CONSTITUTIONAL RIGHTS IN THE LEGISLATIVE PROCESS: THE FINNISH SYSTEM OF ADVANCE CONTROL OF LEGISLATION

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I. INTRODUCTORY NOTES

Probably there are as many methods of securing the constitutionality of laws and regulations as there are countries with a written constitution. How the various processes of control really function depends on a combination of factors of a juridical or legal nature and on historical, socio-political and even ideological factors which are peculiar to the country in question. Even admitting the uniqueness of every system of control and of the preconditions of its functioning, one can nevertheless discern two main lines along which the control can be organized. The control may be built into or be connected with the process in which the laws and regulations are enacted. Alternatively, the requirements of constitutionality may be made operative in connection with the application of the laws and regulations in an individual case. Of course, both types of control may appear in one and the same legal system. They may, moreover, be effectuated in forms other than those which are the most familiar, viz. control by the legislative body itself prior to the enactment of the law and subsequent review by the courts.

In Finland the most significant type of control is that which takes place during the process of enacting legal provisions. However, the system of judicial review exists, too. According to art. 92 of the Constitution Act of 1919, "if a provision in a decree is contrary to a constitutional or other law, it shall not be applied by a judge or other official". This provision is generous in giving powers of surveillance. Any official or authority is empowered, and in duty bound, not to apply any legal provision below the level of acts of Parliament if he or it deems the provision to be contrary to the Constitution or any act of Parliament. The provision is thus not confined to courts. In practice, we have some examples of authorities, mostly courts, exercising this right and leaving provisions of legal regulations unapplied or unimplemented on the ground of their being unconstitutional or, more often, of their being contrary to an act of Parliament. However, it is

important to note an opinion based upon an interpretation *e contrario* that no authority, including all the courts, should have the power to review the constitutionality of ordinary legislation, i.e. acts of Parliament. As a matter of jurisprudence this opinion is perhaps not quite indisputable, but it is nevertheless the one prevailing among legal writers and there are no cases where a court—or any other authority for that matter—has questioned the constitutionality of an act of Parliament.

Thus the Finnish system does not recognize the judicial review of legislation in the most significant meaning of that expression, i.e. as exercised by courts in applying the law in a litigation. If it be added that there exist in Finland no other types of organized control of legislation after the enactment of that legislation, it can be concluded that if the Constitution is to have any limiting effect on the legislation this effect must be brought to bear during the legislative process. This process can be understood broadly to include all phases from the preparing of a bill within the Government to the final sanction by the President of the Republic of a law passed by Parliament. In what follows I will discuss the main features of the advance control of legislation in Finland paying special attention to the observance of the provisions concerning basic rights in the Constitution Act. First of all, however, it will be necessary to discuss certain special features of the Finnish constitutional system, features which, it will be shown, have much to do with the fact that in Finland the control of the constitutionality of legislation has developed solely *within* the legislative process.

II. THE LEGISLATIVE PROCESS

There are several possible ways of proceeding in a situation where an intended piece of new legislation is considered to be possibly in conflict with a country's constitution. One way is to drop the whole idea of the bill or to make such changes in it as may be necessary in order to avoid the possible conflict. Another way is—if the importance and the permanent nature of the intended change justify such a step—to make an amendment to the constitution. Yet another way, and one which is perhaps more common than the one just mentioned, is to interpret the con-

stitution in such a way that the intended law can be held to be constitutional. The actual choice between these possibilities will depend, *inter alia,* on the age and the formulation of the relevant clauses in the constitution and on how easy it is to amend the constitution. In the case of Finland there is still another possibility and one which (apart from the experiences of Germany during the 19th century and during the Weimar Republic) seems to have no counterpart in the world.

Until 1809 Finland was an integral part of the Swedish Kingdom. In that year, however, as a result of the Napoleonic wars Finland was attached to Russia as an autonomous Grand Duchy. It remained in that position until 1917 when, after the October revolution in Russia, the country was declared independent. During the whole period of the Grand Duchy the Swedish Constitution Act of 1772 as well as the Act of Union and Security of 1789, which amended it, remained in force in Finland. The position of the country as a constitutional Grand Duchy, the Grand Duke of which was at the same time the autocratic Emperor of All the Russias, inevitably meant that questions of constitutionality were of primary importance. During the latter half of the 19th century it became urgent to find a solution to a delicate problem of legislation. This was that much new legislation was enacted but some of the intended changes, although badly needed, were not in accordance with the old constitutional laws dating from the previous century. To amend the constitutional laws was a highly delicate matter, for two reasons. On the one hand, any alteration of the documents which defined the powers of the Ruler would have been viewed with suspicion in St. Petersburg. On the other, the old constitutional laws were the cornerstone of Finland's autonomous position, and so, if it were possible to effect changes in them with ease, their status as an impregnable guarantee for the rights of the population would be undermined. The same circumstance—the paramount importance of the constitutional laws for the national interests—also made it impossible to resort to broad, extensive interpretation in order to make the Constitution elastic enough to fit the needs of the time.

What then was the solution? It was to enact the laws in question as ordinary laws but to pass them in the same procedure as was required for constitutional amendments. This device made it possible to enact the needed laws without at the same time altering the text of the constitutional laws or watering them down by extensive interpretation and without opening the way to accu-

sations of passing the laws in an unconstitutional legislative procedure. The method of enacting ordinary laws as "exceptions" to the constitutional laws was first used in cases of minor importance and ultimately developed into an unchallenged practice.[1]

In retrospect it can be seen that this kind of use of a procedure which was originally intended for constitutional amendments was facilitated by the fact that traditionally this procedure was quite capable of being used without entailing excessive procedural delays. Thus whereas amendments to the Swedish constitutional laws required the consent of all four estates, for ordinary legislation the consent of only three estates was required. Hence passing a bill in the procedure for constitutional legislation did not, as in many other countries, entail decisions on two consecutive occasions. This rule was also included in the Finnish Diet Act of 1869, which itself was a constitutional law and which left the Diet still composed of four estates. In addition, the Act provided that if two of the estates so demanded, a bill to be handled in the procedure for constitutional legislation should be left pending until the next session of the Diet. In the new Parliament Act of 1906, by which the Diet of Estates was replaced by a unicameral Parliament, the procedures for both ordinary legislation and constitutional legislation were reformed to fit the new unicameral system. A simple majority was required for passing ordinary legislation. As to constitutional legislation, the earlier requirement of consent by all four estates was replaced by the rule that any bill of this kind must be handled in two separate sessions. It had first to be approved by a simple majority to be left pending until the first ordinary session taking place after a new general election; it could then be passed by a two-thirds majority. The new Parliament Act retained, however, the possibility of passing constitutional laws in one and the same legislative period. If the bill was declared urgent by a five-sixths majority of the votes cast it could be adopted, by a two-thirds majority, already during the same session. These procedural rules were later included, without changes, in the present Parliament Act of 1928. The "urgent" procedure for constitutional legislation was avowedly intended to be no more than an exception to the main rule providing for decisions in two sessions.

