THE LAW IN FINNISH DEMOCRACY

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The purpose of this article is to analyse the role played by "the law" in the modern Finnish political system, here referred to as "Finnish democracy". This analysis requires, by way of introduction, definitions of the two basic notions concerned, viz. "law" and "democracy", as understood in present-day Finland.

1. Law in the *formal* sense means the norms brought into existence as a result of a decision by Parliament (Act of Parliament). The ordinary legislative procedure follows in its broad outlines the normal Continental pattern: the Cabinet draws up a proposal for a law (Bill), which after being presented to the President of the Republic is submitted to Parliament for approval; once adopted by Parliament it is given formal assent by the President and is thereupon promulgated as an Act.

It is also common to speak of law in a *substantive* sense, i.e. as being the legal norms that result from decisions made by public authorities. These are characterized by two features. First, a law in the substantive sense is a norm, in other words a rule governing human behaviour and social life. Secondly, the legal norm must emanate from a public authority. In this way it is distinguished from those legal norms that have come into existence in some other way—precedent, custom, etc.

The concept of law in Finland, then, covers those legal norms which, according to English terminology, fall into the category of "statute law". Precedent, custom and general principles of law fall outside the definition of law as it is conceived of in Finland.

In this article "law" is used to denote law in the formal sense. It is this type of legal norm that forms the foundation of Finnish democracy.[1]

[1] In 1970 the Finnish Government set up a committee comprising representatives of the parliamentary parties whose task was to determine how the Constitution should be changed in order to bring about a greater measure of democracy and increase legal protection for Finnish citizens. The committee submitted its first report in 1974 (*Valtiosääntökomitean välimietintö* 1974), putting forward a number of views which affect the status of the law in Finnish democracy in several ways. For example, it was suggested that the central position occupied by Parliament should be strengthened still further, and the importance of a reform of the provisions in the Constitution concerning citizens' basic rights was also pointed out. However, the lack of unity—resulting from the political divergences among the committee's members—that characterizes the report indicates that rapid reforms are most unlikely. No radical changes concerning the problems discussed in this paper can be expected in the immediate future.

2. The discussion of law and *democracy* contained in this article is based on the view that democracy is a form of government in a national state. Democracy is the system according to which the state is organized and operates. It is a principal characteristic of the democratic system of government that it is the people who form the basis of government in the state. It is in this way that democracy is distinguished from other systems of government, e.g. dictatorship. In Finland's case the principle of democracy is embodied in the country's Constitution: "Power in Finland is vested in the people" (art. 2 of the Constitution Act of 1919).

Finnish democracy presents a picture which is in substance the same as that in the other Nordic countries. Democracy in Finland has its foundation in the principles which underlie the Western liberal view of democracy; ideologically, these traditions go back, to a large extent, to John Stuart Mill and his *Considerations on Representative Government* (1861). Against this background it is useful to call attention to certain features characteristic of a form of government based on liberal democracy. They are termed here the *elements of democracy.*

(1) The main feature is that the people participate in the political decision-making process. The people elect representatives who make decisions concerning the community's affairs on their behalf. The people's participation is based on a common and equal *franchise.*

(2) The people are offered *alternatives* in their choice of representatives. Different shades of opinion must be afforded the opportunity to compete freely for the votes of the electorate.

(3) Democracy presupposes the *freedom of the individual to form his own opinions* as well as the freedom to express his opinion both privately and publicly. This freedom of expression is linked with the freedom of association, i.e. the freedom of individuals to promote their aspirations and intentions by forming and joining groups, e.g. political parties. In this freedom is included the right to organize and take part in public meetings and demonstrations.

All these rights and freedoms are guaranteed in the Finnish Constitution.

(4) Democracy operates on the *majority principle.* The guidelines for the running of the community which are accepted by a majority of the people in an election form a directive for the political decision-makers. The majority principle also applies to decisions made in Parliament. The opinion held by the majority in a certain matter is that which is accepted, save in those cases—e.g. decisions concerning amendments of the Constitution—where a majority of at least two thirds, three quarters, etc., is required.

Finland has a pluralistic political system in which several parties are active. None of these has an overall majority in Parliament. This complicates the practical working of the majority principle. Decisions are often the result of compromises.

Democracy is not just a form of government. It also makes demands on the *contents of those norms* that are created as a result of the normal democratic processes. The demands made by democracy on the contents of laws can be expressed explicitly in what has been called *democratic values.*

The democratic form of government is founded on the notion of the individual as an autonomous and *active* being. It is through his activity that a democratic system operates. At the same time the individual has his own personal *value.* The freedom and equality enshrined in democracy are resources for him personally. With the help of these resources he can work for his own interests. But the individual is also a part of society. He forms a part of the whole and must also serve the interests of the whole. Freedom, equality and security must be adapted to the interplay between the individual and the state.

