



Parliamentary oversight of emergency measures and policies: A safeguard of democracy during a crisis?

Mikko Värttö 

The Faculty of Social Sciences, University of Turku, Turku, Finland

Correspondence

Mikko Värttö, The Faculty of Social Sciences, University of Turku, Turku, Finland.

Email: mikko.vartto@utu.fi

Funding information

Academy of Finland,
Grant/Award Numbers: 345950, 345951

Abstract

The article discusses the role of parliamentary oversight of emergency measures and policies in increasing democratic resilience and recovery from the COVID-19 pandemic. The study on the Finnish Parliament is conducted by analyzing the statements of the Constitutional Law Committee, whose role is to conduct a parliamentary constitutional review of governmental bills. The main focus of the analysis is on the Committee's reviews of the constitutionality of the emergency measures and the procedures of law drafting. The research indicates that the committee considered the restrictions and exceptions of fundamental rights as proportional and necessary to prevent the overburdening of the healthcare system in most cases. However, the justifications for the emergency measures were often lacking, and the parliament's right to receive information was compromised. These deficits undermined the Parliament's capacity to oversee emergency measures and policies. The parliamentary constitutional review during the pandemic could still serve a critical complementary function by protecting fundamental rights and democratic values.

This is an open access article under the terms of the Creative Commons Attribution License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

© 2023 The Authors. *European Policy Analysis* published by Wiley Periodicals LLC on behalf of Policy Studies Organization.

KEYWORDS

COVID-19 pandemic, deliberation, democratic resilience, emergency measures, parliamentary oversight

1 | INTRODUCTION

Governmental responses to the critical challenges caused by the COVID-19 pandemic raised concerns about governmental “power-grabbing” around the World. The critics have claimed that the governments used the pandemics as an excuse to pass laws and decrees they would not have been able to give under normal circumstances. During the pandemic, the governments could declare a state of emergency that provided them with means and mandates to set restrictions and exceptions of many fundamental rights, thus undermining the very essence of democratic political systems. For example, constraints to the freedom of movement and the right to assembly, expression, and protest were submitted to prevent the spreading of the virus (Eichler & Sonkar, 2021).

Due to the significant restrictions of fundamental rights, it is crucial that the basic mechanisms of parliamentary and juridical oversight were functional even during the most critical phases of the pandemic. In democratic countries, the power ought to be distributed between the executive, legislative and juridical. The separation of powers is designed to ensure constitutional checks on the use of power (Grogan, 2020, p. 350). The separation of powers is an essential safeguard against the misuse of power during emergencies, such as a major health catastrophe. While it has been recognized that the executive is typically more suited to responding to emergencies, legislative control over actions taken in an emergency is essential to uphold democracy and the rule of law even under exceptional conditions (Griglio, 2020, p. 67; Grogan, 2020, pp. 349–350).

The separation of powers has been compromised during the COVID-19 pandemic as the governmental responses to emergencies have increased the powers of the executive at the expense of legislative and juridical powers. The phenomenon is sometimes called “executive aggrandizement,” in which those in power do not care about the limitations of their power and seek to change the entire political system for their benefit (Bermeo, 2016, pp. 10–12, 14). As the COVID-19 pandemic hit Europe, many countries, including Finland, very quickly declared a national crisis or a state of emergency, which in many ways strengthened the role of the executive. In practice, this meant large-scale restrictions and exceptions on fundamental democratic rights, such as the freedom of movement and the right to assembly.

Although Finland is considered one of the most successful countries with respect to the low death toll and compliance with basic human rights (see e.g., Scheinin, 2022b, p. 121), the emergency measures have been criticized during the COVID-19 pandemic. Some critical assessments have shown, for example, that the instructions given by the authorities did not have sufficient support in the legislation, and in some cases, people’s basic rights were restricted without a legal basis (Farzamfar & Salminen, 2022; Korkea-aho & Scheinin, 2021). The fight against the pandemic also revealed some faults in ordering a state of emergency (Neuvonen, 2020, p. 229). Since the COVID-19 pandemic was the first time Finland declared a state of emergency and deployed emergency measures based on the Emergency Powers Act (EPA), the pandemic proved to be a critical test for adapting the EPA and other laws regulating executive actions during a pandemic and other crises.

Now that the most critical phase of the COVID-19 pandemic is over, it is time to look back and assess how the Finnish democratic political system succeeded during the pandemic. A critical review of emergency measures is important because pandemics and other crises will not end soon. Some commentators have even claimed that we now live in a constant state of crisis, in which different forms of emergencies co-exist and follow each other (Greene, 2018). So, to assess whether our democratic political systems can endure these critical times, we need to consider whether the basic features of our democratic system, including the separation of powers and the mechanisms of checks and balances, survived the crises.

The case of Finland is interesting because the EPA is special legislation providing the government competencies to cover extreme situations, such as an armed attack or other serious threats, including a pandemic (Cornell & Salminen, 2018). Under exceptional circumstances, the Government can issue decrees for assigning various emergency measures in its combat against the crises. The power of the Finnish Government to issue these emergency decrees is limited by the Constitution and parliamentary and judicial reviews. The governmental decrees that target limiting human rights and fundamental freedoms of individuals and groups are subjected to an immediate parliamentary review (Farzamfar & Salminen, 2022, p. 4).

