THE PLANNED CONSTITUTIONAL REFORM IN FINLAND

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1. INTRODUCTION

The Constitution of Finland consists of a number of basic acts which regulate the relations and the competence of the highest organs of the state and the electoral system. There are four basic laws of particular importance. The core of the Constitution is embodied in the Instrument of Government (*Hallitusmuoto, Regeringsform*) of 1919. This law lays down the principle of separation of powers between the organs of the state. Further, it describes the competence of Parliament, the President of the Republic, the Government (Cabinet) and the Judiciary. It also contains provisions concerning the fundamental rights and duties of the citizens. The Parliament Act (*Valtiopäiväjärjestys, Riksdagsordning*) of 1928 deals with the electoral system, the immunity of the members of Parliament and the working procedures of Parliament. In addition there are two basic laws which concern the prosecution of a member of the Cabinet.

In what follows I propose to discuss the preparation of amendments of certain parts of the basic laws of Finland. Before doing so, I shall present the Instrument of Government and the Act on Parliament in order to illustrate the historical background. Further, I shall give an analysis of the different views of the political parties on constitutional matters.

2. THE INSTRUMENT OF GOVERNMENT AND THE PARLIAMENT ACT

Until 1809 Finland was an integral part of Sweden. From 1809 to 1917 it was an autonomous part of Russia, the Grand Duchy of Finland, with a Constitution of its own. Finland became a sovereign state in 1917, and the Instrument of Government was enacted in 1919.

An Instrument of Government was under preparation when Finland was still a grand duchy under the Russian Tsar. It was the idea of the drafters of the new Constitution that Finland should be made a republic. The draft act was based on the principle of parliamentary democracy.

Because of the experiences during the civil war which followed upon independence, the Conservative parties wanted a Constitution based on a monarchy. The advocates of a monarchy did not wish to base the Constitution on the principle of the supreme power of Parliament. They stressed that the head of the state should have a substantial measure of power under the Constitution in order to maintain the stability of the state. The monarchist groups even went so far as to elect a King of Finland, even though a new Constitution had not been enacted. However, the idea of a monarchical Constitution did not meet with approval. Instead a republican Constitution was enacted. However, the monarchists had sufficient political power to influence the new Constitution. In part this is explained by the fact that the new Constitution had to be passed in accordance with the old Parliament Act of 1906. This gave the minority a strong position in the enactment procedure of basic laws. In order to reach the necessary consensus, the parties in favour of a republican system—the Centre Party, the Agrarians and the Social Democrats—agreed to certain provisions put forward by the monarchists. This explains why the Instrument of Government of 1919 gives the President of the Republic such a powerful position as head of state.

The Instrument of Government of 1919 is still in force; only minor amendments have been made in it. The provisions dealing with the powers of Parliament, of the President of the Republic and of the Government remain as they were. The President has not yielded up any part of his power to Parliament or to the Cabinet by ceasing to use his prerogatives, as the king has done in many constitutional monarchies. On the other hand, the Instrument of Government contains provisions based on the principle of the supreme power of Parliament. With some exceptions, the decisions of the President must be taken in the presence of his Cabinet ministers. It is provided that the ministers must have the confidence of Parliament. Ordinarily, the President uses his powers in conformity with the views of the Cabinet, but it is generally acknowledged that the President has a right to use his power to decide contrary to the opinion of his ministers and it occasionally happens that he does so.