Freedom under a democratic system means primarily political freedom. By this is meant that, in any democratic activity, the individual should have the possibility of participation, interaction and control. Participation means that the individual has the right to take part in public elections. Interaction is seen in the continuous interplay between the citizens and their elected representatives. Control implies that the guidelines for political activity and individual political decisions are subject to continuous reconsideration by the people. The control is built into the principle of democratic participation and is exercised in public elections.

The *equality* implicit in democracy is political equality: every member of society must have the same possibility of taking part in the democratic processes. Political freedom and equality are linked to each other. Restrictions on the freedom of certain groups or individuals are a negation of equality.

Democracy presupposes that the individual enjoys *security* in the sense of being able to take part in democratic activity without undue difficulty and without fear of reprisal. Measures must not be taken against those who have exercised their political freedom in accordance with the legal norms. Society must afford the individual protection if he is attacked illegally in consequence of his political views. If this protection is denied him in any way, remedies must be available which will allow him to exercise his political freedom.

The views presented here point to the existence of two aspects of democracy. The *formal* aspect concerns the way in which society is gov-

erned. The *substantive* aspect refers to values which are relevant both for the functioning of democracy and for the life of the individual members of the community. In that sense, democracy has both form and content.

3. Up to the present point, democracy has been regarded as a theoretical system. By defining principles not directly connected with social reality, the elements of the democratic form of government have been determined.

Whatever the merits of such a system from the points of view of coherence and perfection, it remains a mere model unless it has a basis in reality. In order that democracy shall operate as an actual form of government for a particular society, it must, in a concrete form, be tied to the society in question. This is effected through the intermediary of the law. Through the existence of the law as a body of operative rules democracy is transformed into a *legal system.*

A distinction should therefore be made between, on the one hand, democracy as an abstract theoretical system and, on the other, an actual democratic legal system. The task of the law is to bring about the realization of the elements of democracy in the state. The law applies the principles of democracy to social reality. Unless supported by the law, democracy is powerless.

The law *materializes* and concretizes democracy. It regulates, more or less in detail, the shape of the political decision-making process together with the conditions and results linked with that process. Democracy as legally determined may encompass a regulation which as to its details cannot be derived from democracy as an abstract system. Furthermore, in certain respects the law may deviate from what should follow from the basic elements of democracy. In such a case, the law gives its sanction to a democracy of a lower order. With the statement in art. 10 of the Constitution Act that "Finnish citizens have the freedom of expression", an extremely important part of democracy is materialized. However, when the freedom of the press is restricted in time of war in accordance with art. 16 of the Constitution Act, an important and central part of democracy has been subjected to limitation by the law. From this it is clear that a situation may arise when the actual legal system differs in content from democracy as an abstract system. It is important that those who make and apply the law should endeavour to ensure that legal democracy shall agree as closely as possible with democracy as an abstract system, in other words, to ensure that the degree of democracy actually prevailing in their community shall be as high as possible.

By saying that the law materializes democracy is meant that the demo-

cratic form of government is given its concrete form by means of legal norms. These determine the way in which the elements of democracy are achieved in practice. The state, on the basis of the abstract principles of democracy, sets up norms which seem practicable in view of prevailing conditions. The organization of the state is, as is presupposed in a democratic system, created by law. The techniques of democracy are realized by the law.

The law is binding on those for whom it is intended—public institutions, individuals and private organizations. Through the agency of law the democratic form of rule becomes a social order binding on the members of society. As compared with theoretical principles of democracy, the law is of primary importance, since it lays obligations on the members of society even though it may deviate in some ways from the generally accepted principles of democracy.

The legal system governing a democratic society is composed, first and foremost, of rules which have the quality of law. They have been passed by the representatives of the people with the intention that they shall be complied with. It is in this way that the principle according to which power is invested in the people as represented by Parliament is given concrete form. The law may be supplemented by legal norms of a lower level. Legal norms of a different type—custom and common principles—may also be relevant to the regulation of democracy. However, all those norms that fall outside the concept of law are of secondary importance. They may not conflict with laws passed by the representatives of the people.

When it is said that democracy must be materialized through the agency of the law, this does not mean that thereby an ideal democracy is set up. Democracy is realized to the extent determined by the legislator. The law is an instrument in the hands of a democratic legislator. This means, too, that restrictions on the country's democratic form of government or exceptions to it can only be put into effect when based on the law.

