Human Rights and Fundamental Freedoms as the Basis of the Finnish Constitution

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ABSTRACT

In the article, the author describes the history of the formation of constitutional legislation in Finland and, in particular, notes the key events and participants in the process of constitutionalism in the country. The author describes the Finnish arrangement for monitoring that the adopted laws comply with the Finnish constitution and its provisions of fundamental rights as well as the human rights obligations of Finland. Of particular importance in the article is the description of the development of the institution of fundamental human rights and freedoms, their form of consolidation in the legislation, as well as the shrinking role of customary law. The author emphasizes the important role of the provisions of the Constitution not only in guaranteeing the realization of rights and freedoms, but also in providing guidance for the subsequent development of legislative regulation on various fields of law, including the rights and duties relating to providing of a healthy environment.

Keywords: Constitution of Finland, fundamental human rights and freedoms, constitutionalism, neo-constitutionalism

1. From old Swedish constitution through the times of the Russian rule to the Constitution of the independent republic of Finland

Compared to Russia, the Finnish history of constitution and constitutional law is less dramatic, even though the political history could indicate the opposite. Namely, the old Swedish constitutional laws continued to provide the basis for the Finnish legal order even during the time following the Napoleon wars when Finland was annexed to Russia in 1809. In fact the much criticized Swedish constitutional law of the time gave the ruler almost absolutist powers, but on this occasion it was good news for Finland, since otherwise the new ruler, Russia, might not have granted Finland the autonomy in legal terms. The Swedish constitution was reformed in 1809 whereas in Finland the former Swedish constitution remained valid still more than 100 years.[1] The old Swedish constitutional acts were not yet "enlightened"; they were not built on the ideas of separation of powers or of the sovereignty of the people. During the times of the Swedish rule, the entire concept of law was still mainly premodern, and also the legal system was still non-professional as the legal education was underdeveloped and most of the judges lacked legal education.

The Enlightenment period had raised the issue of freedom rights, but it took a long time before a modern view on the constitution was developed. One line of the development was a constitutionalist reading of the old Swedish constitution, especially towards the end of the 19th century. There was, however, some artificiality involved since the old Swedish constitution played out between the king and the estates, and the point of view of an individual was mainly absent.[2] Anyway, the modern view already entailed the idea that part of the constitution were the rights of the individual which were rights also and especially vis-á-vis the state authorities.[3]

In terms of the constitutional development, first the Constitution of the independent Republic of Finland (Form of Government, 1919, together with the other laws of constitutional rank) formed the permanent basis of a liberal legal order in Finland. As mentioned, the roots of constitutionalism can be traced back to the old Swedish law, but a long formative period was required before the solid basis could be achieved.

At times also the already granted rights were weakened which can be seen for instance from the fact that the 1774 (Swedish) regulation on the freedom of press continued being formally valid, but the

[1] Paavo Kastari, Suomen valtiosääntö, SLY, 1977, p. 41–42. The legal and political history of the period 1809–1917 has been researched extensively, and we only can refer to a few sources. As regards the political history, see Osmo Jussila, Suomen suuriruhtinaskunta. WSOY 2004. As regards the constitutional law history, see, e. g., Antero Jyränki, Lakien laki, Lakimiesliiton kustannus 1989. As regards the history of fundamental rights during that period, see, Veli-Pekka Viljanen, Kansalaisten yleiset oikeudet. Tutkimus suomalaisen perusoikeuskäsityksen muotoutumisesta autonomiakaudella ja itsenäisyyden ensi vuosina. 2. uudistettu painos. Lakimiesliiton kustannus 1988. A text-book on the constitutional law of Finland, see, Jaakko Husa, The Constitution of Finland. A contextual analysis. Hart 2011.

[2] Viljanen 1988, p. 42–43.

[3] Kastari, ibid,. p. 335.

new authority, the Russian tsar gave instructions which narrowed it down. Later a national system of censorship was introduced, and even one that was regulated by a decree in 1829.[4] During the 19th century in Finland the criticism was mainly directed against the political censorship, whereas it was still regarded rather natural that the freedoms themselves could be limited for instance by rendering it punishable to use the right of free speech a certain way.

After five decades of *Stillstand*, in 1863 the tsar Alexander II finally invited the House of Estates again to convene, and a new decree on the freedom of the press for Finland was enacted in 1866. This ended the practice of censorship, but left still room for *ex post* control of the press. The criminalisations limited effectively the exercise of the rights. The ups and downs of the freedom of press in Finland continued until the end of the Russian empire and the October Revolution, and to some extent even the days after the independence.

