

Ilkka Saraviita:

Semi-presidential aspects in the year 2000 Constitution of Finland



Parliament of Finland. In front: statue of President K. J. Ståhlberg

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In the literature on constitutional law and political science, the old Constitution of Finland (1919) was at times described as “semi-presidential”. This expression was brought to the European discussion on comparative constitutional law by a French political scientist, Maurice Duverger. In addition, expressions “dual executive” and “mixed government” are used in this context.² Since the studies of Duverger, the expression has become in a wide use within political science³. This was motivated by the French V Constitution, and became again topical, when the former European socialist states reformed their constitutions after the collapse of the Soviet Union⁴.

¹ This article belongs to a research project on the Finnish parliamentarism, financed by the Finnish Academy (Parliamentarism-2000, project number 510115), and is intended to foreign readers as a description of the power structure between the President of the Republic and the Government in the current Constitution

²Cecanti, M. and Pasquino, Y., *Semipresidenzialismo, Analisi delle esperienze europee*, Bolonia 1996.

³See Maurice Duverger, *Institutions politiques et droit constitutionnel*, Paris 1970, pp. 277-282. Later Duverger concentrated on this concept in his book *Echec au Roi*, Paris 1978, and in several articles, among others “A new Political System Model: Semi-presidential Government”, in *European Journal of Political Research* 8 pp. 165-187, 1980. In the Finnish constitutional law literacy, Paavo Kastari used this concept to describe the Finnish political system based on the year 1919 Constitution (Suomen valtiosääntö, Helsinki 1977, p. 120). In the Finnish political science, the term semi-presidential has been used frequently. See for example Jaakko Nousiainen, *From Semi-presidentialism to Parliamentary Government: Political and Constitutional Developments in Finland*, in *Scandinavian Political studies*, vol. 24, no. 2, 2001 and Heikki Paloheimo, *Divided Government in Finland: from a semi-presidential to a parliamentary*, in *Divided Government in Comparative Perspective*, Oxford 2001, pp. 86-105.

The definition of “semi-presidentialism” by Maurice Duverger (in the article mentioned above) has been developed further. See for example Giovanni Sartori, *Comparative Constitutional Engineering*, London 1994, Robert Elgie, *Semi-Presidentialism in Europe*, Oxford 1999, Cindy Skack, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, Oxford 2005, and Paquino, Gianfranco, *Duverger and the Study of Semi-Presidentialism*, *French Politics*, volume 3, number 3, 2005 pp. 310-322.

⁴ See Oleh Protsyk, *Troubled Semi-presidentialism: Stability of the Constitutional System and Cabinet in Ukraine*. *Europe-Asia Studies*, Vol. 55, N:o 7, 2003, Robert Elgie (ed.) *Semi-Presidentialism in Europe*, 1999 and Thomas Sedelius, *Semi-presidentialism in post-communist countries*, Paper for a Presentation at XIII Nordic Political Science Association, Aalborg 2002. The author classifies as semi-presidential systems the constitutions of Bulgaria, Croatia, Lithuania, Moldova, Mongolia, Poland, Romania, Russia and Ukraine (p. 20).

In the year 1919 Constitution, the President of the Republic had substantial constitutional prerogatives within the system of separation of powers, although the text of the Constitution also underlined the principle of Parliamentarism⁵. The Presidents used these powers at times independently, in accordance with their political views, and very seldom consulted other political actors outside those, loyal to the President. In the political debates during the era of the year 1919 Constitution, the vast presidential powers were at times and especially after the Second World War strongly criticized. A late professor of political science, L.A.Puntila once characterized the use of presidential powers by president Urho Kekkonen as “lash-parliamentarism”. The insufficient legitimacy of the vast presidential powers in the Constitution was a contributory cause for the constitutional change of the year 2000. Some of the old features and the prerogatives of the President of the Republic, however, remained. In this presentation, the new complicated constitutional power structure between the President of the Republic and the Government is described⁶. In short, the key issue is *parliamentarisation*: almost all of the old presidential powers remained in the text of the year 2000 Constitution, but the decisions of the President were more or less tied to prior decisions or at least to the influence of the Government or a single Minister. The Government, on the other hand, is politically responsible to the Parliament.

⁵Rafael Martinez and Antonio Garrido, *Sistemas mixtos de gobierno de tendencia presidencial* WP, 184, Institut des Politiques i Socials, Barcelona, 2000, *passim*, compare the year 1919 Constitution of Finland with other constitutions in the context of semi-presidentialism. On the vast literature on the semi-presidential constitutions, see pp. 50-61.

⁶Generally speaking, the Finnish authors on constitutional law have after the year 2000 Constitution concentrated on the system of basic rights of people in the Constitution. The structural questions and questions related to power relations of the organs of State have been dealt in the literature sparsely. At present, there are four thorough commentaries on the new Constitution of Finland. See Antero Jyränki, *Uusi Perustuslakimme*, Iura Nova, Turku 2000 (in Finnish), Markku Suksi, *Finlands statsrätt* (in Swedish), Åbo 2002, Ilkka Saraviita, *Perustuslaki 2000*, Helsinki 2000 (in Finnish) and *Constitution of Finland* (in English), *International Encyclopaedia of Laws*, Kluwer Law International (suppl. 56) July 2004. On the year 1919 Constitution, see Jaakko Nousiainen, *The Finnish Political System*, Cambridge, MA: Harvard University Press, 1971, Martin Scheinin, *Constitutional Law and Human Rights* in Juha Pöyhönen (ed.), *An Introduction to Finnish Law*, Helsinki 2002, pp. 32-56, Markku Suksi, *Finland: the Constitution 2000*, *European Public Law* vol. 5 issue 3, 1999 pp. 338-349. On the history of Finland, see E.A. Jutikkala, *A History of Finland*, Helsinki 1998. On the text of the year 2000 constitution: see Ministry of Justice, *The Constitution of Finland*, Vammala, Oikeusministeriö 2001 and also www.om.fi. One should also visit the [www](http://www.pages).pages of the Finnish parliament (and choose the versions in English or French), the President of Finland (www.valtioneuvo.fi) and the Government (www.valtioneuvo.fi). See also Maurice Duverger, *Échec au roi*, Paris 1978, Lucifredi, Pier Giorgio, "Il Presidente Della repubblica finlandese", *Quavering Constitutional*, 3 no 2/1983, pp. 349-360, David Artery, "Government in Finland: A Semi-presidential System?", *Parliamentary Affairs*, 38/1985, pp. 477-495 and Jansson, J.M. "Le regime semi-presidential Finland, in: *Dispositions legalese, practicum politique*", en *Les regimes semi-presidential, bajo la direction de M.Duverger*, Paris, 1986.

Historical Background of the Finnish Form of Government

It is troublesome to understand the presidency in the year 2000 Constitution without a description of the historical background. The Finnish constitutional history has long monarchical traditions. Between the years 1130–1323, Finnish areas were gradually annexed to the Kingdom of Sweden called Österlanden (in Latin, *partes orientales*). As early as 1332, Finns were granted the right, along with the other provinces, to participate in the election of the King of Sweden. This right was taken into the Swedish Constitution of 1634.

For over a century, between 1809 and 1917, Finland was an autonomous Grand Duchy in the Russian Empire. The Emperors of Russia were bound by their solemn declaration to the old Swedish Constitutional Acts. After the year 1918 Finnish Civil War, certain parties on the winning side, the 'Whites', wanted to establish a monarchical form of Government for Finland. They pleaded to the old Swedish-Russian tradition. The parliament, which was elected after the Civil War, approved a draft for monarchical Constitution in August 1918. This constitution never entered into force, but many of its constitutional structures were transferred to the subsequent republican Constitution. The Parliament even chose Friedrich Karl, Prince of Hesse, the son-in-law of Emperor Wilhelm II, to be the King of Finland (Väinö I). On 9 October 1918, Germany requested an armistice from the Western Powers. The collapse of Germany in the First World War forced Finland to abandon its king. The republican parties won the parliamentary elections in March 1919, and the republican constitution was approved in July 1919. As we shall see later, the original monarchical model for a new Constitution deeply influenced the final republican Constitution: The President of the Republic received almost all the powers, which were designed for the King of Finland. One of the reasons for these so-called monarchists was, that the King would represent strong governmental power against the Parliament. This, in part, would give stability to the new State, and prevent a further civil war.

⁷In the Swedish constitutional law literature, the year 1617 and 1634 de facto constitutional acts are regarded as a starting point of the Swedish constitutional system. The 1634 Constitution (Riksdagsordning) may be regarded as a de jure constitution. See Nils Stjernquist, "Land skall med lag byggas. Sveriges statsförfattningshistoria", Sveriges konstitutionella urkunder, Stockholm, 1999 p.14.

⁸See Rafael Erich, *Das Staatsrecht des Grossfürstentums Finland*. Tübingen 1912, Robert Hermanson, *Finlands statsrättsliga ställning*, Helsingfors 1892 and Leo Mechelin, *Précis du droit public du Grand-duché de Finlande*, Helsingfors 1886.

