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## Constitution in the Global Change Epoch and the Goals of Constitutional Review

Dear colleagues, we have to congratulate the Constitutional Court of the Russian Federation for its Anniversary. Personally I have the pleasure to thank President *Valery D. Zorkin* for decades´ cooperation, when been able to participate in these seminars so many times and met with exquisite hospitality and enthusiastic discussions towards reinforcing constitutional development.

**Starting points.** The current Finnish Constitution, of the year 2000, is an internationally modern constitution of a democratic and parliamentary welfare state. The Constitution contains basic provisions on the exercise of legislative, executive and judicial powers and lays down fundamental civil and political rights and liberties and also certain economic, social, and cultural rights.

The rule of law and the independence of the judiciary are essential elements in the Finnish legal thinking. No constitutional court exists in Finland, but the courts and other authorities are under an obligation to interpret legislation in such a way as to adhere to the Constitution and to respect human rights. One innovation is the primacy of the Constitution, that is, the review of the constitutionality of legislation in the context of actual cases.

**Primacy of Constitution.** The courts must give primacy to the provision in the Constitution if the application of a provision in a regular Act would be in evident conflict with the Constitutional provision in the case at hand (Section 106). This is an important change from the earlier principle. Namely, the courts were deemed not to have the right to refrain from applying an Act of Parliament. Nevertheless, the aim of the new provision is not to give the courts a general possibility to assess into the constitutionality of legislation.

We have for example seen, that the Supreme Court has deviated from the clear and precise wording of a statute concerning the implementation of the Paternity Act (KKO 1993:58), and the Supreme Administrative Court (KHO 2007:77) founded a manifest conflict with the Constitution in the case related to the Car Tax Act, concerning the taxation of imported used cars.

The primary control is the advance evaluation done by the Constitutional Law Committee during the process whereby the bill proceeds through the Parliament. This control, internationally quite exceptional, consists of the Committee issuing statements on the constitutionality of the bills and other matters submitted to it, as well as on their relation to international human rights treaties. The system has worked in practice, and any loopholes left in the control have now been plugged by the introduction of these new provisions**.**

One strong point of the Finnish model is that it combines the proactive normative review of draft legislation by a parliamentary committee with the retroactive judicial review of legislative provisions for their compatibility with the Constitution in concrete cases.

The Constitution also guarantees the subordination of lower-level statutes (section 107). If a provision in a Degree or other statute of a lower level than a law is in conflict with the Constitution or another Act, it shall not be applied by the court of law or by any other public authority. There exist this kind of situations in the nowadays complicated administration.

**Characteristics of Nordic constitutionalism.** There is a tendence to rights-based constitutionalism, which has been challenged increasingly, since the late 1980s. The growing significance of European-level judicial review as exercised by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ), as well as by national courts enforcing European law, is, of course, a paramount example of this development.

In Finland the case-law of the Supreme Administrative Court contained even before several decisions on the application of fundamental rights, e.g. provisions on property rights (1982 I 2, 1984 II 48, 2004:26), equality (2000:63, 2000:5), personal integrity (2006:43), freedom on movement (1969 II 45), freedom of assembly (1982 II 6) and religion (2008:8), freedom of press (1980 I 2, 1996:6) and social rights (2002:61).

**European Convention of Human Rights** (ECHR) entered into force in 1953. Finland's signing in 1989 and the incorporation of its provisions into the domestic legal order in 1990 represented one important set of events in our constitutional review history. Formally the regulations of the ECHR do not have an extraordinary status in relation to other regulations. Nationally, it has the same status as any other law, meaning a normal parliamentary law. In principle, possible conflicts between a regulation of the ECHR and a national regulation must be resolved through respective regulations and principles.

The Convention established the European Court of Human Rights (ECtHR). The ECHR is generally regarded as the most efficient international human rights monitoring system, as the Convention allows for individual applications as well as contracting state complaints against each other, and the ECtHR's advisory opinions on judicial questions. In practice, private appeals are the most important monitoring mechanism.