To adopt emergency measures provided by the EPA, the Government only needs to gain a simple majority of votes from the Parliament. Due to these features, the Finnish political system can be very effective during critical times and apply emergency measures more quickly compared to some other countries, which probably contributed to the relatively low mortality rates during the early stage of the health crises. On the other hand, the adopted emergency measures set restrictions on many fundamental rights, and the overall social and economic cost of emergency measures will probably prove high over time. Some critics have pointed out the vulnerability of Finland's political system (see Lavapuro, 2016), which may make it susceptible to executive aggrandizement during emergencies.

Another exceptional feature of the Finnish case is a parliamentary constitutional review system where the Constitutional law committee (CLC) is mandated to assess the governmental bills before they are voted in the Parliament. The CLC plays a unique role in the Finnish Parliament since it says nothing about the substantive issues but only reviews the constitutionality of the governmental bills (Husa, 2020, p. 254). The task of the CLC is defined in section 74 of the Constitution of Finland, which assigns the CLC with the task of issuing statements on "the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties." Since the Parliament's status as the highest organ of the state is laid down in the Finnish Constitution, the CLC also functions as a safeguard for parliamentarism.

The proactive parliamentary constitutional review system distinguishes Finland from many other European countries, where a more retroactive judicial review occurs (Neuvonen, 2020, p. 228). Finland follows a Nordic model, where the democratically elected legislature and the independent judiciary are entrusted with a shared duty to protect constitutional rights. This model minimizes the risk of constitutional review becoming a subject of purely majoritarian decision-making or judicial review. Following this model, the duties of constitutional review are distributed between the CLC, the Chancellor of Justice, the Office of the Ombudsman, and the independent courts. Each of these institutions has to review the constitutionality of legislative proposals during various stages of the legislative process. However, insofar as the constitutionality of legislative proposals is concerned, the CLC has the final word (Lavapuro et al., 2011, p. 510). This separates Finland from systems based on strong-form judicial review models.

During the pandemic, the CLC played a significant role in parliamentary oversight of the Government and critically assessed the constitutionality of the proposed emergency measures and policies. Its reports and statements on governmental bills will thus show us whether the Government has exceeded its powers during the pandemic or stayed within the limits of necessary and proportional measures. The assessment of the Committee's operation during a major health crisis will also reveal whether the postante parliamentary constitutional review has successfully protected fundamental rights and democratic values even during exceptional times.

In this article, I will critically examine whether the mechanism of parliamentary oversight remained functional during the COVID-19 pandemic. First, I will study how the pandemic affected the regular proceedings of the Parliament. Second, I will place a particular interest in the functionality of the CLC and its reviews of the constitutionality of proposed emergency measures. The analysis will focus on the mechanisms, such as the right to receive information aimed at securing the parliamentary oversight of the executive even in a state of crisis. The data consist of the official reports and statements made by the CLC during the most critical phase of the pandemic between 2020 and 2021.

In the next section, I will discuss the impacts of the pandemic on the ordinary parliamentary proceedings. Then, I will discuss the deliberative role of parliaments, which can be essential in increasing trust in political institutions and supporting the legitimacy and feasibility of emergency measures. After this section, I will continue by assessing the Finnish Parliament's procedures during the pandemic. This review is followed by an introduction of the research data and the main findings of that data. In the final sections, I discuss my research findings in light of earlier literature and present conclusions.

2 | PARLIAMENTS DURING THE TIME OF CRISES

In recent years, we have seen democratic backsliding in many countries across the globe. The democratic backsliding is manifested in the annual report by Freedom House (Repucci & Slipowitz, 2021), which reports declines in political rights and civil liberties all around the globe. According to the report, the recent pandemic has further intensified the current trend of democratic decline. The attacks on democracy during the pandemic are often driven by a concentration of power in the executive (Boese et al., 2021, p. 894). Using the pandemic as a stalking horse, the governments have gathered powers previously outside their reach and used these to set various measures that undermine fundamental rights and basic democratic principles.

In many countries, the COVID-19 pandemic has undermined the regular duties of the parliaments by preventing them from opportunities to review the emergency measures and discuss them (Bar-Siman-Tov, 2020; Petrov, 2020). The emergency powers are often enacted using a rushed legislative procedure, without time for proper scrutiny and justification (Cormacain, 2020, p. 251). During the most critical phases of the pandemic, the decisions had to be made quickly, without a broad deliberative process, during which different emergency measures could have been discussed. In many countries, the parliaments were temporarily closed, or other restrictions were imposed on them (Bjørnskov & Voigt, 2022; Cartier et al., 2020; Chiru, 2023).

Some commentators have warned about the possibility that the emergency measures, such as temporary closures of parliaments that were initially implemented as impermanent solutions

for fighting against crisis, might get a more permanent status in the future (Vogt, 2021, p. 552; White, 2021, pp. 81–82). Without parliamentary oversight by the parliament, the executive powers would have almost unlimited capabilities. The lack of parliamentary oversight would also endanger the effective emergency measures that would help the countries combat against pandemic more efficiently and gain broader public support.