The legal situation could also be illuminated by looking at the development of the liberty of occupation, that is, the freedom of trade. Finland was not an exception in that traditionally the labor force was organized in guilds which governed the work of the craftmanship. During the 19th century, especially in the 1840's, this system was increasingly being criticised in favor of the freedom of trade. J. V. Snellman was one of the critics who claimed that the guild system was harmful as it protected the minority of the craftsmen, while leaving the majority of them in poverty. The system led to a shortage in production and products had to be imported to cover for the inefficiency. Snellman also demanded that the prohibition to trade land property be repealed since it slowed down industrialisation.[5]

Only when Alexander II started in Russia his liberal reforms which aimed at turning Russia into a rule of law state, progress towards freedom of trade became possible in Finland. Besides that, changes in the demand of the international market created opportunities to export more wood products, but the mercantilist regulations hindered the ability to make full use of those opportunities. Alexander II was aware of these problems and introduced his reform policy, which had a liberal spirit.[6] Many of the reforms introduced created at least some of the basis of a market economy. For the Finnish economy, the liberalization of the sawing industry was especially relevant. The liberty of occupation was realized, albeit not entirely.

It is worth noting that in the "old world" in which the society was organized in guilds and in estates, the breakthrough of new liberal bourgeois rights required that the former privileges be limited or abolished. The conservatives often rather defended the legally granted privileges than fought for reforms. The liberal reforms meant significant progress since the labor force was freed from the mercantilist controls and the poor for instance got the right to move to another municipality. Also the control of the vagabonds became more loose.[7]

Only in the 1870's and 1880's was the term 'fundamental right' introduced in the vocabulary of constitutional law theorizing by two scholars, Leo Mechelin and Robert Hermanson. It had also established itself in the work of the House of Estates. The core basic rights included protection against unlawful detention, right of access to a competent court which was determined by law, and freedom to buy land.[8]

The old laws of Sweden-Finland did not entail developed lists of the rights of the individual. However, in the legal tradition some of such rights had been present for centuries, as could be proven by the fact that the legislature more or less expressly recognized such rights. It took a long time, during the period of Russian rule, to fully implement a system of rights. In this regard the constitution-like Act on freedom of speech, freedom of assembly and freedom of association from 1906 was a landmark.[9] The years 1899–1905 and 1908–1917 are known for the efforts of the Russian rulers to 'russify' Finland and to do away with the separate constitutional identity of Finland.

The Russian revolution led to the foundation of the Soviet Russia whereas Finland gained independence in 1917, and in 1919 the new Finnish Constitution entered into force. It did not really break up with the tradition, but rather built on the long-term historical tradition. No rights were abolished, but new were added and some previous ones were reformulated and broadened to correspond to the societal development. Many of the rights had earlier been granted as customary law. Also some influence of foreign law was visible.

The Constitution of 1919 stated that Finland was a Republic and that supreme public power belonged to the people who are represented by the democratically elected Parliament. The legislative power was

[4] Cf. Riku Neuvonen, Sananvapauden historia Suomessa. Gaudeamus 2018, p. 98–112.
[5] Jukka Kekkonen, Merkantilismista liberalismiin. Suomalainen lakimiesyhdistys 1987, p. 31–37.
[6] Kekkonen, ibid., p. 44–46.
[7] Kekkonen, ibid., p. 152–154.
[8] Hallberg, Pekka et al, Perusoikeudet, Oikeuden perusteokset, WSOYpro, Helsinki 2011, p. 32.
[9] Esko Hakkila, Suomen tasavallan perustuslait, WSOY 1939, p. 33–34.

exercised jointly by the Parliament and the President of the Republic. The highest executive power belonged to the President as well, and besides the President there was a Government which consisted of ministers. The adjudicate authority, in turn, was given to the court system, headed by the Supreme Court and the Supreme Administrative court. The presidential powers were rather central which at least partly reflects the fact that the heavy civil war in 1918 had cast some shadows as regards the idea of giving the Parliament a leading role in the governance of the society.

