SOCIAL EXPERIMENTS IN FINLAND

– From a research, ethics and legal perspective

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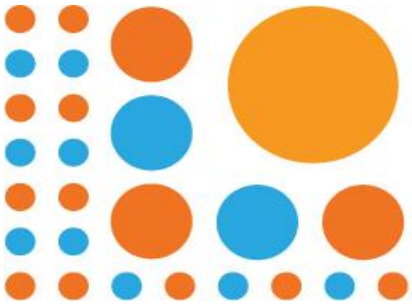

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Social experiments in Finland – from a research, ethics and legal perspective

Many social experiments are conducted in Finland. A key Government project aimed at introducing an experimental culture, which was included in Prime Minister Sipilä's Government Programme, has contributed to promoting growth in the number of experiments. To support this, the Prime Minister's Office and the ministries have published a number of reports and studies on the utilisation of experiments[1][2].

The need for experiments is based on the idea of good regulation, where the various effects of decisions are assessed in advance and different alternative decisions are considered in a balanced way.[3] This is an international trend that also seems to be increasingly taking hold in Finland.

In this paper 'experiments' and 'policy trials' refer to activities which seek to test the effects and impacts of a certain policy or measure relative to the previous state of affairs. Such experiments are used to support evidence-informed policy.

One key objective of social experiments is also to provide, for the preparation of decisions, reliable data on the desired and adverse effects of various policy measures. Experiments can provide reliable data equally well for legislative work and for the implementation of statutes. It should be noted, however, that if piloting and experimenting are not implemented expertly and carefully, the data obtained from them will not be reliable. At worst, poorly conducted experiments will lead to wrong conclusions and thereby to unsuccessful decisions and poor practices in implementing decisions.

A fundamental ethical and constitutional question about social experiments stems from the fact that in order to obtain reliable data about the effectiveness of various social measures we have to treat people in different ways and thus deviate from equality. In what cases is such a transgression acceptable in the name of obtaining data that benefit the whole of society, and in what cases should this not be done?

In Finland, the ethical position on human sciences research is determined by the Finnish Advisory Board on Research Integrity. The ethical principles it publishes [4] also comprehensively cover the ethical issues associated with social experiments. The intention of

[1] Annala, M et al. (2016) Funding Platform for Piloting and Experimenting; Ministry of Employment and the Economy (2015) Kokeileva kehittäminen; Annala, M et al. (2015) Design for Government: Human-centric governance through experiments; Forss, M et al. (2016) Mitä voimme oppia maailmalla järjestetyistä perusturvaan liittyvistä kokeista? Katsaus kenttäkoeasetelmiin

[2] Kokeilun paikka! –taustaselvitys, http://www.sitra.fi/sites/default/files/u570/2012-10-31_kokeiluyhteiskunta-keskustelupaperi_taustaselvitys_tuv_fin_doc.pdf

[3] Assessing the impact of proposed statutes: http://www.oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/200706saadosehdotustenvaikutustenarviointi.ohjeet/Files/Saadosehdotusten_vaikutusten_arviointi_Ohjeet.pdf

[4] Finnish Advisory Board on Research Integrity (2009) Humanistisen, yhteiskuntatieteellisen ja käyttäytymistieteellisen tutkimuksen eettiset periaatteet ja ehdotus eettisen ennakkoarvioinnin järjestämiseksi

this paper is to contribute to refining and supplementing these guidelines from a perspective that takes the special characteristics of social experiments into account.

The Nordic countries collect uniquely high-quality data on social activity, which makes it easier to implement reliable experiments cost-effectively. Register data in the Nordic countries is particularly interesting because it is possible to combine data from many sources. By developing new approaches to policy making, Finland can become, at moderate cost, the world's best environment for piloting and experimenting, which will attract the world's leading social scientists to study the country. An important part of this development is clarifying the ethical and legal framework of social experiments.

This paper has been prepared with the support of the Prime Minister's Office experimentation programme, and it is intended to assist political decision-makers deciding on new approaches, public officials preparing pilot studies, and researchers and other actors conducting social experiments to deliver better and more effective experiments. This document presents social experiments from the perspective of definitions, research methods and ensuring reliability[5], and it reviews the most important ethical and legal principles guiding piloting and experimenting. At the end of the document, the main problems are covered and an operating model with which the main problems could possibly be solved is proposed for consideration.

