

EU Law and the Response of the Constitutional Law Committee of the Finnish Parliament

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1 Introduction

This article¹ will consider certain constitutional aspects of the relationship between EU law and Finnish law in the light of the practice of the Constitutional Law Committee of the Finnish Parliament.²

The focus will be on two distinct, yet inter-related topics at the core of the EU law-Finnish law interface. On the one hand, I will examine the relationship between EU law and the domestic system for the protection of constitutional³ and human rights (Section 3). On the other hand, I will discuss the effects of EU membership on how sovereignty is understood (Section 4). In addition, I will briefly discuss the Treaty Establishing a Constitution for Europe (hereinafter the European Constitution) in the final section of this article (Section 5) from the perspective of Finnish constitutional law. The initial section will chart the broader constitutional context for considering the relationship between EU law and Finnish (constitutional) law (Section 2).

The following discussion will raise several questions of fundamental significance, such as whether there are any constitutional preconditions and limits to the primacy of EU law over Finnish law, whether the Constitutional Law Committee regards itself as having some authority over the limits of EU competence, and whether there are constitutional limits to further moves of European integration.

It should be emphasized that the following discussion pertains to Finnish constitutional law, not to EU law. I will deliberately seek to avoid discussing how, as a matter of EU law, Finnish authorities, including the Constitutional Law Committee, should exercise their powers when dealing with EU law. This is certainly a relevant issue, not least because the following discussion will show that there are indeed some constitutional limits to the domestic implementation and application of EU law. From the perspective of EU law, it is unclear whether Finland, as a Member State of the European Union, is permitted to qualify and limit the domestic implementation and application of EU law on the basis of considerations stemming from, *inter alia*, the domestic system for the protection of constitutional and human rights. However, as already stated, the EU law-Finnish law interface will be discussed through the prism of Finnish constitutional law only.

Finally, something should be said about the Constitutional Law Committee of Parliament. Finland does not have a constitutional court, and ordinary courts still play a secondary role in the review of the constitutionality of legislation. The primary control mechanism for ensuring the constitutionality of legislation,

1 I'm grateful to Mr. Petri Helander, assistant clerk to the Constitutional Law Committee of Parliament, for his insightful comments on an earlier version of this paper. The article was written in August 2006 with some sections added in October 2006 to incorporate subsequent key developments.

2 For a broader discussion of the effects of EU membership on Finnish constitutional law, see Ojanen, T., *The Impact of EU Membership on Finnish Constitutional Law*, 10 *European Public Law*, 2004, p. 531-564.

3 The term "constitutional rights" is used to indicate clearly that the discussion pertains to fundamental rights protected by Chapter 2 of the Constitution of Finland.

including international obligations and EU affairs, is the (abstract) preview carried out by the Constitutional Law Committee of Parliament. The Committee thus considers EU issues of constitutional significance, which in other Member States are usually decided by constitutional courts or other courts. Consequently, the Committee's approach to EU law is particularly relevant to the present discussion.⁴

In practice, the Committee may deal with EU affairs during the passage of bills or other matters through Parliament, with the Committee taking a position on the constitutionality of the bills and other matters submitted to it, as well as on their relation to the international human rights treaties binding upon Finland (Section 74 of the Constitution of Finland).⁵ It should be underlined that the activities of the Committee include the supervision of international treaties (e.g., the founding treaties of the EU/EC and the European Constitution) and the examination of proposed EU measures, such as regulations, directives and framework decisions, for their compatibility with the Finnish Constitution. The Committee issues its opinions on proposed EU measures within the framework of the procedure allowing for the participation of Parliament in the national preparation of EU matters (Section 96).⁶

Although the Committee itself is a parliamentary sub-committee, composed as it is entirely of MPs, its practice is characterized by a search for constitutionally well-founded interpretations and consistent use of precedents. Before issuing its opinions or reports, the Committee invariably hears academic experts on constitutional law. The views of the Committee enjoy strong authority, and they are generally treated as binding on Parliament and other authorities.⁷

4 In this article, PeVL is the abbreviation for perustuslakivaliokunnan lausunto (Opinion of the Constitutional Law Committee). An example of this abbreviation is PeVL 38/2001vp (where 'vp' refers to 'valtiopäivät', the annual session of Parliament).

5 The supervision by the Constitutional Law Committee is abstract, not concrete, in the sense that the relation between the norm and the circumstances of a particular case is lacking, unlike in the case of *concrete(judicial) review* where a court reviews the constitutionality of legislation in the light of all relevant circumstances of a concrete case to be decided.

6 For the participation of Parliament in the national preparation of EU affairs, see N. Jääskinen and T. Kivisaari, *Parliamentary Scrutiny of European Union Affairs in Finland* in *Trying to Make Democracy Work – Nordic Parliaments and the European Union*, M. Wiberg (ed.) (Stockholm, Bank of Sweden Tercentary Foundation, 1997), pp. 29-47.

7 The Committee has established a special status and respect for its integrity and its non-partisan, non-political approach. It is independent of government and party, and it is regarded as inappropriate for political pressure to be brought against the Committee. There is an expectation that the independence of the Committee will be respected.

2 Constitutional Law Background

2.1 *The Relationship Between International Law and Finnish Law*

The Constitution of Finland assumes a minimalist approach to the regulation of the European Union (EU). Nowhere is EU membership directly acknowledged, and one also looks in vain for a constitutional provision that permits limitations of sovereignty or the transfer of sovereign powers to international institutions in general, not to speak of the EU in particular.⁸ There is a lack of provision for dealing with the relationship between EU law and domestic law. It is only in Chapter 8 that one finds any constitutional provisions relating to the EU. These provisions concern regulating the domestic distribution of powers in EU affairs (Section 93, subsection 2), as well as the concrete forms through which the participation of Parliament in EU affairs is managed (Sections 96 and 97).

As a consequence, the issue of the relationship between European law and Finnish constitutional laws is the focus of only a few provisions of the Constitution of Finland. Prominent among these are, on the one hand, Section 1 which addresses the issue of sovereignty and the participation of Finland in international co-operation and, on the other hand, Sections 94 and 95 which deal with the acceptance of international obligations⁹ and their denouncement (Section 94) and the bringing into force of international obligations (Section 95). Section 1 will be considered further within the fourth section of this article.

On the basis of Sections 94 and 95, the relationship between Finnish law and international law is based on the *dualist* approach. Accordingly, no international obligation can become part of Finnish law solely by virtue of its international acceptance by Finland. A distinct domestic legal enactment is required for the purpose of making a certain international treaty part of the Finnish legal order. However, due to the regular use of *in blanco* incorporating enactments, i.e., enactments simply stating that the treaty provisions “are in force” domestically, the outcome has been described as *de facto* monism.¹⁰

As a rule, parliamentary acceptance of the ratification of an international obligation is given by a decision made by a majority of the votes cast. However, a majority of two-thirds is required for the ratification of an international obligation that conflicts with the Constitution (Section 94, subsection 2). Furthermore, international obligations ‘shall not endanger the democratic foundations of the Constitution’ (Section 94, subsection 3). So far, there has been no constitutional practice by the Constitutional Law Committee on the

8 Most of the other Member States with a written constitution have a constitutional provision permitting limitations of sovereignty or transfer of sovereign powers to international institutions. See Bruno de Witte, *Sovereignty and European Integration: the Weight of Legal Tradition* in Anne-Marie Slaughter, Alec Stone Sweet and Joseph H H Weiler (eds.), *The European Court and National Courts – Doctrine and Jurisprudence* (Hart Publishing: Oxford, 1998) 277-304, at 282-284.

