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The Covid-19 Pandemic and Parliamentary Oversight in Finland

TUUKKA BRUNILA, JANNE SALMINEN AND
MEHRNOOSH FARZAMFAR*

I. INTRODUCTION

IN MANAGING THE Covid-19 pandemic, governments around the world resorted to the most extensive use of emergency measures since World War II.¹ This was also the case in Finland. In March 2020, the Finnish government, together with the president, declared a state of emergency in line with the Finnish constitution (731/1999) and the Emergency Powers Act (1552/2011).² As the pandemic continued, the government triggered a state of emergency once more, in March 2021. The first state of emergency lasted for three months (16 March–16 June) and the second for two months (1 March–27 April). The pandemic put a test to the new constitution, which was amended in 2000 to change Finland’s political system from a semi-presidential to a parliamentary governance structure. This change brought about, among other things, a strengthening of the role of the parliament in overseeing and checking the executive branch. Similarly to other Nordic countries, the judiciary in Finland tends to be restrained in exercising review of executive powers as compared to other European countries.³ It is the parliament that enjoys a strong role in *ex-ante* review of the constitutionality of legislative acts. Thus the pandemic saw the

* Salminen and Farzamfar have analysed and discussed this material also in Janne Salminen and others, ‘Legislative Oversight in Finland during the States of Emergencies of the COVID-19 Pandemic’, *COVID-19 and the Constitution: A Special Collection of Essays in Honour of the Thirtieth Anniversary of the Constitution of the Republic of Slovenia* (University of Ljubljana 2024). Brunila’s research on this chapter has been funded by the Government of Finland as a part of the The Lessons of the Pandemic Crisis -project (PAKO).

¹ Venice Commission, *Interim Report on the Measures Taken in the EU Member States as a Result of the COVID-19 Crisis and Their Impact on Democracy*, The Rule of Law and Fundamental Rights (Strasbourg, 8 October 2020) 15.

² Valmiuslaki 1552/2011.

³ See J Husa, ‘Nordic Constitutionalism and European Human Rights – Mixing Oil and Water?’ (2011) 55 *Scandinavian Studies in Law* 101; J Lavapuro, T Ojanen and M Scheinin, ‘Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review’ (2011) 9 *International Journal of Constitutional Law* 505.

constitutional and parliamentary control of executive action in Finland being put to a test.⁴ It raised the significant question whether this governance structure is effective in overseeing and controlling the use of emergency measures.⁵

In this chapter, we analyse how the Finnish Constitution facilitates parliamentary oversight and constitutional control of executive emergency measures. We first develop a theoretical perspective on parliamentary oversight (Section II). We then analyse the constitutional basis of emergency legislation in Finland and its limits in Section 23 of the constitution (Section III).⁶ Thereafter, we analyse the special emergency legislation in Finland – that is, the Emergency Powers Act – from the perspective of legislative oversight (Section IV), as well as the relevance of the constitution in this regard. The decision-making mechanisms available under section 23 of the Finnish constitution and the Emergency Powers Act mean that the Finnish parliament has a legislative oversight mandate during states of emergency.

In addition, we highlight the role of the parliament in controlling the legality of emergency measures, a role that has been noted to serve to uphold the balance of power between the legislature and the executive.⁷ While some have argued that the Finnish system in this context relies on political culture,⁸ we argue that the Finnish Constitution and other relevant legislation offer an important example of parliamentary control during emergencies (Section V). What it shows is that although emergency exemptions are permitted in the Finnish legal system, parliamentary overview has shown that the grounds for such exceptions and their conditions must be provided explicitly in an independent parliamentary act. The necessity of such acts originates in the rule of law and respect for the principle of legality – a principle that has deep roots in both the Finnish constitution and legal tradition.⁹ This chapter thus shows the close interconnection between emergency rules and the rule of law – both of which the parliament in Finland forcefully employed in the context of the Covid-19 pandemic.

⁴ T Brunila and J Salminen, ‘“Regular Powers Are No Longer Enough” – Checks and Balances in Declaring a State of Emergency According to the Constitution of Finland’ (2024) 70 *Scandinavian Studies in Law* 215; regarding the peculiarity of the Finnish system, see J Husa, ‘Locking in Constitutionality Control in Finland’ (2020) 16 *European Constitutional Law Review* 249.

⁵ D Beetham, *Parliament and Democracy in the Twenty-First Century: A Guide to Good Practice* (Geneva, Inter-Parliamentary Union, 2007) 115; H Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments* (Geneva, Inter-Parliamentary Union, 2007) 15.

⁶ Suomen perustuslaki 731/1999.

⁷ J Grogan and J Beqiraj, ‘The Rule of Law as the Perimeter of Legitimacy for COVID-19 Responses’ in J Grogan and A Donald (eds), *Routledge Handbook of Law and the COVID-19 Pandemic* (Routledge, 2022) 209; see also C Poyet, R Niemikari and T Raunio, ‘What Makes Democratic Institutions Resilient to Crises? Applying a Novel Analytical Framework to the Case of Finland’ (2024) 32 *Journal of Contemporary European Studies* 246.

⁸ A Vedaschi and C Graziani, ‘New Dynamics of the “Post-COVID-19 Era”: A Legal Conundrum’ (2023) 24 *German Law Journal* 1612, 1644.

⁹ J Salminen, ‘Finsk krishantering i fredstid – beredskapslagen tillämpas för första gången’ [2020] *Svensk Juristtidning* 1116.

II. EMERGENCIES AND LEGISLATIVE OVERSIGHT

Emergencies often require a shift in the balance of power in favour of the executive.¹⁰ In order to act swiftly and decisively, the executive must have the necessary authority to deal with the emergency.¹¹ A declaration of a state of emergency is often required by legal systems to confine the use of extraordinary measures to a limited period. In addition, the powers granted by the state of emergency are often legislated in advance, which strengthens the capacity of individuals to anticipate them.¹² Doing so is tied to questions of democratic legitimacy.¹³ There are two reasons for this. First, preparing such legislation in advance ensures that emergency powers are democratically deliberated by the parliament and society at large. Second, it allows the legislature to uphold the normal legislative procedures also during emergencies.¹⁴ This means that even if an emergency calls for some extraordinary measures, these measures are legitimate and legally authorised.