Anyway, the Constitution of 1919 was one that was committed to the basic values of republican government, and a list of fundamental rights of the citizens was a central part of the Constitution.[10] The provisions concerning the rights and liberties of the individuals did not maybe contain many surprises, but considering the time of the enactment, they were progressive and they even had some steering effect as regards the following legal development. The provisions concerning the freedom of religion, for instance, were significant, and they paved the way for the legislation on the matter. The Act on that entered into force in 1922.

Freedom of association was granted, as well as freedom of speech, which included the prohibition of any censorship concerning the printed media. People were also granted the right of organizing public meetings without prior permission. The private property was protected which meant that expropriation only was lawful in case of a full compensation. The language rights were granted to both Finnish and the Swedish speakers. The Constitutions included a provision stating that no noble ranks would be awarded in the republic.

We could summarize the development of the understanding of the rights of the individual that a certain way of seeing the role these rights have was partly linked to the historical roots of those rights and to the societal and political debates, circumstances and developments. Besides that, the Hegel-inspired political theorizing of the statesman Johan Vilhelm Snellman presented a system of rights a mature state would be built on. German idealism influenced the Finnish legal scholarship of the time. But still more important was the constitutional law theorizing which included detailed comparative studies. This meant that an understanding of a modern constitution and its central elements for Finland was formed. Amongst the scholars Leo Mechelin is most often mentioned. He was both a scholar and an activist who was the first to raise the issue that the citizen's rights should be guaranteed also vis-á-vis the legislature.[11]

The debates and deliberations first in the House of Estate and later, since 1906, in the one chamber Parliament, paved the way for a national Finnish approach of the system of rights. The liberal reforms which narrowed down the mercantilist forms of governance and which instituted a liberal market were important in introducing a new type of social order which paved the way for a democratic form of governance based on a system of equal rights. Since the Reds were defeated in the civil war, it was clear that the Constitution of the new Republic was to be based on non-socialist premises.

The content of the Constitution was a compromise, and after some hurdles were passed, it could be enacted. The main author of the Constitution was professor Kaarlo Juho Ståhlberg, who also later became a president of Finland. The Constitution itself had a long life since its central contents stayed valid for almost a century. An amendment concerning the new bill of rights was introduced in 1995, and the new Constitution entered into force in 2000.

If we again refer to the freedom of press and freedom of speech, we may note that the freedoms continued to be somewhat limited. During the Russian times the rulers were worried about Swedish influence, and later the Russian rulers were worried about granting any privileged positions to Finns compared to other parts of the empire.

In the 1920's, the supervisors of the press went against social democratic and socialist materials, and the forbidden Communist Party went underground. In the 1920's, the Agrarian Fascist movement of Lapua started its activities, following the model of Mussolini in Italy, and in 1930 the activists of that movement destroyed unlawfully a communist press in Vaasa. The men of the Lapua movement went, however, later too far, but the authorities managed to cut its influence and restore a government through law.

Even this brief summary of some elements of the legal reality tells that the rights of the individual, if we take the example of freedom of speech and freedom of expression, did not become easily, without struggles and without limitations. During the early years the fundamental rights granted in the constitution were not really regarded directly applicable, but they were merely setting limitations and requirements to the legislative procedure. This changed in fact first in the 1990's.

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[10] See, generally, Hallberg, Pekka et al, Perusoikeudet, Oikeuden perusteokset, WSLT 2005.

[11] Viljanen, p. 64.

Democracy and freedom of speech are mutually dependent and the limitations to the freedom of speech were marking also problems of democracy. We speak today of hate speech as if it were a new phenomenon, but in the circumstances of the 1920s and 1930's, incitement to hatred was common, and even legislation contributed to the hatred.

The Constitution of 1919 allowed for laws of exception to be made, and this opportunity was also widely used. It introduced an element of flexibility into the legal system, but it as well relativized the idea of a constitution which would define the core of the state structure and the legal system. Some of the old privileges continued to be valid, so that the Constitution did not completely clear the tables.

Above we have reported on the protection of the rights of the individual, and the ways a system of rights was developed. This development was boosted after WW II also by the international development especially within the frames of the United Nations. The Declaration of Human Rights (1948) was followed by binding international legal instruments such as the International Covenant on Civil and Political Rights (1966) as well as the International Covenant of Economic, Social and Cultural Rights (1966).