The monarchists in the year 1918 Parliament could not get the required special majorities for the final acceptance of a new (monarchical) Constitution, because the members of the parliamentary groups of the Liberals, the Agrarian Party and the Social Democrats were in favour of the republican form of Government. However, for the same reason the 'republicans' could not dictate the details of the republican form of Government. A compromise was reached: in the future republic the President would have almost all the powers that the monarchists had wanted to hand over to the King.

Ironically, the Finnish presidency grew in the direction of a powerful position of the President, while in the Kingdom of Sweden, the equal prerogatives of the Swedish King were gradually 'parliamentarised' and transferred to the Prime Minister of Sweden. The Constitution of Finland today, still reflects the monarchical idea of a strong position for the Head of State, especially during political crises and exceptional circumstances when – as is alleged – the system needs a leader, who is outside everyday political debates.

In order to evaluate and understand the power structure between the President of the Republic and the Government in the year 2000 constitution, one has to enumerate the prerogatives of the President of the Republic in the older Constitution.

The Powers of the President in the year 1919 Constitution

The year 1919 Constitution gave the President of the Republic the following political powers:

1. the President nominated and dismissed the Government, could influence the structure of its party composition (coalition structure), choose the Prime Minister and at times (mainly in the case of a minority Government) also the other members of the Government;
2. the President could dissolve the Parliament;
3. the President had a suspensive veto on parliamentary legislation;
4. the President gave to the Parliament legislative bills and the state budget. He could also dictate the details of these documents;
5. the President was the leader of the Finnish foreign policy and decided on the signature and ratification of treaties;
6. the President was the commander-in-chief of the armed forces;
7. the President nominated all leading civil servants, judges included; and
8. the President could issue presidential decrees on matters, where no parliamentary legislation existed⁹.

Between the years 1919-1939 the semi-presidential aspects of the Constitution remained almost dormant, and the political system worked, as if it would fully represent a parliamentary system. The presidents did not use their prerogatives in an authoritarian way. Instead, the presidents made the formal decisions, which were prepared in advance by the Government, and in almost every situation accommodated themselves to the suggestions of the Government.

⁹ See Antero Jyränki, *Presidentti*, summary pp. 381-387, Helsinki 1981, Sven Lindman, "Pouvoir neutre". *Festskrift till Georg Andrén*. Upsala 1960, pp. 261-274, Tuttu Tarkiainen, *Der Präsident der Republik - Finland. Geschichte und Gegenwart*. Hrdg. im Auftrage der Presseabteilung des fin. Aussenministeriums. Helsinki 1961 pp. 71 - 80, Gerog Maude, *The Finnish Dilemma, Neutrality in the shadow of Power*, Helsinki 1976, Nils Andrén, *Government Politics in the Nordic Countries*, Upsala 1964, Veli Merikoski, *The system of Government*, in Jaakko Uotila (ed.) *The Finnish Legal System*, Helsinki 1966 pp. 31 - 40, Veli Merikoski: *Précis du Droit Public de la Finlande*, Helsinki 1954 and Paavo Kastari, *La présidence de la république en Finland*. Neuchâtel, 1952.

The genuine power shifted to the Prime Minister and the Government. The Government was politically responsible to the Parliament (the principle of parliamentarism), but the rather strict party discipline among the parliamentary groups guaranteed, that the will of the Government was observed in the Parliament. There were at times votes on the confidence of the Government, but only a few times this compelled the Government to leave office. The Constitution of the year 1919 remained in force until the year 2000, when a new Constitution replaced it ¹⁰.

The political situation and power relations in Finland changed dramatically and quickly after the Second World War. One of the reasons was the Treaty on friendship, cooperation and mutual assistance between Finland and Soviet Union in the year 1948 ¹¹. In the new political circumstances and in the circumstances of the so called "Cold War", presidents J.K. Paasikivi and U. Kekkonen underlined, that the principal duty of the President was to lead the foreign policy of Finland. They also regarded themselves as guarantors of the year 1948 treaty. Especially U. Kekkonen associated the leadership of foreign and domestic politics with the argument, that the President of the Republic needs adequate influence in the internal affairs of the State in order to maintain the stability of the foreign policy. In these circumstances, the presidents regarded themselves, quite lawfully, to be independent decision-makers in those areas of the governmental power, which the constitution conferred to the President ¹².

The massive and frequent use of the political powers of the President grew gradually intolerable for the political establishment. The presidents seemed to nominate and change governments and order premature elections for unacceptable reasons. The fact, that the presidents used the presidential powers to their utmost constitutional limits, was one of the reasons for the constitutional change of the prerogatives of the President in the year 2000 Constitution.

¹⁰ Sorsa, K. & Saraviita, I, "La situation juridique du Premier ministre de Finlande en face du Président de la République", en *Les régimes semi-présidentiels, bajo la dirección de M. Duverger*, Paris, 1986.

¹¹ See J.J. Holst (ed.), *Five Roads to Nordic Security*, Oslo-Bergen-Tromsø 1973, Jacobson, M, *Finland: Myth and Reality*, Keuruu 1987, Killinen, K, *The Relation between the Political and the Military Direction in Finland - Democracy in Finland. Studies in Politics and Government*, Helsinki 1960, Korkonen, K, *The FCA Treaty: Some Aspects in International Politics*, Yearbook of Finnish Foreign Policy, Helsinki 1973 and Puntilla, L.A., *Finlands Neutrality and Finnish Foreign Policy. Studies in Foreign Politics*, Vammala 1963.

¹² Rafael Martinez &, op.cit. p. 17 and Törnudd, K.,: "Le mécanisme de l'élection présidentielle en Finlande: évolution et signification politique" en *Les régimes semi-présidentiels, bajo la dirección de M. Duverger*, Paris, 1986.

The year 2000 Constitution was partly a response of the political system to the obvious semi-presidential features of the year 1919 Constitution. The presidential powers were regarded outdated and contrary to the principle of parliamentarism. The object of the change was to increase the powers of the Parliament by eliminating the independent prerogatives of the President by transferring them either directly and alone to the Government or to a decision-making system, where the Government or in special cases a single Minister, would be responsible to the Parliament for the decisions of the President ¹³.

¹³ The General Secretary of the Parliament Seppo Tiitinen offers a detailed analysis on the constitutional change in *Reform of the Constitution* <http://virtual.finland.fi/netcomm/news/showarticle.asp?intNWSAID=25782>. See also Finnish parliamentary book committee (ed.), *The Parliament of Finland, the voice of the people past, present and future*, Helsinki, Finnish Parliament, 2000.

The year 2000 Constitution and the definition of semi-presidentialism

Some basic features of a semi-presidential system remained in the new Constitution. Rafael Martinez and Antonio Garrido, who elaborated the original theory of Maurice Duverger, have given the following characteristics to a semi-presidential model of a Constitution. I use this typology, and shortly comment every of the six characteristic from the viewpoint of the year 2000 Constitution.

A constitution may be described as semi-presidential in Martinez-Garrido classification, if:

1. The election of the President of the Republic is direct through universal suffrage;

-this is the case in Finland,

2. There exists a dual executive power;

-the President of Republic and the Government use decision-making powers in two different arenas (called the Presidential session and Governmental session), but the decisions are closely bound to one another in a rather complicated way, which shall be explained later,

3. Ample constitutional powers are granted to the President of the Republic;
-this is the case in the Constitution as far as the earlier powers in the year 1919 Constitution still exist in the text of the new Constitution, although they have almost totally been combined with the decisions and influence of the Government. The criterion “ample political powers” is the most ambiguous part of the definition of “semi-presidentialism”, and makes it difficult to evaluate the Finnish Constitution,

4. The President appoints the Prime Minister and chairs cabinet meetings;
-the Parliament elects the person of Prime Minister in two stages. First, the parliamentary groups agree on a person, who is announced to the President by the Speaker of the Parliament. The President announces back to the Parliament him as a “nominee for Prime Minister”. This person is thereafter nominated as Prime Minister by the Parliament, and then appointed to the post of Prime Minister by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister. The President chairs some of the Government meetings: those, which are related to the presidential powers (Presidential session). Others Government meetings (Governmental sessions) are chaired by the Prime Minister;

5. The President has the power to dissolve the Parliament;
-the President issues an order concerning extraordinary parliamentary election in response to a reasoned proposal by the Prime Minister, after having heard the parliamentary groups. In other words, the reasoned proposal is a condition of the dissolution of the Parliament,

6. The Government is accountable to the Parliament ¹⁴;
-the Government is both legally and politically accountable to the Parliament.

¹⁴ Rafael Martínez and Antonio Garrido, *Sistemas mixtos de gobierno de tendencia presidencial*, Institut de Ciències Polítiques i Socials, Barcelona, 2000. They determine (p. 8) a semi-presidential system by six characteristics: “1. Existencia de un poder ejecutivo dual. 2. Elección del presidente de la República mediante sufragio universal directo utilizando el sistema electoral de majority-runoff. 3. Amplios poderes constitucionales del presidente de la República. 4. El presidente nombra al primer ministro y preside los Consejos de ministros. 5. El gobierno es responsable ante el Parlamento. 6. El presidente tiene capacidad de disolución parlamentaria.”