4. The fundamental norms that regulate the government of the state and the legal protection of the citizens are embodied in an instrument called the *Constitution.*

The principal purpose of the Constitution is to provide a legal basis for the life of the community in both the private and the public sectors. The Constitution contains those basic legal norms to which all the other legal norms of the society are directly or indirectly linked—*lex superior.* These basic norms are also a real and concrete form of the principles contained in the democratic form of rule. Through the Constitution the highest institutions of society are given their organization and competence. Further, an

important task of the Constitution is to create a firm basis for the position of the individual in society and for his effective legal protection.

The most important part of the rules on the organization of Finnish society is contained in the Constitution. The Constitution is made up of four statutes, of which the most important are the Constitution Act of 1919 and the Parliament Act of 1928. These two acts contain central and fundamental norms that govern the life of the state and the political activities of its citizens. They have come into being through a special legislative procedure and can be changed or repealed only by the same special legislative process that gave rise to them. For this a stipulated majority is needed in Parliament, and normally the matter has to be deliberated by two Parliaments with an intervening general election.

The rules contained in the Constitution are supplemented by *ordinary law*—election laws, party laws, laws concerning the exercise of rights and privileges afforded by the Constitution (freedom of the press, etc.).

Rules concerning the interpretation of the Constitution can be embodied in decrees of a lower order. The life and activities of a democratic state are so complex and varied that not everything can be regulated by law. There must be room for patterns of behaviour and customs that do not impose the same obligations as do the norms contained in the law. None the less, the law provides the foundation and it also constitutes a framework for all social activity in a democratic state. Democracy is government ruled by the law.

Customs and accepted practice form important regulatory factors in political activities. This is a consequence of the fact that the legal norms contained in the Constitution lack detailed regulations in many cases. In practice it is impossible or at any rate inconvenient to bind all the many facets of political activity by norms which regulate details. Such a step would easily lead to the creation of clashes between norm and reality, with the result that the Constitution would be disregarded. This would be most unfortunate, bearing in mind the great importance of the Constitution both for society and for the individual. Political life is best served by norms which, on the one hand, regulate categorically the factors that determine decisions and, on the other, provide sufficient freedom for a political activity that can be adapted to the conditions and needs that prevail at any given time in the community.

The strong influence exerted by accepted customs and practice on the norms of society can be seen, for example, in the procedure followed when a new government is formed. The Constitution provides little guidance in this matter. It only states that the President shall appoint the members of the Council of State (Cabinet) and that those members shall enjoy the

confidence of Parliament. There are also certain requirements concerning the personal qualifications of the members: the President may appoint as members of the Council of State "native-born Finnish citizens known for their integrity and skill". The process of negotiations and decisions that precedes the appointment of a new government is not referred to in the Constitution. Other rules and patterns are followed in this case.

The assessments leading to the formation of a government and its programme are political, not legal. Decisions are made on the basis of two main considerations. One is party activity, which can to some extent be regulated by party norms but is in reality determined by political judgments and the parties' actual possibilities of getting their proposals and views accepted in discussions with other parties. The other is the power wielded by the President, who is not bound by any laws other than those referred to above.

In this way, customs in the form of accepted practice supplement the rules which are given in the Constitution. Customs provide ready-made patterns of action. To disregard a practice which has been followed earlier cannot, however, lead to sanctions. This is not because the customs, from the legal point of view, lack relevance but because legal sanctions are hardly needed or indeed possible where the highest level of political activity is concerned. If, for example, the formation of a Government takes place in a way which departs from earlier practice, this would not give rise to any legal consequences.

Of great importance in Finnish political life are the rules and programmes of the political parties together with the other directives given by the leading institutions of the political parties. The term *party norm* may be used as a common name for these.

As a matter of principle a party norm is binding only on those who belong to or represent the party. The character of the binding effect may vary, however. A political party is a registered union to which the legislation concerning societies and associations applies. In the party's bye-laws are embodied rules concerning its organization and the forms to be followed when decisions are made, but these rules seldom lay down any guidelines as to the contents of decisions other than the general rule about the purpose of the party in question. The line followed by a party in its political activities is determined by different party norms—the party's general programme, and special programmes drawn up by and case-to-case decisions taken by the governing body of the party. In general it is not possible to say how and to what degree such programmes and decisions are binding on the party's members and representatives. Some party norms have largely the character of recommendations or aims which are to be

adopted so far as possible in the course of party activities. Other norms may be intended to be absolutely binding on the party's representatives. In this matter the different parties follow different patterns. Some parties maintain an extremely strict party discipline and demand that programmes and decisions shall be followed to the letter, while others give their members and representatives a relatively large measure of freedom. To a great extent the policy will depend on the political strength of the party in question. A big or fairly homogeneous party can adopt stricter rules for its activities than can a small or divided party.