Most notably, the Venice Commission recommends this approach. The Commission distinguishes constitutional *de jure* and extra-constitutional *de facto* states of emergency.¹⁵ An extra-constitutional state of emergency obtains when emergency measures are extra-legal (often due to a lack of constitutional provisions on emergency measures), so that ‘authorities enact emergency measures without having officially declared a state of emergency’.¹⁶ In contrast, a *de jure* state of emergency occurs when constitutional and legal regulations and constraints are established in advance. The Venice Commission recommends a *de jure* approach as it provides stronger guarantees of fundamental rights and protection of democracy. In this vein, the Commission recommends giving the parliament an active role.¹⁷ The parliament must therefore have the capacity to exercise control over the declaration and termination of a state of emergency, as well as the actions taken

¹⁰ Venice Commission (n 1) 16.

¹¹ C Bjørnskov and Sn Voigt, ‘Emergencies: On the Misuse of Government Powers’ (2022) 190 *Public Choice* 1. J Salminen and M Farzamfar, ‘Legislative Oversight in Finland during the States of Emergencies of the COVID-19 Pandemic’ in Saša Zagorc and Samo Bardutzky (eds), *COVID-19 and the Constitution: A Special Collection of Essays in Honour of the Thirtieth Anniversary of the Constitution of the Republic of Slovenia* (Ljubljana, Slovenia: University of Ljubljana, 2024) 457–476.

¹² T Brunila, ‘Legislation, Emergencies and the Need for Swift Action: Tensions between the Executive Branch and Emergency Legislation during the COVID-19 Pandemic in Finland’ [2025] *The Theory and Practice of Legislation* 31.

¹³ G De Angelis and E De Oliveira, ‘COVID-19 and the “State of Exception”: Assessing Institutional Resilience in Consolidated Democracies – a Comparative Analysis of Italy and Portugal’ (2021) 28 *Democratization* 1602, 1606.

¹⁴ David Dyzenhaus argues that during emergencies only those emergency acts that have a legal basis are democratically legitimate. See D Dyzenhaus, ‘States of Emergency’ in M Rosenfeld and A Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, 2012) 451.

¹⁵ Venice Commission, *Respect for Democracy, Human Rights and the Rule of Law during States of Emergency – Reflections* (Council of Europe, 2020) 6.

¹⁶ Venice Commission (n 1) 8.

¹⁷ Venice Commission, *Rule of Law Checklist* (Council of Europe, 2016) 22.

over its course.¹⁸ What is also important here is that power is not centralised with the executive: it does not both enjoy norm-issuing power and decide on exceptions to those norms.¹⁹ It is these normative principles that are key to understanding parliamentary oversight during a state of emergency.

The main objectives of legislative oversight is the prevention of arbitrary power, making the government accountable and its actions transparent.²⁰ Various oversight tools exist to make governing more democratic and to foster trust and uphold democratic principles, including committees, commissions, and parliamentary inquiries.²¹ Some scholars argue that parliamentary systems are less effective than presidential systems in that the latter separate the two branches – the executive and the legislature – more clearly.²² Others argue that what is more relevant than the principle of separation of powers is the capacity of the legal framework to facilitate control.²³ This means that some constitutions have more oversight potential than others based on the mechanisms and tools established in them. This also applies to emergency governance.²⁴

While a state of emergency requires delegating new powers and authorities to the executive, the checks and balances on the executive are crucial for protecting against the concentration of power and its arbitrary use. To limit these possibilities, which threaten the rule of law and the continuity of the democratic system, the role of the legislative branch is threefold. First, the parliament oversees the executive by assessing and demanding justifications for its actions. Second, the parliament limits executive authority by means of enforcing its constitutional limits (such as by means of sunset clauses that establish that the parliament is responsible for prolonging the state of emergency). Third, the parliament also acts as a legislator during emergencies, as sometimes the extraordinary situation requires new legislation for handling it. These are the three functions relevant in analysing parliamentary oversight in constitutions and in practice.

¹⁸ Venice Commission (n 15) 9, 18.

¹⁹ *ibid* 15.

²⁰ BA Rockman, 'Legislative-Executive Relations and Legislative Oversight' (1984) 9 *Legislative Studies Quarterly* 387, 415; Yamamoto (n 5) 9–10.

²¹ Riccardo Pelizzo and Rick Staphenurst, 'Tools for Legislative Oversight: An Empirical Investigation' in Rick Staphenurst and others (eds), *Legislative Oversight and Budgeting – A world Perspective* (WBI Development Studies 2008) 21; Riccardo Pelizzo, 'Oversight and Democracy Reconsidered' in Rick Staphenurst and others (eds), *Legislative Oversight and Budgeting – A world Perspective* (WBI Development Studies 2008) 31, 39; Kevin Deveaux, Natália Švecová and Tim Baker, *Parliaments Responding to a Pandemic: Lessons Learned for Emergency Planning* (Report from the House Democracy Partnership and The Swiss Agency for Development and Cooperation 2021) 11.

²² David Beetham (n 5) 115, 128; Yamamoto (n 5) 11; however, Staphenurst and Pelizzo suggest that parliamentary systems are better equipped to oversee executive powers. See Pelizzo and Staphenurst (n 21) 20.

²³ Pelizzo (n 21) 44; E Houlihan and W Underwood, *Emergency Law and the COVID-19 Pandemic: Global State of Democracy Thematic Paper 2021* (International Institute for Democracy and Electoral Assistance, 2021) viii; Deveaux, Švecová and Baker (n 21) 11.