Because parliaments consist of elected representatives, they stand out as an intermediary through which citizens can affect the state's policy direction. At the same time, parliaments are an important deliberative forum where governmental bills can be discussed before voting (Waldron, 2009). Parliamentary meetings allow the leading parties to introduce their bills and justify them for the other parties and their MPs. Opposite party members can question the ministers responsible for the proposals and suggest their policy alternatives. Opposition's criticism can catalyze public discussion, which is vital for democracy, especially in times of crisis when governments are prone to seek more room to maneuver (Louwerse et al., 2021, p. 1026).

One of the most critical advantages of parliamentary oversight is that it can interpret and complement expert knowledge (Barber, 2018, p. 59). In parliamentary meetings, the MPs can identify potentially problematic measures and point to gaps, inconsistencies, and other deficiencies to which the executive should respond. It has also been shown that even when there is limited capacity for parliamentary sessions, committees and equivalents can provide fact-finding parliamentary oversight of government action through and following the emergency (Grogan, 2020, p. 350). For example, in the context of the COVID-19 pandemic, the MPs could express the concerns of their constituents affected by the emergency measures and counter the epidemiologic expertise which was overly used during the first phase of the pandemic (Petrov, 2020).

Another function of a legislature is to scrutinize governmental bills or provide feedback to the executive (Barber, 2018, p. 56; Grogan, 2020, p. 56). When governmental bills are introduced to the parliament, the MPs can openly discuss them. The publicity of these hearings can increase the transparency of policy-making, which is one of the main virtues of parliaments (Waldron, 2009, p. 338). Since parliamentary meetings are open to citizens to attend and are broadly broadcast through the media, citizens can follow the discussions and judge the performance of their elected representatives. This publicity of the parliamentary meetings allows citizens to keep their representatives accountable for their actions and sanction (ultimately by not voting for) those representatives who have failed to maintain citizens' trust in them.

Although parliamentary meetings are the parliament's main deliberative arena, most deliberations do not occur in the parliament but inside special committees. For example, in Finland, there are a variety of special committees dedicated to different policy sectors. Every time a new governmental bill is introduced, it is sent to one or more committees to review and edit. Only after each committee has suggested changes to the proposal can it be passed at the second parliamentary meeting, where the MPs will vote on it. Since committees can invite experts to their hearings, they can assess whether there are gaps in the information provided by the Government or if some critical knowledge is missing (Jukka et al., 2022, p. 6). Therefore, special committees also significantly increase the knowledge base of governmental policies during emergencies.

Unlike parliamentary meetings open to everyone and gaining comprehensive media coverage, committees are usually closed from the public eye. Due to the nature of the committees, the members of the committees are freed to some extent from the obligations of

partisan politics. In that sense, committee discussions can sometimes provide a more supportive environment for constructive dialogue, in which MPs do not have to stay firm in front of the public eye but can also change their minds if they are convinced to do so (Chambers, 2004, p. 399). Previous studies have concluded that committee discussions show higher respect levels than heated and sometimes bad-mannered debates in parliamentary meetings (Bächtiger, 2014).

In the context of major societal crises, the deliberative function of the parliament can be crucial not only for preventing the abuse of emergency measures but also for improving the effectiveness of emergency policies by supporting their legitimacy and feasibility (Petrov, 2020). If the emergency measures are discussed openly in the parliament and media, these discussions can give emergency policies additional legitimacy in citizens' minds. Thereby, parliamentary oversight and legislative checks can support trust and citizens' voluntary public compliance with emergency measures during a crisis. Experiences of the pandemic have shown us that the best governmental responses have relied on public trust bolstered by rationalized and transparent decision-making and the capacity to adapt, change, and reform measures and policies (Grogan, 2020).

A distinction between different forms of trust could help us to understand how parliamentary deliberation can increase trust. In literature, two distinct conceptualizations of trust are prevalent: an "irrational" affective and "rational" calculative form of trust. The former refers to intuitive faith that relies on cultural knowledge and associative cognitive processes (Gawronski & Bodenhausen, 2006, 2014). This form of trust encompasses everything that might motivate a decision to rely upon, such as emotion, norms, bias, passion, love, values, morality, and relationships (Stoltz & Lizardo, 2018). The affective form of trust might explain why we saw the "rally around the flag" effect taking place in many countries around the World, including Finland (Bol et al., 2021; Haavisto, 2020; Jallinoja & Väliverronen, 2021). When citizens realized their country was under attack by an unknown enemy, they were willing to renounce some of their fundamental rights so that the government could better combat the external threat caused by the COVID-19 virus.

Unlike affective trust, the calculative form of trust refers to instrumental, strategic, and reasoned processes determining our decision to trust something or someone. However, the distinction between affective and calculative thinking has blurred as knowledge of the cognitive processes that determine our justifications has increased in recent years. Research has indicated that emotions, intuition, and morality determine our reasoning even though we are unaware of them. To pass the old distinction between "rational" and "irrational," Stoltz and Lizardo (2018) have introduced the term deliberate trust, which encompasses all cognitive resources we apply in decision-making. Deliberate trust judgments are not only based on calculation, but emotions also play a part. The difference between intuitive and deliberate trust is that the latter requires effort, attention, and time (Stoltz & Lizardo, 2018, p. 241).