Many party norms are intended to have an external effect, i.e. to influence the decisions of those institutions that determine society's affairs —Parliament, the Cabinet, etc. There is no obligation upon a state institution to follow a party decision. The actual influence wielded, however, is another matter. It will depend on the force with which the party's representatives can back up their demands and wishes. It is a question of political possibilities, and legal assessments are normally not involved.

Agreements may be reached between parties on specific matters or about guidelines for future cooperation. Such an agreement does not constitute a contract which is binding at law. The result is only that certain political obligations are imposed on both sides.

An agreement between parties may result in cooperation over a joint programme. The formulation of the Cabinet's programme is often couched in rather loose terms. When the Cabinet adopts a programme, this takes on an official status. It is intended to be realized as far as possible through the joint efforts of the parties in power. But no legal obligation is imposed either on the Cabinet or on the parties forming the Cabinet.

Our survey of the system of norms followed in political life has shown that there are two main types of norms: rules which must be followed and which can consequently be regarded as legally binding (these include rules that have the character of laws), and rules and directives which politicians attempt to realize and which therefore impose certain obligations. What is important is that all political activity in a democracy takes place within the limits prescribed by the law.

5. The law is a tool used in a democratic society. To express the matter in another way: the law is a *political instrument.*

By politics is meant decisions and measures intended to govern the different sectors of society. Politics comprises both the decision-making process, including all the preparatory work and other activities that precede actual decisions, and measures by means of which the decisions are executed. The tasks of the state are carried out by means of politics and

these tasks determine the limits of politics. The process of controlling local-government bodies is also politics. On the other hand, the activities of the private sector, e.g. the investment and employment policies of companies, are not considered to be politics.

Law and politics are sometimes regarded as opposites. It is true that they often conflict with each other, as when regulations contained in a country's Constitution prevent a reform that has been planned. None the less, it is usually a question of the interplay between law and political aspirations.

In what respects does the law constitute a political instrument?

There are three ways in which this function of the law manifests itself.

(*a*) *Political aims come into being* by means of legislation.

The rules embodied in the law are parts of social reality and their task is to regulate social activity. Politics operates through the law. The process of governing a community, which is the substance of political activity, takes place largely but not exclusively by means of legislation.

The matter can be expressed in another way: in order to be carried out, political decisions in the activity of a community must be clothed in some legal form. Unless they have undergone the legislative process as laid down in the Constitution, political decisions have no impact on the activity of the community. Thus a decision concerning an increase in social benefits may have been made by those bodies which *de facto* have the possibility of making such a decision, e.g. committees of parties that have a majority in the Cabinet and in Parliament. Nevertheless, the legislative procedure cannot be by-passed. It is incompatible with a democratic form of government that bodies which do not at law have the power to legislate should exercise that power—whatever the strength of their factual position—and determine concrete questions in a way binding on authorities and individuals. Political government is achieved through acts of Parliament except in those cases where authorities have been given the power to issue decrees. It is through the law that political decisions are introduced into the machinery of society. Politics operates through the agency of the law.

However, there are two reservations to what has been said so far.

In the first place, political decisions can in many cases be effective without being in the form of laws. When the President of the Republic dissolves Parliament, this is a definite and legally binding political measure. But this measure, too, is based on the law which gives the President the authority to dissolve Parliament and announce new elections. The law always remains the final basis for decisions.

In the second place, political government as exercised by Parliament is not always embodied in legislation. Parliament's decisions concerning the budget, methods of control, etc., are also a form of political regulation.

The governance of society by means of law opens up an interesting perspective. There are, on the one hand, those institutions which, according to the Constitution, have the legal right to create law: Parliament, the President and the Council of State (Cabinet). On the other hand, there are those groups which can, with differing degrees of success, influence the official decision-makers: political parties, interest groups, lobbies of different kinds and individual persons. The activity that these groups display is magnified and strengthened by the mass media. Formal legislative authority and actual political power are not identical.

It is important for the democratic form of government that Parliament, as the institution that represents the people, should not merely have the *formal* right of legislation. Participation by the people in political elections is not intended simply to organize representation for the people. It is also a link in the people's opportunity to influence the direction and formulation of the exercise of power by the state and consequently to bring their influence to bear on decisions concerning society. The participation by individuals in elections is at the same time both an organizational and an influential activity. Parliament must have real power. The law must be an instrument for regulating society by decisions of Parliament, and not just a tool serving forces that operate outside the representative body of the people.