Definitions of experiments

In everyday usage, many kinds of innovative activity are now being called experiments. The phased start-up of new measures and the scaling of grass-roots initiatives may be useful tools in developing society. They are not, however, the sort of piloting and experimenting that provide reliable data referred to in this paper.

In this paper, piloting and experimenting means activity whose purpose is to study the effectiveness of some policy or measure compared with so-called normal activity. It is a question of pilots and experiments that support evidence-informed policy-making.

Example:

> Often, it may be known in advance how a change in the level of unemployment security will notionally affect the income of the unemployed and public expenditure.[6] On the other hand, it is impossible to know in advance how a measure will affect the behaviour of people of working age and thereby actual labour market activity and public expenditure, i.e. what the dynamic effects of the changes being piloted will be. An experiment will help us to find out how the changes affect people's behaviour, after which an assessment of the broader effects of the changes will be possible.

Experiments can be straightforward and simple, such as, for example, exploring the employment-improving effect of a single labour market measure. On the other hand, an experiment can also be used to study the effects of very extensive policy options that will impact people's lives in many ways. A good example of this is the basic income experiment,

[5] Recommended reading for those encountering experiments in their work: Glennerster, R., & Takavarasha, K., (2013). *Running Randomized Evaluations: A Practical Guide*, Princeton University Press, Princeton, NJ.

[6] In this, microsimulations, for example, may be used as an aid.

which is currently being prepared. Whether experiments are big or small, the basic principles presented in this paper are applicable to them all.

Concepts

The term intervention (treatment, measure) means that a change made as the result of an experiment and it has an impact on the subject of the experiment in some matter that can be influenced by the practices or decisions of a policy or organisation. Such changes may be, for example, changes in social security, business aid, authorities' operating practices, provision of education, and taxes. Changes are examined in relation to the earlier practice or activity.

The term test group means a group of people who are the target of the intervention selected in the experiment. It is important to form the test group representatively from the cohort of people about whose activities we wish to obtain data. The better the test group represents the cohort in question, the better we can make generalisations based on the results.

We can speak about a representative sample when the test group corresponds well in its various characteristics to the cohort about whose reactions to an intervention we wish to obtain new data.

The term control group means a group of people at whom an intervention is not directed during an experiment. The idea of a control group is that by studying this group data can be obtained as to what would have happened to the subjects of the intervention if the intervention would not have been directed at them.

The term dynamic effects means how the behaviour of those participating in the experiment, and thereby the outcomes that are the objective of the experiment, change (for example with respect to working, tax revenue, competence level, perceived wellbeing).

The term register data means data continuously collected about people and available to researchers in anonymised form. Utilising these data, the impact of an experiment on the people participating in the experiment can be reliably and easily followed for many years, and the effects of the experiments can be explored in many subareas.

Research perspectives on piloting and experimenting

When is an experiment appropriate?

There are no clear-cut rules as to when an experiment should be conducted or not should not be conducted; it is always a multidimensional issue. It is worth noting that although there are many questions to which answers can be obtained by doing an experiment, there are also many situations in which an experiment is not, for one reason or another, a good way to obtain answers. There follows some prerequisites and perspectives that are worth taking into consideration when deciding on an experiment.

1. The data obtained from the experiment are new

   Before embarking on an experiment, it is important to review the literature on the subject area and the research that has already been done on the same topic. Conducting an experiment is always somewhat onerous, and it is often more meaningful to use existing data than to start building an experiment.

2. The data obtained from the experiment can be utilised

When assessing an experiment plan, it is also worth examining the likelihood that the data obtained from the experiment will be usable. It is therefore important to understand the frame of reference within which the experiment will be conducted. At best, the data obtained from an experiment may be usable both in decision making and in the world of research.

3. The problem to be solved and possible alternative solutions have been determined

Before an experiment is launched, it is important to have an adequate understanding of the different aspects to the problem, and it is worth comprehensively exploring alternative solutions.

4. Experts familiar with experiments are involved

Almost without exception, experimental situations and the conditions under which experiments are conducted are so complex that formulating the design of the experiment as well as analysing and assessing the reliability of the data require the participation of an expert familiar with experiments.

In addition to contributing to the substantive success of the experiment, an expert familiar with experiments will be a valuable resource when seeking to allocate effectively the financial investment earmarked for the experiment. Results of equal quality may be obtained with different experiment designs whose difference in cost may be substantial.

5. Sometimes an experiment arises almost naturally

In individual cases, particularly interesting opportunities for experiments arise from situations in which the experiment design arises almost naturally. In some cases, very small changes in operating practices and systematisation of data collection may result in excellent experiment designs.