The deliberate trust can be increased by justifying why someone is worth relying on. In the context of a crisis, the open communication of emergency measures and their justifications can thus be a source of a more deliberate form of trust. Especially during the pandemic, the spread of misinformation was reported on many of the most popular social media platforms. The spreading of information can strongly influence people's behavior and undermine the effectiveness of government countermeasures (Cinelli et al., 2020). Therefore, to tackle fake news, rumors, and false flags, governments should take time to justify their emergency measures to the concerned citizens and thus build trust in emergency policies.

The deliberative function of the parliaments was undermined when many countries started to tackle the critical issues raised by the emerging pandemic, such as the increasing number of casualties. By suspending the parliament meetings, the countries could quickly apply emergency measures that helped them to cope with the crisis and prevent the overburdening of the healthcare system. On the other hand, the suspensions of parliamentary meetings prevented parliamentary discussions of emergency measures from occurring—a phenomenon that the citizens widely supported (see Merkel, 2020, p. 4). Although lengthy discussions and parliamentary oversight can damage the effectiveness of emergency measures, they are still needed to build trust in political institutions and increase citizens' willingness to comply with the actions.

In the next section, I will study to what extent the COVID-19 pandemic affected the ordinary proceedings of the Finnish Parliament. The first part of the analysis relies on quantitative data and earlier reports of Parliament's performance during the COVID-19 pandemic. The latter part of the analysis is based on the CLC's assessment of mechanisms, such as the right to receive information detrimental to parliamentary oversight even in a state of crisis. The data consist of the CLC's reports and statements on emergency measures issued during the pandemic between March 18, 2020 and December 16, 2021. Altogether, 61 statements were analyzed using thematic content analysis.

3 | FUNCTIONING OF THE FINNISH PARLIAMENT DURING THE COVID-19 PANDEMIC

The emergency measures used in Finland during the COVID-19 pandemic were based on various laws and decrees. Whereas the EPA and Section 23 of the Constitution allow provisional exceptions to fundamental rights during a state emergency, special laws, such as Communicable Disease Act, can be applied during regular times when the critical conditions of a state of emergency are not met. A state of emergency was declared twice during the pandemic in Finland. The first period occurred between March 16, 2020 and March 16, 2020; the second was between March 1, 2021 and April 27, 2021. After declaring a state of emergency, the Government could introduce a wide range of policy interventions in the form of decrees. The emergency measures included a temporary closure of many school buildings, travel restrictions, and closures of restaurants.

Due to the COVID-19 pandemic, the Government needed to adjust its original governmental program and legislative plan. In 2020, 264 government proposals were submitted to parliament, of which 86 were related to the management of the pandemic (Finnish Government, 2021, p. 34). In 2021, 243 government proposals were submitted to Parliament, of which 57 were related to the pandemic (Finnish Government, 2022, p. 29). Since the pandemic-related proposals needed to be processed on a tight schedule, the ministries had to prioritize them in terms of time and the use of preparation resources. In addition to the governmental bills related to the pandemic, work in Parliament was also increased by the decrees issued during the emergency conditions (Finnish Government, 2022, p. 27). In 2020–2021, the Government issued 30 decrees that were discussed in parliament on a similarly tight schedule as other pandemic-related legislative proposals.

In addition to the changes in the legislative plan and the tight schedule, the COVID-19 pandemic affected the basic procedures of the parliament. The most significant adjustment of the practices of the Great Hall was limiting the number of MPs to 54. From 9.9.2020 onwards,

the number of MPs increased to 74 (Kotkas et al., 2022). Other minor changes to ordinary proceedings included the closure of the Parliament from the public and the online hearing of experts during committee meetings. A move to online parliament and committee meetings was also discussed, but eventually, the Parliament did not have to initiate online proceedings. The pandemic, however, changed the pace of the parliamentary proceedings in the special committees since many of the emergency measures needed to be commissioned and implemented more quickly than usual. To respond to the crisis effectively, a fast-track method was adopted at the beginning of the pandemic, and the committees were asked to review the governmental bills in a shorter time than usual.

The state of urgency also affected the CLC, which was much more overloaded during the first 2 years of the COVID-19 pandemic than in 2016–2017 (see Table 1). These years were selected because they represent the same election cycle period as 2020 and 2021. The most significant difference between the two periods was the length of time provided to the Committee to draft its statement. Whereas in 2016–2017, the governmental bills were processed approximately in 4 months, in 2020–2021, the constitutional review of pandemic-related bills took only 21 days on average. The difference in the number of the CLC's notifications and rejections between the reference periods 2020–2021 and 2017–2017 proved statistically significant ($p < 0.05$) regardless of whether all statements are included or only those unrelated to the pandemic. The difference between the processing time of pandemic-related statements and unrelated statements in 2020–2021 was notable and statistically significant ($p < 0.05$). There was also a clear difference between the number of notifications or rejections in the first year of the pandemic compared to the second year. Whereas in 2020, the CLC gave seven notifications or rejections (out of 11 statements) to the Government, in 2021, the number of rejected statements had dropped to four (out of 14).

In addition to regular governmental bills, the CLC was responsible for assessing the decrees commissioned under the state of emergency. Between 2020 and 2021, the CLC published 21 statements on decrees. The assessments of these decrees were conducted in a similarly short time as the assessments of regular governmental bills.

