

SOME ASPECTS OF THE DELEGATION OF
LEGISLATIVE POWER IN FINLAND

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1. FORMS OF LEGISLATION

A. Constitutional and ordinary laws

In Finland constitutional as well as ordinary laws are passed by the Diet, Finland's unicameral legislature, and submitted to the President of the Republic for his approval. Constitutional laws are intended to be more permanent than ordinary laws and complex legislative procedures are required to amend them. They cannot be adopted, modified, interpreted or repealed, nor can they be departed from, except in accordance with the procedure prescribed for constitutional laws in general (Art. 95, Constitution Act, Art. 67, Diet Act). The motion for the third reading of any bill concerning constitutional law must be approved by a simple majority; the bill is then left pending until the first ordinary session of the Diet to be held after the next general election and must be adopted without change during this session through a resolution supported by a majority of at least two thirds. There is, however, an alternative procedure. A bill referring to constitutional law may be declared urgent in a plenary sitting of the Diet through a resolution supported by at least five sixths of the votes cast. In such a case, the Diet can proceed forthwith to consider the resolution for the adoption of the bill.

The procedure for adopting urgent bills, which seems to be unique of its kind, is as speedy as the ordinary legislative procedure. It has been used extensively in making provisions which entail infringement of fundamental rights and other provisions involving a conflict with the Constitution. The letter of the Constitution is left untouched, although its content is materially amended on a certain point. It should be noted that the amending bill does not become part of the Constitution. From 1917, when Finland became an independent state, until today, about 600 bills have been dealt with in the Diet according to the procedure concerning constitutional laws; nearly 95 per cent of them have been

declared urgent and passed, when necessary, in less than three days.¹

A foreign observer might suggest that the extensive use of the procedure for urgent bills would imply constitutional instability. I think Professor Kastari has shown why the abundance of exceptions to the Finnish Constitution is not felt to amount to material constitution-breaking (*Verfassungsdurchbrechung*). He says: "It may be stated that the respect and cautiousness shown by the legislature in never interfering with matters guaranteed by the constitutional laws, and particularly in never encroaching upon the Fundamental Rights by a bare majority of Parliament, has led to the abundant use of constitutional procedure, which in its turn has prevented the articles on Fundamental Rights from becoming a dead letter."²

B. Ordinances

From the 13th century onwards, the King of Sweden and Finland used his Royal prerogative to legislate in Finland on matters that required modification or supplementation. Under Swedish rule, legal norms were established in two different ways. The Riksdag participated in the enactment of laws concerning the Constitution and in countrywide or provincial legislation. On the other hand, in other spheres, especially economic and administrative legislation, as well as general matters not touched on by the Constitution and countrywide or provincial laws, the King alone acted as legislator.

In 1809, when Finland became an autonomous Grand Duchy under the Czar of Russia, the country retained the Swedish Constitution, with such modifications as the new situation made necessary. The Czar, as Grand Duke of Finland, assumed the administrative and legislative powers previously exercised in Finland by the King of Sweden under the Swedish Constitutions of 1772 and 1789.

Under the present Constitution Act, 1919, the President continues to enjoy legislative powers. Article 28 of the Constitution Act runs as follows: "In cases not otherwise provided for in this

¹ For a more extensive and detailed description of the procedure in question, see Paavo Kastari, "Constitutional Protection of Civil Rights in Finland", *Democracy in Finland*, Helsinki 1960, pp. 58 ff. See further Kastari, "The Historical Background of Finnish Constitutional Ideas", *Scandinavian Studies in Law* 1963, pp. 61 ff.

² See Kastari, "Constitutional Protection", *loc. cit.*, p. 63.

present Constitution Act and where such a right has not been vested in the Council of State, the President shall have the right to issue ordinances upon matters which have heretofore been regulated by administrative provisions, as well as ordinances regulating the execution of laws, the administration of State property, and the organization and operation of administrative services and public institutions." It is, however, prescribed that presidential ordinances shall contain no provisions implying the modification of an act passed by the legislature.