We may notice already here, that the Finnish model of governmental decision-making escapes all earlier classifications concerning “The existence of a dual executive power “ or “semi-presidentialism” in Martinez-Garrido terms, mentioned above ¹⁵ . The decision-making system in the year 2000 Constitution is purely of Finnish design, and has no equivalent among existing constitutional systems.

The political background of the new decision-making system in the year 2000 constitution

There exist some friction between the population at large and the political establishment in Finland concerning the constitutional status of the President of the Republic. According to recent studies, the Finnish citizens are still in favour of substantial political powers of the President. The first President serving under the new Constitution (Tarja Halonen), has been very popular by Gallup-investigations, and is characterized as an opinion-leader of the Nation in the media. On the other hand, the political circles of Finland, including almost all major parties and especially their leaders and the parliamentary groups, are in favour of full parliamentarisation of all presidential powers.

It has been said, that the people of Finland, which has more than 600 years been governed by a ruler, a King or a Russian emperor and lately by powerful presidents (J.K. Paasikivi, Urho Kekkonen and Mauno Koivisto), still have favourable memories of these times, and in addition anticipate some counterweight to the influence of the political parties.

¹⁵ On the year 2000 Constitution see Ilkka Saraviita, Constitution of Finland, International Encyclopaedia of Laws: Constitutional Law, Kluwer Law International, suppl. 56, July 2004. Links to materials in English on the Constitution of Finland are on my www-pages (<http://personal.inet.fi/tiede/ilkka.saraviita>, (page number 16, Constitution of Finland). On foreign policy decisionmaking see Ora Meres-Wuori, Toimivaltasuhteet kansainvälisiä sopimuksia tehtäessä, (English Summary): Division of powers in the concluding of international agreements, Lakimiesliiton kustannus 1990.

The leading political parties in Finland could not completely agree on the reform of the presidential powers during the drafting of the year 2000 Constitution. The basic disagreement concerned, above all, of the conduct of foreign policy. The largest party at that time, the Social Democrats, was not ready to depart altogether from the system of independent presidential powers in the area of foreign policy, and consequently a compromise was made. One reason for this might have been, that this party had the best prognosis on the outcome of the following presidential elections. This (unpronounced) expectation was not unfounded: President Tarja Halonen, a Social Democrat, was elected the first President of the Republic. She was re-elected in the year 2006. The disagreement on the authority on the foreign policy lead to a rather complicated power structure between the President of the Republic on one side, and the Government (the Prime Minister with his ministers) on the other. The political parties could not agree on the question of "parliamentarisation" of all former powers of the President. Most strikingly, this may be discerned in the decision-making procedure on foreign relations.

Roughly speaking the compromise in the year 2000 Constitution on the presidential powers may be divided into two parts. The President was preserved the role of the leader of foreign policy, but "in co-operation" with the Government"(Governmental session in this text). On other areas of the former presidential powers, the decisions were divided in different categories; in certain sectors the President still has some independent decision-making power, on the others the President is more or less bound to the suggestions (officially "proposals") for presidential decisions made by the Government. The Government on the other hand decides on these proposals as a multi-member body of a collegiate nature, chaired by the Prime Minister (the Governmental session). This constitutional arrangement was implemented through a complicated procedural section in the Constitution. As the powers of the President and the Government are not clearly enumerated in the text of the Constitution, this rule needs further interpretation.

The procedural rules concerning the decisions of the President of the Republic

Parliamentarism and separation of powers are mentioned as the fundamental principles of the year 2000 Constitution (section 3)¹⁶. They are closely related to provisions on democracy and the rule of law (section 2). The Parliament, which represents the people, elects the Prime Minister and indirectly the Cabinet (Government). Together the President and the Government (the Cabinet) form the Executive¹⁷.

The collegiate body of Ministers has two roles:

a. on the one hand it makes decisions together with the President of the Republic on presentations made by the Ministers (officially Presidential session) and

b. it makes decisions as a real collegiate body (Council of State in the Finnish text of the Constitution) with the Prime Minister as the Chairperson of the meeting of the Ministers on matters, which belong to the governmental power. The English word 'Cabinet' is best suited to describe this second institution. In this study the word, 'Government' as well as "Cabinet" are used to denote the collegiate body (the Governmental session).

From the systematic point of constitutional law, decision-making on the collegiate level and on the presidential level belong to the constitutional law (governmental power), and below that, in the ministries and lower administrative organs, to the administrative law (administrative power). A relevant point in the meaning of constitutional law is the decision-making power of the Ministers within the ministries: the principle of parliamentarianism (political responsibility to the Parliament) is extended to the decisions taken by ministers in the ministries. Decisions by civil servants in the ministries and on lower levels of the State administration are not governed directly by the principle of parliamentarianism. The civil servants serve under legal responsibility, but in a broad sense even the decisions taken by them belong to the political responsibility of the Government and a Minister.

¹⁶ On a broader, comparative perspective, see Jaakko Husa: Nordic Reflections on Constitutional Law, A Comparative Nordic Perspective, Peter Lang mb., Separation of Powers: the Case of Finland, pp. 102-121. See also Jaakko Nousiainen: La Nuevo Constitution de Finlandia: de un régimen mixto al parlamentarismo, Ordenamiento jurídico de Finlandia, Editado por: Parlamento de Finlandia, Ministro des Asuntos Exteriores, Vammala 2001. Translations in French, English and Russian are also available.

¹⁷ Section 2 - Democracy and the rule of law. The powers of the State in Finland are vested in the people, who are represented by the Parliament. Democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions. The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed. Section 3 - Parliamentarism and the separation of powers. The legislative powers are exercised by the Parliament, which shall also decide on State finances. The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament. The judicial powers are exercised by independent courts of law, with the Supreme Court and the Supreme Administrative Court as the highest instances.

Section 58 of the Constitution (Decisions of the President):

*'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 withdraw a Government proposal shall be made in accordance with the Government's new proposal for a decision'*¹⁸.

Notwithstanding the provision in subsection (1), the President makes decisions on the following matters without a proposal for a decision from the Government (1) The appointment of the Government or a Minister, as well as the acceptance of the resignation of the Government or a Minister;(2) The issuance of an order concerning extraordinary parliamentary elections; (3) Presidential pardons and other matters, as specifically laid down by Acts, concerning private individuals or matters not requiring consideration in a plenary meeting of the Government, and (4) Matters referred to in the of Act on the Autonomy of the Ålands Islands, other than those relating to the finances of the Åland Islands; The appropriate Minister presents matters to the President. However, the appropriate government rapporteur presents a proposal concerning the alteration of the composition of the Government, where this concerns the entire Government.

*The President makes decisions on matters relating to military orders in conjunction with a Minister, as provided for in more detail by an Act. The President makes decisions on military appointments and matters pertaining to the Office of the President of the Republic as provided by an Act'*¹⁹.

¹⁸ The word "proposal" has in this official translation misleadingly two meanings. See the page of the Ministry of Justice www.om.fi/21910.htm. In the beginning of the subsections 2 it means *all governmental proposals* to the President, and the second "proposal" means *only* proposals for legislative bills. This difference does not exist in the Finnish version of the Constitution. The translation in French is as follows: "Un dossier est renvoyé pour préparation au gouvernement dans le cas où le Président de la République ne prend pas sur ce dossier une décision conforme à la proposition de décision formulée par le gouvernement en la matière. Ensuite, la décision relative au dépôt ou au retrait d'un projet du gouvernement est prise conformément à la nouvelle proposition de décision présentée par le gouvernement." (www.om.fi/26455.htm) The translation in German is also correct in this respect: Der Präsident der Republik faßt seine Beschlüsse im Staatsrat auf dessen Lösungsvorschlag. Wenn der Präsident der Republik nicht in Übereinstimmung mit dem Lösungsvorschlag des Staatsrates in einer Angelegenheit entscheidet, wird die Angelegenheit zur Vorbereitung an den Staatsrat zurückverwiesen. Über die Abgabe und Rückziehung einer Regierungsvorlage wird darauf nach dem neuen Lösungsvorschlag des Staatsrates entschieden." (www.om.fi/26465.htm)

¹⁹ On the text of the Constitution, see Ilkka Saraviita, International Encyclopaedia of Laws, Kluwer Law International, Constitutional Law, suppl. 51 (April 2003) and <http://www.om.fi/constitution/3340.htm>). The text above (taken from the www-page of Ministry of Justice) may be regarded as a semi-official translation. The numbers in paragraph three may be confusing. Their task is only to enumerate such decisions of the President of the Republic, which are taken without a proposition of the Government

Comments on the procedural rules

Subsection 2 of section 58 is essential and needs interpretation. It draws the line between binding and non-binding propositions of the Government. It enumerates the propositions of the Government, which become binding in the situation, when the President has returned the proposal to the Government and it has decided on a new proposal. If the proposal of the Government concerns a legislative bill, a suggestion of its withdrawal from the discussions of the Parliament, a bill on the State Budget or a suggestion on the acceptance of an international treaty, after the bill has been returned to the Government by the President for further preparation, and the Government has made a new proposal, either similar or different from the first proposal, *the President is bound to this second proposal*. The president must give it to the Parliament as such (without alterations). In the travaux préparatoires of the Constitution the binding nature of the second proposal is explained by the principle of parliamentarism: the legislative and budgetary bills belong to the core of the decision-making power of the Parliament. The Government plays a central role in the preparation of these bills, and in fact leads the legislative work. Therefore, it is justifiable, that the Government, which is politically responsible to the Parliament, has the final word on the contents of the bill.