With this statement, we have summarized the role of the political parties and their relationship to Parliament.

From a formal legal point of view, the political parties are extra-parliamentary units. The Constitution does not presuppose their existence. They have no formal legal role in legislative procedures. None the less, they are there. Without a well-developed activity on the part of the political parties the parliamentary system would not work. The Constitution draws up the guidelines and limits for the activities of the state. But it does not prevent the existence of a system which permits organs other than those mentioned in the Constitution from taking part in the process by which laws are created.

Here one is made aware of the importance of the *legislative procedure.* At different stages of that procedure, opinions and suggestions can be put forward and weighed against one another. Alternative solutions can be worked out. The result that is finally arrived at is often based on compromises and is achieved through concessions to political aspirations from the opposition. It is in this way that the moderating effect of democracy functions.

Ultimately, it is the majority in Parliament which decides the contents of a particular law and consequently the way and the degree to which political

aims become facts—this is true whether it is a question of social assistance, taxes, rent control or any other form of political government. Regardless of whether the decision of the majority was determined by unilateral considerations or whether it was the result of concessions, it will determine the norms that are to apply when the law has been approved by the President and published. The provisions embodied in the law reflect the degree of power and skill that parties, groups and individuals have been able to bring to bear in the course of the legislative process.

(*b*) The claim that the law constitutes an instrument for politics does not only apply to the governing process that results directly from the provisions ebodied in the law. The state authorities often have considerable freedom of action in their decisions by virtue of law. This type of political government takes place through *the decisions and measures taken by the authorities within the limits laid down by the law.*

The law gives the authorities more or less extensive powers to govern and develop society, each of them within a certain sector or at a certain level. The legislator may grant the appropriate competence but he does not always lay down the norms for the contents of decisions which will be made by these authorities. This problem can be seen, for example, in the powers given to the Council of State (Cabinet) to make decisions that affect both society and the conditions of the individual citizens, such as price controls, regulation of charges and rents, etc. Parliament, through laws constitutionally passed, has given the Cabinet powers to act.

According to the Constitution of Finland, the President determines the country's relations with foreign countries. With regard to foreign policy, the President has the authority. This authority has not been very exactly defined as to contents; it is, however, subject to the proviso that the participation of Parliament is necessary in certain cases. For example, Parliament must approve treaties with foreign powers when such treaties contain provisions belonging to the field of legislation.

The problems now dealt with concern the degree to which Parliament must make decisions on matters of the governing and development of the community and the extent to which political decisions can and must be made by the Government or administrative authorities. Much depends on what is regarded as practical and possible. It is important that Parliament should participate in decisions which concern the bases and general guidelines for social activities in different sectors. This participation operates through the passing of laws.

(*c*) In a democracy, *political activity is free.* Each individual has the opportunity—by virtue of the freedom of expression, association and publication—to put forward his views about how society should be run and in

that way to try to influence the course of affairs in society. This is also true of organizations, within the powers designated to them in their rules as determined in accordance with the law.

This political freedom, guaranteed by law, makes it possible to develop the interaction that constitutes such an important part of the democratic system—the continuous exchange of views and the interplay between the people and its elected elite. While it is true that members of Parliament are not legally bound by the opinions expressed among their constituents, it is clear that positions adopted in legislative organs are influenced by the ideas and views that emanate from outside, whether expressed by private individuals or by interest groups, temporary pressure groups, etc. For example, there is the very large part played by labour organizations and employers' associations in matters of economic policy.

6. One of the most important tasks of the law in a democracy is to provide the individual with adequate *protection.* Democracy aims to give the individual a strong position. The democratic system is founded on the right of the individual citizen to take part in public affairs by casting votes in general elections and through the interplay between the individual and the elite. The individual's position is further emphasized by the fact that democracy recognizes that certain rights are of basic value to the individual: freedom, equality, security.

Here, only the protection of democratic rights against *interference on the part of the community* will be discussed.

The protection against decisions and measures taken by society is only one part of the relationship between society and the individual. The other side of the coin is that the individual as a member of society plays an active part within the community. Effective and progressive state activities often necessitate encroachments on the individual's sphere of interest.

There is often a conflict or at least a tension between the individual and society. In such situations there arises the question of protecting the individual against state interference. There is also the matter of the limits to the exercise of power in the state. The drawing of the boundary between state regulation and individual freedom is first and foremost a political issue, not a legal one. However, there are certain legal aspects of the problem.