In legislative matters, the prerogative power of the President under the Finnish Constitution is broader than in many other countries.³ A presidential ordinance may affect the rights and duties of the citizens, provided that it is not contrary to stipulations contained in constitutional or ordinary laws.⁴ There is a constitutional requirement that the President of the Republic shall issue his ordinances at meetings of the Council of State (the Cabinet). Because in Finland the principle of parliamentary government is firmly recognized, albeit with some distinguishing features of its own,⁵ the President regularly consults the ministers present at the meetings of the Council and follows their advice. Within the limits of his prerogative power he has, however, the legal right to issue ordinances independently. On a few occasions the President has used his constitutional right to participate at

³ See, e.g., Nils Herlitz, *Nordisk offentlig rätt*, vol. 2, Stockholm 1958, pp. 104 ff., Robert Malmgren, "Riksdagen och lagstiftningen", *Sveriges riksdag*, vol. 14, Stockholm 1934, pp. 190 ff., Frede Castberg, *Norges statsforfatning*, vol. 2, 3rd ed. Oslo 1964, pp. 47, 57, Poul Andersen, *Dansk statsforfatningsret*, Copenhagen 1954, pp. 537 ff., Alf Ross, *Dansk statsforfatningsret*, vol. 2, Copenhagen 1960, p. 410, Erwin Jacobi, "Die Rechtsverordnungen", *Handbuch des Deutschen Staatsrechts*, vol. 2, Tübingen 1932, pp. 241 ff.

⁴ This basic rule is sometimes—presumably unintentionally—overlooked. Some of the officials who advise the President seem to think that the President could still issue ordinances upon matters which have hitherto been regulated by administrative provisions, although this would mean the infringement of fundamental rights granted by the Constitution. On the other hand, there is a constant tendency to reduce the President's legislative prerogative as a result of the enactment by the Diet of statutes on questions mentioned in Article 28 of the Constitution Act.

⁵ The first sentence of Article 36 of the Constitution Act reads as follows: "The members of the Council of State, who must enjoy the confidence of the Diet, shall be chosen by the President from among the native-born citizens of Finland known for their honesty and ability." The Presidential prerogatives are, however, so wide and they are used in such an independent way that the parliamentary government in Finland displays rather many features of presidential government. See Jan-Magnus Jansson, "Die Verfassungsentwicklung in Finnland seit dem Jahre 1939", *Jahrbuch des öffentlichen Rechts der Gegenwart*, 1957, pp. 298 f.

different stages in the legislative process against the will of the majority of the members of the Council of State,⁶ thereby invoking the powers granted to him by the Constitution even within the field of legislation. (Presidential ordinances are enacted and published in the same way as Acts of the Diet.)

Under Article 28 of the Constitution Act, the Council of State may also issue legal norms, known as resolutions of the Council of State. To employ this power the Council of State—but not the President—always needs an explicit authority granted by an Act of the Diet. The Council of State's powers in this respect are prescribed in greater detail in the Act on Council of State Resolutions which was passed in 1922. By this Act the Council of State is authorized to issue resolutions for publication in the Statute Book on matters in which the Council is empowered to do so by the Constitution Act, other laws or presidential ordinances.⁷

C. Delegation of legislative power

In Finland, the delegation of legislative power implies that the constitutional legislative organs—the Diet and the President of the Republic jointly, or the President acting alone—empower some authority to enact general abstract legal norms. Such power may be granted the President by the Diet in other fields than those mentioned in Article 28 of the Constitution Act. It may be given to the Council of State and to other administrative authorities. The Danish scholar Ross, who has made a penetrating survey of the delegation of legislative powers, has revealed the inadequacy of practically all previous definitions of delegated legislation.⁸ He suggests that delegation should be defined by its derogatory legal force.⁹ I am ready to accept this proposition, but I must take into account the fact that such concepts as delegation, legal norms, the separation of powers and independent ordinance-making power, as well as the power of the courts to consider the constitutionality or legality of legal norms, all have to be viewed

⁶ See generally Paavo Kastari, *Tasavallan presidentin asema*, Porvoo 1961.

⁷ See *Lag om ärendenas handläggning i statsrådet och dess ministerier* (Act on Council of State Resolutions) March 30, 1922, no. 79.

⁸ See Alf Ross, "Om såkaldt delegation af lovgivningsmagt", *T.f.R.* 1957, pp. 372 ff.

⁹ See Ross, *op. cit.*, p. 393: "Delegation of power exists when an authority (the bearer of the power) authorizes another person or body to make provisions which the authority has the power to make itself and to make them with equal legal effect as if they were made by the authority itself" (present author's translation).

against their constitutional background.¹ The purpose of delegation in Finland is to rearrange or to make more precise the legislative competence as established by the Constitution.² I do not propose to delve more deeply into the question how to define delegation, but one point may be made here. If the competence is based directly on the Constitution there is no delegation, since in such a case the competence is established and not transferred by the Constitution.

