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THE CONCEPT OF EMERGENCY IN FINNISH EMERGENCY LEGISLATION: AN ANALYSIS OF AMENDMENTS TO THE EMERGENCY POWERS ACT

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In this article, I analyse the expansion of concept of emergency in the Finnish legal system by means of amending the Emergency Powers Act (1552/2011). The Act is the one of the main vehicles for regulating the use of emergency powers. The Act lists six distinct exceptional circumstances that authorise a state of emergency. Amendments to the Act have served to expand the definition of emergencies in the Constitution (Section 23) and the concept of emergency in general. By analysing the travaux préparatoires of relevant amendments, the focus is on the principles in expanding the concept. I argue that one of the main principles in developing the concept through legislation is preciseness. Emergencies should have to be defined by means of legislation as precisely as possible. In analysing the main principles in expanding the concept of emergency, this article seeks to also emphasise the tensions between these principles. As I will point out, sometimes preciseness is outweighed by the need to ensure that the Act accommodates all emergencies exhaustively.

1 INTRODUCTION

In Finland, the practice has been that emergencies are determined in advance by legislation exhaustively and as precisely as possible. The Finnish legal system emphasises parliamentary sovereignty, meaning that the capacity of courts in controlling legislation is rather restricted[1] – a practice that is prevalent in Nordic countries.[2] Therefore, it has been up to the legislator to develop the concept of emergency. Section 23 of the Constitution, 'Basic rights and liberties in situations of emergency', which is the section that regulates emergencies, states that 'the grounds for provisional exceptions shall be laid down by an Act'.[3] The Emergency Powers Act[4] is meant to be this act. It establishes six different exceptional circumstances as a ground for declaring a state of emergency. It provides for powers during armed conflicts, economic crises, major disasters, pandemics and hybrid threats. This list of exceptional circumstances has been the result of more than 30 years' work – the first document of the long list of *travaux préparatoires* is from 1979.[5] The Act was passed

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[1] Kaarlo Tuori, 'Judicial Constitutional Review as a Last Resort' in Tom Campbell, KD Ewing and Adam Tomkins (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press 2011) 381, 387.

[2] Jaakko Husa, 'Nordic Constitutionalism and European Human Rights – Mixing Oil and Water?' (2011) 55 Scandinavian Studies in Law 101.

[3] Unofficial translation by the Ministry of Justice, Finland. Other translations are the author's unless otherwise stated.

[4] Valmiuslaki/Beredskapslag (1552/2011).

[5] Parlamentaarinen valmiuslainsäädäntökomitea, *Parlamentaarisen valmiuslainsäädäntökomitean mietintö* (Valtioneuvosto 1979).

in 1991 and the most resent major amendment dates back to 2022. Amending the Act's list of exceptional circumstances has expanded the concept of emergency within and beyond the constitutional order. For this reason, the Ministry of Justice is facilitating a comprehensive reform of the Act.[6]

In this contribution, I analyse how the Emergency Powers Act has expanded the concept of emergency. The focus is on the principles in expanding the concept to emergencies other than war in the strict sense.[7] The Act provides for domestic and peace-time crises, which originally expanded the concept substantially.[8] My research question is: what are the principles in amending the Emergency Powers Act's list of exceptional circumstances? Through an analysis of relevant *travaux préparatoires*, I argue that a central principle is that the definition of emergencies is as precise as possible.

However, as I will point out, this principle of preciseness is sometimes in tension with the other principles in amending the Act, namely the principle that the legal system should anticipate emergencies and legislate emergency powers in advance. Anticipating emergencies legislatively ensures that there is no room for extra-legal measures or need for hastily (and therefore poorly) drafted legislation during emergencies. In following this principle, the practice has therefore been that new exceptional circumstances are included in the Act to ensure that the Act accommodates emergencies exhaustively. While legislatively anticipating emergencies is partly justified by the fact that in doing so ensures the proportionality and the preciseness of emergency provisions, ensuring that the Act regulates all emergency situations effectively has sometimes enjoyed precedence over preciseness.

The article's contribution to the discussion of emergency law is in analysing the principles of legislatively expanding the concept of emergency. While many have sought to understand and theorise the principles underlying legislatively defining emergencies,[9] my point is to analyse and illuminate the principles in expanding such a definition. I will begin by a theoretical discussion of conceptualising emergencies (Section 2), then move on to an overview of emergency laws in the Finnish legal system and their history (Section 3). In Section 4, I will analyse the development of the Emergency Powers Act and the *travaux préparatoires* relevant to the concept of emergency.

Three important studies have assessed the concept of emergency in Finnish legal system. Anna Jonsson Cornell and Janne Salminen, in their comparative work on Swedish and Finnish emergency law, have analysed the Emergency Powers Act's significance for

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[6] Ministry of Justice, Finland, 'Valmiuslain Kokonaisuudistus (OM015:00/2022)' <https://oikeusministerio.fi/en/project?tunnus=OM015:00/2022> accessed 15 October 2025.

[7] The Act on the State of Defence (1083/1991) regulates war-time powers. However, the amendments to this Act have not developed the concept of emergency in Finnish legislation significantly.

[8] Antti Aine et al, *Moderni Kriisilainsäädäntö* (WSOY 2011) 28, 138. A similar development seems to have taken place in the Roman Republic. Benjamin Straumann, *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution* (Oxford University Press 2016) 71–74.

[9] John Ferejohn and Pasquale Pasquino, 'The Law of the Exception: A Typology of Emergency Powers' (2004) 2(2) International Journal of Constitutional Law 210; Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press 2006); Sascha Mueller, 'Turning Emergency Powers inside out: Are Extraordinary Powers Creeping into Orginary Legislation' (2016) 18(2) Flinders Law Journal 295.

the Finnish Constitution.[10] Johannes Heikkonen et al. have written a thorough assessment of the Act's constitutionality.[11] Lastly, Antti Aine et al have summarised the history of the Act in the broader context of Finnish crisis legislation.[12] While they all provide a good overview of the Act, its development and issues, they do not focus on the principles in expanding the concept of emergency as such. Furthermore, the Act has gone through a significant amendment after their publication: the addition of hybrid threats as an exceptional circumstance category in 2022.[13]

2 CONCEPTUALIZING EMERGENCIES

There are different approaches to analysing the concept of emergency. Guillaume Tusseau distinguishes between ontological realism, the notion that in legal systems, the term 'emergency' refers to objectively knowable uniform circumstances independent of law, and functionalism, the notion that, while the term 'emergency' might not refer to anything real beyond the legal system, it is still a unified object of knowledge as it has a specific function in law, such as conferring emergency powers.[14] However, these positions are difficult to reconcile with the fact that it is neither possible to establish a correspondence between the legal definition of emergencies and real-world events or situations, nor easy to develop a unified notion within the legal system.[15] Emergencies denote plethora of different events and situations, such as economic, political, and natural events,[16] and the nature of actual emergencies seems to change and develop beyond the intention of the legislator, meaning that new court rulings and/or legislation is needed to further develop the legal definition. Even a working conception of emergencies that is not too general for allowing any event whatsoever to be an emergency and not too specific to hinder an effective emergency response is difficult to formulate.[17] In addition, scholars have convincingly argued that emergencies are becoming more complex and therefore they are less likely to accord with strict spatio-temporal limits.[18]

However, as Tusseau puts it, while the term might not denote anything precise, 'this does not prevent it being used in legal discourses'.[19] Analyses of emergency law should begin with positive law and practice rather than a unified definition.[20] Emergency law may be seen as power-conferring rules in exceptional situations, regardless of the fact whether exceptional

[10] Anna Jonsson Cornell and Janne Salminen, 'Emergency Laws in Comparative Constitutional Law – The Case of Sweden and Finland' (2018) 19(2) German Law Journal 219.
[11] Johannes Heikkonen et al, *Valmiuslaki Ja Perusoikeudet Poikkeusoloissa: Valtiosääntöoikeudellinen Kokonaisarvio Valmiuslain Ja Perustuslain 23 §:N Suhteesta* (Valtioneuvoston kanslia 2018).
[12] Aine et al (n 8).
[13] Laki valmiuslain muuttamisesta / Lag om ändring av beredskapslagen (706/2022).
[14] Guillaume Tusseau, 'The Concept of Constitutional Emergency Power: A Theoretical and Comparative Approach' (2011) 97(4) Archiv für Rechts- und Sozialphilosophie 498, 513, 517.
[15] Michel Troper, *Le droit et la nécessité* (Presses Universitaires de France 2011) 101, 108.
[16] Tusseau (n 14) 520.
[17] Gross and Ní Aoláin (n 9) 5-6
[18] Oren Gross, 'Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?' (2003) 112(5) Yale Law Journal 1011, 1022; Ferejohn and Pasquino (n 9) 228; Alan Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (Hart Publishing 2018) 45–48.
[19] Tusseau (n 14) 530.
[20] Mario Kresic, 'Emergency Situations and Conceptions of Law' in Vadim Mantrov, *Revisiting the Limits of Freedom While Living Under Threat. II* (University of Latvia Press 2024) 76.

situations is a unified set of events or not.[21] An analysis of the concept of emergency can therefore begin with laws and practices that confer extraordinary competences to make exceptions to fundamental rights and the constitution.

For example, the European Convention of Human Rights and Fundamental Freedoms defines an emergency justifying derogations as 'war or other public emergency threatening the life of the nation'.[22] The relevant characteristics of such an emergency were fleshed out in the ECtHR's caselaw. In the so-called Greek-case, the ECtHR established that an emergency must be actual or imminent, affecting the whole nation, threatening the continuation of 'the organised life of the community,' and it has to be exceptional in so far that ordinary powers are insufficient in responding to it.[23] In addition, the International Covenant on Civil and Political Rights determines a public emergency as a threat to the life of the nation.[24] It has been specified similarly by the so-called Siracusa-principles, which also state that internal conflict and unrest or economic difficulties per se do not constitute an emergency.[25] Indeed, in the international context, there is in general a call to establish clear boundaries for emergencies.[26]

While analysing expanding the concept of emergency, I refer to a process in which emergency law accommodates to new exceptional situations and events. Scholars often emphasise the differences between constitutional, legislative, and judicial accommodation of emergencies.[27] Oren Gross and Fionnuala Ní Aoláin distinguish between constitutional accommodation, in which the constitution includes a state of emergency clause, legislative accommodation, in which ordinary legislation or special emergency legislation is used, and 'interpretative accommodation', in which existing laws are interpreted so that they accommodate emergencies. [28] The infamous Article 48 of the Weimar Republic is an example of constitutional accommodation.[29] An example of legislative accommodation would be the French Law No. 2020-290, which developed a new regime of state of health emergency (*état d'urgence sanitaire*) during the pandemic.[30]

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[21] Gross and Ní Aoláin (n 9) 38; Tusseau (n 14) 527–528; on power-conferring norms, see François Tanguay-Renaud, 'The Intelligibility of Extralegal State Action: A General Lesson for Debates on Public Emergencies and Legality' (2010) 16(3) Legal Theory 161, 167.

[22] ECHR, Art 15.