[1] The development of this practice has been ably and extensively discussed by Professor Paavo Kastari, e.g. in his study in 7 *Sc.St.L.*, pp. 63–77 (1963).

In practice, however, it has become the rule.[2] This possibility of enacting constitutional laws just as speedily as ordinary laws, provided enough votes can be rallied behind the bill, has been the procedural precondition for the Finnish system of guaranteeing the constitutionality of legislation. The procedural ease of enacting amendments or exceptions to the constitutional laws has contributed to certain significant features of the Finnish constitutional system. Before discussing details, it will be appropriate to note here certain important general features.

The situation has the following characteristics. On the one hand, there is (a) the possibility of making exceptions to the constitutional laws which as ordinary laws leave the text of the latter as they were and which are repealable like any ordinary law, combined with (b) an expeditious procedure for doing this. On the other hand, (c) there exists no organized form for reviewing the constitutionality of acts of Parliament. This state of affairs has in the course of time made the whole issue of constitutionality exclusively a matter for the legislative level and of those organs which participate in the legislative process. As will be shown later, the clearly leading role among these organs or bodies belongs to Parliament, which in a way controls itself. The fact that the issue of constitutionality is limited to the legislative level and to the procedures of Parliament means in turn that constitutionality as a concrete question of law has remained pretty remote from ordinary citizens and even from ordinary lawyers. It is a question that mostly concerns two categories of lawyers: lawyers in ministries who regularly take part in preparing bills affecting subjects that are possibly subject to doubt as to the constitutionality of the laws regulating them, and lawyers who are consulted as experts in Parliament. It also, of course, concerns those politicians who shape the national policy in constitutionally sensitive areas and those who are members of the Constitutional Law Committee of Parliament. The question which the Government or proponents of private members' bills have to ask themselves in a country like the United States are of the type: Is this constitutional? How will it be treated in the courts? Amendments to the Constitution are on a level clearly different from that of ordinary legislation. In Finland

[2] Kastari mentions that about 95 % of all the approximately 600 laws passed under the procedure for constitutional legislation during the first 50 years of independence (1917–67) were passed under this urgent procedure. See his introductory study to a Ministry of Foreign Affairs' publication: *Constitution Act and Parliament Act of Finland,* Helsinki 1967, pp. 29–30.

the parallel questions are: Does this bill require the procedure for constitutional legislation?[3] If so, do we command the necessary five-sixths of the votes? If we do not, what changes in the bill will be needed in order to get the votes or to make it constitutionally possible to pass the bill by a simple majority? The fact that any laws behind which one can get five-sixths of the votes in the Parliament can be enacted without delay seems to give more room for manoeuvre for the Government, at least in critical times or in those areas of administration where the necessity of some measures is generally accepted and the possible dispute is only about the exact contents of the intended new law. On the other hand, it also gives the Opposition more leverage, since only one-sixth of the members of Parliament can block any laws requiring the procedure for constitutional legislation or at least postpone them until after the general election—which often in practice means the same as definite blocking. The Opposition can thus demand a voice in the pre-voting negotiations about the exact contents of the law. If the requisite number of votes is assured, the procedure as such may appear surprisingly routine-like and speedy to a foreign observer, who may think that the use of the procedure for constitutional amendments represents something extraordinary in the working of the legislature. There are quite a few cases where the matter at issue has been one about which it has been easy to find an accord—as was the case, e.g., with regard to the abolition of certain remnants of the former privileges of the four estates—and where the fact that the procedure for constitutional legislation had to be followed did not involve any practical difficulty or even nuisance but only certain procedural forms to be noted by the Speaker and in the minutes of the House. There are also, of course, cases of the opposite type, where a bill has been declared rejected as it did not receive the required majority.

[3] Art. 20 of the Constitution Act of 1919 requires that the preamble of every law (act of Parliament) shall indicate that it has been enacted in conformity with the decision of Parliament and especially indicate if the law has been passed under the procedure for constitutional legislation. This preamble is considered to be an integral part of the law itself and every bill therefore includes in the form of the proposed preamble a reference to the procedure under which the Government or the M.P. thinks the bill should be passed. If the bill is thought to require the procedure for constitutional laws, the preamble begins: "In conformity with the resolution of the Parliament, taken in accordance with the procedure prescribed in Article 67 of the Parliament Act. . . ."

Table 1. Laws enacted according to the procedure for constitutional legislation, 1919–71.

(for the period 1919–59, the numbers of enactments are given only for every second year)

1919	17	1953	10
1921	7	1955	19
1923	2	1957	11
1925	5	1959	9
1927	2	1960	13
1929	0	1961	12
1931	8	1962	8
1933	11	1963	9
1935	4	1964	14
1937	5	1965	12
1939	19	1966	7
1941	33	1967	8
1943	31	1968	9
1945	42	1969	14
1947	20	1970	28
1949	19	1971	13
1951	16		

The significance of the qualified procedure[4] is indicated already by the fact that in the years 1919–71, i.e. since the time the Constitution Act was enacted, over 700 laws have been enacted under this procedure. As the chart above (Table 1) shows, laws of this kind have not been confined to wartime or to the reconstruction period after the war.[5]

When studying Table 1 one should bear in mind two factors which especially contribute to the large number of laws passed in accordance with the procedure for constitutional laws. (i) Powers of economic control and regulation, necessary above all in time of war and in periods of national reconstruction, which in other western countries are usually regarded as matters of ordinary legislation, are in Finland mostly considered as encroachments upon the constitutional protection of property. (ii) Regulatory powers have usually been given only for a limited period, e.g. a year at a time, and have then in many cases been renewed

[4] Later in the text, for the sake of brevity, I use the expression "qualified procedure" to indicate the procedure for constitutional laws, either the "urgent" procedure or the procedure requiring another session after elections. Similarly I use the expression "normal procedure" when referring to the procedure for enacting ordinary legislation.

[5] The figures in the table for the years 1919–49 are taken from lists prepared by Professor Veli Merikoski and published by him in *Valtiotieteellisen yhdistyksen vuosikirja* 1947, pp. 150–64, and in *Lakimies* 1951, pp. 632–8. See also his *Muuttumaton, muuttuva valtiosääntömme*, Porvoo 1969, p. 18.

year by year through a new law. However, there still remain a considerable number of laws enacted under the qualified procedure even if temporary regulatory laws are disregarded.

