III. Constitutional Reform in Finland

Communication by Mr Seppo TIITINEN, Secretary General off the Parliament, Finland. Brussels Session (April 1999)

Mr DAVIES called Mr Seppo TIITINEN, Secretary General of the Parliament of Finland, to the platform to present his communication on the recent constitutional reform in Finland.

Mr TIITINEN said that he was very pleased to take the floor before the ASGP to present an account of the first constitutional revision in Finland. This revision was the result of the social and political evolution in his country. He then spoke as follows:

" I. Previous constitutional reforms

Finland's current constitutional laws are: the Constitution Act of Finland (1919); the Parliament Act (1928); the Act on the Right of Parliament to Inspect the Lawfulness of the Official Acts of the Members of the Council of State, the Chancellor of Justice and the Parliamentary Ombudsman —generally referred to under its shorter title of Ministerial Responsibility Act (1922); and the Act on the High Court of Impeachment (1922). During the first fifty years of Finnish independence there was little pressure or need for any amendments to the Constitution Act. It was not until 1970 that the process of reforming the Constitution Act and the broader comprehensive reform of the constitutional legislation as a whole was launched with the establishment of a constitutional commission to examine the question of reform. However, the response to the commission's interim report in 1974 made it clear that comprehensive reform was not a realistic proposition at this time. Attention was accordingly switched to a process of piecemeal reform measures, a large number of which have subsequently been introduced since the 1980s.

The fundamental principles of the Constitution Act have remained unchanged for decades, although this has not prevented the Constitution adapting to the changing needs of the day. The flexibility of the Finnish Constitution is

due to the use of exceptive laws, a distinctive feature of the Finnish system. In the Finnish context this means legislation enacted according to the order prescribed for the enactment of constitutional legislation (that is, adopted by a qualified majority) which, without altering the Constitution, enacts a material exception to its provisions.

Parliament has thus adopted about 900 acts of exception, of which 20 to 25 are still in force. It is this provision which has ensured the continuing relevance of the Constitution.

II. The background and progress of the Constitution 2000 project

The Constitutional Law Committee had on a number of occasions during the course of the 1990s expressed its views on the need for greater uniformity and coherence in Finland's constitutional legislation. During the 1994 parliamentary session, in its report on the proposal concerning the powers of the most important state institutions, it expressed the view that the partial reforms to the Constitution already implemented and those still in process of implementation should be followed by a shift in the focus of attention to the internal consistency of the Constitution. The Committee went on to propose that work be commenced on reforming and rewriting the Constitution with the aim of bringing the current diverse pieces of constitutional legislation together by the year 2000 to form a single, integrated Constitution Act.

After the March 1995 parliamentary elections, the Constitution 2000 project referred to in the new Government's programme was launched during the course of the spring with the appointment of a working group of experts (the Constitution 2000 Working Group) to examine the need to consolidate and update the constitutional legislation; to examine questions of constitutional law related to the drafting of an integrated Constitution and questions related to the technical implementation of the Constitution, both with an eye to the later appointment of a parliamentary commission; and to draw up proposals on the systematics and structure of an integrated Constitution. The Working Group proposed that all constitutional provisions be brought together into a single statute. As instructed, the Working Group also drew up a proposal for the structure of the new Constitution, suggesting it should be restricted to around 130 sections, against the total of 235 sections in the current constitutional legislation.

After the Working Group had delivered its report, the Government in January 1996 appointed a commission composed mainly of Members of Parlia-

ment (the Constitution 2000 Commission) to draft a proposal for a new, integrated Constitution to come into force on March 1, 2000. The Commission was instructed to draft its proposal for a new Constitution to replace the four existing constitutional laws in the form of a Government bill. The Commission completed its work on June 17, 1997. On the basis of the proposals of the Constitution 2000 Commission and the feedback received on these proposals, a revised Government bill for a new Constitution Act was presented to Parliament on February 6, 1998.

