APPEAL AGAINST COUNCIL OF STATE AND MINISTRY DECISIONS IN FINLAND

BY

EDWARD ANDERSSON

Professor of Law,
University of Helsinki

1. DISTRIBUTION OF POWERS BETWEEN THE HIGHEST STATE ORGANS

The tripartite distribution of power based on Montesquieu's doctrine is clearly incorporated in the Finnish Constitution of 1919. According to art. 2, the legislative power is exercised by Parliament, albeit in association with the President, whereas the highest executive power is vested in the President, who in the general administration of the state is assisted by the Council of State (Cabinet). The law is administered by independent courts of law. In principle the administration of law is divided between two distinct categories of courts: general courts of law for cases falling within private and criminal law, and administrative courts of law for cases pertaining to public law. The highest instances within each branch are, respectively, the Supreme Court of Justice and the Supreme Administrative Court (SAC). Thus, the latter decides public-law cases in the last instance. Below the SAC, there is no particular appellate instance for all public-law cases, although some 70 per cent of all such cases come to the SAC from the county courts, which have the position of courts of appeal in relation to the decisions of *local* administrative authorities. For cases decided by a *central* administrative agency, such as the Board of Health, the Board of Customs, the Board of Postal and Telecommunications, etc., the SAC is the first as well as the only court of appeal. A complainant is always entitled to lodge an appeal against a final decision made by an administrative authority unless the right of appeal is expressly denied by law or ordinance. The SAC tries and decides some 5 500 appeal cases each year. The procedure is practically always carried out in writing and is consequently inexpensive for the appellants.

The general administration of the state is carried out by the President, the Council of State and the ministries. The President decides on certain administrative measures expressly specified in the Constitution. No appeal lies against his decisions. It has, however, been held that the SAC has the power to revoke deci-

sions made by the President on conditions set out in the Act on extraordinary appeals in administrative matters. However, this very seldom occurs: in fact, it has happened only once. In the case in point, the SAC considered but dismissed an appeal to have the President's appointment of a professor revoked on the ground that the professor's scientific publications were alleged to be based on plagiarism (SAC 1956 I 16).

Other general administrative questions are decided either by the Council of State, which is a collegiate body consisting of a maximum of 17 ministers under the chairmanship of the Prime Minister, or by the different ministries, where in principle the decision is made by the minister after the presentation of a report on the case concerned. The Council of State as a collegiate body has general competence in these matters, whereas each ministry makes decisions only on questions which have been expressly reserved for its jurisdiction. In practice, however, the majority of matters are decided by the ministries, and only a few matters of major importance are decided by the Council of State in its plenary sessions. The distribution of competence is laid down in the standing orders for the Council of State. However, as a collegiate organ, the Council of State both decides cases concerning personal rights and creates rules, i.e. legal norms, for an indefinite number of cases.

There is in the Finnish administrative organization no univocal principle distributing administrative power between the ministries and the specialized authorities (central administrative boards) subordinate to them, such as the Board of Education and the Board of Health. During earlier periods central administrative boards were occasionally abolished for particular reasons and their duties transferred to a ministry. The present tendency is quite the reverse: during latter years several new central administrative boards have been established (the Social Welfare Board, the Water Board, the Taxation Board). This has led to a reduction in the number of cases to be decided by the ministries.

In *Scandinavian Studies in Law,* vol. 15, there is an article by the Danish writer Ole Krarup on "Judicial Control of Administrative Powers", expressing an unorthodox view and containing a penetrating analysis of the problems involved. It seems necessary here to try to point out in what respects there are differences between the legal position in Finland and that in Denmark and certain other countries.

In Finland, as already stated, there are special administrative

courts, whereas the judicial review of administrative decisions in Denmark, as well as in many other countries, lies with the ordinary courts. The Finnish Constitution Act of 1919 contains no provisions regarding the principles intended to govern the division of powers between the judiciary (=the administrative courts) and the executive. But those who drafted the Constitution, especially Finland's first President, K. J. Ståhlberg, who was elected according to the new Constitution, were certainly much influenced by the German and Scandinavian legal writing of their time. The Supreme Administrative Court had been established in 1918 and sec. 5 of the Supreme Administrative Court Act prescribed, as it still does: "If the SAC considers an appeal case to have reference to a question, the settlement of which mainly depends on an appraisal of the expediency of a decision or a measure, the case shall be submitted to the Government for decision." This provision thus already existed at the time when the Constitution Act was adopted.

The provision cited above imposes upon the SAC the task of deciding whether an appeal case "mainly depends on an appraisal of the expediency" of the decision under appeal. But the statute does not set out *how* the boundary between legality and expediency should be drawn. It is likely that the legislators had in mind the criteria adopted in Continental legal theory and practice before 1919, but this is nowhere stated in a binding way. This means in fact that the SAC itself has had the right and the obligation to develop criteria for drawing the boundary in a great number of types of cases. There is an extensive body of case law on this subject. This case law cannot be analysed here, but briefly it may be said that the SAC has adopted a broad concept of legality and a narrow concept of expediency. Consequently, only a small number of cases have been submitted to the Government.

The power of the SAC to review administrative decisions does not rest upon a constitutional provision, the wording of which is somewhat unclear, but is stated in an ordinary Act of Parliament. This Act operates with two criteria, questions of law and questions of expediency, but does not endeavour to define them. This task has to be performed by the SAC. Only the case law can give us relevant information about the real meaning of the two criteria.

