

Dayfines

PUBLIC PERCEPTIONS AND THE FAIRNESS OF THE DAYFINE SYSTEM

An evaluation of the 1999 dayfine reform

Tapio Lappi-Seppälä

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I The dayfine system

In Finland – as also elsewhere in Scandinavia -- fines are imposed as dayfines. The main objective of the dayfine system, is to ensure “equal severity” of the fine for offenders of different income and wealth. In this system the number of dayfines is determined on the basis of the seriousness of the offence while the amount of a day-fine depends on the financial situation of the offender. In Finland the amount of the day-fine equals roughly half of the offender's daily income after taxes.¹ The number of day-fines varies between 1 and 120.²

A fine may be imposed either in an ordinary trial or, in respect of certain petty offences, through simplified summary penal proceedings (penalty orders) by the prosecutor. For minor traffic offences there is a summary penal fee that is set at a fixed amount (petty fine), imposed by the police.

Around 60 % of cases dealt by the Finnish courts are dealt by fines. If offenses dealt by the prosecutors (summary fines) are included, the share of fines of all penalties exceeds 80 %.³ The courts impose annually some 35 000 – 40 000 fines, the prosecutors order some 200 000 penalty orders and the police writes some 100 000 summary penal fees.

Table The use of fines 1970–2000

	1970	1980	1990	1995	2000
	N	N	N	N	N
<i>All penalties imposed by courts</i>					
- fine by the court	(57 675)	(72 282)	(81 627)	(61 208)	(65 505)
<i>Summary proceedings</i>	42 248	47 401	52 542	38 027	37 503
- penalty order (prosecutor)					
- of these, traffic violations	150 542	249 006	311 889	277 530	196 156
- Petty fine (the police; only traffic Violations)	129 140	189 752	252 239	234 977	137 677
	69 291	52 009	103 499

II The 1999 law reform

The basic structure of the dayfine system has remained untouched since 1921. However, technical calculating rules (for the monetary amount of one dayfine), the maximum number of dayfines and the rules of default imprisonment have been revised several times. Often the reforms have been initiated by the desire to reduce the use of default imprisonment and by the aim to enhance the use of fine as an alternative to custodial sentences.

¹ The exact amount results from a rather complicated calculation. However, the official (police, the prosecutor and the courts) have in their hand a handbook which makes it easy to count the amount of day-fines.

² *An example:* The typical number of dayfines for drunken driving with BAC of 1,0 o/oo would be around 40 df. The monetary value of one dayfine for a person who earns 1500 euros/months would be 20 euros. For someone with a monthly income of 6000 euros, the amount of one dayfine would be 95. Thus the total fine for the same offense would be for the former person 800 euros and for the latter 3800 euros.

³ This is partly due to the fact that there is no general administrative penal law in Finland. Practically all offences are classified as crimes and treated under the label of criminal punishments.

The most recent reform of the dayfine system, which took place in 1999 had a different background. One starting point was the fact that the dayfine system may lead to quite intensive fines in cases where the offenders happens to have extraordinary high income. Such occasions occur especially in the field of traffic violations. Every once and while the media reports of traffic-fines that exceed tens of thousands of euros. These extraordinary high traffic fines have even raised certain doubts of the legitimacy of the present system, as a whole.

Related to this, the counting rules had been criticised, especially by the conservatives, for leading to unjust results *in general* in higher income levels, since the amount of a dayfines had been counted on the basis of gross-income (before the taxes) instead of net-income (after the deduction of the taxes). Moving from fining on the basis of gross income into fining based on net-income was the major principal change, brought by the 1999 reform. Other important changes were a raise in the minimum size of a dayfine and an extended use of on-the-spot fines (summary penal fees). The third major reform concerned the fact, how to sort out the true income of the offender. Before 1999 the police had to trust the offenders own declaration in this matter, after 1999 the police could receive this information directly from the taxation official. This reduced the possibility of "fine deception" into its minimum.⁴

According to the bill, the central goal of the reform was *to introduce a more just fining system*, whereby the "size of the fine is perceived as fair among different income-groups." (Government Bill 74/1998).