How far and in what way can the law protect individuals against the dispositions of the state?

There are rights which should be guaranteed to the individual in so far as this is possible. In part they are those freedoms and rights which are the

conditions for or consequences of the democratic system—the right to vote, the freedom of the press, the right of association. In part they are common human rights—the freedom of religion, the privacy of the home, the right to personal integrity, etc. These rights should be protected from any interference on the part of the state, but this is a principle which cannot be applied without modification. It is the task of the law to safeguard these rights from infringement by the state. In so far as rules are needed for the exercise of civic rights and freedoms, these are given by means of laws which must not be of such a kind that in reality they restrict the individual's rights and freedoms more than is required by a rational form for their exercise.

The protection afforded by the law in Finland to civic (human) rights is in certain respects quite far-reaching. The provisions concerning the most important rights and freedoms are contained in the Constitution. This can be changed and exceptions made to it only in accordance with the rules regulating the passing of amendments to the Constitution. This means that the people will have the opportunity to express their opinion on proposals for new laws on these matters in a general election. After having been passed in Parliament by a simple majority, the proposal is tabled until an election has been held. The newly elected Parliament then comes to a final decision on the proposal—without being able to alter its contents in any way—and is guided in its decision by the opinions that have been expressed in the election. In order to be approved finally, the proposal must be carried by a two-thirds majority in Parliament.

Whether the possibility of measuring public opinion in this way in an election is real and not just theoretical depends on the priority given by the political parties to any proposed amendment to the Constitution in the course of the election campaign. The chances of gaining any clear picture of the electorate's real views may be relatively small. In addition to the democratic function of giving the people the opportunity to express their views on an amendment to the Constitution, the rules for the passing of constitutional amendments have a further important task: they prevent hasty and premature changes. It is important that it should be possible to amend the Constitution if it is seen to be in conflict with current developments in society or is no longer suitable for some other reason. But it is equally important that the Constitution should not be changed without careful preparation and full consideration of all aspects involved. It is necessary for the stability of society and for the security of the individual that temporary political factors or ephemeral majorities in Parliament should not erode the individual's protection at law.

Decisions concerning the individual's relationship to society often re-

quire rapid action. Otherwise the steps planned may lose their purpose. The machinery of society must be able to work effectively and rationally.

In reality the normal procedure for the passing of laws affecting the Constitution—the decision has to wait until after a new election—has not always proved to be very practicable. In such situations there are certain provisions concerning rapid action on proposals affecting the Constitution. According to these, a proposal that involves a change of the Constitution can be discussed by the same Parliament if a decision is taken by a five-sixths majority of the house that the matter should be considered urgent.

Instances of such urgent handling of matters affecting the Constitution have been frequent in Finland. This procedure has proved to be necessary first and foremost in questions of economic policy. Infringement of private interests has made amendments of the Constitution necessary. By means of such legislation the Government has been given the authority to regulate prices, rents, etc. Such regulations have often meant a limitation of the constitutional protection granted to citizens' property. In some cases they have entailed restrictions on citizens' rights, usually as the result of an emergency situation.

It is not absolutely clear what rights and liberties are entitled to protection under the Constitution. The problem is a complex one. It is here that ideologies and political goals resulting from ideologies enter into the picture. If the problem is viewed from the democratic angle, then constitutional protection should apply to those rights and liberties that are a condition of or are linked to the democratic system and a democratic attitude to the relationship between society and the individual. However, it is important that the law should provide a real and effective protection for those rights contained in the United Nations Declaration of Human Rights and later conventions on that subject.

When it is considered necessary to undertake an infringement of individual rights, it is important that the law should stipulate the rules governing not only the *conditions* upon which an individual's rights may be placed second to those of the community but also the *way* in which such an infringement may occur. In this way the protection afforded to the individual by the law against encroachments will be clarified.

This protection at law may produce its effects in different directions.

(*a*) Sometimes the legislation has provided for a system whereby *the public interest is given priority over the private interest* because it has been considered necessary or practical to introduce solutions to problems that will satisfy important public needs. Private interests must therefore give way to the public interest. It may be a matter of the building of roads or

airports, of controls on commodities or prices, of restraints on the right to erect buildings, etc.

When talking about public interest and priority therefor, it should be emphasized that society, i.e. the public at large, does not have an interest of its own. In the final analysis, what is termed the public interest or the interest of the society is based on the advantages accruing to citizens or certain groups of citizens. Society exists to serve the individual. In principle there should not be any conflict between society and the individual. But in practice such conflicts cannot be avoided. A clash of interests will materialize when a measure taken by society as a whole affects one individual, e.g. when his land is needed for building a public road. In such concrete situations the individual needs protection from the consequences of the fact that priority has been given to the public interest.