In all fields of activity, unless it is otherwise stated in the Constitution, the legislature, i.e. the Diet and the President jointly, has an unrestricted power to pass legislation. In the Constitution there are special provisions for the making of constitutional laws and for ordinances enacted by the President alone in accordance with Article 28. The Constitution does not require that the legislature shall enact all other legal norms by the ordinary procedure for law-making. The Constitution allows the legislature to make a choice and allocate the competence to make legal norms to the executive. This is what the French call *l'invitation du législateur*.³ The legislature can delegate parts of its general residuary legislative competence by resort to ordinary procedure, because the Constitution does not require that the constitutional procedure shall be used. In many ordinary acts of the legislature, legislative powers on special questions are delegated to the President alone, the Council of State, the ministries and even central administrative boards. Administrative orders of this kind are common. Delegation is particularly frequent in acts on civil service matters, traffic, the protection of employees, fishing and hunting, the preservation of natural scenery, building, town and country planning, the exportation and importation of foodstuffs and chemicals, etc.

The scope of the delegation of legislative power is limited by

¹ Art. 92, para. 2, of the Constitution Act reads as follows: "If a provision in an order is contrary to a fundamental or other law, it shall not be applied by a judge or other official." In Finland the wording of the paragraph is taken to mean that the courts have no power to consider the legality of Acts of the Diet. On conflicts between statutory law and the Constitution, see Paavo Kastari, "Guarantees of Fundamental Rights and the Constitutional Principle", *Jahrbuch des öffentlichen Rechts*, 1964, pp. 450 ff.

² The concept of delegation is widely employed in Finnish legal writing and parliamentary practice. It is used in a very general way to mean the transfer of legislative or administrative power. For a more detailed definition, see Elieser Kaila, "Delegaatio", *Iso Tietosanakirja*, vol. 2, Helsinki 1931, p. 1046.

³ See A. Esmein & Henry Nézard, *Éléments de droit constitutionnel français et comparé*, vol. 2, 8th ed. Paris 1928, p. 83, Léon Duguit, *Traité de droit constitutionnel*, vol. 4, 2nd ed. Paris 1924, p. 703.

several articles in the Finnish Constitution Act. Article 2, which embodies the doctrine of the separation of powers, is paramount. As regards legislative powers, it states as follows: "Legislative power shall be exercised by the Diet in conjunction with the President of the Republic".⁴ This general norm has been applied more strictly to judicial than to administrative powers. In a few instances the rule has been held to forbid extensive legislative delegation,⁵ but there are not enough cases to enable one to give a full survey of all possible instances where Article 2 might be expected to hinder delegation of legislative power.

The Constitution Act contains certain provisions which explicitly forbid delegation of legislative power. Thus, Article 61 states that "taxes, including customs duties, shall be fixed by law" and Article 55 that "provisions referring to general tribunals of first instance and of appeal are laid down by law". Further, there are in Article 62 provisions concerning, *inter alia*, the charges to be made for services provided by public authorities. Fundamental provisions for such charges must be embodied in a law.

Not even these clauses, however, are applied strictly. Often bills presented on these matters provide for a certain degree of delegation. As regards taxation, it is an established practice for acts to contain provisions regarding the basis for determining the amount of taxes, the individual or juridical body that is obliged to pay taxes, and the opportunities of appeal offered to the taxpayer.⁶ As a rule, the Diet now seems to be interpreting clauses of the kind mentioned above more strictly than it did earlier.⁷

There exists an established constitutional practice for the delega-

⁴ Article 2 is to be read together with Article 21 ("The right of the President to issue ordinances is determined by Article 28") and Article 28 of the Constitution Act.

⁵ See Report of the Constitutional Committee 1949 no. 75 (Government bill 1949 no. 82), Opinions of the Constitutional Committee 1957 no. 4 (Government bill 1957 no. 23), 1962 no. 2 (Government bill 1962 no. 27), 1956 no. 3 (Government bill 1956 no. 56).

⁶ See, e.g., Opinions of the Constitutional Committee 1957 nos. 3 and 3 a (Government bill 1957 no. 24), 1963 no. 2 (Government bill 1963 no. 29).