In other matters than the bills of the Government, one has to make an *e contrario* interpretation of the subsection 2: in other cases, (for instance the proposition for the nominations of civil servants) the President of the Republic is not bound to the second proposal of the Government.

One must bear in mind, that the decision-making procedure in foreign policy is partly ordained outside the system described in section 58 (the co-operation method). We shall discuss foreign policy decisions later.

Section 58 divides the presidential decision-making procedures, and consequently the powers of the President to seven different categories:

1. In some cases (those described above), the President is almost definitely bound to the proposals of the Government (proposals for the Government bills). The President may return a proposal for a Government bill. This delays the decision-making process and puts some political pressure on the Government. If the Government still wants to have the bill as such, the President has a legal duty to give the bill to the Parliament in its original form. New legislation and the State Budget are prepared within the State administration. When the text is ready, political decisions are made within and by the coalition parties of the Cabinet, and the text is accepted in the Governmental session. Thereafter the text is presented as a proposals to the President. If the President (in Presidential session) does not accept the proposal, it returns back to the Government for a new decision. The Government may either reaccept the original proposal, or make an altered proposal to the President, who in turn gives the bill to the Parliament.

2. In some cases, the proposals of the Government are not binding (for example proposals for the nominations of the judges and highest civil servants, decisions on ratification of international treaties and the confirmation of a law accepted by the Parliament). In these cases, the President may return the proposal, the Government makes a new one, and during the second stage, the President is free to decide by his or her own. We may say, that in this procedure the President has the final word.

The Presidential decrees (legal norms below the hierarchical status on laws accepted by the Parliament) are also decided on governmental proposals of this second category. The presidential power on decrees is of minor importance, because the significant decrees are issued by the Government ²⁰. According to section 80 of the Constitution, a decree (presidential-, governmental- and ministerial decree) must be in conformity with the parliamentary legislation. Consequently, there is no room for important legislation on the hierarchical level of decrees. The President has no drafters of law in the Office of the President; all written legal norms are prepared by the Government.

²⁰ See Jaakko Husa, supra p. 116.

3. Certain decisions of the President are made without the proposals of the Government, but in co-operation with the Government (the foreign policy affairs). The co-operation process shall be discussed in more detail later.

4. Some decisions of the President are within the principle of the parliamentary government in the way, that the decisions are made by the President on the condition, that the Prime Minister makes an informal (outside the Governmental session) proposal. In the case of extraordinary parliamentary elections, the President makes such a decision only, if the Prime Minister suggests premature elections, and the parliamentary groups have been heard.

Secondly, if it is necessary to dismiss a member of the Government (a Minister), this may be done on an informal suggestion of the Prime Minister.

If the Government loses its confidence of the Parliament, but the Government does not ask for resignation, the President has the duty to dismiss the Government from office.

This decision of the President is done without a proposal of the Prime Minister.

5. The President of the Republic has a special, unconventional and disputed role during the nomination of a new Government. The negotiations for a new Government begin in the Parliament after parliamentary elections or in the situation, when the Government has asked for resignation. If the majority of the members of the Parliament agree on a certain person to be candidate for Prime Minister, his name is communicated to the President. The President later announces in an open letter (without a proposal of the Government) the nominee back to the Parliament, and the Parliament votes on the person of Prime Minister. Three votes are possible. The President may interfere in the negotiations only in case the political parties and their parliamentary groups are incapable to agree on a nominee for Prime Minister. In this way the former power of the President to influence in the formation of a new coalition Government, was substituted by a rather complicated procedure.

The new system for electing the Prime Minister and the other Ministers has been used for the present twice, and the system worked flawlessly. It also proved to be prompt: when the Government of Anneli Jäätteenmäki asked for resignation due to personal reasons linked with the person of the Prime Minister ²¹, a new Government, based on the earlier political coalition, was formed within twelve hours ²².

²¹ During the year 1999 parliamentary elections Anneli Jäätteenmäki, leader of the Centre party and member of the Parliament, received, illegally, classified information from a civil servant of the Office of the President. Among this information was a secret summary on discussions between President George W. Bush and Prime Minister Paavo Lipponen, leader of the Social Democratic Party. Anneli Jäätteenmäki used this information during the election campaign. The Centre Party won the elections and Anneli Jäätteenmäki was elected as Prime Minister of a coalition government between the Centre Party, the Social Democrats and the Swedish Party. When all this became public, and the civil servant had confessed his crime and dismissed from the Office of the President, Anneli Jäätteenmäki asked for resignation. Her successor as Prime Minister was Matti Vanhanen, from Centre Party.

²² Section 61 in the Constitution: "The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister. Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political programme and composition of the Government. Based on the outcome of these negotiations, and after having heard the Speaker of the Parliament, the President informs the Parliament of the nominee for Prime Minister. The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament. If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected. The Parliament shall be in session when the Government is being appointed and when the composition of the Government is being essentially altered." On the procedure see Saraviita, supra, pp.126 - 130.

Behind the procedural rules concerning the formation of a majority government, we may again see the disagreement between the political parties on the presidential powers. Certain parties wanted to give the right to elect the Prime Minister and the Government altogether to the Parliament, while the others wanted to preserve the President as a final resort and conciliator between parties in a situation of political deadlock ²³.

According to section 58, paragraph 4 “the appropriate government rapporteur presents a proposal concerning the alteration of the Government, where this concerns the entire Government.” This “rapporteur” is a civil servant from the office of the Prime Minister (Secretary of State). His duty is to present to the President (in Presidential session) the decision on the change of the Government. Other decisions of the President are signed by the Prime Minister or some other Minister. The Government implements the decisions of the President (section 65.2 in the Constitution). It is a legal duty of the Government. The Government may not use the refusal of the implementation as a political instrument to prevent presidential decisions (faculté d’empêcher). The implementation procedure activates the legal responsibility of the member of Government on the decisions of the President.

²³ The procedure is rather complicated in the text of the Constitution: a person is first a candidate for the post of Prime Minister, then a nominee, then voted upon in the Parliament and elected as Prime Minister and, finally officially appointed by the President. Behind this procedure we may see the ambition of the political parties to eliminate altogether the influence of the President of the Republic in the negotiations on the person of the Prime Minister and the structure of the party coalition of the Government. During the procedure for deciding on the person of the Prime Minister, the President may only act on inputs of the political system, without possibilities to interfere in the negotiations. Only if this system fails, the parliamentary groups may not agree on a person and on a majority coalition, the President may have some influence. Nowadays, when all major parties seem to be willing to accept the role of a government party, this is not probable.

President of the Republic in office is criminally responsible only of treason or high treason, or a crime against humanity. If the decision made by the President is unlawful, the Government shall, after having obtained a statement from the Chancellor of Justice, notify the President that the decision cannot be implemented, and propose to the President, that the decision be amended or revoked (Section 112.2 in the Constitution).

6. Some decisions of the President of the Republic are made in a Cabinet meeting of the President (as the Commander-in-Chief of the Defence forces) on proposals of the military Commander of the defence forces. The Minister of Defence and at times the Prime Minister are present, and may attend the discussion. They bear the political responsibility for these cabinet decisions of the President (as Commander-in-Chief) to the Parliament. The proposals of the military Commander do not bind the President. The Prime Minister and Minister of Defence represent a special kind of parliamentarism: their presence is a link between the President and the Parliament: the latter may discuss and criticize the President indirectly, as these ministers defend the cabinet decision in the Parliament. The President commissions officers and decides on the mobilisation of Defence forces. If the Parliament is not in session when a decision to mobilize is taken, the Parliament must be immediately convened. As Commander-in-Chief, the President has the power to issue in cabinet sessions military orders, which concern general guidelines for military defence, significant changes in military preparedness and the principles according to which military defence is implemented. During normal times the President as Commander-in-Chief leaves all operative decisions concerning the armed forces to the de facto decision making power of the military Commander. The situation may change in a crisis situation. Under the Law on armed forces, the President of the Republic, as Commander-in-Chief, has the final authority on all levels of military decision-making.