2. RIGHT OF APPEAL AGAINST COUNCIL OF STATE AND MINISTRY DECISIONS

From the year of the establishment of the SAC in 1918 until 1951, appeals lodged with the SAC against decisions of the Council of State and the ministries were not, as a general rule, permitted. However, in connection with the above-mentioned abolition of certain administrative boards in the 1920s and 1930s and the transfer of their power of decision to the ministries, it was decided that, in order not to impair the citizens' legal protection, appeals were to be allowed against those decisions of ministries which had previously been decided by central administrative boards. Later on, appeals were also permitted against certain other groups of decisions (e.g. decisions concerning salaries, wages and pensions of civil servants) made by ministries and in some cases even by the Council of State. All these rules were, however, in the nature of exceptions from a main rule, according to which appeals were not permitted.

In 1949, the Government submitted a bill to Parliament concerning appeals dealing with administrative matters. The bill, which in many respects meant a reform and in some other respects a codification of previously unwritten administrative appeal rules, did not, however, contain any provisions as regards a general right to appeal against Council of State and ministry decisions. It was thought that this question still ought to be solved by means of special regulations. A private member's bill was, however, laid before Parliament, which suggested an amendment to the effect that such Council of State and ministry decisions as concerned individual rights (as opposed to the issuing of general norms) could be appealed against on legal grounds (but not on grounds of expediency). This bill was approved by Parliament, an outcome quite unusual for private members' bills relating to questions of fundamental importance, and was incorporated into the statute. Prior to promulgating this Act (called below the Administrative Appeals Act), the President asked the SAC for its opinion on the amendment. The majority (13 members) considered the amendment as approved by Parliament to be an improvement and recommended its sanctioning, whereas the minority (7 members) expressed the opinion that the new amendment would lead to a greatly increased number of appeal cases as well as to other difficulties and voted against it. The subsequent de-

velopment has, however, clearly proved that the opinion of the minority was wrong. The relatively small number of appeals may partly be due to the fact that the decisions of the Council of State and ministries are not, under Finnish law, accompanied by directions for the procedure to be followed when lodging appeals, whereas such directions are compulsory in regard to decisions made by lower administrative authorities. The cases from the Council of State and the ministries have not in any year exceeded 5.5 per cent of the total number of appeals. During the last five years the number has fluctuated between 150 and 250, or 2.3–4.3 per cent of all appeal cases. Both the absolute numbers and the percentage figures show a slight downward tendency as the result of certain administrative organizational reforms during recent years.

The experience of the 20 years (1951–70) during which the provision on the right to appeal against Council of State and ministry decisions has been in force provides a sufficient basis for reasonable conclusions on the application of this provision. In what follows I propose to examine in what kind of cases the rule has been applied, and how. As the question concerns a principle of law, according to which an authority representing the highest judicial power may supervise the legality of decisions made by representatives of the highest executive authority, the examination may even produce some interesting aspects of the "power of the courts of law", a catch-phrase much used in recent political discussions in Finland. In this connection it is worth mentioning that the courts of law in Finland are not considered to have the right to decide whether a law is unconstitutional or not, whereas the legality of ordinances and other rules issued by the President, the Council of State and lower authorities may be examined *ex officio* by judges and other officials (Constitution Act, sec. 92 (2)).

The enactment (Adm. Appeals Act, sec. 4 (1)), which we propose to analyse here, reads: "Appeals against decisions of the Council of State or ministries may be lodged by a party concerned, who considers that a decision infringes upon his/her right, provided no other law or ordinance decrees otherwise." The expression "party concerned" is meant to include quite a small group of persons who are directly concerned by the decision. It is not meant to create an *actio popularis,* but if the decision appealed against was originally made by a municipal body (e.g. a decision approving a town plan), whose decisions may be contested by all

persons who are residents of the municipality, then this extensive right applies here also, but continued appeals may, of course, be lodged only by those residents of the municipality who have lodged an appeal with the ministry concerned and have not achieved the desired result.

The reference to infringements upon the right of the party concerned should be read against the background which is provided by the distribution of authority between the Government and the SAC as described above. By using the expression "infringement upon the right" of the party concerned, the legislator has undoubtedly intended to say that appeals may be lodged on the ground of the alleged *illegality* of the contested decision, whereas its *expediency* has already been judged by the Government and consequently cannot be appealed against. Even in this connection, however, the legislator has not laid down what the concepts of "legality" and "expediency" shall imply; in actual practice, this question has more or less deliberately been left to be decided by the SAC. What may in practice be considered as "legal" or "expedient" has to be shown by an analysis of the individual case concerned. The SAC has generally regarded appeals against decisions as based on alleged illegality, even if the appellant has not expressly said so. As legally based appeal grounds one may, following an expert, Kuuskoski,[1] consider: (1) that the appellant has been denied what he is legally entitled to; (2) that the appellant has been directed to do something to which he/she is not liable according to law; (3) that public power has been exercised to the detriment of the appellant by an authority exceeding its competence or that public power has been used for purposes other than those it was intended for; and (4) that the case has not been dealt with in accordance with the procedure prescribed by law. The case law offers examples of all these grounds.

Such denials of right to appeal as are referred to in the last part of the provision are fairly rare. They have, in so far as the present writer has been able to find out, been enacted on the ground of substantive reasons, and not only for the purpose of lessening the SAC's burden of work. Even cases in which appeals are prohibited by such rules may, through the operation of procedural rules on so-called extraordinary legal remedies, be brought to the SAC for review (*vide*, e.g., SAC 68 II 178).

