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MODERNISING THE PROCEDURE OF ORAL HEARING IN THE FINNISH COURT OF APPEAL: EFFECT ON HUMAN RIGHTS AND COMPARISON TO SWEDEN

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ABSTRACT

The aim of the thesis is to research modernisation of the Finnish oral hearing in the court of appeal in order to decrease the undue delays of the courts and possibly take a model form the Swedish law, where the main hearing has been changed into video evidencing procedure. The similarities of the neighbouring countries judicial systems and similar problems with the lack of resources offer a solid base for comparison. Investigation that would a change of legislation after the Swedish model be effective and desired in the context of procedural times of the court of appeal led to conclusions, that after many unsuccesfull reforms and amendments, the Finnish appellate courts need a modernisation that resolves the current problems in a different way. The Swedish reform of 2008 has had good results and statistics show, that efficiency in resource handling and in prompt proceedings is in many ways better than in Finland. Due to this, the author helds that the modernisation of the oral hearing in the court of appeal after the Swedish model should be seriously taken into account by the Finnish legislators in order to quarantee the applicability of fair trial in all cases.

Keywords: Finnish Court of Appeal, Fair trial, Oral hearing, Modernisation

INTRODUCTION

Finland has received several judgements alleging that the country has violated article 6 of the European Convention for Human rights from the European Court of Human rights considering the length of the procedure [1]. The most of these judgements are from the early 2000 and Finland has taken steps to secure the legal protection of the citizen since, by for example introducing the Act on Compensation for the Excessive Length of Judicial Proceedings: Laki Oikeudenkäynnin Viivästymisen Hyvittämisestä, Act no. 362/2009. However, despite the law establishing the citizens' right to seek compensation from a delayed court procedure, the structural problem of lengthy procedures is still current. The application of this law in individual cases does not resolve the problem of having excessively delayed proceedings: the problem it resolves is the noncompliance with the Court guidelines setting forth that compensation has to be offered. Other commonly used practise is to shorten the sentence taking into account the delayed proceedings. This principle is widely used as a remedy, but neither it does not resolve the structural problem. The problem of excessive length is still current and despite the decreasing number of cases referred to the Court in the past ten years, [2] the use of the compensations in national courts and continuous delaying in procedures reveal that the legal protection of the citizen is not secured.

The excessive length has many effects not only for the human rights of the parties but also for the Justice system of Finland. Because of the guidelines set by the Court, Finland has made changes in the legislation and procedures in order to comply with the article. The Ministry of Justice took the matter in a discussion already in 2000, and the subject is widely researched since. Multiple solutions for the whole process from the pre-trial investigation to the final decision of the court has been introduced. The modernisation of the court system has been a one solution for tackling the problems, and many studies about the ineffectiveness of the oral hearing in the court of appeal

[1] Ervo, L., & Nylund, A. (2014). *The Future of Civil Litigation* (p. 249) Switzerland: Springer International Publishing.
[2] Table: Violations by article and by state 1959-2017, European Court of Human rights (2018) Accessible: https://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf 21 January 2019

have been conducted. Changes into the legislation have been made, but these seem not to have been enough.

In this thesis, the author introduces the procedure used in Finland's Court of Appeal and takes a closer look into the oral hearing procedure. Currently, the main focus in the court systems is not in the lower court instance, as it should be. Inviting witnesses into the main hearing of the appellate court delays the proceedings and creates a lack of trust. As the judicial system in Sweden is similar to Finland, a comparison to the Swedish system is highly essential as, in Sweden, the legislation has been renewed by introducing the hearing from a video recording done in the district court, and at the same time shifting the main focus back to the lower court. In Sweden, it was concluded, that the need of direct oral hearing from the same witnesses in both instances should be rare and that is why there should a more proper way of conducting the hearing the second time. Studies about amending the legislation according to Sweden have been conducted, but no recent opinions have been published, and the opinions are relatively old. The thesis examines, **Should Finland include similar reform into the legislation in order to speed up the procedures, and would that resolve the structural problem of delayed proceedings on a national level**. The hypothesis is that **the modernisation of the oral hearing according to the Swedish model in the Court of Appeal would speed up the procedure in the second instance.**

The subject of the thesis is juridical, and research methods are especially the analysis of the current legislation and legal comparison of systems. The research is normative, and it has the object of examining, by combining empirical and theoretical research, would the change of legislation be effective and desired in the context of procedural times of the Court of Appeal. Empirical research in the field of procedural law is not common, but it is necessary in this case because quantitive research produces the substance which supports the arguments used in the thesis.

The first chapter introduces the European Convention of Human Rights Article 6 Right to Fair trial and examines in detail the history of Finland's cases related to the violations of the reasonable time requirement. A comparison to Sweden is introduced, as it gives essential information about the current situation. The second chapter combines the problem of delays and the oral hearing in the Finnish Court of Appeal and introduces the problems behind the extensive lengths and changes that have been done in order to find a solution. The results of the reforms made in the past justify why a different kind of change in the system is needed. The third chapter is anto the Swedish Court of Appeal procedure, where after the reform of 2008 a new procedure has been in force. It introduces the main principles and aims of the reform and discusses about the implementation into

Finnish law. The fourth chapter offers an insight into the future and contemplates with the possible modernisation of the oral hearing procedure in order to tackle the current problems with the help of the Swedish model.

1. European Convention on Human rights: Article 6

1.1. Length of procedure: effect on human rights

The Right to a fair trial is the sixth Article in the European Convention on Human Rights (ECHR) and an essential element of a modern civilised jurisdiction. The right to a fair trial is the keystone of a society based on the rule of law. Where a fair trial cannot be guaranteed, the other rights of citizens lose much of their value [3]. The object of the provision in Article 6(1) is to protect the individual concerned from living too long under the stress of uncertainty and, more generally, to ensure that justice is administered without delays which might jeopardize its effectiveness and credibility [4].