⁷ An article written by V. Merikoski, "Hinnantasauslainsäädäntö perustuslain kannalta", *Lakimies* 45 (1947), pp. 271 ff., opened up ways of stricter interpretation.

The Constitutional Committee stated in its opinion 1959 no. 6 (Government bill on customs tariff 1959 no. 72) that the bill did not comply with the constitutional requirements for legislation concerning taxes and duties, because it left the amount of customs duties to the discretion of the Government. The bill provided that in certain circumstances the Council of State should be entitled to increase customs duties by 100 per cent or reduce them by 50 per cent.

tion of a limited legislative power by specific authorization in acts of the legislature. But when the provisions of the Constitution are disregarded to the extent that they were in World Wars I and II, the administrative authorities are practically given *carte blanche* both as regards what their edicts may concern and the ways and means for their application. Where an act concerning delegation of power cuts deeply into the fundamental rights of the citizens or those of the legislature itself and departs basically from the principles laid down in the Constitution, the act will rearrange the use of legislative power to such an extent that it has to be passed in accordance with the procedure prescribed for constitutional laws in general. However, I shall not consider here at what point delegation will imply such a rearrangement of the division of competence sanctioned by the Constitution that the Diet is obliged to use the procedure prescribed for constitutional laws.

The procedure of adopting urgent bills has been followed, particularly during the times of crises and war, for suspending parts of the Constitution for limited periods of time. The granting to the Government of broad legislative powers in a constitutionally correct way has been handled with some flexibility. The Diet has, when necessary, been able to produce a majority big enough to support the special procedure. That is why there has been no particular need to interpret the clauses of the Constitution in a way that could not be approved in times of internal and external peace. Accordingly, Finland has, except on a few occasions, been spared the so called "Ausnahmestand", which is defined by, for example, Esser as follows: "In cases of a threat to the state by war or domestic uprisings the Head of the State will temporarily be vested with the whole administration of the state, with power to suspend the fundamental rights of the citizens."⁸

Sub-delegation of delegated legislative powers was widely practised, but has become less frequent since the early 1950s. When passing acts which involve delegation, the Diet has been anxious to point out that the exercise of delegated powers is restricted to the authorities specifically mentioned in each case.⁹

⁸ Josef Esser, *Einführung in die Grundbegriffe des Rechtes und Staates*, Vienna 1949, p. 109. "In Fällen der Staatsbedrohung durch Krieg oder innere Unruhen wird dem Staatspräsidenten... vorübergehend die gesamte Staatsleitung anvertraut, mit der Befugnis, ohne die Formalien eines verfassungsändernden Gesetzes, die Grundrechte der Bürger aufzuheben."

⁹ On several occasions the Constitutional Committee has emphasized that delegation of legislative powers does not in itself contain any authorization for

2. PARLIAMENTARY CONTROL OF DELEGATED LEGISLATION

A. *Submission before the Diet*

It is widely recognized that delegation of legislative power is inevitable in a modern community.¹ There seems to be general agreement that the main problem with respect to delegation is that of finding adequate safeguards against abuses.

In the rule-making process and in the administration of delegated legislation, several types of control—both judicial and parliamentary—and a good many forms of participation by the citizens in the preparation and administration are used. In many countries the growing importance and extent of delegated legislation has induced the legislature to develop special checks. The way in which the parliamentary review of delegated legislation is carried out in Finland would seem to be of interest from a comparative point of view.

It is a widely spread practice that rules and regulations made under a statute shall be laid before the legislature.² There are many different systems for doing this and the procedure is usually varied to match the importance of the subject matter.

There is no general law in Finland requiring that all delegated legislation be laid before the Diet. The act in which the delegation is embodied indicates whether such submission shall take

sub-delegation. For sub-delegation a special clause in the act is required. See, e.g., Reports of the Constitutional Committee 1952 no. 53 (Government bill 1952 no. 92) and 1951 no. 19 in connection with the review of *Statsrådets beslut angående beslag av mejerismör* 1951 no. 508. Words like "The Council of State" in the enabling act should be construed as meaning the Council as a collegial body and not any ministry alone.