The reasons for this state of affairs have not been made the subject of any thorough study and cannot readily be ascertained. The following general explanations are in the nature of educated guesses. One reason is to be found in the strong tradition of legality, which has its roots in the time of Swedish rule with its relatively stable and organically developing governmental machinery and homogeneous population, and which was strengthened during the period of the Grand Duchy, when strict adherence to the domestic laws was the best weapon available for protecting the Finnish people's right to self-determination. This legalistic approach can be seen, e.g., in the fact that the criminal law continually treats as criminal offences many acts or irregularities by state or municipal officials that in most other countries would be considered only as matters of imprudence or impropriety and would at most give occasion for disciplinary measures.[6] Another feature is the expeditiousness of the requisite procedure, which in a way has a self-fulfilling character: as the procedure for constitutional legislation as such is easy, there is also more inclination to use it. This has gone so far that there seem to have been cases where a bill has been passed in the qualified procedure, as it is said, "in order to be sure". In other words, the Government has proposed that a bill be passed in this procedure without giving any reasons for so doing and when in fact no obvious reasons exist and there has been no public dispute as to the correct procedure. Or a parliamentary committee may have proposed this procedure in such a manner that it can only be concluded that the committee was not sure whether it was needed or not but has proposed the qualified procedure in order to avoid any possibility of later criticism. To be sure, cases of this type are exceptional and mostly not of recent vintage, partly because this sort of

[6] Art. 21, chap. 40, of the Criminal Code provides: "If an official, through indifference, negligence or carelessness commits an error in office and if no specific punishment has been provided for it, he shall be liable, provided that the error is not so insignificant that a mere admonition will suffice, to be fined or [temporarily] separated from the office or, if the circumstances are especially aggravating, removed from the office.—The law shall be the same if the official through imprudence or lack of skill commits an error in office . . . ." The vague wording of the article makes it possible to use the milder punishments (admonitions and fines) extensively as a means of controlling minor faults within the bureaucracy.

dential decision there may, of course, have been many steps of preparation where even the question of constitutionality of the bill (which, as mentioned above in note 3, finds its formal expression in the formulation of the preamble of the law) may have been taken into account. However, leaving aside those cases where the correct procedure is evident (e.g. amendments to the constitutional laws or unproblematic changes to existing laws), only two or three points of control are significant. If at the preparatory stage there appear doubts about the constitutionality of a bill, it may be decided to consult the Chancellor of Justice, who is the highest guardian of the law and has power to control the legality of the actions of the Council of State and of the President of the Republic, but who in practice has become more and more also a "Crown Jurist", a legal adviser to the Government. If the Chancellor were to take a clear stand for the qualified procedure, his advice would, because of the high prestige of his office, most likely be heeded. The preamble of the bill would be formulated accordingly. A substantive modification of the bill in order to allow it to be passed in the normal procedure offers an alternative. Much the same can be said about the second point, the approval of the bill in the sitting of the Council of State. When the matter is submitted to the President for decision, the Chancellor is present. He is entitled to express his view and, if his view does not prevail, to have it recorded in the minutes. Clearly expressed opinions of the Chancellor on questions of law are always followed. A third point is the possibility that the President requests an opinion about the bill either from the Supreme Court or the Supreme Administrative Court or from both of them. If one of these courts were to take a stand for the qualified procedure, the President might choose to follow this advice.

This is the legal frame for the possible checking of a bill before it is presented to Parliament. How does this control function and what is its actual significance? The assessment of the real impact of the pre-Parliament control depends largely on the criteria chosen. The fact that the majority of all laws and even most of the laws which actually are enacted in the qualified procedure were passed according to the procedure which was proposed in the Government bill would seem to indicate that the Government "was right" in its proposal concerning procedure. Therefore one might conclude that the control at this stage is indeed significant. On the other hand, one might think that the borderline cases, where the proposed preamble of the bill was changed in

Parliament, are, although not so numerous, the really important ones which will function as guidelines for later Government bills.

It is commonly said by the experts in constitutional law that the control exercised by the Constitutional Law Committee of Parliament is decisive and dictates the development in the area. I concur with this statement. So far no thorough study on this subject has been published. One, therefore, has to limit oneself to the mere impression that the surveillance prior to the handling of the bill in Parliament is secondary in character and mainly implies that guidelines derived from the earlier legislation are followed. This impression is to some extent buttressed by the facts that the Constitutional Law Committee is the only single control organ that can be considered significant and that there are only a very few cases where the highest courts have at this stage been requested to give an opinion on the correct legislative procedure, even cases where the courts have expressed views on this procedural question in their opinions in connection with other things being quite rare.[7] The attitude of the present Chancellor of Justice, Mr Leskinen, may be mentioned, too. In a conversation with the present author Mr Leskinen expressed the view that it is not the proper duty of the Chancellor to check effectively that the procedure indicated in the preamble of a bill is constitutionally correct. For this he gave the following reasons: the Chancellor often has to make his decisions concerning governmental actions at short notice; the bills can be amended in relevant questions during the handling in Parliament; the Constitutional Law Committee of Parliament is the most authoritative organ in questions of proper legislative procedure and the Chancellor should not risk hasty opinions in questions which most likely will be thoroughly investigated by the Committee; and, finally, the bill once passed will again be handled by the Government before it is sanctioned by the President. The attitude of Mr Leskinen may in part be attributable to the fact that earlier he served as Secretary of the Constitutional Law Committee of Parliament and that later, as Parliamentary Ombudsman, he was often heard as an expert witness in the Committee.

According to the Parliament Act of 1928 it is the Speaker of

[7] For this study it has not been possible to ascertain whether there have been any cases where the court has been asked for an opinion solely on the question of the constitutionality of a bill. Since 1919 there seem to have been about 20 cases where the court has, among other things, expressed views concerning the constitutionality of a bill to be submitted to Parliament.

the House who has to see to it that all matters are handled according to the procedure which is provided for them in the Parliament Act. In this task he is assisted by the Secretaries of Parliament and by the Speaker's Conference, where the Speaker and the deputy Speakers as well as the chairmen of the parliamentary committees have a seat. The Constitutional Law Committee, the expert organ in all matters in Parliament concerning the interpretation of the constitutional laws, is, like any other parliamentary committee, only an auxiliary organ, which prepares matters for the sitting of the whole House. Actually, however, its decisions are so authoritative that they have hardly ever been disregarded by the House.