²⁴ Houlihan and Underwood (n 23) viii; De Angelis and De Oliveira (n 13) 5.

III. PARLIAMENTARY CONTROL IN FINLAND DURING A STATE OF EMERGENCY

Declaring a state of emergency under the Finnish Constitution and the Emergency Powers Act means delegating to the Finnish Government the authority to issue decrees for assigning various measures necessary for dealing with an emergency. During the Covid-19 pandemic, these delegations included a range of issues related to social welfare, healthcare services, employment, education, and restricting people's freedom of movement.²⁵ The main aims of these decrees were announced to be that of preventing the spread of the virus, protecting special groups of the population (such as the elderly and the immunocompromised), ensuring the adequacy of social welfare and healthcare personnel, and the capacity of intensive-care services during the crisis, as well as ensuring the supply of medications.²⁶ In this section, we examine how the Finnish Constitution regulates the act of declaring a state of emergency and authorises the parliament to exercise control over the government's actions.

The Finnish constitutional framework predicts and – to a certain extent regulates – states of emergency. When a state of emergency is declared, some additional powers may be added to normal regulatory frameworks in order to secure the livelihood of inhabitants, enforce the law, ensure respect for constitutional freedoms and human rights, and safeguard the territorial integrity and independence of the country. One part of the Finnish attitude towards possible future emergencies has been to prepare legislation for regulating procedures in advance.²⁷ The Finnish legislature has also tried to anticipate possible public powers needed in various types of emergencies. The main objective of the Finnish legislature has been to prepare for possible emergencies in order to regulate them before they occur. The prevailing mindset in responding to emergencies in Finland is that if there is an exceptional situation that requires special competences and measures, such measures should have been regulated in acts of parliament in advance.²⁸ It is especially the first two roles established above in Section 2, the parliament's role in overseeing and assessing the government's actions, and the parliament's role in limiting executive authority, that are relevant to our analysis.

²⁵ Salminen and Farzamfar (n 11); Mehrnoosh Farzamfar, Janne Salminen and Janna Tuominen, 'Governmental Policies to Fight Pandemics: Defining the Boundaries of Legitimate Limitations on Fundamental Freedoms: National Report on Finland' in Arianna Vedašchi (ed), *Governmental Policies to Fight Pandemic* (Brill Nijhoff 2024).

²⁶ Government Decrees (*valtioneuvoston asetukset*) M 1/2020 and M 2/2020 on the adoption of certain emergency powers within the Emergency Powers Act and Government Decrees M 3/2020, M 4/2020 and M 5/2020 on the application of the aforementioned powers were all given to Parliament on the same day and discussed by Parliament on 17.3.2020.

²⁷ See T Brunila, 'Legal Resilience and Legislative Emergency Preparation in Finland' (2025) 183 *Retfærd* 9. This is also the case more generally in Finnish political culture. See A-E Hyvönen and T Juntunen, 'From "Spiritual Defence" to Robust Resilience in the Finnish Comprehensive Security Model' in S Larsson and M Rhinard (eds), *Nordic Societal Security; Convergence and Divergence* (Routledge, 2021).

²⁸ Salminen and Mehrnoosh (n 11).

A. The Constitution

The Constitution of Finland admits of states of emergency and regulates their declarations and governance. More precisely, Section 23, which contains ‘Basic Rights and Liberties in Situations of Emergency’, explicitly enables the government to declare a state of emergency. It adds that during a state of emergency, the government can impose provisional exceptions to basic rights and fundamental liberties:

Such provisional exceptions to basic rights and liberties that are compatible with Finland’s international human rights obligations and that are deemed necessary in the case of an armed attack against Finland or in the event of other situations of emergency, as provided by an Act, which pose a serious threat to the nation may be provided by an Act or by a Government Decree to be issued on the basis of authorisation given in an Act for a special reason and subject to a precisely circumscribed scope of application. The grounds for provisional exceptions shall be laid down by an Act, however.

Government Decrees concerning provisional exceptions shall without delay be submitted to the Parliament for consideration. The Parliament may decide on the validity of the Decrees.

This Section clarifies several important points. First, the situations in which it is deemed necessary to make provisional exceptions to basic human rights, fundamental liberties and freedoms include armed attack or other such emergencies that pose a serious threat to the nation. Second, in all such circumstances, exceptions must be compatible with Finland’s international human rights obligations. Third, the constitution permits exceptions to fundamental and basic human rights only if the principles of temporality and necessity are respected in a very strict manner. Fourth, they must be based on an authorisation given in a parliamentary act or by governmental decree, subject to a precisely circumscribed scope of application. Finally, the grounds for provisional exceptions must be laid down by an act and the authorisation of such acts must be circumscribed in scope. It is especially these last two points that are relevant for parliamentary oversight. Requiring that exceptions be laid down by an act enforces the role of the parliament in assessing their scope and rationale.²⁹

In interpreting a situation as an emergency, it is important that the parliament be given a role in overseeing it. This ensures that the decision does not rest solely in the hands of the government. Indeed, the way in which emergencies are regulated under Section 23 of the Constitution ensures that the constitutionality of deeming a situation to be an emergency can be assessed. Although Section 23 only mentions explicitly armed conflicts, it maintains an evolutionary character of interpretation. That is, by inserting the phrase ‘or in event of other situations of emergency’ the legislature intended to expand the instances of states of emergency to more than merely armed conflicts. While such an open-ended list

²⁹ Salminen and Farzamfar (n 11).

extends the possibility of interpreting other situations as emergencies as well – meaning that the definition or determination of other examples of emergencies is left to parliamentary law – the Constitution of Finland nonetheless sets several relevant boundaries on how the matter is to be regulated by the parliament and parliamentary law. Specifically, this means regulating how the requirement that the threat must ‘pose a serious threat to the nation’ is to be interpreted. Thus, necessary exceptions could arise either during armed conflicts or due to other serious situations. In this way, the constitutionality of interpreting a situation as an emergency can be controlled.