III A follow up study on public perceptions of the fining system

The Scandinavian dayfine system has served as an influential model for a number of European jurisdictions. During the last decades countries such as Germany, Austria and France have adopted the system with success, and Switzerland is considering seriously of a similar reform. On the other hand, the adaptation of "Unit Fines" in England and Wales turned out to be a failure and the system was repealed, mainly with reference to the lack of public support. Taken into account that fines are the part of the penal system that touches annually about 10 % of the adult population, public perceptions on the fairness of that system becomes is a matter of significant importance. Therefore, a separate follow up research was carried out in connection of the 1999 dayfine reform.⁵ The major aims of the study were *to measure the degree of perceived fairness of the fining system, the level of knowledge as well as the relevant changes in both dimensions*.

In order to survey public opinion, a total of 2 966 persons were interviewed at four different stages during the years 1999-2001. During the summer 2000 the fining system received extraordinary attention due to the fact that a well known Finnish NHL ice-hockey star was fined for speeding with a fine of 43 000 euros. Later that same summer well known business man received a similar fine, also for speeding. This created a kind of natural experiment: A possibility to measure the public opinion "before and after the mega-fines of the summer 2000". The study consisted, thus, of four samples:

- before the reform: may 1999

⁴ Giving false information of one's income for the police in order to reduce the amount of fines is criminalized. Penal Code chapter 16 section 6 on "fine deception" states the following:

"A person who in order to gain an economic advantage provides a public authority, for the purpose of imposing a fine, essentially false or misleading information on his/her income, assets, maintenance liability or other circumstance affecting his/her solvency, shall be sentenced for *fine deception* to a fine or to imprisonment for at most three months."

⁵ See Lappi-Seppälä, Tapio, Yleisökäsitykset ja vuoden 1999 sakkouudistus/Public Opinion and the 1999 Reform of the Day-fine System. National Research Institute of Legal Policy. Publication nr 195. Helsinki 2002.

- after the reform but before the “mega-fines”: may 2000
- after the “mega-fines”: august 2000
- after the reform (long term stabilised effects): august 2001

Background information was gathered concerning age, gender, education of the respondents, as well as the use of a car and mileage, annual income and place of residence.

IV Main results

1. Actual practices: More severe fines - an increase in the number of fine-defaulters

To give a background to public opinion, the study also briefly mapped changes in the actual practices.

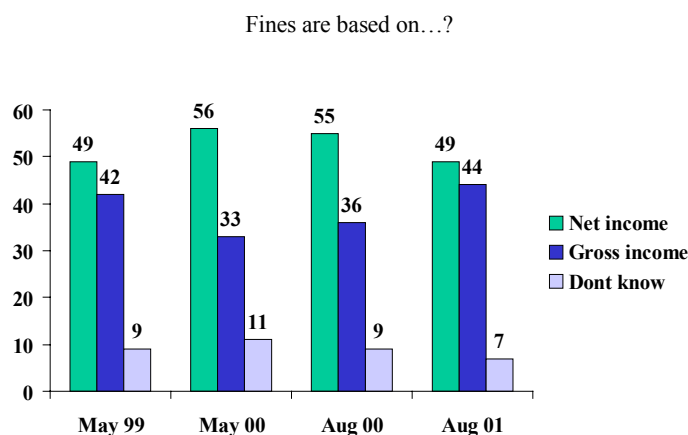
After the reform the overall size (=the total monetary value) of fines has increased by about 30 % during the years 1998-2001. This increase is in part explained by the fact that fines are now determined according to a person's factual (not reported) income. Another explanation is that the amount of the minimum day-fine has been increased.

The large fines that stirred public opinion, is a marginal phenomenon in the overall context. In 2000 as few as 0,2 % of the cases did the total amounts of the fines exceed 1700 euros. Fines that exceed 17 000 euros are singular occurrences.