ECHR//EEC
ARTICLE 6, Right to a fair trial:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

According to Article 6 point 1, a right to fair trial considering the length of the procedure means, that everyone is entitled to a fair and public hearing within a reasonable time. This includes a structural obligation for the states: As the European Court of Human Rights (ECtHR or The Court)

[3]. Brems, E. (2005). Conflicting human rights: An exploration in the context of the right to a fair trial in the European convention for the protection of human rights and fundamental freedoms. *Human Rights Quarterly* 27(1), 298

[4] *Bottazi v Italy* (34884/97) 28 July 1999 ECHR 1999 in Rainey, B., Wicks, E., Ovey, C., Jacobs, F., White, R., & Ovey, C. (2014). *The European convention on human rights* (6th ed., p. 272). Oxford: Oxford University Press.

stated in *Frydlender v. France*, it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations [5]. The reasonable time guarantee will apply to any delays for which the state is responsible in the execution [6]. Where certain stages of the proceedings are in themselves conducted at an acceptable speed, the total length of the proceedings may nevertheless exceed a "reasonable time" [7]. The Court has established a guide for applying Article 6 because the reasonable time is a concept which needs an assessment *in casu*. The Court looks in particular at the complexity of the case, the behaviour of the applicant in comparison with that of the judicial authorities, and in civil cases at the importance of the dispute for the applicant.[8]

1.2. Right to Fair trial in Finland

Finland ratified the European Convention of Human rights (ECHR) in 10.5.1990 [9] and has since been obliged to follow the decisions of the Court of Human rights (ECtHR) and the Convention. In general, Finland has been held respecting the Conventional rights successfully, and human rights are protected in Finland thoroughly. No severe human right violations are considered to have happened in Finland, and the right to a fair trial has been held as a core right of citizens. The right to a fair trial was written in the Constitution of Finland long before Finland ratified the Convention, but some amendments have been made in order to guarantee the full implementation. For example, when Finland joined the Convention, they made a reservation to article 6 regarding the right to hear the parties orally also in the second instance[10]. However, in 1998 due to the general procedural reform, the general rule of oral hearing widened also to the Court of Appeal, meaning that this reservation could be wiped off and Finland is now fully complying with the Convention. Although the Human right situation in Finland is regarded as being in some areas even top class,[11] Finland has had several judgements considering the delayed proceedings in the national courts. The Court

[5] *Frydlender v. France*, no. 30979/96 ECHR 2000
[6] Harris, D., O'Boyle, M., Warbrick, C., Bates, E., & Buckley, C. (2014). *Law of the European Convention on Human Rights* (3rd ed., p. 396). Oxford: Oxford University Press.
[7] *Dobbertin v. France, paragraph 44;* ECtHR
[8] Brems, E. (2005) Supra Nota 3, p. 297
[9] Viljanen, J. (2007). European Convention on Human Rights and the Transformation of the Finnish Fundamental Rights System: The Model of Interpretative Harmonisation and Interaction, *The. Scandinavian Studies in Law* 52, 305
[10] Leppänen, T. (2000). Suullisen todistelun keventäminen hovioikeuden pääkäsittelyssä, *Lakimies* 7–8/2000, 1198
[11] In EIGE equality index Finland has repeatedly taken top places in country rankings in terms of equality https://eige.europa.eu/publications/gender-equality-index-2017-finland (accessed in 13.3.19)

has held many times, that the Finnish authorities have not been able to guarantee the right to a fair trial succesfully, especially when it comes to the length of the proceeding[12]. However, fair trial, in general, is a valued element in Finnish legislation and is protected by authors for example, the Parliamentary Ombudsman and the Chancellor of Justice of the Government.

1.2.1 The History of Finland's excessive length of procedure cases in the European Court of Human Rights

In order to understand the extent of the problem, it is necessary to examine the statistics of all the cases Finland has been held violating the article 6 and compare it to other countries, in this case, to other Nordic countries such as Sweden and Norway, since they are in many ways similar to Finland.

In the early 2000, the problem of excessive length of procedure arose with the first case being *Nuutinen v. Finland* in 2000 [13]. In the case the Court held that in both national instances the authority was granted too much time in preparing an opinion, which made the total procedure extensive taking into account the nature of the case. The same theme has been seen in later cases too for example in *Kangasluoma vs. Finland* [14]. In 2009 already 34% of all judgements where a violation had been found against Finland concidered the excessive length of proceedings. This means 26 cases of a total of 75.[15] In 2013 there were 59 cases concerning the excessive length, wih a sich significant increase in only four years [16]. According to statistics in 2017, Finland has gotten a total of 62 judgements finding a violation concerning the excessive length of proceedings [17]. This is 44% of all judgements (140) where a violation was found. The same numbers are published for the year 2018 [18].

When examining the cases closely, no common trend can be detected as the reason for the excessive length. The Court has established that delays have been happening in all court instances

[12] See for example Kangasluoma v. Finland, no. 48339/99 ECHR 2004
[13] Nuutinen v. Finland. ECHR 2000, *Human Rights Case Digest* 11(3), 311-316.
[14] *Kangasluoma v. Finland*, no. 48339/99 ECHR 2004
[15] Country Statistics: Finland, European Court of Human rights, 2009 (2009) Accessible: https://www.echr.coe.int/Documents/Country_Statistics_2009_ENG.pdf 21 January 2019
[16] Table: Violations by article and by state 1959-2013, European Court of Human rights (2013) Accessible: https://www.echr.coe.int/Documents/Stats_violation_1959_2013_ENG.pdf 21 January 2019
[17] Supra nota 2
[18] ECHR and Finland: facts and figures, European Court of Human Rights, 2018 (2019) Assessible: https://www.echr.coe.int/Documents/Facts_Figures_Finland_ENG.pdf 21 January 2019

and also in the preliminary investigations. Such matters as economic crimes [19] and case backlogs [20] have been often tackled in the Court regarding Finland.

It can be concluded that the number of cases submitted and where a violation has been found has decreased from the early years: while in four years between 2009-2013 the number increased by 36 cases, between 2013 and 2017 it increased by only 2. It is clear that a change on a national level has been done and specifically the reform of 2010 resolved the problem by introducing a new remedy. The problem is not anymore on the Union level as fewer cases are admitted in the Court. However, this does not remove the fact, that the extensive lengths are still a problem and are affecting the human rights of the citizen in the national levels.

1.2.2 Nordic Comparison

The comparison of Finland with other Nordic countries can be justified with the fact that the Nordic legal system is quite homogeneous due to the close history and current co-operation on the legal field. The procedural systems and main principles are almost identical in Sweden and Finland, which is grounded in the common history during important period in the development of the Finnish legal judiciary[21]. Moreover, Finland and Sweden have many other similar characteristics not only the history but for example, the close geographical location, economic situation and the membership in the European Union.