[23] 'Report of the European Commission of Human Rights on the "Greek Case"' s 153; see also *Lawless v Ireland (No 3)* App n Application no 332/57 (ECtHR, 1 July 1961); for the development of the concept under ECHR law, see Guido Bellenghi, 'Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law' [2025] European Journal of Risk Regulation 1, 11.

[24] ICCPR article 4.

[25] American Association for the International Commission of Jurists, *Siracuse Principles: On the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (International Commission of Jurists 1985) 7.

[26] For example, the Venice Commission states emergency powers should not 'be applied in case of threats that, however unfortunate and dramatic, are endemic to modern societies and can never be fully eradicated (common crime, sporadic terrorist attacks etc.)'. Venice Commission, *Respect for Democracy, Human Rights and the Rule of Law during States of Emergency - Reflections* (Council of Europe 2020) 6.

[27] Anna-Bettina Kaiser, *Ausnahmeverfassungsrecht* (Mohr Siebeck 2020) 197–198.

[28] Gross and Ní Aoláin (n 9) 36, 66–67, 72–73; see also Gross (n 18) 1059–1061, 1065–1066.

[29] Kim Lane Scheppele, 'Law in a Time of Emergency: States of Exception and the Temptations of 9/11' (2004) 6 University of Pennsylvania Journal of Constitutional Law 1001.

[30] Sylvia Brunet, 'The Hyper-Executive State of Emergency in France' in Matthias C Kettemann and Konrad Lachmayer (eds), *Pandemocracy in Europe: power, parliaments and people in times of COVID-19* (Hart 2022) 208.

Interpretative accommodation is a practice developed most prominently by courts.[31] At the European level, for example, the Court Justice of the European Union (CJEU) confirmed that COVID-19 justifies restricting freedom of movement.[32] According to Vincent N. Delhomme, this was not a simple matter of applying the pre-existing law, as the Schengen Border Code and relevant EU law, but applying it to a situation unanticipated by its drafters and interpret it 'far beyond the wording of both texts, almost at risk of judicial rewriting'.[33] Furthermore, according to Alan Greene, the approach of the European Court of Human Rights has weakened the threshold for declaring an emergency,[34] meaning that the concept of emergency has become significantly more accommodating of various events.

In the context of constitutional and legislative accommodation, scholars juxtapose strict limits and flexibility.[35] In the context of constitutional accommodation, the worry is that a state of emergency clause might determine emergencies too vaguely or broadly.[36] For example, the Weimar Republic's Article 48 lacked any clear limits, which allowed an uncontrolled expansion of emergency measures.[37] In contrast, some argue that legislative accommodation can be too strict and therefore in constant need of revision.[38] However, the Finnish legal system is interesting as it includes both constitutional and legislative accommodation. The development special emergency legislation, namely the Emergency Powers Act, has also affected the constitutional definition of emergency. Therefore, rather than focusing on legislative accommodation in isolation, my analysis illuminates how these two forms of accommodation are also interconnected. Furthermore, in focusing on the principles in expanding the concept of emergency, I draw attention to the fact that flexibility and preciseness can take place within legislative accommodation.

3 THE FINNISH LEGAL SYSTEM AND EMERGENCIES

3.1 OVERVIEW OF FINNISH EMERGENCY LAW

The main principle in Finnish emergency law is that emergency measures are provided by law legislated in advance to ensure that such laws are ready at hand and proportional.[39] There is no principle of constitutional necessity, namely that the state would act in dire

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[31] Sara Poli, 'Emergencies, 'Crises and Threats in the EU: What Role for the Court of Justice of the European Union?' in Inge Govaere and Sara Poli (eds), *EU Management of Global Emergencies* (Brill | Nijhoff 2014) 199.
[32] Case C-128/22 *Nordic Info* EU:C:2023:951.
[33] Vincent N Delhomme, 'The Legality of Covid-19 Travel Restrictions in an "Area without Internal Frontiers": Court of Justice (Grand Chamber) 5 December 2023, Case C-128/22, Nordic Info' (2024) 20(2) European Constitutional Law Review 307, 316, 327.
[34] Alan Greene, 'Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights' (2011) 12(10) German Law Journal 1764, 1781–1782.
[35] Eric A Posner and Adrian Vermeule, 'Accommodating Emergencies' (2003) 56 Stanford Law Review 605, 606–608; Gross (n 18) 1068.
[36] Pierre-Clément Frier, 'Les Législations d'exception' (1979) 10 Pouvoirs 21, 33.
[37] Ludwig Richter, 'Die Vorgeschichte Des Art. 48 Der Weimarer Reichsverfassung' (1998) 37 Der Staat 1, 26.
[38] Mueller (n 9) 306; Gross and Ní Aoláin (n 9) 68–69.
[39] HE 248/1989, 1, 4; HE 63/2022, 7; Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 112; Valmiuslainsäädäntötyöryhmä, *Ehdotus Laiksi Yhteiskunnan Toimintojen Turvaamisesta Poikkeusoloissa: Työryhmän Mietintö* (Oikeusministeriö 1987) 6; Aine et al (n 8) 9.

circumstances extra-legally.[40] Rather, such measures should always be provided by law.[41] This has been the main principle in developing the Emergency Powers Act. In addition, ensuring that derogations to fundamental rights are precise is a central principle in legislative emergency preparation.[42] As the Section 23 of the Constitution establishes, an authorisation for provisional exceptions to basic rights and liberties may be provided by an Act, given that it is 'subject to a precisely circumscribed scope of application'.[43] In the context of the Emergency Powers Act, the motivation for defining exceptional circumstances that constitute an emergency has been to limit emergency powers provided by the Act to specific emergencies.[44]

There are some general characteristics of the concept of emergency in Finnish legal system that can be identified. These characteristics often mirror the international ones explicitly.[45] First of all, the concept is characterised by a 'principle of normality', which requires that ordinary powers granted by the legal system during normalcy are to be used whenever possible,[46] meaning that genuine emergencies are those that cannot be governed by ordinary powers.[47] In addition, emergencies are grave crises that affect the nation as a whole, or a major part of it, and affect the functioning of the whole society.[48] Therefore, the term 'emergency' denotes only the most serious and exceptional events and situations.

Emergencies are covered by Section 23 ('*Basic rights and liberties in situations of emergency*') of the Constitution. It defines an emergency as an armed attack or other emergency that poses a serious threat to the nation. This definition is meant to be in line with the international definition discussed above;[49] indeed, the first part states that an act may provide 'provisional exceptions to basic rights and liberties that are compatible with Finland's international human rights obligations'. This definition is an amended version of the one established in 1995 by the fundamental rights reform[50] of the Constitution Act[51]In the 1995 version, the definition was an armed attack or emergencies, which are equivalent in severity to an armed attack.[52] In contrast, the amended version of Section 23[53] established that exceptions to basic rights and liberties may be made in 'the case of an armed attack against Finland or in the event of other situations of emergency', which is now closer to the definition established by ECHR.[54] Such emergencies therefore do not have be as serious as

[40] Kaarlo Tuori, 'Hätätilaoikeus teoriassa ja käytännössä' in Kaarlo Tuori and Martin Scheinin (eds), *Lukeeko hätä lakia?* (Helsingin Yliopisto 1988) 44.
[41] HE 200/2002, 6; HE 3/2008, 5; HE 63/2022, 7; PeVL 29/2022, 2.
[42] HE 248/1989, 7; PeVM 25/1994, 2.
[43] Unofficial translation by the Ministry of Justice.
[44] HE 248/1989, 17.
[45] HE 3/2008, 21
[46] PeVL 10/1990, 3; HE 200/2002, 6; HE 3/2008, 5; PeVM 2/2020, 4
[47] HE 248/1989, 4.
[48] HE 3/2008, 1; PeVM 2/2020, 2; PeVM 7/2020, 2.
[49] Heikkonen et al (n 11) 9.
[50] Laki Suomen Hallitusmuodon muuttamisesta / Lag om ändring av Regeringsformen för Finland (969/1995).
[51] Suomen hallitusmuoto 94/1919.
[52] Section 16 in the original Finnish Constitution Act (94/1919) from 1919 recognised only war and rebellion. This section was then later amended (969/1995) to 'an armed attack on Finland as well as under exceptional circumstances threatening the life of the nation and lawfully comparable in gravity to an armed attack' to reflect the definition in international human rights treaties (HE 309/1993 vp, 75-76).
[53] Laki Suomen perustuslain muuttamisesta / Lag om ändring av Finlands grundlag (1112/2011), entry into force in 1.3.2012.
[54] Jonsson Cornell and Salminen (n 10) 239; Heikkonen et al (n 11) 9.

an armed attack, but they still do need to be so extraordinary that they threaten the life of the nation.

The first part of the Section 23 of the constitution establishes that 'the grounds for provisional exceptions shall be laid down by an Act'. The Emergency Powers Actis meant to be this act,[55] which lays down the specific capacities and regulations concerning the state of emergency. The first part of the Act establishes general provisions, namely the purpose, scope of application and general principles of the Act (chapter 1), the protocol for using emergency powers (chapter 2), and obligations for preparation (chapter 3). The second part then establishes the exceptional competences that the Government may exercise in the form of decrees.

Most notably, the first Chapter Section 3 defines six distinct emergencies or exceptional circumstances that authorise the declaration of a state of emergency: (1) an armed attack or another attack of comparable severity against Finland and the immediate aftermath of such an attack; (2) a considerable threat of an armed attack or another attack of comparable severity against Finland; (3) a particularly serious incident or threat against the livelihood of the population or the foundations of national economy; (4) a particularly serious major accident and its immediate aftermath; (5) a very widespread outbreak of a hazardous communicable disease; and (6) a threat or activity, whose combined effects to vital functions[56] of society are substantial (so-called hybrid threats).[57]

These six types of emergencies are the culmination of a long and multifaceted development from the original one from the 1991,[58] which did not include the pandemic and hybrid threats as emergencies but included an emergency category for (3) war or the threat of war between foreign countries or an event of comparable seriousness that threatens the life and welfare of the nation. In addition, the emergency category concerning economic crises was originally restricted to threats 'brought about by hampered or interrupted import of indispensable fuels and other energy, raw materials and goods or by a comparable serious disruption of international trade'.[59] This was later in 2011 enlarged to concern any serious threat or incident in the context of the economy. It is especially due to economic crises that