Finland signed and ratified the central UN human rights conventions rather fast, and this required a substantial domestic work with legal reforms. Finland was also actively participating in the Nordic legal and legislative cooperation which had long roots but which became politically highly ambitious in the 1960's and 1970's. Finland also participated in the international activities of the Council of Europe, without formally being a member. Only when the iron curtain fell, Finland joined the Council of Europe and its Human Rights Convention, and started the preparations for joining the European Union. Finland joined the European Union in 1995, together with Sweden and Austria.

These developments were significant in the sense that both of these systems include a court which has a particular 'constitutional' role as they both interpret the law in a transnational context but in a way which has a legal effect also internally as regards the Finnish legal system. The ECtHR system was revised in 1998 when the new Court started its activities.

This constitutional development has paved the way for strengthening the role of the courts not only in the protection of the rights of the individual, but more generally in increasing opportunities for non-application of ordinary laws.[12] In Finland this shift of balance has still been rather moderate. The full story began already earlier.

Towards the 1970's it had become clear that the Bill of Rights in Chapter II of the constitution was outdated and no longer reflected the needs of the society and the existing legislation. The social critical movements which became active in all of the Western world were demanding better protection of rights and more efficient limitation of the exercise of public power. There were plenty of issues to be raised in Finland, which maybe lagged behind the other Nordic countries in the welfare developments.

The social, economic and cultural rights became important together with the steps toward a welfare society and welfare state. The balance between the state and individual had gone wrong, and reforms were started to grant rights to new groups, such as men in the military service, prisoners, patients in mental hospitals. All this could no longer be left to the benevolence of the administrators. The social and legal critique contested the idea of "administrative power" as justifying rights-affecting decision in closed institutions.

As 1970's was the period when the rights of the individual were in many ways strengthened on the level of legislation, including also new types of laws, such as consumer protection, the changes on the level of constitutional law took more time. The preparations for to reform the Constitution took still a couple of more decades.

This may, however, not have been so detrimental. It may namely have been easier to reform the constitution and formulate the provisions on fundamental rights anew, when at least some of the new contents already had some backup on the level of the ordinary laws. Otherwise that progressive and future-oriented function of the bill of rights might be overburdened and leave people disappointed if the promises of the constitution cannot be lived up to. In some sense, thus, the constitutional reforms may be easier after the fact. At least in the case of Finland, the processes of law reform were parallel rather than top-down. Reforming ordinary laws pawed the way for a constitutional reform, which again strengthened the law reforms. During the last decades we have experienced a kind of dialectics in this respect.

As an example we could mention the constitutional law provision on the environmental protection in 20 § of the Constitution (2000). The paragraph entails two parts, and the first of them deals with the duty protect the environment. Thus, instead of using the language of right, the provision states a common responsibility on the environment. The second part of the provision states that the public power needs to secure for everyone the right to a healthy environment as well as the opportunity to influence

[12] Jääskinen, Niilo, Eurooppalaistuvan oikeuden oikeusteoreettisia ongelmia. Yliopistopaino, Helsinki 2008.

in the decision-making on the own environment. As a result we can see that the provision sort of programs the legislature to take action aiming at securing the preservation of the environment. Thus, the building up of the institutions and regulation needed for environmental protection are an elementary part of living up to such tasks. From 1980's onwards the substantive law on environmental protection has been rapidly developed. Thus, the new constitutional law provision was not the start of it all, but it reinforced and gave an extra boost for working on these issues. The provision was and is symbolical, but is also has guiding power.

2. The Finnish Constitution and the Protection of the Human Rights in 2020

We could now, after these very brief remarks and observations concerning the historical background of protection of basic rights in Finland, look at where we stand now. The preceding years have witnessed a long series celebrations of 100 years anniversaries. The Republic itself celebrated its first centenary in 1917, the Bill of Government was introduced in 1919. The Supreme Court and the Supreme Administrative Court were established in 1919. Even if the anniversaries themselves are not important, they often encourage a look back in the history.

As for Finland, the 100 years has meant a very big leap in societal development. A poor country has developed into one of the most progressed industrialized countries of the world. The legal development has been one aspect of it all. The legal culture has preserved some of its long-term characteristics, such as the legal cultural ties with the other Nordic countries. Especially after world war II the significance of the Nordic legal context has grown.