[1] Kuuskoski, "Överklagande av regeringsbeslut i Finland", *Nordisk administrativt tidsskrift* 1954, p. 26.

For the purpose of illustrating the number of appeals and the scope of material examined in connection with this analysis the following figures may be given:

Distribution of the appeals in cases decided by the Council of State and by the different ministries

	1951	1957	1963	1967	1968	1969	1970	1951–70
Council of State	14	12	12	21	26	36	16	342
Min. For. Aff.	—	1	—	—	—	—	2	13
Min. Justice	11	13	7	6	17	7	5	174
Min. Home Aff.	9	19	23	29	27	32	30	495
Min. Defence	50	35	13	4	3	19	11	471
Min. Finance	8	8	19	12	39	14	13	305
Min. Educ.	—	5	5	4	5	3	1	39
Min. Agricult.	66	31	4	—	5	2	2	429
Min. Comm. & Ind.	4	—	3	1	4	4	2	56
Min. Soc. Aff.	116	76	98	92	84	29	20	1 915
Min. Communications	16	12	35	23	34	28	29	399
Total	294	212	219	192	244	174	131	4 637
%	4·3	4·5	4·2	3·25	4·3	3·2	2·35	

Far from all SAC decisions are reported in Finland. Only those considered by the Court to be of major importance are so reported. The following analysis is based solely on reported cases, and of these a great number have in fact been published for other reasons than for the purpose of showing the position of the SAC in relation to the Government. Cases decided and reported during the period 1951–1969 total 717, and fall under different headings as follows:

Council of State	88
Min. For. Aff.	7
Min. Justice	32
Min. Home Affairs	84
Min. Defence	76
Min. Finance	50
Min. Educ.	14
Min. Agricult.	74
Min. Comm. & Ind.	19
Min. Soc. Aff.	199
Min. Communications	74
Total	717

The figures above seem to indicate that the SAC publishes only about 15 per cent of the total cases handled. However, it should

be observed that many of the cases brought before the SAC are examined together and decided jointly, and therefore the number of decisions made may be estimated to be 10–20 per cent less than that of cases brought before the Court. The number of unreported cases is in any case large, and in principle it would be interesting to know what types of cases they are. In order to be able to give some information on this point, I have studied each of the 251 + 192 cases brought before the SAC in the years 1966 and 1967, which cases resulted in 205 and 170 decisions respectively. My study has proved that practically all of the unpublished decisions are of little general interest. A great number of them are decisions in cases which have not been considered at all or cases which are similar to some other case decided and reported at about the same time or decisions based on the same principles as other cases published previously. Only with regard to a few of the cases examined have I, from my own personal viewpoint, had any doubts as to whether there were not sufficient reasons for reporting them. In no instance, however, have I had reason to presume that the case has been left unpublished on account of its controversial nature.

Among the 717 cases published, there is a surprisingly large number which are of only minor interest in this connection. In the non-interesting group I include those cases where the appellant's claims have not been examined at all, as also the greater part of the numerous cases concerning civil servants' salaries and pensions, which are mainly concerned with details regarding benefits provided for by statute, and which are judged in the same way as in corresponding decisions of the lower authorities. There are also groups of certain other cases, which may be considered as purely technical ones, as well as groups which regularly involve questions of evidence. The SAC does not confine itself to reviewing a lower authority's construction of the law; it also examines the facts as well as the evidence produced in the case concerned. Cases dealt with as matters of evidence are mostly lacking in interest for present purposes.

3. CASE LAW IN APPEALS AGAINST MINISTRY DECISIONS

In order to give the reader an idea of the types of questions that have been appealed against to the SAC from different minis-

tries and the Council of State, I propose to give here, for each ministry separately, a short summary of the cases which to my mind are the most interesting ones from the viewpoints concerned here. A report on the material as a whole has been rendered elsewhere in Swedish as a separate study.[2]

There are no cases of interest to be reported from the *Ministry of Foreign Affairs,* or from the *Ministry of Defence.* The questions decided by the *Ministry of Justice* have also been of small importance from a political viewpoint or from the point of view of general principles. In a few cases this ministry has, in compliance with an ordinance originating from the 18th century, had to consider whether salaries which a town has decided to pay to holders of judicial offices are reasonable. In a number of such cases, the Ministry of Justice, on appeal by the judges concerned, has increased their salaries. The SAC, however, has on appeal not allowed any further increase. Nor has it entertained the town's appeals.

The *Ministry for Home Affairs* is charged with many different duties, its business being, *inter alia,* to sanction a number of local board decisions, as expressly indicated in statutory law, although in principle the municipalities are to a large extent self-governing. In one case, 66 II 21, the Ministry refused to sanction the regulations on air-raid shelters for the local population adopted by a local government board, the reason for the refusal being that some of the regulations did not comply with the model regulations for civilian air-raid shelters drawn up by the Ministry. On appeal by the local authorities, the SAC explained that the Ministry had infringed the municipality's rights inasmuch as the Ministry in its decision did not state in what respect the local regulations did not comply with the Civilian Air-Raid Shelters Act. Thus, the Ministry was prevented from infringing upon local democracy, while SAC clearly showed that internal norms not having been published as law or ordinance lack binding legal force. In another case dealing with air-raid shelters for civilians (63 II 138), the Ministry had laid down, as a condition for obtaining a state grant, that in peace time it was permitted to use an air-raid shelter only for purposes stipulated by the Ministry in advance. This condition was disallowed by the SAC.

