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**THE EFFECT OF C-198/14 VISNAPUU TO THE FINNISH
ALCOHOL REFORM: CONTRADICTION BETWEEN CJEU'S
JUDGMENT AND FINNISH LEGISLATION**

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ABSTRACT

The aim of this thesis is to examine a court case relating to Mr. Visnapuu and the Finnish Alcohol Reform, and therefore, the relationship between them. In the Alcohol Reform, the provisions about distance selling of alcohol have been left intact. However, if the judgment in Mr. Visnapuu's case will become lawful with the same content than the judgment by the Court of Appeal's, the provisions in the Alcohol Reform do not conform with EU law. Consequently, the Finnish alcohol legislation and the retail system would both have to be amended. Therefore, the research problem of this thesis focuses on the effect of Mr. Visnapuu's case to the Finnish alcohol legislation.

In order to understand Mr. Visnapuu's case and the Alcohol Reform, it is necessary to research Finnish and EU legislation and previous case law, and the background of the Alcohol reform itself. Furthermore, Mr. Visnapuu's case has been granted a permission to appeal from the Supreme Court concerning the alcohol crime.

As a conclusion, provided that the Supreme Court upholds the judgment of the Court of Appeal, the Finnish retail license system needs to undergo a reformation. That would allow foreign actors to enter the Finnish alcohol markets without having an establishment in Finland. Therefore, Finnish legislation, market, economy, and most likely also public health would be profoundly impacted.

Keywords: Alcohol Reform, Finland, Visnapuu, retail license system, preliminary ruling

INTRODUCTION

The topic of this thesis relates to the Alcohol Reform in Finland and a court case involving an Estonian citizen, Mr. Visnapuu, who unlawfully imported alcohol into Finland after distance selling it to Finnish customers, and the relationship between the Alcohol Reform and Mr. Visnapuu's case, which has been dealt with in the Court of Justice of the European Union (CJEU) in addition to the two judgments from District Court of Helsinki and Court of Appeal in Helsinki on national level.¹

The topic was chosen because it is extremely current and entwined together with a court case, which makes the topic multidimensional. It enables to see how, in practice, a decision from the CJEU affects national courts and national legislation, and therefore, to look into the relationship between European Union (EU) and national legislation. Considering Mr. Visnapuu's case has been granted a permission to appeal to the Supreme Court of Finland² and there is a preliminary ruling from the CJEU relating to it, it can be deduced that this is an important case which will help in modifying the Finnish alcohol legislation. Also, the fact that several Finnish Governments have been preparing the Alcohol Reform but until last year, they were unable to actually form a proper proposal and present it to the Parliament of Finland, contributes to the fact that both Mr. Visnapuu's case and the Alcohol Reform will have a huge impact on the Finnish alcohol legislation.³

In the fields of alcohol consumption and the detriments caused by it, there are plenty of previous studies whereas about the Finnish alcohol legislation or Mr. Visnapuu's case there are only a few. Therefore, Mr. Visnapuu's case will be thoroughly analyzed, by qualitative research methods, from the point of view of all courts that have given a judgment to it, in addition to being familiarized with all the background information about the Alcohol Reform and, evidently, the Alcohol Reform itself.

¹ Helsingin KO t. 12/8629

² *KKO myönsi osittaisen valitusluvan Alkotaxi-asiassa* (2018). Korkein oikeus. Accessible: <http://korkeinoikeus.fi/fi/index/ajankohtaista/tiedotteet/2018/01/kkomyonsiosittaisenvalitusluvanalkotaxi-asiassa.html>, 23 February 2018.

³ PTK 89/2017 vp: Pöytäkirjan asiakohta (Item in the minutes)

In this thesis, Mr. Visnapuu's case and the Alcohol Reform, and their relationship with each other will be researched. The aim is to find out what kind of effect Mr. Visnapuu's case should have to the Finnish Alcohol Reform or, in practice, to the Finnish alcohol legislation as well as to the importation and distance selling of alcohol. Therefore, the research process examines how a preliminary ruling from CJEU affects the decision making of national courts and ends up affecting the national legislation to make it compatible with EU legislation.

The research method used in this thesis is qualitative, for it is about the nature of the Alcohol Reform and Mr. Visnapuu's case as well as the reasoning behind them. Therefore, the research focuses on the hows and whys. Research is mainly based on both peer-reviewed academic sources and sources from the Finnish governmental agencies. Therefore, the methodology focuses on documentary analysis. The researcher of this thesis is detached and researching from an external point of view.

The research question of this thesis is the following: How does the proposed Alcohol Reform need to be changed because of CJEU's judgment in C-198/14 and the Court of Appeal's judgment considering Mr. Visnapuu's case, assuming that the national judgment from the Court of Appeal will become lawful? Research problem is that in the Alcohol Reform, the provisions about distance selling of alcohol have been left as they are in the current Alcohol Act, but provided that the judgment in Mr. Visnapuu's case will become lawful with the same content than that in the Court of Appeal's judgment, the provisions in the Alcohol Reform do not conform with EU law and, therefore, need to be amended. The hypothesis is, that the retail license system of Finland should be reconstructed and distance selling of fermented alcoholic beverages containing up to 4,7 percent of alcohol by volume should be permitted.

In this thesis, the English names of the legal acts being used are from Finlex, which is the official website for all Finnish legislation, even though the English translations of the Acts are unofficial. As the topic focuses on the effect of Mr. Visnapuu's case to the Finnish Alcohol Reform and the Alcohol Reform itself, Alcohol Act 8.12.1994/1143 will be talked about as the current Alcohol Act, and the Alcohol Act 1102/2017 which went fully into force on 1 March 2018 will be referred to it as the new Alcohol Act.

In the first chapter, the Alcohol Reform in Finland and its background will be looked into. The main areas to look into are the reasons behind the Alcohol Reform, and the main differences

between the current Alcohol Act and the new Alcohol Act. The comments from the Committees of Ministries also play an important role in how the new Alcohol Act was formed and therefore, it is necessary to get acquainted with them in this thesis.

The second chapter focuses on all relevant legislation, on both national and EU level. The procedural law in Finland will be examined, as well as some legislation which is closely connected to Mr. Visnapuu's case in the Finnish court system. On the EU level, the key legislation relating to imports, competences of EU, and alcohol policies in Europe will be examined. Last part of the chapter concentrates on the relevant case law on the EU level.

The third chapter focuses on Mr. Visnapuu's case chronologically in different courts. At first, the background of the case and the judgment of the District Court of Helsinki will be discussed. Next, the focus will be on the preliminary ruling from CJEU, for the Court of Appeal of Helsinki requested the preliminary ruling from CJEU and their judgment came before the judgment from the Court of Appeal. Therefore, the last part of chapter three will obviously concentrate on the judgment from the Court of Appeal.

The fourth chapter is the analytical part of the thesis and it will also function as the conclusion of this thesis. The relationship between Mr. Visnapuu's case and the Finnish alcohol legislation will be contemplated as well as the effect the case should have on Finnish legislation. Lastly, the current situation of both Mr. Visnapuu's case and the Alcohol Reform will be discussed.

1. FINNISH ALCOHOL REFORM

In the Nordic countries, the alcohol monopolies emerged in the aftermath of prohibition.⁴ In Finland, Alko was the instance that was established to control production, export, import, and sales of alcoholic beverages.⁵

Several studies suggest that people are generally more supportive of those alcohol policies that are related to education and information about the drawbacks of alcohol and policies that control the heavy drinkers, whereas the policies that control physical and economic access are generally less popular among people.⁶ In Finland, based on the proposals from different members of Parliament, ministers, and parties, and the reactions they have evoked in people, the supporters of more liberal alcohol legislation exceed the supporters of stricter alcohol legislation.⁷ This can also be seen in the Alcohol Reform for it is more liberal compared to the current Alcohol Act.

1.1 Why is the Alcohol Reform needed?

When Finland applied for the membership of the European Union, the Commission claimed that the alcohol monopoly was of a commercial character and, therefore, needed to be abolished. After negotiations, the end result was that the European Commission acknowledged the link between the alcohol monopoly and the health and social policy objectives which meant that the retail monopoly could remain unchanged, while the import, export, and wholesale monopoly needed to be abolished.⁸ Therefore, the previous Alcohol Reform in 1995, that is the Alcohol Act which was in force at the time the court proceedings against Mr. Visnapuu started, was carried out to make

⁴ Mäkelä, K., Tigerstedt, C. (1993). Changing responsibilities of Nordic alcohol monopolies. – *Contemporary Drug Problems*, Vol. 20, No. 2, p 192.

⁵ *Ibid.*, p 199.

⁶ Hemström, Ö. (2002). Attitudes toward alcohol policy in six EU countries. – *Contemporary Drug Problems*, Vol. 29, No. 3, p 616.

⁷ *Myös hallitus ajoi keskioluen laimentamista – vain keskustasta tuli syntipukki* (2015). Yle. Accessible: <https://yle.fi/uutiset/3-7796075> , 12 March 2018.

⁸ Ugland, T. (2010). An Integrated Alcohol Policy: What, Why and How. – *Contemporary Drug Problems*, Vol. 37, No. 1, p 47.

the Finnish law compatible with EU law, which is also one of the reasons behind the latest Alcohol Reform.

