

FINLAND

Sub-National Issues: Local Government Reform, Re-Districting of Administrative Jurisdictions, and the Åland Islands in the European Union

Markku Suksi

1. Introduction

The past year has brought to the fore a number of issues – forwarded to the Parliament of Finland in the form of Government Bills – which are of great importance from the point of view of Finnish administrative law and public law in general.¹

One of the most debated administrative issues ever in Finnish politics is the pending reform of local government, which is propelled by a scarcity of public funds in relation to an ever increasing need of expensive services in the areas of health care and vocational education and which may result in both voluntary and mandatory mergers of municipalities. The projected reform constitutes one dimension of the inter-generational attempt to ensure that there will be funds available also in the future to cover the expenses of what is still left of the Nordic welfare-state in Finland.

Another issue at the sub-national level is the plethora of sector-wise administrative units of the state at the regional and local level. Several reforms of overlapping jurisdictions is underway, propelled by demands of greater territorial jurisdictions for greater economic efficiency but also for facilitating a higher level of professionalism amongst the civil servants by concentration to larger units.

¹ The rapport reflects the situation at the end of January 2007.

A third issue often visible in the press is the relationship between the European Union on the one hand and the Åland Islands, the self-governing and autonomous part of Finland, on the other, especially with a view to actions brought by the European Commission to the European Court of Justice concerning failure of Finland to fulfil its implementation obligations of EC directives on the Åland Islands. Disappointed as the Åland Islanders start to be with the European Union, the Legislative Assembly of the Åland Islands has presented a proposal to the Finnish Parliament concerning the creation under domestic law of a reserved seat in the European Parliament in order to guarantee at least some measure of influence of the Åland Islanders on the content of legal acts of the Community. Finally, a fourth issue of general European relevance is the ratification of the Constitutional Treaty of the European Union. The ratification was completed following the expectation to make a decision on ratification under the current treaties, although it is clear that the Constitutional Treaty will not, in its present form, enter into force because two countries have already made negative ratification decisions. The ratification issue has a very interesting Ålandic twist, too, accounted for towards the end of the rapport.

To a greater or a lesser extent, all four issues involve the Constitutional Committee of the Parliament of Finland in the elaboration of the proposed pieces of law. Under Section 74 of the Finnish Constitution on the supervision of constitutionality, the Constitutional Committee of the Parliament is the authoritative body for the determination of whether a Bill dealt with by the Parliament is constitutional or not and whether a Bill is in harmony with international human rights treaties.² Hence the main form of control of constitutionality of legislation in Finland is an abstract control *ante legem*, basing itself on the presumption that a piece of law, enacted under the sovereignty of Parliament, is to be assumed constitutional by those who implement the Act of Parliament, that is, by the administrative authorities and courts of law.³ It should be noted that all Bills submitted to the Parliament

² Section 74: 'The Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.'

³ However, as concerns both the general courts and the administrative courts, they have been granted the opportunity under Section 106 of the Constitution to give, under certain conditions outlined in more detail in the *travaux préparatoires* to the Constitution, primacy to a provision of the Constitution if the application of a provision of an ordinary Act of Parliament in an individual and concrete case would be in evident conflict with the Constitution: 'If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.' The provision has been used once by the Supreme Court (HD 2004:26) in a case concerning a temporary prohibition under the Act on the conservation of buildings (60/1985) of refurbishing and other measures in a part of the building that had been used as a pharmacy since the beginning of the 20th century, a prohibition which was issued by the regional environmental authority and which the Court found led to a loss of earnings for the housing company that wanted to lease it for other activities after the pharmacy had moved out from the premises. The housing company was found to have suffered an economic

are not reviewed by the Constitutional Committee as to their compatibility with the Constitution. Out of a usual 250 to 300 Bills submitted by the Government each year, the Committee deals only with 50 to 60. The review of the Bills by the Constitutional Committee is therefore by no means comprehensive.

The role of the Committee in the process of legislation is connected to a particular Finnish speciality, namely the possibility to enact so-called Acts of Exception. Those are Acts enacted by a qualified majority of two-thirds according to the procedure prescribed under Section 73.1 of the Constitution for the adoption of such ordinary legislation which contains one or more incompatibilities with the Constitution.⁴ Under the provision of the Constitution, however, the exception should be limited, which in the light of the *travaux préparatoires* means that an exception should be circumscribed either temporally or materially. Thus in theory, the Committee

loss and the state had a constitutional duty to compensate the loss. The provision was also used by a regional administrative court (Helsinki Administrative Court, decision of 23 November 2006), in which the court found that an administrative charge that was levied on a person for a preliminary tax ruling who later on decided to use a possibility to change the grounds for taxation for the purposes of automobile taxation. The amount of the administrative charge was tied to the automobile tax that would have been levied in the case that the process had been brought to the end originally intended. The court found that the administrative charge was not such a charge under section 81(2) of the Constitution which is to be levied on the official functions, services and other activities of State authorities, but instead a tax under section 81(1) of the Constitution, which requires that the grounds for the amount of the charge must be stated in an Act. Because the legislation contained only a provision on the upper limit and left in other respects the amount of the charge to the discretion of the public authority, the requirements of accuracy developed by the Constitutional Committee of the Parliament were not fulfilled. The court found an evident conflict in relation to section 81 of the Constitution and refrained from applying the provision in the Act on the charge. At the same time, the court abolished the charge of 1850 Euros.

⁴ It should be underlined that an Act of Exception is an ordinary law, because under the doctrine, diminishing the exception to the Constitution by amending the Act or repealing the Act altogether can be done in the order prescribed in section 72 of the Constitution for ordinary pieces of law, that is, by simple majority. Conversely, if there is a wish to expand the exception, the relevant Act of Exception must be amended by following the order of constitutional enactments under section 73(1) of the Constitution, that is, by qualified majority of two-thirds. A more explicit but materially similar provision is included in Art. 84 of the Constitution of Sri Lanka concerning bills inconsistent with the Constitution: (1) A Bill which is not for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, but which is inconsistent with any provision of the Constitution may be placed on the Order Paper of Parliament without complying with the requirements of paragraph (1) or paragraph (2) of Article 82. (2) Where the Cabinet of Ministers has certified that a Bill is intended to be passed by the special majority required by this Article or where the Supreme Court has determined that a Bill requires to be passed by such special majority, such Bill shall become law only if the number of votes cast in favor thereof amounts to no less than two-thirds of the whole number of Members (including those not present) and a certificate by the President or the Speaker, as the case may be, is endorsed thereon in accordance with the provisions of Article 80 or 79. (3) Such a Bill when enacted into law shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting.

could decide to recommend four different approaches to a Bill that has been sent to its review by another standing Committee of the Parliament: 1) that the Bill can be adopted in the order established section 72 for the adoption of an ordinary Act by simple majority, 2) that the Bill can be adopted in the above-mentioned order provided that the constitutional remarks made by the Committee are taken into account and the Bill is changed accordingly, 3) that the Bill should, because of incompatibility with the Constitution, be adopted in the order established in section 73 for the adoption of an amendment to the Constitution by a qualified majority, whereby the Bill becomes an Act of Exception, and 4) that the text of the Constitution should be amended.

While formal amendments of the Constitution are normally out of the question when there is a need to enact ordinary legislation, section 73(1) of the Constitution places the above-mentioned limitation to the use of an Act of Exception, hence leaving in practice two main alternatives to the Constitutional Committee. These are 1) the finding of no incompatibility with the Constitution and allowing the adoption of the Bill as it stands in the order prescribed for ordinary legislation by simple majority on the one hand, or 2) the finding of an incompatibility with the Constitution and making a conditional grant for the use of the order prescribed for ordinary legislation, expecting the Bill to be amended in the way the Constitutional Committee recommends in order to abolish the constitutional incompatibilities, on the other. Therefore, in addition to short overviews of the above-mentioned reforms, this rapport will also look into the role of the Constitutional Committee of the Parliament in its role as the authoritative interpreter of the Finnish Constitution.

2. Local Government Reform

The Government proposed in its Bill No. 155/2006 (containing several interconnected proposals) an Act with a legislative framework which in itself does not contain many obligations for the municipalities, but which sets forth a programme for further work in the area of local government reform during the period 2007-2012.⁵ The Government suggests that such an Act would, against the background of democracy at the level of local government, strengthen the municipalities and the organizations that provide different municipal services by establishing a new system of state support to the municipalities and by reviewing the division of tasks between the state and the municipalities. The aims of the reform are to improve productivity and stall the increase of budgetary expenditures in the municipalities.⁶

⁵ Regeringens proposition med förslag till lagar om en kommun- och servicestrukturereform samt om ändring av kommunindelningenslagen och av lagen om överlåtelseskatt (RP 155/2006).