Experiment design

This paper will focus particularly on randomised A/B testing because, in the light of current knowledge, this is generally the most useful and easiest experiment design. In some cases, reliable data may also be obtained using other methods.

In a randomised A/B experiment, the individuals selected for the experiment are placed randomly into two or more groups. In the experiment, an intervention is directed at the individuals placed randomly in group A, and the individuals placed randomly in group B act as a control group. With respect to other factors influencing the outcome of the experiment, the groups are absolutely identical; the only difference between the groups is that some participate in the experiment and some do not.

After the experiment period, how the intervention has affected the individuals of group A is studied by comparing them with the members of the control group selected for group B. When there are sufficient test subjects and the test subjects have been placed randomly into groups A and B, the average differences between the groups after the experiment will very

probably result from the intervention and not from any other factor. The composition of the groups may, if necessary, be changed during the experiment by focusing more on those interventions that, according to the first results, seem most promising.

Example of a randomised A/B experiment:

Question: How will a new kind of labour market training affect the income level after five years of those who receive the training?

Experiment (ideal way): 10,000 individuals are selected for the target group who are willing to receive training, from which 5,000 are randomly selected for the new training, with the other 5,000 remaining within the present system.

Analysis of the results: Five years later, the average incomes of the individuals belonging to the test group and control group are compared. If the average incomes in the test group are greater than in the control group, the new kind of training will be judged to be a more effective way than the present system of improving the incomes of the participants.

Applications of experiment designs, and the most common problems

In terms of the reliability of an experiment, most of the possible errors and problems relate both to the selection of the test group and to the control group. It is possible to correct some of the problems at the analysis stage, in which case they only affect the interpretation of the results. When conducting experiments, however, errors may be made that cannot be corrected at a later stage.

Example: We want to know in what way labour market training affects the incomes of those who receive the training.

1. Control group is not comparable

   The most important error made when conducting experiments relates to the selection of the control group. These errors are particularly serious, since they cannot be corrected afterwards. For this reason, particular care must also be taken in selecting the control group.

   Example of a typical error:
   As the test group is taken all of the individuals who received labour market training and as the control group all those who did not receive such training. The result is that the income level of those who received the labour market training is significantly lower. In this design, the control group is not comparable, because generally individuals who have not received labour market training have not, on the whole, had problems with employment.

   Example of a typical error:
   Unemployed people are asked if they would like to participate in labour market training, after which all those who are willing to participate are selected as the test group for the training and all those who did not participate in the training are selected as the control group. With such an experiment, we would possibly obtain as a result that the income level of individuals who received the training would be significantly

higher than those unemployed people who did not receive the training. In this design, the control group is not comparable. It is very likely that those who actively want to receive training are otherwise also more active in improving their situation than those who for one reason or another do not want to receive training.

2. Everyone in the test group does not accept the intervention or some of the control group succeed in receiving it

   Example of a problem:

   The test group and the control group are selected in the orthodox way randomly from the cohort of those willing to receive training. For some reason, all of those selected for the training do not, however, come to the training or some of those selected for the control group succeed in some way to gain access to the training. This problem is, however, partially solvable if, when implementing the experiment, data on the results of the random selection and who actually participated in the training have been saved. A consequence of this, however, is that the effect of the training can be measured only for those individuals who participated in the training because they were randomly selected into the test group (in other words, they would not have participated if they had been drawn into the control group).

3. Some of the people are forced to participate in the intervention and some should not participate under any circumstances

   Often there are situations where it is known in advance that for some of the target group the intervention would be useful and for others the intervention would not be useful or would be even harmful.

   Example of a solution to the problem:

   We know in advance that some of the target group would benefit strongly from the labour market training and that others in the target group would not. In such cases, the experiment design can be formulated to be reliable in such a way that only uncertain cases are separated from cases for whom the impact of the intervention is certain and only uncertain cases who are randomly selected for the course or outside the course are taken as subjects for the experiment.

4. Problem related to measuring

   In an experiment, a problem may also arise from uncertainty related to measuring. In studies based on data, numbers indicate a change, but identifying or describing a change in behaviour or a change in activity may be difficult.

   Example of a solution:

   An experiment aimed at reducing bullying in schools had to formulate a way of collecting results that widely used various methods. This is because participants' answers to questions concerning bullying do not necessarily reflect real changes. In order to uncover a more real situation, observations were made in the schools and classmate assessments were utilised in questionnaires. The respondents did not only assess their own situation but also the bullying-related activity of classmates.