As already mentioned, Finland had a Constitution of its own during its period as a grand duchy (1809–1917). At first it was the Swedish constitutional instruments in force at the time of Finland's separation from Sweden, namely the Constitution Act of 1772 and the Act of Union and Security of 1789. In accordance with the Swedish constitutional tradition, Finland had a separate basic law dealing with the functioning of Parliament. The first Finnish Parliament Act was passed in 1886. In 1906 an important change took place, the Diet of the Estates being replaced by a

unicameral Parliament. The 1906 Parliament Act contained detailed provisions on parliamentary procedures. When this act was under preparation the Conservative groups expressed the opinion that a unicameral Parliament would misuse its legislative powers and might adopt laws suppressing national minorities and depriving others of their privileges. In the beginning the Conservatives suggested that the new Parliament should be bicameral, with a first or upper chamber having the power to postpone or veto unjust or premature legislation. Public opinion was so strongly against bicameralism that this idea was rejected. Instead a unicameral Parliament was created, but in the Parliament Act certain provisions intended as guarantees against misuse of the majority rule were laid down. Indeed these rules had a similar function to that of a bicameral system. Thus the 1906 Parliament Act provided that a minority of one third of all the members should be able to postpone the adoption of a law until after a new election. Further, the passing of tax laws required a two-thirds majority of the votes cast. In addition, the enacting of new basic laws or of amendments to basic laws had to be carried by qualified majorities. The same was the case with a law which constituted an "exception" from a basic law. The Finnish system of "exceptions"from basic laws will be described later on. The rules on the establishment of a Special Committee for the purpose of scrutinizing draft laws may be regarded as another reminiscence of the idea of a bicameral system.

When Finland became an independent state, the Parliament Act of 1906 had to be reformed in order to reflect the new status of sovereignty. There were—just as there had been during the drafting of the 1906 Parliament Act—different opinions about the special-majority rules. As a part of a political compromise the provisions of the 1906 Act on this matter were taken over by the new Act. Some amendments to the rules were proposed, but none carried enough support, and consequently the controversial provisions were preserved. The 1928 Parliament Act is still in force, and no substantial changes have been made in the special-majority rules.

To sum up, both the Instrument of Government of 1919 and the Parliament Act of 1928 were the product of political compromises. They reflect strongly the social situation prevailing at the time of their coming into being.

The differences of opinion with regard to constitutional issues can be summarized as follows:

(1) The Conservative groups wanted to establish a monarchy and to give strong powers to the Government and to have a sharp division of competence between Parliament, on the one hand, and the monarch or president as head of state, on the other. They also favoured rules giving a strong

position to the minorities in Parliament, e.g. special rules on majority decisions in legislative issues.

(2) The Social Democratic Party favoured a system which would make Parliament the centre of power. They were also opposed to rules which were contrary to the principle that the majority should carry the decisions.

(3) The centre groups favoured a parliamentary system but wanted the head of the state to have substantial powers in order to enable him to break political and parliamentary deadlocks.

There were, and still are, other minor differences of opinion about certain other constitutional principles. Thus the method of electing the President of the Republic caused disagreement. Those on the left wanted Parliament to elect the President, while other groups favoured a direct or indirect popular vote. Nor could the parties agree upon the methods of electing members of Parliament.

3. CONSTITUTIONAL DEVELOPMENTS AFTER THE ENACTMENT OF THE INSTRUMENT OF GOVERNMENT AND THE PARLIAMENT ACT

As already mentioned, there have been no major amendments to the Instrument of Government and the Parliament Act. In the 1930s there were some unsuccessful attempts to strengthen the position of the Government and to diminish the effect of the parliamentary system. Further, the Finnish Communist Party was excluded from taking part in the parliamentary work through a change in the provisions concerning the right to be elected to Parliament. After the second world war, the Communists became eligible again. During the 1950s suggestions were made for a thorough revision of the Parliament Act with a view to creating more favourable working conditions and rationalizing the legislative procedures. During the same period attempts were made to limit the unrestricted right of members of Parliament to speak during debates.