The Nordic countries are known for the fact that they have not introduced constitutional courts, but rather opted for other ways of checking of the constitutionality of the laws to be enacted. Differences between the Nordic legal systems are significant. What is common is the high respect of the parliamentary decision-making and respectively a lesser role of the courts. In Norway, the Supreme Court has a bigger role than in the other Nordic countries.[13]

In Finland this way of controlling the constitutional law quality of ordinary legislation by a particular committee, the Constitutional Law Committee, has over the years won a very central role. This committee which is part of the bodies of the Parliament consists of politicians as do also all the other committees. The main choice is thus that the control of the constitutionality of ordinary legislation will be carried out by a political body which is part of the national Parliament. But still, the particular role of that committee has over time developed so that in fact the Committee has a quasi-judicial role. It not only reviews the compatibility of a law proposal with the Constitution, but also interprets the human rights and fundamental rights obligations of Finland and assesses the merits and demerits of the law proposal in that regard.

The Constitutional Law Committee has over time won a particular role, and the history of this dates back to the early days of the Parliament a century ago. In the early times this role was not visible in the letter of the constitution, but in the most recent reform of the Constitution (2000) it was expressly regulated. As a result, the Constitutional Law Committee has a unique position as a (quasi-)judicial body which is still part of the parliament. The *ex ante* control of the constitutionality of law proposals as carried out by the Committee has the benefit that it does not weaken the role of the Parliament in this regard and that, due to the high status of the opinions of the committee, it in a way strengthens the role of both the Parliament and the Constitution in the legal system.[14] Even the doctrine of legal sources which recognizes the significance of the preparatory works in interpreting statutes is a sign of the central role of legislature in the legal culture as is the fact that the precedents of the Supreme Court are not legally binding.

The opinions of the Constitutional Law Committee are regarded as binding by the other bodies of the parliament, and its opinions enjoy a high respect throughout the legal system and its various institutions. The committee hears experts, typically constitutional law experts, and it has over the years established for itself a special authority in these issues. The opinions are published online in the data system of the Parliament and can easily be consulted.

This system of *ex ante* control has also actively been developed, since still in the 1980's it was a rare event that the constitutional law committee would issue an opinion concerning a law proposal in

[13] Cf. Jaakko Husa, Constitutional Mentality, in Pia Letto-Vanamo, Ditlev Tamm, Bent Ole Mortensen (Ed.s), Nordic Law in European Context. Springer 2019, 41–60, at p. 53.

[14] See, Antero Jyränki, Valtiosta valtaan. Valtiosääntöoikeuden yleisiä kysymyksiä. 3. painos, Talentum 2003, 393–414.

the field of criminal law. Since then, the role of the committee has grown a lot, these days it is rather usual that an opinion will be delivered. The committee has, for instance, given opinions on the principles of criminalisations stating certain requirements which need to be fulfilled in order to allow for criminal law to be used. Such a doctrine rather effectively frames and limits the use of criminal law measures and enables to secure a certain balance of criminal law and constitutional law. The starting point is that criminalisations are limitations of fundamental rights and need to be reasoned by giving ground which justify the use of criminal law. The relationship between criminal law and fundamental rights is, however, twofold since the state also has the duty to guarantee the basic rights, and thus there are duties to criminalise breaches of rights.[15]

This doctrine, which was formulated rather soon after the new bill of rights had entered into force, has been influential also when Finland has been under pressure to act fast as has been the case concerning the drafting of the law on terrorist offences. The active participation of the constitutional law committee has contributed to the fact that the principle of legality and its sub-rules have been respected and the new regulations have been adjusted to the needs of the protection of the fundamental rights and human rights.

When the new bill of rights was adopted in 1995, the Constitutional Law Committee itself emphasized that in most cases the courts should interpret various legal provisions in such a way that a contradiction between the letter of the law and the fundamental rights could be avoided. The provisions concerning the fundamental right are today directly applicable; once again a novel feature, since earlier it was very rare that arguments based of constitutional rights would have been openly taken up in judicial proceedings of judgments of the courts.

The novel idea was that even though at first sight a contradiction could appear, in most cases this contradiction could be done away by interpretative means. The new doctrine that would be helpful in this was the so-called *fundamental rights friendly interpretation*.[16] This doctrine, in turn, was borrowed from a previous doctrine, namely the doctrine of human rights friendly interpretation[17] which had been introduced when following of the case law of Strasbourg became an obligation. In this sense the point was not so much to emphasize the *primacy* of the norms on fundamental rights in relation to the ordinary laws, but rather to seek to adjust these two sources of law to each other. An existing *ex ante* check of the constitutionality of ordinary legislation was helpful since it as well was based on a approach of reading the legislation in the light of the constitution, and this this first reading created the basis for the courts to continue the same path.