9 The notion of ‘international obligation’ includes, but also transcends, international treaties, and extends to cover such international obligations as, *inter alia*, the binding decisions of international organisations.

10 Scheinin, M., *Constitutional Law and Human Rights*, Juha Pöyhönen (Ed.) *An Introduction to Finnish Law* (Kauppakaari:Helsinki 2002) 31-57, at 34.

interpretation of this absolute limitation on the acceptance of international obligations that was introduced by the new Constitution of Finland in 2000. According to the *travaux préparatoires* of the new Constitution, however, this provision is designed to preclude the ratification of such international treaties that would endanger such democratic foundations of the Constitution as the status of Parliament as the highest state organ.

Provisions of international obligations that are of “a legislative nature” and, accordingly, fall within the competence of Parliament must be brought into force by an Act of Parliament (Section 95). Otherwise, a Decree ranking lower than an Act of Parliament suffices. The status of the incorporating domestic enactment is of significance since the starting point for considering the domestic status of international obligations is the status of the incorporating domestic enactment.¹¹

An Act of Parliament incorporating provisions of a legislative nature from international obligations can usually be adopted by a majority of the votes cast. However, if an international obligation is deemed to be in conflict with the Constitution, the incorporating enactment requires a two-thirds majority in Parliament (Section 95, subsection 2).

It should be emphasized that no amendment to the Constitution is necessary to enable Finland to enter into an international obligation that is deemed to be in conflict with the Constitution. The explanation for this is *the institution of exceptive enactments*.¹² This idiosyncrasy of Finnish constitutional law allows the adoption of laws that in substance are in conflict with the Constitution without requiring its amendment, subject to the proviso that such laws are approved in accordance with the same procedure that is required for amending the text of the Constitution pursuant to Section 73 of the Constitution. Constitutional law scholars speak about an exceptive enactment making a ‘hole’ in the Constitution and filling it with the relevant norms of the exceptive enactment.

Acts incorporating international obligations conflicting with the Constitution are a special case among exceptive enactments, since the procedure for their enactment requires no more and no less than a two-thirds majority in Parliament (Section 95, subsection 2). By contrast, the following normal procedure for constitutional enactment is applied to other exceptive enactments: the bill is left in abeyance until after elections, unless the bill is declared urgent by a decision made by at least five sixths of the votes cast. In addition, the bill must be adopted by a decision supported by at least two thirds of the votes cast (Section 73).

Exceptive enactments are on the same hierarchical level as ordinary Acts of Parliament. Consequently, an Act of Parliament repealing an exceptive enactment can be adopted through the ordinary procedure of enactment. The procedure for amending exceptive enactments, in turn, depends on the answer to the following question: does the amendment significantly extend the original

11 However, the status of international obligations, especially international human rights treaties, is no longer “mechanically” determined by the hierarchical rank of the incorporating enactment. See Scheinin, *Constitutional Law*, supra note 8, at pp. 32-34.

12 A brief historical review of this institution is provided by Scheinin, *Constitutional Law*, supra note 8, at pp. 55 and 56.

exception – the ‘hole’ – to the Constitution? If the answer is yes, the procedure for constitutional enactment becomes necessary; otherwise, the ordinary legislative procedure is sufficient.

2.2 Two Significant Changes in the Constitutional Matrix Since 1995

There have been two significant changes in the constitutional matrix for considering EU affairs since Finland joined the EU on 1 January 1995. Firstly, there was the comprehensive reform of the domestic system for the protection of constitutional rights, which entered into force on 1 August 1995. Human rights treaties binding on Finland, especially the European Convention on Human Rights, acted as the main inspiration and stimulus for this reform which has significantly increased sensitivity to constitutional and human rights in Finland.

As a result of the 1995 Constitutional Rights Reform, the current constitutional rights catalogue in the Constitution of Finland (Chapter 2 of the Constitution) is very comprehensive. It sets out a range of economic, social and cultural rights, in addition to the more traditional civil and political rights. Moreover, there are specific provisions on responsibility for the environment and environmental rights (Section 20) as well as on the right to good administration (Section 21, subsection 2). Almost all of these rights are, granted to everyone, an exception being made only with regard to freedom of movement (Section 9) and certain electoral rights (Section 14).¹³

Moreover, the domestic standard of protection of constitutional rights is generally at a higher level than the fundamental rights standard under EU law, although it would be foolish to claim that the domestic standard of protection always goes further than that under EU law in protecting fundamental rights. A point that should also be underlined is that just before Finland joined the EU, there was concern that the EU might somehow dilute the domestic standard of constitutional and human rights protection. In the light of this concern, some provisions of the 1995 Constitutional Rights Reform can actually be understood as defensive measures against those problematic tendencies in the field of constitutional and human rights that might in the long run arise from EU membership. As examples, one may refer to a strict clause on the right of access to information (Section 12, subsection 2), a relatively far-reaching clause in Section 19 on the right to social security in which the guaranteed rights are granted to everyone (and not just EU citizens or workers and their families). Some social rights, either by means of the relevant constitutional provision itself, or by means of Acts of Parliament, have also been guaranteed as subjective

13 See, e.g., M. Scheinin, *Finland* in *International Human Rights Norms in the Nordic and Baltic Countries*, M. Scheinin (ed.) (The Hague/London/Boston, Martinus Nijhoff Publishers, 1996), pp. 257-280. On economic, social and cultural rights under the Finnish Constitution, see M. Scheinin, *Protection of Economic, Social and Cultural Rights in Finland – A Rights-Based Variant of the Welfare State?* in *Constitutionalism and the Welfare State*, M. Scheinin (ed.) (København, Nordic Perspectives, 2001), pp. 245-285. A thorough Finnish Constitutional Rights Commentary is provided by P. Hallberg et al., *Perusoikeudet* (Helsinki, Werner Söderström Lakitieto Oy, 1999).

rights directly enforceable through the courts.¹⁴ Section 20, which guarantees responsibility for the environment and environmental rights, can also be understood as imposing restrictions on integration, and the same applies to Section 21 on the right to good governance. The interaction between the domestic system for the protection of constitutional and human rights and EU law will be considered further in the next section of this article.