In the period from 1919 until now a remarkable development has taken place, which has not required any constitutional amendments. Both the Instrument of Government and the Parliament Act foresee the possibility of legislating "exceptions" from the provisions of the basic laws. Parliament can adopt an ordinary law which is contrary to a provision in a basic law, without amending the provisions of the basic law which were derogated from. This is done by adopting the bill containing an "exception" from the basic law by using the same procedure of special majorities as is required

for amendments of the basic law itself. In this way more than 700 exceptions have been legislated since 1919. Most of them have concerned derogations from the provisions dealing with the protection of individual property in sec. 6 of the Instrument of Government. It has been an established practice that bills providing for limitations of the right to use property are considered contrary to the provision for the protection of the right to individual property. When passing the bill, Parliament applies the "exception method". The bill is declared to be in conflict with the constitutional protection. Thereupon it is adopted by the special majorities required for amendments of basic laws. This method, of course, gives the minority a power to influence decisions. In practice, bills dealing with export and import restrictions, rent control, price control and regulation of dealings in foreign currencies, etc., are regarded as derogations from constitutional rights. Consequently, such bills can be passed only by using the special-majority-rule procedures.

A bill can be adopted as an "exception" from a constitutional rule by using one of two alternative procedures. The bill may be handled under a procedure covering two separate parliamentary sessions. In that case it has to be approved by a simple majority and left pending until the first ordinary session which takes place after a new general election, whereupon it has to be passed by a two-thirds majority. The other alternative is the urgency procedure. The bill is first voted urgent by the majority of five sixths of the votes and thereupon immediately adopted by a majority of two thirds. In this case the procedure requires only a few days (the minimum time is two days and a few hours). Both procedures give minorities in Parliament the possibility of preventing legislation, since one third of those casting votes can always stop the adoption of a bill and one sixth can block the use of the emergency procedure. As mentioned before, acts regarding rationing have often been considered to constitute derogations from constitutional rights and therefore require special majorities. This has led to situations where the opposition in Parliament has prevented the Government from getting through Parliament legislation on rationing which the Government has considered important for reasons of economic policy.

4. THE WORK ON THE REFORM OF THE FINNISH CONSTITUTION

At the end of the 1960s an animated dicussion arose about the need for constitutional reforms. In 1970 a Constitutional Committee was ap-

pointed. It was instructed to draft a new Constitution in order to develop political institutions, to promote democracy and the rights of the citizens. It was to pay special regard to such provisions in the basic laws as might have become obsolete. The new Constitution should strengthen the status of Parliament as the central organ of the state and develop the parliamentary system. The Committee should study the provisions on the election of the President of the Republic and on the powers of the President. Further, it should propose a mechanism whereby the citizens could participate more effectively in political life and in decision-making. In addition it was to study and review the provisions concerning the fundamental rights of the citizens with special reference to so-called human and social rights.

The Committee had to present alternative solutions and to draft the text of a new Constitution.

It was a rather large body. It had 16 members representing the political parties, the civil service and the learned world, and four secretaries. Politically it was balanced with a small majority of non-Socialists (Conservatives, members of the centre parties, and neutral members) against a strong minority of Socialists (Social Democrats, Socialists and Communists).

The Committee had a very difficult task because of political controversies. After three years' intensive work it was not able to publish more than a concise preliminary report on the legislative alternatives. The members were not able to agree with regard to the basic questions. Votes were cast on dozens of issues. Most of the differences of opinion arose between those on the left and the non-Socialist members. The basic questions concerned the power and the position of Parliament and the powers of the President of the Republic. The non-Socialist members wanted to maintain (albeit in a modified form) the separation of powers as conceived by Montesquieu: in other words they considered that the new Constitution should be based on the same principle as the Instrument of Government of 1919. The left wing, for their part, wanted to abolish the separation of powers and to give Parliament an unchallenged position as the centre of political decision-making. This goal could be attained by taking away the powers of the President of the Republic and giving them to the Prime Minister or to Parliament and by prescribing in the Constitution that the President could use his powers only in conformity with the advice of his Cabinet.

The Constitutional Committee suggested that the political parties and other organizations of citizens should be asked for their opinion with regard to the constitutional reform and that such a procedure should be followed in the future in the preparation of constitutional laws. In addition

a number of social scientists and scientific institutions should be asked for their opinion on the constitutional reform.