[55] Janne Salminen, 'Finsk Krishantering i Fredstid — Beredskapslagen Tillämpas För Första Gången' [2020] Svensk Juristtidning 1116, 1121.
[56] 'Vital functions' (*elintärkeät toiminnot*) is a central notion in emergency preparation. The Security Strategy for Society enumerates leadership, international and EU activities, defence capability, internal security, economy, infrastructure and security of supply, functional capacity of the population and services, and psychological resilience - Security Committee, *The Security Strategy for Society* (The Security Committee 2017) 14. These include critical services, such as energy and food supply, industry and service production, communication and information systems, traffic and transportation, social and health services, but also the mental well-being, trust in institutions and mutual solidarity of the population. Valtioneuvosto, 'Valtioneuvoston Turvallisuus- Ja Puolustuspoliittinen Selonteko 2004' (Valtioneuvoston kanslia 2004) 116–122; Ministry for Foreign Affairs of Finland, *Government Report on Changes in the Security Environment* (Finnish Government 2022) 37. The latter, psychological resilience, is reflected in how security strategies and documents emphasise that societal security also requires that the rule of law, democracy, legal certainty, and bolstering fundamental rights. Security Committee, *The Security Strategy for Society* (The Security Committee 2017) 10, 19, 28; Ministry of the Interior, *Government Report on Internal Security* (Finnish Government 2022) 8, 38. Measures to protect psychological resilience are especially needed against hybrid threats, as they often aim 'to drive a wedge between different interest groups, create a poisonous atmosphere within the population and weaken the people's trust in public institutions'. Ministry of the Interior, *National Risk Assessment 2018* (Ministry of the Interior 2019).
[57] Paraphrasing of the translation by the Ministry of Justice, Finland.
[58] Valmiuslaki / Beredskapslag (1080/1991).
[59] Unofficial translation by the Ministry of Justice, Finland.

the Act has remained an exceptive act – an act that has been passed as an exception to the constitution – as it deviates from international criteria for emergencies.[60] One of the main impetuses in amending the Act has been to make it accord with the Constitution.[61]

The exceptive act procedure is a peculiar aspect of the Finnish legal system. Amendments to the Emergency Powers Act have been implemented under this procedure. It allows the parliament to pass an act in the order prescribed for constitutional legislation that deviates materially from the constitution.[62] This is done by leaving it in abeyance until after the following parliamentary election, which is then passed with two thirds majority (or, if it is deemed urgent by 5/6 majority, it can be passed with two thirds majority immediately without leaving it in abeyance). The current Constitution regulates this procedure under Section 73 (‘*Procedure for constitutional enactment*’). The underlying idea is that exceptions to fundamental rights should not be made via ordinary law but via a constitutional enactment.[63] It was deemed necessary to include it in the new constitution[64] to uphold the normativity of constitutional law. Without this procedure, the concern was that either exceptions would have to be included in constitutional laws or made vague enough to allow for discretion.[65] With the new constitution, the practice of passing such acts is informed by the principle of avoiding them whenever possible and by the doctrine of ‘limited exceptions’, which demands that exceptive acts are limited in scope and do not invalidate fundamental rights in their entirety.[66] However, it remains a contentious aspect of the Finnish legal system.

3.2 HISTORY OF EMERGENCY LAW IN FINLAND

The amendments to the Emergency Powers Act reflect a long-term trend in Finnish development of emergency law. Since independence, the legal problem regarding emergencies has been emergencies other than armed conflict, as the legal system was based on a dichotomy between war and peace.[67] In the 1930s, during major societal unrest and extra-parliamentary opposition,[68] the need to develop peace-time emergency powers became an urgent task.[69] Emergency legislation, in the form of an exceptive act, was passed to deal with the situation. Most notably, a temporary act, the Republic’s Protection Act[70] was passed

[60] HE 3/2008, 21; HE 60/2010, 23. Jonsson Cornell and Salminen (n 10) 240.
[61] PeVL 1/2000, 4; Valmiuslakitoimikunta, *Valmiuslainsäädännön Tarkastelua Perustuslain Näkökulmasta: Valmiuslakitoimikunnan Välimietintö* (Oikeusministeriö 2004) 33, 37; HE 3/2008, 5, 20; PeVL 6/2009, 16. Liisa Vanhala, ‘Valmiuslaki – Mitä Ja Miksi?’ [2020] Lakimies 502, 503.
[62] Janne Salminen (n 55) 1121.
[63] Veli-Pekka Viljanen, *Perusoikeuksien Rajoitusedellytykset* (WSLT 2001) 13, 16–18.
[64] Suomen perustuslaki / Finlands grundlag (731/1999), entry into force 1.3.2000.
[65] HE 1/1998 vp.: 35, 39.
[66] HE 1/1998 vp.: 6, 28–29, 125.
[67] Aine et al (n 8) 21; Jonsson Cornell and Salminen (n 10) 238; Heikkonen et al (n 11) 15–16.
[68] Johanna Rainio-Niemi, ‘Managing Fragile Democracy: Constitutionalist Ethos and Constrained Democracy in Finland’ (2019) 17(4) Journal of Modern European History 519, 528–529; Aura Kostiainen, ‘Oikeusvaltiokamppailua Laillisuuden Tuuliajolla – Suojelulaista Vuonna 1930 Käydyn Eduskuntakeskustelun Oikeudellis-Poliittista Tarkastelua’ (2018) 47 Oikeus 215, 222–226.
[69] Aine et al (n 8) 23. This was mostly due to the right-wing radicalism and the pressure put on the Government to restrict communist (and socialist) political activity. Jenni Karimäki, ‘Finnish Liberals and Anti-Fascism, 1922–1932’ in Kasper Braskén, Nigel Copsey, and Johan A Lundin (eds), *Anti-fascism in the Nordic Countries: New Perspectives, Comparisons and Transnational Connections* (Routledge 2019) 47–48; Ville Okkonen and Ville Laamanen, ‘Kansalaisuus, Politiikka Ja Laillisuus Mäntsälän Kapinan Jälkeen’ (2018) 116(1) Historiallinen Aikakauskirja 15, 16–17.
[70] Tasavallan suojelulaki (336/1930).

to grant the executive temporary powers to restore order and deal with domestic disturbances.[71]

Developing legislation concerning peace-time emergencies took a decisive step in the 1960s and 70s when the focus of policy was on Finnish society's preparedness for economic crises. Before that, an exceptive act, the Act on the Regulation of the Economy in Exceptional Circumstances,[72] originally enacted during the second world war, and which was renewed every year from 1941 to 1955 – a feat which became increasingly difficult to accomplish as years passed – was the main instrument for regulating economic emergency measures.[73] In the 1960s, the problem was therefore once again the 'legal gap' between war and normalcy.[74] To anticipate an economic crisis beginning with an armed conflict or political tension between foreign countries that would affect the Finnish economic situation, the Parliament passed the Act on safeguarding the livelihood of the population and the economy of the country in exceptional circumstances.[75] It was used during the oil-crisis of the 1970s. According to Aarninsalo and Rainio-Niemi, while this Act still only recognised armed conflict as the sole basis of emergency governance – albeit in this case it was not necessary for Finland to be involved in it – the oil crisis served as the main catalyst for reforming Finnish emergency laws and to develop a legal concept of peace-time emergencies.[76] The culmination of this development was the Emergency Powers Act of 1991, the preliminary work of which began in the late 1970s.[77]

4 THE EMERGENCY POWERS ACT

In this Section, I will analyse how the original Emergency Powers Act and its subsequent amendments have developed the concept of emergency. The Emergency Powers Act is an exceptive act; it is in contradiction with the constitution as it delegates broad legislative powers to the executive, includes emergencies that are not in line with the constitution's definition,[78] and does not accord with Finland's international obligations. Nevertheless, it has a crucial role in developing the Finnish concept of emergency, as it has even served as a basis

[71] HE 54/1930 vp., 1. The lawyer, public law scholar and the first President of the Republic (3 February 1914 – 3 April 1917), Kaarlo Juho Ståhlberg (28 January 1865 - 22 September 1952), noted in 1930, functioning then as a Member of the Parliament for the liberal party, that right-wing lawless and criminal activity against the communist threat had brought about a situation in which the law's authority was severely weakened. To amend this situation and restore the law's authority, he supported passing the Republic Protection Act (336/1930) to develop a legal solution for the situation and clarify the law's position on the matter. Kaarlo Juho Ståhlberg, 'Vuoden 1930 Toisten Valtiopäiväin Tehtävät', *Puheita : 1927-1946* (Otava 1946) 98–99. Indeed, as Tuori puts it, the motivation for the legislation was to create a positive legal basis for the actions against communists. Tuori, 'Hätätilaoikeus teoriassa ja käytännössä' (n 40) 52.

[72] Laki talouselämän säännöstelemisestä poikkeuksellisissa oloissa (303/1941).

[73] Lyydia Aarninsalo and Johanna Rainio-Niemi, '1970-luvun öljykriisi : Kokoaan vaikuttavampi kriisi?' in Jari Eloranta and Roope Uusitalo (eds), *Ankarat ajat: suomalaisten talouskriisien pitkä historia* (Gaudeamus 2024) 160-161.

[74] Tuori, 'Hätätilaoikeus teoriassa ja käytännössä' (n 40), Aarninsalo and Rainio-Niemi (n 73) 171; Heikkonen et al (n 11) 16.

[75] Laki väestön toimeentulon ja maan talouselämän turvaamisesta poikkeuksellisissa oloissa (407/1970).

[76] Aarninsalo and Rainio-Niemi (n 73) 169.

[77] Aine et al (n 8) 24.

[78] Heikkonen et al (n 11). This was also the case with the original (1080/1991), which was deemed to be in conflict with the Constitution Act's (PeVL 10/1990, 1-2).

for also amending the definition of emergency in the new Constitution.[79] Therefore, amendments to the Emergency Powers Act have also developed the constitutional notion of emergency and, in addition, the concept of emergency in Finnish legal system in general. As mentioned, these amendments have expanded the concept to accommodate new exceptional circumstances.

My focus is on how the principles in expanding the concept of emergency have developed in the amendment process of the Emergency Powers Act. As I established above, two central principles established by the constitution are that emergency provisions legislated in advance and that they are as precise as possible. Apart from these two, constitutionality and the principle of normality are also central principles in amending the Act. As I will point out, while preciseness and constitutionality are often prevalent in the *travaux préparatoires* of the amendments, they are often weighed against the principle that legislation should anticipate emergencies exhaustively so that no need for extra-legal measures arises. Namely, as the Finnish political, security and societal situation changes, there is a pressing need to ensure that all grave situations that require emergency powers are accounted for by the Act. While legislatively anticipating emergencies is a good practice, and doing so will also ensure that constitutionality and preciseness are taken into consideration, it has also been emphasised at the expense of these two principles in the amendment process of the Act.

In addition to the Government Proposals, documents developed by the Constitutional Law Committee and the official accounts, reports, and forecasts on the Finnish security situation are of particular relevance for expanding the concept of emergency. The former functions as a form of ex ante constitutional control of legislation. The Committee is formed of parliamentary members and it hears experts on constitutional law (such as constitutional law professors). Apart from the review of legislative proposals, the Committee's reports and assessments develop principles, concepts, guidelines and recommendations for future proposals and amendments. The Committee's accounts and reports are meant to function as one of the primary sources of constitutionality control of legislation.[80]

The latter, the official accounts, reports and forecasts on Finnish security situation, are documents commissioned by various ministries and the State Council of Finland. They focus on recent developments of the security landscape, potential threats, and policy recommendations for preparedness. The most relevant are the annual Government report on Finnish foreign and security policy and the various accounts and recommendations by the Security Committee, an intergovernmental body that operates under the Ministry of Defence. In addition to these two sources, various temporary committees established by the State Council have written reports on how to amend the Emergency Powers Act and the Constitution that are also important for understanding the development of the concept of emergency as they serve as the main basis for the Government Proposals.