During spring and autumn 1998, the Government bill was considered in depth by the Constitutional Law Committee , which finally produced its unanimous report on the bill on January 21, 1999. On February 12, Parliament gave its almost unanimous approval for the Committee's proposal for the new Constitution to be postponed until after the parliamentary elections in March, while also giving final approval for the content of the proposed Act. If approved unamended by a two thirds majority in the new Parliament and ratified by the President of the Republic, the new Constitution will come into force on March 1, 2000. The Parliament elected in March 1999 will probably deal with the bill some time during spring 1999.

III. The Finnish Constitution in the year 2000

1. Goals and structure

Parliament gave final approval for the content of the proposal for Finland's new Constitution in February 1999. As it stands, the proposal meets the main goal set for the reform: to integrate and update Finland's constitutional legislation. The foundations of the Finnish Constitution will remain essentially unchanged by the new law, which is intended rather to amend and fine-tune the Constitution without altering its fundamental principles. The changes introduced during the bill's passage through Parliament mean that the new Constitution will also increase the parliamentary features of Finnish government even more than had been proposed in the original Government bill.

The structure of the new Constitution is based on a combination of organisational and functional principles. It also reflects the changes which have occurred in the social and political importance of the various subjects concerned. There has been a fundamental increase in the importance of international affairs as a result of the on-going process of European integration and of internationalization in general, and this is reflected in the bringing together of the constitutional provisions relating to the European Union and international relations under their own chapter.

In legal terms, the Constitution serves as the supreme source of national law and provides the basis for the legal system as a whole. It also serves as the central national symbol, the founding charter of the Finnish Republic. The new Constitution has been written in a sufficiently general form, without details or provisions of a technical nature which are particularly susceptible to becoming dated. The concept of the legally binding nature of the Constitution does not readily accommodate provisions of an essentially proclamatory, political nature. Thus, although the language and turns of phrase in the new Constitution have naturally been modernized to some extent, respect for the continuity of constitutional tradition has also led to the retention of established expressions and usages.

In line with the general principles outlined above for the structure and method of writing the Constitution, the new Constitution of Finland is divided into 13 chapters, as follows:

Chapter 1. Fundamental provisions
Chapter 2. Fundamental rights
Chapter 3. Parliament and Members of Parliament
Chapter 4. Functions of Parliament
Chapter 5. The President of the Republic and the Government
Chapter 6. Legislation
Chapter 7. State finances
Chapter 8. International relations
Chapter 9. Administration of justice
Chapter 10. Supervision of legality
Chapter 11. Administration and autonomy
Chapter 12. Defence
Chapter 13. Final provisions

2. Fundamental provisions and fundamental rights

The opening chapter on fundamental provisions continues the affirmation of Finland's status as a sovereign Republic; the inviolability of human dignity; the sovereignty of the people; the principle of representative democracy and the position of Parliament as the highest organ of government; the separation of legislative, executive and judicial powers; the independence of the courts; the principle of parliamentary government; and the rule of law.

In accordance with the provisions of the current constitutional legislation, the new Constitution makes no reference to Finland's membership of the European Union except insofar as this impinges on the relationship between the Government and Parliament. Thus, Parliament agreed with the concept implicit

in the Government bill according to which the indirect reference to EU membership in Chapter 8 (International relations) is sufficient.

The provisions on fundamental rights contained in Chapter II of the Constitution Act were comprehensively reformed as of August 1, 1995. The reformed sections have now been transferred effectively unchanged into Chapter 2 of the new Constitution.

3. Provisions concerning Parliament

One of the main goals of the constitutional reform process has throughout been to move Finland further in the direction of a parliamentary system of government. Accordingly, there are a number of ways in which the new Constitution strengthens the position of Parliament as the highest organ of government and makes it easier for the legislature to carry out its work — this despite the fact that the new Constitution's provisions on the organization and procedures of Parliament contain no fundamental changes in terms of content, and the legal provisions on Parliament and Members of Parliament remain largely unchanged.