Sweden ratified the ECHR in 2.4.1952 [22] which is 38 years before Finland's ratification. Between 1953-2013 Sweden has had 12 judgements considering a violation oflength he the h of procedure and until this day the number has not increased [23]. In total, The Court has found at least one violation in 60 cases against Sweden, whereas in Finland the same number is 140. It is notable, that Sweden has been a part of the Convention 38 years more than Finland and yet it has half of the violations compared to Finland. The comparison to Norway is even more distinctive: Norway has only two violations concerning the same matter [24] until the year 2013. In 2013 Finland had

[19] See *Ruoho v Finland* no. 66899/01 ECHR 2005, *Narinen v Finland* no. 13102/03 ECHR 2007
[20] *Molander v Finland* no. 10615/03 ECHR 2006,
[21] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 249
[22] Nergelius, J., & Kristoffersson, E. (2014). *Human rights in contemporary European law* (6th ed., p. 131). Portland: Hart Publishing.
[23] Supra Nota 18
[24] Supra Nota 16

roughly the same amount of violations concerning the excessive length than Europe's poorest country Macedonia [25].

As seen from the statistics, a major of cases against Finland is related to the Article 6 of the ECHR and especially to the excessive length of proceedings. This trend is common in the applications to the ECtHR: It is considered that issues under Article 6 of the Convention concerning access to Court, fair trial and speedy length of proceedings contribute substantially to the Court's workload [26]. In fact, in 2018 24,10 % of all cases where a violation had been found were about the Article 6 [27] . However, the big difference between Finland and the neighbouring countries Norway and Sweden, where the violations of delayed proceedings are one of the lowes the Europe and where the legal system is held to be quite similar to Finland is worrisome and raises questions. The numbers cannot be explained by differing sizes of Finland and Sweden or economic differences since the similarities between the two countries and the judicial systems offer a solid base for the comparison. A need for more in-depth analysis is needed in order to find the reasons behind the lack of effectiveness of the Finnish court procedure.

[25] Ibid.
[26] Villiger, M., (2007) *Fair Trial and Excessive Length of Proceedings as Focal Points of the ECtHR's Increasing Caseload ,The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions* p.93-103, Springer, Heidelberg
[27] Supra Nota 18

2. The Finnish Court of Appeal and delayed proceedings

2.1. Finnish Code of Judicial Procedure

The Finnish civil procedure is regulated in The Code of Judicial Procedure, oikeudenkäymiskaari (4/1734), which also provides complimentary provisions for criminal and administrative proscedure. Similar to Sweden, the code makes a distinction between dispositive cases in which the parties are free to settle outside the court and non-dispositive cases which are not amenable to settlement out of court [28]. The base of the law is the Law of 1734 which was codified in Sweden and it is still in force. Finland has a history of reforming the code of judicial procedure few times over the years in order to tackle the problems in the procedure. It is essential to describe these changes in order to understand, why despite so many amendments, we still need to modernise the system more.

2.1.1. The first reforms and the starting point of the delays

Finland has been following the example of Sweden in reforming legislation due to their common history and for example the reform of procedural law in the 1990s [29] took a model from Sweden. The wholesome reform of the Code of Judicial Procedure was under construction for a century. Finally, in 1993 the Civil Procedure Reform took effect and in 1997 it was followed by the Criminal Procedure Reform. In 1998 the Court of Appeal procedure was reformed to comply with the European Convention of Human rights[30] and to add the number of orally handled cases, as formerly the cases in the Court of Appeal were solely handled on paper [31]. Finland had a tradition of written procedures in the Court of Appeal which came along from the Swedish jurisdiction after Finland started to form their jurisdiction. This change to include oral proceedings was big and demanded many resources from the prosecutors and courts. Afterwards, the reform received much criticism and in early 2000s [32], it was starting to look like the reform affected the length of proceedings, as the average handling times increased from 5,2 months in 1997 to 8,0 months in

[28] Koulu, R., (2015) *Evidence in Civil Law - Finland,* Institute for Local Self-Government and Public Procurement Maribor, Maribor. p. 1
[29] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 270
[30] See Finland's reservation to the Article 6
[31] Leppänen, T. (2000). Supra Nota 10, p. 1198
[32] Ibid.

2001.[33] It has to be remembered that a procedural change in the District courts was also done and the statistics show an increase in their handling times also.

The reform had many critiques, and it was presented that the reform was unsuccessful as problems of increasing expenses and length of procedure arose[34]. Therefore, a re-reform of 2003 was made in order to resolve these problems and delete the problems of expensive and excessive procedures. The length of the procedure on average has been decreasing from the year 2000 when the first cases in the ECtHR were conducted. However, this change is not as significant than the increase in the time from 1997 to 2001 from 5,2 months to 8 months. [35] This increase was noted in the Court also, and the reform of 2003 was made in order to solve these problems.

It also has to be noted that the trend of lightening the composition of the court and decreasing the number of courts has been popular in recent years. The District courts are responsible for an actually ually bigger area than a district would consist of, which means an area of several municipalities. Also, the Court of Appeal has faced significant changes and only five Court of Appeals are dealing with the cases nationwide. Due to these changes, the length of proceedings could be a result of having fewer resources for handling cases on time. However, as L. Ervo states, the delays are due to a number of reasons, and the new procedure was not the only reason, but it was and is responsible for this kind of development as a one "player" on the field of jurisdiction[36]. The lack of resources is a problem that has also be tackled in order to affect the lengths positively.

2.1.2 The recent efforts made considering the excessive length

After receiving many judgements about the delayed proceedings from the ECtHR and because the Court had concluded in many cases such as *Kangasluoma v Finland*, that the remedies set in the national law were ineffective, [37] a proposal of amending four laws and creating a one new one was introduced in 2008. The Ministry of Justice in concluded in their note of 2010 that the maximum length of the whole procedure should not be more than four years from the starting of the preliminary investigation to the judgement of the Court of Appeal [38]. For example, in 2009 the

[33] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 268
[34] Leppänen, T. (2000). Supra Nota 10, p. 1198
[35] Legislative draft HE 2002/91 (2002) Accessible: https://www.edilex.fi/he/20020091 1 February 2019
[36] Leppänen, T.,(1998) p 437 in Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 265.
[37] Viljanen, J. (2007) Supra Nota 9, p. 299-320
[38] Statement of the Ministry of Justice of Finland. 87/2010 (2010) p. 32

police investigations took approximately three months while the time the prosecutor used was two months. While the average time the district court used in a criminal charge was three months, this calculation leaves only two months for the Court of Appeal if the goal of overall maximum would be met. Clearly, this is not possible.