The documents by the Constitutional Law Committee and the Finnish security reports

[79] In the context of the Constitution Act (94/1919), the Government Proposal amending it mentions, among others, the Emergency Powers Act's notion of the temporary aspect of emergencies as a basis for amending the Constitution Act's respective notion (HE 309/1993, 76).

[80] In the Government Proposal for the new Constitution, the Constitutional Law Committee is named as the central and leading authority on constitutional control (HE 1/1998, 125-126; see Jaakko Husa, *The Constitution of Finland: A Contextual Analysis* (Hart 2011) 161-162.

are important sources for amendments to the Emergency Powers Act. These sources demand, (1) legislative preciseness and restricting discretion, and (2) enhancing Finnish preparedness and adapting to new crises, that have worked in tandem to develop the concept of emergency in the Finnish legal system. On the one hand, the Constitutional Law Committee's main role in the context of the concept of emergency has been to emphasise that the grounds for declaring a state of emergency, the exceptional circumstances, need to be defined as precisely as possible and interpreted restrictively. On the other hand, official documents concerning the Finnish security situation and its forecasts have served as a basis for justifying the expanding of the concept of emergency by, explicitly or implicitly, recommending that the Emergency Power Act is amended to improve Finnish preparedness for future crises.

The first time the constitutionality of applying the Emergency Powers Act came into question was during the COVID-19 pandemic. In cooperation with the President of the Republic, the State Council declared a state of emergency in 16th March 2020.[81] The declaration itself does not grant any extraordinary powers. Rather, only an application decree for extraordinary competences, established in the second part of the Act, does so. The Emergency Powers Act's extraordinary competences were applied twice, between 16 March 2020 and 16 June 2020, and between 01 March 2021 and 27 April 2021.[82]

The parliament has no power for reviewing the declaration but it controls the application decree by deciding whether it remains in force and to what extent, and for how long. Therefore, the Constitutional Law Committee could not directly review the declaration. Instead, it assessed the application decrees and whether they are necessary and proportional.[83] The Constitutional Law Committee emphasised the principle of normality, namely that the extraordinary competences may be used if ordinary legislation is not enough.[84] The position of the Committee was that the new Section 23 covers the pandemic, and that the current situation, a global pandemic whose full impact had not yet been felt in Finland, accorded with the legislative intent.[85] The situation in the beginning especially required concentrating some of the healthcare and restrictive measures, which meant that ordinary legislation, namely the Communicable Diseases Act,[86] was deemed insufficient.[87] However, the Committee also emphasised that governing with the Emergency Powers Act has to be temporary, it should not be used 'just in case,' and using the

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[81] 'Valtioneuvoston Päätös VNK/2020/31: Poikkeusolojen Toteaminen' (*Valtioneuvosto*, 16 March 2020) <https://valtioneuvosto.fi/paatokset/paatos?decisionId=0900908f8068ec10&gsid=4fc4a561-cddb-46ab-8fc6-7dc857849f2a> accessed 19 November 2025.

[82] 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 Vedaschi (ed), *Governmental Policies to Fight Pandemic* (Brill | Nijhoff 2024) 180.

[83] See, e.g., PeVM 9/2020, 4. For an analysis of the Constitutional Law Committee during the pandemic, see Mikko Värttö, 'Parliamentary Oversight of Emergency Measures and Policies: A Safeguard of Democracy during a Crisis?' (2023) 10(1) European Policy Analysis 84; Tuukka Brunila, Janne Salminen, and Mikko 'Oikeuden Resilienssi Poikkeuksellisissa Oloissa – Perustuslakivaliokunnan Rooli Oikeuden Ylläpitämisessä Covid-19-Pandemian Aikana' [2023] Lakimies 1011.

[84] PeVM 2/2020, 4; PeVM 8/2020, 2; PeVM 9/2020, 3.

[85] PeVM 2/2020 2-3; PeVM 7/2020, 2; PeVM 8/2020, 1. However, some of the experts consulted noted that the definition is not very explicit. See, e.g., EDK-2020-AK-291030.

[86] Tartuntatautilaki / Lag om smittsamma sjukdomar (1227/2016).

[87] PeVM 2/2020, 3-5.

Communicable Diseases Act should be preferred.[88]

4.1 THE ORIGINAL ACT

As mentioned, the preparatory work for the Emergency Powers Act began in the 1970s.[89] Two reports from 1979 and 1987 developed the basic principles of the Act, such as that exceptional circumstances should be defined as restrictively and precisely as possible.[90] The main motivation for developing emergency legislation was to account for peace-time and internal crises less serious than war.[91] The reports describe these as 'intermediate' emergencies between war and normalcy (*välitila*).[92] In addition, one of the purposes of the Act was to be applicable in situations when the threat of war might require raising preparedness level in a way that does not yet necessitate triggering the Act on the State of Defence.[93] The reports provide a list of exceptional circumstances, developed by the presidential Committee of Defence, which is basically the same as the one that was adopted by the original version of the Act.[94] Here, the principle of legislatively anticipating emergencies begins to develop. However, the original 1979 committee recommended also explicitly including terrorism to the major disasters exceptional circumstance category, as it might pose a threat of comparable seriousness.[95] In contrast, the 1987 report states that in preparedness for terrorism attacks, ordinary competences and legislation are sufficient, and, as its effects can in extreme cases be identified as an armed attack or a major disaster, the list of exceptional circumstances was deemed sufficient without it.[96]

The Government Proposal for the Act established five distinct exceptional circumstances: (1) an armed attack, war and its aftermath on Finnish territory, (2) a violation of Finnish territorial integrity and the threat of war, (3) war or the threat of war between foreign countries or an event of comparable seriousness that threatens the life and welfare of the nation, (4) 'a serious threat to the livelihood of the population or the foundations of the national economy brought about by hampered or interrupted import of indispensable fuels and other energy, raw materials and goods or by a comparable serious disruption of international trade',[97] and (5) a major disaster.[98] The Government Proposal stated that the Act would concern emergencies less serious than war, which is regulated by the State of Defence Act,[99] partly because the current definition of emergencies was too narrow to be

[88] PeVM 9/2020, 3-5; see also PeVM 8/2020, 5.
[89] The Cold War and Finland's relationship with the Soviet Union had a decisive role in developing the Act. The first report on the Act from 1979 notes that having proportional and legally established emergency powers will ensure that 'misinterpretations outside the country' will not rise and trigger actions by foreign nations (most notably by the Soviet Union). Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 112; see Aarninsalo and Rainio-Niemi (n 73) 170.
[90] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 117; Valmiuslainsäädäntötyöryhmä (n 39) 7, 22.
[91] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 15, 105, 109, 129; Aine et al (n 8) 24, 28.
[92] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 110, 132, 137; Valmiuslainsäädäntötyöryhmä (n 39) 13–14.
[93] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 110; Aine et al (n 8) 132.
[94] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 106–110; Valmiuslainsäädäntötyöryhmä (n 39) 9.
[95] Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 109, 110, 140.
[96] Valmiuslainsäädäntötyöryhmä (n 39) 26.
[97] Unofficial translation by the Ministry of Justice, Finland.
[98] HE 248/1989, 12-14.
[99] HE 248/1989, 4, 12-13.

applicable.[100]

The Constitutional Law Committee stated that this expansion established in Section 2, in addition to the Act delegating very broad legislative powers, meant that the Act would have to be enacted as an exceptive act as it expanded the concept of emergencies.[101] Indeed, as the Constitution Act's Section 16 recognised only war and rebellion as grounds for necessary decrees that derogate from fundamental rights, the Emergency Powers Act expanded the concept of emergency to the aftermath of war, conflicts that do not involve Finland directly, and to threats to indispensable materials and major disasters. The Constitutional Committee also noted that, while the proposal was meant to be in line with Finland's international obligations, the list of exceptional circumstances made the concept of emergency more expansive than the one in international treaties.[102] This was especially the case with the economic exceptional circumstance. The need to anticipate emergencies by means of legislation therefore outweighed constitutionality as the concept was expanded beyond the constitution.

However, the Act's development did not mean expansion without qualifications. Indeed, the aim was to define exceptional circumstances as precisely as possible. Emergencies should have to be interpreted restrictively and exhaustively, meaning that it could not be expanded by analogical interpretation so that events caused by mass unemployment, labour disputes or other such events do not constitute an emergency.[103] The Government also decided not to add terrorism to the list of exceptional circumstances, as it deemed in line with the report form 1987 that, on the one hand, counter-terror measures could be provided by ordinary legislation during a state of normalcy, and, on the other hand, it could be possible to interpret a large scale act of terrorism as an armed attack or as a major disaster if its effects constituted one.[104]

When it came to major disasters, according to the proposal, they were to be considered an exceptional circumstance only if ordinary competences were insufficient for managing one.[105] The Constitutional Law Committee proposed that this criterion, which in the proposal was only limited to major disasters, would apply to all exceptional circumstances, developing further the principle of normality mentioned above – thus further entrenching the principle of normality as a principle in emergency law.

4.2 CONSTITUTIONAL AMENDMENTS

The next steps regarding the concept of emergency took place at a constitutional level. First, there was to the fundamental rights reform of the Constitution Act. Section 16 was amended to 16 a, which stated that an Act of Parliament may derogate from fundamental rights during 'an armed attack on Finland as well as under exceptional circumstances threatening the life of the nation and lawfully comparable in gravity to an armed attack'. While it expanded

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[100] HE 248/1989, 12.
[101] PeVL 10/1990, 1-2. The reports from 1979 and 1987 had already predicted this. Parlamentaarinen valmiuslainsäädäntökomitea (n 5) 131; Valmiuslainsäädäntötyöryhmä (n 39) 82.
[102] HE 248/1989, 9.
[103] HE 248/1989, 12.
[104] HE 248/1989, 14. One can only wonder, though, if interpreting a terror attack along these lines would mean an analogical interpretation that the proposal sought to preclude. See HE 248/1989, 12.
[105] HE 248/1989, 6, 13-14.

the earlier definition, which only mentioned war and rebellion, the amendment was meant to align the Finnish concept of emergency with the one in international human rights treaties (most notably ECHR, Article 15 and ICCPR, Article 4).[106] The intention was also to make emergencies and emergency powers more precise, specific, and temporally limited.[107]

Second, the new Constitution kept the Section providing for emergencies (now Section 23) intact: fundamental rights could be derogated from in situations of an armed attack or other emergencies comparable in seriousness.[108] While this new constitutional definition of emergencies, to be sure, was not as narrow as the original one from 1919, it did not alleviate the issue concerning the Emergency Powers Act, whose list of exceptional circumstances did expand the concept to crises that were less serious (and therefore not comparable) to war.[109] For this reason, the Constitutional Law Committee stated that the Emergency Powers Act would have to be reviewed after the new Constitution would come into force.[110] In the future, making the Act constitutional would be a central principle in drafting amendments to the Act.