The new Constitution will mean the replacement of the current framework of four separate constitutional laws with a single statute, and will thus see the repeal and disappearance of the current constitutional statute devoted specifically to Parliament and its procedures, i.e. the Parliament Act. The regulatory framework for Parliament will be simplified by transferring a considerable portion of the detailed provisions on parliamentary procedure contained in the current Parliament Act out of the Constitution and into the Procedure of Parliament. In relation to Parliament, the new Constitution will primarily contain only those provisions which touch on the legislature's position as the highest organ of government or provide essential definitions of parliamentary functions, organization and decision-making procedures or the status of Members of Parliament, and which clearly have a significance wider than merely the internal workings of the legislature. The main constitutional provisions on Parliament are contained in Chapter 3 (Parliament and Members of Parliament) and Chapter 4 (Functions of Parliament) of the new Constitution.

The new Constitution will bring flexibility to the constitutional framework for Parliament by increasing the legislature's powers to independently decide on how to raise matters for consideration. The Constitution will no longer define all the ways in which matters can be raised for debate, leaving the legislature to decide for itself in the Procedure of Parliament on new methods of initiating debate. The Constitution also contains only a general provision on the rights of Members to ask questions and the organization of topical debates in

Parliament, the more detailed framework for question times and topical debates being transferred to the Procedure of Parliament. The new Constitution simplifies the procedure for interpellations and provides for the appointment of temporary committees to investigate or examine questions or problems with important social ramifications.

Compared to other countries, Finnish Members of Parliament enjoy an exceptionally wide and unrestricted freedom to speak, and this will remain the case under the new Constitution. Members' freedom to speak is still seen as an important point of principle.

Under the Parliament Act, Parliament has traditionally been entitled to receive from the Government and the relevant ministries whatever information it needs to carry out its functions, while the parliamentary committees have enjoyed a similar right to be provided with information and reports on matters within their purview. The new Constitution extends Parliament's right to be informed by giving individual Members of Parliament the right to receive information from authorities which they need to carry out their functions, provided the information concerned is not classed as secret and is not related to the preparation of the Government's budget proposal.

The new Constitution rationalizes and tightens up Parliament's legislative procedures in respect of the readings of a bill in plenary session following preparation in committee, reducing the current three readings to two.

Parliamentary supervision of the Government and of the overall administrative machinery of government is to be enhanced by transferring the National Audit Office, which monitors management of the public finances and compliance with the Government budget, from its current position under the Ministry of Finance to become an independent office working in conjunction with Parliament. This reform will enter into force by the beginning of 2001.

A new Procedure of Parliament, which supplements the provisions on Parliament contained in the Constitution and which should be considered of equal status to Acts of Parliament, will come into force at the same time as the new Constitution on March 1, 2000. Preparatory work took place last year. A group of officials is currently reviewing the draft text of the new Procedure which will be adopted in Autumn 1999 on the proposal of the President/ Speaker.

4. The President of the Republic and the Government

The main changes in content contained in the new Constitution relate to the constitutional regulation of decision-making by the President of the Republic

and the formation of the Government. Both the mode of electing the President and his term of office remain unchanged. Presidential decision-making procedures are specified more precisely, while the Government, responsible to Parliament and dependent on the confidence of Parliament, is given a greater role in presidential decision-making. The normal procedure as described in the new Constitution will be for the President to take decisions at sessions of the Government based on the proposal of the Government. The most notable change is the transfer of the final decision on the introduction and withdrawal of Government bills from the President of the Republic to the Government, this including bills in the area of foreign affairs. In discussing the legislative proposal for the new Constitution, Parliament further decided that the internal consistency of the Constitution requires that the President's decision-making related to the issuing of military orders is made subject to consultation with the Minister concerned.

In relation to the formation of the Government, the practical effect of the new Constitution is to transfer the appointment of the Prime Minister from the President to Parliament. This also strengthens guarantees that the principle of representative democracy will be observed whereby the composition of the Government should reflect as directly as possible the results of the parliamentary elections and the spread of opinion in Parliament. The new Constitution thus marks the end of the President's leading role in the formation of the Government. The President will take a prominent role only when the parliamentary groups are unable to reach agreement on a suitable basis and programme for the Government, and consequently on a suitable candidate for Prime Minister.