⁶ The role of the municipalities in the Finnish public administration can be illustrated with reference to the number of employees in the public sector: while the state has around 120 000 employees, the municipalities in Finland employ around 445 000 persons.

In addition, the municipalities should be guaranteed a better possibility to supervise and direct the service they themselves are obliged to produce. The Bill implies, *inter alia*, mergers of entire municipalities with each other so that the 430 municipalities that existed in the beginning of 2006 could become around one hundred less during the next five years. In addition, the Bill also implies that a part of a municipality can be merged with another municipality. The structure for the provision of service especially in such expensive sectors of public service as health care and vocational education is enhanced by creating associations of co-operation between municipalities so that the population basis for the service provided is greater. The end result should be the guarantee, on the basis of an efficient use of resources, of public service of a high quality available for the inhabitants in the various municipalities on an equal basis across the whole country. The Parliament referred the Bill to the Administration Committee of the Parliament, which requested an opinion from, *inter alia*, the Constitutional Committee.

The Constitutional Committee felt in its Opinion No. 37/2006 that the Bill raises issues in relation to several provisions in the Constitution, namely sections 17 on the right to one's language and culture, 17(3) on the right of the Sami to their language and culture, 44 on statements and reports of the government, 58 on the decisions of the president, 121(1) on the self-government of municipalities, 121(2) on the right of the municipalities to levy tax, 121(4) on the right of the Sami to linguistic and cultural self-government in their native region, 122(1) on administrative divisions with respect to the Finnish and Swedish languages, and 122(2) on the principles governing the municipal divisions.⁷ The Committee concluded that the proposals in the Bill that the Government had submitted to the Parliament can be enacted in the order prescribed by section 72 of the Constitution for the enactment of ordinary legislation, but on the condition that the constitutional remarks of the Committee concerning sections 5(2) and 9(4) of the first proposal in the Bill are taken into account in the relevant manner. The constitutional problems that arose on the basis of these sections of the first proposal touched upon sections 121(1) and 58 of the Constitution, while the other sections of the Constitution were considered either as such which did not raise any problems at all for the Bill or as such which implied only minor constitutional problems that could be tolerated within the framework of the provision of the Constitution.⁸

In relation to section 5(2) of the proposal, the reason for this statement was that the proposed section would violate section 121(1) of the Constitution.⁹ The

⁷ Grundlagsutskottets utlåtande 37/2006.

⁸ The Constitutional Committee accounted for the content of other sections of the Constitution to the parts relevant for the matter so as to remind the Administration Committee, the entire Parliament and those who will apply the Act once adopted of the interpretation of the meaning of the Constitution.

⁹ 'Finland is divided into municipalities, whose administration shall be based on the self-government of their residents. Provisions on the general principles governing municipal administration and the

proposal has the general aim of creating on the basis of independent municipalities territorially defined co-operation areas with at least 20000 inhabitants for primary health care and such social care which is connected with primary health care, and with at least 50,000 inhabitants for basic vocational education in a co-operation area.¹⁰ The Constitutional Committee stated that the objective with the proposed norm is to place municipalities with fewer inhabitants than mentioned above under a duty to belong to such co-operation areas, unless the aim is achieved by (voluntary) mergers of municipalities. The problem identified by the Committee in the proposal was that the municipality in a co-operation area which has the largest number of inhabitants might acquire unilateral decision-making power. In addition, the Committee remarked that a decision-making system based only on the number of inhabitants in the co-operation area does not necessarily and in all cases guarantee that a municipality with a low number of inhabitants will have any representation at all in the decision-making organs of the co-operation area. Therefore, the Constitutional Committee was of the opinion that a condition for the use of the legislative procedure for ordinary law is the deletion of the last sentence in the proposed section 5(2) of the first proposal.¹¹ Such an amendment of the proposal would instead make it possible for the municipalities to strike an agreement concerning the decision-making in a co-operation area within the framework created for associations of municipalities in the Act on Municipalities (365/1995). Alternatively, the Committee recommended that the main rule in the provision should be reconsidered so that the decision-making system which is to be applied in a co-operation area does not give an individual municipality a position which makes it possible for that municipality to exercise unilateral decision-making powers at the same time as the provision guarantees all municipalities in the co-operation area representation in the organs of the area.

In relation to section 9(4) of the first proposal, the reason for the above-mentioned statement was that the proposed section would violate section 58 of the Constitution, which deals with the decisions of the President.¹² The first proposal of the Bill contains a rule on the duty of the Council of State to submit a Government Bill to the Parliament in the beginning of 2009 concerning amendments to the Act on Municipal Division (1196/1997). The Constitutional Committee felt that this was

duties of the municipalities are laid down by an Act.’

¹⁰ The size of the municipalities in Finland varies very much, from small rural municipalities with some hundreds of inhabitants to city-like municipalities with more than 500,000 inhabitants.

¹¹ ‘The decision-making of a co-operation area shall be arranged so that it is based on the number of inhabitants participating in the co-operation area, unless the municipalities agree on something else.’

¹² ‘The President of the Republic makes decisions in Government on the basis of proposals for decisions put forward by the Government. If the President does not make the decision in accordance with the proposal for a decision put forward by the Government, the matter is returned to the Government for preparation. Thereafter, the decision to submit or to withdraw a government proposal shall be made in accordance with the Government’s new proposal for a decision.’

not without problems, because the decision concerning the submission of a Bill to the Parliament is formally made, according to section 58, sub-sections 1 and 2, by the President of the Republic and not by the Council of State.¹³ Therefore, the Committee was of the opinion that the first proposal must absolutely be amended so that it is in line with section 58 of the Constitution. Only after such an amendment of the relevant part of the first proposal could the Bill in this respect be enacted pursuant the procedure for enactment of an ordinary Act of Parliament.

The Administration Committee changed the first proposal in accordance with the constitutional remarks of the Constitutional Committee so that the entire Bill can be passed by simple majority instead of qualified majority.¹⁴ The last sentence of section 5(2) of the first proposal was deleted altogether. Section 9(4) of the first proposal was amended so that the provision does not anymore identify the organ which should submit a Bill to the Parliament, but formulates only an obligation to submit a Bill, which means that the Bill will, under section 58 of the Constitution, be submitted by the President in accordance with the normal procedure. In addition, the Administration Committee complemented paragraph 6 in section 1 of the first proposal concerning the linguistic rights of the Sami, making the point that in planning and implementing measures according to the Act, attention shall be paid to the linguistic rights of the Sami as well as to the right of the Sami as an indigenous people to maintain and develop their own language and culture and to the self-government of the Sami concerning their language and culture in their homestead area.

The Administration Committee accounted also for the provisions in the Bill that take into account the linguistic rights of the Finnish and Swedish speaking population¹⁵ and concluded that the provisions are relevant under section 122(1) of the Constitution.¹⁶ The Administration Committee notes that the provision does not contain a similar reference to a general aim to create unilingual jurisdictions as the previous Form of Government (Constitution) Act. The Committee thereafter refers to the opinion of the Constitutional Committee, which makes the point that during the enactment of the Constitution, it was considered important that when the administration is organized, attention is paid to the linguistic rights in section 17 of the Constitution and that the possibilities for the Finnish and Swedish speaking population to receive services in their own language are ensured. The Administration

¹³ The Committee felt that it is another matter that the President makes his or her decisions on the proposal of the Council of State and that the President, if refusing the proposal of the Government once, can not refuse the same proposal a second time, but is obliged to submit the Bill in accordance with the renewed proposal of the Council of State.

¹⁴ Förvaltningsutskottets betänkande 31/2006.

¹⁵ Section 1, para. 5; section 5.5, para. 2; and section 6.4.

¹⁶ 'In the organisation of administration, the objective shall be suitable territorial divisions, so that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language on equal terms.'

Committee also refers to the statement of the Constitutional Committee given during the enactment of the Constitution,¹⁷ where the Constitutional Committee made the point that linguistic circumstances may constitute such special reasons because of which it is possible to deviate from jurisdictional divisions which otherwise would be suitable. These interpretative observations by the Administration Committee express the direction that the implementation should take after the Act has been passed and entered into force.

After the Administration Committee submitted its statement to the Parliament, the Bill was dealt with in the two readings. No amendments were made in plenary to the text of the proposal as it had been finalized by the Committee. In the second reading on 17 January 2007, the Act was adopted pursuant to the procedure prescribed by section 72 of the Constitution for the enactment of ordinary Acts. The framework Act is temporary in nature and will, after entering into force on 1 February 2007, remain in force until the end of 2012.