Before the Act's constitutionality would be reviewed more thoroughly in late 2000s, two amendments to the Emergency Powers Act were made in 2000[111] and in 2003[112]. From the point of view of the concept of emergency, they were somewhat minor adjustments. According to the Government, the motivation for the 2000 amendment were the changes in the Finnish political system, such as joining the European Union, the fundamental rights reform in 1995 and the new Constitution.[113] These changes required that the definition of emergencies would be made more precise. In addition, the proposals for the 2000 and 2003 amendments emphasised the need to develop emergency powers to better account for future threats.[114]

Preciseness and the need to anticipate emergencies were therefore both present in these first amendments that expanded the concept of emergency and emergency powers. In the 2000 proposal, the Government stated that existing competences did not include securing availability of indispensable building materials and that serious international political tensions were missing from the list of exceptional circumstances.[115] The latter meant, namely, those situations, in which international tensions threaten to escalate into war, which would require securing supply chains and increase material and military preparedness.[116] This required amending Section 2's list of exceptional circumstances so that Section 2 Paragraph 3 (war or threat of war between foreign countries) would include an international tension requiring necessary preparatory action.[117] In contrast, the 2003 amendment did not explicitly develop the list of exceptional circumstances, but it added competences to regulate financial and insurance markets, which were needed due to the development of international trade

[106] HE 309/1993, 75.
[107] HE 309/1993, 76; PeVM 25/1994, 2, 11.
[108] HE 1/1998, 81.
[109] PeVL 31/1998, 5; 2000 1/2000, 2.
[110] PeVM 10/1998, 13.
[111] Laki valmiuslain muuttamisesta / Lag om ändring av beredskapslagen (198/2000).
[112] Laki valmiuslain muuttamisesta / Lag om ändring av beredskapslagen (696/2003).
[113] HE 186/1999, 4.
[114] HE 186/1999, 4; HE 200/2002, 1, 5, 9.
[115] HE 186/1999, 5, 7.
[116] HE 186/1999, 7, 10.
[117] HE 186/1999, 15.

and markets (most notably Finland becoming a part of the Eurozone) and financial technology (monetary transactions).[118]

While these amendments were minor, at least in comparison to the later amendments, they illuminate what the requirement regarding legislative precision meant. While international tension and, perhaps, building materials could already be interpreted to be implicitly included in the definition of 'threat of war' and 'indispensable materials', the principle has been to make them explicit by legislation rather than by interpretative accommodation.[119] In addition, while the attempt was to make the Emergency Powers Act accord with the Fundamental Rights Reform of 1995 and the new Constitution, the Constitutional Law Committee stated that, as the Emergency Powers Act's list of exceptional circumstances is more expansive than Section 23 of the Constitution, the 2000 amendment had to be enacted as an exceptive act.[120] This was the case also with the 2003 amendment due to its manner of delegating extensive legislative powers.[121] Indeed, all subsequent amendments to the Act would have to follow suit. Here, the principle of legislatively anticipating emergencies was connected to making the Act as precise as possible, both of which enjoyed precedence over constitutionality.

4.3 THE NEW ACT

An overhaul of the Emergency Powers Act was accomplished in 2011. In addition to shifting the balance of power between the president and the parliamentary government in favour of the latter – which was in line with the new constitution's shift towards parliamentarianism – the new Act, which replaced the old one from 1991, made major changes to the list of exceptional circumstances. The motivation was once again to make the Act constitutional and to better anticipate future threats.[122]

Drafting began with the Emergency Powers Act Committee appointed by the ministry of justice in 2003. In its report, the Committee noted that the Act's scope of application was broader than the constitutional notion of emergency, as it only accommodated the exceptional circumstances under Section 3 Paragraphs 1–3 (the military ones).[123] The committee also suggested that, instead narrowing the Act's the scope of application, it should be made more precise.[124] In the second report, which also presented a proposal, the committee recommended a revision that would update the Act and its list of exceptional circumstances while keeping its form and structure intact.[125]

The proposal defines exceptional circumstances as those 'grave crises that affect

[118] HE 200/2002, 5-6, 36.
[119] Similarly, as the Emergency Powers Act lacked financial and insurance regulatory powers, new competences needed to be developed. HE 200/2002, 9, 23, 25.
[120] PeVL 1/2000, 2-3; see PeVL 57/2002, 2.
[121] PeVL 57/2002, 3.
[122] Valmiuslakitoimikunta, *Ehdotus Uudeksi Valmiuslaiksi: Valmiuslakitoimikunnan Mietintö* (Oikeusministeriö 2005) 33; Aine et al (n 8) 142–144.
[123] Valmiuslakitoimikunta (n 61) 13, 29, 31.
[124] ibid 36. The Committee also considered whether the Act could be narrowed to accord with Section 23 of the Constitution. This would have required ensuring that the problems of extraordinary governance were not simply ordinary legislation (n 122) 39.
[125] Valmiuslakitoimikunta (n 122) 3.

the nation as a whole, or a major part of it, and affect the functioning of the whole society'.[126] The number of exceptional circumstances remained the same. However, a widely spread contagious disease was added as a new exceptional circumstances category (Section 3 Paragraph 5), the economic exceptional circumstance was broadened, and the violation of territorial integrity into the first circumstance was subsumed.

Like the 2000 amendment, the proposal motivated the overhaul because the present Act predated the fundamental rights reform of 1995 and the new constitution, and because of the need to review the definition of exceptional circumstances and competences in the shifting security situation.[127] The former meant that the new Act was supposed to be drafted so that it would no longer be an exceptive act, which would also require assessing the fact that its definition of emergency was broader than the one in Section 23 of the Constitution.[128] According to relevant security documents, the latter meant that recent development in the Finnish security situation required that the Act would have to be reviewed thoroughly,[129] a development which was caused by globalisation and growing dependency on international information and trade networks in particular.[130] The main threats identified by the State Council's security strategy document were, among others, terrorism, economic and information network disruptions, dangerous communicable diseases, illegal entry into the country, the use of military force, and a major disaster.[131] The proposal considered some of these, namely large-scale illegal border crossing, terrorism and disasters concerning animal and plant health or foodstuff hygiene crises, but stated that ordinary competences and legislation were sufficient to deal with them.[132]

Some categories on the list of exceptional circumstances did become more constitutional, such as the first one, which was amended to mention armed conflict, and not war, to be in line with Section 23 of the Constitution.[133] However, the proposal was conscious that economic crises, major disasters and pandemics were broader than the definition of emergency in the constitution, EU treaties (notably, Article 347,[134] TFEU) and international human right treaties.[135] Indeed, a major expansion took place in the context of economic crises. In the original Emergency Powers Act an economic crisis meant situations such as war or trade war beyond the Finnish territory, causing depletion of or spikes in prices of indispensable goods or sudden in prices, or disruption of trade routes, that seriously undermine the import of indispensable fuels, energy, raw-material and other such goods, which would require measures such as regulating or rationing private property and export and import of goods.[136] In contrast, the new amended version broadened the category to 'any particularly serious incident or threat against the livelihood of the population or the

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[126] HE 3/2008, 1.
[127] HE 3/2008, 5, 22, 30.
[128] HE 3/2008, 20-21.
[129] The Proposal refers to Valtioneuvosto (n 56); Valtioneuvosto, *Yhteiskunnan Elintärkeiden Toimintojen Turvaamisen Strategia: Valtioneuvoston Periaatepäätös 23.11.2006* (Puolustusministeriö 2006).
[130] HE 3/2008, 22; see Valtioneuvosto (n 56) 10, 111; Valtioneuvosto (n 129) 25.
[131] Valtioneuvosto (n 129) 26.
[132] HE 3/2008, 23. However, in case of terrorism, the proposal points out that the effects of an attack could be interpreted as a major disaster or an armed attack.
[133] HE 3/2008, 32-33.
[134] Ex Article 297 TEC.
[135] HE 3/2008, 20-21, 26.
[136] HE 248/1989, 13, 18, 22.

foundations of the national economy'.[137] The idea was that now other disturbances, such as ones to information systems, might constitute a serious economic threat in general rather than only to indispensable materials.[138] However, as Finland was now part of the Eurozone, resorting to the Emergency Powers Act in the economic context required that the Government first tries to solve the issue with the EU and the ECB.[139] This means that, if the EU and the ECB cooperation take precedence over the use of the Act, the threshold for an economic crisis serving as a ground for a state of emergency should be quite high.

In the context of broadening the definition of economic crises, the tension between the principle of legislatively anticipating emergencies and other principles becomes evident. The need to prepare for economic crises outweighs the principle that its definition should be precise. Instead, it is broad for the sake of flexibility. In doing so, the legislator has sought, at the expense of constitutionality and preciseness, to ensure that the definition is exhaustive and that the act accommodates grave economic crises.

Apart from amending the economic exceptional circumstance, the new Act expanded the concept of emergency considerably, as it added a contagious disease to the list of exceptional circumstances. The proposal is quite brief about a pandemic as it is only mentioned that it is caused by a widely contagious disease, the effects of which are comparable in seriousness to a major disaster,[140] such as a nuclear or a radiation disaster or a major dam accident.[141] As the proposal establishes that an emergency is something that affects the whole or a major part of the nation or the functioning of the society as a whole, a pandemic could become serious enough to reach this threshold.[142] In addition, ordinary legislation (e.g. the Communicable Diseases Act[143]) was not seen as enough because extraordinary readiness to deal with a pandemic might be needed even before a global pandemic has reached Finland,[144] and, during such an emergency, ordinary competences would be insufficient in situations that, for example, would require establishing temporary health care facilities.[145]

Preciseness was also a relevant aspect of adding pandemic to the list of exceptional circumstances. In the original proposal, pandemics were meant to be part of the major disaster category, such that Section 3 Paragraph 4 of the Act would read as follows: 'an

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137 Unofficial translation by the Ministry of Justice.
138 HE 3/2008, 33.
139 Act HE 3/2008, 22, 28. The proposal for the amendment 696/2003 seems to have also established a criterion for declaring an economic emergency being that the mechanisms and measures taken with the European Union and the European Central Bank are insufficient (in so far as cooperation with EU and ECB would precede using the Emergency Powers Act). HE 200/2002, 19, 24. The new Act included Section 27, which stated that 'A decree on the use of emergency powers laid down in Section 15 or 17, Section 19, subsection 1, Paragraph 3 or Section 20 or 21 that concerns tasks of the European System of Central Banks under the Treaty establishing the European Community or the Statute of the European System of Central Banks and of the European Central Bank may only be issued if the European Central Bank and the Bank of Finland, when carrying out tasks of the European System of Central Banks as part of the European System of Central Banks, are not able to function in emergency conditions'. (Unofficial translation by the Ministry of Justice).
140 HE 3/2008, 26, 34; The Constitutional Law Committee voiced this critique in its opinion. PeVL 6/2009, 4.
141 HE 3/2008, 34.
142 PuVM 3/2010, 5.
143 Tartuntatautilaki / Lag om smittsamma sjukdomar (1227/2016).
144 HE 3/2008, 23; StVL 3/2008, 2.
145 PuVM 3/2010, 5.

extraordinary serious major disaster, its immediate aftermath, and a very widely spread dangerous contagious disease comparable to an extraordinary serious major disaster in its effects'. However, the parliamentary Defence Committee recommended that these two should be divided into their own categories, so that the application extraordinary competences would remain more restricted and precise.[146]