1 of January 2010 came into force:

- A new Chapter 19 to the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*; as amended by Act no. 363/2009)
- The Act on Compensation for Excessive Duration of Judicial Proceedings (*laki oikeudenkäynnin viivästymisen hyvittämisestä, lagen om gottgörelse för dröjsmål vid rättegång;* Act no. 362/2009)
- A new paragraph 53a to the act on Administrative Judicial Procedure (*hallinnonkäyttölaki, Förvaltningsprocesslag;* as amended by Act no. 363/2009)
- Amendmeo the paragraph 80 of the act on Income Taxation, t*uloverolaki, inkomstskattelag*; as amended by Act no. 363/2009)
- Amendment to paragraph 19 of the Chapter 4 of the Enforcement Code (*ulosottokaari, Utsökningsbalk*; as amended by the Act no. 363/2009)

The most important changes in the context of the matter in hand are the first two. The new chapter to the Code of Judicial procedure provides a possibility to apply an for acceleration of pending proceedings due to specific reasons for example due to the length of proceedings. A successful application grants a priority examination before other cases in the district court. Application of this chapter has a direct effect on the length of procedure. The Act on Compensation for Excessive Duration of Judicial Proceedings provides a private party with compensation from the State funds if judicial proceedings last an excessively long time.

These reforms were justified with the high number of violations Finland had had in the Court and with the long times that the procedure took in average in the different court instances [39]. The law proposal stressed that the average procedure time in the Court of Appeals in 2006 was 7,6 months and in 2007 7,5 months, and that is not an acceptable length. For example, the whole procedure time in criminal procedures from the commitment of the crime to the decision of the court was in

[39] Law Proposal HE 233/2008 vp

average 21,3 months.[40] Not all of these laws will affect the length of the procedure, but as a whole, they all were necessary to comply with the international obligations that the Court set up. The Act on Compensation for Excessive Duration of Judicial Proceedings was originally regulating the general courts, but the scope of application was widened to administration courts in 2013[41]. This tells, that the act was held to be so effective, that it was amended to cover cases of administrative matters to help compensation in there also. Consequently, later in the case *S.V. vs Finland* the Court held that the Act on Compensation for Excessive Duration of Judicial Proceedings is an effective remedy from the point of view of of the Convention. This statement changed the possibility to appeal to the Court, since it now holds that if a compensation according to the act had been done in the national court, the case cannot go forward to the Court as a proper compensation has been. offered.

2.1.3. Solving the problem of compensation, not delays

It has been a public consensus, that the number of delayed proceedings is decreased and that the biggest problem is in the past. The statistics from the European Council partly support this. However, it can be argued, that the reason for these results is not the fact that delayed proceedings do not exist. The statics only show the cases that have been appealed to the Court and which have qualified the conditions of admissibility. The reason that fewer cases find their way into the Court is the fact that Finland has introduced new ways to compensate the delaying on a national level after a recommendation by the Court such as the Compensation Act, which is held by the Court to be effective in the case *S.V. vs Finland.* The fact that the remedies compensating the delays are needed tells, that the delays in procedures still happen, even though they do not exist in the statistics by the Court. It can be said that the problem of delays is an obvious one in Finland, and it has also been taken seriously by the Parliament, the Ministry of Justice and other actors in the field as well, including the general audience. However, the problem still exists, and despite many reforms, it has not been solved yet [42].

[40] Ibid.
[41] Reinnmann, M., (2015) Oikeudenkäynnin viivästymisen hyvittäminen hallintolainkäytössä, pro-Gradu, University of Tampere, Tampere
[42] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 274

2.2 The oral hearing in the Court of Appeal

Oral hearing in the Finnish court procedure is one of the core principles that support the immediacy principle and the best evidence rule [43]. It is a manifestation of an public trial and thus forms one of the key principles of Article 6(1) of the ECHR. [44] Article 6(1) of the ECHR also covers oral hearing in the appellate courts and it can be demanded in cases where the written procedure is not enough to quarantee a fair trial to the parties. The Court has stated that regard must be had in assessing this question to, inter alia, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided by it and their importance for the appellant. [45]

Although in Finland the oral hearing has been given a priority before written procedure *de jure*, the trial procedure in the Finnish court of appeal is usually made in written behind closed doors. The recent statistics provide that in 2017 from all of the cases only 26,7 % were held in the main hearing while 74,3% were decided in the written procedure [46]. At the same time, the legislator has had as the goal to decrease the number of oral hearings by many amendments by using the burden relief of the courts as the excuse. A lower number of main hearings means that fewer resources are needed for the appellate court as the written procedure needs only the judges residing in the same room without the costs such as compensation for witnesses or the setting of a new trial date after cancellation, which inevitably delays the trial. For example, Leppänen thought that it would be more beneficial to relieve the burden by changing the content of the main hearings than decreasing the number of them[47]. However, the legislators have held their position, and the most changes into the law has had the main focus on decreasing the numbers of oral trials.

[43] Jokela, A. (2010). *Hovioikeusmenettely* (2. ed). Helsinki: Talentum. p. 360
[44] Hirvelä, P. (2013). *Ihmisoikeudet: Käsikirja EIT:n oikeuskäytäntöön*. Helsinki: Edita Publishing. P. 2
[45] Belziuk v. Poland no 23103/93 ECHR 1998
[46]Publicationsations of the government, statistics of the Finnish Court of Appeal 2017 accessed 20.4.19, http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160698/OMTH_11_2018_Tuomioistuinten_ty%C3%B6tilastoja_2017.pdf
[47] Leppänen, T. (2000). Supra Nota 10 p. 1199

2.2.1. Problems and effects on lengths

Already in 2000, publications about the oral hearing in the court of appeal and de lege ferenda were published [48]. Already back then it was acknowledged that modern technology would change the meaning of the principles of immediacy and credibility which are held high in the Finnish procedural law. The popularity of the subject was also a result of the procedural reform that changed the whole legislation concerning the court proceedings. This reform was the result of almost a century of proposals of modernization to the procedural law. Due to the first reform's failure, studies about how to reduce the burden of the court of appeal in order to tackle the problems it had were concluded.

The screening system of 2003 was renewed in 2011[49] to restrict the number of cases in the appellate courts by introducing the current system of leave for a continuous appeal. It was also suggested at the same time in the bill 63/2009 that one way of modernizing the procedure would be to follow the example of Sweden and shift the focus of procedure more to the first instance by introducing video recordings as a way of conducting the procedure in the second instance. [50] However, this was held to be too unsure and a too big of an change although a minority of the committee were ready to implement this into the law [51]. Consequently, many smaller changes have been made. The hesitation of the legislators is understandable due to the failures in the history of amending procedural laws, as describn the chapter 2.1.1.