5. Too small number of test subjects

Often a problem arises from the fact that the number of individuals participating in an experiment is so small that significant effects cannot be distinguished from random differences between the groups. As a rule of thumb, one can say that if the intervention being trialled causes a big change in the test subjects, a smaller group of test subjects is sufficient, while if the change caused is small, a larger group of test subjects is required to reliably show the existence of a phenomenon. A problem may also arise if the number of responses received during the experiment is low.

Example:
The effects of labour market training between the test group and the control group are studied by comparing incomes. One hundred people participated in the experiment. The incomes of the test group are higher than the control group but, because of the small size of the groups, this difference is not statistically significant.

6. The intervention has an effect, irrespective of the methods used

A challenge of experiment-related interventions is sometimes the fact that the intervention in itself causes an effect. In such cases, it not possible to assess the effectiveness of the intervention.

Example:
An experiment directed at a working community aims to improve job satisfaction by utilising the services of an occupational psychologist. If the control group is not offered any activities, it is probable that the use of the occupational psychologist will produce better results. This does not, however, say anything about the effectiveness of using the occupational psychologist. By using active control, a third test group makes a lighter intervention; in the working community, the workers discuss the same themes with each other, for example. By comparing these three groups, it is possible to assess whether any intervention would be equally effective.

7. The experiment also affects the control group

If the experiment also directly affects the control group, the differences between the test group and the control group will not measure the real effect of the intervention being trialled.

Example:
It is assumed that, in the example of labour market training, the instructor will arrange jobs for the trainees as part of the course. If there are many trainees in relation to the area's labour market, it may be that the course participants will take up all of the job vacancies in the area. The experiment will accordingly weaken the employment of the control group. As a result, the differences between the test group and the control group will grow.

Example:
On the training course, the trainees are taught effective ways of obtaining information about job vacancies. Some of those belonging to the test group tell friends who belong to the control group about these information acquisition channels. This improves the employment of the control group, as a result of which the employment differences between the test and the control group are reduced.

Stages of an experiment

Although many differences can be distinguished between social experiments that produce reliable data, in practice the same stages can regardless be identified in all experiments.

1. Planning
   The most important and most demanding stage of an experiment is the planning of the experiment. Firstly, an objective is set for the experiment. It may be set by the actor conducting the research or by the client who commissioned the work.
   a. Target group selection; the target group includes a test group and a control group
   b. Planning of data collection and analysis. The indicators and criteria for the analysis of the results must be decided on at the planning stage.
   c. Power calculations

2. Implementation
   a. Commitment of actors
   b. Interventions are made according to the plan
   c. Data collected according to the plan

3. Analysis and reporting of the results, and data registration
   a. The collected data are analysed according to the plan
   b. Reporting of the results
   c. The data obtained from the experiment are registered and saved for later use

Ethical aspects of piloting and experimenting

The main ethical issue of piloting and experimenting relates to the role played in decision making by the data obtained from the experiments. If successful, developing and introducing pilots and experiments aimed at obtaining quality data has an impact on decisions made by the whole of society. At best, the whole decision-making system will be improved. Successful experiments may increase the use and transparency of quality data in the decision-making system, which may be considered a positive aspect. An alternative to experimentation may be that a planned measure is launched on the entire population without the consequences being precisely known.

The ethical guidelines of human sciences research are based on four basic principles: utility, avoiding harm, fairness and respect for people. It is also worth considering the ethical basis of piloting and experimenting via these basic principles.

Taking ethical aspects into account is, in all cases, a matter of considering the issue in question as a whole. There is no explicit boundary indicating when an experiment would be considered acceptable and unacceptable from an ethical perspective, except in a few extreme cases. In considering ethical aspects, it is important that assessments are conducted systematically and following consistent principles at clearly specified points in the piloting and experimenting process.

In the ethical assessment of social research, it is worth consulting, where applicable, the Declaration of Helsinki[7] and the Belmont Report[8]. The ethics of social experiments are highly comparable to the ethics of traffic research[9], with which those interested in the ethics of social experiments should also familiarise themselves.

Relationship to general ethical guidelines of medical science and human sciences

For medical science and human sciences research, there exist specific ethical guidelines that are applied to these fields of research. In medical science, the main ethical issues often relate to a person's physical integrity and the violation thereof. In human sciences, the main ethical issues often relate to the privacy, data protection and, for example, the individual integrity of single individuals.