7. A very limited group of decisions are made by the President on the presentation of a civil servant (matters concerning the Åland Islands, presidential pardons and the office of the President)²⁴. The Constitution and the literature are silent on the question about the political responsibility of these matters.

²⁴ On the status and the Constitution of the Åland Islands see Markku Suksi: Ålands Konstitution, En sammanställning av material och tolkningar i anslutningen till självstyrelselag för Åland, Åbo Akademis förlag, Turku 2005.

The legislative changes to the decision-making powers of the President and the Government

In the Constitution the President of the Republic and the Government are mentioned on the same hierarchical level: 'The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of Parliament' (section 3, Separation of powers). We may see here a transformation of principle: in the year 1919 Constitution the governmental powers belonged to the President of the Republic and the Government was mentioned only as a supplementary body in the governmental decision-making²⁵. Characteristically to the year 2000 Constitution, the connection of the presidential powers to the principle of parliamentarianism may be seen in the wording, that the President of the Republic makes decisions on the proposals of the Government. In an ambiguous way, even the President is bound to the influence of Parliament (the majority groups) through the principle of parliamentarism. The President of the Republic may use the presidential powers only on the proposal and in co-operation with the Government, and in certain cases in co-operation with the Prime Minister (premature elections and the nomination of a new Government). The Government and the Ministers bear the political responsibility of the decisions of the President of the Republic.

²⁵ See *supra*, Sorsa, K & Saraviita.

The division of decision-making powers between the President and the Government is based on the rule, that the President of the Republic only uses those Powers, enumerated in the Constitution, and in a few cases in lower legislation. The powers of the Government are not enumerated in the Constitution. The detailed provisions, which concern the decision-making power (jurisdiction) of the Government, are on the level of ordinary legislation. The rule of interpretation is, that the powers of the Government may be increased by ordinary acts and even by decrees. In cases where the legislation is silent, the powers belong to the Government. The increase or decrease of the powers of the President, mentioned in the Constitution, may be accomplished only through a constitutional change.

It is obvious, that the drafters of the year 2000 constitution had as a starting point the principle, that the new Constitution is exhaustive as to the powers of the President. According to section 57 of the Constitution: “The President of the Republic carries out the duties stated in this constitution or specially stated in an other Act”. “Act” refers to acts given before the year 2000 Constitution. The question concerning additional powers to the President of the Republic by ordinary legislation, is open. One may not read from the preparatory works of the year 2000 Constitution, whether the framers of the Constitution wanted to permit the increase of presidential powers by ordinary acts.

The Presidential session and the Office of the President

The President makes all formal decisions in the Presidential sessions of the Government. The President chairs these so called Presidential sessions ²⁶. The Government is obliged to present the President of the Republic with a proposition on its preferred decision for items. Where necessary, the Governmental session (collegiate body of Ministers), may in advance and in a separate session decide its position by voting. The presenting Minister must then present the matter to the President according to the position supported by a majority within the Government (the Governmental session).

All the Ministers are expected to attend Presidential sessions. In order to constitute a quorum, the sessions must be attended by the President and at least five members of the Government. Also present are the Chancellor of Justice or the Deputy Chancellor of Justice, and the Secretary to Government Sessions, who keeps the minutes. The minutes are public documents. Usually there are no discussions in these meetings, except the official presentations of the Ministers. The decisions are announced by the President.

One should note the presence of the Chancellor of Justice in the presidential sessions (as well as in the Governmental sessions). According to section 108 of the Constitution, “The Chancellor of Justice shall oversee the lawfulness of the official acts of the Government and the President of the Republic.”

²⁶ “The President of the Republic makes decisions in Government on the basis of proposals for decisions put forward by the Government.” Section 58, subsection 1.

It is the primarily the role of the Chancellor to see to, that the complicated decision-making structure of the Constitution is observed by both parties. The chancellor has also sufficient sanctions in order to guarantee the legality of the decision-making of the Government and the President of the Republic. The President of the Republic alone takes the decisions at Presidential Sessions; no vote is taken on business presented. Ministers may, however, have their differing opinions entered in the minutes. In this way, they have a possibility to free themselves from the legal and political responsibility of the decision taken by the President. Opinions of this kind have never been expressed. A dissenting minister is expected to leave the Cabinet. The President makes almost all formal decisions in Presidential session, which is usually held at 11 a.m. on Friday. The presidential decisions are drafted by the relevant ministry, accepted as propositions to the President by the Governmental session and finally submitted to the President by the Minister concerned. Such a proposal is first approved by the Governmental session meeting usually on Thursday and then submitted to the President. Each presidential decision is put in writing in an official document (Government bill, Act of Parliament, decree, so called open letter, letter of appointment, and so on) which is signed by the President and countersigned by the Minister concerned.

The President of the Republic has at his disposal only a small office with a few civil servants. They work as advisers of the President. The Office has no direct relations with the Presidential sessions. By this “cabinet,” the President of the Republic is not capable of conducting governmental power in the field of home affairs. The Office of the president is non-political by nature. It consists of experts on law and political sciences. The significance of the office is somewhat different in the decision-making on foreign policy issues, as the President with her “cabinet” has personal and direct relations to other Heads of State. Even here, the President is heavily dependent on the services of the Ministry of Foreign affairs ²⁷.

²⁷ The office of the President describes the functions of the office as follows: “The duties of the Office of the President of the Republic of Finland (www.president.fi) The duties of the Office are statutory and most recently defined by Act 1995/1382, in force since 1.1.1996. The Office assists the President in carrying out her official duties, manages the President's administrative business, and organizes personal services needed by the President and her family. The Office is also responsible for the personal security of the President and security of the buildings used by her.

The Cabinet members monitor questions relevant to the President in the performance of her official duties and report thereon to the President and to the Cabinet. The Cabinet also has primary responsibility to otherwise assist the President in her official duties in accordance with her instructions.

The President of the Republic in person chairs meetings of the Cabinet dealing with the most important matters relating to the performance of the President's official duties. The Cabinet meets to deal with other official business and to prepare meetings with the President. A number of Aides-de-Camp seconded from the Defence Forces work in the Office of the President of the Republic.

The Aides-de-Camp under the leadership of the first Aide-de-Camp are responsible for the management of the President's and her spouse's daily program in accordance with the instructions of the President and guidance given by the Cabinet.

This practice dates from 1918-19, when General C-G. E. Mannerheim was the provisional Head of State.”

Working Methods and Decision-making in the Governmental session

The year 2000 Constitution has only a short section on the decision-making and working methods of the Government. The Governmental session is comprehensively prescribed on the level of ordinary law and decree. In fact, one may state, that the decision-making is ordained in a far too detailed and formal way. The Government sessions (as in fact the Presidential session) have become almost formalities, without real discussion on policy matters ²⁸.

The real policy-making within the Government has escaped from the official Governmental session and is carried out elsewhere in sessions that are more private by nature. The Governmental session only officially confirms the decisions, which have been made elsewhere. The short Governmental session is usually held once a week, one day before the Presidential session.

²⁸The handling of business in Government plenary sessions is based on a presentation list distributed in advance and including the draft decisions proposed by the presenting rapporteurs. Items for which a rapporteur is not called to attend are handled under the decision list procedure. Items on the decision list are generally approved unchanged. Ministers do, however, have the right to remove an item from the agenda or request the production of relevant documents, while the Government as a whole may decide to shelve the matter until a later session. Under the alternative presentation list procedure, items on the presentation list are presented in person by the rapporteur responsible for the preparatory work. Items are presented according to the order in which the ministries are listed in the Government Act. If a member of the Government in plenary session wishes to examine an item on the presentation list in greater detail before reaching a decision, he/she may request access to the relevant documents. Ministers also have the right to remove an item from the agenda, while the Government as a whole may decide to shelve the matter until a later session to allow time for additional information or for some other comparable reason. Voting procedure. All members of the Government have the right to propose their own solution to business discussed in plenary session. A vote must be taken in cases where more than one proposal is put forward. Proposals by a minister do not need the support of other ministers in order to be voted on. A proposal by a rapporteur which does not receive the backing of a single minister is dropped without a vote. Government voting procedure is collegial. Fundamental to this procedure is that all proposals are decided on a single vote. In the voting process, each minister in turn expresses his/her opinion in reverse order of seniority, from the most junior up to the most senior minister. The chairperson is the last to express a view. The proposal supported by the majority is declared the decision. In the event of a tie, the chairperson's vote is decisive. If a minister wishes to express a minority view on an issue, but does not wish to present an alternative solution or a dissenting opinion, he/she has the right to enter a statement in the Government minutes. See <http://www.valtioneuvoisto.fi/tietoa-valtioneuvoistosta/perustieto/en.jsp>

The matters to be considered by the Government shall be prepared in the appropriate Ministry. The Government has Committees of Ministers for the preparation of matters. The Governmental session is competent with a quorum of five Ministers present. In addition to the Prime Minister and other Ministers, these plenary sessions of the Government are also attended by the Chancellor of Justice.