The Constitutional Law Committee is composed of 17 members of Parliament. They are elected not for the whole four-year parliamentary term but for each parliamentary session (year) separately. It is so composed that, as a rule, each political party has as strong a representation, relatively, in the Committe as it has in the House. Since the Committee members are ordinary M.P.'s, they are mostly not lawyers, although the proportion of lawyers is generally greater in this committee than in other committees of Parliament. The lack of legal training is to some extent compensated for by the fact that the membership of the Committee is pretty stable, the same M.P.'s being elected to the Committee year after year. The Committee chairmen have usually been lawyers. The Committee has a part-time secretary, usually a civil servant with legal training.

Given the authority of the Committee, it is naturally very important that all bills which may be problematic as to their constitutionality should actually be considered and investigated by the Committee. In practical terms this leads to the question: Who decides or how is it decided, which bills shall be investigated by the Constitutional Law Committee? Matters can come to the Committee in two ways. All legislative bills have to be prepared by one or other of the parliamentary committees before they are dealt with by the whole House. The House may send a bill directly to the Constitutional Law Committee for preparation. The following bills are usually sent to the Committee in this way: bills concerning amendments or evident exceptions to the constitutional laws, the position of the province of Åland, the structure of the central government, the two supreme courts, citizenship, the University of Helsinki, delegation to the Government of a power belonging to Parliament, and bills concerning economic re-

gulation. In such cases the Committee submits a report on the matter. The other possibility is that another parliamentary committee which is preparing a bill for report consults the Constitutional Law Committee. In such cases the Constitutional Law Committee gives an opinion. The committees may be ordered by the House to request in this way an opinion from another committee or they may do so on their own initiative. As will be explained later on, it is the substantive contents of the bill and not the question of its constitutionality which is the reason for sending the bill to the Constitutional Law Committee for report. The interesting material on questions of constitutionality is to be found in the opinions of the Committee. Neither a single member of Parliament nor a specific number of members of Parliament are allowed to request that the constitutionality of a bill be investigated by the Constitutional Law Committee. Thus it is either the majority of the House or of a parliamentary committee which decides whether such an investigation shall take place or not. In cases where the correct procedure is not self-evident and where the decision on this matter is politically significant, to speak about the decision of the majority may correspond to reality. It is my impression, however, that such cases have been exceptions. Actually the decision to send a bill to a given committee for report is made by the Speaker or the Speaker's Conference and is based on the preparation and advice of the secretarial staff of Parliament. The subsequent decision of the House is only a formal finalization of the Speaker's decision. This applies, too, to decisions concerning investigation of the constitutionality of a bill. When the decision to collect an opinion from the Constitutional Law Committee is initiated in some other committee, it is, correspondingly, strongly influenced by the prior preparation by the chairman and secretary of that committee.

The Finnish system has its shortcomings. By placing the actual burden on the Speaker and the chairmen of committees and on their staffs it in fact requires a high degree of alertness, expertise and sensitivity in constitutional issues from persons who are elected or appointed mainly on account of other qualifications and who usually are pressed by time because of other duties. To expect that an M.P. as a member of a parliamentary committee will perform the task of screening all the bills to be handled by his committee from the point of view of their constitutionality would be far too idealistic. No doubt, legislators may be alerted to questions of constitutionality by various "signals"

from the public, but such signals are inevitably only occasional and are to be expected only in cases where a large or vocal group feels threatened by the proposed new law. It is, therefore, more or less natural that in practice parliamentary custom should play a decisive part in the choice of the committee to which a bill should be sent for preparation and report. This reliance on precedents might be detrimental in matters where changes in general attitudes or in legal thinking render desirable a new look at the question of the legislative procedure.[8] Whether or not an opinion is requested from the Constitutional Law Committee seems to depend on incidental factors. It is standardized types of situations that seem to inspire requests for investigation of the constitutional issue; "new" types of issues have been almost non-existent. It is not, of course, to be expected that "new" types of constitutional questions should occur whith frequency in a political system with old legal traditions. It is nevertheless noteworthy how little creative thinking there seems to be on the use of the means of constitutional control. This situation is probably largely due to the strong legalistic tradition among those who work with questions of constitutionality. They are in favour of a strict interpretation of constitutional and other laws and of formal amendments as means of constitutional development. As to basic rights especially, it seems that among the people—the electorate—the degree of sensitivity and alertness in questions of civil liberties is for various reasons in-

[8] A good example is the history of handling proposals for a law concerning effectivization of order and security (93/1933). This law included a provision (sec. 11) which empowered the Ministry of the Interior to give the police authorities, in areas where the crime rate had continuously been high, a power to conduct, in so far as they found necessary, searches of persons and homes in given places or on given occasions in order to seize illegal weapons or ammunition. It might now well be argued that this provision was not in accordance with the constitutional provisions concerning personal freedom and the protection of domicile. The law preceding this law (165/1930) was prepared in Parliament by the Committee for Legislation. The bill of 1933 was sent to the same committee for preparation. The law was temporary and every time it was renewed it was sent to the same committee for preparation. In the politically difficult atmosphere of the early 1930s, the law possibly corresponded to the common attitudes towards the pertinent constitutional rights and with the interpretations given to the constitutional provisions in question. But it is highly doubtful whether it was in accord with the ideas that prevailed in the Constitutional Law Committee in the last half of the 1960s. This was never tested, however, as the bills were not sent to this committee. The 1933 law was kept in force until the end of 1968 and was then replaced by a law on public entertainment (429/1968). Significantly, even this law was passed without consulting the Constitutional Law Committee.

sufficient to cause a more active and creative attitude among their representatives in the legislative process. To be sure, it is easier for people—and more to be expected of them— to be alert in disputes which may possibly be taken to court than to follow carefully the contents of would-be laws.

The Constitutional Law Committee functions according to the same rules as other parliamentary committees. All decisions are made by majority vote. The Committee works *in camera,* and no hearings in the American fashion are held. The Committee, however, can and does invite experts to appear before it. Often these are officials from the ministry where the bill was prepared. Sometimes the minister concerned is himself interrogated about the substance and effects of the bill. As to the question of legislative procedure, the Committee relies heavily on outside experts in constitutional questions. Such experts are mostly university professors or lecturers or high officials who in the exercise of their office have acquired expertise in these questions. Both the experts and, through them, the Committee lay very great emphasis on being consistent with earlier practice. Certain familiar patterns appear as if a choice between various established juridical concepts or categories were at issue. Less attention is paid to such realities as the precise causes and needs or expected effects of the new bill. Perhaps this state of affairs is to some degree an inevitable part of any advance control of legislation. There is, however, no reason why the controlling organ could not go into more detail on what is likely to happen when a proposed law will be enacted, nor is there anything to prevent it from undertaking a more thorough discussion of the legal questions involved or a more careful analysis of previous decisions and their portent for the case at hand or, generally, from devoting more time, energy and legal skill to the writing of its decisions. Some limitations on the work of the Committee, to be sure, are set by the fact that the Committee is a part of the parliamentary machinery and it functions within the limits of a legislative process. At present the reports and opinions of the Constitutional Law Committee run in most cases to no more than two or three printed pages, the most extensive being only about eight pages. The reports and opinions not infrequently contain one or more dissenting opinions. Characteristically enough, these are mostly very short if it is only the legislative procedure which is at issue. The way the Committee constructs its decisions and the brevity of these are hardly ideal from the viewpoint of constitutional jurisprudence or, what is more im-

portant, the point of view of developing the system of constitutional law and constitutional liberties.