In 2000, the Constitution of Finland⁹ was amended and it requires all rights and duties of the citizen, and other matters of legislative nature, to be governed by Acts. For most of the alcohol-related matters were governed by decrees in addition to the Alcohol Act, the Alcohol Reform has been a long time coming in Finland. Alcohol Reform was also needed to safeguard the conditions for effective competition and to continue to prevent the problems and detriments of alcohol.¹⁰ In its proposal for the new Alcohol Act, the Government estimates that the Alcohol Reform will have positive financial effects to the manufacturers of brewery products and grocery stores. The public economy will most likely gain more revenue through the taxation on alcoholic beverages. Nevertheless, the Alcohol Reform will likely have a negative impact on the health of people, at least during the first couple of years after entering into force.¹¹

1.2 How does the Alcohol Reform differ from the Alcohol Act?

The core changes in the Alcohol Reform compared to the current Alcohol Act relate to the qualifications and age limit of workers in restaurants, the opening times of restaurants and bars, the removals of certain licenses, and enabling several restaurants to have a common area where customers can drink alcohol.¹²

According to the Alcohol Reform, it is sufficient to only have one responsible worker, who has the alcohol license and is at least eighteen years old, per shift. It would be possible for other employees to be sixteen years old and not have the alcohol license, as long as the responsible worker is working alongside them. Before it was necessary for all the employees to be eighteen years old unless they were studying in the restaurant business, in which case they could be sixteen years old, and the workers needed to have special qualifications. This change in the legislation is meant to make it easier for smaller and seasonal restaurants to hire workers and plan the shifts.¹³

⁹ Suomen perustuslaki (the Constitution of Finland) 11.6.1999/731

¹⁰ HE 100/2017 vp: Hallituksen esitys eduskunnalle alkoholilaiksi ja eräiksi siihen liittyviksi laeiksi (Government's proposal to the Parliament for the new Alcohol Act and some related Acts), p 7.

¹¹ *Ibid.*, p 8.

¹² PTK 89/2017 vp, *supra nota* 3

¹³ HE 100/2017 vp, *supra nota* 10, p 95 and 105.

The Alcohol Reform aims at liberalizing the opening times of the restaurants by allowing alcohol to be served until 4 am and consumed until 5 am in the premises of the restaurants by a mere notification to the necessary authorities. Furthermore, it enables all restaurants to sell all kinds of alcohol, for the old A-, B-, and C-licenses will be removed. Previously, all restaurants could sell alcohol only until 1:30 am or until 3:30 am with a specific retail license. Also, the restaurants had to put an end to selling alcohol to consumers for at least half an hour before the closing of the restaurant.¹⁴

A change proposed by the Alcohol Reform, which is likely the most popular amongst the general public is that there are no more limits as to how much alcohol can be sold in one serving, whereas in the current Alcohol Act the limit is 4 cl in spirits. For the producers and the businesses, a pleasant proposal in the Alcohol Reform is that, in the future, they could advertise the selection of the alcoholic products they offer and the restaurants would also be allowed to have happy hours.¹⁵

Under the current Alcohol Act, it is not possible for multiple restaurants to have a common area, where people can buy food or alcoholic beverages from different restaurants and consume them in the same area. The Alcohol Reform proposes a change to it, for it allows multiple restaurants to have a common area for customers as long as at least one of the restaurants will agree to supervise the area and the selling of alcohol within it.¹⁶

Under the current Alcohol Act, a permission to sell alcohol in temporary events needs to be applied separately for each event. Under the Alcohol Reform, a permission could be applied for a specific venue or for a specific provider in possession of an alcohol license, and the National Supervisory Authority for Welfare and Health (Valvira) would only need to be notified for at least three days beforehand that alcohol is going to be sold in that specific venue or by that specific provider.¹⁷

Presumably, the most prominent change proposed in the Alcohol Reform is that in the future grocery stores could, with the regular retail license, sell all alcoholic beverages containing up to 5,5 percent of alcohol by volume. Under the current Alcohol Act, the retail license only allows grocery stores to sell fermented alcoholic beverages containing up to 4,7 percent of alcohol by

¹⁴ *Ibid.*, p 97.

¹⁵ *Ibid.*, p 96 and 101.

¹⁶ *Ibid.*, p 82-83.

¹⁷ *Ibid.*, p 84.

volume.¹⁸ Therefore, the Alcohol Reform would bring alcoholic beverages that have been manufactured by mixing spirits with a non-alcoholic mixer into the shelves of the grocery stores.

The Alcohol Reform proposes that a person traveling outside of the EEA-area can only import alcoholic beverages for personal use when the trip lasts for at least 24 hours and happens by other means than traveling by air transport. Under the current Alcohol Act, the time limit is 20 hours. In Tobacco Act¹⁹, the time limit is 24 hours and the change of time limit in the Alcohol reform is proposed to unify the time limits in tobacco and alcohol legislation.²⁰

When preparing the Alcohol Reform, the Government, and especially the Ministry of Social Affairs and Health, acquainted themselves with the judgment of Mr. Visnapuu's case from the Court of Appeal in Helsinki.²¹ In the Alcohol Reform, the sections about distance selling will stay intact compared to the current Alcohol Act. Considering Mr. Visnapuu's case does not yet have a lawful judgment, the Government thought it best to not change the sections about distance selling and instead wait until the lawful judgment comes in to make the necessary amendments to the new Alcohol Act if needed.²²

1.3 Comments from the committees of the Ministries

On 14 September 2017, the proposal for the new Alcohol Act was given to the Parliament of Finland and five days later, on 19 September 2017, the issue was transferred to the Social Affairs and Health Committee, which needed to obtain statements from the Constitutional Law Committee, the Administration Committee, the Agricultural and Forestry Committee, and the Commerce Committee.²³ Also, the Social Affairs and Health Committee asked the Legal Affairs Committee to issue a statement to regarding the criminal and other sanctions in HE 100/2017 vp.²⁴

¹⁸ *Ibid.*, p 81.

¹⁹ Tupakkalaki (Tobacco Act) 29.6.2016/549

²⁰ HE 100/2017 vp, *supra nota* 10, p 92-93.

²¹ *Alkoholilain valmistelussa perehdytään alkoholijuomien etämyyntiä koskevaan Helsingin hovioikeuden tuomioon* (2017). Sosiaali- ja terveysministeriö. Accessible: http://stm.fi/artikkeli/-/asset_publisher/alkoholilain-valmistelussa-otetaan-huomioon-alkoholijuomien-etamyntia-koskeva-helsingin-hovioikeuden-tuomio , 15 March 2018.

²² HE 100/2017 vp, *supra nota* 10, p 26 and 92.

²³ PTK 89/2017 vp, *supra nota* 3

²⁴ Lakivaliokunnan lausunto LaVL 17/2017 vp – HE 100/2017 vp (Statement of the Legal Affairs Committee LaVL 17/2017 vp regarding HE 100/2017 vp), p 1-2.

1.3.1 Statement of the Legal Affairs Committee

In their statement to the Social Affairs and Health Committee, the Legal Affairs Committee has general comments about the Alcohol Reform and a couple of important notions regarding how some sections of the Alcohol Reform should be worded. Generally, the Legal Affairs Committee considers the aim of unifying and clarifying the sanction regime in alcohol legislation to be beneficial.²⁵

The Legal Affairs Committee addressed the issue of distance selling of alcohol in their statement. It draws attention Articles 8 and 34 of the Alcohol Reform, according to which the exclusive retail system of alcoholic beverages is still the core of the Alcohol Reform, while the proposed regulation does not clarify the issue of distance selling of alcohol as the regulation regarding it has been directly transferred from the current Alcohol Act to the to the Alcohol Reform almost as such.²⁶

The Legal Affairs Committee also refers to the case of Mr. Visnapuu and the decisions from both CJEU and the Court of Appeal of Helsinki while pointing out that the national judgment is not yet lawful seeing that the permission to appeal has been applied from the Supreme Court. Therefore, the Legal Affairs Committee states that there are some ambiguities when it comes to the distance selling of alcohol and the regulation regarding it should be more clear and more precise than it currently is in the Alcohol Reform. Also, the concepts of distance selling and distance buying should be determined in the Alcohol Reform, in addition to clarifying the permissible or penalized actions regarding them, and on what grounds.²⁷ Because of all the above, the Legal Affairs Committee urges the Social Affairs and Health Committee to evaluate whether it is possible to clarify the Alcohol Reform based on current knowledge or whether the issue should be prepared separately after a lawful judgment in Mr. Visnapuu's case.²⁸

1.3.2 Statement of the Constitutional Law Committee

In their statement to the Social Affairs and Health Committee, the Constitutional Law Committee first draws attention to Article 19 Section 3 of the Constitution of Finland, which states that the government needs to aim at improving public health by legislation. The Constitutional Law

²⁵ *Ibid.*, p 2.

²⁶ *Ibid.*, p 10.

²⁷ *Ibid.*, p 11.

²⁸ *Ibid.*, p 12.

Committee states that despite including some regulations, which are likely to increase the consumption of alcohol the detriments caused by it, the Alcohol Reform is compatible with Article 19 Section 3 of the Constitution.²⁹

The Constitutional Law Committee comments on the regulation about distance selling of alcohol by stating that in their opinion, the sanction regime does not prohibit distance selling of alcohol for personal use equivalently with the explanatory memorandum of the Alcohol Reform, especially because in the Criminal Code of Finland³⁰, the sanctions are tied to the unlawful importation of alcohol whereas the explanatory memorandum of the Alcohol Reform states that distance selling of alcohol is unlawful and punishable. Therefore, the Constitutional Law Committee expresses that the regulations proposed in the Alcohol Reform and to the Criminal Code of Finland are contradictory and unclear, and the Social Affairs and Health Committee should amend the Alcohol Reform and the proposed changes to the Criminal Code of Finland to make the legislation clearer and more unified.³¹

1.3.3 Statement of the Administration Committee

In their statement, the Administration Committee specifies that they will examine the Alcohol Reform in light of domestic safety, license administration, supervision, and municipalities.³²

The Administration Committee estimates that the proposed changes in the Alcohol Reform will increase incidents in which immediate police assistance is required, which will, in turn, increase the need for police resources. As the police do currently not have enough resources, the Administration Committee states that the increased need for police resources caused by the Alcohol Reform needs to be secured.³³

Article 32 of the Alcohol Reform prohibits distance selling of alcohol but the Administration Committee states that considering Article 32 regulates importing of alcohol, it is likely to cause obscurities when it comes to the scope of the Finnish Customs to execute their supervision duty,

²⁹ Valiokunnan lausunto PeVL 48/2017 vp – HE 100/2017 vp (Statement of the Constitutional Law Committee PeVL 48/2017 vp regarding HE 100/2017 vp), p 2.