However, the problematic issue that is still crrent, is that that the main hearing in the second instance is held in the same extent as in the first instance [52] so this amendment was not as effective as it was hoped to be. It had been criticised that this system would be applicable in such procedural systems where the general rule is that the main hearing in the court of appeal is oral, such as in Sweden [53]as stated in the beginning of the chapter, but in Finland a major of cases are handled in the written procedure. In 2010 when the bill of the law was presented, 33,% of cases were handled

[48] See for example Leppänen, T. (2000). Supra Nota 10.
[49] Laki oikeudenkäynnin muuttamisesta 650/2010
[50] Legislative draft LA 63/2010
[51] Jokela, A. (2010) Supra Nota 43, p.32
[52] Vilkko, E.,(2015) Modernimpi hovioikeusprosessi – käräjäoikeuden kuva- ja äänitallenteet hovioikeuden suullisessa todistelussa, Pro Gradu, University of Helsinki. p.27
[53] Virolainen, J., (2009) Blog post 189. Hovioikeusprosessin uudistaminen, osa II: yleisiä näkökohtia jatkokäsittelyluvasta. accessed 1.4.18 http://jyrkivirolainen.blogspot.com/2009/11/189-hovioikeusprosessin-uudistaminen.html

orally [54]. Now, in the appellate process, it is common that there are actually two written phases, the leave for the appeal and the written procedure itself, which both are handled behind closed doors. Moreover, the new leave for appeal system does not give - even in theory, a change for every case tried in district court to go forward to the court of appeal due to different restrictions and requirements set in the Code of Judicial Procedure [55]. This questions the legal security of individuals who should have a right to a fair trial in any case. It must be noted that the screening system before this did allow everybody a chance to bring their case to the apellate court, even though they were declined in there.

In 2011, law 650/2010 changed the code so that oral hearing in the court of appeal would be conducted if the parties demanded it or there were special reasons for the court to arrange an oral hearing [56]. Again, this change was also part of the plan of reducing the burden of the court and aimed to the elimination of oral trials in cases where a written procedure is enough, even though, it is clear that the number of orally handled cases is not high. It seems like the legislators did not want to amend the content of the hearing in the first place and after realising that that a change of law did not result in a more efficient apellate court system and saving of resources, they made another change to decrease the numbers more.

2.2.2. Modernisation of 2016

The most recent amendments considering the hearing in the Code of judicial procedure have been centred in the content of the trial, and not trying to decrease the number of the main hearings.
The most crucial step towarrds successfully changing the oral hearing was the modernization of procedure in 1.1.2016 [57]. Then came into force the amendment to the Code of Judicial Procedure, which regulated the use of video and phone conferencing as a competent way of hearing the witness in cases when it was not possible for the witness to come present in the court or it was justified from the point of view of witness protection. Again, Finland followed the model of Sweden. A distinction between direct and indirect types of evidence is not made in the Finnish law of evidence. Audio and video conference may be used to obtain evidence from a distance when

[54] The statistics of the Finnish Court of Appeal of 2010, accessed in 22.4.18, http://www.tilastokeskus.fi/til/hovoikr/2010/hovoikr_2010_2011-09-23_fi.pdf
[55] Oikeudenkäymiskaari, 4/1734
[56] Laki oikeudenkäymiskaaren muuttamisesta 650/2010
[57] Laki oikeudenkäymiskaaren muuttamisesta 732/2015

there is a synchronous link between the main hearing and the distance access point[58]. Such video or audio evidence may be obtained from abrad as well, if the other state approves this procedural act.

The reasons for not modernizing the oral haring more, is deeply linked to the procedural principles and elements, which question the immediacy of video conferencing. The law establishes that the immediacy is maintained if the testimony is given live and with justified reasons. A recording of the testimony was not seen something the court of appeal was ready to implement although, the need for it was seen in the Bill 63/2009 to change the hearing according to the Swedish model. Moreover, due to the problems the procedural reforms caused in the past, the legislator was not understandably interested in making another wholesome reform to the core of the procedural system without more knowledge about the effectiveness of the system in Sweden. However, the law of 422/2018[59] that came in force in 1.1.2019 allowing the hearing of the accused in the appellant court through video conferencing is a definite step towards modernisation. If witnesses and accused both can be present via video in the trial, that is a more closer status of law towards the Swedish system than there has ever been

2.3. The connection between the delays and oral hearing

The fact that the number of main hearings has been restricted to the point that it is hard to find a way of amending the law more to decrease the numbers without inevitably encountering problems with the legal safeguards of the citizen shows that the legislator has connected the problem of delays with the oral procedure. In many years the numbers of the main hearings have been tried to decrease in order to save resources and make a more effective system. However, it can be questioned, how much the ineffectiveness of the system depends on the resources needed in the main hearings keeping in mind, that only 2194 main hearings were held of the total solved cases 8217 in 2017[60]. And moreover, would the problem be solved in another way of changing the law, for example, by using the Swedish model implemented into the main hearing system, now that

[58] Oikeudenkäymiskaari, 4/1734, chapter 17 § 34 a
[59] Laki oikeudenkäymiskaaren muuttamisesta 422/2017
[60] Publishment of the government: statistics of the courts 2017, accessed 20.4.19 http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160698/OMTH_11_2018_Tuomioistuinten_ty%C3%B6tilastoja_Moreover,7.pdf

already videoconferencing is used? This implementation means that the main hearings could be tried more efficiently and time and resources are then opened for more cases.

3.The Swedish Procedural Law Reform

In 1.11.2008 in Sweden came in effect a complete renewal of the appellate court system that was changed by the law SFS 2005:683. Before this, a similar system to Finland of leave for an appeal was in force. The system was widely updated in the reform and it was prepared for four years, which gave time to implement the procedural changes, for example, technical devices into the court rooms and so on [61].

3.1.The Reasoning for the Reform

The reformed code of Procedure in 2008 introduced a new aspect of the oral hearing in the court of appeals in Sweden and also in the world. The Bill is called A Modern Trial (En modernare rättegång, Government Bill 2004/05:131). The change was that testimonies in lower courts proceedings now are video recorded and, in case of an appeal trial, then are screened in the court of appeal. Althought the primary function of the Swedish court of appeal even before the reform was to evaluate and correct decisions made in the first instances, in many cases the trial in the second instance amounted to a new full hearing of parties and witnesses [62], like in Finland.

In order to maintain the principle of best evidence, which in the Swedish judicial system is closely tied to the principles of orality, concentration, and immediacy, the same as in Finland, the use of video technology is there viewed as offering means for both a more rational and more efficient division of labour between primary and secondary instance, but without compromising the legal rights of the individual[63]. It was seen, that the District court trial should not be held as a moot trial for the Court of appeal trial. The starting point in the district court should be, that the matter is handled "here and now" [64]. A similar problem exists in the Finnish system also.