The promulgation of the laws which have been passed by Parliament represents the last step. The decision to promalgate is made by the President of the Republic and, like other presidential decisions, it is made at a sitting of the Council of State in the presence of the Chancellor of Justice. According to the Constitution Act the President has the power of temporary *veto*. He can refuse to accept the law but if in such a case Parliament after a general election again approves the law, the President cannot prevent it from entering into force. During the years 1919–70 there were 55 cases where the President used this power of veto.[9] In almost all these cases the veto was applied, not because Parliament had passed the law by an incorrect procedure, but because of a political issue or, in many cases, simply a fault in the law which was noticed only after the measure had been passed by Parliament. Possibly the Government had already sent a new bill on the matter to Parliament. There have been cases, though, where at this stage there appeared doubts about the constitutionality of the law to be promulgated and where the assent was withheld because the law was considered unconstitutional. The control of constitutionality at this stage finds its organized forms in the presence of the Chancellor of Justice and in the possibility, provided for in the Constitution Act, that the President may request an opinion from one or both of the two supreme courts. Such requests regarding a law which has already been passed are relatively rare and only in a very few cases have they concerned the question of the proper legislative procedure. During the years 1919–70 there seem to have been six such requests to the supreme courts, where the main issue was the constitutionality of the law. In five of these cases, in 1923, 1925, 1928, 1933 and 1951, the court considered that the law had not been passed in a correct procedure. The President adopted the same view and used his veto. In addition, in one case from 1925 one of the main reasons for using the veto seems to have been that the law, enacted on the basis of a private member's bill, was deemed to be in conflict with the Parliament Act.[1]

[9] Only in five of the veto cases did Parliament "break the veto" and the law in question enter into force. In none of these cases was the question of correct legislative procedure at issue.

[1] On the veto decisions referred to in the text, see the minutes of the Coun-

IV. THE FUNDAMENTAL RIGHTS IN THE FINNISH CONSTITUTION

The second chapter of the Constitution Act of 1919 is, according to its heading, devoted to the "General Rights and Legal Protection of Finnish Citizens". This chapter, with its 12 articles providing for the basic or fundamental rights of the citizens, comprises the Finnish equivalent of a Bill of Rights. The rights guaranteed by the chapter, are, in numerical order: equality before the law (art. 5), protection of life, honour, personal liberty and property (art. 6), the right of sojourn and travelling in the country and free choice of place of residence (art. 7), freedom of religion (arts. 8 and 9), freedom of speech and of the press, freedom of assembly and freedom of association (art. 10), inviolability of the domicile (art. 11), secrecy of postal, telegraphic and telephonic communications (art. 12), the right of the citizen to be tried by the (regular) court which according to the law has jurisdiction over him (art. 13), the equal position of the two national languages, Finnish and Swedish, and the right of every citizen to use before the authorities his mother tongue, Finnish or Swedish (art. 14), and the prohibition against conferring new titles of nobility or other hereditary titles (art. 15). Finally, in art. 16, the chapter includes a provision to the effect that the preceding provisions in the chapter constitute no obstacle to establishing by law restrictions which are necessary in time of war or insurrection, and, in respect of persons in military service, at any time. As indicated, the rights and freedoms guaranteed are all negative in character: they all provide for limits or prohibitions of the governmental power and are as such an expression of the liberalistic tradition which has dominated numerous constitutional documents since the time of the Bills of Rights of the North American colonies and the Declaration of Human Rights of the French Revolution. However, there is also one positive provision, namely art. 6, clause 2. Originally this clause provided, following the pattern of the Weimar Constitution, that the labour of the citizens was under the special protection of the state. In July, 1972, there was added a provision which affirms that it is the task of the state to arrange for all citizens an opportunity to work unless it is otherwise provided by law. The addition, enacted on the basis of

cil of State April 4, 1923, July 17, 1925, June 27, 1928, December 22, 1933, August 17, 1951, and, for the last-mentioned case, August 14, 1925.

a private member's bill, is so far the only amendment to the original text of the chapter. It remains to be seen what kind of effect, if any, this vaguely worded amendment will have. In this context one may note that it is the negative rights that are best adapted to being safeguarded by an advance control of legislation, in other words by seeing to it that the proposed laws do not infringe upon the "private sphere" which is constitutionally guaranteed to the citizen. Rights of a positive character, on the other hand, would require another kind of approach. They hardly lend themselves to safeguarding through the present machinery of control by the Constitutional Law Committee.

In Finland very little attention was paid to the fundamental rights in the preparation and enactment of the Constitution Act. The questions in the foreground were those concerning the form of government and the state as well as the division and delegation of powers of government. The documents of the years 1917–19 containing the legislative history of the Constitution Act have no real significance for the interpretation of the provisions on the basic rights. Nor can one obtain many guidelines for interpretation from the legal tradition of the time preceding the enactment of the Constitution Act—at least if one regards the system of the fundamental rights as a whole. To be sure, there are significant historical factors which have affected the attitudes towards, e.g., personal freedom or the protection of property, but only in some aspects of the protection of property—mainly in questions of the so-called vested rights—does the legal and constitutional tradition of the 19th century possess significance in matters concerning the interpretation of the constitutional provisions on basic rights.

V. THE FUNDAMENTAL RIGHTS IN LEGISLATIVE PRACTICE

The total role played by fundamental rights or even by a given fundamental right in the legislative practice cannot be readily ascertained and defined. This difficulty arises already from the variety of forms in which the fundamental rights may affect the process of formulating new legal provisions and getting them enacted. Thus it may be relatively easy to observe that a certain

fundamental right has been the reason for passing a bill by the qualified procedure or for the bill's being rejected because it was supported only by a simple majority, but it is hard if not impossible to register the many less conspicuous effects connected, e.g., with the attitudes and sensitivities among drafters of Government bills in relation to various fundamental rights. The present author confines himself to certain features, which can be gleaned fairly directly from the Statute Book of Finland and from the reports and opinions of the Constitutional Law Committee. It is probable that these features are characteristic and representative of the whole role of the constitutional rights in the Finnish legal system. However, it is only a part of the picture which is presented. More thorough studies need to be done, not only by jurists but also by political and social scientists.[2]

As was mentioned earlier, the total number of laws enacted since 1919 by the qualified procedure already exceeds 700. As can be seen in Table 1, the annual number of such laws is not declining. Rather it seems to have settled on a higher average level than before the war.[3] It is commonly said in Finnish writing on constitutional law that it is the protection of property which has mostly been the reason for using this procedure and which also has dominated the work of the Constitutional Law Committee. This has, however, remained largely an overall impression only. In order to get more concrete and reliable information on the matter I have taken a closer look at the laws enacted under this procedure during the 22 years 1950–71. The results of this limited study can be summarized as follows.