[2] Andersson, "Överklagande av statsrådets och ministeriernas beslut i rättspraxis 1951–1970", *Publikationer från institutet för offentlig rätt vid Helsingfors universitet,* C: I, Helsinki 1972.

It is also the duty of the Ministry for Home Affairs to give its sanction to town plans approved by town councils. As to the contents of town plans, it is laid down by statute, *inter alia,* that "a town plan shall conform to the terrain, the nature of the soil and other local conditions ... [and] shall satisfy the requirements of health, fire protection and traffic as well as the demands for comfort and beauty .... Cultural memorials as well as attractive scenery and other aesthetic values should whenever possible be protected—established conditions of landownership shall as far as possible be respected—and unreasonable restrictions shall not be imposed on private landowners, if they can be avoided without materially disregarding any essential requirements of the town plan". These criteria have been considered by the SAC as authorizing the review of the contents of town-plan decisions as matters of law.

When trying complaints by private landowners within the areas affected by a town plan, the SAC has decided, in several cases, that the town plan has been framed in such a way that there have been imposed on several landowners unreasonable restrictions which could have been avoided without materially disregarding any essential requirements of the town plan, or that the established conditions of landownership have not been observed to the full extent possible. In one case, the SAC has expressed the opinion that the protection of aesthetic values and cultural memorials had not been considered in the town plan.

An interesting case is 55 I 21, in which the town council and the Ministry for Home Affairs had adopted and sanctioned so-called out-of-plan regulations, prohibiting the erection of buildings within 100 metres of the waterfront. By a majority of five votes to four the SAC dismissed an appeal, as there was no legislation preventing the local authorities from taking such measures; the large minority group, on the other hand, held that *de facto* the decision meant a ban on building within certain large areas, thereby infringing upon landowners' rights. In the case 64 I 2, the Ministry for Home Affairs had refused to sanction the building plan of a borough, according to which the responsibility for street maintenance was transferred from the property owner to the borough. Here the SAC, on appeal by the borough, held that the refusal was an infringement upon the borough's rights, as the law only laid down maximum limits regarding the responsibility for street maintenance that could be imposed on private owners and that consequently there was no legal obstacle to the

transfer of this responsibility from the private owner to the municipality.

In the case 64 II 230, the Ministry for Home Affairs had granted the subsidiary of a foreign pharmaceutical company a licence for the sale of pharmaceutical products, but on condition that the pharmaceutical manager, who was not concerned with the economic and administrative side of the business, should be granted "full Powers of Procuration", a phrase which was probably meant to denote unlimited sole powers to sign on behalf of the company. The SAC dismissed the complaint and stated that the granting of the licence was based on the discretionary powers of the Ministry and that the latter consequently had the right to lay down such conditions as were considered necessary. The decision was as such indisputable, but the SAC should also have expressed its opinion as to whether the Ministry had exceeded its discretionary powers by laying down irrelevant conditions (*détournement de pouvoir, Ermessensmissbrauch*).

Like many other ministries, the Ministry for Home Affairs also decides many cases concerning Government grants, particularly grants for local purposes (such as hospitals, schools or social institutions, the building of roads and many other purposes). The grants often represent large amounts. Generally, what the applicant is entitled to is laid down by statute in great detail both as regards the purpose and the amount of the grant, but there are also Government grants-in-aid, which ministries *may* bestow upon such municipalities as comply with certain criteria (e.g. sparsely populated and industrially undeveloped municipalities). In the cases covered by specific statutory rules, the appeals lodged generally develop into a regular economic dispute between the state and the local body, which has to be resolved by the SAC with regard both to the fundamental right to a grant and to the amount. In respect of the latter cases the SAC cannot, of course, intervene in decisions based on the Ministry's discretionary powers —a fact which complainants do not always seem to understand— but only as regards the conditions laid down by statute, if the Ministry has denied the presence of these conditions in the cases concerned. This is well illustrated in case 61 I 15, in which the SAC, reversing a decision of the Ministry of Home Affairs, held that a certain building was a necessary hospital building under the Mental Health Act, for which reason the application for a grant ought not to have been rejected on this ground, but that it otherwise depended upon the discretionary opinion of the Min-

istry whether an appropriation for the purpose would be included in the budget that year.

The construction of statutes on Government grants by the ministries has often been very restrictive. This may partly be due to the fact that only the applicants (municipalities and institutions), and not anyone representing the Government interests, may lodge complaints with the SAC in these cases. The SAC has consequently in a great number of cases modified ministry decisions on these questions. In this connection, the SAC has had to make decisions on criteria such as, e.g., whether certain expenditure was "necessary" or "needed" or "real and acceptable", etc. As an example of this could be mentioned the fact that in the case 63 II 177 the SAC, unlike the Ministry of Home Affairs, considered a TV set and a piano as being part of the initial costs of a certain mental hospital and as such entitled to be included in the Government grant to the hospital.

In certain Government grant cases, the question that has come up in the decision has been of a more formal character. Thus, a decision by the Ministry for Home Affairs refusing a Government grant in the case 59 II 485 was reversed because the decision did not say on what precise statutory provision it was based, nor did it give any other reason as a basis for the refusal. There were consequently, in the opinion of the SAC, no legal grounds for judging the question. In case 57 II 472, a decision by the Ministry for Home Affairs was revoked as it had been made only on an opinion delivered by the Board of Health without the appellant's application having been available to the Ministry. In the case 65 II 84, a decision by which a Government grant had been partly refused under a certain statute was considered illegal as the statute concerned contained provisions to the effect that more detailed criteria would be given by ordinance, but such an ordinance had not yet been issued. The SAC has in several cases held that, when determining the amount of Government grant for a certain year, the ministries do not have the right to make deductions by "setting off" sums which they deem to have been incorrectly allowed by themselves during some previous year. On the other hand, there are decisions by which the SAC has, at the request of a ministry, revoked a decision by that very ministry to the detriment of the beneficiary of the grant.