3. Re-districting and Re-shaping Administrative Jurisdictions

At the same time as municipalities perform most of the tasks of the public administration at the local level and while they are also important at the regional level, the state administration at the local and the regional level has, in spite of its proportionally speaking smaller size in comparison with municipalities, traditionally been very fragmented.¹⁸ In two different Bills, the Government proposed measures aimed at a reform of the state administration at the local level.

¹⁷ Grundlagsutskottets betänkande 10/1998.

¹⁸ The fragmentation of state administration at the local and regional level is stunning (although the individual in need of the services of the administration rarely needs to become aware of this). In 2005, tasks of the police, prosecution, executory and magistrate were taken care of in 77 counties as sections of county administration. In 13 counties, separate authorities existed for these tasks. The local police was organized as a *police department* in each county under the direction of the provincial government either as a section of the county administration or as a separate administration in the county, with the exception of the police department in Helsinki county, which is a local authority directly subordinated to the Ministry of Interior. After the county reform in 1993, there has existed 90 police departments, of which the police departments in 13 counties function as a separate authority and in 77 counties as a section of the county administration. At the moment, there exist positions as sheriff in 7 counties. The local *prosecutors* work in separate offices of the prosecutor or at the prosecution sections of the county administrations, which are 64 altogether. On the Åland Islands, there is, in addition, an office of the regional prosecutor. Of the local prosecutorial units, almost half are units with only one or two prosecutors. The Ministry of Justice has established 16 areas of co-operation for the prosecutorial units, and at these, the Prosecutor-General has the competence to order how the co-operation is to be organized. There existed 65 *executory districts*, of which 14 (including the Åland Islands) are separate administrations and 51 joint administrations, that is, sections of the county administrations. The division in the executory districts is based on

In the first Bill No. 229/2005 concerning the Act on the administration of registers and some Acts containing provisions concerning the competence of the magistrate, the aim is, *inter alia*, to enhance the efficiency, increase the level of competence and unify the decision-making praxis of magistrates. In relation to some of the functions of the magistrate,¹⁹ the first Bill implies that the territorial jurisdictions of the magistrates are abolished so that the magistrate constitutes in relation to these tasks one public authority with service offices in different parts of the country. As a consequence, the tasks are organized within one public authority with one territorial jurisdiction covering the whole country so that there is a distribution of tasks between the different service offices. The Parliament referred the Bill to the Administration Committee of the Parliament, which was instructed to request an opinion from the Constitutional Committee.

The Constitutional Committee felt in its Opinion No. 24/2006 that the first Bill raised issues in relation to two provisions in the Constitution, namely section 21(1) on protection under the law and section 80(1) on the power to issue Decrees (it is remarkable that the Committee did not make any explicit connection between the first Bill and section 17 of the Constitution on the right to one's own language and culture). The Committee accounted for its earlier opinions on similar matters and found that the Bill can be dealt with in the order prescribed for the adoption of an ordinary Act of Parliament, that is, adoption by simple majority in the second reading. However, the Committee at the same time formulated a few recommendations for the Administration Committee. One of the recommendations made the point that there should be a provision in the Act according to which the individual whose application is being dealt with by the organization is entitled to be informed of the fact that her or his application has been transferred from the magistrate at which it was originally filed to another magistrate for processing and decision-making. The second recommendation dealt with the possibility for the Ministry of the Interior to determine the tasks which can be concentrated to one or several magistrates. The Committee was in principle satisfied with the proposal, but felt

the division of the country into counties in spite of the fact that the executory tasks is taken care of in 26 counties by the executory authority of another county on the basis of the rules of the Ministry of Interior concerning co-operation of 1996 (21 counties) and of 2003 (5 counties). The executory administration had 146 different offices where staff of the executory authorities worked permanently (65 main offices and in addition 75 service offices and 48 service points where staff is available at certain times or at request). There existed 37 *magistrates* of which 14 also had 1-4 external service units. The service network of the magistrates consisted of altogether 59 places in mainland Finland where services were offered, while on the Åland Islands, the functions of the magistrate is performed by the provincial government of the Åland Islands. The jurisdiction of each magistrate covers one or more counties. Of the magistrates, 24 were sections at the county administration and 13 were separate authorities. The information is based on the report of the Council of State *Statsrådets redogörelse för central-, regional- och lokalförvaltningens funktion och utvecklingsbehov: Bättre service, effektivare förvaltning* (SRR 2/2005).

¹⁹ The functions according to the Act on the administration of registers, Act on home municipality, Act on names, Act on paternity and Act on inheritance.

that it could be made more specific by stipulating that a magistrate that has received an application can also be the magistrate that makes the decision in the matter. In a third recommendation, the Committee underlined that the provisions of the Act should make sure that applications filed in the Swedish language are transferred to a magistrate at which it is certain that they will be dealt with in Swedish. Hence at the end, some concerns in the ambit of section 17 of the Constitution were raised by the Constitutional Committee, although the constitutional provision was not identified as a source of a potential problem.

The Administration Committee inserted the first and the second recommendation into the relevant parts of its statement to the plenary, and the first Bill was enacted into law accordingly.²⁰ The third recommendation on the language did not cause any reaction in the Administration Committee, and it is only to be hoped that the reform to this extent does not thwart the linguistic rights of the Swedish-speakers in Finland.

In the second Bill No. 72/2006 concerning on the Act on the administration of the police and some other Acts that are related to it, the aim is, *inter alia*, to organize the local police departments in accordance with counties so that the jurisdiction of a police department in the county covers one county or several counties and to grant the Council of State the powers to determine those police departments in a specific county the jurisdictions of which cover several other counties.²¹ The Parliament referred the Bill to the Administration Committee of the Parliament, which was instructed to request an opinion from the Constitutional Committee.

The Constitutional Committee felt in its Opinion No. 29/2006 that the second Bill raised issues relevant for re-districting of administrative jurisdictions in relation to three provisions in the Constitution, namely section 17 on the right to one's own language and culture, section 119 on state administration and section 122(1) on administrative divisions with respect to the Finnish and Swedish languages. Here it is possible to see the linguistic dimension, which should have been relevant also in relation to the first Bill. Starting with section 119, the Constitutional Committee concluded that the state can have, on the top of administrative units at the central level, also regional and local authorities. This fairly general provision is aiming at facilitating a flexible development of the state administration, and in comparison with the rule in the previous constitutional document, the Form of Government (Constitution) Act of 1919, the current Constitution, in force since 1 March 2000,

²⁰ Act on the amendment of the Act on the administration of registers (956/2006), Act on the amendment of sections 7e and 9 of the Act on home municipality (957/2006), Act on the amendment of the Act on names (958/2006), Act on the amendment of the Act on paternity (959/2006) and Act on the amendment of the Act on inheritance (960/2006). The first amending Act enters into force on 1 January 2007 and the others on 1 March 2007.

²¹ The second Bill also deals, *inter alia*, with the tasks of the technical centre of the police, the Act on firearms, the Act on private security services, and the Act on police training, but they have no bearing on state administration at the local or regional level and they are, therefore, not dealt with here.

does not anymore contain any provision requiring that the administration of the state shall be organized according to the division into provinces and counties. It is according to the Committee sufficient that the Parliament defines by means of an Act the fundamental principles concerning the regional and local administration of the state and that the more specific provisions are passed by means of Decrees. The Committee also stated that the decision concerning the municipality in which a unit of state administration is located can be made by means of an administrative decision of a Government Ministry. This relaxed framework for the creation of administrative sub-structures at the regional and local level is, however, affected by linguistic concerns. The Constitutional Committee finds that the second Bill is in line with section 122(1) of the Constitution concerning the principle of the organization of the administration and goes on to hold that when the local police is organized, it is to be taken into consideration that the jurisdictional division is suitable. This should be the case particularly in relation to the jurisdictional divisions of the alarm centres and prosecutors.²² The Committee underlined that the districts of the local police should be drawn so that the availability of those police services which are necessary for the security of the citizens are guaranteed and that the linguistic rights under section 17 of the Constitution are realized. With this recommendation, the Constitutional Committee found that the second Bill can be passed into an Act of Parliament in the order prescribed for ordinary Acts.