The monitoring system was renewed in 1998 and 2004. First, the then existing part-time European Commission of Human Rights and the Court were united into a full-time institution responsible for deciding cases as well as possible compensations for damage. When it comes to cases, however, some degree of screening has proven necessary; annually, tens of thousands of appeals are sent to the ECtHR, the vast majority of which are dropped early on in the process.

Cases, which have been problematic in the light of the judicial praxis of the ECtHR are cases concerning expropriation licence, cancelling of business permits, the disciplinary monitoring activity of associations. Licensing of business or other economic activity permits may also belong to the field of Article 6. Cases concerning taking a child into custody by force and social insurance cases are nowadays consistently included in that field.

The **EU membership** has affected the way justice is applied in the Member States. EU law is often applied in conjunction with domestic law: some of the issues will be resolved by national law, while some other factors are settled by EU law. Considerably often the relationship between the two means, that EU law forms the general norm that requires national law for implementation and enforcement.

From the principle of priority of EU law a requirement follows that national judicial practice ought to have a favourable approach to interpreting EU law. This means that a national judge should aspire to interpret national law, if possible, in a way that it is in harmony with EU law. National courts are not under the European Court of Justice, but in order to ensure a uniform interpretation, a preliminary ruling system has been created. The procedure is based on the cooperation of the European Court of Justice and national courts.

Certain requirements have developed through the legal practice of the EU Court of Justice that concern, in particular, the formal preconditions for a request for a preliminary ruling, so that the questions raised in the request may be replied with useful answers. Roughly 100 requests for preliminary rulings have been made by Finland, of which the biggest number by administrative courts and more than half by the Supreme Administrative Court.

Currently, the Charter of Fundamental Rights of the EU has been legally binding since December 1st 2009, when the Treaty of Lisbon became fully ratified and effective. Anyway the Council of Europe, as well as the institutions of the EU, are slow and even powerless in practice to tackle the problems of signatory states in the very core of the European continent.

**Different fundamental rights traditions.** The constitutions of European countries have traditionally guaranteed particularly civil liberties and equality, following the model of the French Revolution. The inclusion of economic, social, and cultural rights is characteristic of post-World War II constitutions.

With regard to the history of ideas, it seems to me that in the Anglo-American world the inspiration of *Locke* is more prevalent: human rights are essentially viewed as meaning freedom from the state. *Rousseau* as a source of inspiration is more common on the European continent: human rights are more than a mere freedom from the state. Thus, the latter tradition has a more positive attitude towards the state as an instrument of common welfare.

**Global Change Epoch.** Broadly speaking, the process of globalisation has two aspects: The first one refers to factors that bring societies and citizens closer together, such as trade, investment, technology, cross-border production systems, flows of information and communication. The second one refers to policies and institutions which support the integration of economies and countries, such as capital market liberalisation, international standards for labour, the environment, corporate behaviour, agreements on intellectual property rights, and other policies pursued at both the national and the international level.

Even though globalisation can be studied as a business-level process, it also affects the internal functioning of states. Hence, it should be considered evident that globalisation affects the internal functioning and capacities of states. The changes are primarily of domestic origin and only indirectly do they result from international factors. Legislation plays a key role in the development of the rule of law. As legislation develops, the rule of law gains substance. In this regard the rule of law is a dynamic principle. The recent book on Soft Law Governance (China, 2013) describes the links between hard law and soft law norm types, and the reality of norms, that is, the living law.

It is also important to discuss the relation between cosmopolitan models and the rule of law. The cosmopolitan approach is from the top downwards. In contrast, from the perspective of the rule of law, the approach to globalisation must be from the bottom upwards: we have to examine the sustainability of the principles developed in the context of the nation-state in global markets, and particularly the rule of law as a strategy in globalisation.

**Different indicators.** Several research organisations and international institutions have created indicators for the evaluation of justice, economy and human rights. Since many of the analyses are very limited in scope, a broader dialogue for rule of law monitoring would be necessary.


These databases comprise an enormous amount of information that can be combined in different ways in order to monitor judicial, economic and social development. Even though most of the indicators are based on interviews, their significance as guideposts of development is evident. However we need the more general issues, related to power structures and the functioning of legislative policy and public authority, Goals of Constitutional Review.