The promotion of the public interest does not mean that the private individual is left without protection. He is protected in two main ways. First, the law lays down the conditions and the way in which an authority may infringe the individual's rights. Secondly, the law provides compensation in cases where the measures taken by society cause the individual economic loss.

As an example of cases of this type may be mentioned the law of expropriation, which makes it a condition of an infringement of private interests that "the public need dictates" such a measure—a wording which is indefinite and open to different interpretations. In principle, full compensation must be given. In practice, calculating compensation is an extremely complex matter.

(*b*) In order that society shall be able to fulfil its tasks, it is necessary that *individuals shall be placed under certain obligations,* principally economic ones. In the main it is a political question what obligations society lays upon its members and to what degree it does so. Granted that the citizens anyhow have obligations towards society as a whole, the individual nevertheless has the right to protection against society's demands. For this reason a protective mechanism has been built into the legal system. This has a twofold meaning.

It is a principle that obligations cannot be laid upon private individuals except *by virtue of a law* passed by Parliament. This principle is expressed in the Constitution with reference to taxes and charges.

Even in cases not specifically referred to in the Constitution, the principle that the law constitutes the basis when individuals are placed under obligations towards society must be observed. This follows from the fundamental ideas underlying the democratic system. It is natural that Parliament, which represents the people and consequently also, indirectly,

its individual members, should determine whether and in what way and to what extent obligations towards society shall be imposed on individuals. For the legislator must endeavour to frame the provisions contained in the law in such a way that the limits for the obligations incumbent upon the individuals are sharply defined, in order to exclude arbitrary decisions by the authorities.

Since the exercise of power by the authority rests in the final analysis on the law, it would be inconsistent to permit an authority to place certain obligations on private individuals unless the power to do so has been granted by the law.

7. The law has other tasks, too, besides that of bringing about a democracy and democratic values. The additional tasks which characterize the part played by the law in a democratic system might be summed up in what I propose to call *the principle of legality in democracy*. The following two components may be distinguished: (1) the society's activities have their foundation in laws passed by Acts of Parliament; (2) the authorities in society are under a duty to follow the law and other legal norms which have the force of law (in other words, there must be conformity to law), and these norms are also binding on private individuals (obedience to the law must exist).

The principle of legality is an important part of general legal policy. It is through the application of this principle that legal protection for the individual and for society and its institutions is substantiated. The principle also satisfies the requirement of legal security: it encourages order and law-abidingness in the community and makes it possible for individuals to estimate the consequences of their actions and to predict the authorities' decisions and policies.

Legality might be defined as the general principle that the law has to provide the foundation and the guiding light for activity in society.

(*a*) The law provides the *basis* for activity in society. The authority to regulate the conditions for the existence of the democratic society is vested in Parliament. Directives other than those contained in the law or provided for by law lack binding effect. All decisions and measures concerning society's affairs must, directly or indirectly, have the support of or be in agreement with existing law. Any actions that conflict with the law are foreign to a democratic way of life. It is on this point that the democratic system differs from authoritarian regimes.

The principle of the law as a basis for activity in society must be modified in three respects.

To begin with, it is not in practice possible for Parliament itself to

regulate all public activities, in all sectors and at all levels. There exists a strong need for legal norms created by authorities at a lower level in the hierarchy. However, legal norms which are brought into existence in this way have their basis in law, since the power to create them is based on laws passed by Parliament. How far Parliament's legislative authority should extend is largely a practical matter. The guidelines for social activity and for matters of special importance should be laid down directly by the law. Stipulations regarding details have their appropriate place in decrees emanating from authorities at lower levels.

Secondly, it is not possible to regulate public activity in detail by means of the law and supplementary legal norms. It is not possible for the legislator to be far-seeing enough to produce a statute book that is exhaustive. The law must be worded in such a general language that its application in each case will depend on construction of its terms or consideration of the circumstances.

Thirdly, social conditions vary so greatly and concrete situations are so different that the authorities must to a large extent be given the power to act in accordance with what is practicable in each case. This applies especially to administrative authorities. The development of society, furthermore, would be greatly hampered by norms which were too detailed. The law always has its limits, whether they are close or remote.

(*b*) *The obligation to comply with the law* and other legal norms is an important part of the democratic system.

It is in the nature of the law that it is binding on those persons for whom it was intended. Such people are duty-bound to follow the directives embodied in the law and to accept sanctions imposed when a norm is disregarded. This duty of compliance with legal norms holds throughout the whole of society.