The Prime Minister decides the order for the presentation of business at Governmental session. Sessions handle approximately 2,000 items of business every year. Each item on the agenda is presented by a rapporteur from the ministry concerned.

The decision-making system of the Government of Finland is described to be as formal as the work of the Supreme Court. The politically significant decisions are made in other preparative bodies of the Government, and then taken in the official Governmental session. The Government as a whole meets weekly unofficially, usually one day before the Governmental session, on Wednesday. All matters of political importance are in fact decided in these unofficial meetings. There are also special additional and unofficial procedures for the preparation of the State Budget. In addition, the leading Ministers of the coalition parties have their private meetings. Special committees of Ministers prepare political decisions of the Government in their meetings²⁹. There are four official ministerial committees established by an act. Of special interest here is the Cabinet Committee of Foreign and Security Policy, which is the central arena for the co-operation on foreign policy between the President and the Government.

²⁹ A Government evening session is an unofficial meeting convened by the Prime Minister. They are held as a rule at 17.00 on Wednesdays in the Government Banqueting Hall (Smolna). In keeping with their informal spirit, no formal decisions are taken at the evening sessions. In addition to members of the Government, the sessions are also attended by the chairpersons of the parliamentary groups of the Government parties, the Chancellor of Justice, the State Secretary of the Prime Minister's Office and the Director of Government Communications. The Prime Minister's special adviser on political affairs serves as secretary to the evening sessions. The resulting notes and minutes are not considered public documents.

Informal Government meetings are held between ministers convened by the Prime Minister. In addition to members of the Government, informal Government meetings are also attended by the chairpersons of the parliamentary groups of the Government parties, the Chancellor of Justice, the State Secretary of the Prime Minister's Office and the Director of Government Communications. Items for discussion are presented by the relevant minister in person. No formal decisions are taken. The Prime Minister's special adviser on political affairs serves as secretary to the meetings. The resulting notes and minutes are not considered public documents.

Foreign policy

The decision-making power of the President of the Republic in foreign policy affairs is the most complicated question related to the aspects of semi-presidentialism in the new Constitution. The decision-making procedure concerning international relations is ordained in section 93 of the Constitution (titled “Competence in the area of foreign policy issues”):

The foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament accepts Finland's international obligations and their denouncement and decides on the bringing into force of Finland's international obligations in so far as provided in this Constitution. The President decides on matters of war and peace, with the consent of the Parliament.

The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution. The communication of important foreign policy positions to foreign States and international organisations is the responsibility of the Minister with competence in foreign affairs.

The decisions on international relations should be viewed in the context of decision-making procedures of two categories: the formal decisions by the President of the Republic on the proposals of the Government (section 58 in the Constitution), and the informal decisions on foreign relations. Into the formal decisions, one may count first the decisions on Government bills to Parliament regarding the approval of international treaties, other internationally binding obligations and the denouncements of such obligations or on reservations to them. These decisions are made in the Presidential session on the proposal of the Government. To this category belong also decisions on the appointment of delegations to the treaty negotiations and the ratification of international treaties. One may point out, that these decisions are in fact formalities, as the relevant policy-decisions have been made earlier. Formal decisions are made according to the rules in the Section 58 of the Constitution, described earlier.

Both the formal and informal decisions concerning the foreign policy, belong to the category of “co-operation”, mentioned in sub-section 93.1.³⁰

The second category of presidential decisions on international relations are the different kinds of informal and usually preparatory decisions and unofficial contacts to foreign states or international organisations, and public or confidential statements to subjects of international law (States and intergovernmental organisations) or their representatives. These actions of the President belong to the vast category of international relations decided upon in the co-operation process with the Government. The co-operation process is confirmed in the text of the Constitution, but not regulated in detail. In different situations and in different matters alternative methods are used. The importance and weight of a foreign policy operation determines the co-operation method, which is used.

³⁰ The relationship between the Parliament, the President of the Republic and the Government is described by Seppo Tiitinen as follows: “Chapter 8 of the new Constitution is devoted to international relations. Its provisions are intended to clarify the constitutional framework for the management of international affairs and strengthen parliamentary control over foreign policy and over the actions of the President of the Republic. In practice, the provision in the new Constitution that deals with the division of authority in relation to international affairs (Section 93) does not alter the existing division of authority between the President, the Government and Parliament. The provision states that Finland's foreign policy is conducted by the President of the Republic in co-operation with the Government. However, as a general rule it is the role of Parliament to ratify and withdraw from international obligations and decide on their implementation, while the President decides on war and peace upon the consent from Parliament.”

<http://www.cbss.st/documents/cbsspresidencies/7lithuanian/outlook/dbaFile475.html>

At the background are the rules of international treaty law: the Head of State may bind the State internationally by direct communications with the representatives of Foreign Powers ³¹.

The co-operation process may take three different forms:

- 1) The most important unofficial decisions, operations, plans etc. may be discussed between the President and the Government as a whole. This is very uncommon. In fact, between the years 2000–2005 there were no such recorded or reported meetings at all (the President and all the ministers), although only this method of co-operation is mentioned in the text of the Constitution (“President of the Republic in co-operation with the Government”).
- 2) The Foreign- and security policy committee of the Government is another forum.
- 3) In cases of minor importance or in cases of urgency it is considered sufficient, that the President consults the Prime Minister, the Minister of Foreign Affairs or both. This might be the case for instance, if there is an unexpected vote in the United Nations.

The Constitution is silent on the co-operation procedure. It does not answer the crucial question, how the decision is made in case, when the President on one side, and the Government on the other, are of different opinion on the decision to be made. The only answer that the drafters of the Constitution could give was, that the parties should negotiate until a result, that is acceptable for both, is found.

³¹ The office of the President of the Republic has given the following definition (www.tp.fi) “The President’s actual decision-making in initiating handling of matters or during their processing must be done in consultation with the Government if what is involved is a significant foreign-policy decision or measure (a speech, a letter, extending or accepting an invitation), but this is done informally. The Government’s input into those of the President’s other decisions and actions in the sphere of foreign policy which are not required to be discussed at the Presidential sessions of the Government can be effected through the cabinet committee for foreign and security policy, other informal consultations or discussions with the Prime Minister and/or one or several other Ministers. In matters of major and far-reaching significance, it may be necessary to consult with the whole Government, but it is generally sufficient to discuss matters at a meeting between the President and the Cabinet Foreign and Security Policy Committee or to hold discussions with the Prime Minister and/or the Minister in question - in most cases the Minister for Foreign Affairs. The President follows this procedure to discuss such matters as state and official visits abroad or to Finland by a foreign Head of State and meetings of the European Council, at which Heads of State or Government of the European Union countries gather, usually twice a year.”

The President takes all significant decisions on foreign policy in co-operation with the Government, which does the preparatory work. This, in turn is carried through mainly by the Ministry of Foreign Relations, but also by other Ministries. For EU-matters, there are special arrangements ³². The President of the Republic has no competence on these matters with the exception, that the President attends at times the meetings of the European Council.

Decisions, which relate to foreign policy guidelines, initiatives and instructions to official representatives of Finland in all questions of importance either in principle or otherwise, are the responsibility of the President. She also decides on the recognition of foreign states, the establishment or severance of diplomatic relations, on Finnish diplomatic missions, on joining or withdrawing from international organisations, on delegations to international negotiations, and on the signing, ratification and entry into force of international treaties (subject to Parliamentary approval when required). The President appoints or assigns the highest officials in the foreign affairs administration and the heads of Finnish diplomatic missions (ambassadors). Diplomats representing other states and international organisations accredited to Finland present their credentials to the President.

³² See Saraviita, op.cit. pp. 192-194. See also www.valtioneuvosto.fi/vn/liiston/base.lsp?r=745&k=fi

The President in the Committee on foreign policy and security policy

The Cabinet Committee on Foreign and Security Policy is the principal arena for co-operation in foreign policy matters. It is chaired by the Prime Minister. It also includes the Minister for Foreign Affairs, the Minister of Defence, Minister of the Interior, the other Ministers designated to handle matters falling within the competence of the Ministry for Foreign Affairs and three other Ministers designated by the Prime Minister. If the President of the republic is present - as usually is the case - she leads the discussion. At the end of the conversation, the Chairperson summarises the discussion after asking the opinion of the Prime Minister. During recent years the Committee has had from 14 to 19 meetings annually.