The assessment of the CLC's proceedings during the pandemic shows that the main change was the tight time frame. Similar findings are also made of other special committees during the COVID-19 pandemic. Whereas the committee treatment of governmental bills typically takes months, the governmental bills during the pandemic were often processed in weeks (Jukka et al., 2022, pp. 16–17). Because of the streamlined process, there was much less time for

TABLE 1 The CLC's statements in 2020–2021 and 2016–2017.

	2020/2021 (related to the pandemic)	2020/2021 (unrelated to the pandemic)	2016/2017 (total)
Number of statements	25	49	87
Processing time (days/ statement)	21	114	79
Notifications (share of statements)	36%	43%	35%
Rejections (share of statements)	8%	2%	0%

Abbreviation: CLC, Constitutional law committee.

discussions and expert hearings in committee meetings, which could have compromised their role as surveillants of executive powers. The limited time of parliamentary oversight gained criticism from the Chancellor of Justice during the pandemic (Chancellor of Justice, 2021, p. 45). Due to the tight time frames, hearing processes were sometimes interrupted or heavily restricted during the pandemic.

4 | THE REVIEW OF EMERGENCY MEASURES IN FINLAND

4.1 | Restrictions and exceptions of fundamental rights

In its assessments of the emergency measures and policies commissioned in the form of decrees, the CLC has carefully assessed the potential effects of emergency measures on fundamental rights. For example, in its review of the restrictions on bars and restaurants, which was one of the first measures the Government adopted during the first period of a state of emergency, the Committee assessed the restrictions based on the freedom to conduct a business and protection of property (CLCR 10/2020). According to the Committee, maintaining the functioning of the healthcare system during a pandemic is a very weighty argument regarding the proportionality of emergency measures. Since the Constitution obliges the Government to safeguard everyone's right to life (7 §) and to ensure adequate health services for everyone (19 §), even far-reaching actions by public authorities can be justified (CLCR 10/2020, p. 2).

Another significant emergency measure adopted by the Government during the first state of emergency was the restriction of movement. This governmental bill restricted movement to and from the Uusimaa region, which includes the capital of Finland, Helsinki, for two and a half weeks in the spring of 2020. In reviewing the restriction, the CLC emphasized that the right to free movement constitutes part of individual self-determination (CLCR 8/2020, p. 4). This criticism, however, did not prevent the restrictive measure from passing the constitutional review, considering its potential role in preventing the spreading of the virus on new territories. The Committee also paid attention to the restriction's relatively short duration and important exceptions that allowed movement for necessary reasons (CLCR 8/2020, pp. 4–5).

Due to the crisis's continuation, the state of emergency was evoked again in 2021. This time the Government again restricted the citizens' rights to move and assemble. One significant difference from the previous year was that the Government adopted sections 106 § and 107 § of the EPA. These emergency powers mandated the Government to coordinate the communication measures and emergency measures of the public authorities in such a way that citizens and communities would have “an open and truthful picture of the course of the epidemic and the actions of the authorities to combat and contain the coronavirus” (Decree 1/2021, Memorandum, p. 15).

In its review of the emergency measures issued under sections 106 § and 107 § of the EPA, the CLC assessed the coordination of communication measures and emergency measures of different public authorities in relation to freedom of speech and publicity. According to the Committee, there were severe problems in the Government's attempts to centralize the communication of various ministries and other state authorities under the direct management of the Prime Minister's Office (CRCR 2/2021, p. 4). From the Committee's perspective, the proposed measures would significantly limit the ability of the various ministries and state

administrative authorities to communicate independently. However, these restrictions on communication were more a matter of the internal reorganization of the administration's activities, not a direct interference with fundamental and human rights (CRCR 2/2021, p. 4).

Another emergency measure that the CLC reviewed during the second state of emergency considered the restrictions of movement and close contacts. This time the Committee assessed the emergency measures in relation to the right to free movement and the right to assembly. The Committee considered the bill highly problematic from the point of view of the necessity requirement since it would restrict gatherings and prohibit the movement of all people (CLCS 12/2021, p. 16–17). These restrictions would thus cover many everyday activities and ordinary life, which are harmless or at least have little impact on the spread of the coronavirus. The Committee considered these weaknesses so severe that it ordered the Government to revise the bill completely.

Due to the many deficits of the current emergency legislation, the CLC has proposed on many occasions that the current laws should be revised after the crisis. The pandemic has revealed many weaknesses in the existing legislation, including the EPA, that need to be considered so that the Government would be better prepared for the next possible crisis (CLCR 11/2020, p. 11). The Committee has stressed, however, that the legislative changes should not be enacted during a crisis but only during regular times. This requirement would enable a participative and transparent law drafting process.

4.2 | Challenges of parliamentary oversight

Although the Committee did not find severe interferences with fundamental and human rights in most cases, it found plenty of room for improvement in the Government's assessment of the necessity and proportionality of chosen emergency measures. For example, in its evaluation of the closures of restaurants, the Committee stressed that the Government should consider the regional differences and issue restrictions only on those areas most suffered from the pandemic (CLCR 10/2020, pp. 2–3). The Committee also criticized the Government for relying on one-sided information and notified the Government of solely using the assessments of the Finnish Institute for Health and Welfare. The Committee stated that from the point of view of weighing fundamental rights, the Institute's position cannot be considered a sole knowledge base for the Government's necessity assessment, as it refrains from assessing the overall harm caused by restrictive measures (CLCR 10/2020, p. 4).