³⁰ Rikoslaki (the Criminal Code of Finland) 19.12.1889/39

³¹ Valiokunnan lausunto PeVL 48/2017 vp, *supra nota* 29, p 9.

³² Valiokunnan lausunto HaVL 33/2017 vp – HE 100/2017 vp (Statement of the Administration Committee 33/2017 vp regarding HE 100/2017 vp), p 2.

³³ *Ibid.*, p 3-4.

especially since according to the proposed Articles in the Alcohol Reform, the Finnish Customs is obliged to only supervise the legality of importation. Therefore, the Administration Committee states that Article 32 of the Alcohol Reform needs to be clarified.³⁴

The regulation regarding the prerequisites concerning the person applying for an alcohol license corresponds to the ones in current legislation. In case the person applying for the alcohol license has had their alcohol license canceled within the last two years, the prerequisites for granting the alcohol license are not fulfilled. The Administration Committee feels that two years is a considerably short amount of time in light of the Business Prohibition Act³⁵ and, therefore, the time limit should be five years.³⁶

The Administration Committee also states that the right of the municipalities to prevent the consumption of alcohol or limit it to protect the safety of their inhabitants is a necessary and justifiable clause for according to the Alcohol Reform any establishment can continue to serve alcohol after 1:30 am by a mere notification to the necessary authorities.³⁷

1.3.4 Statement of the Agricultural and Forestry Committee

The Agricultural and Forestry Committee wants to address that the reasoning for the new Alcohol Act does not acknowledge the potential effects to the agricultural food chain and its potential. Finland has a huge advantage in manufacturing alcoholic and brewery products. However, currently the crude material suitable for the production of alcoholic beverages is not exploited well enough and their commercial potential is only exploited partly. Therefore, the Agricultural and Forestry Committee feels that the crude material should be utilized more diversely considering the export market.³⁸

Article 3 of the Alcohol Reform conveys the relevant definitions, including farm wines and artisan beer. The Agricultural and Forestry Committee presents that the term artisan beer would be changed to craft brewery beer seeing that artisan beer is an established term that describes products

³⁴ *Ibid.*, p 4-5.

³⁵ Laki liiketoimintakiellosta (Business Prohibition Act) 13.12.1985/1059, according to the Business Prohibition Act, a person can be sentenced to a ban on business operations for no less than three and no more than seven years.

³⁶ Valiokunnan lausunto HaVL 33/2017 vp, *supra nota* 32, p 5-8.

³⁷ *Ibid.*, p 6.

³⁸ Valiokunnan lausunto MmVL 23/2017 vp – HE 100/2017 vp (Statement of the Agricultural and Forestry Committee 23/2017 vp regarding HE 100/2017 vp), p 2.

differing from mainstream beers, not beers that are only manufactured by small quantities. Also, the Article has limitations as to how many liters of artisan beer and farm wines can be produced per year. Considering one of the central targets is to promote cooperation between companies in rural areas, the low manufacturing limits might slow down the development of the industry should the producers feel it is not profitable to invest in a higher production despite the demand, the Agricultural and Forestry Committee proposes that the limits are increased.³⁹

According to the Alcohol Reform, the retail license for small producers of farm wines and artisan beer only allows the products to be sold from one retail location, regardless of how many manufacturing sites a producer has. For this is likely to hinder the small producers, and it might be more profitable for them to be able to sell their products from somewhere else than a retail site connected to the manufacturing site, the Agricultural and Forestry Committee proposes that the retail license should allow retail sales from multiple sites with a justified cause.⁴⁰

Currently, the Finnish companies are in an unequal position compared to foreign companies when it comes to the online marketing of products, especially when the marketing is directed to foreign countries. The Agricultural and Forestry Committee feels that domestic restrictions should not hinder the rights of domestic companies to enter the markets in other countries. Therefore, the Finnish export companies should be allowed to have the same operating conditions with the other EU Member States when it comes to the online marketing of products to customers in other countries.⁴¹

1.3.5 Statement of the Commerce Committee

In their statement, the Commerce Committee emphasizes the significance of exporting groceries to the Finnish economic life and current account. Therefore, they determine that national legislation should not hinder the development of the grocery industry, which is why online stores orientated towards foreign countries should be permitted.⁴²

³⁹ *Ibid.*, p 3-4.

⁴⁰ *Ibid.*, p 3.

⁴¹ *Ibid.*, p 4.

⁴² Valiokunnan lausunto TaVL 51/2017 vp – HE 100/2017 vp (Statement of the Commerce Committee 51/2017 vp regarding HE 100/2017 vp), p 2.

The Alcohol Reform proposes that serving of alcohol after 1:30 am is permitted by a notification to the authorities inside the premises of the restaurant but not on the outside premises of the same restaurant. The Commerce Committee feels that this limitation is inadequate and, therefore, proposes that the consumption of alcohol should also be allowed in the outside premises on the same conditions than it is allowed in the inside premises.⁴³

The Commerce Committee concurs with the Agricultural and Forestry Committee when it comes to the rights of small producers to produce and sell their products, and feels that the limits imposed upon small producers are not conducive to the growth of the industry and cooperation between producers. Furthermore, allowing only one retail location which needs to be connected to the manufacturing site is not optimal for either the customers or the businesses.⁴⁴

The Commerce Committee perceives that the provisions about distance selling of alcohol in the Alcohol Reform are unclear. The provisions about distance selling do not directly prohibit the consumers from ordering alcohol from foreign countries through the internet. Instead, the prohibition is included in the explanatory memorandum of the Alcohol Reform. There is a clear contradiction between the Alcohol Reform and its explanatory memorandum. Therefore, the Commerce Committee suggests that the Social Affairs and Health Committee would clarify the legislation in this regard.⁴⁵

⁴³ *Ibid.*, p 4.

⁴⁴ *Ibid.*, p 4-5.

⁴⁵ *Ibid.*, p 5-6.

2. RELEVANT LEGISLATION AND PROCEDURAL LAW

2.1 Outline of Finnish procedural law

In Finland, sovereign courts possess the jurisdiction, and the judiciary includes courts in three levels. The District Courts act as general inferior courts, and generally, all cases are first tried in them.⁴⁶ There are currently 27 District Courts in Finland.⁴⁷ The decision of a District Court can be appealed to one of the five Courts of Appeal, which are the general superior courts.⁴⁸ The Supreme Court has the highest jurisdiction, and a decision from a Court of Appeal can be appealed to the Supreme Court under certain conditions.⁴⁹

In Finland, the procedural law is divided into the civil procedure and the criminal procedure. The criminal procedure is regulated by the Code of Judicial Procedure⁵⁰ and the Criminal Procedure Act⁵¹, the former of which is a general law and the latter a special law. Article 21 of the Constitution of Finland includes the fundamental right provision⁵² regarding legal protection, and therefore, it precedes all other Acts. In addition to the strongly binding legislation, the explanatory memorandums of Acts, judgments from Finnish courts, especially the Supreme Court, and the statements in legal literature are also used as sources of law.⁵³ Punishments and other criminal sanctions, and how they should be imposed are legislated in the Criminal Code of Finland.⁵⁴

⁴⁶ Vuorenpää, M. (2009). *Prosessioikeuden perusteet: Prosessioikeuden yleisiä lähtökohtia sekä menettely käräjäoikeuden tuomioon asti*. Helsinki: Alma Talent Oy, p 25.

⁴⁷ *Käräjäoikeudet*. Oikeus.fi. Accessible: <https://oikeus.fi/tuomioistuimet/karajaoikeudet/fi/index.html> , 29 March 2018.

⁴⁸ *Hovioikeudet*. Oikeus.fi. Accessible: <https://oikeus.fi/tuomioistuimet/hovioikeudet/fi/index.html> , 29 March 2018.

⁴⁹ Vuorenpää, *supra nota* 46, p 25.

⁵⁰ Oikeudenkäymiskaari (Code of Judicial Procedure) 1.1.1734/4

⁵¹ Laki oikeudenkäynnistä rikosasioissa (Criminal Procedure Act) 11.7.1997/689

⁵² Article 21 of the Constitution of Finland states the following: "Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have decision pertaining to his or her rights or obligations reviewed by a court of law or other dependent organ for administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act."

⁵³ Vuorenpää, *supra nota* 46, p 5-8.

⁵⁴ Virolainen, J., Pölonen, P. (2003). *Rikosprosessin perusteet: Rikosprosessioikeus I*. Helsinki: Alma Talent Oy, p 6.