The existence of an active Constitutional Law Committee thus takes away most of the air from the needs to strike down laws or not to apply laws due to problems of human rights and fundamental rights protection. The Constitution, however, in its 106 § provides that the non-application of a legal provision by a court only may result from a manifest contradiction between the constitution and the legal provision. A fundamental rights friendly interpretation of laws will in most cases solve the issue and show that the contradiction is not inevitable. There will, however, always remain cases in which such an approach will not be enough.

Cases have been rather rare, but not quite non-existent. The threshold of this ex post judicial control of the constitutionality of a legal norm has knowingly been set higher than it would be otherwise; thus, use of term 'manifest contradiction' is meant to indicate this.

A recent case in which Helsinki Court of Appeal, after a vote and in a strengthened composition, anyway applied the famous 106 § of the Constitution concerned was one in which a male person had refused both military and its alternative, civil service, since he claimed to have conscience grounds for this choice.[18] He was not a Jehova witness, for which an exceptional exclusion was expressly granted by law, and he claimed for an equal protection of his belief.

Helsinki Court of Appeal followed his reasoning in that a privileged treatment of the Jehova witnesses was against the equal treatment before the law as granted by the Constitution. The legal obligations for such a protection had increased more weight after the time when the Constitutional Law Committee had exercised its *ex ante* check of the constitutionality of that specific law.

The judgement of the Appeals Court was not unanimous, and the minority reasoned that since the Constitutional Law Committee has not voiced doubts when dealing with this issue, there was no ground for applying the 106 § of the Constitution. It has, namely, been a rather common practice that when the

[15] CLC, Report 25/1994, p. 4–6; CLC, Opinion 23/1997, p. 2–3.
[16] CLC, Report 25/1994.
[17] CLC, Opinion 2/1990.
[18] Helsinki Court of Appeal, 23.2.2018, 108226 (2018:4).

committee has expressed itself on a certain issue, the courts would not go against it. But in this case the legal and constitutional protection against discrimination had been strengthened after the committee had issued its opinion, which triggered that the court had to give legal protection to the applicant.

This is, of course, what the courts are expected to do. The decision was, however, rather revolutionary, and it led to a fast law reform which mainly consisted in the abolition of the privilege granted for the Jehova witnesses. In this case, thus, the final outcome was not that the right granted was universalized, but rather the opposite. In any case, there was also some ground for this abolition since such a privilege was less grounded than before, and also the ways to perform these citizenship duties had become more flexible and the Jehovas were no longer so clearly at risk of facing a sentence of imprisonment.

The European human rights law has also increasingly become visible in the case law of the Finnish courts. According to the data of the open database Finlex there are some 300 decisions of the Supreme Court of Finland in which the court refers to the European Convention of Human Rights. There are a variety of important topics which have been involved, and the Finnish courts have learned how to secure that in the national application of law the European minimum standard of human rights protection will be granted. Finland has had particular problems concerning issues such as the ne bis in idem -prohibition, too lengthy proceedings and some freedom of speech -situations.

In 2019 Finland faced a first really grave conviction at the Strasbourg Court; it concerned the expulsion of a person to Iraq in spite of the fact that he had already faced certain threats in Iraq as a former governmental official. He was killed soon after the expulsion had been completed. Finland was convicted on grounds of both article 2 and 3 of the Convention.[19]

Over the last 30 years the Finnish legal culture has matured in the way it handles fundamental rights and human rights. Finland has been part of a bigger process which has often been called the *new constitutionalism*. The courts have learned to live up to the expectation that they should give protection to the individual accordingly and even in a situation not clearly foreseen by the legislature. There have been cases, for instance, in which a legal remedy has not been available, but the 106 § of the Constitution has enabled opening one.

A human rights friendly and fundamental rights friendly interpretation of the laws has to my mind also been made possible by the general improvement of substantial reasoning of the courts since the 1970's, which again has resulted of the increased expectations that the judgements of the courts are well-founded and deserve social appreciation. It became increasingly important that the courts could give convincing reasons for their decisions since the society had changed and the exercise of public authority started meeting with open challenge and criticism. The only way to maintain the trust of the people was to raise the professionality of the court's work and to emphasize the need for good reasoning. The legal theoretical discussions and theories have contributed to the development. In Finland, the work of Aulis Aarnio has been groundbreaking.[20]

In 1980's the Supreme Court of Finland was made into a court which mainly delivers precedents, and this gave it the opportunity also to set an example of how good reasoning would look like. The decisions of the Supreme Court are not as precedents legally binding meaning that the case law of the Supreme Court has not been recognized a clear rule-making role. As a result, the authority of the Supreme Court's decisions stems more from the high appreciation of the quality of its work. A continuous improvement of the quality of its reasoning has contributed to that it has gained a kind of factual rule-making power.