Ultimately, the Constitutional Law Committee opined that the Constitution covers only the first two of the exceptional circumstances.[147] The others broadened the concept of emergency beyond emergencies comparable in seriousness to an armed attack. The Committee once again noted that, while the economic exceptional circumstance was broad for a good reason to allow for flexibility in dire situations (such as in serious disruptions to information and communication infrastructure), it should be interpreted restrictively to ensure that ordinary economic events (such as economic recession or labour disputes) are not seen as a ground for declaring a state of emergency.[148] In addition, the Committee stated that some of the other exceptional circumstances should also be interpreted more restrictively by limiting the extraordinary competences that can be enacted during them. For example, the Committee recommended that weakening social security as a measure[149] should be limited to the first three exceptional circumstances.[150]

Nevertheless, despite the fact that the new Act would broaden the concept of emergency beyond the Constitution, the Committee noted that there were grave and weighty reasons for the Act, as the extraordinary competences are necessary for dealing with contemporary crises.[151] Therefore, the Committee stated that the Act maybe passed as an exceptive act. However, as the Act was both necessary and would also have to be passed as an exceptive act, a situation which in the long run was not a preferable or a sustainable solution, the Committee suggested that perhaps the constitutional definition of emergencies should be modernized.[152]

The next step was indeed to broaden the definition of emergencies in the Constitution.[153] The constitutional amendment,[154] a larger constitutional revision project, was done with the Emergency Powers Act in mind.[155] As the Committee for constitutional revision (appointed by the Ministry of Justice) noted, the 'limits set by the constitution have proved to be too narrow especially in the case of emergency law'.[156] The task, therefore, was to modernise (i.e. expand) the constitutional definition of emergencies so that it would be broader and more accommodating.[157] The Government Proposal agreed with the Committee's assessment and stated that the limits set by Section 23 were too narrow, and

[146] PuVM 3/2010, 5; see also StVL 4/2008, 2.
[147] PeVL 6/2009, 3.
[148] PeVL 6/2009, 4.
[149] Current Sections 56 and 57 of the Act.
[150] Section 3 Paragraphs 1–3. PeVL 6/2009, 9.
[151] PeVL 6/2009, 4, 16.
[152] PeVL 6/2009, 16.
[153] Interestingly, the Emergency Powers Act Committee opined against this solution as it would break Finnish international human rights obligations. Valmiuslakitoimikunta (n 61) 37.
[154] Laki Suomen perustuslain muuttamisesta / Lag om ändring av Finlands grundlag (1112/2011).
[155] HE 60/2010, 22.
[156] Perustuslain tarkastamiskomitea, *Perustuslain tarkistamiskomitean mietintö* (Oikeusministeriö : Edita Publishing 2010) 60.
[157] ibid 60–62.

that it should be amended, in accordance with international human rights treaties, to help make the Emergency Powers Act constitutional.[158]

The new Section 23 now states that provisional exceptions to basic rights and liberties may be provided by an Act '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'.[159] While the original version required that other emergencies are comparable in seriousness to armed conflict, the new amended definition allowed for other, less serious emergencies to be accommodated. Even though the new definition would be broader, as the Constitutional Law Committee pointed out, it was still meant to be restrictive and accord with strict criteria established by human rights treaties.[160] However, the Proposal noted that economic crises will not fulfil the international criteria for emergency,[161] a fact also stated by the Constitutional Law Committee's report,[162] and therefore the problem regarding the Emergency Powers Act's unconstitutionality would not be immediately solved.

4.4 HYBRID THREATS

After applying the Emergency Powers Act for the first time during the COVID-19 pandemic in 2020, the next amendment (in 2022)[163] was right around the corner. However, this amendment neither revised pandemic powers nor the economic exceptional circumstance category, but, instead, developed an altogether new exceptional circumstance category: hybrid threats.[164]

The motivation for the amendment was prompted by the Russian invasion of Ukraine and its effects on the Finnish security situation.[165] Security documents and reports had drawn attention to the fact that the use of hybrid and covert tactics to influence societal stability require developing more preparatory mechanisms.[166] Hybrid threats are defined as action that seeks to destabilise society and 'in which the aim of the instigator is to achieve its aims by using a multitude of complementary methods and exploiting the weaknesses of the targeted community'.[167] Such methods include attacks on cyber security, spreading disinformation on social media, acquiring properties in strategic locations, and financing, trade and investment

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[158] HE 60/2010, 22-23. See Jonsson Cornell and Salminen (n 10) 245–246
[159] Unofficial translation by the Ministry of Justice.
[160] PeVM 9/2010, 9.
[161] HE 60/2010, 23.
[162] PeVM 9/2010, 10.
[163] Laki valmiuslain muuttamisesta / Lag om ändring av beredskapslagen (706/2022).
[164] The law itself does not mention the word hybrid threats. Also, sometimes multi-domain influencing (*laaja-alainen vaikuttaminen*) is used as a more precise term (HE 63/2022, 5). However, as the Government Proposal, relevant security documents, research literature and public discussion use this expression, I will also use hybrid threats for the sake of simplicity. See also EU-level security documents European Commission, *Joint Framework on Countering Hybrid Threats: A European Union Response* (European Commission 2016); European External Action Service, *A Europe That Protects: Countering Hybrid Threats* (The Diplomatic Service of the European Union 2018).
[165] HE 63/2022, 6, 32.
[166] Already in 2004, the Government report on Finnish security and foreign policy had stressed that multi-domain influencing and unsymmetric use of military tactics was a central security issue for Finnish societal stability Valtioneuvosto (n 56) 81–83. In addition, Russian aggression on neighboring countries was already in issue before 2022. Ministry for Foreign Affairs of Finland, *Government Report on Finnish Foreign and Security Policy* (Finnish Government 2020) 21.
[167] Ministry of the Interior, *National Risk Assessment 2018* (n 56) 16.

to create influence and dependence.[168] Indeed, technological development, complexity and acceleration of societal processes, and global interdependency has increased the amount of (relatively inexpensive) methods that aggressors can use to destabilise societies.[169] Apart from the various hybrid methods and tactics, the documents singled out serious and extensive disturbances caused by major accidents, terrorism, activities targeting critical infrastructure, and large-scale movement of people or migration.[170]

The development of Finnish security landscape therefore entailed, once again, a need to adapt relevant legislation. According to the parliamentary Defence Committee, this development meant both that the Emergency Powers Act's definition of exceptional circumstances is not up to date *and* that ordinary legislation is needed, as most of hybrid influencing will take place below the threshold of Emergency Powers Act.[171] In the Act's case, hybrid threats pose a problem because, to quote the 'National risk assessment 2018', they take place 'in the grey zone between the legal and illegal, thereby often remaining beyond the reach of ordinary security measures of the authorities'.[172] This makes hybrid threats a boundary defying and breaking phenomenon, as responding to them entails that cooperation is intergovernmental, takes place between military and non-military authorities, and that internal and external security measures are intertwined.[173] It also means that specifying extraordinary powers according to precise exceptional circumstances would make cross-sectoral governance more difficult.[174]

Hybrid threats as an exceptional circumstance category therefore required an altogether new approach to legally defining exceptional circumstances. Two reports on amending the Emergency Powers Act emphasised that a phenomenon-based approach should be taken, namely that events and situations are approached as part of a larger,

[168] Ministry for Foreign Affairs of Finland, *Government Report on Finnish Foreign and Security Policy* (n 167) 14; Security Committee, *The Security Strategy for Society* (n 56) 96; Ministry of the Interior, *National Risk Assessment 2018* (n 56) 16.

[169] Minna Branders, 'Valmiuslain Uudistamisen Ilmiöpohjaiset Lähtökohdat' (Maanpuolustuskorkeakoulu 2021) 1, 5–8; Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (2021) 3, 17; Ministry for Foreign Affairs of Finland, *Government Report on Finnish Foreign and Security Policy* (n 167) 15; Parliamentary Committee on Crisis Management, *Effective Crisis Management: Recommendations of the Parliamentary Committee on Crisis Management on Developing Finland's Crisis Management* (Finnish Government 2021) 12; Ministry of the Interior, *Government Report on Internal Security* (n 56) 30.

[170] Ministry of the Interior, *Government Report on Internal Security* (n 56) 34. Especially extensive migration – which can either be caused by natural reasons (such as global warming) or it is a tactic used in hybrid influencing (so-called 'instrumentalised migration') – has been noted as a possible scenario that escalates so that the situation can no longer be governed by ordinary procedures and arrangements. Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 5–6; Ministry of the Interior, *Government Report on Internal Security* (n 56) 35; Ministry for Foreign Affairs of Finland, *Government Report on Changes in the Security Environment* (n 56) 32.

[171] PuVM 4/2021, 9-10.

[172] Ministry of the Interior, *National Risk Assessment 2018* (n 56) 16; see also European External Action Service, *Food-for-Thought Paper 'Countering Hybrid Threats'* (Council of the European Union 2015) 2.

[173] HaVL 30/2021, 2; Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 3, 8. In this context the National risk assessment 2018 emphasises that 'external and internal security are strongly intertwined in hybrid threats, and it is impossible to draw a clear distinction between the two'. Ministry of the Interior, *National Risk Assessment 2018* (n 56) 17. The parliamentary Administration Committee also noted that the current Emergency Powers Act does not take into account internal security threats. HaVL 30/2021, 6.

[174] Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 17; Branders (n 170) 10.

cross-sectoral context.[175] On the one hand, single disturbances could trigger a serious emergency, and, on the other hand, multiple minor disturbances could develop into a serious one.[176] In addition, as hybrid tactics are by design meant to be difficult to attribute to a specific actor – upholding deniability is a central aspect of such tactics[177] – defining them as an emergency requires focusing on their cumulative effects rather than on their underlying causes and motives.[178] The problem in doing so, according to the Security Committee's report on amending the Act, was how to make the definition of exceptional circumstances broad enough to remain flexible for the various threats to be included, and yet to ensure that it is clear enough for political decision-makers to have the 'legal mandate for declaring an emergency to be at hand in a situation that the criteria of the definition are met'.[179] This was a challenge as, due to ever increasing complexity of societal and international contexts, emergencies are becoming less and less precise and therefore more difficult to define.[180] Therefore, the aforementioned tension between anticipating emergencies and preciseness was once again present.

The Government Proposal emphasised that, while individual acts and tactics utilised in hybrid influencing might meet the criteria of emergencies, cumulative effects might pose a serious threat to the vital functions of society.[181] As the Emergency Powers Act was outdated, the Proposal claimed, the definition of exceptional circumstances needed to be complemented.[182] The Proposal stated that a sixth exceptional circumstance category would be added so that threats, actions, events, or their cumulative effects endangering decision-making capacities of public authorities, functioning of critical infrastructure, border security or public order and security would be covered by it.[183] Namely, what was lacking was threats, actions or events that neither were armed conflicts nor threatened economic circumstances.[184] For example, whereas in previous amendments to the Emergency Powers Act mass migration was deemed to be a disturbance governable by ordinary competences, the new Proposal established that so-called instrumentalised migration cases, that is, the redirection of migration flows to overwhelm border officials resembling the 2021 Poland-Belarus border crisis,[185] were a novel issue not taken into account by previous amendments.[186]

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175 Branders (n 170) 2–3, 5–6; Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 3.