Regional jurisdiction determines the court of law where the trial will be held. Generally, all trials will be held in the District Court of the area where the alleged crime was committed. In certain special cases, that are laid out in the Criminal Procedure Act⁵⁵, the trial can also be conducted in another court of law. The possible conflicts regarding regional jurisdiction are mainly concerned with the cases in District Courts for their large number, compared to the lesser number of higher courts.⁵⁶

Chapter 10 of the Courts Act⁵⁷ lays out the competencies required of a judge, which include a graduate degree, Finnish citizenship, proficiency in either Finnish or Swedish and satisfactory knowledge of the other language in addition to certain personal attributes and previous working experience in the court of law, either as a prosecutor or as a counsel.⁵⁸

In criminal procedure, a claim is brought against a person, who is suspected of having committed a crime, in the court of law in addition to the preliminary investigation and the considering of charges, both of which need to happen before the case can proceed to the court.⁵⁹ The considering of charges means that the prosecutor receives the results of the preliminary investigation and based on it determines whether a criminal offense has been committed and whether or not there is enough evidence to secure the prosecution.⁶⁰ The parties of trials in the court of law include the injured parties, in addition to the prosecutor and the accused person, the defendant.⁶¹

A case may be tried in the court of law only by the prosecutor's initiative. The application of summons submitted by the prosecutor needs to include all the charges that are brought against the defendant. After the application of summons is submitted to the court, the charges cannot be changed.⁶² According to the Code of Judicial Procedure, the burden of proof is placed upon the prosecutor.⁶³ Unlike in some other EU countries, for example in Estonia, if the victim has a

⁵⁵ See all Articles in Chapter 4, especially Articles 1 and 3-5.

⁵⁶ Vuorenpää, *supra nota* 46, p 25-26 and 30-33.

⁵⁷ Tuomioistuinlaki (Courts Act) 25.8.2016/673

⁵⁸ Vuorenpää, *supra nota* 46, p 37-39.

⁵⁹ Linna, T. (2012). *Prosessioikeuden oppikirja*. Helsinki: Alma Talent Oy, p 5.

⁶⁰ *Asset Tracing & Recovery: The FraudNet World Compendium*. (2009)/Ed. B. H. Klose. Berlin: Erich Schmidt Verlag, p 520.

⁶¹ Vuorenpää, *supra nota* 46, p 9.

⁶² Council of Europe. (2000). *What Public Prosecution in Europe in the 21st Century*. Strasbourg: Council of Europe Publishing, p 106.

⁶³ Lappi-Seppälä, T. (2012). Criminology, crime and criminal justice in Finland. – *European Journal of Criminology*, Vol. 9, No. 2, p 218.

compensation claim connected to a criminal case, that compensation claim is dealt with within the criminal proceedings and pursued by the prosecutor, unless the litigant wants to pursue it on his own.⁶⁴

In case injured parties are not invited to the court of law at the expense of a fine, they do not need to personally appear in court, instead only their counsel needs to be present.⁶⁵ Lawyers who are members of the Finnish Bar Association, public legal assistants, and legal assistants who have been granted permission can act as a counsel in a court of law in Finland.⁶⁶

All material needs to be presented orally in the main hearing with all the relevant persons present, otherwise, a judge will not take that material into account when determining the judgment. For the main hearing to be as smooth and efficient as possible, the judge cannot be changed or the main hearing interrupted, excluding in few specific cases that are regulated in Chapter 6 of the Criminal Procedure Act. However, should, for some reason, the judge need to be changed during a trial, the main hearing needs to be started afresh.⁶⁷

One of the core principles of criminal trials in Finland is the independence of the judiciary, which requires the judge to be neutral towards the parties and not have any prejudices concerning the case. Should there be any reason for the judge not to be able to be unbiased concerning the case, it is up to that judge to recuse himself from the case.⁶⁸ Another core principle is the right to be heard, according to which all the relevant parties need to be present in the trial and given a chance to express their point of view regarding the case before a judgment can be passed.⁶⁹

The main forms of punishment for criminal offenses in Finland are fines, community service, and imprisonment, both conditional and unconditional. Roughly sixty percent of criminal cases have fine as the form of punishment.⁷⁰

⁶⁴ *Ibid.*, p 218.

⁶⁵ Bachvarova, T. (2017). *The Standing of Victims in the Procedural Design of the International Criminal Court*. Leiden: Brill Nijhoff, p 96.

⁶⁶ Linna, *supra nota* 59, p 31.

⁶⁷ *The Reception and Transmission of Civil Procedural Law in the Global Society: Legislative and Legal Educational Assistance to Other Countries in Procedural Law*. (2008)./Eds. The International Association of Procedural Law (IAPL), M. Deguchi, M. Storme. Antwerp: Maklu Publishers, p 216.

⁶⁸ Linna, *supra nota* 59, p 15.

⁶⁹ *An Inquiry to the Existence of Global Values: Through the Lens of Comparative Constitutional Law*. (2015)./Eds. D. Davis, A. Richter, C. Saunders. Oxford: Hart Publishing, p 165.

⁷⁰ Lappi-Seppälä, *supra nota* 63, p 218.

2.1.1 Appeal procedure from the District Court to the Court of Appeal

A central element of a fair trial is the right to appeal the decision.⁷¹ The regulations about appeal procedure in Finland are set out in Chapters 25-31 of the Code of Judicial Procedure. The right to appeal a decision is granted to all the parties in a case: the prosecutor, the defendant, and the injured parties.⁷²

When the judgment is announced in the District Court, the judge also needs to announce whether or not the decision can be appealed, and if so, what is the time limit for appealing. The parties present in the court of law also need to be given written instructions regarding the appeal procedure. In order for a party to be able to appeal, that party needs to notify the court about their dissatisfaction concerning the judgment within seven days from the declaration of that judgment. After the reception of the notification, the District Court will hand out an appeal manifestation declaring the Court of Appeal which will hear the case and the deadline by which the manifestation needs to be delivered to that Court of Appeal. The manifestation period ends thirty days after the declaration of the judgment in the District Court. The District Court that declared the judgment will deliver all necessary documents to the Court of Appeal.⁷³

The part of the judgment being appealed, if not the whole judgment, needs to be carefully considered the Court of Appeal will investigate the appeal only concerning the claims that were mentioned in the appeal.⁷⁴ In 2003, the Code of Judicial Procedure was amended and the concept of counter appeal was added. It refers to the appeal made by the opposing party of the party that made the original appeal. If an appeal is made, the other parties of the case are notified about it and they have to make the possible counter appeal within fourteen days of the original deadline for appealing.⁷⁵

The Court of Appeal needs to generally grant a leave for continued consideration on specific cases according to the legislation. The leave needs to be granted when the justification is grounds for alteration of the judgment, revision of the judgment is necessary, it is necessary to set a precedent, or there is another substantial reason for granting a leave. When the defendant has been sentenced

⁷¹ Linna, *supra nota* 59, p 19.

⁷² Lappi-Seppälä, *supra nota* 63, p 218.

⁷³ Linna, *supra nota* 59, p 163-164.

⁷⁴ *Ibid.*, p 164-165.

⁷⁵ *Ibid.*, p 171.

to eight months of imprisonment or more, none of the parties need a leave for continued consideration. In case the leave for continued consideration is not granted, the decision of the District Court becomes lawful.⁷⁶

Reformatio in peius is a customary law principle followed in Finland. According to it, when only one of the parties of the case is appealing the decision, that decision cannot put the appellant into a worse position than he was at after the judgment from the District Court.⁷⁷

2.1.2 Appeal procedure from the Court of Appeal to the Supreme Court

A decision of the Court of Appeal can be appealed to the Supreme Court provided that permission to appeal has been granted by the Supreme Court. The Supreme Court grants appeal permissions on three grounds: when it is necessary to set a precedent, to reverse a judgment, or there is another substantial reason to give a judgment in the case. In practice, setting a precedent is the most important reason for the Supreme Court to grant a permission to appeal.⁷⁸ In addition to granting permissions to appeal, the dissolution of a judgment that has become lawful and the restitution of a lost deadline are special procedures which also belong within the jurisdiction of the Supreme Court.⁷⁹

When the appellant is applying for a permission to appeal from the Supreme Court, the application needs to include argumentation about why the permission to appeal should be granted and on what grounds. The application for the permission to appeal needs to be submitted to the Supreme Court within sixty days of the Court of Appeal's judgment. The Supreme Court receives approximately 2 500 appeal applications annually but grants the permission to appeal in less than one-tenth of the cases.⁸⁰ The Supreme Court can also, as well as the Court of Appeal, only grant the permission to appeal regarding part of the judgment, instead of permitting the whole judgment to be appealed.⁸¹

The process in the Supreme Court occurs in two phases. In the first phase, the Supreme Court reviews the case and decides whether the permission to appeal is granted and to what extent. Should the permission be granted, the appeal will be addressed in a written procedure. If necessary,

⁷⁶ *Ibid.*, p 175-179.

⁷⁷ *Ibid.*, p 167-168.

⁷⁸ *Ibid.*, p 184-185.

⁷⁹ Jokela, A. (2005). *Oikeudenkäynnin perusteet: Oikeudenkäynti I*. 2nd ed. Helsinki: Alma Talent Oy, p 233.

⁸⁰ Linna, *supra nota* 59, p 185.

⁸¹ Jokela, *supra nota* 79, p 233.

the Supreme Court can also have an oral hearing. In the judgment, the Supreme Court can grant or dismiss the appeal, decide not to investigate the appeal, or return the case back to the lower court to be readdressed. Considering the Supreme Court is the highest judicature in Finland, its judgments will become lawful after they are declared.⁸²

2.2 Relevant Finnish legislation

2.2.1 The Excise Tax Act

According to Article 6 Section 11 of the Excise Tax Act⁸³, distance selling means a person located in Finland, and other than an authorized warehouse keeper, or registered or unregistered trader not practicing independent financial activity, has bought products belonging within the scope of excise tax from the other Member States that are handed over for consumption, and they are either directly or indirectly sent or transported to Finland by the distance seller or someone on behalf of him. Section 12 of the same Article defines distance seller as a person that sells his products to Finland according to Section 11.