5. International relations

Chapter 8 of the new Constitution is devoted to international relations. Its provisions are intended to clarify the constitutional framework for the management of international affairs and strengthen parliamentary control over foreign policy and over the actions of the President of the Republic.

6. Exceptive laws

In the event, the new Constitution retains the option to enact exceptive laws, which have been one of the distinctive features of Finland's constitutional legislation and one of the keys to its durability. Despite this retention of the option of exceptive laws, the scope of their use is to be restricted to allow only limited exceptions to the Constitution; exceptive laws will no longer be able to depart from the central provisions of the Constitution. The option of exceptive laws is to be used sparingly in the future, and only in highly exceptional cases where there are particularly pressing reasons.

7. Supervising the constitutionality of legislation

The Finnish approach to supervising the constitutionality of legislation may described as anticipatory and parliamentary. The emphasis is on Parliament, and in practice on the Constitutional Law Committee. The concept of a constitutional court has not been included in the Constitution.

The new Constitution introduces a specific provision on the legal precedence of the Constitution. This provision requires all courts to accord precedence to the provisions of the Constitution on statute law. But Parliament continues to be the originator of legislative decisions which cannot be subjected to general retroactive challenge in the courts through appeal to the Constitution."

* * *

Mr DAVIES thanked Mr TIITINEN for the quality of his communication. He emphasised the flexibility of the Finnish Constitution which allowed it to endure and the primacy of Parliament strengthened by the current revision. With regard to the considerable freedom of speech enjoyed by Finnish members of parliament, he wondered if they enjoyed total immunity or whether they could be prosecuted. In the British system, members of parliament did enjoy immunity from prosecution for words spoken in committee or in the plenary session. He wanted to know if the Finnish system was comparable to that of Westminister.

Mr TIITINEN said that to his knowledge the extent of protection in the Finnish Parliament was more or less comparable to that of the British system. However, the current Constitution contained provisions which would be retained in the new Constitution and which encouraged deputies to express themselves in a reasonable manner. These provisions were interpreted very flexibly so that in fact deputies could express themselves as they wished. Such a broad protection only existed in two or three parliaments in the world. This topic had been brought up during the course of the Constitutional revision. Members of parliament had very clearly expressed their wish to be able to continue to speak freely. Mr TIITINEN added that since the Second World War the Finnish Parliament had known only three cases of filibustering.

Mr DAVIES said that it was important not to confuse the quantitative and qualitative aspects of the right to speak and wondered how the Finnish Parliament controlled the length of debates.

Mr TROCCOLI (Italy) thanked Mr TIITINEN for his communication which had interested him greatly, in particular with regard to the role of the

Auditor General's Department and its collaboration with Parliament in the exercise of the function of oversight and scrutiny.

Mr TIITINEN said that in fact there were two different bodies. The Auditor General's Department would work from the entrance into force of the Constitutional reform in collaboration with Parliament instead of being placed under the Ministry of Finance. The Auditor General's Department would therefore be able to conduct detailed inspection of the budget of the State. The new Constitution in fact aimed to make this body more independent. Parliament would collaborate with the Auditor General's Department in the same way as with the Ombudsman. • From an organisational point of view the Auditor General's Department would remain independent of Parliament but Parliament would guarantee its financial resources so that it was able to function effectively. Members of Parliament who audited and scrutinised the budget would be able to co-operate effectively with this body so as to improve the scrutiny of government.

Mr KHATRI CHHETRE (Nepal) congratulated Mr TIITINEN for his communication and asked two questions. He asked about the timetable adopted for the revision of the Constitution and whether the agreement given in February 1999 by Parliament and the new agreement which had to be given by the Parliament elected in March 1999 was not in effect a duplication of effort. He also asked him about the contents of the final provisions of the Constitution.