The parliament’s role is the clearest in the obligation established by Section 23 that the grounds for provisional exceptions should be laid down explicitly and clearly in a separate parliamentary act. This means that the grounds and reasons for such exceptions are reviewed by the parliament. All governmental decrees concerning provisional exceptions must be submitted to the parliament for further consideration. As a constitutional rule, the parliament has the authority to decide on the legal validity of these governmental decrees. Despite a certain scarcity of regulation on emergencies at the constitutional level, the constitutional review of decrees upholds the compulsion of legality³⁰ – deeply rooted in the constitution – by giving no room for unregulated, extra-legal, or extra-constitutional emergency law-making. Thus the constitution establishes that provisional exceptions cannot go beyond what it has explicitly and clearly regulated.³¹

In fact, Section 23 subjects an emergency decree to a stronger parliamentary oversight mechanism than decrees in a normal situation. This means that while a state of emergency might entail granting the executive extraordinary competences, it does not necessarily mean that the legislature’s role is weakened. This is evident in the difference between governmental decrees in general and those regulated under Section 23. The issuance of governmental decrees in general is regulated under Section 80 of the Constitution. According to this Section, the president of the republic, the government, and a ministry may issue decrees based on the authorisation given to them in the Constitution or in another act. If there are no specific provisions on who should issue a decree, it is issued by the government. The principles governing the rights and obligations of private individuals and other matters that are legislative in nature are to be governed by the legislative acts of the Parliament. This means that the Constitution includes several reservations regarding the use of parliamentary acts in certain cases; for example, the grounds of the rights and obligations of individuals must be enacted in law.³² Regarding the decrees created under Section 80 of the Constitution, the Parliament has the possibility to consider only the Sections on which the decree has been issued. In this context, the main restricting element of

³⁰ Regarding the concept, see D Dyzenhaus, ‘The Compulsion of Legality’ in VV Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge University Press, 2008).

³¹ Salminen and Farzamfar (n 11).

³² See, eg, statements of the Constitutional Law Committee of the Parliament, PeVL 26/2013 vp and PeVL 41/2014 vp.

the content of decrees is the requirement of enacting certain issues on the level of parliamentary acts.³³

In contrast to decrees issued under Section 80 the Constitution, Section 23 concerns the emergency decrees issued only after the declaration of a state of emergency. Requiring a declaration of a state of emergency as a procedure helps control and limit the use of emergency measures.³⁴ Unlike the ordinary or general decrees issued under Section 80, the decrees issued under Section 23 must be temporary and necessary in nature and subjected to immediate parliamentary review. During its review, the parliament has the power to approve or reject these governmental decrees. This furthers the parliament's role in limiting executive authority during emergencies. Essentially, although the Finnish Constitution allows for some exceptions to constitutional rights, it does not allow official institutions to derogate from their public duties, such as matters related to the relationship between the government, the president of the republic, and the courts. The same applies to the institutional duties of municipalities or other self-governing regional bodies. The constitution does not recognise any other temporary changes during emergencies than those stipulated based on and under Section 23. Thus, the Finnish system of emergency powers presupposes that the parliament and government should function together even during the difficulties of states of emergency.³⁵

While Section 23 of the Constitution differs from Section 80 regarding the power to rule by decrees allowing derogation from fundamental rights, it nevertheless requires the grounds for derogations to be set forth explicitly by a parliamentary act. Hence, during states of emergency, the basis for derogation from fundamental rights must be regulated by parliamentary law.³⁶ To be sure, there are some differences in the wordings of Sections 23 and 80 of the Constitution, by means of which Section 23 allows a slightly greater scope for using governmental decrees during emergencies. However, to balance this power, Section 23 provides the parliament with the right to review all temporary decrees and sets out an obligation for the government to provide the parliament with the possibility to review the decrees immediately after issuing them. According to the Finnish constitution, the parliament decides on the validity of these decrees.³⁷

B. The Emergency Powers Act

As mentioned above, Section 23 of the Constitution provides only an indicator for recognising and declaring states of emergency in Finland. In order to limit

³³ Salminen and Farzamfar (n 11).

³⁴ See Brunila and Salminen (n 4).

³⁵ Salminen and Farzamfar (n 11). A Jonsson Cornell and J Salminen, 'Emergency Laws in Comparative Constitutional Law – The Case of Sweden and Finland' (2018) 19 *German Law Journal* 219, 241–42.

³⁶ Salminen and Farzamfar (n 11).

³⁷ Cornell and Salminen (n 35).

the open-endedness of interpreting this Section, the types of emergencies and the powers of authorities during emergencies are regulated under the parliamentary Emergency Powers Act. On the one hand, this Act shifts the balance of power during emergencies in favour of the executive branch in order to enable swift action. On the other hand, it regulates in detail the powers and actions of the government in emergency situations.³⁸

Before going into the substance of the Act itself, the complicated nature of its constitutional basis must be emphasised. While the constitutional basis of the state of emergency is an important value in Finnish legal culture, the one major deviation from this practice in Finnish constitutional law is the fact that the Emergency Powers Act, which regulates exceptions during emergencies, is in a way an exception to the constitutional order. When it was enacted, the Constitutional Law Committee of the Finnish parliament (an *ex-ante* institution of parliamentary control meant to assess the constitutional basis of laws and acts of government) considered the Emergency Powers Act not to be materially in line with the Finnish Constitution, and therefore to be unconstitutional. However, if an act does not declare a constitutional amendment, it can enter into force as an exceptive enactment, which, while being substantially contrary to the constitution, is formally constitutionally valid due to qualified enactment procedures. Since the total revision of the Finnish constitution in 2000, the common constitutional tendency has been to avoid such exceptive enactment, meaning that nowadays, the use of exceptive enactments is very rare. Because the Emergency Powers Act grants a greater possibility for the executive branch to issue decrees during emergencies, and was thus considered to be substantially contrary to the constitution,³⁹ the constitution was later revisited, in 2011. Section 23 was amended to solve this problematic legal issue. Conversely, it seems that the current Emergency Powers Act is still substantially contrary to the Constitution, even after those amendments made to Section 23, which came into force in March 2012.⁴⁰