The Administration Committee was this time more concerned about the linguistic dimension and decided to reformulate the tasks of both the central and regional administration of the police and the local police so as to underline the importance of the equal availability of police services to the citizens. The point of the Administration Committee is that police services shall be guaranteed near the citizen in both national languages, Finnish and Swedish, according to the local linguistic circumstances. This is so because the Language Act (423/2003) guarantees the right established for everyone in section 17(1) of the Constitution to use his or her own language, either Finnish or Swedish, before courts of law and other authorities. The Committee emphasized the requirement that was already included by the Government in the Bill that there should also in the future exist such police departments in Finland which use the Swedish language as their work and office language.²³ In addition,

²² As concerns the prosecutors, information in the press (Åbo Underrättelser on 19 December 2006, p. 13) indicates that the 63 prosecutor's districts will be cut down to 15 in the whole country and that none of the prosecutor's districts in mainland Finland will have Swedish as the language of the population majority. Instead, the intention is that in some districts, Swedish-speaking prosecutors will be appointed. It seems that the internal working language of those prosecutor's districts which today exist in areas with Swedish as the majority language will, apart from the Åland Islands, turn into Finnish.

²³ As concerns police districts, information in the press (Åbo Underrättelser on 19 December 2006, p. 13) reveals that the Provincial Governments have made a proposal with a view to a reform that could enter into force in 2009 meaning that the 90 police districts of the country would be merged into 30 police areas. The reform would have as a consequence that none of the police areas in

the Administration Committee stressed the linguistic rights of the Sami according to the Sami Language Act (1086/2003) and held that services of the police shall also be guaranteed in the Sami language in the native area of the Sami, that is, in the northernmost part of Finland. The Parliament enacted the second Bill to the extent dealt with here on 8 December 2006 by simple majority.²⁴

4. Åland Islands in The European Union

4.1. Self-Government and EU Membership

The Åland Islands is a self-governing and autonomous territory in Finland which is unilingually Swedish-speaking and which has a Legislative Assembly of its own vested with exclusive law-making powers in areas which in general terms encompass public law, while the general private law matters can be presumed to belong to the competence of the Parliament of Finland.²⁵ This division of law-making powers is not without exceptions, but a presumption exists that matters of public law belong to the competence of the Legislative Assembly of the Åland Islands. The competences encompass such areas as social affairs and health, education, agriculture, fisheries, police, environment, traffic and culture. Therefore, none of the legislative matters dealt with above affect the self-government authorities of the Åland Islands.

The Åland Islands were granted autonomy already in 1920, but because of a dispute between Finland and Sweden since 1917 on the basis of the explicitly expressed wish of the inhabitants of the Åland Islands to belong to Sweden instead of Finland, the matter of national affiliation of the Islands was decided by the League of Nations in June 1921. The Settlement agreed to by Finland and Sweden before the Council of the League of Nations recognized the Åland Islands as a part of Finland, but on the basis that certain guarantees for the maintenance of the Swedish character of the Islands were inserted into the Self-Government (Autonomy) Act of 1920.²⁶ The guarantees, established through the so-called Guaranty Act of 1922,

mainland Finland would have Swedish as the internal working language. The matter will be prepared by a governmental working group and the reform, with or without linguistic concerns, will be effectuated by means of a Decree on the basis of the Act on the administration of the police.

²⁴ The Act was promulgated under the Act number 100/2007 for entering into force on 1 March 2007.

²⁵ Concerning the Åland Islands, please see Markku Suksi, *Ålands konstitution*. Åbo: Åbo Akademis förlag, 2005.

²⁶ The Åland Islands Settlement from 27 June 1921 should not be confused with the so-called Åland Islands Convention of 20 October 1921, that is, the Convention on the non-fortification and neutralization of the Åland Islands, which was concluded between Germany, Denmark, Estonia, Finland, France, Great Britain, Italy, Latvia, Poland and Sweden. In addition, Finland and the

encompassed, *inter alia*, a preferential right of the legal residents to purchase real property and a right for those who have been legal residents during the last five years and who are Finnish citizens to vote in elections to the Legislative Assembly and municipal councils as well as a provision that the authorities of the self-government or municipalities on the Åland Islands shall not be obliged to maintain other schools than those in which Swedish is the language of instruction. This commitment did not become a formal treaty under international law, and after the collapse of the League of Nations, the commitment can now be considered to be valid between Finland and Sweden under customary international law. The exclusive rights of the inhabitants of the Åland Islands were expanded in the Self-Government (Autonomy) Act of 1951 by way of domestic decisions made by the Parliament of Finland with provisions on regional citizenship on the basis of five years uninterrupted residency and right of establishment of business. The current Self-Government (Autonomy) Act (1144/1991) was enacted in 1991. The Constitution of Finland refers to the self-government of the Åland Islands in sections 75²⁷ and 120.²⁸

The Åland Islands joined the European Union on 1 January 1995 together with Finland. Because the Legislative Assembly of the Åland Islands shall, under section 59(1) of the Self-Government (Autonomy) Act, give its consent to such an international treaty that Finland wants to conclude which affects the legislative competences of the Legislative Assembly, the accession negotiations between Finland and the EU were conducted so that a separate Protocol dealt with the Åland Islands. The underlying idea was to make it possible for the Åland Islanders to join the EU together with Finland on the basis of this Protocol or to make it possible for the Åland Islanders to remain outside of the European Union. The Åland Islands chose the first alternative after an advisory referendum and by a decision of consent made by the Legislative Assembly. Because Protocol 2 on the Åland Islands is a part of the Accession Treaty of Finland, it is at the same time part of the primary law of the EC. The Preamble refers to the special position of the Åland Islands under international law and gives this position as a reason for the exceptions outlined in the Protocol. Article 1 of the Protocol establishes as acceptable exceptions to the principles of EC law that the Åland Islanders shall have the special rights to purchase and possess real property and that certain limitations shall apply to non-Ålanders in respect of the right of establishment and provision of services. The

Soviet Union concluded in 1940 a separate treaty concerning the Åland Islands with a view to the non-fortification and neutralization of the Islands.

²⁷ 'The legislative procedure for the Act on the Autonomy of the Åland Islands and the Act on the Right to Acquire Real Estate in the Åland Islands is governed by the specific provisions in those Acts.

The right of the Legislative Assembly of the Åland Islands to submit proposals and the enactment of Acts passed by the Legislative Assembly of Åland are governed by the provisions in the Act on the Autonomy of the Åland Islands.'

²⁸ 'The Åland Islands have self-government in accordance with what is specifically stipulated in the Act on the Autonomy of the Åland Islands.'

Article also contains a so-called stand still rule, which prohibits the creation of such new special rights for the Åland Islanders that could in one way or the other constitute a breach of EC law. The Åland Islands is, under Article 2, a so-called third country as concerns the application of the harmonization directive concerning indirect taxation. The Member States of the EU have also committed themselves to respecting the provisions of the Åland Islands concerning the right to vote and to stand in municipal elections,²⁹ and the Finnish Government has submitted a unilateral declaration recorded in the minutes of the inter-governmental conference which confirms the special status of the Åland Islands under constitutional law and public international law.³⁰

The exceptions in Protocol 2 affect areas which in practice are minor from the perspective of the legislative powers of the Åland Islands. However, after accession to the EU, it has become completely clear to the Åland Islanders that membership in the Union affects the legislative powers of the Legislative Assembly in a most profound way. Although the Government of the Åland Islands has the right to participate in many ways in the preparation of Finnish positions concerning decisions of the EU and the European Court of Justice,³¹ although the Government of the Åland Islands appoints one of the Finnish representatives in the Committee of Regions and although one civil servant of the Åland Islands is included among the staff of the Permanent Representation of Finland to the EU, still the conviction has grown in the Åland Islands that the legislative competences that belong to the Åland Islands under the Self-Government (Autonomy) Act have been drained and transferred not only to the EU but also in practice to the Government of Finland. The main reason for this perception is the fact that the EU is mainly engaging in

²⁹ The right of the EU citizens to vote and to stand for election in local government elections does not extend itself to the elections of the Legislative Assembly of the Åland Islands.

³⁰ Finland's request and EU common position on Åland at the accession of Finland to the European Union 1994/Conference on accession to the European Union, CONF-SF 20/94, paragraph b-4: 'Taking into account the special status that the Åland Islands enjoy under international law, the Union [...] can accept the inclusion in the minutes of the Conference of the following unilateral declaration by Finland recalling the special status of the Åland Islands: 'The Government of Finland recalls that the autonomy of the Åland Islands is constitutionally guaranteed to its inhabitants in the Constitution of Finland and Finnish legislation on the autonomy on the basis of International law in pursuance to the Resolutions of 24 and 27 June 1921 on the Åland Islands of the Council of the League of Nations and that the Åland Islands are the subject of an established status under International law.'