A new Constitutional Committee was appointed on July 4, 1974. Most of the members of the Committee were the same as those of its predecessor. The new Committee was not called upon to draft a Constitution. Its only task was to prepare a summary report on the opinions of the political parties, the organizations and other institutions and of private citizens on a constitutional reform. The matter had been the subject of a lively discussion in the press. The report was presented on March 26, 1975. The Committee had carefully studied the written opinions submitted by the political parties. From these the Committee—although it was not given the task of indicating the feasibility of a constitutional reform—drew the conclusion that a new Constitution was not likely to receive sufficient support in Parliament.

Anyone reading the statements of the parties cannot fail to observe that the basic differences between the parties today are of the same character as those which existed already during the drafting and the bringing into being of the Instrument of Government of 1919 and the Parliament Act of 1928.

The non-Socialist parties (the Conservatives and the centre parties) consider the present Constitution rather satisfactory. They suggest only minor amendments of the provisions regarding the powers of Parliament, the Government and the President of the Republic. The parties of the left (the Social Democrats, the Communists and the Socialists associated with them) require changes in the power relationship and stress the importance of eliminating the special-majority provisions. They point out that the procedure of making "exceptions" from the basic laws led to unsatisfactory situations. On the other hand, almost everyone agrees that the position of Parliament should be strengthened. There is unanimity, too, with regard to the social and economic fundamental rights of the citizens. All parties agree that the Constitution should contain new provisions on this matter.

5. PLANS FOR PARTIAL REFORMS

The work on the reform of the Constitution started in 1970 in a somewhat hasty and uncoordinated way. No serious attempt was made to reach a consensus, or to find out what compromises were possible. After the presentation of the summary report of the second Constitutional Commit-

tee there was a remarkable change of approach. The Government appointed two informal groups to study the possibilities of constitutional amendments. These groups endeavoured to find areas where political compromises might be reached and reform proposals might find sufficient support. Members of all major political parties and experts on constitutional law were consulted. As a part of the work a careful prognosis on the feasibility of constitutional reforms was prepared. At the beginning of 1977 the groups presented suggestions regarding the next stage of the preparation of constitutional reforms. The original idea of a total revision of the Constitution was abandoned and attention was focused on possible partial reforms.

The 1977 Constitutional Committees

In the summer of 1977 two committees on constitutional matters were appointed, the Committee on Special-Majority Rules and the Committee on Fundamental Rights. The committees are political in the sense that the political background of the members reflects the political relationships in Parliament. Some of the members are members of Parliament, others are experts on public law.

The Special-Majority Committee has two basic tasks. First, the Committee is to study the possibilities of reducing the effects of the special-majority rules in the Parliament Act on the legislative procedure. As mentioned before, an amendment of a provision in a basic law as well as a law constituting an "exception" to a basic law requires two-thirds and five-sixths majorities. One third of the members of Parliament can postpone an ordinary bill until after a new parliamentary election. Further, a new permanent tax requires a majority of two thirds. The Committee is to study the possibilities of adjusting these ratios, which in effect implies that the Committee is to suggest a lessening of the influence of parliamentary minorities.

Secondly, the Special-Majority Committee has the task of studying the smoothing of the legislative procedure with regard to economically important bills. The Committee's terms of reference on this point are related to the established interpretation of the constitutional provisions on protection of private property and the technique used to adopt "exceptions" from the basic laws. Many important bills on rationing have been ruled contrary to the Constitution and it has been possible to adopt them only by approval of special majorities (two thirds and five sixths). In order to facilitate in the future the passing of important rationing bills and other

economically important bills, the Committee is to study and suggest amendments of the Constitution by which it would be possible to smooth the legislative passage of these kinds of bills. Such a reform would also lessen the influence of parliamentary minorities. The possibility of an easier procedure for the adoption of such bills is regarded as important for the creation of work opportunities, the stabilizing of prices, the promotion of economic progress, undisturbed import and export, and regional development.