The Committee handles the preliminary preparation of matters relating to foreign and security policy and other matters relating to Finland's relations with foreign countries and important issues of national defence. The Committee and the President of the Republic meet together whenever current business so requires. This joint session is a new institution, which was formally established at the beginning of the year 2003. The Committee was divided in two: meetings with and without the President of the Republic. According to the Constitution (section 67.3) Committees of Ministers exist for the 'preparation of matters'. When the president of the Republic is present, one may not speak about mere 'preparation'. The committee is a body of co-operation between the President and the Government in foreign policy matters. In matters where the President is responsible for directing foreign and security policy, the proceedings may be seen as final decisions according to the rules concerning the co-operation procedure on international relations (section 93.1 in the Constitution). Matters relating to the European Union's Common Foreign and Security Policy, which fall within the Government's purview, are also dealt with at such meetings with the President. The decision-making procedure on international relations has certain similarities with the Constitution of the French V Republic, and the so-called situation of cohabitation in cases when the President of the Republic and the Prime Minister have different political background³³. The political background of the President of the Republic seems to have only insignificant importance to the decision-making and co-operation between the President of the Republic and the Government. The President has little, if any, influence on policy-matters, which are of importance to the governmental parties (legislation and budgetary matters). On the other hand, in the area, where the accent of the presidential powers is (foreign relations and security policy), a stable consensus prevails among political parties, either coalition-parties or parties in the opposition. This is illustrated by the fact, that at the end of the year 2004, the Parliament accepted unanimously a comprehensive report, prepared by the Government, on the security policy of Finland.

33 The first President of the Republic, Tarja Halonen, who directed the foreign policy of Finland according to the new rules in the year 2000 Constitution, was former Minister of Foreign Affairs, and a Minister in the Paavo Lipponen's first Government. They both represented the Finnish Social Democratic Party. The President, according to an established Constitutional habit, left her party. In the new Cabinet, Paavo Lipponen's second, Ilkka Tuomioja, the Minister of Foreign affairs, belonged to the Finnish Social Democratic party. Thus during the first years of the new system the decision-making on foreign policy was conducted by persons, who all had the same political background, and who probably shared the same basic views on the foreign policy line of Finland. In the new, year 2003 Jäätteenmäki Government, later the Vanhanen Government, the Prime Minister represents the Centre Party and Tuomioja, again the Foreign Minister, represents the Social Democrats. Therefore, the President of the Republic (Tarja Halonen) and the Prime Minister (Matti Vanhanen) have different political backgrounds.

The experiences of the decision-making procedures between 2000-2006 ³⁴

In a broad sense, the President of the Republic and the Government, together, “exercise the governmental powers” (section 3, “Parliamentarism and separation of powers”). They have a common goal but may have different opinions. In everyday political practice, the Government and the Prime Minister are in the leading role. The Prime Minister does not have significant constitutional powers.³⁵

³⁴ Jaakko Nousiainen summarises the year 2000 constitution: La réforme a été marquée par un « pathos parlementariste » et le désir explicite de renforcer le statut de fait du Parlement. La Constitution sert de tampon et empêche que ne surgisse un pouvoir présidentiel comme dans les années 1960 et 1970, et l'atmosphère est propice à ce que les formes d'action parlementaires continuent à se développer. La tension entre présidentielisme et parlementarisme s'atténue ; le statut du Président de la République est moins fondé sur un pouvoir constitutionnel et davantage sur l'autorité personnelle. On est donc en droit d'attendre que le renforcement de l'axe Parlement-gouvernement et la réduction des prérogatives du Président de la République éloignent le chef de l'État de l'exercice de la politique dans la société et soulignent son rôle comme soutien du gouvernement en place, comme conciliateur et comme interprète de la volonté populaire. À l'avenir, le fonctionnement du système politique sera moins tributaire des ressources politiques et de l'activité personnelle du Président de la République, et davantage de la constellation parlementaire, de l'alternance des rapports de forces entre les partis et les coalitions. www.dn.fi/3064.htm

³⁵ The official duties of the Prime minister are listed here: The Prime Minister directs the work of the Government and oversees the preparation and consideration of Government business. The Prime Minister monitors the implementation of the Government Programme and coordinates the preparation and consideration of issues to be decided in the European Union . When the Prime Minister is prevented from attending to his or her duties, these are taken over by the minister depositing for the Prime Minister, or, when the latter is also prevented, by the most senior minister in the Government.

The Prime Minister chairs plenary sessions of the Government and has the right to decide the days and the order for the presentation of business in the sessions. The Prime Minister may also require presentation of a particular item of business to the Government plenary session by a set date. On the proposal of the Prime Minister or the minister under whose competence the matter in hand falls, the Government plenary session may transfer a matter coming under the competence of an individual ministry for decision in plenary session. When a vote in plenary session ends in a tie, the Prime Minister's casting vote is decisive.

The Prime Minister chairs all the statutory Cabinet Committees, namely the Cabinet Committee on Foreign and Security Policy, the Cabinet Committee on European Union

Affairs, the Cabinet Finance Committee and the Cabinet Committee on Economic Policy . He or she also chairs sessions of the Economic Council, the Science and Technology Policy Council and the Title Board.

The Prime Minister is head of the Prime Minister's Office. The role of the Prime Minister's Office is to ensure that the activities of the Prime Minister and Government flow smoothly in all circumstances. The Prime Minister's Office is responsible for the monitoring of the implementation of the Government Programme and assists the Prime Minister in the general management of Government functions. The Prime Minister's Office also coordinates Finland's EU policy and handles issues related to the development of the EU.

The Prime Minister is the political leader of the Government and is responsible for reconciling the differing views on Government policy held by the various groups represented in the Government. The Prime Minister is also responsible for coordinating the work of the Government with that of Parliament. Under the new Constitution, the President of the Republic may dissolve Parliament and call fresh elections only on receipt of a reasoned request from the Prime Minister and having first consulted the party groups in Parliament. The President appoints the other ministers of the Government in accordance with a proposal by the Prime Minister.

The Prime Minister stands in for the President of the Republic whenever the President is prevented from carrying out his or her duties. However, a statement by the President of the Republic entered in the Government minutes in December 1991 ended the previous practice whereby the President had been automatically considered to be prevented from carrying out his or her duties during trips abroad. In practice, the Prime Minister only stands in for the President in cases where it is known in

advance that it will be necessary during the course of a presidential trip abroad for the President to take decisions in presidential sessions of the Government, or where

The President of the Republic does not have equivalent resources for independent policy-making. Due to direct election by the people, the President, however, derives legitimacy and public support. During the first years of the year 2000 Constitution, the President (Tarja Halonen, who was elected in the year 2000 for a six year period in office, and again in the year 2006) has been very popular, and her way to use the presidential powers is highly appreciated among the population according to opinions polls. In other words, the dissenting opinions among some politicians and scholars on the existing constitutional powers of the President, are not shared by the common man, according to Gallup-investigations.

The semi-presidential aspect of the Finnish political system leads to question: have there been significant disagreement on the governmental politics between the Government and the President?

In Finland, there are three major parties, the Conservatives (Coalition Party), the Centre (The Centre Party) and the Social democrats (Social Democratic Party). In the Finnish model of parliamentarism, two of these major parties form the foundation of a majority Government, while the third stays, and is in fact compelled to stay in opposition. One may note, that during the first six years there has been two different political coalitions. At first, the Government consisted of Social democrats and Conservatives. The Prime Minister, Paavo Lipponen was a Social democrat. After the year 2004 election, the Centre party won a victory, and gained the largest parliamentary group, which entailed it the seat of the Prime Minister (at first Anneli Jäätteenmäki, lately Matti Vanhanen). These two different coalitions exercised governmental powers with President Tarja Halonen, who was elected President as a candidate of the social democrats.

One may not see differences in the political relationship between the Government and the President connected with the structure of the Government coalition. The new system has worked smoothly and there have been only a few open disagreements between the two parties. To use the concepts of the Constitution, only in one case the President has not made her decision in accordance with the proposal of the Government. The question concerned a nomination of a civil servant (member of the Government of the Bank on Finland). The President did not accept the person, put forward in the proposal by the Government, and the President returned the proposal to the Government. Later the Government changed its candidate, and the President accepted the second proposal. So, if we regard the power-relationship, which has been established in section 58 of the Constitution, the system has proved to be functional.

We may not compare the era of President Tarja Halonen with power relations of her predecessors. In the year 1919 Constitution the President of the Republic could, according to the words of the Constitution, use the presidential powers independently, and without the political support of the Government, and some of the former Presidents really did so. During the era of the year 1919 Constitution, the Government and the Prime Minister were at times not ready or able to contest the will of the President. It could happen, that the Government acquired in advance the opinion of the President and then acted accordingly. At times, the President himself informed the Government, on his intentions. The constitutional change of the year 2000 altered the situation both legally and politically: almost in all cases, when the Constitution (section 58) requires a proposal of the Government the President of the Republic has accepted the proposal and decided accordingly. There are no signs of the old feature, that the present-day Governments prepare proposals by inquiring in advance the President's opinion.

The constitutionally crucial area, decision-making on foreign policy in co-operation with the Government (section 93 of the Constitution), is more problematic to analyse, than the decisions on governmental propositions. In fact, the majority of decisions concerning foreign relations never lead to concrete decisions, which are made public by recorded formal decisions. The instruments of foreign policy are entirely different from those, used in the governance of administration in internal affairs. In foreign policy the states operate by foreign policy announcements, diplomatic operations, voting operations in the meetings of international organisations and other bodies, discussions with other powers, political programmes, plans etc.