³¹ The Government of the Åland Islands has the right under section 59a(1) to participate in the national preparation in the Council of State of the Finnish position concerning decisions to be made in the European Union, formulates under section 59a(2) the Finnish position in respect of a decision of the EU on the implementation of the common EC policy concerning the Åland Islands to the extent it would belong to the competence of the Legislative Assembly, shall under section 59a(3) be informed by preparation of matters within the EU that affect the competence of the Legislative Assembly and given the possibility to participate in the work of the Finnish delegation to the EU on such matters.

a dialogue with the Governments of the Member States, leaving the sub-national actors aside. However, this perception is also supported by Commission statistics concerning the implementation of EC law in Member States, which normally faults Finland as the Member State for insufficient implementation in its territory of a few directives because of the failure of the Åland Islands authorities, including the Legislative Assembly, to enact implementing legislation within the time-frame established in a directive or up to the established minimum contents of a directive.³² In addition, a number of cases regarding the implementation of EC law have established legally through judgments of the ECJ the liability of Finland in respect of issues that are under the control of the Legislative Assembly and the Government of the Åland Islands. These cases have reinforced the opinion among a good portion of the Åland Islanders that membership in the EU is not beneficial for the Åland Islands.

4.2. Failure to Fulfil Obligations Under EC Law

A number of actions for failure to fulfil obligations have been brought by the European Commission against the Republic of Finland before the ECJ because of implementation problems in the Åland Islands.³³

- C-344/03 on failure to fulfil the condition laid down in Article 9(1)(c) of Council Directive 79/409/EEC on the conservation of wild birds, as amended by the accession treaty (the so-called *Spring hunting* decision; this case also dealt with spring hunting in mainland Finland);
- C-327/04 on failure to implement Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Equal treatment*);
- C-107/05 on failure to Implement Directive 2003/87/EEC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (*Greenhouse gases*);
- C-343/05 on failure to ensure transposition by Åland of Article 8a of Directive 89/622/EEC on the approximation of the laws, regulations and administrative

³² The implementation problems are mainly due to the small number of staff working with law-drafting in the bodies of the Åland Islands. The issues arising on the basis of directives are complex and require a high input of personal resources for a materially and timely implementation, but if this can not be done, one feasible solution that has been used is to bring into force the text of the directive, for instance, by a reference to the directive itself or by enacting an Ålandic act which brings into force in the Åland Islands the provisions of an Act enacted by the Parliament of Finland for mainland Finland. See also *Ålands landskapsregerings meddelande till lagtinget* nr. 1/2006-2007, section 4.2.2.

³³ The Case C-99/05 was stricken out of the list of cases after the Åland Islands had implemented the directive while the case against Finland was pending at the Court.

provisions of the Member States concerning the labelling of tobacco products, as amended by Council Directive 92/41/EEC, amended by Article 8 of Directive 2001/37/EC on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, and observance on vessels registered in Finland of the prohibition on placing on the market of snuff laid down by that provision (*Oral tobacco*);

- C-152/06 on failure to implement Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (*Hazardous electrical equipment*);
- C-154/06 on failure to implement Directive 2003/108/EC amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE) (*Waste electrical equipment*);
- C-159/06 on failure to implement Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (*Assessment of environmental effects*).

In all cases, the Republic of Finland was found to be in violation of EC law because of lack of implementation or faulty implementation at the Åland Islands. In addition, Case number C-292/03 on failure to implement Directive 2000/53/EC on end-of-life vehicles concerns both mainland Finland and the Åland Islands and mentions the late implementation on the Åland Islands, which eventually took place, but later than in mainland Finland.³⁴

Two of the above-mentioned judgments of the ECJ, the *Spring hunting* case and the *Oral tobacco* case have caused animated reactions on the Åland Islands, because they touch upon Ålandic traditions or deep-rooted habits. In the *Spring hunting* case, the problem dealt with the traditional hunting of seven species of migratory sea-birds during their return to the rearing grounds and during their period of reproduction. The local population in the Åland Islands (and also in the South-Western parts of mainland Finland) have traditionally hunted these species in the spring, but the directive only allows this if there is no other satisfactory solution other than spring hunting and if the birds are taken in small numbers, defined by a committee (the ORNIS Committee created under the directive) to mean around 1 per cent of the average annual mortality rate of the species in question. The Government of the

³⁴ On the top of these cases on failure to implement, it should be mentioned that the Administrative Court of the Åland Islands, which is a state court and as such a part of the ordinary court system of Finland, has requested on preliminary ruling from the ECJ. The Case C-42/02 dealt with the question of whether Article 49 EC prohibits such legislation in a Member State under which winnings from games of chance organized in other Member States (in this case Sweden) are treated as income of the winner chargeable to income tax, whereas winnings from games of chance conducted in the Member State in question are not taxable. The ECJ found that this indeed was the case.

Åland Islands and the Government of Finland run separate régimes of hunting licenses on the basis of their respective legislative competences under sections 18 and 27 of the Self-Government (Autonomy) Act, and the hunting authorities of both jurisdictions have granted proper permits for shooting of the birds. However, the Commission received complaints concerning the spring hunting and therefore action was brought before the ECJ. Already during the first stages of the process involving the formal notice and the reasoned opinions from the Commission to the Government of Finland, those affected at the Åland Islands, that is, mainly men who in the modern society have hunting as a hobby, made the point that this is an intolerable intrusion into their right to hunt and into the historical tradition of spring hunting in the archipelago, something that had always existed and that had an importance for subsistence (the issue of spring hunting was always less important in mainland Finland and never reached the same intensity of political discussion). The point was also made that the hunters contribute to the preservation of the species by decimating such small predators which threaten especially the nesting and by assisting in the creation of nesting places. The ECJ, however, found that only one of the seven species fulfilled the condition that there was no other satisfactory solution, but that species was not among those for which the condition of taking of birds in small numbers was fulfilled. It thus seems that spring hunting is allowed under EC law in relation to one species, the long tailed duck, but in much smaller numbers than previously and, as also required by Article 9(1)(c) of the Directive, under strictly supervised conditions and on a selective basis. As concerns the other species and their being hunted in the spring, the court ruled that Finland had failed to fulfil its obligations under the relevant directive. Hence the tradition of spring hunting can be expected to come to an end at the Åland Islands or at least to decrease drastically.

The *Oral tobacco* issue deals with the fairly wide-spread habit in Sweden and amongst the Swedish-speaking population in Finland to use oral tobacco instead of or parallel to smoking cigarettes. The habit of using oral tobacco is evidently so important that it caused an exception to be inserted for Sweden on the basis of Article 151 of the Accession Treaty,³⁵ specified in Annex XV, letter X (Miscellaneous), to the Accession Treaty, concerning Council Directive 89/622/EEC on the labelling of tobacco products and the prohibition of the marketing of certain types of tobacco for oral use, as amended by Article 8 of Directive 2001/37/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products. In effect this means that whereas oral tobacco is a legal product in the Swedish market, oral tobacco is forbidden elsewhere in the EU, including the Åland Islands and the Swedish-speaking parts of Finland. Oral tobacco is, however, a product that is and has been for sale on the ferry-boats operating between Sweden and Finland. The ferry-boats that have been offering oral tobacco have been registered both

³⁵ OJ C 241, vol. 37, 29 August 1994.

in Sweden and in Finland.³⁶ After a formal notice and a reasoned opinion by the Commission, the Government of Finland replied that the prohibition of marketing of oral tobacco had been implemented and observed in mainland Finland. However, the Government concluded that under the Self-Government (Autonomy) Act, the matter belongs to the legislative competence of the Åland Islands. The Government of Finland thus agreed with the findings of the Commission that the prohibition of marketing of oral tobacco is not implemented in the Åland Islands and that the prohibition is not observed on vessels registered at the Åland Islands. The ECJ found in its judgment that Finland had failed in its obligation to comply with its obligation under the Treaty and the directive, because Finland as a Member State 1) has not ensured that the Åland Islands has made the contents of Article 8a of the directive a part of its legislation and 2) has not ensured that the prohibition of marketing of oral tobacco is complied with on vessels registered at the Åland Islands. It is interesting in the context that it seems to be completely clear for the ECJ that registration of vessels in the separate ship register of the Åland Islands, a register which is not maintained by the authorities of the self-government or autonomy but by the state of Finland on the Åland Islands, has the legal consequence that the legal order of the Åland Islands follows on board of the vessels registered at the Åland Islands even when the vessel is outside the territorial waters of Finland and the Åland Islands.