Altogether 271 laws were enacted under the qualified procedure during the period. If one deducts constitutional amendments proper, numbering 20 in all, there remain 251 laws enacted as exceptions to the constitutional laws. As to the reason for using

[2] For general information on the system of basic rights in Finland, see Professor Kastari's book *Kansalaisvapauksien perustuslainturva*, Vammala 1972. The work of the Constitutional Law Committee during the years 1939–52 has been discussed in Professor Jan-Magnus Jansson's book *Grundlagsutskottets funktioner vid riksdagarna 1939–1952*, Helsinki 1954. A dissertation on the role of the Constitutional Law Committee in the interpretation of constitutional laws was published by Esko Riepula in 1973 with the title *Eduskunnan perustuslakivaliokunta perustuslakien tulkitsijana* (No. 101, Series A of the Society of Finnish Jurists).

[3] In 1972, 11 such laws were enacted by December 1. Since many of these laws are temporary and their period of validity usually coincides with calendar years, a large proportion of these laws have been enacted (renewed) in November–December.

the qualified procedure, one can divide these 251 laws into three groups. One group, by far the largest with 205 laws, is composed of those laws which were considered to encroach upon the protection of property. The second group, comprising 10 laws in all, consists of those laws which were considered to infringe upon other basic rights. The third group, 36 laws, is made up of those laws where the main reason for using the qualified procedure was something other than the protection of basic rights.

Of the 205 laws in the protection-of-property group, more than half, 113 laws, were temporary. Of these, 76 laws were laws providing for or empowering economic regulation. When the economic regulation laws and other laws concerning property are counted separately, one notices that of the 81 economic regulation laws 76 were temporary, while of 124 property laws other than those concerning economic regulation only 37 were temporary.

Of the 10 laws concerning other basic rights than the protection of property, nine concerned personal freedom and one concerned freedom of speech. Of the nine laws on personal freedom, three subjected veterinarians to certain working duties in cases of epizootics, three provided for the possibility of extraditing Finnish citizens in certain situations to other Nordic countries on the basis of multilateral agreements, two laws concerned arrangements in the Porkkala area, a peninsula which the Soviet Union had had on lease and which later was returned to Finnish possession, and one law empowered airport personnel to take certain precautionary measures against hijacking. The only case where the decision to pass a law by the qualified procedure was based on the freedom-of-speech clause in the Constitution Act was a law establishing the censorship of films. Of 10 laws concerning other basic rights than property rights, two laws, both concerning personal freedom, were temporary.

The test of constitutionality is formed not only by those laws which are actually enacted in the qualified procedure but also by decisions in cases where the question of legislative procedure was explicitly at issue but where it was decided that the bill concerned did not require the qualified procedure. In Parliament, questions of legislative procedure are occasionally decided *de facto* by other committees besides the Constitutional Law Committee. Here it may suffice to give some details of the practice of that Committee alone, since it is the only continuously important organ in matters of constitutionality. In the following table (Table 2) there are indicated all the reports and opinions

Table 2. Work of the Constitutional Law Committee during the annual parliamentary sessions 1959–70.

	Reports						Opinions					
	Government or private members' bills; matter concerned						Government or private members' bills; matter concerned					
	Protection of property						Protection of property					
	Economic regulation	Other measures	Protection of other basic rights	Other questions	Other matters than bills	No. of Reports	Economic regulation	Other measures	Protection of other basic rights	Other questions	Other matters than bills	No. of Opinions
1959	4			1	13	18	1	3		4		8
1960	3			4	19	26		2		1		3
1961	5	1		9	20	35	1	6	2	1		10
1962	2	2		5	9	18		2		4		6
1963	2	3		1	18	24		3		5		8
1964	3	1		2	11	17	1	2	2	6	1	12
1965	1	1		7	29	38		2		6	1	9
1966	2	1		3	8	14				1		1
1967	2	1		5	10	18		2	1			3
1968	3	2		5	23	33		3		3		6
1969	3	1		11	20	35		3		3		6
1970	5	2	1	13	14	35		1		5		6
Total	35	15	1	66	194	311	3	29	5	39	2	78

of the Constitutional Law Committee during the annual parliamentary sessions 1959–70.[4]

In the great majority of decisions the matter at issue was other than that of a basic right. Of the reports, in fact, over 62 per cent have concerned other matters than legislative bills, such as, e.g., administrative enactments based on delegation laws and sent to Parliament for scrutiny. In close to 43 per cent of those reports that concerned legislative bills, protection of property was the main issue, in one of the 117 cases it was the above-mentioned constitutional amendment regarding the right to work, and in the rest of these reports the issue was other than basic rights. As mentioned earlier, however, the reports of the Committee are of secondary interest as far as questions of constitutionality are concerned. In these cases the procedure to be followed has as a rule been clear even before the handling in the Committee. Grouping the reports on bills according to the main issue is here used only in order to indicate that side of the substantive contents of the bill which caused it to be sent to the Constitutional Law Committee for ordinary committee preparation. The routine nature of the procedural question in the reports can be seen also in the fact that during this period no changes connected with the legislative procedure to be followed were required in the reports (see Table 3 below).

The opinions of the Committee are highly significant in regard to the legislative procedure. Among the opinions, too, the property cases were markedly dominant among those concerning basic rights (32 of 37). Of the total of five cases concerning other basic rights, three concerned the freedom of speech, one concerned personal freedom and the remaining one the right of the citizen to use before the authorities his mother tongue, Finnish or Swedish.[5] It is noteworthy that cases concerning economic regula-

[4] The one item in Reports, column "Protection of other basic rights" is an amendment to art. 6 of the Constitution Act, mentioned earlier in the text. In "Other questions" in Reports are included three changes in the language legislation and two changes in the Freedom of Religion Act, since only the contents of detailed changes and not the constitutional level protection of basic rights was here at issue (reports 10/1961, 2 and 11/1962, 4/1968 and 18/1969).