Secondly, the new Constitution of Finland entered into force on 1 March 2000.¹⁵ Rather than drafting an entirely new text, this reform was primarily based upon the continuity of the old traditions that had been established in earlier constitutional documents, although some fresh elements were included. One of the most significant novelties of the new Constitution is that it is much more European and internationalist in its orientation, with the sovereignty doctrine having undergone a significant transformation in the practice of the Constitutional Law Committee.¹⁶ This issue will be considered further within the fourth section of this article.

2.3 Constitutional Adjustments and Solutions Required by Finland's Accession to the EU

Space precludes a thorough analysis of the constitutional and legislative adjustments required by Finland's accession to the EU; this can be found elsewhere.¹⁷ However, certain summarizing observations must be made briefly so as to provide a basis for understanding the relationship between EU law and Finnish law from the perspective of Finnish constitutional law.

To begin with, the Treaty of Accession of 1994¹⁸ was in conflict with the Constitution of Finland, the major reason simply being the incompatibility

14 Finnish courts have treated as 'justiciable' several dimensions of social rights. See, e.g., the following judgments of the Supreme Administrative Court: KHO 2000:36, KHO 2001:35 and KHO 2001:50.

15 *Suomen Perustuslaki*, Act No. 731 of 1999. English translation of the Constitution of Finland is available at "www.om.fi/constitution", 1 March 2006. For an introduction to the Constitution of Finland, see e.g. M. Scheinin, *Constitutional Law and Human Rights in An Introduction to Finnish Law*, J. Pöyhönen (ed.) (Helsinki, Kauppaakari, 2002), pp. 31-57, at pp. 40-41.

16 For the interpretation of sovereignty in the era of the new Constitution of Finland, see T. Ojanen, *Suomi on täysivaltainen tasavalta – täysivaltaisuusarvioinnin lähtökohtia ja perusteita uuden perustuslain aikana* (2004) XXXVII Oikeustiede-Jurisprudentia – vuosikirja, 385-432 (with an English summary). See also T. Ojanen, *The Impact of EU Membership on Finnish Constitutional Law* (2004) 10 European Public Law, 531-564.

17 See Pekka Aalto, *Accession of Finland to the European Union: first remarks*, 20 European Law Review (1995) 618-628; Niilo Jääskinen, *The Application of Community Law in Finland: 1995-1998*, 36 Common Market Law Review (1999), 407-441; Allan Rosas, *Finland's Accession to the European Union: Constitutional Aspects*, 1 European Public Law (1995), 165-170; Martin Scheinin and Tuomas Ojanen, *Finland* in Joël Rideau (ed.), *Les États Membres de l'Union Européenne. Adaptions-Mutations-Résistances* (Paris, 1997), 185-213.

18 The basic instrument concerning the accession of Finland to the European Union is the Treaty between Member States of the European Union and the Kingdom of Norway, The Republic of Austria, the Republic of Finland, the Kingdom of Sweden. O.J. 1994 C 241/14, as adjusted by Council Decision 95/1/EC, Euratom, ECSC, O.J. 1995 L 1/1.

between Finland's sovereignty and its transfer of powers to the EU.¹⁹ However, no amendment to the Constitution was found appropriate to enable the accession because of the institution of exceptive enactments. Accordingly, the Treaty of Accession was incorporated into Finnish law through an exceptive enactment (Act No 1540 of 1994) approved by a two-thirds majority in Parliament.

The incorporation Act of the Accession Treaty (Act No 1540 of 1994) is a conspicuous example of the Finnish tradition of *in blanco* incorporation enactments. These are enactments without any material provisions of their own, which accordingly simply state that the explicitly identified treaties and provisions are in force as they have been agreed upon. A careful notice of the identified treaties is thus necessary in order to acquire appropriate understanding of the EU obligations under the Accession Treaty.²⁰

The incorporation Act of the Accession Treaty (Act No 1540 of 1994) – as well as written Finnish law in general – is thus also silent on the issue of the domestic effects and status of EU law within the Finnish legal system. As already noted, Section 1 of the incorporation Act only provides that ‘The Accession Treaty of Finland ... as well as those treaties that are mentioned in Article 1, paragraph 1 of the said Treaty, shall be in force as they have been agreed upon.’ However, the doctrinal understanding is that EU law has, within the Finnish legal order, such legal effects and status as is prescribed by EU law itself, and as interpreted by the European Court of Justice.²¹ Finnish courts have not disputed this view. There is no evidence of any reluctance on the part of the Finnish courts to embrace such ‘constitutional qualities’ of EU law as its direct effect, indirect effect and primacy.²²

Furthermore, a consultative referendum was organized on 16 October 1994. The referendum was not a constitutional condition for accession, but the issue of accession was put to the people of Finland for the purpose of ensuring the domestic legitimacy of the decision to join the EU.²³ In the referendum, a majority of 56,9 % of those who voted answered ‘yes’ to the following question: ‘Should Finland become a member of the European Union in accordance with the treaty which has been negotiated?’ The turnout was 74 %.

Thirdly, certain constitutional amendments were made in order to adjust domestic competence arrangements originally made in connection with the European Economic Area (EEA) Agreement in 1993 (Act No 1116 of 1993) to the EU state of affairs. The details of these amendments are not relevant in the present context. It suffices to say that the amendments were about arranging the

19 See PeVL 14/1994vp.

20 See, e.g., Scheinin and Ojanen, Finland, *supra* note, at 191 and 192 and Jääskinen, *The Application of Community Law*, *supra* note, at 410.

21 See e.g. Scheinin and Ojanen, *Finland*, *supra* note, at 191 and 192.

22 For a detailed description of Finnish case law relevant to indirect effect, direct effect, primacy and Member State liability, see Jääskinen, *The Application of Community Law*, *supra* note, at 416-4 428.

23 The referendum on accession to the EU was the second referendum in Finland's history. The first was arranged on the issue of whether or not the system of prohibition of alcohol should be abolished in 1932.

division of domestic decision-making powers pertaining to EU affairs between Parliament, the Government and the President along the same lines as that in domestic legislative affairs, rather than the division which is typical in foreign policy decision making. Without such constitutional arrangements, many significant matters that were previously decided by Parliament in the form of legislation would have been left for the President to decide and this, therefore, would have precluded any parliamentary influence and accountability.

Since Finland's membership of the EU, two amendments to the founding treaties of the EU/EC have entered into force: the Amsterdam Treaty on 1 May 1999 and the Nice Treaty on 1 February 2003. The Amsterdam Treaty and the Nice Treaty necessitated consequential constitutional and legislative adjustments in Finland. Regarding the Amsterdam Treaty, the essential constitutional question was whether or not this treaty expanded the "hole" in the Constitution of Finland made by the original exceptive enactment of 1994.