The Ministry of Finance. Quite a varied selection of appeals has come from this ministry, but only a few of them are of interest here. As regards a great number of cases, the Ministry has

availed itself of discretionary powers as laid down by statute, and appeals have as a rule been dismissed on the ground that the refusal of the application in question was within the discretionary power of the Ministry and that it had not been proved that the Ministry had exceeded the limits laid down for its discretionary power. When the statutory prerequisite for refund of taxes has been that "very weighty reasons" shall have been adduced, the SAC had declared (55 II 103) that the reasons referred to were not very weighty and that the decision for dismissal did not infringe the applicant's rights. In a case concerning a right to pension provided for by statute, the Ministry's decision was reversed on the ground that it had been passed without sufficient examination of the case.

The Ministry of Education. There is only one case, 63 II 344, worth reporting from this ministry. A researcher had applied for permission to examine certain copies of telegrams from the civil war of 1918 which had been declared to be secret. The Ministry had refused the application on the ground that secrecy of telegrams was protected under the Constitution and that consequently an exemption could not be granted. The SAC was, however, of opinion that the question in this case concerned public documents, not telegrams, and declared that the application for an exemption could not be refused on the grounds mentioned, whereupon the Ministry took up the matter for reconsideration and granted the exemption.

There are no cases from the *Ministry of Agriculture* worth discussing here. From the *Ministry of Commerce and Industry* there are a few decisions that may be mentioned. These concern forfeited mining rights, and here the decisions were reversed by the SAC on the ground that they were made before the party concerned had been heard. In a case of small intrinsic importance, a sailing club had filed a complaint against a ministry decision sanctioning a flag for another sailing club. The SAC had to decide at first whether the appellant could be considered a party to the case and whether the appeal could thus be taken up for consideration. Only after an affirmative answer was given to this question (voting 5–3), did the SAC declare that the flags differed sufficiently from each other (68 II 193).

Nearly 50 per cent of the appeals concern decisions of the *Ministry for Social Affairs.* A great number of these, however, relate to public assistance allowances, which are very small both materially and in terms of money, e.g. grants to invalids and

other destitute people, and the issue of such cases will generally depend upon the evidence. The Ministry for Social Affairs was reorganized as from July 1, 1968, and a new Social Welfare Board was established. Nowadays the Ministry (its present name being the Ministry for Social Affairs and Health) does not as a rule deal with these unimportant cases.

There are, however, some interesting cases to report concerning the Ministry for Social Affairs. In the case 65 II 289, the Ministry had refused a local board's application for compensation regarding maternity allowances, which the community had had to pay on behalf of the state. The refusal was due to the fact that the beneficiary of the allowance had not complied with certain formalities laid down by statute. The SAC reversed the decision on the ground that even in these cases the local social board had the right after due consideration to grant allowances and that consequently it could not be refused compensation for the allowances in question. In a case where the Ministry of Social Affairs had refused compensation for the care of an invalid on the ground that the invalid had been under care before an application for compensation had been submitted to the Ministry, the SAC was of opinion that in this case the taking under care of the invalid had been of immediate urgency and that consequently the Ministry could not dismiss the application on this account (64 II 318). In another case the Ministry for Social Affairs had refused a local board's application for compensation because the application had arrived late, but the SAC reversed the decision on the ground that it was due to the Ministry's own negligence that the application was not submitted in time (58 II 352). In another case (56 II 364), an invalid had received benefits in the form of a loan for purchasing a motor car. After he had been found guilty of insobriety while driving the car, the Ministry for Social Affairs decided to demand immediate repayment of the loan. The SAC pointed out that the conditions for the discontinuance of the care of invalids were laid down by statute and that this type of case was not included among the conditions, and for this reason the decision was reversed. It seems right that the conditions for the discontinuance of a granted benefit were strictly interpreted.

The Ministry for Social Affairs also decides in cases concerning Government grants. In this connection the SAC has in a few instances adopted a non-formalistic equitable interpretation. In the case 65 II 288, the question concerned a local board's right

to a Government grant for wages to visiting home nurses. Under the relevant statutory provisions, grants are allowed for six visiting nurses in localities with a population exceeding 10,000 and for five nurses in other localities. The Ministry for Social Affairs had agreed to a grant for only five nurses on the ground that the census registration on January 1 indicated a population somewhat below 10 000, whereas during previous years the number of inhabitants had exceeded that figure. The SAC reversed the decision of the Ministry on the ground that the local authority could not have known of the population decline as the census result did not become known until much later in the year. In the case 67 II 159, the Government grant had to be applied for before a certain date, and the local board had in fact done so. The application had, however, been very incomplete but it was supplemented after the stipulated date. The Ministry for Social Affairs did not take the supplementary information into consideration, but the SAC declared this to be an infringement upon the local board's rights. In another case, which also concerned the salaries for visiting home nurses (57 II 118), the Ministry for Social Affairs allowed a Government grant on the basis of a certain salary grade, whereas the local board had paid according to a higher grade. The SAC declared that the rights of the local board had been infringed, because the limitation was not clearly set out in the statute. This case resulted in an amendment of the statute on this point in the same year.