In contrast with the above, the main ethical issues of social experiments often relate to equality and deviations from equality. It is also worth noting that the benefits obtained through social experiments are often not directly connected to the individual, but above all to developing the whole of society and thereby as possible eventual benefits to individuals.

Insofar as social experiments are conducted using the methods of medical science or other human sciences, it is clear that the ethical and legal guidelines in these fields should be followed.

Ethical principles to take into account in planning social experiments

1. High quality research
   The pilot project should be well planned and the research should be of high quality. The experiment must, in terms of delineation and scale, be sufficient relative to the question to which an answer is sought in decision making through the experiment.

2. Avoiding harm to the target group
   The pilot project should be planned so that harm to the target group is minimised. Experiments should aim to improve people's living conditions and wellbeing. Experts should therefore hold the view that the intervention being trialled will improve the

[7] World Medical Association, http://www.wma.net/en/20activities/10ethics/10helsinki/

[8] National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, http://www.hhs.gov/ohrp/regulations-and-policy/belmont-report/

[9] On the ethics of traffic research has been published a high quality article that comprehensively sets out the ethical principles of bioethics and traffic research. This paper utilises the article in question without further referring to it separately: Svensson, Sara, and Sven Ove Hansson. "Protecting people in research: a comparison between biomedical and traffic research." Science and engineering ethics 13.1 (2007): 99-115.

target group's living conditions and wellbeing. It is acceptable, however, that uncertainty is connected with the effects of the intervention.

In a possible situation where the least bad option in terms of limited resources is sought, this issue may be a very strong consideration.

3. Assessing the risks and benefits for the target group and other parties
   It is important that the risks and possible benefits of the pilot project are identified and assessed. The experiment can be conducted only if someone from the group of qualified experts represents the view that it will benefit the target group more than potentially exposing it to harm[10].

4. Selecting the members of the target group fairly
   In selecting the experiment's target group, the aim should be fairness. Two special areas of focus in selecting the target group are as follows: for the target group should be selected individuals who, it can be assumed, will benefit from the experiment; selecting people in a vulnerable position for the target group should therefore be avoided.

5. Adequately informing the members of the target group
   The guidelines for research in the human sciences state: "An exception from the principle of informed consent can be made if advance information would distort the results of the study."

   It is often characteristic of social experiments that, in many cases, informing the target group in advance may be difficult in practice or it may distort the results of the research. The Belmont Report specified constraints on incomplete disclosure. Research involving incomplete disclosure is justified only if the following conditions are fulfilled:
   1. Incomplete disclosure is truly necessary to accomplish the goals of the research.
   2. There are no undisclosed risks to subjects that are more than minimal.
   3. There is an adequate plan for debriefing subjects, when appropriate, and for dissemination of research results to them.

6. The consent of the members of the target group
   The guidelines for research in the human sciences states: "An exception from the principle of informed consent can be made if advance information would distort the results of the study."

   Social experiments are often such that asking for the subjects' consent would in itself distort the research results significantly. In cases where asking the subjects for consent

[10] Another issue arises from compulsory shutdown experiments in which it is believed that at most the harm arising is in balance in relation to realities that have been separately specified politically.

is impossible with respect to the success of the research, the concept of an assessment conducted by a deputy may be applied.

Assessment carried out by a deputy may be applied via the following questions: What choice would the test subject have made? What choice would be in the test subject's interests? One option in the ethical examination of an issue is obtaining consent via the community. This, accordingly, is the most democratic process possible, in which representatives of the community consider an issue and give consent on behalf of individuals.

7. Protecting the privacy of the target group
   Data should, in principle, be collected and stored so that protection of privacy is maintained in all situations and so that individual people cannot be identified from the data. Exceptions to this can only be made with the consent of the subjects of the research.

Legal aspects of piloting and experimenting

A comprehensive report has been published on the legal aspects of piloting and experimenting in connection with studies on the pending basic income experiment[11]. The report examines, for example, the Constitutional Law Committee's policy outlines on piloting and experimenting, and there is no need to repeat that work in this paper. The purpose of this paper is to give a short overview of the most important legal principles and operating models and to provide, looking forward, some background, particularly for the planning of new operating practices.

It is important to note that even though the ethical and legal assessments of experiments are linked to each other in terms of content, an ethical assessment does not replace legal assessment. For an experiment to be conducted, it must pass though ethical screening as well as legal assessment.