The Excise Tax Act also sets an excise duty of 51 cents per liter to every packaged product. The only way to exempt products from the excise tax is to include them into a return system in which the beverage packings are reused or recycled.⁸⁴ Seeing that the excise tax needs to be paid on both foreign and domestic products under the same requirements, the possible difficulties caused to either foreign or domestic producers from having to enter into a return system do not amount to a violation of Article 110 Treaty on the Functioning of the European Union (TFEU).

2.2.2 The Alcohol Act

The articles of the Alcohol Act discussed refer to the current Alcohol Act, which was in force when Mr. Visnapuu imported the alcohol to Finland and the court proceedings were started against him.

Article 8 of the Alcohol Act⁸⁵ states that when importing alcohol in a commercial manner or for other business purposes, a specific permission according to the Alcohol Act is necessary. Article

⁸² *Ibid.*, p 235.

⁸³ Valmisteverotuslaki (Excise Tax Act) 19.3.2010/182

⁸⁴ de Sadeleer, N. (2016). Case Note Court of Justice of the European Union Preliminary Ruling – Excise Duty on Certain Beverage Packaging: Case C-198/14 (Valev Visnapuu). – *Review of European Community & International Environmental Law*, Vol. 25, No. 2, p 261.

⁸⁵ Alkoholilaki (Alcohol Act) 8.12.1994/1143

14 regulates retail licenses. It states that all fermented alcoholic beverages containing at most 4,7 percentage of ethane alcohol by volume can be sold also by those who have been granted a retail license by the licensing authority. All retail licenses for selling alcohol in Finland are granted by the Regional State Administrative Agencies. The retail license for selling alcohol in a grocery store needs to be obtained from the Regional State Administrative Agency in the same region than where the grocery store is located, and the permission is site- and trader-specific.⁸⁶

Article 5 states that alcoholic beverages cannot be manufactured or sold without permission, and spirits cannot be manufactured, imported, sold, used, or obtained without permission. Article 29 specifies this by stating that a person importing or exporting alcoholic beverages with a commercial purpose, needs to notify Valvira when starting the operation.⁸⁷

2.3 Relevant European law

The competence of EU is generally divided into three categories, which are exclusive competence, shared competence, and competence to take supporting, coordinating, or supplementary action.⁸⁸ The competence for determining direct taxes is left at the Member States but even though EU does not have competence over it, the national rules about direct taxes still need to be in accordance with the four freedoms⁸⁹ established in the Treaty of Rome.⁹⁰

Article 34 TFEU prohibits the use of quantitative restrictions and measures having an equivalent effect to quantitative measures (MEEs) to imports from the other Member States. However, Article 36 TFEU allows treaty derogations on specific conditions.⁹¹ Therefore, Article 36 TFEU justifies the use of certain MEEs as long as they are not means of arbitrary discrimination or a disguised restriction on trade between the Member States.⁹²

⁸⁶ *Vähittäismyyntiluvat*. Aluehallintovirasto. Accessible: <https://www.avi.fi/web/avi/vahittaismyyntiuivat> , 21 February 2018.

⁸⁷ Alholilaki, *supra nota* 85

⁸⁸ Craig, P., de Búrca, G. (2015). *EU Law: text, cases, and materials*. 6th ed. Oxford: Oxford University Press, p 73.

⁸⁹ The four freedoms of EU are free movement of goods, services, capital, and people.

⁹⁰ Craig, de Búrca, *supra nota* 88, p 86.

⁹¹ Chalmers, D., Davies, G., Monti, G. (2010). *European Union Law: cases and materials*. 2nd ed. Cambridge: Cambridge University Press, p 882.

⁹² de Sadeleer (2016), *supra nota* 84, p 263.

Article 110 TFEU relates to the internal taxation on products from the other Member States. It has a broad scope for the first paragraph sets a prohibition to discriminate between domestic and foreign similar products, whereas the second paragraph prohibits indirect discrimination of other foreign products by way of taxation.⁹³

Directive 94/62/EC on packaging and packaging waste⁹⁴, which aims at preventing and reducing the effect of packaging and packaging waste on the environment, is the legislative framework meant to harmonize the national measures on all types of packaging and packaging waste within the single market of the EU.⁹⁵

Alcohol policy in the EU belongs under the scope of the public health and social policy, which is, in some cases prioritized over the trade interests, most importantly free movement of goods.⁹⁶ Alcohol policies, which meet the health and social policy objectives in a manner they are supposed to, do not allow discrimination between domestic and foreign products nor do they allow measures that are only weakly linked to the health and social policy objectives.⁹⁷

EU can only act in the area of alcohol policy-making to the extent the Member States have conferred power to the EU through the EU Treaties⁹⁸. However, due to the internal market, alcohol policies fall within the scope of EU law as long as they distort the internal market, usually by advertising, minimum pricing, taxation, and monopolies.⁹⁹ The most detailed picture of the effect EU law has on the alcohol policy-making is provided by the rulings from CJEU and European Free Trade Association (EFTA) Court.¹⁰⁰

2.3.1 Preliminary ruling procedure

⁹³ de Sadeleer, N. (2014). *EU Environmental Law and the Internal Market*. Oxford: Oxford University Press, p 248.

⁹⁴ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, OJ L 365, 31.12.1994, p 10-23.

⁹⁵ Chiellini, E. (2008). *Environmentally compatible food packaging*. Cambridge: Woodhead Publishing Limited, p 526.

⁹⁶ Allebeck, P. (2001). Alcohol policy in Europe: What can the European Union do? – *European Journal of Public Health*, Vol. 11, No. 1, p 2.

⁹⁷ Ugland, *supra nota* 8, p 45.

⁹⁸ EU Treaties refers to the primary sources of EU law, Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU).

⁹⁹ Baumberg, B., Anderson, P. (2008). Health, alcohol and EU law: understanding the impact of European single market law on alcohol policies. – *European Journal of Public Health*, Vol. 18, No. 4, p 392.

¹⁰⁰ *Ibid.*, p 393.

The main function of the preliminary ruling procedure is to ensure uniform interpretation and application of EU law in all Member States.¹⁰¹ Other functions of the preliminary ruling procedure are to ensure the unity of EU's legal order and facilitate access to justice by ensuring that in addition to being applied by CJEU, EU law also needs to be applied by the national courts.¹⁰² When giving a preliminary ruling, CJEU can only interpret EU law, whereas the application of the interpreted EU law to the facts of the case is left to national courts.¹⁰³ Therefore, CJEU has the final authority in the interpretation of EU law.¹⁰⁴

According to Article 267 TFEU, national courts are the only instances which can request a preliminary ruling from CJEU. The parties of the case can always request the national court to refer a question to CJEU for a preliminary ruling but it does not oblige the national court, instead the national court itself always makes the final decision of whether or not to request a preliminary ruling.¹⁰⁵ Only when the national case has proceeded to the highest court, whose decision cannot be appealed, the national court has an obligation to request a preliminary ruling from CJEU in case there is an issue about the interpretation or the validity of EU law, which needs to be taken into account when determining the ruling in the national case.¹⁰⁶ Therefore, a distinction is made between the lower national courts and the national courts of the last instance.

The doctrine of *acte clair* was established in the CILFIT-case¹⁰⁷. It means that the national court does not need to refer a question to CJEU for a preliminary ruling if there is an earlier judgment concerning the same issue provided that judgment or a rule of law and its meaning are clear enough and can be interpreted by the national court by itself.¹⁰⁸ Even before the CILFIT-case, CJEU had made a similar ruling in the *Da Costa en Schaake et. al.*-case¹⁰⁹ where the doctrine of *acte éclairé*, which states that it is likely unnecessary to refer a question to CJEU for a preliminary ruling should

¹⁰¹ Barents, R. (2009). *Directory of EU Case Law on the Preliminary Ruling Procedure*. The Hague: Kluwer Law International, p 278.

¹⁰² Tridimas, G., Tridimas, T. (2004). National Courts and the European Court of Justice: a public choice analysis of the preliminary reference procedure. – *International Review of Law and Economics*, Vol. 24, No. 2, p 128.

¹⁰³ Raworth, P. (1977). Article 177 of the Treaty of Rome and the Evolution of the Doctrine of the Supremacy of Community Law. – *Canadian Yearbook of International Law*, Vol. 15, p 276.

¹⁰⁴ Tridimas, Tridimas, *supra nota* 102, p 132.

¹⁰⁵ Milinis, A., Praneviciene, K. (2016). Conditions and circumstances which lead to application to the Court of Justice of the European Union and adoption of a preliminary ruling. – *Baltic Journal of Law & Politics*, Vol. 9, No. 3, p 133.

¹⁰⁶ Tridimas, Tridimas, *supra nota* 102, p 127.

¹⁰⁷ Court decision, 6.10.1982, *CILFIT*, C-283/81, EU:C:1982:335

¹⁰⁸ Milinis, Praneviciene, *supra nota* 105, p 140.