Regarding interpreting a situation as an emergency, according to the Emergency Powers Act, the Finnish government, in cooperation with the president, may declare a state of emergency when the criteria for a state of emergency obtain. The current Act defines six types of emergencies that fit the criteria for a crisis gravely threatening the nation. One of these types of emergencies is a widespread, dangerous, life-threatening infectious disease, the gravity of which corresponds to a catastrophe. The Covid-19 pandemic was deemed to fit this definition in 2020. Alongside the selection of criteria laid down in Section 23, the main principles for the use of the Emergency Powers Act are stipulated in the Act itself.⁴¹

³⁸ Salminen and Farzamfar (n 11).

³⁹ J Heikkonen, P Kataja, J Lavapuro, J Salminen and M Turpeinen, 'Valmiuslaki ja perusoikeudet poikkeusoloissa: Valtiosääntöoikeudellinen kokonaisarvio valmiuslain ja perustuslain 23 §:n suhteesta' Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 64/2018.

⁴⁰ *ibid.*

⁴¹ Salminen and Farzamfar (n 11).

The Act facilitates oversight and control as it also limits and circumscribes emergency measures. According to the Act, under emergency conditions, the authorities may only exercise powers that are necessary for legitimate purposes and proportionate to the objectives pursued. Additionally, the powers may be exercised if and only if the authorities cannot control the situation through their regular public powers. Thus, the use of the emergency powers envisioned by the Act is only possible if it is necessary and proportional, and if the regular powers have proven insufficient. In addition, if a normal parliamentary act is enough for the achievement of the goals of legislation, such a parliamentary act should be used instead, not an act based on Section 23.⁴²

Another important aspect of the Emergency Powers Act that serves to limit emergency powers is that it specifies the powers specific to the six different emergencies. In the case of a state of emergency caused by a pandemic, the Act provides only a limited set of additional powers that can be granted to the authorities. These powers are closely purpose-related in comparison with, for example, the extra powers in the cases of a military attack or its aftermath. The Act lays down the possibility to, for example, register and call to work all persons with a medical education, irrespective of where they work. In addition, a pandemic also allows imposing certain limitations on movement within the state.⁴³

The role of the Parliament in overseeing emergency measures derives from the fact that a declaration of emergency as such does not entail that all powers mentioned in the Act or allocated within the emergency in question are automatically at the authorities' disposal.⁴⁴ Instead, the Act stipulates a procedure according to which the government should first issue a decree stating clearly which powers are needed to handle the emergency. This decree is then subject to parliamentary scrutiny. If the decree is accepted by the parliament, the Government can issue further decrees to apply the adopted powers. All these decrees are reviewed by the parliament *ex-post* their issuance.⁴⁵ In addition, the specific powers at disposal, according to the Emergency Powers Act, are dependent on the emergency in question. In the case of a pandemic, the range of powers is rather restricted.

The Emergency Powers Act also empowers the Parliament to limit the government's authority and powers. While the Act does grant new powers to the government upon the declaration of a state of emergency, and while it grants the government authority to decide which powers within the Act to use,

⁴² Salminen and Farzamfar (n 11).

⁴³ Salminen and Farzamfar (n 11).

⁴⁴ Brunila and Salminen (n 4) 223.

⁴⁵ Lavapuro, Ojanen, and Scheinin (n 3). See also L Kirvesniemi, M Sormunen and T Ojanen, 'Developments in Finnish Constitutional Law' in R Albert, D Landau, P Faraguna and Š Drugda (eds), *2016 Global Review of Constitutional Law* (Boston, I-CONnect-Clough Center, 2017). M Dahlberg, 'Finland-Ex ante constitutionality review of laws relating to the COVID-19 pandemic' (2021) *Public Law* 4. Also see P Johanna Neuvonen, 'The COVID-19 Policymaking under the Auspices of Parliamentary Constitutional Review: The Case of Finland and its Implications' (2020) *6 European Policy Analysis*.

the use of decrees is regulated and their review is mandated.⁴⁶ The Parliament decides whether the decree under review is to apply as such, or whether it is to be repealed in full or in part, and whether it is to remain in force for the period sought or a reduced timeframe. In case the government does not give the parliament the opportunity to review the decree within one week of its being issued, the decree will automatically become void. Governmental decrees may be applied only after the parliament has decided that there is no problem in their application and that they are not to be repealed. Furthermore, all such decrees adopted under the Emergency Powers Act are temporal in nature – although the end of the state of emergency is not legally regulated as such. Decrees issued under the Emergency Powers Act are valid for a maximum of six months. The ending of the emergency entails the end of the decrees and competences under the Act. Furthermore, if the government does use the power to issue decrees during the emergency, all such decrees are subject to parliamentary *ex-post* review as mandated by Section 23 of the Constitution and regulated by the Emergency Powers Act.⁴⁷

Thus the Act establishes the interaction between the Finnish government, the president, and the parliament during states of emergency.⁴⁸ In the case of any new legislation on states of emergency based on Section 23, the Act should go separately through the enactment procedures in the parliament. To point out the obvious, in such cases the parliament acts as a legislature in the context of emergencies.

C. The Constitutional Law Committee

While our analysis has focused on the explicit regulation of states of emergency, it is important to mention the special constitutional feature of the Finnish parliamentary oversight mechanisms. The parliamentary oversight during emergencies is linked closely with the peculiar Finnish system of *ex-ante* constitutional review. In Finnish legal culture, one of the main doctrines has been

⁴⁶ M Farzamfar and J Salminen, 'The Supervision of Legality by the Finnish Parliamentary Ombudsman during the COVID-19 Pandemic' (2022) 99 *Nordisk Administrativt Tidsskrift* 1, 4.