The Constitutional Law Committee decided that it did. In essence, the call for an exceptive enactment arose because the Amsterdam Treaty was considered to have transferred qualitatively new powers from Finnish State organs to the institutions of the EU, thereby entailing a further intrusion into the sovereignty of Finland.²⁴

In the case of the Nice Treaty, the necessity of using an exceptive enactment was *not* found to be appropriate. Two major reasons coalesce to explain this different outcome. The first is that the Nice Treaty was largely, if not exclusively, about the necessary reforms of the institutional structure of the EU in view of the anticipated enlargement of the Union. The Constitutional Law Committee regarded such changes as normal evolutionary corollaries and necessities and, above all, as largely irrelevant from the point of view of Finland's sovereignty. However, this is not to imply that the Nice Treaty was constitutionally insignificant. In fact, the acceptance by Parliament of the ratification of the Nice Treaty was deemed to be necessary on the basis that the Treaty was "otherwise significant" within the meaning of Section 94, subsection 1, of the Constitution, in addition to the fact that the Nice Treaty comprised a host of articles of a legislative nature.²⁵

The second explanation is that a certain significant constitutional change had taken place prior to the entry into force of the Nice Treaty: the new Constitution of Finland had entered into force on 1 March 2000. This development is discussed in the fourth section of this article.

3 EU Law and the Domestic System for the Protection of Constitutional and Human Rights

On the eve of Finland's accession to the EU, the Finnish constitutional doctrine was largely, if not exclusively, based on the idea that EU law and Finnish law, including the domestic system for the protection of constitutional and human rights, can be regarded as two distinct legal orders which are in force in different

24 See PeVL 10/1998vp.

25 PeVL 38/2001vp.

“regions of legal space” and which have different fields of application. Consequently, the view was that constitutional rights must not affect domestic decision-making pertaining to EU affairs and *vice versa*.²⁶

Quite soon, however, it became evident that the relationship between EU law and Finnish law had to be envisioned as one based on various forms of interaction and inter-dependence. Accordingly, EU law and EU membership in general significantly condition and shape the domestic protection of constitutional and human rights in Finland.

But the converse is also true: domestic decision-making pertaining to EU affairs is far from being immune to the influence of constitutional and human rights. Basically, these rights may come into play in domestic decision-making pertaining to EU affairs at two stages:²⁷

Firstly, constitutional and human rights have assumed relevance when the Constitutional Law Committee has issued its Opinions on proposals for EU measures within the framework of the procedure allowing the participation of Parliament in the national preparation of EU matters (Section 96). The purpose of this preview by the Constitutional Law Committee is to eliminate the risk that the eventual EU measure is problematic through the prism of Finnish constitutional law although such a risk cannot be eliminated altogether. A special feature of this preview has been the Committee’s practice of taking cognizance of the EU Charter of Fundamental Rights when considering the potential implications of proposals for EU measures on fundamental and human rights. The first reference by the Committee to the Charter can be found in its very first Opinion in the parliamentary session of 2001,²⁸ and ever since the Committee has consistently tried to take into consideration the EU Charter, alongside constitutional rights and human rights treaties, in its constitutional preview of proposals for EU measures.

Secondly, constitutional and human rights condition and shape the domestic implementation of EU measures. At present, the constitutional premise is that the implementation of EU measures cannot be permitted to weaken the domestic standard of protection of constitutional and human rights.²⁹ As this premise has occasionally compromised the most “maximal” implementation of EU measures, constitutional and human rights may even be said to define the limits of the primacy of EU law over Finnish law.

Concrete examples are provided by the implementation of the Council Framework Decision of 13 June 2002 on combating terrorism, on the one hand, and the implementation of the Council Framework Decision on the European arrest warrant, on the other. In both situations, the express starting point of

26 For shifts in Finnish views regarding the relationship between EU law and constitutional rights, see T. Ojanen, *Euroopan unioni ja kotimainen perusoikeusjärjestelmä* (with English Summary), (2003) Lakimies, pp. 1149-1168.

27 See T. Ojanen, *The Impact of EU Membership on Finnish Constitutional Law*, (2004) 10 *European Public Law*, pp. 531-564, at pp.

28 PeVL 1/2001vp.

29 PeVL 25/2001vp.

Government bills³⁰ was that the obligation to safeguard the observance of constitutional rights and international human rights had to be taken into account in the implementation of the EU measures in question. Moreover, a number of additional changes and specifications to the bills were made by the Constitutional Law Committee in order to ensure the appropriate observance of constitutional and human rights.³¹ The implementation of common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers under Council Regulation (EC) No 1782/2003 of 29 September 2003 provides the most recent example of the Committee's practice of limiting the domestic effects of EU measures for the purpose of observing constitutional rights.

However, at the same time it should be underlined that the potential for direct and open conflicts between EU law and constitutional rights should not be overemphasized. In almost all cases, it has been possible to implement EU measures without having to compromise the reasonable observance of constitutional and human rights, and *vice versa*, sufficient implementation of EU legislation has also been possible in spite of the observance of constitutional and human rights.

Occasionally, there has been a *prima facie* tension between constitutional rights and a certain EU measure, but the practice of the Constitutional Law Committee has illustrated a strong tendency to try to blunt the edge of any open conflict between constitutional and human rights, on the one hand, and EU measures, on the other hand, in a variety of ways, e.g., by adopting a constitutional and human rights-sensitive interpretation approach in relation to particular EU legislation and its domestic implementing enactment.³²

The system of exceptive enactments offers a constitutionally valid solution to the implementation of EU measures that cannot be harmonized with constitutional and human rights and the Constitution of Finland in general. However, the more one is concerned with the effective realization of constitutional and human rights, the more unsatisfactory this solution becomes. After all, the institution of exceptive enactments is about proper parliamentary procedure, not the effective protection of constitutional and human rights.

So far, the institution of exceptive enactments has been used only once in order to implement EU measures conflicting with constitutional rights. History was made by the implementation of the Council Framework Decision on the European arrest warrant.³³ This EU act was in evident conflict with the Constitution of Finland to the extent that it significantly extended the existing

30 HE 188/2002vp terrorismia koskeviksi rikoslain ja pakkokeinolain muutoksiksi. See also PeVL 48/2002vp; and HE 88/2003vp (Hallituksen esitys laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi).

31 PeVL 48/2002vp.

32 See, e.g., PeVL 5/2001. See also PeVL 25/2005vp.

33 For a detailed discussion of the implementation of the European Arrest Warrant in Finland, see Ojanen, T., *The European Arrest Warrant in Finland – Taking Fundamental and Human Rights Seriously*, Guild, E. (Ed.), *Constitutional Challenges to the European Arrest Warrant* (Wolf Legal Publishers, Nijmegen 2006), 89-100.

scope of extradition of Finnish nationals. Nevertheless, the Constitution of Finland still adheres to the absolute prohibition on extraditing Finnish nationals as is set out in Section 9, subsection 3:

“Finnish citizens shall not be prevented from entering Finland or deported or extradited or transferred from Finland to another country against their will.”