176 Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 6–7, 18.

177 Branders (n 170) 5.

178 Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 11, 19.

179 Security Committee, 'Valmiuslain Uudistamistarpeita Kartoittava Ilmiöpohjainen Skenaarioselvitys' (n 170) 18.

180 Branders (n 170) 24; ibid 25.

181 HE 63/2022, 5.

182 HE 63/2022, 6, 32. Here, the argument is picked up from the above-mentioned reports: the main issue is that the current definition is based on singular and clearly determined events or threats, which in themselves are serious enough to trigger a state of emergency.

183 HE 63/2022, 40, 42-43, 60.

184 HE 63/2022, 58. The Proposal also states that adding hybrid threats as an exceptional circumstance will help ensuring that these types of emergencies will not develop into more serious armed conflicts or comparable ones needing military action. HE 63/2022, 60.

185 See, e.g. Ondřej Filipec, 'Multilevel Analysis of the 2021 Poland-Belarus Border Crisis in the Context of Hybrid Threats' (2022) 8(1) Central European Journal of Politics.

186 HE 63/2022, 59.

Once again, the definition was meant to be as precise as possible and to accommodate new types of emergencies that pose a serious threat to national security.[187] The threshold for applying it, the Proposal stated, would have to accord with the requirements of Section 23 of the Constitution.[188] Indeed, the Proposal mentions the principle that the concept of emergency cannot by broadened by interpretation.[189]

Apart from this substantial broadening of the concept of emergency, the amendment would develop the concept by adding cumulative effects, or the seriousness of the overall situation, as a grounds for a state of emergency.[190] This would require that the effects can be estimated as serious enough to accord with Section 23's definition; mere minor disturbances would not do so.[191] While one of the defining features of an emergency was that they are so grave that they affect the nation as a whole, or a major part of it, and affect the functioning of the whole society,[192] the Proposal states that with hybrid threats (e.g. cyber-attacks) the former, affecting the nation as a whole or in part, might not be easy to determine as it is difficult to pinpoint them spatially or numerically.[193]

In focusing on (cumulative) effects rather than causes was meant to solve the issue regarding the covert nature of hybrid threats. Whether an emergency was at hand would not require determining the cause or the originator the disturbance. What was crucial was the seriousness of the effects on national security, vital functions of society and the population's living conditions. This means that an emergency could also be the outcome of unintentional actions.[194]

While the Constitutional Law Committee agreed that there were grave reasons for amending the Act due to the shifts in the security landscape,[195] it also drew attention to the fact that it significantly broadened the definition of exceptional circumstances and extended its scope of application.[196] The Committee noted that while there was some overlap between the new exceptional circumstance and the armed conflict, threat of armed conflict and economic crises),[197] expanding the extension of exceptional circumstances through interpretation is against the principles of legislating emergency powers.[198] However, the broadness of the definition was still an issue. In the Proposal, it is stated that an exceptional circumstance includes 'other threats, activity, an event, or a cumulative effect of these on the capacity of public decision-making, the functioning of society's critical infrastructure, border security, or public order and security, and which endangers very seriously and substantially

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[187] In defining threats to national security, the Proposal refers to the Government Proposal (198/2017) on amending Section 10 of the Constitution, *The right to privacy*. In this document, national security is elaborated as 'the collective security of the people within the state's jurisdiction against direct or indirect external violent threats'. Threats against national security are those that 'threatens the life or health of a large and unpredictable, randomly determined number of people' directly, or by targeting society's vital functions, state organs, and democratic decision-making institutions. HE 198/2017, 35-36.
[188] HE 63/2022, 62.
[189] HE 63/2022, 58, 62.
[190] HE 63/2022, 60.
[191] HE 63/2022, 41, 60.
[192] HE 3/2008, 1; PeVM 2/2020, 2; PeVM 7/2020, 2.
[193] HE 63/2022, 43.
[194] HE 63/2022, 43-44, 62.
[195] PeVL 29/2022, 2-3, 10.
[196] PeVL 29/2022, 6.
[197] Section 3 Paragraphs 1–3.
[198] PevL 29/2022, 4.

national security, society's functioning or the population's living conditions'.[199] The Committee noted that the new criteria lacked a clear definition similar to the other categories (such as 'a contagious disease' in Section 3 Paragraph 5.[200] In addition, the term 'critical infrastructure' was very broad and lacked legal content.[201] Because of this, it was difficult to assess the scope of application in advance and, therefore, whether such exceptional circumstances would be serious enough to accord with Section 23's criteria.[202]

Because of the difficulty in predicting the scope of application, which also made the extraordinary competences too general and broad, the Committee deemed that the amendment would have to be passed as an exceptive act.[203] However, the Committee noted that in legislating emergency powers, some flexibility is always a necessity, and because of this, attempts to make the amendment accord with the Constitution would prove to be counterintuitive.[204] Despite this, the Committee recommended that the definition should be made more precise to better accord with Section 23's requirements.[205]

The passed version was significantly more precise than the proposal. The parliamentary Defence Committee took the task of developing the proposal to better account for the Constitutional Law Committee's comments. The Defence Committee emphasised that hybrid threats cannot be given a singular definition similar to the other exceptional circumstances.[206] It suggested making the Section 3 Paragraph 6 into a list. The passed amendment,[207] which reflected the Committee's proposal, states that an exceptional circumstance is:

> such a threat, activity or incident or the combined effect of these targeting
> a) the decision-making capacity of the public authorities;
> b) the maintenance of border security or public order and security;
> c) the availability of essential healthcare, social welfare or rescue services;
> d) the availability of energy, water, food supplies, pharmaceuticals or other essential commodities;
> e) the availability of essential payment and securities services;
> f) the functioning of transport systems critical to society; or
> g) the functioning of ICT services or information systems that maintain the functions listed in Paragraphs a–f.
>
> as a result of which the functions vital to society are prevented or paralysed substantially and on a large scale, or which in some other manner of comparable severity endangers the functioning of society or the living conditions of the population particularly seriously and substantially.[208]

Parts (c) to (g) were meant to replace the notion of critical infrastructure with more

[199] HE 63/2022, 73.
[200] PeVL 29/2022, 5.
[201] PeVL 29/2022, 5, 10.
[202] PeVL 29/2022, 5.
[203] PeVL 29/2022, 5-6.
[204] PeVL 29/2022, 9-10.
[205] PeVL 29/2022, 10; PuVM 2/2022, 21.
[206] PuVM 2/2022, 21.
[207] Laki valmiuslain muuttamisesta / Lag om ändring av beredskapslagen (706/2022).
[208] Unofficial translation by the Ministry of Justice.

precise terms, and the final part is meant to establish the criteria for application and emphasise that only very serious cases would fall within its scope of application. [209] This way, the exceptional circumstance category is more precise but it also expands into many social domains, such as information systems, social welfare, border security, and so on.

As noted above, the Act's development process is far from over. At the end of its statement, the Constitutional Law Committee noted that the overall situation, namely that the Emergency Powers Act being an exceptive act, was not preferable, and a process should be initiated for an extensive review of the Act's current status.[210]

5 CONCLUSIONS

In this contribution, I have analysed how the Emergency Powers Act has expanded the concept of emergency in Finnish legal system. Most notably, the Act has expanded the concept of emergency by adding peace-time emergencies to the situations and events authorising the application of emergency powers. These so-called intermediate emergencies between war and normalcy have broadened the concept of emergency to internal and non-military circumstances. The Act has also affected the constitutional definition of emergencies. As I pointed out, the Constitution's definition has been amended with the Act's requirements in mind. In addition, while amendments have sought to ensure that Finland's international treaties are respected, the Act has also expanded the concept of emergency beyond the international definition. Namely, this applies to the economic exceptional circumstance, which deviates from the Constitution's, ECHR's and ICCPR's definitions.[211]

My argument has been that preciseness is a central principle in expanding the concept of emergency. Often the legislation's definition has been more precise than the proposal's version. This is the case, for example, in the adding of hybrid threats to the list of exceptional circumstances. Preciseness can be seen as an aspect of why emergency powers are legislated in advance. Namely, in doing so the proportionality of such legislation can be ensured.[212] However, I pointed out that sometimes, especially in the context of economic crises, the principle of legislatively anticipating emergencies is in tension with the principle of preciseness. In these cases, exhaustiveness of the list of exceptional circumstances and flexibility have outweighed preciseness.

Indeed, preciseness is not the only principle in developing the list of exceptional circumstances. The principle of normality has served to limit the expansion of the concept of emergency in some cases (e.g. terrorism). In addition, the constitutionality, while not followed to the letter, has been a principle present in the *travaux préparatoires*. Lastly, the principle of legislatively anticipating emergencies has been central in amending the Act. Following this principle has sometimes meant favouring flexibility over preciseness.[213] For example, economic crises as an exceptional circumstance category has been developed to become more accommodating for the sake of flexibility. However, preciseness should not be seen as mere narrowness. Instead, the aim to make exceptional circumstance categories

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[209] PuVM 2/2022, 22.
[210] PeVL 29/2022, 12.
[211] Aine et al (n 8) 144; Heikkonen et al (n 11) 33; Vanhala (n 61) 507.
[212] Valmiuslakitoimikunta (n 122) 3.
[213] PeVL 6/2009, 4; PeVL 29/2022, 9-10.

as precise as possible can be seen to accord with the need for flexibility in dire situations. Nevertheless, there is a moment where 'as precise as possible' no longer holds and, instead, flexibility simply means broadening the definition.

To emphasise, this article analysed one characteristic of the concept of emergency in the Finnish legal system, namely, the principles in the legislative process of expanding the concept. This process has expanded the concept and adapted it to new circumstances by accommodating less serious emergencies. Greene argues that such accommodation weakens the protective nature of the state of emergency procedure as emergency measures are expanded to non-exceptive circumstances.[214] However, this point is more relevant in legal systems in which emergency powers are the same in all emergencies. Indeed, especially when the judicial branch has a stronger role in determining the legality of emergency measures,[215] this serves to expand the state of emergency to less exceptional cases. However, because the powers provided by the Emergency Powers Act are specific to the exceptional circumstances, the state of emergency is not identical in various emergencies. This is in line with the Venice Commission's statement that 'while the idea behind the declaration of a state of emergency is a dichotomy between normalcy and the exception, in practice there can be a spectrum between the powers used in the ordinary situation and those used in an emergency'.[216] Indeed, the concept of emergency in the Finnish legal system seems to form a spectrum of states of emergencies from more serious to less serious ones.