Also, in its later statements, the CLC criticized the Government for leaving out justifications for its emergency measures (CLCR 5/2020, p. 2; CLCR 13/2020, p. 2). For example, on its review of the restrictions of movement, the Committee declared that the restrictions were so substantial that the necessity of regulation and the inadequacy of other available means should have been explained more extensively (CLCR 8/2020, p. 6). This criticism should be considered severe since the Government's failure to provide adequate information undermines the Parliament's right to receive reliable and comprehensive information to support its decision-making. It also challenges the Committee's ability to make assessments of the necessity and proportionality of the emergency measures.

The problem of receiving adequate information continued throughout the early stage of the pandemic. According to the Committee, the Government failed to discuss alternative measures and methods of application (CLCR 9/2020, p. 3; CLCR 13/2020, p. 3) or assess the cumulative effects of the proposed restrictions (CLCR 10/2020, p. 4; CLCR 11/2020, p. 3; CLCR 14/2020,

p. 5). The Committee especially drew attention to the need to assess the cumulative societal impact of restrictive measures and the overall harm caused by restrictions compared to their benefits (CLCR 11/2020, p. 3).

Due to the lack of information, the Committee had to separately exercise the right to information under Article 47 of the Constitution to obtain information that should have been made available to it on the Government's initiative (CLCR 12/2020, p. 6). From the Committee's view, the Government should have paid serious attention to the matter and delivered reliable and comprehensive information to the Parliament to support its decision-making (CLCS 30/2020, p. 4). The Committee also criticized the Government for not considering the earlier criticism by the Committee (CLCR 12/2020, p. 6). Instead, the Government has ignored the criticism and failed to provide adequate and properly presented information.

During the pandemic, the Committee has claimed that the Government's tendency to leave too little room for parliamentary scrutiny has narrowed the Parliament's opportunity to influence the laws and decrees (see CLCR 11/2020; CLCS 6/2021; CLCS 12/2021). The urgency has undermined the Parliament's status as the highest organ of the state, which is laid down in Section 2 of the Constitution of Finland. The Government's failure to provide information and reserve sufficient time to oversight the constitutionality of the governmental bills has also undermined the Committee's capacity to conduct its task laid down in Section 74 of the Constitution (CLCS 14/2020, p. 7).

Since the COVID-19 pandemic revealed many deficits in the parliamentary oversight of emergency measures, the CLC has suggested measures to strengthen the Parliament's role during emergencies. For example, the Committee has stated that the decision-making power of the Parliament should be clearly expressed and supported in regulating emergency conditions. According to the Committee, the Parliament's position as the main legislative body entails that it should have a chance to revise the content of decrees issued under the EPA and not just affect their duration (CLCR 11/2020, pp. 6–7).

Another method to strengthen the Parliament's position during emergencies is to move from a simple majority principle to a supermajority (two-thirds vote). According to the Committee, the supermajority requirement should be considered because it would highlight the high threshold for emergency powers and exceptions of fundamental rights (CLCR 11/2020, p. 6). A move from simple majority voting to supermajority voting is discussed in Finland occasionally. If the Government needed to collect the supermajority of votes, it would have to pay more attention to justifying its emergency measures to the opposition parties. The downside of supermajority voting is that it would undermine the Government's capacity to react to an acute crisis.

5 | DISCUSSION

The governmental emergency measures during the pandemic raised worries around the World about executive aggrandizement. A quick and decisive response to emerging crises may effectively counteract the possible damages caused by the crisis. On the other hand, the extensive restrictions and exceptions of fundamental rights may shake the foundations of liberal democracy and impair the legitimacy and feasibility of emergency governance (Petrov, 2020, p. 78). If the public views the executive's emergency measures as mere power-grabbing instruments and means of self-enrichment, they may be more unwilling to comply with the proposed emergency measures.

In this paper, I studied whether the Finnish democracy survived the critical stress test caused by the pandemic in relation to parliamentary oversight. An analysis is based on the evaluations by the CLC, whose duty is to assess the constitutionality of the governmental policies and measures and prevent extensive restrictions and exceptions of fundamental rights even during a state of emergency. The system of ex-ante constitutional review by the CLC reflects the principle of legislative supremacy and the Parliament's status as the highest organ of the state, which is laid down in Section 2 of the Constitution of Finland.

In my analysis, I distinguished between procedural and substantive elements. The study of the former indicates that the pandemic had some effect on the normal functions of parliamentary oversight. Despite these changes, the Parliament was not suspended but was very much involved in the day-to-day management of the emergency (cf. Chiru, 2023, p. 11; Scheinin, 2022c, p. 134). This separates Finland from countries like Serbia or Australia, where the parliamentary meetings were temporally suspended (Bjørnskov & Voigt, 2022; Rizzi & Tulich, 2022). Nevertheless, the novelty and urgency of the situation undermined the Parliament's capacity to critically evaluate and discuss the emergency measures and policies before they were enacted. This situation is reflected in the assessment of the CLC's operations during the pandemic. Due to the state of urgency, the Committee had to prepare its statements of governmental bills on a tight schedule.