[5] Of the three freedom of speech cases, two (1961 and 1964) concerned the censorship of films and one (1961) the radio monopoly (note 6, *infra*). The personal freedom case (1964) concerned the powers needed for the Finnish administration of a canal area that was rented from the Soviet Union. The language case (1967) concerned the position of the two languages according to new provisions regulating the cooperation in patent matters between the Scandinavian countries.

tion make up only about 9 per cent of all the property cases in the opinions, while the corresponding figure in the reports is 70 per cent. These figures reflect the facts that laws concerning economic regulation are as a matter of routine considered to require the qualified procedure and that, as a rule, there has been no problem as to whether a bill actually entails economic regulation in the constitutionally significant meaning of that expression.

The frequency with which various questions come up in the Constitutional Law Committee does not indicate how significant the Committee's work has been in the control of the constitutionality of legislation in general or in guaranteeing basic rights in particular. As has been mentioned above, not all bills containing provisions whose constitutionality could be doubtful come to the Constitutional Law Committee. In these matters the significance of the Committee's work lies only in the effect of its earlier decisions on stands taken in governmental or parliamentary organs on the question of constitutionality. In regard to matters which do come to the Committee one can of course say, in view of that body's acknowledged authority, that the control exercised by the Committee is important. The opinion generally held about the Committee's authority does not, however, indicate what the handling in the Committee has actually meant for the passing and the contents of the laws in question or for the upholding of the constitutionality. The less the handling in the Committee has brought about actual changes, the more the Committee can be viewed only as an organ sanctioning decisions made by other organs. In this context those changes are of particular interest which are directly connected with the question of the constitutionality of the bill, i.e. with the procedure by which it is to be passed. Such changes may concern the preamble—it is proposed that a qualified procedure for passing the bill shall be followed—or the contents of the bill—the bill shall be amended in order to make it possible to pass it by the normal procedure. In the annual parliamentary sessions 1959–70 no such changes were required in the reports of the Constitutional Law Committee. This is understandable, since in the reported matters the Committee has mostly been in the position of an ordinary parliamentary committee for the preparation of bills rather than in that of an organ for verifying constitutionality. The cases in which the Committee has required changes of the above-mentioned type during this period are thus all included

Table 3. Opinions of the Constitutional Law Committee during the annual parliamentary sessions 1959–70 in which the Committee required changes connected with the legislative procedure to be followed

	Opinions where changes were directly required in a Government bill; matter concerned				Opinions where changes were required in a private member's bill or because of amendments to Government bills which were proposed in Parliament. All of them concerned protection of property in connection with other measures than economic regulation	Total of opinions where such changes were required	Total of opinions on legislative bills
	Protection of property		Other basic rights	Other questions			
	Economic regulation	Other measures					
1959	1			1	2	4	8
1960							3
1961		2	1		3	6	10
1962		2		1		3	6
1963		1		3	1	5	8
1964	1	1		1		3	11
1965		1		2		3	8
1966							1
1967		2	1			3	3
1968				1	2	3	6
1969				3	1	4	6
1970				1		1	6
Total	2	9	2	13	9	35	76

in the opinions of the Committee. They are shown in the table above (Table 3). In order to give some idea of the extent to which the control exercised by the Committee is a kind of last instance in regard to the function of governmental control mechanisms or, alternatively, the extent to which it means "only" internal policing of proposals made within Parliament, there are indicated separately in the table those requirements of changes which directly concerned a Government bill, and those which concerned private members' bills or such amendments to Government bills as were proposed in Parliament.

The Committee required changes connected with the constitutionality of the proposed law in 35 out of 76 opinions. Of the required changes, nine were to be made in private bills or in amendments, or on account of amendments made to Government bills in Parliament. All these nine opinions concerned protection of property in connection with matters other than economic re-

gulation. The rest of the required changes (26) directly concerned Government bills. Of these cases, 11 concerned the protection of property. Of the total of 20 property cases, only two concerned economic regulation. Of all the 35 opinions in Table 3, only two concerned other basic rights than the protection of property. One of these two concerned the freedom of speech, the other the right to use before the authorities one's mother tongue, Finnish or Swedish.[6] Thirteen of the cases in Table 3 concerned matters other than basic rights.[7] It is worth mentioning that in only one of the opionions indicated in the table did the Committee require a change to the normal procedure instead of the qualified procedure. This was a Government bill of 1965 concerning the salary system of the Evangelical Lutheran Church. The Government proposed the qualified procedure because of a supposed violation of the protection of property, but the Committee took the view that the proposed law did not violate the property clause in the Constitution Act and required a change to the normal procedure.

Whether the number of all required changes, 35 during a 12-year period, or the number of changes required concerning basic rights, 22 during the same period, is considered large or small depends on the standards chosen. A comparison with the number of laws enacted during roughly the same period as exceptions to the constitutional laws gives a frame of reference. There were 133 such laws in all and 113 of them were exceptions to the constitu-

[6] The former case, in 1961, does not altogether fit in the table, since the Government was proposing the qualified procedure and the Committee also held the view that this procedure was indeed required if the bill was not amended. The bill concerned the broadcasting system and the Government had argued that the qualified procedure was required because the law would provide for a state radio monopoly. The Committee took the stand that the monopoly as such did not violate the protection-of-property clause and not even (which in the author's view is somewhat dubious) the freedom-of-speech clause, but that the bill, if not amended, would require the qualified procedure because provisions guaranteeing the legal protection of those whose interests were involved in the establishment of the monopoly were missing or inadequate. The handling of the matter was not completed by the end of the legislative period.—On the other case, see the preceding note *in fine*.

[7] Of these cases seven concerned the question whether the proposed law was a tax law and thus subject to the special procedural norms of the Parliament Act concerning tax laws, two concerned delegation to the Government of powers belonging to Parliament, two concerned the right of self-administration of the communes, one concerned the autonomy of the University of Helsinki, and one concerned the giving to Parliament of functions which belong to the general administration.

tional provisions regarding basic rights.[8] One may also note that some of the bills on which the Committee has given an opinion requiring changes connected with the question of constitutionality of the bill were rejected or otherwise failed in Parliament. Thus the share of those laws enacted in the qualified procedure in the case of which the choice of procedure was a direct result of the stand taken by the Committee is actually a little smaller than the figures above would indicate. To a considerable extent the controlling and guiding role of the Committee seems to be indirect. Drafters of bills base their decisions on the procedure question on their interpretation of the earlier practice of the Constitutional Law Committee. However, there is no counterpart to the appeal from a lower court to a higher court as is the case in a system with judicial review. The Constitutional Law Committee, despite its authoritative position, cannot change or even take up for investigation decisions on legislative procedure made by the House, e.g. on the basis of a report by another committee. There exists, therefore, the possibility of non-coherent practices and constitutional interpretations which are made operative independently from the Constitutional Law Committee.[9]

[8] See Table 1. Among the laws promulgated in the period 1959–70 the first ones were handled in Parliament before 1959. Some of the laws handled in Parliament before the end of 1970 were promulgated after that time.