Finally, we come to the *Ministry for Communications and Public Works,* which in the autumn of 1970 was divided into a Ministry of Traffic and a Ministry of Labour. Among the largest and most interesting group of questions from this ministry are those which concern operating permits for interurban bus services, licences for contract traffic with lorries and taxis and also licences for the operation of driving schools. These cases are as a rule in the first instance decided by the county administration, the first appeal instance being the Ministry of Communications (now called the Ministry of Traffic). In certain cases the matter is in the first instance considered by the Ministry. The Ministry's decisions may be appealed against to the SAC, the latter having in 1958 successfully proposed to the President that a section of the Motor Traffic Ordinance of 1957 prohibiting appeals altogether should be abolished. According to the Ordinance, when considering an application for a traffic licence the licensing authority must examine whether the proposed service, taking into consid-

eration already existing traffic services, is "in the public interest and otherwise needed and appropriate", and also whether the applicant's reliability and his ability to operate the service in question are adequate. The last-mentioned criteria are, of course, questions of legality, as opposed to criteria of expediency. Thus, the SAC has declared (69 II 175) that an application should not have been refused on the ground that the applicant was not sufficiently reliable merely because 10 years earlier he had been put on probation by a court. In the case 69 II 173, the Ministry of Communications had rejected an application for a licence to operate traffic between Finland and foreign countries on the ground that it was not considered expedient that a person without any experience of commercial traffic should carry on traffic abroad. The SAC declared that the application could not be refused on grounds which were not expressly laid down by ordinance.

The criteria referred to above, which concern the need for traffic services and traffic interests in general, seem to stand closer to a purely discretionary judgment than do the criteria previously dealt with. The SAC has, however, made a constant practice of independently considering even these criteria, and has on many occasions arrived at an opinion about traffic needs other than that held by the Ministry. It may be that this case law has been influenced by the fact that traffic licences are economic privileges of great value and that the impartiality of the lower authorities in these cases has not always been beyond doubt. There exist, in fact, two reported cases (60 II 112 and 68 II 129) which clearly show abuse inasmuch as applicants had been refused a licence on the basis of insufficient traffic needs, whereas shortly afterwards another applicant was granted a licence for exactly the same traffic, without any good reasons having been given for this. In those cases where the SAC has not accepted the standpoint taken by the Ministry of Communications concerning traffic-licence applications, the SAC has stated positively that the traffic planned was in the public interest and, considering the existing traffic services, both needed and appropriate, or putting it more briefly, has stated that a traffic service was needed. Such cases have then been returned to the Ministry for reconsideration.

A licence to conduct a driving school should be granted provided a driving school is considered to be required in the locality concerned and provided the applicant possesses the necessary qualifications required for operating such a school. The SAC

has held that these criteria, too, are criteria of legality. Thus, the SAC, in the case 63 II 83, considered that a new driving school was required in a suburb of Helsinki, reversing a decision by which the Ministry of Communications had refused an application.

The Ministry of Communications also decides a great number of questions concerning road construction. *Inter alia,* the Ministry confirms the so-called road plans, whereby the class of the road to be built and its route are determined. The SAC has considered many appeals against sanctioned road plans as questions of law but has, with one exception, dismissed all of them after stating in its decision the grounds for dismissal, often in detail. For example, in the case 61 II 142, the SAC declared, *inter alia,* that "the improvement of the road was needed for the public traffic and was not principally intended for local needs, and that it had been planned so that its purpose was achieved in the best possible way and without causing anybody more damage or harm than necessary". Only in the case 69 II 167 was the decision concerning a road plan quashed in part on the ground that it was held that the road-building authorities were being allowed to take gravel for the building of the road in such a manner that it would cause a cement factory more harm than was necessary. In this case too, however, the SAC was, except for this detail, of the same opinion as the Ministry of Communications.

4. CASE LAW IN APPEALS AGAINST COUNCIL OF STATE DECISIONS

I have left the decisions on appeals against *Council of State* resolutions to the last, as these should in principle be the most interesting ones.

The Council of State decides, *inter alia,* questions regarding the licensing of pharmacies. Licence applications are judged on the basis of proved "efficiency, capacity and approved civic virtues", criteria which are the same as those governing the promotion of civil servants according to sec. 86 of the Constitution Act. The SAC has as a rule dismissed appeals lodged by competitors on the ground that, having regard to the said criteria, they have not proved themselves to be better qualified than the beneficiary

of the licence. In some of these cases a minority of the SAC has formulated its dismissal in a different way, namely by stating that it has not been proved that the Council of State has used its discretionary power unjustly. In one case (56 II 429), the SAC had clearly been of the opinion that the Council of State had not granted the pharmacy licence to the most highly qualified applicant. In two other cases, the appeals were entertained on the ground that the Council of State, on being asked by the SAC for its opinion on the appeal, had stated that the appellant, who was one of the applicants for the licence, had not been considered at all when the decisions were made, in one case because five years had not passed since he was granted the licence for his present pharmacy and in the other because he was already 64 years of age. The SAC was consequently of opinion that this exclusion in advance of the two applicants was unlawful. After the return of these two cases for reconsideration the Council of State was, however, in principle able to uphold its previous decisions.