The number of fines that have been converted to imprisonment has increased and the number of fine-defaulters in prisons has doubled. In 1998 the annual average of fines defaulters in the Finnish prisons was 96, in 2002 the number was 190. ⁶

2. The public has a faint knowledge of the fining system

How informed the public is about the system with day-fines was measured by asking whether fines are determined according to net- or gross income. The respondents expressed the following opinions in different samples:



A majority of those who answered this question held all along the view that fines are determined according to net income: even when fines in fact were determined according to

⁶ The increased number of fine-defaulters is one factor behind the recent growth of the Finnish prison population. See in more detail Lappi-Seppälä, Tapio, Utvecklingen av straffrättsliga påföljder i Finland. NtFK 2/2004.

gross income. The share of the population that held this view grew slightly after the law reform. In 2001 there was a return to the point of departure, the position prior to the reform. Now even a greater share of the respondents than before, held the view that fines were determined according to gross income (42 % -> 44 %). In may 1999 they were right, in august 2001 they were wrong.

Only half the respondents were able to take a position on the question how large a fine is imposed on a person without income (so-called minimum day-fine). Before the reform of the fining system, 14 % of the respondents mentioned the correct amount. After the reform only 5 % of the respondents knew the amount of the minimum day-fine.

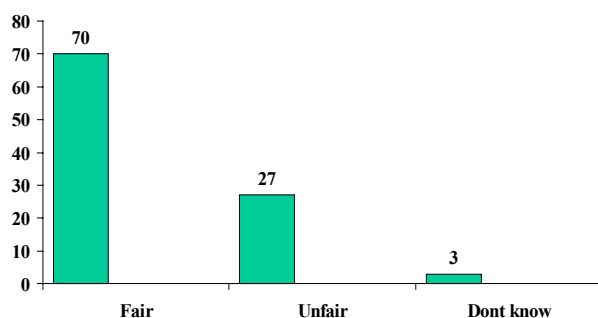
In general, information about the reform did not reach the public very well. During spring following the reform (May 2000), some 60 % mentioned that they had noticed it. Also impressions about the content of the reform were in many respects imprecise.

3. General perceptions of the fairness of fines

Traffic fines were seen as appropriate as to their size. Among the respondents, just below 60 % considered traffic fines generally to be fair, close to one fifth considered them too low and close to one sixth too severe.

The system with day-fines was seen as fair. Approximately three respondents out of four considered that the system with day-fines was fair (the share varied in different samples between 64 and 75 %).

The fairness of the dayfine-system



The same issue was approached also by asking, whether the speeding fines should be graded according to the drivers income, or whether the fine should be the same for all drivers irrespective of the level of income. Four out of five were in 2001 of the opinion that there should be different fines for speeding for different income-categories.

Rules and procedures. The criminalization of “fine deception”⁷ gained unreserved support by the public. A clear majority (85-90%) know that lying about one's income is punishable, and they also accept (95% of the respondents) that one be punished for fraudulent behaviour associated with fines.

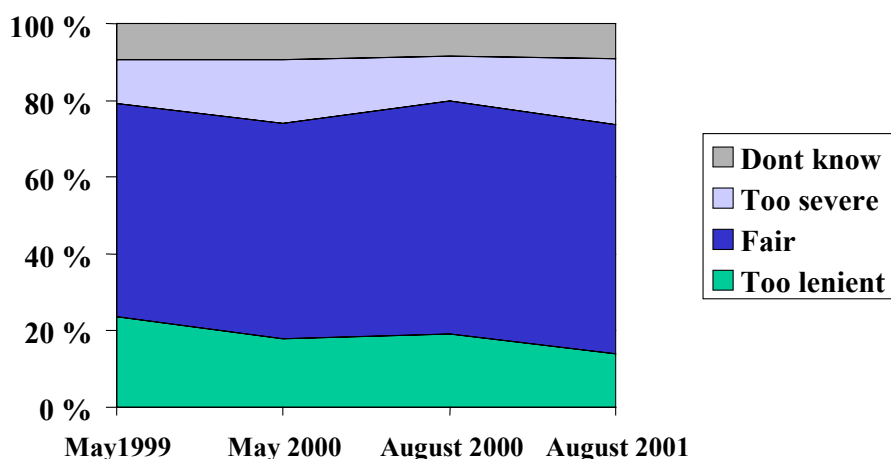
⁷ See above II.