[9] One example of the possibility that the indirect guiding effect of the practice of the Constitutional Law Committee does not always guarantee indisputable results is the handling of bill no. 130 in 1969. In addition to creating a new, more expeditious system of parking tickets, the bill also provided for the possibility of towing away illegally parked cars the owners of which did not move them after being ticketed. In the Government bill the view was adopted that the law violated the constitutional protection of property because the new type of ticket could in certain cases fall on another person than the person who actually had unlawfully parked the car and because of the limitations on the owners' rights connected with the towing away of the car. The Government therefore proposed that the law should be passed by the qualified procedure and this view was adopted in Parliament, seemingly without discussion and without bothering to request an opinion on the matter from the Constitutional Law Committee. It is doubtful whether the Committee, if questioned, would in fact have concurred with the Government view. Even if it had done so, it is possible that the Committee would have taken the stand that with certain modifications in favour of the owners' rights the law could be passed by the normal procedure. In any case the basic juridical questions involved—the right of the state to impose punitive measures of an economic character and to take factual measures for ensuring public order, *versus* the protection of ownership—were of such calibre that the qualified procedure, and thus an extensive interpretation of property rights, should not have been adopted without discussion in and an explicit approval by the Constitutional Law Committee.

As regards the protection of basic rights, one feature appears very clearly from the above materials, namely the dominant role of the protection of property compared with the role of other basic rights. The dominance in this context of questions concerning property rights can only partly be explained by the peculiarity of Finnish constitutionalism that laws providing for or empowering economic regulation are considered to encroach upon the constitutionally protected property rights and by the periodic nature of most of the regulation laws. Even the requirements of the postwar period and of the settlement of people evacuated from the ceded Karelian areas cannot adequately explain the role of property cases in the legislation of the 1950s and 1960s. The explanations are to be sought mostly in the legal and constitutional traditions of the country and in the lack of alertness of the citizenry in questions concerning other basic rights.

VI. SUPPLEMENTARY NOTES

The facts that the constitutionality of laws is determined in advance and that the dominant organ in this advance control is a parliamentary committee naturally also affect the kind of arguments used in establishing what is constitutional and what is not. The arguments, concepts and approaches used in the Constitutional Law Committee in drawing the boundaries of constitutionality in connection with basic rights reflect the opinions of the scholars of constitutional law no less than the opinions of legal writers reflect the views of the Committee. The approach has been that of considering the circumstances of each case. One cannot discern any attempt to build a coherent system of basic rights or to develop a theoretical framework embracing all these rights. The Committee has in its decisions relied heavily on earlier decisions. In its work the Committee comes closer to the approach of the courts of the common-law countries than do the Finnish courts of law. On the other hand, there has not been developed any kind of doctrine of *stare decisis* and very little attention has been given to the question of making distinctions between the case at hand and the precedents. The actual significance of the earlier decisions seems to be more a matter of practical convenience and of a feeling for the importance of con-

tinuity in parliamentary affairs in general than a result of adopted legal doctrines. In any case the reliance on previous practice gives the work of the Committee a high degree of predictability, and clearcut reversals of earlier stands are practically non-existent.

Since the great majority of all cases concerning basic rights are connected with the protection of property and decisions concerning other basic rights appear only occasionally, it is inevitable that the patterns of reasoning that have developed in the Committee should have been greatly influenced by issues of an economic nature and that they should often not be capable of being directly applied when the protection of other basic rights is involved. On the other hand, the number of decisions concerning other basic rights has been so small that no patterns of reasoning that are peculiar, say, to personal freedom or political rights have developed. Consequently, legal writing on the reasoning to be used and the factors to be taken into account in deciding whether a measure violates a basic right has mostly been orientated towards the property issues and has tended to be very vague on points which could be adapted to other issues as well. To be sure, even in questions directly concerning the property issues legal writers have often used rather broad language which inevitably means different things to different people. Perhaps the formula most commonly used has been the following one: If the new law would be against the "normal, moderate and reasonable" use of property, then the law, because it violates the property clause in the Constitution Act, should be enacted by the qualified procedure. This formula, introduced by Professor Kaira in 1946, has been often used in the Committee since then and has frequently been referred to, with or without modifications, in legal writing, too.[1] It has been added that the qualified legislative procedure becomes necessary when the intended measure is provisional or abrupt and the procedural guarantees for the persons involved are inadequate, so that the new law is exceptional compared with the normal development of the legislation. The formula has also been criticized as insufficient and as requiring a basis of common values which does not always exist, and a more creative interpretation of the basic rights has been requested. It has also been said that the line between the rights that are protected on the constitu-

[1] The views of various authors are presented in my study in the yearbook *Oikeustiede—Jurisprudentia*, 1971, I, pp. 96–100. See also Kastari at pp. 81 ff. of his book referred to in note 2 *supra* (p. 115).

tional level and those that are protected only on the level of ordinary legislation generally cannot be drawn according to substantive differences—what is at issue is only a quantitative difference: minor restrictions can be made in ordinary laws, while those that go deeper into the protected rights require qualified legislative procedure. In this context the significance of the purpose of the intended legislation has also been emphasized: the greater and more urgent the common interest or need behind a bill, the further one can go in the normal procedure.

Despite their vagueness, the explanations referred to tell us something about the lines of thinking behind decisions concerning the constitutionality of a bill. The reason for the vagueness of any short explanation here seems to lie in the fact that no single factor can be sufficient to determine what must be considered to violate a basic right. There is always a combination of factors which have to be taken into account. In an earlier study[2] I have tried to show what separate factors have to be considered in this question. It is submitted that these factors in general have been influential, even if not expressly so, in the decision-making of the Constitutional Law Committee. Some of these factors point to the possibility of using the normal legislative procedure, some would require the qualified procedure. Summing up these factors, one can say that the bigger (a) the negative effects on the citizen and (b) the defects in the machinery for securing his rights in the case, the greater is the necessity to use the qualified procedure. On the other hand, (c) the bigger the group subjected to the measure, (d) the bigger the social need behind it, (e) the closer the linking of the measure with one's own choice or (reproachable) conduct or (f) with the protection of other basic rights or (g) with the legislation already in effect, the closer is the conclusion that the law can be passed by the normal procedure. With varying scope or intensity all these factors may be represented in one and the same case.

[2] *Op. cit.* in the preceding note, pp. 101–6.