No general law has been enacted in Finland on social science experiments, while medical science research is covered by such a law. In the legal assessment of piloting and experimenting, one must therefore rely on the existing legislation. If a social experiment design impacting fundamental rights is planned, then a special law will be needed to establish the experiment.

From a legal perspective, there are three questions to be considered in piloting and experimenting:

a) Will the launch of an experiment be decided within the scope of official discretion without new statutory regulation or amendments to existing legislation?
b) Is new statutory regulation or the amendment of existing legislation required?

[11] Report on the basic income experiment:
http://tietokayttoon.fi/documents/10616/2009122/13_2016_Ideasta+kokeiluun.pdf/20f52711-9d86-494d-aa5f-0e6d8b0fad48?version=1.0

c) What restrictions will general preconditions for limiting fundamental rights set for such legislation in order that the usual legislative procedure can be followed?

The interpretation of the Constitution in Finland is the responsibility of the Constitutional Law Committee of Parliament, and the interpretation of normal legislation is the responsibility of the courts of law. Since the broad utilisation of social experiments to support decision-making is still finding its feet in Finland, relatively little case law has arisen to date. For this reason, precise guidelines with respect to cases for which there are no precedents cannot be given.

Although is not possible to give a direct answer to all questions, a careful review of the aspects presented in this paper will probably allow the reader to avoid pitfalls in a large proportion of cases. At the end of the paper, ideas on modifying operating practices are also set out, so that possible problems may be overcome as flexibly as possible.

Special characteristics of social experiments

In this paper, we only consider those factors that are particularly typical with respect to the social experiments described above and about which legal problems have already arisen or may possibly arise. Such issues include equality and the consent of the test subject. It is clear that many other laws, such as the Personal Data Act, impose constraints on piloting and experimenting, but often in cases involving these laws practices have been able to develop over time, and for that reason they are not considered in this paper.

It is characteristic of the social experiments referred to in the paper that, in them, the test group and the control group are treated in different ways. Conducting social experiments proves to be impossible, in practice, if we cannot treat people in different ways. The main legal issue relating to social experiments concerns equality, which is laid down as a fundamental right in the Constitution, as well as deviations from equality. In assessments, we have to consider in what cases and in what ways we can, in exercising public authority, treat people in different ways in order to obtain new data.[12]

In addition to deviating from equality, a characteristic issue relating to social piloting and experimenting is the requirement to ask for the consent of the test subject. The requirement to ask for consent often gives rise to significant problems from the perspective of the reliability and practical implementation of an experiment. If we only include those who are willing to participate in experiments, the sample will be seriously distorted. Constitutionally, the problem relates to the right to life, individual freedom and integrity. In legal assessments, we have to consider in what cases, in order to obtain new data, we include an individual in an experiment without the test subject having the opportunity to refuse to participate in the experiment.

In medical research, when a test subject's physical integrity is involved, the requirement for consent is inviolable. In social experiments assessed by the Constitutional Law Committee,

[12] Sections 7.2.1 and 7.2.3 of the background report on the basic income experiment, referred to earlier, review decisions of the Constitutional Law Committee on the fulfilment of equality in experiments.

consent has not been required; the regional restriction of the experiments, for example, has been approved.[13]

Assessing the fulfilment of other fundamental rights, for example social rights, may also come into question in respect of some experiments. From a process perspective, assessing the fulfilment of all fundamental rights is done in the same way and following the same principles.

Constitutional assessment of social experiments

The requirement of the Constitution for the fulfilment of all fundamental rights is not absolute; some fundamental rights may be waived for an acceptable reason.

The Legislative Drafting Process Guide[14] states the following about an acceptable reason:

> "The justification by which a fundamental right is restricted must be acceptable in terms of the system of fundamental rights as a whole. The justification for a restriction may therefore be an attempt to protect the fulfilment of some fundamental right other than that subject to the restriction or to achieve some other objective which in terms of the system of fundamental rights as a whole is considered on objective grounds to be (in a normative sense) acceptable."

and:

> "The restriction provision should not only be acceptable but also required by a well-founded social need."

The Constitutional Law Committee has in its earlier decisions considered that producing data to support decision-making has in some cases been such an acceptable reason specified by the Constitution, for example in deviating from equality. The Constitutional Law Committee has also in some regional experiments considered it acceptable that the test subjects are not asked for their consent.