The analysis of the CLC statements of emergency measures reveals that the Committee was quite critical at the early stage of the pandemic. The Committee repeatedly asked the Government to give better justifications for its emergency measures. Especially the necessity and proportionality of the emergency measures were often questioned by the Committee, and it asked the Government to do an overall assessment of the proposed measures. The CLC also criticized the Government's incapacity to provide parliament with adequate and balanced information, undermining the right to receive information. The earlier research literature has made similar findings by shedding light on problems receiving sufficient and balanced information. For example, Neuvonen (2020) has pointed out that the Government's failure to provide information systematically undermined the legislators' right to receive information and thus harmed the principle of transparency.

However, the situation improved to some extent throughout the pandemic, and the Government succeeded in providing better justifications for its emergency measures and policies. A comparison between the first and second year of the pandemic showed that the number of notifications and rejections made by the CLC dropped as the pandemic progressed and the acute crisis state was over. This decrease in criticism could be seen as a natural development as the World moved to the next crisis stage. Whereas the decisions had been made quickly and without information during the early stage of the crisis, more time resources and information became later available.

Despite some challenges, there are grounds to argue that the CLC has succeeded relatively well during the pandemic. Since there were no severe changes to the ordinary proceedings of the CLC, it could still operate relatively normally during the pandemic and assess the government's proposed emergency measures. This postante parliamentary constitutional review has secured that the Government has paid attention to justify the emergency measures and followed the rule of law even during the most critical phase of the pandemic (see Scheinin, 2022c, p. 135). When the Committee has found deficits in the government's justifications, it has notified the Government and asked it to revise its propositions. This role of the Committee as the critic of the Government was important, especially at the beginning of the pandemic when there was broad public support for strict emergency measures even among

opposition parties (see Christensen et al., 2022; Louwerse et al., 2021; Niemikari & Raunio, 2022). When the public debate about emergency measures progressed, more critical voices also began to raise above the surface.

Since the statements of the CLC are always public, some of the critical remarks of the Committee were discussed in the media during the pandemic. Especially the Finnish-language blog *Perustuslakiblogi* (Constitution Blog) played a central role in the public debate as it often reports about the assessments of the CLC and is followed by politicians and journalists (Scheinin, 2022c, p. 135). Using media as its soapbox, the Committee could pinpoint some of the most severe deficits of the pandemic-related governmental bills. Thus, the Committee could contribute to the public deliberation of emergency measures and impact the public perception of governmental policies during the pandemic. This public discussion of emergency measures is vital to ensure public trust, which has proven essential to high compliance with COVID-19 measures (Grogan & Weinberg, 2020).

However, there have been some criticisms of the Committee's operations occasionally. Since the Committee consists of the MPs, some critics have argued it can be subject to party politics (Scheinin, 2022a). The politicization of the Committee is, however, strictly against the Committee's function, according to which it should simply review the constitutionality of the governmental bills and not concentrate on the substantive issues (Husa, 2020, p. 254). To avoid politicization, the Committee is expected to draft its assessment of governmental bills unanimously. In its reviews, the Committee also draws heavily on the experts' evaluations, which is expected to increase the neutrality of its assessment even on politically controversial issues.

There is, however, some ground for criticism due to the heavy involvement of experts in the proceedings of the Committee. As the urgency of the pandemic undermined the politicians' capacity to discuss emergency policies, the role of experts was strengthened. Some authors have argued that the pandemic was characterized by technocratic tendencies (Eichler & Sonkar, 2021, p. 4; Merkel & Lührmann, 2021, p. 870). This phenomenon was especially noticeable at the beginning of the pandemic when the Government regularly referred to expert opinions (Niemikari & Raunio, 2022, p. 9; Poyet et al., 2023, pp. 7–8). With this respect, the constitutional review made by the CLC has perhaps further intensified this process, where the responsibility to assess the feasibility of different policy alternatives was moved from politicians to experts.

Finally, it should be reminded that the CLC is not the sole reviewer of the constitutionality of the emergency measures in Finland. In addition to the CLC, the constitutionality of the restrictive measures has also been assessed by the Chancellor of Justice and the Office of the Ombudsman. In coming years, we will see more and more cases being evaluated by national courts, which will have their say on the restrictions. The decisions of these courts will further increase our understanding of the feasibility and legitimacy of the emergency measures. Also, as the discussion about the role of the parliament during the pandemic continues, it will shape the general understanding of the correct balance between efficiency and democracy during times of crisis.

6 | CONCLUSION

In this article, I aimed to study whether the unique parliamentary constitutional review system prevented executive power-grabbing in Finland during the most critical phase of the COVID-19 pandemic. The analysis indicates that some procedures of parliamentary

oversight were compromised during the crisis. Especially in the early stage of the emergency, the lack of information and limited time resources undermined the deliberative role of the Parliament. A lack of parliamentary oversight could be defended by the acuteness of the crises and broad public support toward emergency measures. The research literature explains the general compliance with strict emergency measures with a “rally around the flag”-effect observed in many countries during the COVID-19 pandemic. Since this effect increases the citizens’ willingness to comply with emergency measures, it can be a great asset in the fight against a health crisis. From a democratic perspective, a lack of public deliberation is still a problem and may undermine a just recovery from an emergency. In that sense, the parliamentary constitutional review made by the CLC during the pandemic served a critical complementary function in the Finnish political system during one of the most severe crises of our time.