Mr TIITINEN recalled the procedure for the adoption of this new Constitution. Parliament had the obligation of deciding on the content of the new Constitution in February 1999. However, because of the occurrence of elections, it was decided out of a concern for democracy that the new Constitution should be approved by the Parliament elected in March 1999. One of the issues of the March 1999 elections was in fact the revision of the Constitution. If the proposals of February 1999 had been rejected then the content would have had to be re-examined. In fact in February 1999 the new Constitution had been adopted almost unanimously. The final provisions in the Constitution related to the conditions for the entry into force of the new Constitution and abrogated certain former statutes.

Mr HONTEBEYRIE (France) also congratulated Mr TIITINEN on the quality of his communication and then asked him about the electoral system. He asked if the exceptive laws had a particular scope or field of reference and if they were passed according to a particular procedure. Finally he asked how the constitutionality of statute law was ensured and if it depended solely on Parliament which would thus have the job both of voting on statute and on ensuring its constitutionality.

Mr TIITINEN gave more details on electoral law. The exceptive laws which allowed derogation from the provisions of the Constitution authorised in matters of procedure derogation for a given law from the rules of qualified majority. He gave the number of 900 exceptive laws of which certain ones related to fundamental rights, for example the right to property. One exceptive law had thus been used for the entry of Finland into the European Union. The Finnish Constitution provided for the adoption of international treaties which had to be approved by a qualified majority of two-thirds but an exceptive law had authorised by derogation from the need for such a qualified majority the approval of the treaty of entry of Finland into the European Union.

Mr TIITINEN then turned to the question of the supervision of the constitutionality of statute law and said that the Chancellery had for its part to ensure that the Government respected the Constitution. If it came across provisions contrary to the Constitution in a bill, the Chancellery told Parliament of the matter and the supervisory committee had to examine those provisions and amend them in the case of proven unconstitutionality. However, it was always possible to have recourse to an exceptive law, the bill thus being placed as a matter of urgency on the orders of the day and adopted by a two-thirds majority. The committee that supervised the constitutionality of bills was the only competent body to pronounce on the conformity of a law to the Constitution and thus to interpret the Constitution. If the President of the Assembly considered that a bill contained provisions contrary to the Constitution, he had to raise them so as to oppose the bill. The role of the Secretary General was to signal possible provisions contrary to the Constitution but the supervisory committee gave the definitive last word on the matter. Finally before the promulgation of a law by the President of the Republic, if the Chancellery considered that a bill contained provisions contrary to the Constitution, it could propose to the President that the law not be promulgated. This provision, a somewhat complicated one, nevertheless functioned in a satisfactory way. The new Constitution provided that the legal authorities had to give priority to the Constitution in relation to laws adopted by Parliament.

Mrs VASSILOUNI (Greece) thanked Mr TIITINEN and asked him about the organisation of parliament vis-à-vis the institutions and proposed legal instruments of the European Union.

Mr TIITINEN said that after a comparative examination of the various existing models which took place at the beginning of the 1990s the Finnish system followed that of Denmark. In the nordic system a Committee on European Affairs examined at the outset and then the competent committees at the end of the process all the proposed acts of Community legislation. The Finnish members of parliament wished to be linked in the closest possible way

with the examination of such proposed Community law. The Committee on European Affairs met every Wednesday and sometimes on a Friday at two o'clock in the afternoon and this allowed ministers to come to present their point of view before meeting in the EU's Council of Ministers. Following the meeting of the Council of Ministers, the Minister would report back to the Committee. In this committee members of parliament examined draft Community legislation and explicitly indicated their position to the Government which was then bound by that position. This provision would be maintained in the new Constitution.

Mr WINNIFRITH (United Kingdom) said that the British Parliament had in one area followed the Finnish experience. The Finnish Parliament had a permanent representative in Brussels and for its part the House of Commons had recently decided to open an office in Brussels from the 1 October 1999. He understood that Italy had come to the same solution and also perhaps Sweden. Little by little it was probable that other parliaments would do the same. He welcomed the Finnish Constitutional reform which had progressed so smoothly and which would allow the development of flexibility in Parliament, emphasising in particular the strengthening of Parliament's independence in relation to the Government with regard to the supervision of the accounts and budget of the State.