¹⁰⁹ Court decision, 27.3.1963, *Da Costa en Schaake et. al.*, joined cases 28/62 and 30/62, EU:C:1963:6

there already be a decision that concerns the same rule of law, was established. In case a national court decides to not refer a question for a preliminary ruling to CJEU based on either *acte clair* or *acte éclairé*, it needs to divulge this in addition to the basis for not considering it necessary to request for a preliminary ruling.¹¹⁰

2.3.2 Relevant case law

*Van Gend en Loos*¹¹¹ is a landmark case in the EU which established the direct effect of EU law. A Dutch company imported chemicals from Germany and was charged an import tax which the company thought was breaching Community legislation, which is why the case ended up before CJEU.¹¹² The issue was whether or not the provisions in the founding treaties could be appealed to and relied on upon before national courts by the parties. CJEU ended up establishing the direct effect of Community law, which means that the rights imposed by the founding treaties can be enforced by natural and legal persons in national courts.¹¹³

*Costa v ENEL*¹¹⁴ is another landmark case in the EU, which is about an Italian citizen who refused to pay his electric bill to a national electricity company, which had recently replaced private electricity companies.¹¹⁵ The issue was referred to both the Italian Constitutional Court and CJEU, the former of which was first to give its judgment stating that when two rules are in conflict with each other, the subsequent one, in this case, the Electricity Nationalization Act of 1962, prevails. That judgment led to the Italian government appearing in front of CJEU and stating that the reference for a preliminary ruling was inadmissible because national legislation prevented EC legislation from being applied.¹¹⁶ Therefore, CJEU ended up establishing the principle of primacy when it ruled that EC law prevails over national law inasmuch as the Member States have transferred over their sovereign rights to the EC in the founding treaties.¹¹⁷

¹¹⁰ Milinis, Praneviciene, *supra nota* 105, p 141.

¹¹¹ Court decision, 5.2.1963, *Van Gend en Loos*, C-26/62, EU:C:1963:1

¹¹² Raitio, J. (2003). *The Principle of Legal Certainty in EC Law*. Dordrecht: Kluwer Academic Publishers, p 348.

¹¹³ Chalmers, D., Davies, G., Monti, G. (2014). *European Union Law: text and materials*. 3rd ed. Cambridge: Cambridge University Press, p 16-17.

¹¹⁴ Court decision, 15.7.1964, *Costa v ENEL*, C-6/64, EU:C:1964:66

¹¹⁵ *Article 234 and Competition Law: An Analysis*. (2008)/Ed. B. J. Rodger. Alphen aan den Rijn: Kluwer Law International, p 218.

¹¹⁶ *The Evolution of EU Law*. (2011)/Eds. P Craig, G. de Búrca. 2nd ed. Oxford: Oxford University Press, p 328.

¹¹⁷ *The Court of Justice and the Construction of Europe: Analyses and perspectives on Sixty Years of Case-law*. (2013)/Eds. A. Rosas, E. Levits, Y. Bot. The Hague: Asser Press, p 25.

In C-434/04 *Ahokainen and Leppik*¹¹⁸, the defendants had smuggled almost 10 000 liters of spirits, which had the alcohol content of 96,4-96,5%, to Finland when, according to the documents, the truck was supposed to be transporting sesame oil.¹¹⁹ The case ended up in the Finnish Supreme Court, which decided to ask for a preliminary ruling from the CJEU about whether Article 28 EC (current Article 34 TFEU) needs to be interpreted as prohibiting a national legislation requiring a licence when importing spirits that have over 80 percent of alcohol by volume, and if so, whether the licensing system is allowed by the exception in Article 30 EC (current Article 36 TFEU).¹²⁰ The Court ended up ruling that Articles 28 and 30 EC (current 34 and 36 TFEU) are not obstacles to a system demanding prior authorization for importing spirits that have over 80 percent of alcohol by volume.¹²¹ In the rationale, CJEU stated that the Member States have a freedom to determine how important the legitimate objectives, in this case, prevention of alcohol abuse and trying to prevent the various forms of criminality linked to alcohol consumption, are and what are the necessary measures needed to achieve concrete results.¹²²

C-394/97 *Heinonen*¹²³ was about a Finnish defendant who had brought nineteen cans of beer from a day trip to Estonia, even though the Finnish law specifically stated that a person arriving into Finland from outside EEA¹²⁴ cannot import any alcohol when the trip has not lasted for over 20 hours and the person is traveling by other means than air transport.¹²⁵ The case proceeded into the District Court of Helsinki, which decided to refer three questions for the CJEU for a preliminary ruling.¹²⁶ The questions focused on whether the Finnish law prohibiting imports of alcohol in specific circumstances was compatible with EC legislation seeing that it was for the protection of public order and safety, and protection of health and life of humans.¹²⁷ In its judgment, CJEU concluded that as long as this legislation was on grounds of public morality, public policy, public security or to protect health and life of humans, and considering there was a direct link between the increase in the amount of alcohol imported and the increase of social and health problems, and since these health and social problems had reduced when the Finnish law went into force, the

¹¹⁸ Court decision, 28.9.2006, *Ahonen and Leppik*, C-434/04, EU:C:2006:609

¹¹⁹ *Ibid.*, point 9.

¹²⁰ *Ibid.*, point 13.

¹²¹ *Ibid.*, point 40.

¹²² *Varieties of European Economic Law and Regulation: Liber Amicorum for Hans Micklitz*. (2014)/Eds. K. Purnhagen, P. Rott. Cham: Springer International Publishing, p 408.

¹²³ Court decision, 15.6.1999, *Heinonen*, C-394/97, EU:C:1999:308

¹²⁴ *Heinonen* was decided in 1999 when Estonia was not yet a member of the EU.

¹²⁵ *Ibid.*, points 16, 19, and 20.

¹²⁶ *Ibid.*, points 21 and 22.

¹²⁷ *Ibid.*, point 22.

Finnish law prohibiting people from importing alcohol from trips outside the EEA area when the trip was not made by air transport and lasted less than 20 hours was compatible with EC legislation.¹²⁸ Therefore, CJEU made clear that the Member States maintain discretion when protecting public morality, as long as the possible derogations are in accordance with the principle of proportionality and the principle of non-discrimination.¹²⁹

¹²⁸ *Ibid.*, points 30, 34, and 45.

¹²⁹ *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality*. (2016)./Eds. P. Koutrakos, N. Nic Shuibhne, P. Syrpis. Oxford: Hart Publishing, p 152.

3. COURT PROCEEDINGS RELATING TO C-198/14

On 21 October 2011, court proceedings were initiated against Valev Visnapuu, as a representative of European Investment Group OÜ, jointly by the Finnish Government and the National Board of Customs for aggravated tax fraud etcetera.¹³⁰ Mr. Visnapuu was prosecuted for selling alcohol to Finland from Estonia through a website and neglecting to pay taxes for the imported alcohol, and for professional conveying of alcohol substances during summer of 2009, since in Finland, according to the national legislation, anyone importing and reselling alcohol needs to have the adequate wholesale or retail permission according to 8 § of the Alcohol Act. Also, Mr. Visnapuu had neglected to inform the National Board of Customs about the imported alcoholic beverages.¹³¹

3.1. Proceedings in the District Court of Helsinki

In his application for summons, the district prosecutor demanded that Mr. Visnapuu should be, according to Article 2 of chapter 29 of the Criminal Code of Finland, sentenced to imprisonment for aggravated tax fraud from four months to four years, reimburse the compensations paid to the witnesses to the government, and in case Visnapuu is not deemed to be liable to compensate the taxes, he needs to be sentenced to lose to the state the advantage of 15.710,00 euros he gained by committing crime.¹³² The plaintiffs concur with the district prosecutors demands, and also demand that Mr. Visnapuu is obliged to pay to the government of Finland as damages the taxes that were avoided for the amount of alcohol that ended up being consumed: alcoholic beverage tax in the amount of 26.894,35 euros and beverage packing tax in the amount of 6.101,64 euros, which total to 32.995,99 euros with penalty interest from 18 August 2009.¹³³ The penalty interest is calculated according to Article 4 Section 1 of the Interest Act¹³⁴.

¹³⁰ Helsingin KO, *supra nota* 1, p 1.

¹³¹ *Ibid.*, p 1-2.

¹³² *Ibid.*, p 1-3.

¹³³ Helsingin KO, *supra nota* 1, p 3.

¹³⁴ Korkolaki (the Interest Act) 20.8.1982/633

Mr. Visnapuu denied the charges, plaintiff National Board of Customs' damage claim, and demanded that the charge and the damage claim be dismissed. The primary basis for denying the charges is that he did not commit the alleged crimes intentionally.¹³⁵ Mr. Visnapuu admitted to 70 percent as the amount of compensation, ergo 23.144,89 euros as the amount of alcoholic beverage tax and 5.233,52 euros as the amount of beverage packing tax, totaling to 28.378,40 euros, and 8.374,00 liters as the amount of alcohol imported.¹³⁶ In case the District Court dismisses the charges, Mr. Visnapuu demanded that the government of Finland needs to reimburse his legal costs of 44.433,75 euros according to Article 1 a of chapter 9 of Criminal Procedure Act.¹³⁷

In its judgment of 26 September 2012, the District Court of Helsinki imputed both charges and convicted Mr. Visnapuu to 8 months of probation with the probationary period ending on 30 June 2014 as the District Court of Helsinki viewed that he had transported the beforementioned amounts of alcoholic beverages to and sold them in Finland. Mr. Visnapuu was also sentenced to pay 44,80 euros as witness compensation to the Finnish government, 28.378,40 euros with penalty interest from 18 August 2009 according to Article 4 section 1 of the Interest Act to the National Board of Customs, and 800,00 euros as compensation for legal costs to the Finnish Government with penalty interest from a month from the day of the judgment.¹³⁸

3.2. Preliminary ruling of CJEU in C-198/14

The Court of Appeal of Helsinki sent eight questions to the CJEU for a preliminary ruling in relation to the case of Mr. Visnapuu v the Finnish Government and the National Board of Customs. The first four questions were related to the Finnish beverage packing tax: whether it should be examined in light of Article 110 TFEU instead of Article 34 TFEU and whether the beverage packing tax system is compatible with Article 1 Section 1, Article 7, and Article 15 of Directive 94/62 on packaging and packaging waste, when taking into account the relevant TFEU Articles. On the other hand, the last four questions were related to the requirement of a retail license in order to be able to sell alcoholic beverages and whether that requirement is compatible with EU law and whether the retail license system should be considered as a quantitative restriction or a MEE, and

¹³⁵ Helsingin KO, *supra nota* 1, p 4.