In a Government grant case (60 II 211) the Ministry for Social Affairs had sanctioned the building plans for a workhouse, whereupon the house was built and the town asked for a Government grant. The Council of State rejected the application on the ground that the building was unsuitable for its purpose. This decision was reversed by the SAC because the Council of State should not have tried the suitability of the building, as the Ministry for Social Affairs had already decided on this question in a binding way within the scope of its powers.

Cases of greater public and even political interest are those which concern expropriation permits. These permits are granted by the Council of State for "public needs", and appeals against them may be lodged with the SAC. Apart from the formal questions, the Court also examines whether there exists a public need for the expropriation concerned. In my opinion the SAC can, however, hardly be expected to arrive at any other result regarding this issue than that reached by the Council of State. In practice, expropriation permits granted by the Council have been revoked only on formal grounds (omission to hear the landowner; inadequate specification of the areas concerned). In one case, however, (63 II 216) the permit was withdrawn on material grounds. The case concerned expropriation under a special statute, which allowed expropriation only for certain defined purposes, and the SAC was of opinion that those purposes did not exist in the case concerned.

Another, politically even more interesting group of cases are appeals against resolutions by the Council of State regarding grouping and regrouping of municipal districts, particularly appeals against decisions on incorporation of one municipality into another made by the Council of State against the wishes of the community concerned. A "compulsory order" of this nature is permitted by statute "only if it is considered needed in order to prevent, remove or lessen some existing major incongruities or is otherwise called for in the public interest". The criteria are thus very flexible, and the question of compulsory incorporation has during latter years been the subject of conflicting political opinions. On appeal, the SAC has in principle considered the statutory prerequisites in every respect, but in no single case has the Court altered the outcome arrived at by the Council of State, although cases exist in which some individual members of the Court have been of opinion that the conditions for compulsory incorporation had not been fulfilled (particularly 66 II 53). On the other hand, as regards details connected with the regrouping of municipalities, such as the economic settlements between the municipal districts concerned, appeals against decisions of the Council of State have been successful (e.g. 68 II 64). This has not, however, affected the timetable of the incorporation process.

Here, the case 53 II 364 may also be mentioned. The Council of State had refused to give sanction to a bank's articles of association, because under the articles the bank would have the right to do real-estate agency business. This interpretation of the relevant statute was upheld by the majority of the SAC. In the case 68 II 137, the county council had, on application by some cultural associations, approved measures to be taken with a view to protecting "Hvitträsk", the former home of the famous architect Eliel Saarinen. The decision being submitted for approval, as prescribed by law, to the Council of State, the measures were not confirmed. The SAC, in reply to an appeal lodged by the associations, declared that their rights had not been infringed, inasmuch as it depended on the discretionary powers of the Council of State whether the proposed measures should be taken or not.

Finally, I should like to mention one more group of cases, namely appeals against decisions by the Council of State concerning the appropriation of deceased persons' estates, which in the absence of legal heirs or beneficiaries under a will fall to the state. Such estates must as a rule be passed to the local municipality

concerned, but for various reasons the inheritance may be retained in the possession of the state or be transferred to the deceased's next-of-kin, provided this is considered fair and reasonable. The SAC has in two cases (69 II 216–217) had to consider such cases, but it arrived at the same result as the Council of State.

5. SUMMARY AND CONCLUSIONS

The foregoing selection of cases illustrating the SAC practice in trying appeals against decisions of the Council of State and the ministries should give the foreign reader an idea of the importance of the appeal regulations and the types of questions which are in practice tried in accordance with them. Many readers may perhaps think that the cases mentioned were not of particular importance and were still less interesting from a political point of view. I am quite prepared to agree with this: many groups of cases decided by the ministries are, as to their contents, quite unimportant and do not differ in any way from the cases decided by lower authorities, against whose decisions appeals may, of course, be lodged. But among the decisions made by the Council of State and the ministries there are undoubtedly cases which are of financial and/or political importance.

The scope of the discretionary powers and possibilities allowed to the SAC varies a great deal, depending on the nature of the different cases to be decided. In most cases, e.g. within the fields of legislation relating to civil servants and Government grants, the situation is that in principle the tendency in all laws and ordinances is to furnish complete provisions on the relations between the state on the one hand and the civil servants or the beneficiaries of Government grants on the other, without allowing the Council of State and the ministries any discretionary powers. Undoubtedly, linguistic shortcomings and the impossibility of anticipating coming developments have many times prompted the legislators to resort to flexible criteria in statutory texts, but there have never been any doubts that, in the end, it is for the SAC to construe the law. In these cases, the political interest has come to the fore, particularly in connection with the actual process of *legislation,* whereas it plays only a secondary part in connection with the ensuing process of *application* of the law.

The opposite group of cases are those in which the legislator, by referring explicitly to discretionary powers or in some other way, has distinctly stated that the authority entrusted with the decision of a case may consider how the matter shall most expediently be settled. In these cases, as already stated by the author, the duty of the SAC is limited to considering the procedure adopted during the making of a decision, and to make sure that discretionary powers have not been used for any other purpose than that intended. The SAC has never revoked any decision of the Council of State or of ministries on the last-mentioned grounds, whereas a great number of appeal cases have been allowed on formal grounds. However, in regard to the cases to be decided in the last resort by use of discretionary powers, too, there may be certain conditions laid down by statute, to the effect either that, by a discretionary decision, a certain benefit *may* be granted only to those who fulfil certain conditions, or that the same benefit *shall* be granted to all those who fulfil the conditions and *may* further be granted even to those who do not fulfil the conditions. Another formula is that the benefit *shall* be granted but that the ministry is to decide the *time* when it shall take place. These and other similar variants give rise to a great number of different questions relating to the procedure of appeal.