Although the respondents believed that lying was not so frequent after the reform, it was still believed that an average of every third person to be fined lies about one's income to the police. In actual fact, the reform of the fining system has made it almost impossible to succeed with fine deception. This arrangement, in turn, which made it possible for the police to get the information of the offenders income directly from the taxation officials was considered to be fair by 95 % of the respondents.

4. Perceptions of fairness between and after the reform

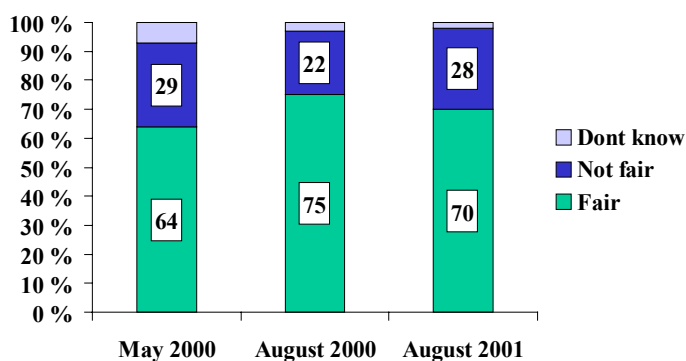
Traffic fines. Perceptions of fairness remained relatively constant during 1999-2001. However, the share of those who considered fines too severe as well as those who considered them fair had increased slightly. In 1999, 12 % considered fines too severe, 24 % too mild and 56 % found them fair. In 2001, 17 % found them too severe, 14 % too mild and 60 % fair.

The fairness of traffic fines 1999-2001



The dayfine system. The stirring fines in summer 2000 did not appear to have affected the confidence in the system with day-fines. In fact, the share of those expressing a positive view about the system grew during summer 2000. In the assessments made in 2001, the answers had, however, come closer to the answers given in 1999.

The fairness of the dayfine system: before and after the
"megafines"



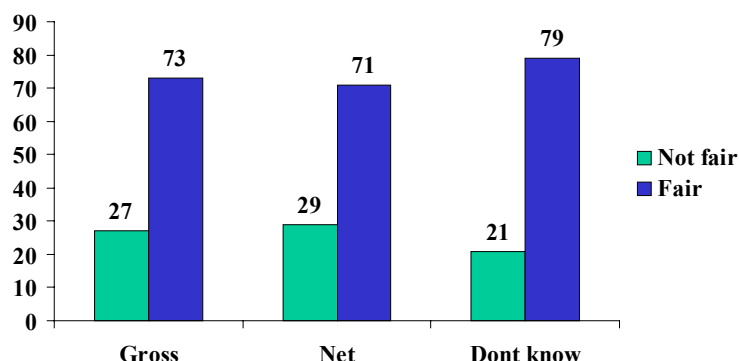
Perceptions of fairness in different respondent groups. The assessments of fairness varied in different respondent groups. Those who do not themselves drive or participate actively in the traffic as drivers, considered the system with day-fines to be fairer than those who drive. However, also among drivers 70 % considered the system fair. Men were more critical of the system with day-fines than women. Nevertheless, even among men, 69 % considered the system to be fair (among those driving 66 % and others 73 %). For women the corresponding figure was 77 % (drivers 77 % and others 78 %). Women would often be more apt to demand more severe traffic fines than men.

There was a clear connection between income and the respondents' opinions: With higher income the respondents' critical attitudes towards the system with day-fines grew. The share of those who after the reform considered fines to be too severe grew particularly in a higher income bracket. However, one of the basic aims of the reform was precisely to make the fines fairer in regard to this income group.