⁴⁷ Salminen and Farzamfar (n 11).

⁴⁸ Of course, besides the measures taken in Finland during the state of emergency under this Act, the situation has also been managed by using powers provided for in the legislation applied under normal conditions – including, for example, the Communicable Diseases Act and the Border Guard Act, amongst many other ordinary laws. During the COVID-19 pandemic, over one hundred Governmental proposals for new legislation were issued. During the crisis, ordinary legislation has been amended, partly provisionally. This is particularly the case with the Communicable Diseases Act. In addition, the COVID-19 pandemic has been managed in Finland through guidelines, action plans, recommendations, and decisions issued by local authorities, all of which could be labelled as a softer source of law, see on this E Korkea-Aho and M Scheinin, 'Could You, Would You, Should You? Regulating Cross-Border Travel through COVID-19 Soft Law in Finland' (2021) 12 *The European Journal of Risk Regulation*.

the sovereignty of the parliament,⁴⁹ a reason for which the Finnish Parliament has also been given the authority to review the constitutionality of legislation. In this context, the constitutionality of legislation is reviewed by the *ex-ante* parliamentary institution, the Constitutional Law Committee (*perustuslakivaliokunta*) which is a parliamentary committee with a very special function. While it is one of the parliament's committees, it is made up of members of the parliament. It reviews the government's proposals for Acts from a constitutional point of view, and during the legislation process it has the final say regarding the constitutional basis of legislation.⁵⁰ It is also in charge of the review of emergency decrees in the parliament. In the Finnish constitutional setting, the Constitutional Law Committee is the key control mechanism for ensuring the constitutionality of legislation.

IV. THE COVID-19 PANDEMIC AND THE FINNISH STATE OF EMERGENCY

The framework we have explicated above was applied in the exceptional conditions of the Covid-19 pandemic. As mentioned, during the pandemic, a state of emergency was declared twice in Finland.⁵¹ Since the World Health Organization (WHO) had already classified Covid-19 a pandemic of seriously dangerous character, it was not problematic to deem that the pandemic threatened the nation in a way that justified declaring a state of emergency.⁵² During the pandemic in Finland, the executive branch held a central position in responding to the emergency.⁵³ The two periods of states of emergency made it possible for the government to claim some of the competences provided by the Emergency Powers Act. However, the Finnish system guarantees a key supervisory role for the parliament in all legislative decision-making.⁵⁴ We argue that the parliament was not marginalised in Finland during the Covid-19 emergencies,⁵⁵ but functioned in line with the legal framework that had been established in advance. During the two states of emergency announced due to the pandemic, the Finnish parliament functioned and acted rapidly without the need to establish any

⁴⁹ Lavapuro, Ojanen and Scheinin (n 3) 507; Husa (n 3) 107, 109; M Suksi, 'Common Roots of Nordic Constitutional Law? Some Observations on Legal-Historical Development and Relations between the Constitutional Systems of Five Nordic Countries' in H Krunke and B Thorarensen (eds), *The Nordic Constitutions – a Comparative and Contextual Study* (Hart Publishing, 2018) 40.

⁵⁰ Lavapuro, Ojanen and Scheinin (n 3) 510.

⁵¹ Government Decision (valtionneuvoston päätös) VNK/2020/31.

⁵² In addition, several other European States had already declared a state of emergency to respond to the situation. See N Morag (ed), *Impacts of the COVID-19 Pandemic: International Laws, Policies, and Civil Liberties* (Wiley, 2023).

⁵³ R Niemikari and T Raunio, 'Finland: Balancing Centralized Leadership and Regional Interests' in K Lynggaard, M Dagnis Jensen and M Kluth (eds), *Governments' Responses to the Covid-19 Pandemic in Europe* (Springer International Publishing, 2023) 285; See R Niemikari and T Raunio, 'Centralized Leadership, Ministerial Dominance, and Improvised Instruments: The Governance of COVID in Finland' (2022) 99 *Nordisk Administrativ Tidsskrift* 1.

⁵⁴ Salminen and Farzamfar (n 11).

⁵⁵ Vedaşchi and Graziani (n 8) 1628–29.

additional committees or supervising bodies. For example, the parliament made efforts to secure its functionality by amending its Rules of Procedure to allow Members of Parliament to work remotely.⁵⁶

As pointed out above, while the Finnish government and president can jointly declare a state of emergency based on the Emergency Powers Act, such a declaration does not by itself, without a contribution from the parliament, provide any extra powers for the government.⁵⁷ Furthermore, every decree based on the Emergency Powers Act is temporal and needs parliamentary approval. However, the declaration most certainly has very clear social and deep political effects. For example, such declarations often produce, at least in the early phases of an emergency, a ‘rally around the flag’-effect, which makes it difficult to oppose governmental measures.⁵⁸ This could have resulted in the parliament simply granting the government what it deemed necessary in order to stay out of the way of effective emergency response and not slow it down. However, during the Covid-19 emergencies in Finland, the time limit was used as one of the central elements when considering the proportionality of decrees, and the emergency periods were *shorter* than the Emergency Powers Act would allow.⁵⁹ This means that the parliament did not simply approve emergency measures without reservations – a practice that would have marginalised and undermined its role.