In a democracy, compliance with legal norms has quite a different foundation from that which it has in an authoritarian society. All legal norms, both those created by the institutions of the state and those which have the approval of society in some other way, have their origin in the power invested in the people. All exercise of power takes place by virtue of legal norms. The principle that the law is the basis for the society's activity presupposes a compliance with norms of the type discussed here. The law must not have to compete with other sources of power—a dictator's orders, the aggressive influence of a particular lobby, etc.

As far as the *authorities* are concerned, their obligation to comply with the law is laid down in the Constitution (sec. 91 (1)). Those who exercise power are obliged to observe the code of conduct of public officials. This code includes the duty to act in compliance with the dictates of the law. The duty

to disregard directives, whether from a higher source or from outside, which do not conform to the law is also a part of this code of conduct. Where there exists a regulation based on legal norms, then it must be followed. It must not be replaced by other directives. In those cases where the law gives the authorities the liberty to make decisions in accordance with what is practicable in a particular case, there are certain legal requirements which must be complied with, such as the demand that decisions shall be objectively motivated and not be arbitrary.

The code of conduct of state officials, which in principle is binding on all public authorities at every level, means that anyone who breaks a law can be subjected to sanctions—punishment, disciplinary measures, the obligation to pay compensation, etc. The sanctions that can be imposed are also regulated by law. Other consequences than those prescribed by the law cannot be imposed.

The law is also binding on those institutions that create them, e.g. Parliament, unless and until it is changed or repealed by due procedure.

A private *individual* is bound to comply with the law and other legal norms. The individual apprehends this obligation to comply with the law—obedience to the law—differently from those who are exercising power. Other factors contribute to strengthen and promote obedience to the law among individuals.

An important factor is the individual's feeling of solidarity with the democratic society to which he belongs. The individual is aware of the fact that laws are needed if democracy is to function and among them there are laws which impose obligations on the individual towards society. The better democracy functions and the more the activities of the society protect and satisfy individual rights and liberties, the more firmly will the laws be anchored in the consciousness of the people. If a democracy does not function well and has authoritarian tendencies or infringes repeatedly on the rights of individuals, this may easily lead to a situation where the acceptance of the laws by the people and thereby the actual viability of the system may be weakened or even destroyed.

Democracy is not just a system according to which society is ruled: it is also a human attitude. It presupposes a readiness to bear those obligations that the democratic society imposes on individuals. The two sides of democracy are inseparable: the individual cannot just accept the privileges conferred on him by living in a democratic system without at the same time being ready to shoulder the attendant burdens and responsibilities. The principle of legality implicit in democracy must be seen in the same way. It exists not only for the purpose of giving freedom and protection to the individuals but also in order to give substance to the demands that society

places on private individuals. Where individuals voluntarily accept legality with this double connotation, the necessary conditions for the real validity of the laws in society exist.

It is also important that the legislature (Parliament) should be regarded by individuals as representing all the people and not just vested interests or power groups. If laws are carried by a small parliamentary majority and crucial interests of the minority are ignored, there is a very real danger that the laws will not gain acceptance in society.

Finally, it is of considerable importance that the legislator should respect current moral norms and that the rights and liberties of individuals should be afforded protection to the greatest possible extent through the agency of the law. The greater the agreement that exists between the content of the law and people's conception of what is right, the stronger is the actual validity of the laws. The ancient tradition that the law exists to be obeyed serves to strengthen obedience to the law even further.

Legality in society needs to be supplemented by a *mechanism* which can operate if and when the norms of the law are ignored. Without such a mechanism the law can fulfil its task in society only in an imperfect way.

The courts constitute the most important part of this legal mechanism. In addition, certain administrative authorities have tasks concerning the safeguarding of the citizens' legal protection.

The mechanism of legal protection is also organized and regulated by law. The law determines which authorities shall deal with questions concerning the legal protection of the members of the community and the degree of authority each instance may exercise. The procedure to be followed in court and before administrative authorities is also determined by law. In addition, there exist guarantees that the individual will be able to make use of the machinery which is established for legal protection. Thus, he is entitled to bring a case before the courts or other authorities or to use legal remedies for having his case reconsidered by a higher instance. Attempts have been made to make this procedure more easily accessible by adopting liberal rules concerning compensation for legal costs.

The strongest guarantee for the protection that the law affords individuals in a democracy is an independent judiciary. The principle of the independence of the judiciary is contained in the Finnish Constitution and is firmly established in the Finnish legal system.