The case principally means that while ferry-boats registered in Sweden and trafficking on the Åland Islands are allowed to continue to market oral tobacco on the basis of the exception established for Sweden in the Accession Treaty, the Ålandic vessels operating on the same routes are prohibited from marketing the oral tobacco. The economic interest of the sale of oral tobacco on the Ålandic vessels has been estimated to be around 6 million Euros, which may now be lost, while the Swedish competitors can develop the sale of oral tobacco into a competitive advantage, potentially affecting also the number of passengers of Ålandic ferry-boats in a negative way. As a consequence and with regard to the slim economic margins due to the fairly harsh competition between the ferry-lines, ship-owners on the Åland Islands operating ferry-boats between Finland and Sweden may be compelled to change the flag of their ship from Finnish (and Ålandic) to Swedish. Such a change of flag would, as a further consequence, affect the tax status of the Ålandic employees on the vessels, decreasing the amount of tax that the local government on the Åland Islands will be able to collect from those employed on the ferry-boats and ultimately causing a negative development in public finances at the Åland Islands. It is actually incredible that such a trivial issue as oral tobacco

³⁶ In so far the vessel is registered in Sweden, it can be asked whether or not Sweden is complying with one of the conditions of the exception concerning oral tobacco, namely with paragraph (b) of letter X in Annex XV, which says that the Kingdom of Sweden 'shall take all measures necessary to ensure that the product referred to in paragraph (a) is not placed on the market in the Member States for which Directives 89/622/EEC and 92/41/EEC are fully applicable'. Those directives are fully applicable in Finland, including the Åland Islands.

and the exception under EC law concerning the prohibition of its marketing in one Member State has the potential to threaten a whole segment of economic activity in the neighbouring country and in a very special part of it.

The Government of the Åland Islands took action on the matter by proposing to the Legislative Assembly a Bill amending the tobacco legislation of the Åland Islands. The Bill contains a provision according to which it is prohibited to sell oral tobacco or to carry out business transactions involving oral tobacco. The Bill contains a separate provision according to which the prohibition is applicable also on vessels registered in the province of Åland while they remain in the territorial waters of the Åland Islands and Finland. The Legislative Assembly agreed to this on 25 September 2006 after a specification of the extent of the territorial waters of the Åland Islands. This separate provision seems to imply that vessels registered in the province of Åland may sell oral tobacco while they remain in international waters or in the territorial waters of such a third country in which oral tobacco is allowed, that is, in Swedish territorial waters. The Åland Islands Delegation, which is a joint committee with representatives from the Åland Islands and mainland Finland with the task of controlling as a first instance the compliance of the legislative decision of the Legislative Assembly with the division of competence between the Åland Islands and mainland Finland, concluded on 23 October 2006 that there is no legal obstacle to be found in the Self-Government (Autonomy) Act to the entering into force of the piece of law. As a second instance of competence control, the Supreme Court of Finland reviewed the matter on 13 December 2006 and expressed doubts of whether the prohibition is as extensive as the directive and the decision of the ECJ indicate but concluded that the legislative decision did not breach the definition of the legislative competence of the Legislative Assembly as established in the Self-Government (Autonomy) Act. With a view to the Opinion of the Supreme Court, the President of Finland decided on 16 January 2007 not to exercise her absolute veto powers in respect of any of the provisions in the legislative decision, which means that the new provisions of the Ålandic tobacco legislation could enter into force on 1 February 2007 after the promulgation of the provisions by the Government of the Åland Islands on 11 January 2007.³⁷

It remains to be seen whether the European Commission agrees with the new legislation. If the Commission does not agree, the next step would seem to be to bring the case again to the ECJ on the basis of Art. 228(3 and 4) for the determination of a lump-sum and/or a penalty payment and an imposition of such a sum. The interesting point here is that under EC law, such a sanction is to be paid by the Member State, in this case Finland, and is determined, *inter alia*, in relation to the GDP of the Member State and the relative weight of its votes in the Council. This means that it is the Republic of Finland that would be fined according to these indicators, not the much smaller sub-state entity of the Åland Islands. As a consequence of this, the issue of the internal distribution of the fine between Finland

³⁷ See Landskapslag om ändring av tobakslagen för landskapet Åland (4/2007).

and the Åland Islands under section 59 d of the Self-Government (Autonomy) Act concerning the liability of the Åland Islands would arise,³⁸ for the first time ever.

4.3. Ålandic Proposal for a Special Seat in the European Parliament

The cases implicating the Åland Islands in the actions against Finland have confirmed the authorities of the Åland Islands in the belief that the European Union only talks to the Member States and does not pay much attention to the specific situations and special legal orders at a sub-national level, an assertion which certainly deserves sympathy. Against the background of this understanding, the Legislative Assembly of the Åland Islands decided to make a bold move and to use its right under section 22(1) of the Self-Government (Autonomy) Act to present a Bill to the Parliament of Finland on issues that belong to the legislative autonomy of the Finnish Parliament,³⁹ requesting that the Finnish Act on elections (714/1998) be amended so as to reserve one seat of the 14 MEPs to be elected from Finland for the constituency of the Åland Islands.⁴⁰ Under the current rule, Finland is one constituency for the purposes of election of the 14 MEPs, but the Ålandic proposal makes the case for electing 13 MEPs from mainland Finland and one from the Åland Islands.⁴¹ In this way, it is perceived that the Åland Islands would gain compensation for the loss of legislative competence and political voice in the European Union.

The system proposed by the Legislative Assembly as concerns the elections to the European Parliament is essentially the same as is in place since 1947 at the national

³⁸ Section 59 d, para.1: 'If the Court of Justice of the European Communities has rendered Finland liable to pay a fixed compensation, a conditional fine or some other comparable pecuniary sanction, Åland shall be liable for that sanction *vis-à-vis* the State in so far as it has arisen from an act or omission on the part of Åland.' Section 59 d, para.2: 'The State and Åland may seek a settlement regarding the amount of the liability referred to in paragraphs 1-3. A dispute as to the liability may be brought before the Åland Administrative Court as a matter of administrative litigation as provided in chapter 12 of the Act on Administrative Judicial Procedure (586/1996) and above in this section.'

³⁹ Övrigt ärende 3/2006, Regeringens skrivelse till Riksdagen med anledning av Ålands lagtings initiativ som innehåller förslag till lag om ändring av vallagen.

⁴⁰ The initiative also raised two other issues, namely the participation of the Government of the Åland Islands in the control of the implementation of the principle of subsidiarity and the standing of the Åland Islands before the ECJ. However, these additional issues were not framed in the form of legislative proposals.

⁴¹ There is one similar arrangement in place, namely concerning the German-speaking population of Belgium, which has one reserved seat in the European Parliament. See Loi du 23 mars 1989 relative à l'élection du parlement européen (coordination officieuse jusqu'au 1 mars 2004)/Wet van 23 maart 1989 betreffende de verkiezing van het Europees parlement (officieuze coördinatie tot 1 maart 2004), Articles 9 and 10.

level for elections to the Parliament of Finland. Currently, under section 25(2) of the Constitution of Finland and section 68 of the Self-Government (Autonomy) Act, the Åland Islands forms one constituency for the purposes of electing one Member of Parliament to the Finnish Parliament. Hence from the Ålandic constituency, only one MP is elected, and the natural electoral system would be first-past-the-post as practised in Britain in Parliamentary elections or an election with two rounds as, e.g. in France. Preferential voting systems could also be relevant. The Ålandic electoral system for parliamentary elections is none of these, but could instead be described as a first-list-past-the-post. Namely, under the Election Act, the election of the one MP takes place under a very peculiar electoral system which in principle replicates the system of proportional elections with open lists in multi-member constituencies distributed according to the d'Hondt method used in mainland Finland. In the Åland Islands, under the expectation that lists of maximum four persons are submitted, persons with the right to vote, that is, persons who fulfil the qualification of being citizens of Finland of at least 18 years of age (and who thus do not have to be in the possession of the regional citizenship), vote for one person on the list. The person on the list who gets most votes in the election will, for the purposes of establishing the relative numbers of votes, receive all votes of the list, the second half of the votes, the third one-third of the votes and the fourth one-fourth of the votes. The person ranked first on the list which receives most votes will receive the mandate as MP.