¹ See *Innstilling fra Komiteen til å utrede spørsmålet om mer betryggende former for den offentlige forvaltning* (Forvaltningskomiteen), Kragerø (Denmark) 1958, pp. 316 ff., International Commission of Jurists, *The Rule of Law in a Free Society*, Geneva 1960, pp. 6 ff., United Nations, *1962 Seminar on Judicial and Other Remedies against the Abuse of Administrative Authority with Special Emphasis on the Role of Parliamentary Institutions*, ST/TAO/HR/15, pp. 9 f., *Committee on Ministers' Powers*, Report, Cmd. 4060, London 1932, pp. 51 ff.

² Attention is drawn to several procedures which exist in the United Kingdom. See John Kersell, *Parliamentary Supervision of Delegated Legislation. The United Kingdom, Australia, New Zealand and Canada*, London 1960, John Eaves, Jr., *Emergency Powers and the Parliamentary Watchdog: Parliament and the Executive in Great Britain, 1939-1951*, London 1957. As regards Finland, see Jan-Magnus Jansson, *Grundlagsutskottets funktioner vid riksdagarna 1939-1952*, Helsinki 1954.

place with respect to the orders which will be issued. In the majority of cases no procedure for submission is prescribed and many items of delegated legislation come into force and remain in force without ever having been laid before the Diet. It has been customary, however, for acts which grant a large amount of authority to contain provisions for parliamentary control. It has been considered a leading principle that a clause prescribing a procedure for submission should form part of all delegating laws which might affect fundamental rights or are otherwise of great legal or political importance.³ In the absence of such a clause, delegated legislation cannot be laid before the Diet.⁴

Orders issued under the act embodying the delegation must, immediately after publication, be brought to the attention of the Speaker of the Diet, who has to inform the Diet at once or, if the Diet is not sitting, as soon as it meets.⁵ The Speaker is not bound to convene the Diet solely in order to consider some item of delegated legislation. Nowadays submission clauses are regularly supplemented by the provision that the procedure shall apply only

³ There is, however, no clear-cut line between those statutory provisions which demand constitutional procedure and those which do not. For this reason the Diet has on some occasions considered a submission clause necessary even though the statute in question was enacted in accordance with the ordinary legislative procedure. See, e.g., *Lag om förhindrande av försäljning till underpris* 1958 no. 279, sec. 6.

As regards so-called "authorizing acts" in general, see Jansson, *op. cit.*, pp. 227 ff.

⁴ This includes orders brought to the Diet's attention without any statutory requirement in the Act embodying delegation as well as orders which the Diet refuses to consider because they merely revoke existing orders or otherwise do not contain any new stipulations that would constitutionally require the Diet's approval. The Diet resolves that the submission of an order does not call for any action, see reports of the Constitutional Committee 1942 no. 51 (in connection with *Statsrådets beslut angående upphävande av statsrådets beslut om handeln med brännved* 1942 no. 422), 1944 no. 78 (in connection with *Statsrådets beslut om befriande från beslag och reglementering av benlim, som tillverkats i landet* 1944 no. 652) and 1945 no. 54 (in connection with *Statsrådets beslut angående ändring av statsrådets beslut om prisgaranti för inhemsk stubbtjära* 1945 no. 616).

⁵ For the first time a clause of this kind was introduced in *Skyddslag för republiken* ("Act for the protection of the Republic") 1930 no. 336, sec. 2: "Orders enacted by virtue of this Act shall be submitted immediately to the Speaker of the Diet, who shall make them known to the Diet without delay or, if the Diet is not sitting, when the Diet meets, and such orders shall be repealed when the Diet so decides." Compare this with the wording of *Lag om bemyndigande för regeringen att utfärda nödiga stadganden till betryggande av det ekonomiska livet* 1931 no. 386, sec. 2: "Orders enacted by virtue of this Act shall be submitted immediately to the Speaker of the Diet, who shall make them known to the Diet as soon as the Diet meets; and they shall be revoked if the Diet so requests."

to orders which under the Constitution require the Diet's consent.⁶

The requisite copies of items of delegated legislation are delivered to all members of the Diet when they are announced in the Diet for review. Modifications and abrogations of delegated legislation are also examined by the Diet. However, an order which is required to be laid before the Diet may become operative before it is submitted.

The Diet as a whole is not able to exercise effective supervision of delegated legislation, even though there are ample opportunities for debate. Individual members rarely have sufficient time or skill to scrutinize complicated pieces of delegated legislation. There is a need for some kind of automatic machinery. The Constitutional Committee of the Diet acts as the legislature's chief instrument for the review of delegated legislation.