It should be noted that the implementation of the European Arrest Warrant also stimulated a reform of this constitutional provision on extradition (Section 9), so as better to comply with Finland’s international obligations and, specifically, its obligations under EU law. Thus, when the Government submitted a Bill on the implementation of the European arrest warrant³⁴ to Parliament³⁵, it simultaneously submitted a Bill that included, *inter alia*, a proposal for the amendment of Section 9 of the Constitution of Finland.³⁶ The essential content of the amendment is that the extradition of Finnish nationals will be acknowledged even in the text of the Constitution of Finland, albeit subject to a number of preconditions and limits. The Constitutional Law Committee has already delivered its Report on the Bill,³⁷ which has now been left in abeyance until after parliamentary elections following the normal procedure for a constitutional enactment under Section 73 of the Constitution of Finland. After the elections, the Bill must receive at least two thirds of the votes cast to be adopted.

In conclusion, the domestic system for the protection of constitutional and human rights functions as a significant source of constitutional preconditions and limits in the domestic implementation and application of EU measures. Seen from the perspective of human rights law, Finland’s position appears to be well founded. Indeed, Finland has been praised by the UN Human Rights Committee for its practice of trying to take human rights seriously in the context of extradition as follows:

“The Committee is pleased to observe the State party’s concern to integrate human rights into action to combat terrorism, in part by maintaining an outright ban on extradition,

34 HE 88/2003vp (Hallituksen esitys laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi).

35 There was a debate over the enactment procedure of the implementing enactment of the European Arrest Warrant. Should the normal procedure for a constitutional enactment apply? Or should this EU measure be understood as an international obligation within the meaning of Section 95, subsection 2, of the Constitution of Finland with the consequence that a two-thirds majority in Parliament would be needed for its acceptance (Section 95, subsection 2)? Eventually, the Constitutional Law Committee took the view that the Council Framework Decision on the European arrest warrant is an instance of an international obligation within the meaning of Section 95, subsection 2 of the Constitution. This can be seen as reversing the earlier practice of the Committee to the extent that the Committee has emphasized the specificity of EU obligations. See section 4.3.

36 HE 102/2003vp (Hallituksen esitys laiksi Suomen perustuslain muuttamisesta sekä eräiksi siihen liittyviksi laeiksi). -

37 PeVM 5/2005vp.

refoulement or expulsion to a country where the individual concerned might be exposed to the death penalty and violations of articles 6 and 7 of the Covenant.”³⁸

How the Finnish practice of implementing EU measures in a manner sensitive to constitutional and human rights appears through the prism of EU law, is a different matter. As already noted in the introduction, this question falls outside this article’s focus. It can, however, be noted that the Council Framework Decisions on the European arrest warrant and combating terrorism were far from unproblematic from the perspective of constitutional and human rights. Therefore, “the Finnish way”, allowing *both* the sufficient implementation of EU measures *and* the appropriate observance of constitutional and human rights, was well suited to the implementation of these two Framework Decisions. In addition, it can be added that the legitimacy of the Finnish way is increased by the fact that methods for securing the compliance of draft EU legislation with fundamental and human rights are still in their infancy. It is submitted that the emergence of such methods could significantly diminish those kinds of problems which the implementation of EU measures currently much too often poses from the perspective of constitutional and human rights.³⁹

4 Sovereignty and European Integration

4.1 *General Remarks*

One of the most significant influences of EU membership relates to the developments in the framework of constitutional ideas and principles associated

38 Concluding observations of the Human Rights Committee: Finland. 02/12/2004” Concluding observations of the Human Rights Committee: Finland. 02/12/2004. CCPR/CO/82/FIN. (Concluding Observations/Comments), paragraph 4. See “[www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument)”, 15 August 2006.

39 In 2005, the European Commission adopted instruments designed to improve compliance of EU laws and policies with the EU Charter of Fundamental Rights. Communication from the Commission, Compliance with the Charter of Fundamental Rights in Commission legislative proposals. Methodology for systematic and rigorous monitoring, COM (2005) 172 final of 27.4.2005. On 13 March 2001, the Commission had already decided that any proposal for legislation and any draft instrument to be adopted by it would, as part of the normal decision-making procedures, first be scrutinised for its compatibility with the Charter of Fundamental Rights of the European Union. See also Communication of 5 June 2005 on Impact Assessment, COM (2002) 276. Although these instruments still fall short of compensating for the lack of an institutionalised screening mechanism which would allow a systematic and rigorous preview of EU legislative proposals and policies for their compliance with fundamental and human rights, they nonetheless feature as first steps in the right direction.

with the concept of sovereignty.⁴⁰ The entry into force of the new Constitution of Finland on 1 March 2000 marks a watershed in the development of the Constitutional Law Committee's views of sovereignty during the period of Finland's EU membership. So much so that it is possible to speak about the sovereignty doctrine before and after the new Constitution.

4.2 *Sovereignty Doctrine Prior to the New Constitution of Finland*

Prior to European integration, and even in the 1990s, the constitutional construction of sovereignty focused on the opening provision of the Constitution Act of 1919, which stated: 'Finland is a sovereign republic' (Section 1, subsection 1).⁴¹ The Constitution Act of 1919 was also very "domestic" in its orientation, and in this sense it failed to respond to the challenges of Europeanization and globalization. The Act was also unique by European standards in that it lacked a constitutional provision that permits limitations of sovereignty or the transfer of powers to international institutions, not to speak of the EU in particular. Therefore, the constitutional review of international treaties could not focus on a provision that labels the written constitutions of the other Member States of the European Union.

As a consequence, the sovereignty clause in Section 1, subsection 1 of the Constitution Act of 1919 assumed an almost exclusive place in the constitutional review of international obligations by the Constitutional Law Committee. Indeed, it can be said that prior to the 1995 Constitutional Rights Reform, and even during the first years of EU membership, the Committee's concern was not generally with the compatibility of international obligations with the Constitution of Finland, but only with sovereignty as set forth in the opening provision of the Constitution Act of 1919. In addition, the institution of exceptive enactments should be remembered since it paved the way for the practice by which, on the one hand, the Constitutional Law Committee was able to uphold a strict interpretation of the sovereignty clause, by requiring the use of the qualified enactment procedure for the incorporation of international obligations deemed to be in conflict with sovereignty, while, on the other hand, making many derogations from the sovereignty clause.

All these characteristics resulted in a sovereignty doctrine prior to 2000 that was markedly formal and strict: unconstitutionality was declared almost automatically if an international obligation appeared to entail even in a minor way the transfer of powers to international organizations or the authorities of other states.

4.3 *Sovereignty Doctrine During the Era of the new Constitution of Finland*

40 For a detailed analysis of the sovereignty doctrine during the era of the new Constitution of Finland, see Ojanen, T., *Suomi on täysivaltainen tasavalta – Täysivaltaisuusarvioinnin lähtökohtia ja perusteita uuden perustuslain aikana* (with English summary), Oikeustiede – Jurisprudentia XXXVII 2004, pp. 385-432.

41 See Antero Jyränki, *Transferring Powers of a Nation-State to International Organizations*. In Antero Jyränki (ed.), *National Constitutions in the Era of Integration* (London 1999), 61-85.