The question is whether this same system would work in the elections for the European Parliament. From the national point of view, the remark can be made that the Bill initiated by the Legislative Assembly does not involve a proposal to amend either the Self-Government (Autonomy) Act or the Constitution of Finland so as to create the Åland Islands as a single-member constituency for the purposes of the European Parliament elections. Hence the Bill contains no proposal to create a constitutional basis for the guaranteed seat in the European Parliament. This can be viewed as a problem under the current Constitution, although this was not the case in 1946. From the point of view of EC law relevant for the matter, reference can be made to Council Decision of 25 June and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, which in Article 1 establishes that the elections to the European Parliament shall be carried out by way of proportional representation, using the list system or the single transferable vote, and under Article 7(1), according to which the electoral procedure shall be governed by the national provisions of each Member State subject to the provisions of the Council Decision. On the one hand, Article 2 of the Council Decision allows that a Member State establishes constituencies for elections or subdivides its electoral area in a different manner, however, without generally affecting the proportional nature of the system. This is sustained by Article 7(2), which underlines that the national provisions may, if appropriate, take account of the specific situation in the Member State. However, taking into account such a specific situation shall not affect the essentially proportional nature

of the voting system. Against this background, it is possible to raise doubts about the conformity of the proposed Ålandic election system with EC law, because it would create a massive imbalance in the proportion of representation per mandate in the European Parliament between the one mandate designated for the Åland Islands with around 26000 inhabitants on the one hand and the thirteen mandates designated for mainland Finland with around 5.2 million inhabitants. It is also possible to refer to a potential source of complication in Article 25 of the UN Covenant on Civil and Political Rights, which in letter b) establishes a human right to participate in elections and in c) a right to have access, on general terms of equality, to public service in his country. In the matter of *Istvan Mátyus v. Slovakia*,⁴² the UN Human Rights Committee concluded that Slovakia had violated Article 25 of the Convention when allowing a town to be divided for the purposes of local elections into a number of constituencies of very different sizes, some of which sent one representative for more than one thousand inhabitants to the local council, while others sent one representative for as few as two hundred inhabitants to the local council. Hence there existed several complications for the Bill proposed by the Legislative Assembly of the Åland Islands.

In its Report to the plenary of the Parliament,⁴³ the Constitutional Committee concluded that the Finnish Government represents the Åland Islands in the Council of Ministers at the EC level when the Council deals with matters which also belong to the competence of the Åland Islands and found that the initiative of the Åland Islands is understandable and that the legal order of the Åland Islands should be taken into account in the context. However, the Constitutional Committee was of the opinion that the initiative does not fit well the requirement of proportional elections and the principle of equal suffrage. Rather surprisingly, at the same time, the Committee established that the issue of Ålandic representation in the European Parliament can not be decided on the basis of principles of international law or rules of the Constitution but that the issue is ultimately dependent on a political solution. This may perhaps be interpreted as a life-line the Parliament is throwing in the direction of the Åland Islands. However, on the basis of these grounds and because the number of Finnish MEPs will, because of the Treaty of Nice, be diminished from 14 to 13, the Constitutional Committee proposed that the initiative be disapproved of. The Committee, nonetheless, appended an additional statement according to which it would be important to continue the discussions about the mechanisms of influence for the Åland Islands in the European Parliament at a European level because, *inter alia*, the special position of the Åland Islands in Europe is unique. On 13 February 2007, the initiative was defeated in the Parliament without a vote.

⁴² UN Human Rights Committee, Comm. 923/2000, U.N. Doc. CCPR/C/75/D/923/2000.

⁴³ Grundlagsutskottets betänkande 13/2006.

5. Ratification of the Constitutional Treaty of the European Union with Special Reference to the Åland Islands

The Parliament of Finland gave its consent for the ratification of the draft Constitutional Treaty of the European Union on 5 December 2006 by a vote of 125 in favour and 39 against. The decision was made under section 94(2)⁴⁴ and section 95(2)⁴⁵ of the Constitution, the first requiring a qualified majority for the consent to an international treaty which concerns the Constitution and the second requiring a qualified majority for the incorporation into the national legal order of treaty provisions that concern the Constitution. This basis for the decision-making was recommended by the Constitutional Committee in its Opinion 36/2006, given against the background of the Government Bill 67/2006 on accepting the treaty concerning the constitution of the European Union and on enacting an Act for the bringing into force of those provisions in the treaty which belong to the area of legislation. Although there is only one procedure of decision-making in the Parliament on the substantive issue of the treaty, in theory two different decisions are made, one on the consent and another on the incorporation, of which the latter is of a legislative nature.⁴⁶

As concerns the Act of incorporation, the procedure is framed as an Act of Exception, but instead of the full constitutional enactment procedure prescribed in section 73 of the Constitution, treaties that in one way or the other violate the Constitution are to be enacted pursuant to section 95(2) of the Constitution under the so-called limited constitutional enactment procedure, which applies only to treaties and which does not require that the Act of incorporation is left in abeyance over the next parliamentary election, but allows instead that the Act is enacted in the second reading by a two-thirds qualified majority.⁴⁷ The qualified decision-making

⁴⁴ 'A decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution or an alteration of the national borders, the decision shall be made by at least two thirds of the votes cast.'

⁴⁵ 'A Government bill for the bringing into force of an international obligation is considered in accordance with the ordinary legislative procedure pertaining to an Act. However, if the proposal concerns the Constitution or a change to the national territory, the Parliament shall adopt it, without leaving it in abeyance, by a decision supported by at least two thirds of the votes cast.'

⁴⁶ A proposal to arrange a consultative referendum on the Constitutional Treaty was made in the Parliament, but the Constitutional Committee found that the changes included in the Treaty are not of such a nature that it would be necessary to organize a referendum, although the Committee also recognizes that the referendum issue is very much dependent on political considerations.

⁴⁷ In its Opinion, the Committee reminded itself of the fact that the Act on the incorporation of certain provisions of the Finnish Accession Treaty was enacted in this way of limited procedure of constitutional enactment in 1994 because of many different reasons; one general reason being that the provisions of the Accession Treaty circumscribed the sovereignty of Finland. The Act

formula was recommended by the Constitutional Committee because the common foreign and security policy and the co-operation within criminal law and police matters are brought under the principle of precedence of Community law, because the competence of the ECJ is expanded to the area of criminal law and police matters, because a new European prosecution authority is created and because the European Council is authorized to amend the Constitutional Treaty in a procedure which is not the one envisioned in sections 93-95 of the Finnish Constitution, because the Council may change the decision-making rules within deepened forms of co-operation, because the European law-maker is granted the authority to pass minimum rules concerning the description of a crime and sentences within the area of particularly serious criminality of a trans-border nature, and because the European Council may decide to expand the competence of the prosecutorial authority to such serious criminality which has trans-border dimensions. According to the Constitutional Committee, these are all measures that circumscribe the sovereignty of Finland.

The Constitutional Committee also reviewed the relationship between the Constitutional Treaty of the European Union and the Self-Government (Autonomy) Act of the Åland Islands, which contains two provisions relevant for the incorporation of treaties, namely section 59(1)⁴⁸ and section 59(2).⁴⁹ The Committee stated that such provisions in the Constitutional Treaty are of importance through which the Union assumes competence in matters which belong to the legislative or administrative competence of the Åland Islands.⁵⁰ If such transfer of competence takes place, that

on bringing into force of the Treaty of Amsterdam was enacted in the same way. However, as concerns decisions concerning EU treaty arrangements made after the entering into force of the Constitution of Finland on 1 March 2000, such as the Treaty of Nice and the accession treaties of the new Member States, the treaties have received the consent of the Parliament by simple majority and the treaties have been incorporated by Acts enacted in the order prescribed for the enactment of ordinary legislation.

⁴⁸ 'If a treaty or another international obligation binding on Finland contains a term which under this Act concerns a matter within the competence of Åland, the Åland Parliament must consent to the statute implementing that term in order to have it enter into force in Åland.'

⁴⁹ 'If the term is contrary to this Act, it will enter into force in Åland only if the Åland Parliament gives its consent by a qualified majority of two thirds of votes cast and if the implementing statute has in the Parliament been dealt with in accordance with the procedure laid down in section 95, paragraph 2, of the Constitution on the implementation of international obligations with constitutional implications. [...].'

⁵⁰ The Constitutional Treaty would not, if it entered into force, change the position of the Åland Islands under Community law. The Inter-Governmental Conference which adopted the final text of the Constitutional Treaty appended to the text a number of declarations, of which nr 31, Declaration on the Åland islands, deals with the position of the Åland Islands under international law and indicates that it was entirely taken into account during the negotiations. In the Declaration on the Åland islands, it is stated that the 'Conference acknowledges that the regime applicable to the Åland islands, referred to in Article IV-440(5), is established taking into account the special status that these islands enjoy under international law. To that end, the Conference stresses that

is, if the transfer of competence from the Åland Islands to the European Union is broadened from what it has been under the previous treaties, the measure must be carried out by using an Act of Exception enacted on the basis of the super-majority of two-thirds, unless the modification of the previously transferred competences is of an insignificant nature.