B. Delegated legislation before the parliamentary committees

The Constitutional Committee consists of at least seventeen members, chosen on the basis of party strength in the Diet. According to an old Swedish-Finnish tradition, government through parliamentary committees is a deeply rooted feature of the political structure. In the Diet, committees which may be either permanent or provisional—though even the latter are often in practice permanent—bear the chief burden of daily work.

The Constitutional Committee and certain other committees review delegated legislation from the viewpoints both of its legality and its expediency. The Constitutional Committee reports on the constitutional or procedural aspects as well as on the merits

⁶ The Act concerning a State of War ("Lag om krigstillstånd") 1930 no. 303 contained a clause according to which any order issued under the authority of the act must be converted into an act by the legislature, provided the clause would have required the Diet's consent under normal circumstances. When Finland was declared to be in a state of war in 1939, clauses of the Act became operative. The Government, however, was not willing to produce parliamentary bills as required by the Act. It pointed out that the system in force was bound to result in the creation of a great number of statutes which would live an independent life of their own even after the state of war was suspended. It considered such a system unsuitable and produced a bill to amend the clause. The bill was passed and a standard clause for submission was introduced by the Act concerning a State of War 1940 no. 75.

Statutes on customs tariffs (November 29, 1924 no. 292) contained and still contain a clause (Customs Act, *Tullagen*, September 8, 1939 no. 271, sec. 157) similar to that in the Act concerning a State of War in its original wording.

or policy of any order remitted to it for review. It recognizes no specific limitations regarding its powers in this connection. In reviewing items of legislation which are the product of delegation the Committee applies its ordinary procedure. The Committee may hear experts, e.g. civil servants or legal scholars. In some cases delegated legislation is reviewed by other parliamentary committees, namely the Committee for Foreign Affairs, the Finance Committee or the Bank Committee.⁷

The Constitutional Committee or the committee to which the matter has been referred presents its conclusion to the Diet in a report, which may include memoranda by experts and opinions emanating from some other committee. Ordinarily the committee requests statements from the appropriate government department beforehand. The committee's report may concern one or several particular items of delegated legislation.

C. Delegated legislation in plenary session

The reports of the parliamentary committees are submitted to one reading in the Diet, which has to pass a resolution on the matter. The timetable of the Finnish Diet is not overloaded—except possibly during a short period of feverish activity before Christmas and the summer recess—and any member can be sure that he will have an opportunity to express his views.

The report of the committee forms a basis for discussion. Any member can challenge the conclusions of the report and put forward his own proposals. It often happens that private members move that the order reviewed be annulled.

A piece of delegated legislation cannot be amended by the Diet in any respect, it can only be approved or rejected. A negative resolution takes the form "That order no. . . . be annulled". If such a motion is passed, the Government is obliged to revoke

⁷ Delegated legislation on foreign trade is reviewed by the Committee for Foreign Affairs. The Bank Committee examines delegated legislation when the Bank of Finland is involved. Extraordinary powers concerning the Bank of Finland were granted in the Act 1931 no. 288 (*Lag om ändrad lydelse av 7 och 8 §§ i reglementet för Finlands Bank*). The Finance Committee reviews orders concerning wages of the civil servants and similar matters. (There are delegation clauses in the following acts: *Lag om erläggande av vissa betalningar för år 1959*, 1959 no. 233. *Lag om erläggande av vissa ur statsmedel utgående betalningar justerade efter levnadskostnadsindex*, 1958 no. 170, and *Lag angående ändring av lagen om avlöning i statens tjänster eller befattningar*, 1952 no. 37.)

the order. It ceases to have effect when it is revoked by the President or the Council of State. The revocation is without prejudice to the validity of anything done under the order, nor does it infringe upon the power of the appropriate agency to issue a new order replacing the one annulled.

Instead of recommending the revocation of a piece of delegated legislation, the reviewing committee may make suggestions and remarks that it thinks deserve the attention of the Diet. If the committee's report receives the approval of the Diet, such observations will exert considerable influence.⁸ The Government will endeavour to implement them, since in a parliamentary system the executive is by definition willing to conform to the wishes of the legislature.⁹ Regardless of their wording, however, suggestions and recommendations have no binding legal force. As in other Scandinavian countries, there is in Finland a special parliamentary commissioner, the Ombudsman, whose duty it is to keep a watchful eye on the administration. In his annual reports the Ombudsman states whether any recommendations or suggestions made by the Diet still remain unfulfilled.