5. The fairness of the dayfine system and the basis for fining (gross or net-income))

Whether fines were believed to be calculated according to the principle of gross or net income, did not affect the degree of satisfaction or dissatisfaction with the fining system: Among those who believed that fines were based on gross income, 73 % considered the system with day-fines to be fair, whereas among those who assumed that fines were based on net income, 71 % considered it fair.

The fairness of the dayfine-system and the basis of fining
(gross-income or net-income)



All in all, it would appear that the political controversy about "gross fining versus net fining" has remained fairly alien to the public. On the whole, people have not been clear about the system on which fines are based, in a way that they *in that sense* could have voiced dissatisfaction, as has been assumed in the critique of the fining system. Neither does the dissatisfaction that can be measured appear to be linked to the view of what income is taken as a basis for calculating the fines.

6. Half the respondents support a ceiling for fines - half of them oppose it

One of most disputed issues has been, should there be an absolute ceiling for the amount of one day-fine. This issues has been raised on a regular basis – every time, when one of the young Finnish millionaires get caught of speeding.

In 2000 a majority (55 %) of the respondents considered that there is no need for an upper limit for day-fines. The share of those who held this opinion grew after the large fines were imposed in summer 2000. (up till 67 %) In 2001 the share was even (50/50) between those who supported an upper limit and those who opposed it.

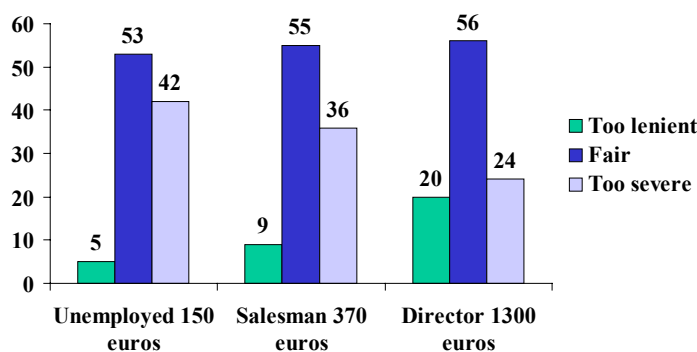
Thus, the “megafines” in summer 2000 did not increase the general popularity of a “fining ceiling”, as one might have expected -- at least not, as a immediate reaction.⁸

7. The fairness of a fine imposed at 30 km/h speeding

The respondents were asked to assess the fairness of a normal speeding fine (following the fixed practice) for different income groups in a concrete case of speeding at 30 km/h (speed limit 50 km/h).

⁸ Opinions varied somewhat as to at what level the upper limit should be determined, depending on the options offered. When the alternatives offered departed from FIM 5 000 a ceiling conceived of as appropriate was located at an average of FIM 10 000. When the alternatives departed from FIM 300, a suitable ceiling for day-fines was located at an average of FIM 5 000.

The fairness of a concrete speeding fine (30 km/h; 18 dayfines) for offenders of different income



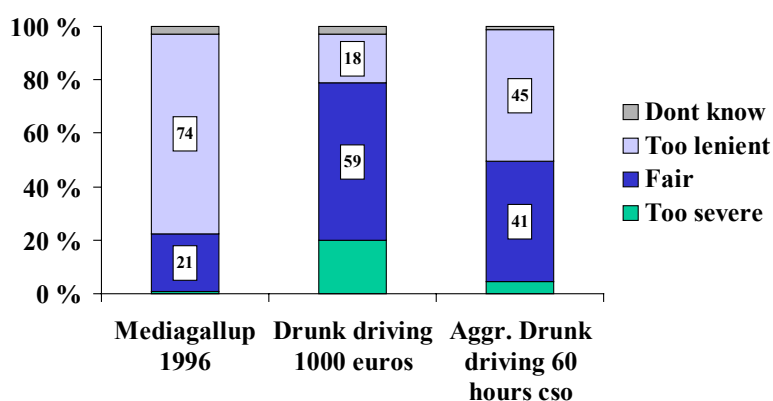
The opinions held by the public are fairly well in tune with present penal practices. Where dissatisfaction was expressed concerning these speeding fines, they were rather considered to be too severe than too mild. However, *with an increased income for the person fined, an increasing number of respondents considered the fines to be increasingly mild.* Correspondingly, the share of those who considered the fines to be too severe grew in proportion to a decreasing level of income. When for the same speeding a fine of 150 euros was imposed on an unemployed person, it was seen as too mild or much too mild only by 5 %, whereas a fine of 1300 euros, imposed on a director, was already by 21 % seen as too mild. Whereas 42 % considered that the fine for an unemployed was too severe, only 24 % held this view concerning the fine imposed on a director.