On this basis, the Constitutional Committee found that in the area of some new competences of the Union which at the moment belong to the competences of the Åland Islands, such as tourism, sports, emergencies and protection of the population and administrative co-operation, the nature of the competences of the Union is such (support, co-ordination, complementing) that the legislation is not in violation of the Self-Government (Autonomy) Act. In addition, the proposed authority of the Union to prescribe measures for the supervision of, early warning and counter-acting serious trans-border threats to the health of individuals was not considered to be at least in all respects within the competence of the Åland Islands. However, the abolishment of the pillar structure of the Union will result in the fact that principles of community law (such as precedence) will also be applied in the area of co-operation in the area of police and criminal law. This has importance in the context, because the Legislative Assembly of the Åland Islands has law-making competence in the area of public order and security and especially in the area of criminal law, making it possible to define crimes and sentences in relation to other competences of the Ålandic law-maker. Because of this legal implication of the Constitutional Treaty for the legislative competence of the Åland Islands, the

specific provisions have been included in Section 5 of Title V of the Protocol on the Treaties and Acts of Accession of [...] the Republic of Finland [...]. Article IV-440(5) establishes at the level of primary law that the Constitutional Treaty 'shall apply to the Åland Islands with the derogations which originally appeared in the Treaty referred to in Article IV-437(2)(d) and which have been incorporated in Section 5 of Title V of the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden'. Finally, Protocol nr 8 on the Treaties and Acts of Accession of various Member States contains in section 5, Art. 56 – Art. 58 concerning Provisions on the Åland Islands the entire text of the current Protocol 2 on the Åland Islands harmonized with the language in the Constitutional Treaty, and establishes that '[t]he provisions of the Constitution shall not preclude the application of the existing provisions in force on 1 January 1994 on the Åland islands on: (a) restrictions, on a non-discriminatory basis, on the right of (...). Furthermore, in Art. 59 of the Protocol, it is established that '[t]he provisions of this Section shall apply in the light of the Declaration on the Åland Islands, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden'. It should also be mentioned that there is a technical provision in this Protocol, section V, Art. 46, which provides that '[o]wn resources accruing from value added tax shall be calculated and checked as though the Åland Islands were included in the territorial scope of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment'. See Official Journal of the European Union, C 130, 16 December 2004 (2004/C 310/01).

Constitutional Committee concluded that the Act on the bringing into force of the Constitutional Treaty must be enacted in the qualified order prescribed by section 59(2) of the Self-Government (Autonomy) Act of the Åland Islands. The Act on bringing into force of such provisions in the Constitutional Treaty of the European Union that belong to the area of legislation (1149/2006) enters into force at a date determined by a Decree of the President of Finland (provided that all Member States ratify the Treaty, which is not going to happen).

In addition to the qualified order in the Finnish Parliament, the Legislative Assembly of the Åland Islands must, under section 59(1), give its consent to the Act on the bringing into force of the Constitutional Treaty. Because the Constitutional Committee found that the Treaty touches upon the competences of the Legislative Assembly in a way which is not insignificant, the consent must be given by a qualified majority of two-thirds of the members of the Legislative Assembly present and voting. Only in this way will the Constitutional Treaty also enter into force domestically in the territory of the Åland Islands. Given the disillusionment on the Åland Islands with the European Union and the ensuing uncertainty on whether or not the Legislative Assembly will give its consent, one plausible scenario is that the Legislative Assembly does not manage to reach the qualified majority prescribed by section 59(2) of the Self-Government (Autonomy) Act. In such a situation, the Constitutional Treaty would not enter into force in the entire territory of the Republic of Finland. Hence at the moment, pending the consent of the Legislative Assembly of the Åland Islands, the Government of Finland can not guarantee that the Constitutional Treaty would be, in its ratified form, applied domestically throughout the territory of Finland. In fact, if the Legislative Assembly of the Åland Islands does not give its consent to the Act on the bringing into force the Constitutional Treaty, the domestic constitutional situation is such that the old treaties remain in force in the relationship between mainland Finland and the Åland Islands. With a view to a situation of this kind, the Constitutional Committee recommended, the Government of Finland should engage in negotiations with the European Union in order to solve the problem, but in the first place, however, the national preparations for the bringing into force of the Constitutional Treaty should continue so that the emergence of such an unclear legal situation is prevented. This statement of the Constitutional Committee is a reference to the above-mentioned initiative of the Legislative Assembly of the Åland Islands to the Parliament of Finland to amend the Election Act so as to guarantee a special seat for the constituency of the Åland Islands in the European Parliament. If the proposals of that initiative were realized, the chances of getting a qualified majority in the Legislative Assembly of the Åland Islands behind the consent to the Act on the bringing into force the Constitutional Treaty would be considerably improved. If the Legislative Assembly of the Åland Islands fails to give its consent with the required qualified majority, which at the time of writing this rapport seems politically likely, a serious problem in the uniform application of EC law will arise. Given the fact that the Constitutional Treaty will not enter into force, the problem is, however, of a theoretical nature only.

6. Concluding Remarks

The administrative structures in Finland are undergoing a drastic change. The self-governing municipalities at the local government level have been regarded as bedrock of public administration, difficult to move in any direction. It seems, however, as if the scarcity of public funds is finally compelling even the most stubborn municipalities to consider a development at least in some areas of public service dictated by scale benefits and effectuated by means of legislation enacted by the Parliament. There seems to be less difficulty in carrying out a streamlining within the state administration, in this case the police and other state functions at the local level. The Constitutional Committee of the Parliament is of the opinion that the necessary legislative amendments can be enacted in the order prescribed for ordinary legislation, while none of the ordinary Acts had to be enacted as Acts of Exception. However, at the same time the Constitutional Committee expressed greater or lesser concerns for certain constitutional issues, such as linguistic rights, which in most cases would touch the Swedish-speaking minority population of Finland more than the Finnish-speaking majority population.

The review of the reactions of the Constitutional Committee shows that it plays not only a procedural but also at least to some extent a substantive role in the law-making process of the Parliament by recommending, against the background of the provisions of the Constitution, different courses of action for the enactment of the law. These recommendations are considered authoritative interpretations of the Constitution in relation to the plenary of the Parliament, although this legal effect is not prescribed by an express provision of the Constitution. In its opinions and statements, the Constitutional Committee also gives interpretations of the Constitution as concerns the implementation of the legislation, and they are supposed to acquire a central role in the litigation in concrete cases before courts of law that may result in the precedence of the Constitution under section 106 of the same.⁵¹ How these recommendations raised under the Constitution, *inter alia*, in the area of linguistic rights will be translated to Decrees of the Government or administrative decisions concerning the jurisdictions and their borders will be seen in the future, but the prognosis is not very optimistic.

From the point of the European Union, the autonomous Åland Islands seems to be an issue entering the legal and also the political agenda with a certain frequency. The overt and covert loss of legislative competences to the European Union and – allegedly as a consequence of that – also to the Government and Parliament of Finland has become a sore point in the relationships of the Åland Islands to the Union and to Finland. The current structure of the Union is not paying much attention to the issue of sub-national law-making powers held by self-governing

⁵¹ This issue, dealt superficially in footnote 2, *supra*, is likely to become a topic in a future rapport from Finland, but only after a somewhat greater number of cases resolved on the basis of section 106 of the Constitution has seen the light of the day.

regions, and that may result in a never-ending flow of litigation before the ECJ because of implementation problems experienced in this sub-national entity. This is clearly an area where measures have to be taken, perhaps by way of expanding the territorial exception recorded in Protocol 2 to the Finnish Accession Treaty into new substantive issues so as to give more leeway to the Åland Islands.

One of the constitutional and political challenges of the day relates to the ratification and bringing into force domestically of the Constitutional Treaty of the European Union. The Constitutional Committee is of the opinion that the ratification and domestic implementation is of such a constitutional nature that a qualified majority is required both for the decision to ratify and for the enactment of the Act on the bringing into force of the Constitutional Treaty. Such a majority was reached in the current Parliament. With a view to the fact that the Constitutional Treaty recently adopted by the Finnish Parliament will not enter into force in the present form, it is interesting to contemplate on how the political constellations will change in the elections of March 2007 and whether those new constellations will affect the eventual ratification of a new basic Treaty that most likely will emerge after smaller or greater amendments to the current Constitutional Treaty.⁵² Nonetheless, judging on the basis of the substantive comments of the Constitutional Committee, the ratification and domestic implementation of a new basic Treaty is likely to require qualified majorities in the Finnish Parliament.

⁵² One easy way to diminish popular doubts about the ratification throughout Europe could – on the top of some substantive changes – be to drop the reference to a constitution and re-name the treaty so as to call it the Basic Treaty of the European Union or simply the Treaty of the European Union.