If the Diet passes an act having the same content as an order which was a piece of delegated legislation, the order will remain in force until the act comes into operation. If an act delegating power to legislate is repealed and there is no other legal ground for the order's existence, the order dies with its parent act.¹

As regards sub-delegation, it occurs by virtue of the order and not under the parent act. On the other hand, ultimate authority can be traced to the act. However, legislation based upon sub-delegation need not be laid before the Diet and thus escapes

⁸ The remarks in question might cover a wide range of different items, from the interpretation of a certain clause to the expression of a wish that the rationing of a certain item should be discontinued.

⁹ In many cases the Diet makes its decision not to repeal an order conditional on the Government's taking certain steps or amending the order in a certain way.

¹ To be more explicit, even those orders which are upheld by the Diet do not thereby gain such legal force as they would possess in some countries in Central Europe. They can still be amended or repealed at will by the agency issuing them. If the parent act is repealed, all the orders made under its authority are annulled, unless the agent who issued the order can base his authority on some other provision. As mentioned before, Article 28 of the Constitution grants the President legislative authority within a certain framework. It has been customary to maintain in force orders based on a repealed statute by enacting a new statute. See report of the Constitutional Committee 1961 no. 35 (in connection with *Statsrådets beslut om införsel till landet av utländsk spannmål och spannmålsprodukter* 1961 no. 600).

parliamentary supervision.² Many have regarded this as a loophole in the system of controls.

A total of 1,483 orders were examined by the Diet in the years 1932–62. The outcome is shown in Table 1.

Column 2 also includes ordinances which were revoked by the executive before the Diet had an opportunity to deal with them in plenary session, provided the Diet did not make any comments later on.

D. The importance of the submission procedure

The most significant legal question as regards delegated legislation is whether it is *intra vires*, i.e. within the legal limits set by the parent act. Relevant objects of study are, *inter alia*, whether the order is in accord with the aims of the parent act, whether its subject matter should have been dealt with by the parent act alone, etc.

The Constitutional Committee has made several remarks from the legal point of view. On several occasions it has criticized obscurities in the language or deficiencies in the drafting,³ or sub-delegation on dubious authority. Both the Committee and the Diet have been concerned to emphasize that orders must be laid before the Diet promptly, for too often undue delays have occurred.⁴ The efficacy of parliamentary control is obviously reduced

² This is due to the fact that sub-delegated legislation is not within the scope of the submission clause of the parent act. The Constitutional Committee had not been able to cope with the tremendous amount of sub-delegated legislation issued in the 1940s.

³ In Finland both Finnish and Swedish are official languages. Poor drafting may have contributed to the fact that the Finnish and Swedish texts do not always have the same meaning. See Constitutional Committee 1943 no. 13 (in connection with *Statsrådets beslut om ändring av statsrådets beslut angående reglementering av förbrukningen av läder och lädertillverkningar* 1943 no. 103). As to other remarks, e.g. lack of clarity, see Constitutional Committee 1943 no. 42 (in connection with *Statsrådets beslut om reglementering av kött* 1943 no. 407), and 1961 no. 34 (in connection with *Statsrådets beslut angående vissa tullar på kaffe* 1962 no. 28).

⁴ See reports of the Constitutional Committee 1942 no. 102 (in connection with *Statsrådets beslut angående ändring av statsrådets beslut om särskilda åtgärder, vilka avse att främja lantbruksproduktionen på det med riket återförenade området*, 1942, June 3, no. 460, laid 1942, Nov. 10), 1943 no. 14 (in connection with *Statsrådets beslut om skogsarbetsgivares anmälningsskyldighet* 1943, Jan. 21, no. 76, laid 1943, March 2), 1954 no. 27 (in connection with *Statsrådets beslut om ändring av statsrådets beslut angående åtgärder för bekämpande och lindrande av arbetslösheten* 1954, April 8, no. 197, laid 1954, Nov. 30). Criticisms of unjustifiable delay have been levelled in the case of about a dozen orders.

TABLE I.