As illustrated above, as a compensation for the delegation of powers which can include derogation from rights, the Finnish legal system strengthens the role of the parliament in overseeing the government. This seems to have been the case during the pandemic as well, as the parliament was active in overseeing the government.⁶⁰ Indeed, the need to justify restrictions and other reactions, and to evaluate the situation – not only epidemiologically, but also from a wider societal perspective – *increased*. While throughout the pandemic the focus was on the epidemiological facts and health care needs, in retrospect, attention has increasingly been given to other aspects of the crisis as well. This has partly been supported by the parliament and the Constitutional Law Committee, as the latter has demanded an evaluation of the actions taken during the pandemic not only from the narrower point of view of the resources of the health care sector, but also from the perspective of impacts on various special groups in society in general.⁶¹ Thus, the impact assessment of proposed legislation in

⁵⁶ Salminen and Farzamfar (n 11). Brunila (n 12) 47–48.

⁵⁷ See the report of the Constitutional Law Committee, PeVM 2/2020 vp.

⁵⁸ Niemikari and Raunio, ‘Centralized Leadership, Ministerial Dominance, and Improvised Instruments’ (n 53) 248.

⁵⁹ M Scheinin, ‘Finland’s Success in Combatting COVID-19’ in J Grogan and A Donald (eds), *Routledge Handbook of Law and the COVID-19 Pandemic* (Routledge, 2022) 134–35.

⁶⁰ *ibid* 134; Niemikari and Raunio, ‘Finland: Balancing Centralized Leadership and Regional Interests’ (n 53) 286. In Finnish, see T Brunila, J Salminen and M Värttö, ‘Oikeuden Resilienssi Poikkeuksellisissa Oloissa – Perustuslakivaliokunnan Rooli Oikeuden Ylläpitämisessä Covid-19-Pandemian Aikana’ [2023] *Lakimies* 1011.

⁶¹ See H Lonka, ‘Valmiuslaki Koronapandemian Sääntelystrategiana’ (2023) 42 *Hallinnon Tutkimus* 183.

connection with the Covid-19 pandemic has been approached similarly to the regular impact assessment conducted within the law-making process during normal times. This has been partly because of the supervision of the Constitutional Law Committee and its reports and statements,⁶² which have underlined, for example, the need to observe restrictions from the perspective of the rights of persons with disabilities and children. However, this requirement also stems from Section 23 of the constitution, which requires that all regulations must be in line with Finnish obligations to the international human rights conventions.⁶³ Nevertheless, despite resorting to national emergency powers, Finland has not notified international institutions about the human rights provisions from which it has derogated (eg, Article 15 of the European Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights).⁶⁴

The oversight role of the Parliament and the Constitutional Law Committee is seen especially in how they insisted on the need for a rationale and justifications regarding the purported necessity of actions taken, and deeper legislative assessment on the effects of these actions.⁶⁵ For example, when evaluating the continuation of decrees concerning distance schooling, the Constitutional Law Committee underlined the need for wider evaluation of the effects of these actions.⁶⁶ In the same vein, the Committee started to emphasise the need to follow the effects of emergency actions and to terminate the emergency decrees as soon as possible.⁶⁷ In addition, the Committee started to increasingly evaluate the overall benefits and costs of restrictions in society, and not only restrictions pertaining to emergencies.⁶⁸ During the second state of emergency in Finland, in 2021, the parliament also considered that the wide application of decrees was not needed in the same manner enacted by the government.⁶⁹ Concerning the proposed massive restrictions on people's movements, for example, the Constitutional Law Committee found such serious problems that the

⁶² Scheinin (n 59) 134.

⁶³ On limitations to fundamental rights, see the decision of the Chancellor of Justice 1.10.2020 (OKV/61/10/2020) criticising the inadequate analysis of restrictions to fundamental and human rights in Government Decision SM/2020/20 (inadequate consideration of impacts, necessity, alternatives, and requirements imposed by the Schengen Code and Government Decision SM/2020/21 (the citizens' right to leave and enter country, PL 9 §, implied but not explicitly mentioned and similar deficiencies as in the above-mentioned decision)). In this regard, also see the Constitutional Law Committee's assessments in Statements PeVL 7/2021 vp, PeVL 9/2021 vp, PeVL 14/2020 vp, and Report PeVM 11/2020 vp. Concerning the constitutionally problematic governmental propositions, see PeVL 32/2020 vp and PeVL 12/2021 vp (problems of proportionality and indispensability, as the rights and duties were not clearly regulated).

⁶⁴ Salminen and Farzamfar (n 11).

⁶⁵ See, eg, PeVM 13/2020 vp.

⁶⁶ See PeVM 14/2020 vp.

⁶⁷ See PeVM 15/2020 vp.

⁶⁸ See, eg, PeVM 17/2020 vp.

⁶⁹ See PeVM 5/2021 vp.

government finally had to withdraw its plan.⁷⁰ It is this last example especially that shows that the parliament did effectively limit the government's emergency measures.

Action has also been taken to ensure that the Parliament is not marginalised. The Constitutional Law Committee has underlined that, prior to issuing decrees on the use of the powers of the Emergency Powers Act, there should be a decision by the parliament on the acceptance of the decree that concerns the powers within the Act planned to be utilised.⁷¹ On several occasions, when reviewing emergency decrees, the Committee has also reiterated the right of the parliament to receive all information needed for legislation and its review.⁷² Regarding the legislative or enactment procedures, the Constitutional Law Committee on several occasions clearly declared that the government should respect the procedures of the parliament and plan its own decision-making timetables, so that the parliament might have sufficient time to consider the issues.⁷³ For future emergencies, the Constitutional Law Committee has pointed out that certain parts of the Emergency Powers Act – especially those regulating the right of the parliament to access information and its possible maneuvers concerning the decrees – should be revisited after the emergency.⁷⁴

Parliamentary oversight and constitutionality control remained active and effective during the pandemic. As pointed out above, the Finnish legal framework strengthens the parliament's capacity to do so during emergencies. Indeed, the Constitutional Law Committee's *ex-ante* constitutional review and the parliament's *ex-post* review of decrees gives the parliament many possibilities to oversee, control and limit the Government's emergency measures, if needed. As the courts are a less relevant part of the review of constitutionality and legality of emergency decrees in Finland, the strong role of the parliament given by the constitution, the Emergency Powers Act, and the legal system is even more justified in ensuring that emergency measures are not disproportional and that they are used strictly for their intended aims. The parliament's success in achieving this task is most visible in reviewing the necessity and scope of emergency decrees based on the Emergency Powers Act.