Mr DAVIES said that he hoped the House of Lords would be able to benefit from the work done by the House of Commons in its Brussels bureau.

Mr CLERC (Switzerland) thanked Mr TIITINEN and asked him about the procedure for the revision of the Constitution which was adopted by Parliament. He noted that the qualified majority of two-thirds was required for a Constitutional revision. He asked if this revision might also have been adopted through a referendum, referring to the two referendums organised in Finland (one on the prohibition of alcohol in 1930 and the other on the joining of the European Union in 1995). Despite the organisation of these two historic referendums, he emphasised that recourse to referendum was not customary in Finland and this deprived the people of direct participation in such decision-making. He wanted to know if in the future another referendum might be organised. He also asked if the revision had been a central theme of the electoral campaign of March 1999. Finally he said that voting in a referendum, with the objective of revising the Constitution, had taken place in Switzerland on 18 April 1999. This revision had been adopted and he would be able to discuss it in Berlin in October 1999.

Mr TIITINEN was concerned at the absence of consultation of the people. They had, however, been able to express themselves in an indirect manner on

the Constitutional revision during the election of a new assembly. Even if this revision had not been the central theme of the electoral campaign, the revision had nevertheless been debated for a long time without exciting great controversy, all the political parties having in fact admitted that it was necessary to develop the institutions of the State in particular the presidential function. Finnish democracy was a representative democracy and the people participated in it in an indirect way. The new Constitution had provisions allowing for the organisation of consultative referendums. In the 1980s Finland had placed more emphasis on a representative system than on a system of direct democracy. Nowadays, even if society had developed, representative democracy remained the preponderant idea. However, if the President wished he could organise a consultative referendum and then have a vote organised on whatever bill was the object of the referendum. There was in reality a double procedure.

Mr GICHOHI (Kenya) thanked Mr TIITINEN. With regard to that information which had to be communicated by the Government to members of parliament, Mr GICOCHI asked what defined confidential information which was exempted from the obligation of communication. He also asked if parliament could decide on the need to modify the Constitution and if a qualified majority was required for the adoption of Constitutional revision.

Mr TIITINEN said that matters coming under confidentiality were defined by law. They concerned principally the security of the State and respect of private life. With regard to the second question, he added that Parliament was sovereign in deciding on the amendment of the Constitution. He recalled that the qualified majority of two-thirds was required, that is 130 members for the revision of the Constitution. However, tradition stated that very significant decisions had to be taken almost unanimously.

Mr SANTARA (Mali) thanked Mr TIITINEN and asked him about the entrance into force of the new Constitution. He wondered in particular if there was a new procedure and a timetable applicable between the adoption of the new Constitution and its entrance into force. He also wanted to obtain further detail on the division of responsibility with regard to international relations in the context of the new Constitution.

Mr TIITINEN said that the new Constitution had to enter into force in March 2000. However, it was provided that certain provisions would enter into force in 2001, in particular those concerning the oversight of the Auditor General's Department. The Constitution provided that all laws had to be promulgated as soon as possible. As a result no specific timetable had been laid down between the adoption of the bill and its entry into force. But with regard to a Constitutional revision it was necessary adopt a particular law for the

putting into effect of the Constitution so that there was no interruption or upsetting the legal continuity of the country.

Mr OLAFSSON (Iceland) asked Mr TIITINEN whether an identical procedure would be maintained in the future when new amendments were proposed for the Constitution.

Mr TIITINEN said that this was the first reworking of the Constitution and that it was not foreseen that they would in the near future go on to make further fundamental changes.

Mr OLAFSSON (Iceland) noted that no future revision procedure had been mentioned.

Mr TIITINEN said that they were contained in Chapter 6 of the Constitution and that he had in his possession the Swedish text.

Mr DAVIES thanked Mr TIITINEN again for the quality of his communication as well as for the contributions from the floor.

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