Before the amendment, a major of the appealed cases were tried exhaustively on the appellate court again like in the district court. This means that the appellate process is usually very similar to the district court especially when the oral evidence is again tried in the court of appeal. When

[61] Jokela, A. (2010) Supra Nota 43, p.61
[62] Fitger, P., (2008) Förhållandet mellan tingsrätts- och hovrättsprocess. *Svensk juristtidning* 5/6, 458-459
[63] Leif Dahlberg, (2013), A Modern Trial: A Study of the Use of Video-Recorded Testimonies in the Swedish Court of Appeal, in Austin Sarat (ed.) *Studies in Law, Politics, and Society* Vol. 61 Emerald Group Publishing Limited, p.91
[64] Leven S, Wersa¨ll F (2011) En modernare rätttegång – hur har det gått? , (p 16), *Svensk Juristtidning*

the process in the appellate court is as exhaustive as in the district court it will bring harm to all of the parties. The handling time can double, and this means that the parties have to wait for their justice for more than it would be necessary. Also the procedural costs are more significant than they should be. Delays and high costs are a problem from the point of view of individual's legal certainty. The government wanted to update the code of conduct so that it fulfils the citizens' rights of efficient and prompt trial. [65]

The Swedish legislators have been ahead of time before: Sweden was the first country to allow both video and telephone testimonies [66]. Ths is peculiar, since the past shows that introducing the film and using it as evidence in the court of law has been slow and the modern judicial system has an ambivalent attitude towards photographic image [67]. For example, tape recorders were introduced from early on but allowing the cameras to the court room has taken decades. This slow pace of change seems to be a characteristic of judicial systems and reacting slowly has been seen as a secure and reasoned way of conduct. A reason for Sweden to pass on the legislation was to keep up on the current changes of technology and have a solution to problems from early on and not when the delays are more usual. The Swedish legislators already saw the possibility of increasingly excessive procedures due to the trend of cutting resources from the courts together with the overly burdened court of appeals.

3.2. The changes in the law

The reform amended the Code of Judicial Procedure in both civil and criminal cases, Rättegångsbalken (RB) 1942:740.

In Sweden oral hearing is conducted only if the court finds that relevant in the case (RB35:13) and that is when the records from the district court are played. Only in the cases when there arises new questions for the witnesses, the wittnesses called in to the main hearing (RB 35:13.). This means, that the hearing in the lower court has to be conducted efficiently and thoroughly. At the main

[65] Bill 2004/05:131 p. 171

[66] Justitiedepartementet, Regeringskansliet. (2004). *Internationell rättslig hjälp i brottmål: tillträde till 2000 års konvention om ömsesidig rättslig hjälp i brottmål mellan Europeiska unionens medlemsstater* (p. 88). Norstedts Juridik AB Stockholm.

[67] Mnookin, J. (1998). The image of truth: Photographic evidence and the power of analogy. *Yale Journal of Law & the Humanities*, 10(1), p. 1–74.

hearing, the parties can also present legal material by referring to documents in the case and have wider possibilities to evoke written testimonies[68].

3.3.Effectiveness in practice

According to the Government's official investigations, the new procedure for presenting evidence by playing back audio-visual recordings and holding additional examinations has proven to be successful. The new technique has overall been satisfactory, and the new procedure has led to a substantial decrease of cancelled hearings. Between 2008 and 2012, the decrease in this respect was 77 %. During the same period, the length of proceedings in the civil cases has also decreased from 7.6 to 3.8 months, i.e. 3.8 months shorter. The administrative work of summoning parties and witnesses has also decreased. [69] These results have a direct effect on the lengths of cases and the lesser need of resources. For example, the civil cases determined following a main hearing have decreased from 31,5% in 2008 to 13,4% in 2018. [70]

The Swedish National Courts Administration inquiry published that compared to 2008, the last year before the effects of the reform, the length of proceedings has gone down. In 2008, the Government's goal was seven months in both instances. The actual length was 8.6 months in the district courts and 9.7 months in the courts of appeal. The conclusion is that the district courts, in general, in 2012 were close to fulfilling the goals and that the courts of appeal, in general, fulfilled the goals. [71] In 2018 in the court of appeal, the time targets set by the government were also fulfilled or were close to fulfilling. [72]

It has to be remembered that the reform of 2008 did not only address the Court of Appeal and the change of the heaing procedure, but that many other changes were also made. There have also been other legislative changes in recent years, which have had an impact on the workload of the courts. For example in 2011, the handling of certain court matters was transferred from the district

[68] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 260
[69] ibid p. 263
[70] Swedish Court statistics 2018 (accessible 22.4.19)
http://www.svea.se/upload/Lokala_webbplatser/Domstolsverket/Statistik/court_statistics_2018.pdf
[71] Swedish National Courts Administration inquiry (2012) Stockholm: Elanders Sverige AB p 12-14
Accessible: https://www.regeringen.se/49bb87/contentassets/93376d8ccda84a48b82569ee9152b75c/en-modernare-rattegang-ii---en-uppfoljning-del-1-huvudbok-sou-201293 22 April 2019
[72]Swedish Court Statistics (2018) Supra Nota 69

courts to various administrative authorities. The reform was a step in the direction of refining the tasks of the courts to judicial matters. The amount of filed court matters has, as a consequence, decreased during the years of 2011 and 2012.[73] This difference of systems has to be remembered in comparing the numbers of Swedish and Finnish court cases.

In addition, the Swedish court of appeal judges have been positively surprised about the quality of the recordings. The technique has been held as user-friendly and also as a secure way to receive testimonies.[74] The national courts carefully made sure that the technological needs are met and that the quality and security of the recordings are fulfilled as the preparation of the law took four years.

3.4. Model for the Finnish Reform

The fact that the jurisdictions of Finland and Sweden are almost similar and Finland has a history of successfully reforming legislation after the model of Sweden gives a solid base for a reform of the oral hearing in the Finnish Court of Appeal. As the studied effects of the reform in Sweden have been held positive and effective, and the reform has reached its goals in Sweden, Finnish legislators should take the possible need for an amendment seriously.