If it is considered that there is an acceptable reason for deviating from fundamental rights, the restriction must be effected in such a way that the general preconditions for the restriction of fundamental rights are fulfilled. The general preconditions for the restriction of fundamental rights are[15]:

1. the restriction shall be prescribed in law
2. the restriction shall be precisely limited and specified
3. the reason that is the justification for the restriction shall be acceptable in terms of the system of fundamental rights as a whole and also required by a well-founded social need
4. the restriction shall not apply to the core of the fundamental right

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[13] Sections 7.2.4 of the background report on the basic income experiment, referred to earlier, reviews decisions of the Constitutional Law Committee on the asking of consent.

[14] Legislative Drafting Process Guide: http://lainkirjoittaja.finlex.fi/4-perusoikeudet/4-1/#jakso-4-1-16

[15] http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/200611lainlaatijanperustuslakiopas/Files/OMJU_2006_11_Lainlaatijan_perustuslakiopas_92_s.pdf

5. the restriction shall be necessary to accomplish an acceptable purpose; in addition, the legal good protected by the fundamental right and the interests that are the justification for the restriction shall be proportionate to each other
6. in respect of the implementation of the restriction, adequate right to due process arrangements shall be ensured
7. the restriction shall not be in conflict with human rights obligations

In terms of the assessment of an experiment, these general principles give rise to the following questions from the perspective of the Constitution:

1. Is the experiment relevant, i.e. will it provide reliable and valid data for decision making that cannot be obtained without deviating from fundamental rights (necessity requirement)?
2. Is the deviation from fundamental rights caused by the experiment meaningfully proportionate to the benefit obtained from the experiment (proportionality requirement)?
3. Has the deviation from fundamental rights been minimised?

When drafting the law on the experiment, particular attention should also be paid to precisely limiting the restriction of fundamental rights and to ensuring that the restriction itself is precisely specified.

It is worth noting that no explicit boundary exists as to when a situation provides an acceptable reason defined by the Constitution for deviating from a fundamental right. Assessing the acceptability of experiments is always a matter of considering the issue in question as **a** whole, in which either, in lighter experiments, a single public official or, in more onerous experiments, the Constitutional Law Committee must on a case-by-case basis consider what kind of deviation from a fundamental right the experiment might cause and whether the data to be obtained from the experiment is with respect to society as a whole such that it provides an acceptable reason referred to the Constitution to deviate from a fundamental right.

Two types of experiment

From a legal perspective, social experiments may be divided into two groups, which differ from each other significantly in terms of the way they are handled. It is important to note that both alternatives are bound by the same principles despite the differences in the ways they are handled, and in both cases existing legislation must be complied with insofar as the new law on the experiment does not apply.

First group: Experiments that may be conducted within the scope of existing legislation and official authority without new statutory regulation or amendment of legislation.

Some social experiments may be conducted within the scope of existing legislation. In such cases, it the duty of the authority responsible for the said issue to consider the benefits and drawbacks of the experiment also from the perspective of fundamental rights.

Example:

We want to know in what way labour market training affects the incomes of those who receive the training. The officials who direct the trainees into labour market training are instructed to randomly select uncertain cases from the decision-maker's perspective into different training courses. Legally, the case seems to be clear, because the possible benefit received from development based on data obtained from the system experiment may be very large and no violation of equality takes place in the situation.

Second group: Experiments that require amendments to existing legislation in order to be carried out.

Some social experiments are such that amendments to legislation are required to carry them out. Such a situation may be encountered in two cases:

4. The intervention required by the experiment is in conflict with existing legislation.
5. The design of the social experiment has an impact on fundamental rights.

In these cases, it is considered an effective practice to draft a separate law on the experiment, in which the experiment is prescribed[16]. The normal legislative procedure for an experiment will apply if the general preconditions for restricting fundamental rights are not exceeded. The law on the experiment will go through the normal legislative process, and the fulfilment of fundamental rights will be assessed at pre-determined points. In these cases, the assessment and decision on constitutionality will be made by the Constitutional Law Committee of the Parliament.

Example:

We want to know in what way changes to some regulation, for example to the introduction of a basic income, will affect employment activity in the labour market. Such an experiment is clearly in conflict with existing legislation and in violation of equality, and therefore it is clear that it cannot be launched by the decision of an authority; it will require a more onerous procedure in which ultimately the Constitutional Law Committee will decide on the constitutionality of the experiment.

Randomisation

The quality of the data obtained from an experiment is significantly affected by randomness in the selection of the test group. Randomisation is not in itself a problem in terms of the Constitution, but randomisation may pose a problem in cases where there is a deviation from fundamental rights.