At first glance, there is little in the new Constitution of Finland suggesting the emergence of a new way of understanding sovereignty.⁴² Indeed, the textual formulation of the sovereignty clause in the new Constitution of Finland is exactly the same as in the old Act of Constitution of 1919: 'Finland is a sovereign republic' (Section 1, subsection 1). As with the old Constitution, the new Constitution of Finland also lacks a provision that permits limitations of sovereignty or the transfer of powers to international institutions or the EU.

Nonetheless, the entry into force of the new Constitution provided a sufficiently powerful impetus to cause a significant shift in the understanding of sovereignty by the Constitutional Law Committee. Three distinct, yet inter-related reasons coalesce to explain the constitutional shift.

Firstly, the contemporary construction of sovereignty is shaped by the *a priori* acknowledgement of the idea that Finnish sovereignty is, under present conditions, qualified by the international obligations that are binding on Finland and, especially, by its EU membership. This mode of thinking made its breakthrough in the practice of the Constitutional Law Committee in the late 1990s, when the need to adapt the construction of sovereignty to meet the challenges of European integration was already tentatively acknowledged.

However, it is only since 2000 that this idea has fully developed due to the entry into force of the new Constitution of Finland. The express intention of the constitutional reform was to replace the traditional, markedly formal and strict understanding of sovereignty with a much more modern and realistic European and international-oriented construction. As a consequence, the new Constitution places an entirely new emphasis on international co-operation by containing a general statement expressing a positive attitude towards international co-operation as follows: 'Finland participates in international co-operation for the protection of peace and human rights and for the development of society' (Section 1, subsection 3). According to the *travaux préparatoires* of the new Constitution, this provision is designed to offer a new dimension for the construction of sovereignty so that those international obligations which are deemed to be 'conventional' in modern international co-operation and which only affect sovereignty in a 'minor way' are no longer as such at variance with the sovereignty of Finland.⁴³ Since 2000, the Constitutional Law Committee has consistently referred to Section 1, paragraph 3 when reviewing both EU measures and international obligations for their compatibility with the sovereignty of Finland.⁴⁴

42 On the construction of the sovereignty clause during the period of the new Constitution of Finland, see Tuomas Ojanen, *Suomi on täysivaltainen tasavalta" – täysivaltaisuusarvioinnin lähtökohtia ja perusteita uuden perustuslain aikana*. Oikeustiede-Jurisprudentia – vuosikirja XXXVII:2004, 385-432 (with a short summary in English). See also Liisa Nieminen, *Eurooppalaistuva valtiosääntöoikeus – valtiosääntöistyvä Eurooppa* (Vammala, 2004).

43 HE 1/1998vp, p. 73. The Constitutional Law Committee has consistently taken advantage of this provision in its interpretation of the sovereignty principle. See, e.g., PeVL 11/2000vp, PeVL 45/2000vp, PeVL 6/2001vp, PeVL 38/2001vp and PeVL 44/2002vp.

44 The very first reference appears in PeVL 2000vp.

Secondly, the shift in the sovereignty doctrine is based on the idea of *the specificity of the European Union*: the Union as something more than a conventional international organization, yet something less than a (federal) state. In essence, the distinction between the EU and other international organizations results in a greater tolerance of limitations on sovereignty stemming from EU membership than those derived from other international obligations.⁴⁵ Sovereignty thus varies from one area to another, so that the practice of the Constitutional Law Committee suggests that it demonstrates the greatest preparedness to accept ‘EU-related’ limitations on sovereignty as being compatible with the Constitution. On the basis of this thinking, the Committee has almost always concluded that a certain EU measure at most affects sovereignty in a minor way and, accordingly, is in harmony with the Constitution of Finland.

The third reason for the shift in the Committee’s practice regarding sovereignty may have to do with a more profound “paradigmatic” change in the Finnish legal order: a constitutional shift away from the sovereignty paradigm towards a paradigm based upon the effective protection of constitutional and human rights. At the level of the Committee’s daily practice, one concrete manifestation of this paradigmatic change has been that whereas previously constitutional limits to international and European affairs were predominantly based on sovereignty, constitutional and human rights now occupy center stage.

In practice, the result of its new approach has been that the Committee has been prepared to accept much wider limitations on sovereignty than before as being compatible with the Constitution. However, it should be emphasized that while the scope and significance of sovereignty have certainly reduced, sovereignty has not become totally irrelevant as a limit to the domestic reception of EU measures or international obligations. The overall approach of the Constitutional Law Committee still reveals that sovereignty does matter. The Committee tries to accommodate the principle of sovereignty to the special characteristics of the EU or, perhaps more to the point, to adapt the EU phenomenon within the principle of sovereignty.

Attention also should be focused on the Committee’s conception of the nature of the EU. The Committee does not see Finland – or the Member States in general – as peripheral to the EU. On the contrary, the Committee regards the EU as an entity in which the Member States ultimately occupy a central position and continue to have the final decision. The Committee’s view is that EU membership centers on exercising Finland’s sovereign powers in conjunction with other sovereign Member States for the benefit of European co-operation. This is hardly a very idiosyncratic perspective, for this conception is consonant

45 See also PeVL 44/2002 vp and PeVL 21/2003vp. The notion of the specificity of the EU is also applied by other major parliamentary committees, the Grand Committee and the Foreign Affairs Committee, which act as the EU affairs committees of Parliament. In their opinion, ‘the European Communities and the European Union cannot be directly equated with any international organisation or federal state.’ See the Opinion of the Grand Committee 4/2001vp and the Opinion of the Foreign Affairs Committee 18/2001vp.

with similar traditional, national constitutional thinking that has been upheld by the German Constitutional Court, to name one such counterpart.⁴⁶

Moreover, the Committee's conception of the nature of the EU can be seen as establishing the following constitutional prerequisite for the participation of Finland in the process of European integration: the EU must remain an entity derived from, and legitimized by, the sovereign will of the Member States. Cast in terms of traditional constitutional terminology, the Committee's message is that *Kompetenz-Kompetenz* remains – and should continue to remain – in the hands of Finland and the other Member States. As will be seen in the next section, this view of the fundamental nature of the Union has recently shaped Finnish views regarding the European Constitution, too.

5 The European Constitution

5.1 *General Observations on the Finnish Discussion about the European Constitution*

The European Constitution has generated relatively little discussion in Finland, with the exception of certain defense and foreign policy issues, which for historical reasons have always featured highly on the Finnish political agenda. In addition, some institutional questions, as well as the referendum issue, have gained attention. The Finnish discussion is also characterized by the fact that it is not focused on the European Constitution itself. True, certain specific articles, such as the so-called 'solidarity clause' (Article I-41(7)) have given rise to some debate, but broader issues beyond the immediate scope of the European Constitution, such as Finland's overall EU policy or the future of the European Union in general, have generated more discussion than the European Constitution itself.

After the rejection of the European Constitution by the French and Dutch electorates in May and June 2005, discussion and debate practically ceased in Finland. The Finnish Government was initially prepared to issue a Government proposal on the ratification of the European Constitution to Parliament during the 2005 autumn session, but decided to postpone the ratification process.