Also the income-level of the interviewed persons stood in a clear relation to their responses. Persons with a low income considered the director's fine too mild and that of the unemployed too severe. With an increasing income-level of the respondents also the share of those grew, who considered the director's fine as unnecessarily severe. The assessments of fairness concerning the fines reflected the life situation and economic resources of the respondents.

8. An appropriate level for a penalty for drunken driving?

The respondents were also asked to express their opinions on two specific cases of penalties imposed for drunken driving: Driving to work in the morning with a “hang-over” and a low level of alcohol (1000 euros fine) and a recidivist driving off from a pub with a fairly high level of alcohol (60 hours community service). The actual penalty for the former was very well in line with public opinion: 61 % considered a fine of 1 000 euros to be an appropriate penalty, 19 % considered it too mild and 20 % too severe. A slight majority also considered that a penalty of 60 hours community service was a suitable sanction for aggravated drunken driving for a recidivist, although almost the same number expressed the opinion that the penalty was too mild.

The fairness of penalties for drunk driving



This result deviates from earlier penalty polls, according to which three fourths consider penalties imposed for drunken driving too lenient. When the questions were specified by relating them to a particular situation, the share of those who considered the penalty as fair grew, whereas at the same time the share of those who considered the penalty too lenient diminished. The variance with earlier results reveals the error that occurs when questions are formulated in too general a fashion.

V Conclusions and lessons

Several of the findings were in clear contradiction with general presumptions concerning the legitimacy and public support of the fining system.

Evidently the fears of the perceived unfairness of the fining system were grossly exaggerated. Four out of five respondents regarded the day-fine system as an fair and just method of punishment. Fines imposed for traffic violations were considered fair by 60 %.

The reform of the fining system introduced in 1999 did not as such bring about any significant change in public opinion. Neither seemed the stirring fines imposed in summer 2000 appear to have affected the public's confidence in the fining system for traffic offences.

But as it also turned out, the general public is poorly aware of the rules concerning fines for traffic offences. The fact, whether the fines were counted on the basis on net income or gross income turned out to be completely irrelevant for the perceived fairness of the fining system.

One major lesson was that the images of the public opinion, as expressed by the media and the politicians may have very little to do with the views shared by the "silent majority". Other lessons are known from earlier public opinion studies: The level of knowledge is generally poor and the degree of punitivity decreases as the questions become more exact and concrete. Not surprisingly, it turned out the perceptions of fairness and the proper amount of control depended heavily on the respondents personal circumstances and financial situation: Those who do not drive, wish more control and stiffer penalties, those who drive are less satisfied with the fining system, and those who have the highest income

level are the least satisfied with the dayfine system. Envy and self-interest are essential elements in public opinion.

It also turned out the legislators attempt to “gratify” the well off offenders by moving from “gross fining” to “net-fining” did not succeed. Paradoxically, after the reform the discontent of the fining system grew especially among those respondents with the highest income level. Those who benefited most from the new “net fining “ were the least satisfied with the changes brought by the reform. Either they had misperceived the content of the reform – or they were unhappy with the fact that they could no longer hide their true income from the police.

Surveys always leave the door open for different interpretations and rivalling conclusions. One fairly reliable conclusion might be that a clear majority of Finnish people regard both the dayfine system and the fines imposed for traffic violations as fair and just. This was the case before and after the reform -- which largely passed their attention. Another conclusion could be that presumptions on the contents of “public opinion” may lie on a shaky basis, and that pleasing this opinion may sometimes meet unforeseen obstacles.