Example:

An authority, within the scope of its discretion, randomly selects uncertain cases into groups instead of arbitrarily assigning them to groups. In this case, there is no deviation from equality, in which case randomisation is also not a significant issue.

[16] Legislative Drafting Process Guide has a section on regional experiments: http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1378370560107/Files/Lainkirjoittajan_opas_low_20130904.pdf

In cases where there is a deviation from equality and the decision is made to draft a law on the experiment, the Constitutional Law Committee, as part of its overall discretion, will make an assessment as to whether randomisation may be carried out. Two factors are considered to be important issues:

6. Democracy – ultimate decision-making power should be retained by Parliament
7. The right to due process – arbitrary decisions by authorities should be avoided

When drafting an law on an experiment, it is important to ensure that the law is constructed so that Parliament exercises ultimate decision-making power when there is a deviation from fundamental rights and that arbitrary decisions by authorities, for example in the selection of the test group, are avoided.

Example:

The Constitutional Law Committee has considered that, in a municipal experiment, the municipalities ending up in the experiment should be specified on a statutory level. Selecting the municipalities randomly is not a problem, as the randomisation is done at such an early stage that the municipalities can individualised in the law.

Problematic issues and opportunities to resolve them

When planning experiments, two problems are encountered:

1. How can we ensure that the data obtained from planned social experiments are reliable?
2. How can we know in advance how the proposed experiment will be reconciled with legal constraints, i.e.
    a. Will the launch of piloting and experimenting be decided within the scope of official discretion without new statutory regulation or amendments to existing legislation?
    b. Is new statutory regulation or the amendment of existing legislation required?
    c. What restrictions will general preconditions for limiting fundamental rights set for such legislation in order that the usual legislative procedure can be followed?

The solution to the first problem is simple. Pending experiment proposals should be brought at a sufficiently early stage before recognised experts who understand experiments.

The solution to the second problem is more complicated. For the sake of clarity, it is worth dividing the problem into two parts.

In a situation in which it is decided to draft a law on the experiment, the constitutionality assessment process and who makes the final assessment are clear; the Constitutional Law Committee assesses the constitutionality of the law in its own process. A problem arises from the fact that in the constitutionality assessment process, the decision will come at a very late stage from a planning perspective. Before the decision on constitutionality is obtained, the resources of very many experts and other actors will probably have been used in the

processes. In uncertain cases, even in those that make sense in terms of decision making and obtaining new data, this may result unnecessarily in an experiment not being conducted.

In cases where a single authority has to make an assessment on whether it is possible to conduct an experiment within the scope of the said authority's powers or whether perhaps a law on the experiment should be drafted, the situation may still be problematic. The formal process for assessing the legality of the authority's actions will not take place until later, as a consequence of processes initiated by possible appeals. This uncertainty is likely to reduce the authorities' willingness to conduct experiments.

Possible solution

If the objective is to use social experiments more widely to support decision-making, it is important to solve these problems in some way. On the one hand, there must be a procedure that ensures the high quality of experiments. On the other hand, there must be a procedure that provides a basis for researchers and officials planning experiments to assess constitutionality already at the planning stage and thus lower the threshold for utilising experiments.

In medicine, the assessment of the ethics and legality of research has resulted in a solution in which the issue is prescribed in law.[17] At the national level, for questions of principle there operates the National Committee on Medical Research Ethics, while individual research projects are assessed by regional ethics committees. The committees have been given the role of assessing the legal and ethical acceptability of research projects. The members of the committees serve on the committees with public liability.

Although the problems presented cannot be solved completely, in social experiments a lighter procedure than the medical controls could be considered, for example so that by Government decree an expert body would be nominated in connection with the Prime Minister's new experimentation programme. In a limited format, experts familiar with social experiments would be invited to become members of this body. In addition to these, constitutional law experts would also be invited to the body in an expanded format.

The task of the limited format would be to collectively consider 2–4 times a year all of the experiment proposals made via the public sector from the perspective of the reliability of data, and to act as an interface between government officials coordinating and organising experiments and the scientific community. The task of the expanded format, meeting 1–2 times per year, would be to give an opinion in unclear cases on experiment proposals from the perspective of constitutionality and thereby create, at an early stage of the planning process, a better basis than at present for researchers and officials planning to conduct experiments.

[17] National Committee on Medical Research Ethics TUKIJA, http://tukija.fi/etusivu