Since 1990's the case law of the Supreme Court as well as plenty of other legal sources have been available online, which again has rendered this case law accessible to both lawyers and the general public. The FINLEX portal was the first of its kind in the world. Thus, we have seen several developments take place in a parallel fashion, and the rise of neo-constitutionalism and the status of rights has been part of this process of open argumentation and thus transparency. The new way of dealing with the tensions within the legal system has meant that the formal hierarchical structures of the legal order are not stressed too much, but rather the emphasis has been put on the quality of the substantial reasoning.

What has been helpful for the courts in this task is that actors of all the relevant normative fields speak more or less the same language. Since the freedom of speech, for instance, is protected on different levels, be they on the level of the Constitution or the level of ordinary legislation, or on the level

[19] Case N.A. v. Finland (Application no. 25244/18), November 14, 2019. Finnish National Bureau of Investigation has, however, surprisingly announced on April 22nd 2020 that the documents presented during the proceedings may have been falsified and that the expulsed person in fact may still be alive.

[20] Cf. Aarnio, Aulis, The Rational as Reasonable. A Treatise on Legal Justification. Kluwer, 1986.

of European or international human rights law, the different levels do not necessary conflict much with each other.

If we think of current issues of incitement to racial and other hatred, it is very clear that the case law of the Strasbourg Court provides for a central point of reference, but the Finnish courts and the Finnish scholars will of course also pay attention to the Finnish circumstances which deviate in some sense from the situation of other countries. Finland has, for instance, not introduced legislation on holocaust denial or specific legislation banning use of nazi symbols. It may, however, be punishable as incitement to hatred to use nazi flags in a rally, for instance. Finnish courts have also recently been faced with new types of cases, since the Police Government has demanded that an organization named Nordic Resistance Front be prohibited due to its openly racist goals. An appeal is pending in the Supreme Court, and a ban is currently temporarily being enforced.

It is not possible here to give any fuller account on the role of human rights and fundamental rights in the context of the European Union law. Anyway, one should bear in mind a clear strengthening of the role of these rights also within the EU legal order. This has not been a quite easy and linear process, but anyway we can see the rights of the individual have gained more significance as the EU law has marched to new areas. It has been very important for instance as regards the establishment of the EU as an Area of Freedom, Security and Justice that the EU simultaneously as it strengthens it's role in addressing security threats, also commits itself to the core European values. The drafting of the Charter of Fundamental Rights of the European Union was a landmark. The EUCJ has also in its case law established the human rights and fundamental rights as general legal principles of the EU law.[21] The Lisbon Treaty provides for that the European Union would become a party to the ECHR, but this has faced both technical and more principled obstacles.[22]

The clear trend is that the rights of the individual play today a bigger role than earlier in the Finnish legal culture. But the new emphasis has not changed the foundations of the legal culture. The strong role of the Parliament and of the legislation is still true. Developing a strong democratic culture where the political legislature and legislation as its product stands as the central and most legitimate source of legal governance of the society can be combined with a legal culture in which the rights of the individual are at the core.

The neo-constitutionalist tendencies have in the Finnish legal system introduced importantly new features to the ways the various legal actors see their role. But once again we see that the development has not been revolutionary but rather evolutionary; neo-constitutionalist development can be seen as an important part of maturing and deepening of the constitutional rule of law state. Contrary to many other countries, as regards Finland, the development itself has not been motivated by an effort to take a distance vis-á-vis the former history.[23]

In the Finnish model it has been possible to develop the entire system so that the various sources of legitimacy will all contribute to the over-all legitimacy of the legal system. The Finnish model of constitutional rule of law state involves in this regard and efficient *ex ante* control of the constitutionality of the ordinary legislation, but also active courts which will give effect to the human rights and fundamental rights, should the legal order not otherwise be able to give full legal protection. The aim to make rights real is shared by all relevant institutions. The Constitution itself, in the Article 22, sets out the objective that the public power has to secure the full implementations and enforcement of the human rights and fundamental rights.