The most interesting cases are, however, those where existing legal provisions do not indicate clearly how a case should be solved but also do not allow the authority to use full discretionary powers in settling the matter. For these cases the expression "flexible rules of law" is sometimes used. The practice of the SAC would seem to indicate that, in the opinion of the SAC, each case has as a rule to be solved within limits laid down by law (the discretion of the competent authorities being "bound"), and that full discretionary consideration is an exception to the rule. For this reason, the borderline cases, i.e. the flexible rules of law, have been construed to mean that the SAC has full powers to decide such cases. Consequently, the SAC in principle considers independently such flexible concepts as "public need", "considerable incongruities", "public interests of importance", "needed and appropriate traffic services", "unfair restrictions" and other similar criteria. This goes to show that the cases considered by the SAC cover a very wide field, even looked at from an international point of view.

To my mind it would, however, seem realistic to assume, both deductively and as a conclusion drawn from the legal usage ex-

emplified above, that in the opinion of the SAC the scope of its power of review in cases based on flexible rules of law is not as wide as in cases concerning "pure construction of law". One cannot, however, specify the scope of this power, as there is a sliding scale starting from the cases particularized by the law and ending with the discretionary cases, for the judging of which the legislator has not indicated any kinds of criteria. The boundary between the flexible rules of law and pure discretionary consideration is from a formal viewpoint quite strict, but in practice it is far from clear-cut, since in its construction of the flexible rules of law the SAC seems to have paid special attention to cases which could be characterized as abuse of discretionary powers. Although formally the SAC has a wide power of review regarding the flexible rules of law, I have not observed that this power has in any single case been used for "political purposes".

One might also start from the assumption that the different groups of cases may differ very much as to their political importance. But even here one cannot make any definite "measurements". Conclusions have to be based on very diffuse and subjective grounds. Thus, it would seem to me reasonable to presume that applications for trade licences by private persons (pharmacy and traffic licences) are matters of very little political importance. The fact that the SAC has in many cases had another opinion than the Ministry of Communications as regards licences for contract traffic by taxi or for keeping a driving school has hardly caused any conflicts on the political level. There is no published case where a ministry, after a case has been returned to it from the SAC for reconsideration, has tried to defy the SAC opinion or where the new decision has been appealed against afresh. On the other hand, it seems to be of importance, considering the complainants' legal protection, that the right of appeal exists and that the SAC has not without exceptions adopted the opinion arrived at by the Council of State and the ministries when applying the flexible rules of law.

Public land law questions, particularly those concerning town and road planning, may of course be of greater political interest. Cases concerning town planning are more likely to bring the SAC into conflict with local political interests than with the general policy of the Government. The fact that the SAC, in quite a number of cases, has reversed town-plan decisions on the ground that private landowners' rights have been violated must be looked upon as a manifestation of the powerful protection

which the right of property has traditionally enjoyed under Finnish law. Incidentally, the importance of the protection of ownership was confirmed by a strong parliamentary opinion expressed in connection with the introduction in 1958 of the Building Act now in force.

One can clearly perceive the greater restraint exercised by the SAC when considering flexible rules of law concerning expropriation and the incorporation of municipalities, questions which are undoubtedly of great political interest. If, e.g., the SAC construction of the conditions for compulsory incorporation in certain politically important cases (particularly 66 II 53, which concerned the incorporation of a borough as well as a whole rural district into the town of Lappeenranta [Villmanstrand]) had differed from that of the Council of State, a conflict between the political and the judicial powers might very easily have arisen. However, the practice hitherto followed is not of a kind to sustain the thesis about a political power and influence exercised by the courts of justice.

If one considers the right of appeal against decisions of the Council of State and the ministries from the private citizen's viewpoint, I believe that apart from its original repressive function, the right of appeal acts as an important preventive guarantee for legal protection. In itself the citizen's possibility of lodging an appeal must to a great extent prevent irrelevant factors from having an influence on decisions. The fact that the SAC has in quite a number of cases allowed appeals and reversed decisions of the Council of State and ministries, often on the ground of apparent faulty procedure or on account of faulty construction of the law, clearly proves empirically that the appeal regulations serve a need. There is no evidence to show that these faults could have been avoided if the decisions of the Council of State and ministries could not have been challenged.

The SAC may also, within certain limits, apply "benevolent" discretionary judgment when strict application of the rules of law in force would lead to unjust results. This is proved by some of the cases described. Many cases also tend to show that the SAC has seen to it that the authorities have not in their adjudication held rules as binding which have not been of a binding character, and that they have not added conditions for the granting of benefits to those laid down by law. In some cases, of course, it may be arguable whether the SAC has struck the right note, but the pervading principle would seem to be quite clear in that

the citizens, the communities and all others have their own righ in relation to the state and that the enjoyment of these righ does not altogether depend on the goodwill of the authoritie

Every system for legal protection depends to a great exte not only on how the powers are distributed between the high Government organs but also on historical factors and on mar other circumstances. It is not, of course, my intention to sugge the Finnish system for adoption where it is not suitable. But comparative analysis of judicial procedure is never wasted, ina much as such an analysis may lead to valuable conclusions co cerning one's own country's system. This article, which is base on a somewhat subjective selection from a great number of case is essentially intended to be regarded as a description of a sect of the Finnish legal system illustrated by means of actual cases.