¹³⁶ *Ibid.*, p 5.

¹³⁷ *Ibid.*, p 6.

¹³⁸ *Ibid.*

if so, whether the system can be considered to be justified and proportionate to protect the health and life of people.¹³⁹ CJEU determined that the first four questions need to be investigated separately from the last four questions on account of them being concerned with different matters.¹⁴⁰

Since the harmonization in the Articles in Directive 94/62 is not exhaustive, CJEU felt that the national measures that were taken to implement the directive need to be scrutinized in light of the relevant primary law.¹⁴¹ Seeing that the beverage packing tax is considered internal taxation within the meaning of 110 TFEU, CJEU stated that the beverage packing tax system in Finland needs to be investigated in light of Article 110 TFEU instead of Article 34 TFEU, and focus on its second section which means investigating whether the beverage packing tax is higher on imported products than on national products.¹⁴² CJEU ended up stating, that the difficulties that might arise from having to enter a functioning return system or starting one of their own are similar to small national actors established in Finland as they are to those established in the other Member States.¹⁴³ Also, it was determined that Articles in Directive 94/62 are not a barrier to a system in which tax is carried to beverage packing unless they belong to a functioning return system.¹⁴⁴

Therefore, CJEU's decision concerning the first four questions was that 110 TFEU and Article 1 Section 1, Article 7, and Article 15 of Directive 94/62 are not barriers to the kind of beverage packing tax system that is used in Finland, where a tax is carried on beverage packing unless they belong to a functioning return system, in which case they are exempt from the tax.¹⁴⁵

Concerning the last four questions, CJEU first determined whether Article 34 TFEU or Article 37 TFEU would be applied to the requirement of having to have a retail license in order to be able to import alcohol to sell it to Finnish consumers.¹⁴⁶ The opinion of the Court was that since the requirement of a retail license belongs within the scope of Article 14 of the Alcohol Act, the last four questions need to be examined in light of Article 34 TFEU.¹⁴⁷ When considering the

¹³⁹ Court decision, 12.11.2015, Visnapuu, C-198/14, EU:C:2015:751, point 37.

¹⁴⁰ *Ibid.*, point 38.

¹⁴¹ *Ibid.*, point 48.

¹⁴² *Ibid.*, points 55 and 58.

¹⁴³ *Ibid.*, points 63 and 64.

¹⁴⁴ *Ibid.*, point 68.

¹⁴⁵ *Ibid.*, point 130.

¹⁴⁶ *Ibid.*, points 82 and 84.

¹⁴⁷ *Ibid.*, point 92.

requirements that need to be fulfilled in order for the retailer to be granted a retail license, and that they are not equally applied to all operators, seeing that Alko has been exempt and does not need any license to sell alcoholic beverages in its stores, and the retail license can only be granted to operators that are established in Finland, CJEU considered the retail license system to be a measure having equivalent effect to a quantitative restriction.¹⁴⁸

Next, the Court had to determine whether the measure was justified within the meaning of Article 36 TFEU. In their earlier *legal praxis*, it has been determined that legislation aimed to prevent any detriment caused by alcoholic beverages and thus aimed at combatting alcohol abuse fulfills the requirements of Article 36 TFEU to be excluded from the scope of Article 34 TFEU.¹⁴⁹ Based on the material that CJEU had, they concluded that it is up to the national court to decide whether retaining the retail license system as it is, is necessary for the protection of health and life of people or is used to indirectly protect certain national products.¹⁵⁰

Based on the above, CJEU's answer to the last four questions was that Articles 34 and 36 TFEU need to be interpreted as not being a barrier to a retail license system as long as the system can guarantee that the pursued object, in this case, health and life of people, can be fulfilled, and neither the object can be achieved at the same level with less restrictive measures nor is the system a mean of arbitrary discrimination or a disguised restriction of trade between Member States, which needs to be investigated by the national court.¹⁵¹

3.3 Proceedings in the Court of Appeal of Helsinki

In his appeal to the Court of Appeal of Helsinki, Mr. Visnapuu demanded that all charges and the damage claim against him should be dropped or at least reduced, and he should not have to reimburse the court fees and witness compensations to the government of Finland. He also stated that he had not acted intentionally.¹⁵² The district prosecutor demanded that Mr. Visnapuu's appeal should be dismissed.¹⁵³

¹⁴⁸ *Ibid.*, points 101, 105, 106, and 108.

¹⁴⁹ *Ibid.*, point 115.

¹⁵⁰ *Ibid.*, point 124.

¹⁵¹ *Ibid.*, point 130.

¹⁵² Helsingin HO 24.4.2017 t. 503, p 1.

¹⁵³ *Ibid.*, p 3.

The Court of Appeal looked into the aggravated tax fraud first. As a result of CJEU having determined that the Finnish beverage packing tax system does not discriminate the operators in the other Member States, the Court of Appeal needed to determine whether Mr. Visnapuu's right to not self-incriminate himself had been breached.¹⁵⁴ When importing the alcoholic beverages in a commercial purpose, Mr. Visnapuu was not under a criminal investigation, therefore, he would not have self-incriminated himself by informing the National Board of Customs about the alcoholic beverages he imported and by paying the necessary taxes. Because Mr. Visnapuu had admitted that he had not even tried to find out about his obligation to pay taxes from the Finnish authorities, the Court of Appeal saw that he had acted intentionally.¹⁵⁵ Therefore, the Court of Appeal saw that Mr. Visnapuu's actions fulfill the features of tax fraud and the crime, as a whole, must be regarded as aggravated.¹⁵⁶

Concerning the alcohol crime, the Court of Appeal needed to investigate whether the monopoly granted to Alko fulfils the requirements in Article 37 TFEU, whether the Finnish legislation discriminates foreign producers by allowing an exception to certain producers to sell the alcoholic beverages, which have less than 13 percent of alcohol by volume, they manufacture to customers at their production facility, and whether the Finnish retail license system belongs within the scope of Article 36 or could achieve the same goals with the same efficiency with a retail license system that is less restrictive towards intra-EU trade.¹⁵⁷

According to Article 37 TFEU, as long as the national monopolies do not discriminate producers or customers from the other Member States, state monopolies are allowed. Should the sale of alcoholic beverages included in Alko's retail monopoly be allowed to operators in the other Member States, it should also be allowed for Finnish operators. Therefore, the Court of Appeal saw that Article 13 of the Alcohol Act, specifically the prohibition to distance sell alcohol belonging within the scope of Alko's retail monopoly, is not contradictory to Article 37 TFEU.¹⁵⁸

According to the report given by the Finnish government, the exception granted to certain producers in Finland is meant to, in addition to protecting public health and general order, promote tourism and enable the producers to sell their products directly to customers. Also, the Finnish

¹⁵⁴ *Ibid.*, p 4.

¹⁵⁵ *Ibid.*, p 5.

¹⁵⁶ *Ibid.*, p 6.

¹⁵⁷ *Ibid.*, p 6, 12, and 13.

¹⁵⁸ *Ibid.*, p 8-9.

government does not have the competence to give producers from the other Member States the permission to sell their products at their production facilities for they are not located within the territory of Finland. Additionally, the operation of these producers is so limited that the Court of Appeal said this exception cannot be viewed as favoring national production, or as a mean of arbitrary discrimination or a disguised restriction of trade between the Member States.¹⁵⁹

The retail license system is meant to oversee that the regulations about selling alcoholic beverages are being complied with. According to the Court of Appeal, the requirement of having an established place of business in Finland makes it easier for the authorities to oversee the selling of alcohol.¹⁶⁰ However, the Court feels that it is possible to effectively supervise the selling of alcoholic beverages even without an established place of business in Finland, which means that the retail license system can be changed to allow distance selling of mild fermented alcoholic beverages. Therefore, the Court of Appeal stated that it is possible to protect public health and general order with a retail license system that is less restrictive towards intra-EU trade.¹⁶¹

In its case law, CJEU has stated that national authorities cannot punish people for not abiding a law that is contrary to EU law.¹⁶² Seeing that the retail license system is not wholly consistent with EU law, Mr. Visnapuu cannot be sentenced for importing mild fermented alcoholic beverages.¹⁶³

All in all, The Court of Appeal decided that considering the charge was partially dismissed, the sentence imposed upon Mr. Visnapuu by the District Court of Helsinki needed to be reduced to six months of imprisonment and the damages imposed to Mr. Visnapuu needed to be reduced to 23.097,19 euros, which is the amount Mr. Visnapuu admitted to, excluding the alcoholic beverages confiscated by the National Board of Customs.¹⁶⁴ The rest of the District Court of Helsinki's sentence remained unchanged.¹⁶⁵

¹⁵⁹ *Ibid.*, p 13.

¹⁶⁰ *Ibid.*, p 11.

¹⁶¹ *Ibid.*, p 12.