Let me also mention in passing that the Finnish law still recognizes certain rights which, in fact, continue to be based on customary law, or, to put this another way, are only partly legally regulated. Here I refer to the so-called everyone's rights which are regarded as restrictions to the rights of the owner of land property. When the Bill of Rights of the Constitution was reformed, the matter was debated whether everyone's rights should be listed as constitutional rights, but the reformers ultimately let that field stay unregulated.[24]

Everyone is thus entitled to move freely on another person property, pick mushrooms and berries, etc. The exercise of such a right needs also caution since you are not allowed to leave rubbish behind or cause other nuisance. You are also not allowed to violate the domestic peace, which means that you should not enter the garden of a house. Everyone's rights are granted even to foreigners, as are other

[21] Cf. Rosas, Allan, Perus- ja ihmisoikeudet EU-oikeudessa, in Hallberg, Pekka et al, Perusoikeudet, Oikeuden perusteokset, WSOYpro, Helsinki 2011, 200–205.

[22] Opinion 2/13 (2014), EUCJ. Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[23] Lavapuro, Juha, Uusi perustuslakikontrolli. SLY, Helsinki 2010, p. 21.

[24] Hallberg, Pekka et al, Perusoikeudet, Oikeuden perusteokset, WSOYpro, Helsinki 2011, at p. 781.

fundamental rights, except for the political rights. Everyone's rights may even have prepared the Finns for an environmental friendly approach to law, since they communicate values which are once again topical: everyone's duties to care for the environment and to see the need for common action in this.

In this brief article I wanted to especially focus on the role of rights of the individual in the Finnish legal order, but I feel that it is necessary to still complement this with a remark on the control of the legality of acts taken by the authorities. I refer here not only to the supervision exercised by the chancellor of justice who works directly under the national government, but also to the supervisory activities of the Parliamentary Ombudsman who in turn is appointed by the Parliament and who reports to the Parliament.

Both of these institutions have already a long history and they enjoy a high respect amongst the people. Individuals may report cases in which they feel that the authorities have not performed lawfully, and this usually leads to some investigation of the case, which again may lead to a legal action. Usually, if there is something to be improved in the way people's matters are being handled, the supervisors indicate there view on a rather soft tone, but due to the status of these institutions, the authorities in most cases will study carefully the instructions given, and will do their best to improve their performance. Very rarely, and only in severe illegalities, will the supervisors initiate a criminal investigation against the civil servant.

It deserves also to be noticed that the neo-constitutionalist tendencies can be seen here as well. The Parliamentary Ombudsman, for example, sees his role these days increasingly as a guarantor of the rights of the individual. In order to do that, the supervisory bodies also do site visits to institutions such as the prisons and the military bases, and they will interview the detainees and others in a vulnerable situation for to make sure that no abuses of authority take place. Such interviews will take place so that the formal representatives of the institutions are not present. All these activities aim at securing a full accountability of the authorities for their actions, and also at ensuring that the trust in the authorities is not blind, but is based on a real trustworthiness.

Conclusion

I hope I have in this brief summary been able to shed some light on how the Finnish legal order and the legal actors working for it see the role of the rights of the individual in the constitution of this order. The point is that if the various actors see the key features of the system in a similar enough way, they will jointly be able to develop a new culture in which the constitution becomes more a living instrument and in which it plays a bigger role than in the earlier times, but in which also excesses of constitutionalism may be avoided.

The neo-constitutionalism has namely also triggered discussions of whether the constitutionalisation of law has already gone too far and whether this development threatens the role of law as we have been used to seeing it, as fragmented in the sub-branches of criminal law, procedural law, etc.[25] In today's mature constitutionalism the risks of excesses have been given due attention, and all the actors see that a certain threshold must be set before an ordinary case becomes a true test case concerning the human rights or fundamental right.

From the point of view of the protection of human rights, the current constitutional setting provides for an approach for not only the judges, but the law drafters as well, that the human rights and fundamental rights standards set up by transnational legal bodies should be taken seriously and seeing as feedback mechanisms which strengthen rather than threaten the efforts to build a strong culture in which the rights of the individual are respected.

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[25] See, e.g., Lavapuro, Juha, Uusi perustuslakikontrolli. SLY, Helsinki 2010, p. 14–15.

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