Taking into account that many scholars believe that technology is seen as being more involved in the court procedure, some kind of change is inevitable to keep up with the modernisation. According to the European Commission for the Efficiency of Justice (CEPEJ), the use of video conferencing is increasing in European judicial systems and that it is a foreseeable tendency that information computer technology will continue to be used in the judicial systems to increase effectiveness and quality. It is also foreseeable that new interesting solutions will be implemented since there is a trend towards rationalisation and an increasing use of performance and quality indicators in order to make justice more efficient. However, CPEJ states that there is a need to develop norms in order to define the range of application of the new tools and govern their use since there are no European standards at this stage.[75]

[73] Ervo, L., & Nylund, A. (2014) Supra Nota 1
[74] Leven S, Wersa¨ll F (2011) En modernare rätttegång – hur har det gått? , (p 30), *Svensk Juristtidning*
[75] European Commission for the Efficiency of Justice (2010), p. 128. in Ervo, L., & Nylund, A. (2014). Supra nota 1, p. 261

Many amendments to resolve the procedural delays have been made in Finland, but for example the lack of resources restrains the legislators and courts. The resources are being decreased from the courts year by year, and this trend is continuing. However, comparing the burden of courts in Sweden, the numbers are not in favour of Finland.

From the appendix 1 table in the appendices it can bee seen that in 2017, the both countries appellate courts had almost the same number of man-years[76] but in Sweden there were a total of 26 303 filed cases while in Finland only 8263. Moreover, in Sweden at the end of the year there were 5544 cases pending while in Finland there were 3780, which equals of a one third of the whole filed cases in Finland and one fifth in Sweden. Sweden had the expendure of the court of appeal almost twice of Finland's expendure, but there were three times more cases filed and determined.[77] In conclusion, the Swedish court of appeal solves with the same working hours three times more cases than the Finnish court of appeal. There are six court of appeals in Sweden and five in Finland, but the number of cases referred to each court is still much higher in Sweden than in Finland. Somehow Sweden works through with less resources more effectively than Finland and this shows again the success of their model.

Also as stated before, the recent reforms have been ineffective when it comes to the existence of the excessessive proceedings and other questions have risen, such as the legal certainty of individuals and the current main hearing systems unsuccessfulness. It it clear that the physical presence in the court is not an issue anymore and after numerous amendments made into the legislation in order to resolve the problems of delays, lack of resources and need for modernisation, no success story has been declared. The Swedish model of video evidencing has produced good results in Sweden even over ten years after it came in force.

[76] Sweden 415 and Finland 419
[77] Working statistics of Finnish courts 2017, (2018) Accessible: http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160698/OMTH_11_2018_Tuomioistuinten_työtilastoja_2017.pdf _25 April 2019, The year review of the Swedish court instances of 2017 (2018) Accessible: http://www.domstol.se/Publikationer/Arsredovisning/arsredovisning_2017_sverigesdomstolar.pdf 25 April 2019

4. Modernisation of the Finnish oral hearing in the Court of Appeal

4.1. De lege ferenda: Video evidencing

In Finland, reforms made to the code of judicial procedure have had as their goal to comply with the principles of procedure, which are held high in the Finnish judicial system. Even though modernisation has been in many aspects needed, the principles of immediacy, credibility, contradictory, publicity and orality have stayed in the core of the procedural legislation. While these principles ensure the fair application of laws and regulate the procedural conduct, they at the same time have also been the reason why modernisation and change of conduct has been slow and shy. For example, the principle of immediacy insists that the witnesses and parties are present in the court room. It adds to the principle of credibility and is an essential element of the judicial system. However, it can be contemplated that is physically being in the court room needed anymore, and could the immediacy still be applied with the help of modern technology such as video conferencing and video records.

Moreover, it is current to think about the credibility of a testimony made in the court of appeal again after the testimony has already given in the district court. Not only that it uses the resources of the individual and the court system, but it has been declared as a very problematic thing from the witness psychological perspective.[78]

It is true that a wholesome reform of procedure cannot be done hastily and often. At the same time, it must be kept in mind, that modernisation and use of technology could create a need for a reform anyway in the future. As from the newest amendment it is seen, the principle of immediacy has been concluded being met even in the case where the witness is not present in the court room. [79] The question about changing a whole appealing procedure into viewing the first instance proceedings through a video recording however, needs a comparison of a lot more things. That is why in the statement of 2012 by the Ministry of Justice, it was decided to wait for more experiences from the neighbouring country first [80]. However, now after seven years, the question could be

[78] Väisänen, T., (2014) Eräitä todistajan kertomuksen arviointiin liittyviä kipukohtia oikeuspsykologisen tiedon valossa. *Defenssi Lewis* (5/14) p. 730
[79] Oikeudenkäymiskaari 4/1734, chapter 17 § 52
[80] Statement of the Ministry of Justice 69/2012, p. 9.

retaken on the table, mainly due to the problems of the current system as presented in the chapter 2.2.1.

4.2.Possible effects on the lengths of proceeding

Clearly, the using of videotape to replacing the need of calling in witnesses and conducting the main hearing which is many ways similar than in the district court, would shorten the length of the procedure and at the same time be cost effective from the monetary perspective; this was recognised already in 1982: "If all testimony is by videotape deposition, the 'trial' concept would embrace simply the playing of the videotapes (subject to evidentiary objections) "sandwiched" between opening and closing statements. That could advance the trial date considerably, because the flexibility of scheduling, involving only counsel and the court, would permit the trial to be placed in any available open date on short notice" [81].

Although not only the court of appeal has had delays in judgements, fastening the second instance procedure would have an impact to the overall length of proceedings. The question is, would this effect be enough to justify the change of law and the whole second instance procedure? Currently, only 2194 main hearings were held of the total solved cases 8217 in 2017. This is a very small number compared to the number of main hearings in Sweden in 2018: a total of 11 666[82]. The effect would have to be big enough, so that it would help in expediting the cases decided in a written procedure.

Consequently, also amendments in the District court proceedings have to be done, although recording the court trial is common in the already existing procedure.

4.3 Other Effects

Besides looking at the matter from the perspective of the length of procedure, we have to take into account the legal security of individuals and procedural economy.

[81] Lucien v. McLennard, 95 F.R.D. 525, 526 n.2 (N.D. Ill. 1982). in Kengyel, M., and Nemessányi, Z., (2012) *Electronic Technology and Civil Procedure* volume 15, Springer, (p.43)
[82]Swedish Court Statistics (2018) Supra Nota 69

If the new legislation would happen, the persons questioned in the district court are, as a main rule, not questioned again in the court of appeal. This implies that the court of appeal, to a greater extent than before the reform, will try the case on the same material as was tried by the district court [83]. This is from the witness psychological point of view a solution to the current problem of the Finnish judicial procedure not offering optimal conditions to evaluate the credibility of the witness. [84] Since a court procedure can take many months or even years and, especially taken into account that delays are a problem in Finland, the credibility of the witness inevitably decreases. False memories and the fact that people often interpret situations afterwards according to current information[85] have an effect on testimonies.