	1.	2.	3.	4.	5.
	Numbers of ordinances reviewed each year	No remarks by the Diet	Criticism or suggestions by the Diet on grounds of expediency	Criticism or suggestions by the Diet on grounds of legality	Revocation demanded by the Diet
1932	2	2			
1933	1	1			
1934	6	6			
1935	7	5	1	1	
1936	17	17			
1937	2	1	1		
1938	13	13			
1939	6	4	2		
1940	106	98	8		
1941	120	111	8	1	
1942	127	114	11	2	
1943	129	101	22	6	
1944	106	94	10	2	
1945	120	91	23	3	3
1946	109	81	26	2	
1947	85	56	25	4	
1948	63	47	14	1	1
1949	77	70	6		1
1950	44	26	13	2	3
1951	73	63	8	2	
1952	32	30	2		
1953	29	26	3		
1954	37	30	4	2	1
1955	40	28	10		2
1956	23	18	1	1	3
1957	15	12	3		
1958	35	30	3	2	
1959	13	11	2		
1960	21	20	1		
1961	16	13	3		
1962	9	4	2	3	
Total	1,483	1,223	212	34	14
		82.5 %	14.3 %	2.3 %	0.9 %

by such delays and the control is sometimes rendered illusory, indeed practically impossible. Nevertheless, in some cases the Diet has come to the reluctant conclusion that it would be inexpedient to call for the annulment of an order already in force, even though there may have been good legal grounds for doing so.⁵

In some other cases, there have been good legal arguments for demanding the revocation of an order on the ground that the agency concerned acted *ultra vires*, at least to some extent. Nevertheless, the Diet has let it pass, contenting itself with a strongly worded criticism in its resolution.⁶ In none of the fourteen cases of annulment (column 5) was the demand for repeal based on that ground. The grounds for revocation may be classified as follows: the order was unsuitable (5 cases), the rise of prices caused by it was too high (2 cases), the regulation system should not be expanded further or should be abolished (4 cases), the order should be annulled as the parent act had been repealed and there was no independent ground for keeping the order in force (3 cases).

There is no doubt that the attitude of the Diet, formally cautious but practically firm, has led to considerable improvements in delegated legislation. It seems to be the case that if the Constitutional Committee gives voice to strong criticism to the effect that an order should be annulled, the Government often revokes the order before the report of the Committee is considered by the Diet.⁷ As a rule, criticisms and suggestions lead to amendments. In one instance, when the Government revoked an order and promptly issued a new one of practically identical content, the Constitutional Committee and the Diet protested that the Government had made a mockery of the reviewing procedure

⁵ See, e.g., the Report of the Constitutional Committee 1942 no. 42 (in connection with *Statsrådets beslut om högsta försäljningspris på brännved*, 1942 no. 170), which stated that an annulment would upset already existing contracts and was not a practical possibility.

⁶ The Constitutional Committee, Report 1947 no. 11 (in connection with *Statsrådets beslut angående reglering av arbetslönerna* 1946 no. 951) disclosed that certain orders were not submitted as required by law. The Diet contented itself with expressing its criticism. Some orders (*Statsrådets beslut angående ändring av statsrådets beslut om tillämpning av lagen om prisutjämning* 1958 nos. 118 and 138) were undoubtedly to some degree *ultra vires*. The Constitutional Committee (Report 1957 no. 40) and the Diet did not recommend revocation but merely requested the Government to make the necessary amendments.

⁷ Examples of such swift reaction by the executive are provided by the following orders: 1940 no. 256, 1942 no. 415, and 1955 no. 435.

by depriving the Diet of the opportunity to express its opinion on matters which by law come under its surveillance.⁸

It is suggested that the Diet has been able to make use of its political power when reviewing delegated legislation. By means of suggestions, recommendations and criticism it has caused the Government not only to revoke specific orders but also to make amendments or to administer the order in the spirit requested by the Diet. The submission procedure is primarily a political instrument, although legal points of view are not left unconsidered. Against this background, it has been proposed that questions of expediency should be considered in some other parliamentary committee than the Constitutional Committee, which should be allowed to concentrate on constitutional questions.⁹

In addition to what has been said above, the other normal forms of parliamentary review apply to delegated legislation. A study of the records of parliamentary debates, motions, questions and interpellations will confirm the vivid interest of the Finnish Diet in the question of delegation of legislative powers.

⁸ See the report of the Constitutional Committee and the resolution of the Diet (Report 1955 no. 36 in connection with *Statsrådets beslut om fastställande av prisen på lantbruksprodukter* 1955 no. 435).

⁹ See Jansson, *op. cit.*, p. 241 and pp. 275 f.