The decisions on foreign policy are often made public in the speeches by the President, the Prime Minister, and Minister of Foreign Affairs either in the Parliament, national media or on international platforms. An outside observer may not deduce, what kind of decision-making procedure is behind these announcements on the foreign policy line. The observer takes as starting point naturally, that all internationally significant announcements have been decided according to the broad rules of co-operation in foreign policy decision-making. An outsider may not get precise information on a possible disagreements or differences of opinion between the President on one side, and the Government or Prime Minister or Minister of Foreign Affairs on the other. It seems to be in the interest of all parties to give outsiders the impression of unity on foreign policy issues.

Conclusions

The title of this article refers to the semi-presidential features of the present Constitution of Finland as understood and defined by Maurice Duverger, and later by other researchers of political science. The year 2000 Constitution has broken the original and intentional semi-presidential structure of the year 1919 Constitution. On the other hand the new Constitution differs significantly from the present day parliamentary systems in Europe. In the original, year 1919 Constitution, the President of the Republic had certain prerogatives, which could be used on the Presidents own initiative and at times directed against the Parliament. The President could decide on the dissolution of the Parliament and influence the coalition structure of the Government.

The fact, that the president of the Republic is elected directly by the people, inevitably leads to a situation of "dual executive"³⁶. The Government holds the confidence of the Parliament, which is elected by the people. In the governmental decision-making the Government and its Prime Minister face in decision-making the President, who has gained in the presidential election the support of the majority of the people.³⁷ The presidents have until now maintained direct contacts to the population by different means. They have continuously travelled around the country, and met people in festivities and marketplaces.

³⁶ Giovanni Sartori, *Comparative Constitutional engineering*, London 1994 pp 131-132, speaks about "dual authority" as he defines "semi-presidentialism". Sartori characterises it in the following way: The head of state is elected by popular vote for a fixed term of office. The head of state shares executive power with a prime minister, thus entering a dual-authority structure whose three defining criteria are as follows: 1. The president is independent of parliament, but is not entitled to govern alone or directly and therefore his or her will must be conveyed and processed via the government. 2. Conversely, the prime minister and cabinet are independent of the president in that they are parliament dependent: they are subject to parliamentary confidence or non-confidence (or both), and in either case need the support of parliamentary majority. 3. The dual-authority structure of semi-presidentialism allows for different balances and also for shifting prevalence of power within the executive, under the strict condition that the "autonomy potential" of each component unit of the executive subsists". Sartori seems to concentrate on the differences between "presidential" and "semi-presidential" systems.

³⁷ The solemn affirmation of the President before the Parliament commences: "I..., elected by the people of Finland as the President of the Republic. . ." (section 56 in the Constitution).

The concept “dual executive”, which is almost analogous with the term “semi- presidentialism”, may be directly seen in section 3.2 in the Constitution:” The governmental powers are exercised by the President of the Republic and the Government, the members of which shall have the confidence of the Parliament”. The division of powers may be seen also in the division on procedures to the “Governmental session”, headed by the Prime Minister and to the “Presidential session” chaired by the President.

If the parties, the President, who is elected by the majority of the people, and the Government, that has its power base in the parliament, also elected by the people, disagree on a matter of general importance and interest, disturbances to the legitimacy of the political system are probable, in case the dissenting opinions become public. This is the case at least in the situation, when the President returns a governmental proposition. This is also the case, if the President blocks the decision-making or plan, which is supported by the Government in the co-operation procedure on foreign policy. In the year 2000 Constitution, the President of the Republic seems to have only defensive and conserving powers.³⁸ The dissolution of the Parliament is possible on the recommendation by the Prime Minister. Equally, the President may involve in the election of the Prime Minister only in a political situation, when the Parliament is unable to decide on a majority Government. The President has a suspensive veto on legislation. The President may reject nominations of the highest civil servants. In the area of foreign policy, the President may hinder initiatives that belong to foreign relations, negotiations on an international treaty or an agreement and the ratification or acceptance of an international obligation or the denouncement of a treaty.

³⁸The presidential powers in the year 1919 Constitution were often characterized by the definitions of Benjamin Constant (Cours de politique constitutionnelle ou collections des ouvrages publiés sur le Gouvernement représentatif I, Deuxieme edition, Paris 1872 p. 19) as “pouvoir neutre” and “pouvoir modérateur”. After the constitutional change of the year 2000 this seems inappropriate, as the President may not decide alone on the dissolution of the Parliament, and at least in a normal situation influence in the negotiation on a new Government and Prime Minister.

In the text of the Constitution the President still has significant, although preventive or hindering prerogatives against the Government, while the new Constitution is almost silent on the individual powers of the Prime Minister and the Government.³⁹ The President makes decisions in separate Presidential Sessions, military cabinet and more informally in co-operation with the Government. Formally the Constitution still looks semi-presidential.⁴⁰

The definition of semi-presidentialism, as put forward by Maurice Duverger, underlines, that the powers of the President in a semi-presidential system are *significant*. Is this the case in the Finnish constitutional system, is a question, which may not be answered by those scientific methods, which are available in the legal science (constitutional law). One may not draw conclusion from the text of the Constitution on the actual power-relations.⁴¹ Probably only Maurice Duverger could decide, does the Finnish constitutional system still fulfil the criteria of semi-presidentialism.

³⁹ See a recent comparative study (28.2.2003) on semi-presidential systems: Axel Tshentscher International Constitutional Law, www.uni-wuerzburg.de/law/index.html. Tshentscher points out, that although the literature on semi-presidential systems has been expanding, there is still much progress to be made.

⁴⁰ Rafael Martinez, Semi-presidentialism: a comparative study, ECPR Joint Sessions, Mannheim 26-31 March 1999, Workshop no. 13: Designing institutions, points out, that "The semi-presidential system ... is composed of three political organs, the President of the Republic, the Cabinet and prime minister and finally the Parliament with its own effective powers" (op.cit p. 12). This is exactly the case in the year 2000 Constitution, as the Presidential session and the Governmental sessions are separate constitutional institutions. We may also note, that Rafael Martinez exclude Austria, Ireland and Iceland from the category of semi-presidential systems: "Now, it is a question of evaluating whether the semi-presidential system is actually in application in these countries or whether it is merely a matter of legal formalism but an absence of practical application . . . In these cases the various political parties have reached what we could call a consensus to neutralise the presidential powers, by annulling the potential power conferred by direct election of the President. Indeed, the presidency is deprived of all real power; it could even be termed a case of constitutional mutation" (p. 21).

⁴¹ From the point of view of constitutional law, we may only state, that the powers of the President of the Republic still is a sensitive and controversial subject. At the end of the year 2005, the President gave to the Parliament a bill concerning the decision-making procedure on sending Finnish military forces to peacekeeping and crisis management missions abroad. The Government proposed, that the Parliament and the Government should decide on the matter but on the condition, that the President of the Republic would make the final solution to send the troops. Unexpectedly, the Constitutional law committee of the Parliament gave an opinion, that it would be contrary to the year 2000 Constitution to give the President the final word, when the European Union has decided on the peacekeeping and crisis management mission. The Government called off its proposition and appointed a committee to draft a change of the Constitution, which should give the final word to the President even on decisions based on EU-resolutions. Only after negotiations between the Government and the parliamentary groups, a compromise was made: the Parliament did not change the Constitution, but enacted a derogation to it. This permanent derogation confirms, that in all situations the President of the Republic has the decisive power on peacekeeping and crises-management missions.



About the Author

Born 13.8.1940

Matriculation examination, Oulun lyseo 1959

LL.M. 10.2.1964

Master of Laws trained on the bench 5.5.1965

Solicitor, Oulu 1966 - 1967

LL.Lic. 28.4.1966

LL.D. 25.11.1972

Associate professor, Public law, University of Tampere, 1974, Associate professor, Constitutional law, University of Helsinki 1977, Professor in Public Law, University of Lapland 1979 -

Dean of the faculty of law 1983 -1995

Knight, first class, Order of the White Rose 6.12.1990 Commander, Order of the Lion of Finland

6.12.2004 Medal for unblemished service, XXX years, (President of the Republic), silver medal

for service XX year 1998 and gold medal XXV year 2003, University of Lapland , Gold Medal,

Law Students Union Artikla, 2000, Honorary Chairman, law students association Kriminaalilubi

Special course in national defense 1995, Defense Academy

Jean Monnet Chair 1997

Best teacher, 1999, Law Students Union Artikla, 1998 and 2006.

Chairman, member or expert in various committees and expert, Ministry of Justice and the Constitutional commission of the Finnish parliament, Legal adviser, delegation of Finland to the United Nations 1980. Author of several books on constitutional law, law of treaties and law of international organizations, several articles on constitutional, international and administrative law.

Current activities: parliamentarism in the year 2000 Constitution of Finland, research project/doctoral studies, financed by the Academy of Finland.

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E-mail: ilkka.saraviita@fimug.fi

www-pages: <http://personal.inet.fi/tiede/ilkka.saraviita>