The Special-Majority Committee faces an extremely difficult task, since opinions between the political parties are divided about the significance of the special-majority rules and the legislative procedures regarding economic bills. If it should prove that the Committee is unable to reach a consensus on these matters—which is rather unlikely—the Committee should at any rate be able to suggest compromises which could satisfy at least two thirds of the members of the parliamentary groups of the political parties. Otherwise no amendment of the Constitution can find the necessary approval. It seems quite possible that no constitutional reform will take place, and the Government will be given permanent rationing powers by an "exception" from the Instrument of Government.[1]

The Committee on Fundamental Rights is confronted with a somewhat less formidable task. It has to study the provisions of the Instrument of Government regarding the basic rights of the citizens, among them the right to personal freedom, freedom of speech and protection of property (classic human rights). If a provision is found to be obsolete or incomplete, the Committee is to suggest amendments. A second part of the work of the Committee concerns the economic and social rights of the citizens. As mentioned before, the Instrument of Government lacks provisions on these matters. The Committee has been given a free hand to draft new provisions for the Constitution. It is instructed to finish its work before the end of 1978.

When the 1970 Constitutional Committee was at work, it was stated that all the political parties agreed that the Constitution should contain provi-

[1] *Addendum* (May, 1978). The Committee on Special-Majority Rules delivered its final report on February 2, 1978. The Committee could not reach consensus about the amendments of the special-majority rules. Instead, the Committee suggested—after casting of votes—that the Government be given permanent rationing powers by means of an "exception" from the Instrument of Government. When this is written (May, 1978) the coalition in power are discussing the possibilities to present such a bill to Parliament during the summer of 1978. However, general elections are to take place within a year. This fact has influenced the political climate so that the possibilities of the bill getting parliamentary approval seem rather poor.

sions of this kind. The Committee listed more than 20 new cultural and economic rights, but did not make any choice of its own. It will be the task of the 1977 Committee on Fundamental Rights to select those rights which are considered so important that they should be embodied in the Constitution.

The Committee is to study the citizen's access to appeal to courts of law or to administrative courts in matters concerning the fundamental rights of the citizens. In the present Constitution the provisions of the fundamental rights of the citizens are considered to govern only the legislative process. The Committee may meet with difficulties when it comes to the drafting of provisions which are directly applicable to decisions of courts and of administrative bodies. It may be particularly difficult to draft provisions on the economic and social rights of the citizens which shall apply both to the legislature and to administrative and judicial bodies. Constitutional provisions on economic and social rights might be considered commitments, they are goals which the legislative bodies should seek to attain by means of future legislation. On the other hand, it would seem that there were no major disagreements between the political parties as to the substance of such provisions.

It should be noted that the basic laws of Finland do not allow the challenging in court of the constitutionality of an act passed by Parliament. The constitutionality of an act is scrutinized during the legislative process by the Parliamentary Standing Committee on the Constitution. During this procedure special regard is paid to the question whether a bill is in conformity with the provisions on the fundamental rights of the citizens.

Legal writers and certain political parties have made statements suggesting that a constitutional court should be established to examine the constitutionality of laws adopted by Parliament, with special reference to the conformity of the law with the fundamental rights of the citizens. The subject is, however, controversial and there are differences of opinion both between the political parties and among legal writers. Some persons hold that a judicial review of constitutionality would imply a limitation of the sovereignty of Parliament (in the French tradition), while others consider that the possibility of challenging in court the constitutionality of an act might strengthen the protection of the fundamental rights of the citizens. It is not in the terms of reference of the Committee on Fundamental Rights to examine the possibility of a challenge in court of the constitutionality of acts passed by Parliament.

At the end of 1977, the work of the Committee was still in its preparatory stage. It is unlikely that the Committee will present its report before the next parliamentary election in 1979.

The two committees have a realistic approach to their work; they endeavour to arrive at proposals which could lead to constitutional amendments. However, it must be borne in mind that the task of the Special-Majority Committee is extremely difficult because of the controversial nature of the subject. Further, it has to be considered that in Finland the legislators would seem to have been very conservative. Proposals to amend the basic laws have often been rejected in the past.