From the point of view of procedural economy, according to the experience in Sweden, the amendment could save resources in the court, although also it would create new tasks for example administrative tasks for arranging the recording devices[86]. The effect of the law should solve the resource problem similarly than in Sweden, where the courts are working with twice more cases with the same resources than in Finland, as presented in chapter 3.4. For individuals not needed to travel to testimony again after even many years, it is certainly beneficial.

According to Susskind, technology is going to be used in the future court trials more, than currently and most likely trials can be conducted from a distance. He thinks lawyers of tomorrow could be physically courtroom the court room only rarely [87] and as European Commission for the Efficiency of Justice (CEPEJ) has also stated that in the future more technology is used in the court [88], it could be wise to follow the step of Sweden as being ahead of time and implement more technology into the court room now, as it may be that in the near future that is going to be the standard. For example, it has been suggested that a statistical process control (SPC), which is a quality control method used in industrial procedures, could be used as an aid to control handling time lengths. [89]

[83] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 260
[84] Väisänen, T., (2014) Supra Nota 75, p. 729
[85] British Psychological Society *(*2008) p 10–14 in ibid p. 730
[86] Ervo, L., & Nylund, A. (2014) Supra Nota 1, p. 258
[87] Susskind, R., (2014) *Juristin huominen. Johdatus tulevaisuuteesi.* Talentum Media Oy p.104-105
[88] See footnote 74
[89] Oakland, J.S., Statistical Process Control, (2003) Volume 5, Butterworth-Heinemann in Sutela, M., (2016) Arbitrium an decisio – Uniformity of Judicial Decision-Making in General Courts, Dissertations in Social Sciences and Business Studies, no 117, Publications of the University of Eastern Finland

4.4.Possible problems

There has been presented some criticue against video evidencing. In 1999 Lederer stated that "recorded testimony lacks the immediacy of live testimony" [90]. It is true, but today there is a more softer approach to the principle of immediacy due to the technology being increasingly regular even in the court room and fulfills the and as principles as long as the testimonial is ensured to be of good quality. On the other hand, it is contemplated, that a judge will face less favourably a witness, who is present only via videoconferencing. A judge may also make false accusations of the behaviour of the witness via video. A witness cannot affect the judge's feelings and create sympathy towards themselves. In other words, a video decreases humanity. The possible effect of physical and oral presence disappears.[91] Problems can also occur if the implementation is not done carefully. In Sweden the preparation took four years and so Finland should carefully take all matters into account and prepare the courts and administration for the new procedure.

[90] F. Lederer, "The Road to the Virtual Courtroom? A Consideration of Today's – and Tomorrow's – High-Technology Courtrooms," *South Carolina Law Review* 50 (1999): 799–844, 819.
[91]Koulu, R., (2011) Virtuaaliläsnäoloa istuntosalissa – oikeudenkäynnin tulevaisuus vai teknologiauskoisten utLegis *Defensor legis* 1/2011, p. 73–86

CONCLUSION

The thesis aimed to investigate, would the Swedish model of using video recordings in the court of appeal speed up the court procedures and resolve the structural problem of delayed proceedings. As the hypothesis, it was presented that the modernisation of the current oral hearing after the Swedish model would resolve the problem of the extensive lenghts.

The result that the problem of the delays lies in the many reforms and the laws created to erase the problems have caused only more issues, is surprising. Through investigating the reforms, it can be understood that the problem has been associated with the high number of oral hearings that demand a lot of resources from the apellate court and which have then been tried to decrease. However, should the shift of the focus be changed into the content of the procedure more than decreasing only the numbers of the trials? This has been done to the extent that the legal certainty of individuals could be jeopardized, if the decreasing affects too much into the possibility to appeal. After all, that too belongs into the consept of fair trial.

Lately changes into the content of the procedure have been made and witnesses and accused can nowdays be present via video conferencing or telephone. This has been enabled by the modern technology and the fact that it is more cost-effective than live presence in the court room. These few steps towards modernisation have been inevitable and the modernisation has also softened the old principles of procedure and live testimony is not anymore compulsory. Since the technology of using video recordings already exists in the court rooms, the investments to a new procedure of video evidensing is minimal. Since the video evidensing is a much more quicker procedure than transporting witnesses to the court room main hearing, time and capacity of the judges can be used in the other pending cases.

After learning the positive effects that the whole reform has had in Sweden, the video evidencing in the main hearing of the court of appeal seems like an possibility that the author supports as a new procedural amendment in the Finnish court system. However, the amendment's applicability to the cases in the scale of Finland is low, since only a few thousand cases are tried in the main hearing yearly compared to Sweden, where this number is much higher. Since Sweden has had the same problems of lack of resources and the problem of the second instance going through the same procedure as in the district court as in Finland and, without any improvements in the efficiency of the courts despite reforms in Finland, the model can be seen as a reform that could change the

scope of the procedure more into the district court while at the same time resolve the problem of resources and, the debated problem of excessive delays.

As it is described in the chapter 3.4., The Swedish courts of appeal are dealing with three times more cases on a yearly basis than the Finnish courts with more or less same resources. The effectiveness of their system is persuasive and as the similarity between the Finnish and Swedish systems has led to Finland modeling the Swedish law before, it would not be unusual to reform the oral hearing in the procedure of the court of appeal according to the Swedish model. The legislator has tried to solve the problems of the procedure in many reforms and amendments that all have been declared problematic by a wide scope of scholars. The restrictions in order to decrease the numbers of the main hearings where the oral hearing is conducted have met their limit as less than 30% of cases determined by courts of appeal are tried in the main hearing. The number cannot be longer decreased, but the content of the procedure can be changed in order to restrain the undue delays, so that the main hearing itself would be faster in order to free time and capacity for other cases. The Swedish model of using video evidencing in the oral hearing could be a solution in order to tackle the problems in the Finnish court of appeal and this is an possibility that should be taken seriously into account by the legislators.

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APPENDICES

Appendix 1. Table comparing the statistics in 2017 between Swedish and Finnish courts of appeal

In 2017	Swedish courts of appeal	Finnish courts of appeal
Filed cases	26 303	8263
Determined cases	25 800	8269
Pending cases	5544	3780
Man-years	415	419
Expendure (in 1000 eur)	61 419	35 406
Number of courts	6	5

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