDENT INTERVENTION	95
Chapter 3. Withdrawal and Termination of an Action	97
Chapter 4. Postponement of the Main Hearing	98
Chapter 5. Substitution of the Parties	99
§1. GENERAL SUBSTITUTION	99
§2. SPECIAL SUBSTITUTION	99
Part VI. Legal Costs and Legal Aid	101