¹⁶² *Ibid.*, p 14.

¹⁶³ *Ibid.*, p 15.

¹⁶⁴ *Ibid.*, p 15.

¹⁶⁵ *Ibid.*, p 18.

4. THE EFFECT OF MR. VISNAPUU'S CASE TO FINNISH LEGISLATION AND THE NEW ALCOHOL ACT

4.1 The meaning of the decisions of the CJEU and the Court of Appeal in Helsinki

In their judgment, CJEU ruled that the national court should determine, whether the aims of the Finnish alcohol legislation, more importantly, the retail license system, could be achieved with less restrictive measures.¹⁶⁶ Based on the judgment in C-198/14 *Visnapuu*, the Court of Appeal stated that the current retail license system in Finland does not fully adhere to EU legislation concerning fermented alcoholic beverages containing at most 4,7 percent of alcohol by volume.¹⁶⁷ Based on the judgments of both courts, it can be concluded that the Finnish retail license system will most likely go through a transformation but only future will tell what that transformation will be like.

Should the judgment by the Court of Appeal become lawful, the Finnish alcohol legislation will be forced in another whirlwind for a second time within a short period of time. Considering that the whole retail license system would need to be changed to also apply to foreign actors, the legislators in Finland would have a hard time determining what the retail system would look like, as some kind of supervision from Finnish or national authorities would most likely be required.

The Finnish Customs issued a press release, after the preliminary ruling from CJEU, stating that after concluding some research into the ruling in C-198/14 *Visnapuu*, it does not have any immediate effects on the operation of the Customs, and that the possible effects will only be known after a lawful judgment has been given by a national court. Therefore, the Customs will not change any of its policies relating to the distance selling of alcohol.¹⁶⁸

¹⁶⁶ *Visnapuu*, *supra nota* 139

¹⁶⁷ Valiokunnan mietintö StVM 24/2017 vp – HE 100/2017 vp (Report of the Social Affairs and Health Committee StVM 24/2017 vp regarding HE 100/2017 vp), p 16.

¹⁶⁸ *EU:n tuomioistuimen ennakkoratkaisu (C-198/14 Visnapuu) ei vaikuta Tullin toimintaan* (2015). Tulli.

Accessible: http://tulli.fi/artikkeli/-/asset_publisher/eu-n-tuomioistuimen-ennakkoratkaisu-c-198-14-visnapuu-ei-vaikuta-tullin-toimintaan , 21 March 2018.

4.2 Contradiction between the judgment of the Court of Appeal in Helsinki and the Alcohol Reform

Even though there are no laws that specifically state so, the requirement that a retail license for selling alcohol needs to be obtained from the Regional State Administrative Agency located in the same region where the store wanting to obtain the license is located in, and that the retail licence is site- and trader-specific basically means that any person wanting to sell alcohol in Finland needs to have a physical store in Finland. This applies to both the current Alcohol Act and the Alcohol Reform. However, the judgment of the Court of Appeal basically states that the retail license system should be changed to allow the granting of retail license also to distributors outside the territory of Finland. Therefore, there is a clear contradiction between the Alcohol Reform and the judgment of the Court of Appeal when it comes to the retail license system.

Although the only contradiction between the Alcohol Reform and the judgment of the Court of Appeal is regarding the retail license system, the consequences from that contradiction will be far more comprehensive. Should the Court of Appeal's judgment stay lawful, the Finnish market for alcohol will profoundly expand due to the easy access to the market by foreign actors. The availability of certain alcoholic beverages would increase exponentially, which would also affect the Finnish economy due to the likely loss of tax revenue from a majority of mild fermented alcoholic beverages being purchased from abroad, where the price of alcohol is considerably lower than in Finland. That might, consecutively, increase the health detriments of alcohol and show in increased health expenses to the government.

4.3 Current situation of the Alcohol Reform and Mr. Visnapuu's case in the Finnish courts

On 19 December 2017, the Finnish Parliament approved the Alcohol Reform by 124-65 votes¹⁶⁹ and it was verified by the President of Finland on 28 December 2017. Some parts of the new Alcohol Act entered into force on 1 January 2018 and on 1 March 2018, the new Alcohol Act entered into force in whole.¹⁷⁰

¹⁶⁹ *Eduskunta hyväksyi alkoholilain äänin 124-65 (2017)*. Eduskunta. Accessible: https://www.eduskunta.fi/FI/tiedotteet/Sivut/alkoholilaki_lopullinen.aspx , 19 March 2018.

¹⁷⁰ *Alkoholilain kokonaisuudistus*. Sosiaali- ja terveysministeriö. Accessible: <http://stm.fi/alkoholilain-kokonaisuudistus> , 23 February 2018.

On 1 February 2018, the Supreme Court of Finland announced that it had granted a partial permission to appeal to the prosecutor and Mr. Visnapuu concerning the alcohol crime but the permission to appeal had been denied concerning the aggravated tax fraud.¹⁷¹ The fact that the Supreme Court has granted a permission to appeal in Mr. Visnapuu's case, implies that the case is controversial and interesting, and it is necessary for the Supreme Court to rule on the issue to set a precedent for the future *legal praxis*.

The Supreme Court of Finland will determine whether or not the new Alcohol Act of Finland will be amended and in which way. In my opinion, it is likely that the Supreme Court will agree with the Court of Appeal in Helsinki that the retail license system in Finland could be less restrictive while still achieving its goals for the Court of Appeal cannot have given their judgment lightly without thinking through all the possibilities. The extent to which the Supreme Court will agree with the Court of Appeal or determine the possible new retail license system is yet to be seen until the case is dealt with. For the Finnish alcohol legislation is a lot stricter than in other EU countries when it comes to importing the alcohol and the current orientation in legislation is towards more liberal legislation, it would also be likely from that point of view that the Supreme Court will agree with Court of Appeal in saying that the current retail license system is not fully consistent with EU law.

Considering that Mr. Visnapuu's case has been in the Finnish court system since 2012 and has yet to receive a lawful judgment, the judgment from the Supreme Court will bring all speculation, as to what kind of effect it will have to Finnish legislation, to an end and allow the necessary amendments to be made to the new Alcohol Act in addition to clarifying the rules relating to the distance selling of alcohol. It is likely that the Supreme Court will rule on the case in late 2018 or early 2019, which means that the full effect of Mr. Visnapuu's case to Finnish legislation will emerge during 2019.

¹⁷¹ KKO myönsi osittaisen valitusluvan Alkotaxi-asiassa, *supra nota* 2

CONCLUSION

The aim of the thesis was to examine the Finnish Alcohol Reform, Mr. Vinapuu's court case in the Finnish court system and the relationship between these two in addition to getting acquainted with Finnish and European alcohol legislation. All the abovementioned elements are closely entwined with each other for the research question and research problem are both concentrated on the likely effect of Mr. Visnapuu's case to the Finnish alcohol legislation.

The Finnish retail license system has been under scrutiny because of Mr. Visnapuu's case in both national courts and in CJEU, which led to its compliance with EU law being questioned by both the legislature and the judiciary. Currently, there is no lawful judgment concerning Mr. Visnapuu's case which means that there is no lawful judgment, based on which it can be determined whether or not the Finnish retail system, as it currently is, is a necessary measure in guaranteeing its object, the health and life of people, or whether the same object could be achieved with lesser methods, which in practice means amending the retail license system to also allow foreign actors to enter the market of alcoholic beverages containing no more than 5,5 percent of alcohol by volume.

In their judgment, the Court of Appeal in Helsinki determined that the Finnish retail license system does currently not conform with the EU legislation, for the Court of Appeal determined that it could be possible to protect the health and life of people by lesser measures to the same extent that it is currently protected. The case was appealed to the Supreme Court, which granted a partial permission to appeal concerning the alcohol crime. Therefore, until the Supreme Court has ruled on the issue, it cannot be known whether or not part of the Finnish alcohol market will be opened to foreign actors.

A new Alcohol Act came fully in force on 1 March 2018 but the provisions about distance selling of alcohol and the retail license system take no stand when it comes to the issues established in Mr. Visnapuu's case. Instead, the provisions about distance selling of alcohol stayed intact compared to the old Alcohol Act, and despite the section about the retail license being changed, it still requires everyone to apply for a retail license from the Regional State Administrative Agency

in their area. Therefore, the new Alcohol Act and its provisions about retail license do not allow foreign actors to sell alcohol in Finland without an establishment in Finland.

The conclusion of this thesis is that provided the Supreme Court upholds the judgment from the Court of Appeal concerning their opinion that the current retail license system does not conform with EU law and it needs to be liberated to also allow foreign actors into the Finnish markets without an established place of business, the Finnish alcohol legislation will undergo another change in a short period of time, and the effects will be profound. The change in the retail license system will have an impact on not only the alcohol markets, mostly by increasing the availability of alcohol and competition but also by affecting the Finnish economy both directly and indirectly. When the new Alcohol Act was passed by the Parliament, the Government of Finland estimated that the effect of the Act to the health of the nation will be negative, which means that should the alcohol markets be partially opened to foreign actors, it will negatively affect the health of the nation in Finland.

After a lawful judgment in Mr. Visnapuu's case, more research possibilities for the future will appear. The real effects of Mr. Visnapuu's case to the Finnish alcohol legislation and retail license system can then be thoroughly researched, instead of focusing on the hypotheticals and speculation. Furthermore, the possible renewal of the retail license system brings new research possibilities concerning the changes in the retail license system and its possible effects. Therefore, new research possibilities emerge in multiple areas, including from the point of view of legislation, economy, and national health.

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