At the end of 2005, however, serious efforts were made to revive the domestic discussion. Among these initiatives, the most notable was the submission of a Government Report to Parliament in late November 2005.⁴⁷ With its report, the Government aimed to provoke debate on the European Constitution in both Parliament and in Finnish society in general. It also hoped

46 See, e.g., the famous 1993 Maastricht decision of the German Constitutional Court, Judgment of October 12, 1993, 89 BVerfGE 155 (the phrase is at 190). For a detailed analysis of the position of the German Constitutional Court, see Juliane Kokott, *Report on Germany* in Anne-Marie Slaughter, Alec Stone Sweet and Joseph H H Weiler (eds.), *The European Court and National Courts – Doctrine and Jurisprudence* (Hart Publishing: Oxford, 1998) 77-131, especially at 92-107.

47 VNS 6/2005 vp (Euroopan unionin perustuslakisopimuksesta [A report to Parliament on the Treaty Establishing a Constitution for the European Union]). For an English extract of the report, see "www.valtionuuvosto.fi/tiedostot/pdf/en/98185.pdf", 3 March 2006.

that the report would send a message to the EU about Finland's support for the European Constitution. The report was positively received by a clear majority of MPs, several of whom called for the immediate launching of the ratification process, so that the European Constitution could be ratified in the second half of 2006.⁴⁸

A proposal for the ratification and incorporation of the European Constitution was submitted by the Government to Parliament in June, which was just before the beginning of Finland's EU Presidency in the second half of year 2006.⁴⁹ At the time of writing in August 2006, there appears to be widespread support in Parliament for the ratification of the European Constitution, although there has been some dissent, too. Most significantly, perhaps, the President of the Republic (Tarja Halonen) disagreed with the rationality and the timetable of the ratification.

While there appears to be fairly positive support for the European Constitution and the EU in general among the political elite, the situation is increasingly different amongst the general public. Finns have always been critical of the EU, but this negative sentiment has increased more than ever, regardless of whether the opinions measured concern EU membership, the image of the EU, or the European Constitution. One of the major reasons as to why the EU is seen in an increasingly unsympathetic light appears to be the cost of membership, which is considered to be too high in relation to the benefits received. In addition, it is felt that Finland's voice is not sufficiently heard in the EU decision-making process, and that the EU interferes too much in affairs that should be dealt with at the domestic or local level. The democratic deficit is also perceived as a problem for Finns.⁵⁰

One distinct topic under discussion has been the referendum issue. The holding of a referendum is not a constitutional condition for the ratification and incorporation of the European Constitution, even if it were deemed to be in conflict with the Constitution of Finland. However, the Finnish Constitution recognizes the institution of a consultative referendum (Section 53), and, as already noted, such a referendum was arranged in 1994 on the issue of Finland's accession to the EU.

The debate over the idea of putting the European Constitution to a referendum commenced after the completion of the work of the European Convention in 2003, and it has since continued with varying degrees of intensity. On a legal-political level, the persistent and prevailing theme has been whether the European Constitution entails a significant change in the relationship

48 See, e.g., Helsingin Sanomat, International Edition, 30 November 2005.

49 HE 67/2006 vp (Euroopan perustuslaista tehdyn sopimuksen hyväksymisestä ja laiksi sen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta). [A Government proposal on the approval of the Treaty establishing a Constitution for Europe and a Bill for the incorporation Act bringing into force those provisions of the Constitutional Treaty that are of a legislative nature.]

50 See, e.g., Attitude and Value Survey by Finnish Business and Policy Forum, *Opening Windows to the World – EVA's 2006 Attitude and Value Survey*. English summary can be found at "www.eva.fi/files/1524_English_summary.pdf", 6 March 2006.

between Finland and the EU, compared with the Treaty of Nice and the Finnish 1994 referendum on accession. The thinking is that *if* a significant change in the relationship between the EU and Finland occurs by virtue of the European Constitution, *then* a referendum would be necessary.

Regarding this moot issue, the Constitutional Law Committee stated already in 2003, after the European Convention had presented its Draft European Constitution to the European Council, that neither the changes made to the Founding Treaties by the Treaty of Amsterdam and the Treaty of Nice after Finland's accession, nor the Draft European Constitution elaborated by the European Convention, were of such a nature as to make a referendum necessary.⁵¹ Subsequently, this view was followed by a clear majority of political parties. On 3 September 2004, various political parties and Prime Minister Matti Vanhanen (Centre Party) held a meeting during which the three political parties in government (the Centre Party, the Social Democratic Party, and the Swedish People's Party), as well as the main opposition party (the conservative National Coalition Party), all concluded that an advisory referendum on the European Constitution would not be necessary. After this meeting, the debate over the referendum subsided, if not ceased altogether. At the time of writing in August 2006, only a relatively small group of politicians and activists is still calling for a referendum. The supporters of a referendum argue that it would enhance the legitimacy of the European Constitution, ensure support for the European project by future generations, and bring the Union closer to its citizens. However, it is almost absolutely certain that there will be no referendum.

5.2 *The Nature and Content of the European Constitution*

The Finnish Parliament has yet to consider the Government proposal for the ratification of the European Constitution which is currently pending before Parliament. However, Parliament and various sub-committees, including the Constitutional Law Committee, have had several opportunities to air their views concerning questions arising at the Convention on the Future of Europe.⁵² In addition, Parliament has very recently discussed the European Constitution on the basis of the Government's Report which was submitted to Parliament in November 2005. The following views on the European Constitution emerge from parliamentary documents.⁵³

First of all, the parliamentary discussion, including that in the Constitutional Law Committee, has concurred with the Government's overall assessment that

51 See PeVL 7/2003vp.

52 See, e.g., Opinions of the Grand Committee (1/2003vp), the Constitutional Law Committee (PeVL 7/2003vp) and the Foreign Affairs Committee (4/2003 vp) on the Government Report on Finland's positions concerning questions arising at the Convention on the Future of Europe.

53 VNS 6/2005vp (A report to Parliament on the Treaty Establishing a Constitution for the European Union). For the views of the various sub-committees, see especially the Report of the Grand Committee 2/2006vp (also in English), the Report of the Constitutional Law Committee 9/2006vp and the Report of the Foreign Affairs Committee 2/2006vp

the European Constitution comprises an entity that is balanced and acceptable from the Finnish standpoint, although it does not fully correspond to Finland's original negotiating objectives. In particular, the various sub-committees have expressed their concern over increased elements of intergovernmentality and the weakening of the so-called Community method through, for example, the institutionalization of the European Council with a permanent Presidency, a new Council Presidency system and a reduced Commission.

As a matter of Finnish constitutional law, the European Constitution is regarded as being a treaty under international law within the meaning of Sections 94 and 95 of the Constitution of Finland. However, at the same time, it is recognized that the European Constitution brings together a number of matters that are essentially constitutional, and which are presently scattered amongst the existing Treaties of the EU and the EC, and in the case law of the European Court of Justice. The constitutional nature of the European Constitution is thus acknowledged in Finland.