Apart from expanding the concept, there are also some general aspects of the concept of emergency that have developed as a result of the amendments to the Emergency Powers Act. Most notably, the idea that cumulative effects can serve as a ground for applying the Act is indeed a novel one. However, the notion that only the effects matter and that the reason or the intention behind the situation or event is irrelevant, while emphasised in the most recent amendment, is nothing new.[217] In fact, part of the reason why terrorism was left out of the original Act was because its effects could be interpreted as an armed attack or a major disaster, points to the fact that the origin of such events, whether intentional or not, is not significant. The principle of normality is also something that has been developed mainly by means of amending the Act. In addition, the fact that Finland's membership of the EU and Eurozone has to be taken into account in assessing the necessity of extraordinary measures, namely whether the ECB's measures are sufficient in an economic crisis, is also a novel feature.

The capacity to predict and anticipate future emergencies by means of legislation is a difficult task. As the security situation can alter rather rapidly, the need for amendments to adapt to these changes never ends.[218] Indeed, one of the main drivers for developing

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[214] Greene (n 34) 1748.

[215] According to Fabbrini, courts tend to defer to the executive especially during the initial phase of an emergency. Federico Fabbrini, 'The Role of the Judiciary in Times of Emergency: Judicial Review of Counter-Terrorism Measures in the United States Supreme Court and the European Court of Justice' (2009) 28(1) Yearbook of European Law 664, 674.

[216] Venice Commission (n 26) 6.

[217] Aine et al (n 8) 133.

[218] According to Aine et al, part of the reason why ordinary legislation has been developed to address crises is partly because amending the Emergency Powers Act is such an extensive and slow process. Antti Aine and others, *Moderni Kriisilainsäädäntö* (WSOY 2011) 11.

the Emergency Powers Act has been changes in Finnish security landscape.[219] In order to avoid gaps and analogical interpretation, the list of exceptional circumstances has been amended regularly. Developing the Act's capacity to legislatively accommodate future emergencies has served to expand its list of exceptional circumstances and make it more comprehensive. Because of this, the concept of emergency and, as a by-product, the Constitution has been 'modernised' through amendments to the Act..

Perhaps in the future new exceptional circumstances will be added to the list. Terrorism as an emergency has always 'haunted' the proposals. This would happen if extraordinary competences strictly needed for addressing terrorism are deemed necessary to be included in the second part of the act. So far, it has been deemed unnecessary. Recent security documents have also emphasised space as a new frontier of warfare, technological development and security policy.[220] The new Security Strategy for Society has considered ensuring availability of space services as a domain of security policy.[221] Perhaps this will lead to amending the list of exceptional circumstances (most probably Section 3 Paragraphs 1-3 and 6), or simply adding new extraordinary competences to the second part of the Act (which will also serve to expand the concept of emergency). It remains to be seen. However, one thing is certain: the concept of emergency will develop with future changes in the security situation.

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[219] Indeed, already the 1987 report notes that the growing global interdependency requires amending the Finnish emergency law. Valmiuslainsäädäntötyöryhmä (n 39) 5.

[220] Ministry for Foreign Affairs of Finland, *Government Report on Finnish Foreign and Security Policy* (Finnish Government 2024) 19; Security Committee, *Security Strategy for Society: Government Resolution* (Finnish Government 2025) 24.

[221] Security Committee, Security Strategy for Society (n 225) 132.

LIST OF REFERENCES

Aarninsalo L and Rainio-Niemi J, '1970-luvun öljykriisi : Kokoaan vaikuttavampi kriisi?' in Eloranta J and Uusitalo R (eds), *Ankarat ajat: suomalaisten talouskriisien pitkä historia* (Gaudeamus 2024)

Aine A et al, *Moderni Kriisilainsäädäntö* (WSOY 2011)

Bellenghi G, 'Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law' [2025] European Journal of Risk Regulation 1
DOI: https://doi.org/10.1017/err.2025.17

Branders M, 'Valmiuslain Uudistamisen Ilmiöpohjaiset Lähtökohdat' (Maanpuolustuskorkeakoulu 2021)

Brunet S, 'The Hyper-Executive State of Emergency in France' in Kettemann MC and Lachmayer K (eds), *Pandemocracy in Europe: power, parliaments and people in times of COVID-19* (Hart 2022)
DOI: https://doi.org/10.5040/9781509946396.ch-010

Brunila T, Salminen J, and Värttö M, 'Oikeuden Resilienssi Poikkeuksellisissa Oloissa – Perustuslakivaliokunnan Rooli Oikeuden Ylläpitämisessä Covid-19-Pandemian Aikana' [2023] Lakimies 1011

Delhomme VN, 'The Legality of Covid-19 Travel Restrictions in an "Area without Internal Frontiers": Court of Justice (Grand Chamber) 5 December 2023, Case C-128/22, Nordic Info' (2024) 20(2) European Constitutional Law Review 307
DOI: https://doi.org/10.1017/s1574019624000245

Fabbrini F, 'The Role of the Judiciary in Times of Emergency: Judicial Review of Counter-Terrorism Measures in the United States Supreme Court and the European Court of Justice' (2009) 28(1) Yearbook of European Law 664
DOI: https://doi.org/10.1093/yel/28.1.664

Farzamfar M, Salminen J, and Tuominen J, 'Governmental Policies to Fight Pandemics: Defining the Boundaries of Legitimate Limitations on Fundamental Freedoms: National Report on Finland' in Vedaschi A (ed), *Governmental Policies to Fight Pandemic* (Brill | Nijhoff 2024)
DOI: https://doi.org/10.1163/9789004708655_006

Ferejohn J and Pasquino P, 'The Law of the Exception: A Typology of Emergency Powers' (2004) 2(2) International Journal of Constitutional Law 210
DOI: https://doi.org/10.1093/icon/2.2.210

Filipec O, 'Multilevel Analysis of the 2021 Poland-Belarus Border Crisis in the Context of Hybrid Threats' (2022) 8(1) Central European Journal of Politics
DOI: https://doi.org/10.24132/cejop_2022_1

Frier PC, 'Les Législations d'exception' (1979) 10 Pouvoirs 21

Greene A, 'Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights' (2011) 12(10) German Law Journal 1764
DOI: https://doi.org/10.1017/s2071832200017557

——, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (Hart Publishing 2018)
DOI: https://doi.org/10.5040/9781509906185

Gross O and Ní Aoláin F, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press 2006)
DOI: https://doi.org/10.1017/cbo9780511493997

Gross O, 'Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?' (2003) 112(5) Yale Law Journal 1011
DOI: https://doi.org/10.2307/3657515

Heikkonen J et al, *Valmiuslaki Ja Perusoikeudet Poikkeusoloissa: Valtiosääntöoikeudellinen Kokonaisarvio Valmiuslain Ja Perustuslain 23 §:N Suhteesta* (Valtioneuvoston kanslia 2018)

Husa J, *The Constitution of Finland: A Contextual Analysis* (Hart 2011)
DOI: https://doi.org/10.5040/9781472560841

——, 'Nordic Constitutionalism and European Human Rights – Mixing Oil and Water?' (2011) 55 Scandinavian Studies in Law 101

Jonsson Cornell A and Salminen J, 'Emergency Laws in Comparative Constitutional Law – The Case of Sweden and Finland' (2018) 19(2) German Law Journal 219
DOI: https://doi.org/10.1017/s2071832200022677

Kaiser AB, *Ausnahmeverfassungsrecht* (Mohr Siebeck 2020)
DOI: https://doi.org/10.1628/978-3-16-156413-0

Karimäki J, 'Finnish Liberals and Anti-Fascism, 1922–1932' in Braskén K, Copsey N, and Lundin JA (eds), *Anti-fascism in the Nordic Countries: New Perspectives, Comparisons and Transnational Connections* (Routledge 2019)
DOI: https://doi.org/10.4324/9781315171210-3

Kostiainen A, 'Oikeusvaltiokamppailua Laillisuuden Tuuliajolla – Suojelulaista Vuonna 1930 Käydyn Eduskuntakeskustelun Oikeudellis-Poliittista Tarkastelua' (2018) 47 Oikeus 215

Kresic M, 'Emergency Situations and Conceptions of Law' in Mantrov V (ed), *Revisiting the Limits of Freedom While Living Under Threat. II* (University of Latvia Press 2024)
DOI: https://doi.org/10.22364/iscflul.9.2.06

Mueller S, 'Turning Emergency Powers inside out: Are Extraordinary Powers Creeping into Orginary Legislation' (2016) 18(2) Flinders Law Journal 295

Okkonen V and Laamanen V, 'Kansalaisuus, Politiikka Ja Laillisuus Mäntsälän Kapinan Jälkeen' (2018) 116(1) Historiallinen Aikakauskirja 15
DOI: https://doi.org/10.54331/haik.140486

Poli S, 'Emergencies, Crises and Threats in the EU: What Role for the Court of Justice of the European Union?' in Govaere I and Poli S (eds), *EU Management of Global Emergencies* (Brill | Nijhoff 2014)
DOI: https://doi.org/10.1163/9789004268333_011

Posner EA and Vermeule A, 'Accommodating Emergencies' (2003) 56 Stanford Law Review 605

Rainio-Niemi J, 'Managing Fragile Democracy: Constitutionalist Ethos and Constrained Democracy in Finland' (2019) 17(4) Journal of Modern European History 519
DOI: https://doi.org/10.1177/1611894419880658

Richter L, 'Die Vorgeschichte Des Art. 48 Der Weimarer Reichsverfassung' (1998) 37 Der Staat 1

Salminen J, 'Finsk Krishantering i Fredstid — Beredskapslagen Tillämpas För Första Gången' [2020] Svensk Juristtidning 1116

Ståhlberg KJ, 'Vuoden 1930 Toisten Valtiopäiväin Tehtävät', *Puheita : 1927-1946* (Otava 1946)

Straumann B, *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution* (Oxford University Press 2016)
DOI: https://doi.org/10.1093/acprof:oso/9780199950928.001.0001

Tanguay-Renaud F, 'The Intelligibility of Extralegal State Action: A General Lesson for Debates on Public Emergencies and Legality' (2010) 16(3) Legal Theory 161
DOI: https://doi.org/10.1017/s1352325210000182

Troper M, *Le droit et la nécessité* (Presses Universitaires de France 2011)
DOI: https://doi.org/10.3917/puf.trope.2011.02

Tuori K, 'Hätätilaoikeus teoriassa ja käytännössä' in Tuori K and Scheinin M (eds), *Lukeeko hätä lakia?* (Helsingin Yliopisto 1988)

——, 'Judicial Constitutional Review as a Last Resort' in Campbell T, Ewing KD and Tomkins A (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press 2011)
DOI: https://doi.org/10.1093/acprof:oso/9780199606078.003.0018

Tusseau G, 'The Concept of Constitutional Emergency Power: A Theoretical and Comparative Approach' (2011) 97(4) Archiv für Rechts- und Sozialphilosophie 498
DOI: https://doi.org/10.25162/arsp-2011-0041

Vanhala L, 'Valmiuslaki – Mitä Ja Miksi?' [2020] Lakimies 502

Värttö M, 'Parliamentary Oversight of Emergency Measures and Policies: A Safeguard of Democracy during a Crisis?' (2023) 10(1) European Policy Analysis 84
DOI: https://doi.org/10.1002/epa2.1190

Viljanen VP, *Perusoikeuksien Rajoitusedellytykset* (WSLT 2001)