As we point out below, there are some shortcomings in reaching the parliament's full potential in overseeing the government, such as its lacking a role in declaring a state of emergency. However, while these issues can mainly be addressed by applying principles already inherent to the existing legal framework, there are also drawbacks that pertain to the principles themselves.

⁷⁰ See PeVL 12/2021 vp.

⁷¹ See the reports of Constitutional Law Committee, PeVM 2/2020 vp, PeVM 4/2020 vp, PeVM 5/2020 vp and PeVM 6/2020 vp. The report PeVM 8/2020 vp includes a very serious reminder on this issue, pointing out that the action of Government was against the Emergency Powers Act and the constant, new practice of the Constitutional Law Committee.

⁷² See, eg, reports PeVM 7/2020 vp and PeVM 8/2020 vp, also PeVM 12/2020 vp.

⁷³ See, eg, the statement of the Constitutional Law Committee, PeVL 6/2021 vp.

⁷⁴ See PeVM 11/2020 vp.

To point out the obvious, the parliament is a fundamentally political entity, and its capacity to act as an overseer of the government is dependent on the willingness of the parliament to do so. While the Parliament was able to limit the scope and time limits of emergency decrees, this was partly due to such a willingness. Perhaps in an emergency that is more politically polarizing (an economic one, say) or one where going against the government would be less politically feasible (a war, most probably),⁷⁵ the Parliament would have acted differently. However, at least during the pandemic, the parliament seems to have been unwilling to forgo its role in genuinely trying to oversee and put bounds on the government. Yet it could be pointed out that it seems that the Constitutional Law Committee had a more visible role in doing so than the parliamentary *ex-post* review. Therefore, one could argue that Section 23 of the constitution and the Emergency Powers Act did not establish the *main* mechanisms for parliamentary oversight, as the Constitutional Law Committee – the actions of which are not regulated by these laws – was simply more relevant. Be that as it may, this did not result in the parliament focusing solely on *ex-ante* review. Rather, by requiring also *ex-post* review, the Constitutional Law Committee was complemented by the parliament's capacity to oversee and control the emergency decrees.

V. CONCLUSIONS

One of the key advantages of the Finnish Constitution and its emergency legal framework is that by predicting emergency clauses in law in advance, the Finnish Parliament is permitted the active role of reviewing executive action during emergencies. Both Section 23 of the Constitution and the Emergency Powers Act mandate the parliament to review the grounds and decrees made by the government based on the emergency powers and enables it to dispose of decrees that it deems unnecessary and disproportional to their aims. Against this backdrop, we examined the parliament's powers as exercised during the Covid-19 pandemic in Finland. Our study shows that the parliament carried out regular checks and balances of power and maintained a crucial role during the pandemic in holding executive power to account.

The parliamentary oversight was not without problems, however. According to Korkea-Aho and Scheinin, the parliamentary review failed in the context of soft law; that is, when the government made non-binding recommendations to government officials, as they were not seen as decrees that had to be reviewed.⁷⁶ These problems were, however, addressed by other legal actors, such as the Parliamentary Ombudsman.⁷⁷ In addition, there were structural problems, such as the parliament's limited role in decisions regarding the declaration and ending

⁷⁵ In the context of hybrid threats, see Brunila (n 27).

⁷⁶ Korkea-Aho and Scheinin (n 48) 43.

⁷⁷ Farzamfar and Salminen (n 46).

of the state of emergency.⁷⁸ Nevertheless, while it is true that Finnish party cohesion and discipline make traditionally majority cabinets quite strong against the parliament,⁷⁹ and while many scholars have argued that such aspects weaken the capacity of the parliament to audit the executive,⁸⁰ our analysis suggests that the parliamentary oversight potential of the constitution was effective during the pandemic. However, this success was not simply a question of legal structures, concerning political power-relations, as has been seen through the gradual politicisation of the constitutional committee.⁸¹ This means that political culture cannot be disregarded in this context.⁸²

As underlined by the Venice Commission, ‘any legal acts issued by the executive should be subjected to a subsequent parliamentary approval and should cease to produce effects, if they do not secure such approval within a certain period’.⁸³ Still, during the Covid-19 pandemic, many parliaments within the EU Member States seem to have performed a secondary role, leaving executive power largely unfettered, at least from parliamentary oversight.⁸⁴ In contrast to the general trend in pandemic governance, which favoured granting the executive extensive powers and thus marginalising the role of the parliament,⁸⁵ in Finland the parliament remained active in facilitating both legislative and constitutional control. We have argued that this is the case not because of mere political good will, but because of the *ex-ante* system of constitutional review and the legal framework that requires governmental decrees to be put to the parliament for review.

⁷⁸ Brunila and Salminen (n 4) 229; Scheinin (n 59) 133.

⁷⁹ T Raunio and M Wiberg, ‘Finland: Polarized Pluralism in the Shadow of a Strong President’ in K Strøm, WC Müller and T Bergman (eds), *Delegation and Accountability in Parliamentary Democracies* (Oxford University Press, 2003) 321.

⁸⁰ Beetham (n 5) 127; C Friedberg and RY Hazan, *Legislative Oversight* (Center for International Development, 2012) 9.

⁸¹ Husa (n 4) 273; M Pellonpää, ‘Perustuslakikontrollista neljässä Euroopan maassa ja Suomessa’ (2021) 6 *Lakimies* 934.

⁸² Vedaschi and Graziani (n 8) 1644.

⁸³ Venice Commission, (n 1).

⁸⁴ *ibid.*

⁸⁵ Vedaschi and Graziani (n 8) 1614.