The prevailing view is that the European Constitution is primarily a codifying document in nature, and as a result, it does not, in itself, entail a drastic departure from the existing Treaty framework and the EU legal order in general. Indeed, the European Constitution is regarded as preserving the fundamental nature of the European Union, without signifying the transformation of the EU into a federal state, or any other fundamental change. The Union remains, according to the prevailing view, a community of Member States and a community of citizens. The competences of the Union will remain limited in the sense that the Union will have competences only in the areas specifically listed in the European Constitution, while other competences will remain with the Member States. The view is that *Kompetenz-Kompetenz* continues to lie within the Member States.

At the same time, however, the European Constitution is seen as strengthening certain principles and structures, thus distancing the Union from other international organizations. It is also acknowledged that it will bring about significant changes to the institutional and constitutional framework of the EU. Moreover, the thinking is increasingly that the European Union itself has changed a great deal in recent years due to significant transformation in its global operational environment, its enlargement and gradually deepening cooperation between the Member States within the framework of the Union. In view of these transformations, the European Constitution is regarded as providing a balanced and acceptable approach that would strengthen the Union's capabilities and decision-making ability.

Last but not least, the European Constitution is seen as strengthening the fundamental rights dimension of EU law, the status of citizens and the Union's democratic legitimacy. From the point of view of fundamental rights, for example, the European Constitution is considered to matter for several reasons. The most visible contribution of the European Constitution to the protection of fundamental rights in the Union consists in the insertion, in part II, of the Charter of Fundamental Rights and in Article 9(2) providing for the accession of the European Union to the 1950 European Convention on Human Rights. The other significant contributions of the European Constitution relate, inter alia, to the abolition of the structure in pillars of the Treaty on the European Union

which also implies that the anomalous definition of the jurisdiction of the Court of Justice under Article 68 EC would disappear. The European Constitution would also enlarge the possibilities for private individuals to seek the annulment of an act, even of a general nature, directly affecting them.

Beyond these views on the nature and essential content of the European Constitution, there has been discussion about the impact of the European Constitution on the role of Parliament in the domestic preparation of EU affairs. The view is that the participation of Parliament in the national preparation of decision-making at the European level continues to be better secured through arrangements under the Finnish Constitution than through the procedures created by the European Constitution. The latter are regarded as secondary and supplementary in relation to Parliament's current powers under the Constitution of Finland. In addition, the institutionalization of the European Council and the new powers accorded to it in the European Constitution are seen as problematic through the prism of parliamentary accountability and scrutiny. Namely, hitherto both the Prime Minister and, in almost all cases, also the President of the Republic have represented Finland at European Council meetings. However, Parliament can only exercise its power of scrutiny over the Prime Minister who always briefs the Grand Committee and the Foreign Affairs Committee before and after the European Council meetings. Several parliamentary sub-committees have now stressed that the position of Parliament and the realization of parliamentary accountability must be secured if the solutions adopted in the European Constitution regarding the European Council enter into force. In practice, this means that the President should no longer participate in the meetings of the European Council after the European Constitution has entered into force.

5.3 The Relationship between the European Constitution and the Constitution of Finland

The European Constitution cannot become part of Finnish law solely by virtue of ratification by Finland. A distinct domestic legal enactment is also required in order to make the European Constitution part of the Finnish legal order. It is beyond doubt that the European Constitution can be considered as an 'otherwise significant' treaty within the meaning of Section 94, subsection 1 of the Constitution. The European Constitution also contains a host of articles of a 'legislative nature', which must be brought into force domestically through an Act of Parliament (Section 95).

It has also become clear that some elements of the European Constitution are at odds with the Constitution of Finland. In its fresh proposal for the ratification of the European Constitution, the Government has taken a clear stand on this question by submitting that the European Constitution contains a number of articles that are in conflict with the Constitution of Finland. According to the Government, the incompatibility mainly lies in the fact that the European Constitution transfers additional powers from the domestic legislature, the executive and the judiciary to those of the EU, thereby entailing a further intrusion into the sovereignty of Finland.

The final word concerning the compatibility of the European Constitution with the Constitution of Finland belongs to the Constitutional Law Committee,

which has yet to make a detailed analysis of the matter. However, the Committee recently noted in its 2006 Opinion on the Government Report on the European Constitution that the European Constitution appears to contain a number of elements which are “in all likelihood” in conflict with the Finnish Constitution.⁵⁴ The practical outcome of this view is that *both* parliamentary acceptance of the ratification of the European Constitution *and* the adoption of the incorporation enactment would require a majority of two-thirds in Parliament (Section 94, subsection 2 and Section 95, subsection 2). Consequently, the incorporation enactment of the European Constitution would assume the character of an exceptive enactment which, in substance, is in conflict with the Constitution of Finland but which would not formally amend the text of the latter.⁵⁵

6 Conclusion

The overall conclusion to be drawn from the previous discussion can be condensed into two distinct, yet inter-related remarks.

On the one hand, EU membership has already had a marked impact on Finnish law, including such fundamental constitutional solutions as state sovereignty and the domestic system for the protection of constitutional and human rights. The idea of *the specificity of the European Union* – the Union is not a state, specifically not a federal state, nor a conventional international organization, but a Union *sui generis* – has contributed to a greater tolerance of effects stemming from EU membership, as opposed to those flowing from other international obligations. It is, however, necessary to add that EU membership has often emerged as only one, albeit very conspicuous, of a number of reasons explaining profound shifts in Finnish law, including constitutional law, during recent years. Human rights treaties with the ECHR at their apex and the 1995 Constitutional Rights Reform have also paved the way for these changes. As a consequence, the most bewildering dynamics in Finnish law during recent years is due to the intricate interaction in which EU membership and those other sources of dynamics have contributed and reinforced their respective influences on Finnish law.

On the other hand, it is important to emphasize the interrelationship and mutual influences between Finnish law and EU law. The interaction between EU law and Finnish law is *bi-directional*, with the various idiosyncrasies of the Finnish legal order – including within the Finnish legal culture – conditioning and shaping the implementation and application of EU law in Finland.

In particular, constitutional and human rights condition and shape the domestic implementation of EU measures, even to the extent that these rights can be said to limit the primacy of EU law over Finnish law. The constitutional premise currently is that the implementation of EU measures is not be permitted

54 See PeVL 9/2006vp.

55 However, the idea is that the entry into force of the incorporation enactment of the European Constitution is held in abeyance to *see* how the European Constitution is handled by the EU.

to weaken the domestic standard of protection of constitutional and human rights. This is not a form of lip service paid to constitutional and human rights since due observance of these rights has come to take precedence over the 'maximal' implementation of EU measures in certain concrete circumstances. There have always been challenges from constitutional actors within the Member States of the European Union, the German Constitutional Court and its Italian counterpart having been the most prominent actors in this respect. But the constitutional challenge is also now in the far north, in the Constitutional Law Committee of Finnish Parliament, for anyone who wishes to look.