ACKNOWLEDGMENTS

This work was funded by the Strategic Research Council (SRC) established within the Research Council of Finland, grant numbers 345950 and 345951.

CONFLICT OF INTEREST STATEMENT

The author declares no conflict of interest.

ORCID

Mikko Värttö  <http://orcid.org/0000-0002-8772-7872>

REFERENCES

- Bächtiger, A. (2014). Debate and deliberation in legislatures. In S. Martin, T. Saalfeld, & K. W. Strøm (Eds.), *The Oxford handbook of legislative studies* (pp. 145–166). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199653010.013.0008>
- Barber, N. W. (2018). *The principles of constitutionalism*. Oxford University Press. <https://doi.org/10.1093/oso/9780198808145.001.0001>
- Bar-Siman-Tov, I. (2020). *Parliamentary activity and legislative oversight during the coronavirus pandemic—A comparative overview*. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>
- Bermeo, N. (2016). On democratic backsliding. *Journal of Democracy*, 27(1), 5–19. <https://doi.org/10.1353/jod.2016.0012>
- Bjørnskov, C., & Voigt, S. (2022). This time is different?—On the use of emergency measures during the corona pandemic. *European Journal of Law and Economics*, 54(1), 63–81. <https://doi.org/10.1007/s10657-021-09706-5>
- Boese, V. A., Edgell, A. B., Hellmeier, S., Maerz, S. F., & Lindberg, S. I. (2021). How democracies prevail: Democratic resilience as a two-stage process. *Democratization*, 28(5), 885–907. <https://doi.org/10.1080/13510347.2021.1891413>
- Bol, D., Giani, M., Blais, A., & Loewen, P. J. (2021). The effect of COVID-19 lockdowns on political support: Some good news for democracy? *European Journal of Political Research*, 60(2), 497–505. <https://doi.org/10.1111/1475-6765.12401>
- Cartier, E., Ridard, B., & Toulemonde, G. (2020). *The impact of the health crisis on the functioning of Parliaments in Europe*. Robert Schuman Foundation.
- Chambers, S. (2004). Behind closed doors: Publicity, secrecy, and the quality of deliberation. *Journal of Political Philosophy*, 12(4), 389–410. <https://doi.org/10.1111/j.1467-9760.2004.00206.x>
- Chancellor of Justice. (2021). *Annual report 2020*. The office of the Chancellor of Justice.
- Chiru, M. (2023). *Parliamentary oversight of governments’ response to the COVID-19 pandemic: Literature review*. European Parliamentary Research Service. [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740217/EPRS_STU\(2023\)740217_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740217/EPRS_STU(2023)740217_EN.pdf)

- Christensen, T., Jensen, M. D., Kluth, M., Kristinsson, G. H., Lynggaard, K., Lægread, P., Niemikari, R., Pierre, J., Raunio, T., & Adolf Skúlason, G. (2022). The Nordic governments' responses to the Covid-19 pandemic: A comparative study of variation in governance arrangements and regulatory instruments. *Regulation & Governance*, 17, 658–676. <https://doi.org/10.1111/rego.12497>
- Cinelli, M., Quattrociochi, W., Galeazzi, A., Valensise, C. M., Brugnoli, E., Schmidt, A. L., Zola, P., Zollo, F., & Scala, A. (2020). The COVID-19 social media infodemic. *Scientific Reports*, 10(1), 16598. <https://doi.org/10.1038/s41598-020-73510-5>
- Cormacain, R. (2020). Keeping Covid-19 emergency legislation socially distant from ordinary legislation: Principles for the structure of emergency legislation. *The Theory and Practice of Legislation*, 8, 245–265. <https://doi.org/10.1080/20508840.2020.1786272>
- Cornell, A. J., & Salminen, J. (2018). Emergency laws in comparative constitutional law—The case of Sweden and Finland. *German Law Journal*, 19(2), 219–250. <https://doi.org/10.1017/s2071832200022677>
- Eichler, J., & Sonkar, S. (2021). Challenging absolute executive powers in times of corona: Re-examining constitutional courts and the collective right to public contestation as instruments of institutional control. *Review of Economics and Political Science*, 6(1), 3–23. <https://doi.org/10.1108/reps-08-2020-0132>
- Farzamfar, M., & Salminen, J. (2022). The supervision of legality by the Finnish Parliamentary Ombudsman during the COVID-19 pandemic. *Nordisk Administrativt Tidsskrift*, 99(2), 1–19. <https://doi.org/10.7577/nat.4817>
- Finnish Government. (2021). *Annual report 2020* (p. 31). Publications by the Finnish Government.
- Finnish Government. (2022). *Annual report 2021* (p. 23). Publications by the Finnish Government.
- Gawronski, B., & Bodenhausen, G. V. (2006). Associative and propositional processes in evaluation: An integrative review of implicit and explicit attitude change. *Psychological Bulletin*, 132(5), 692–731. <https://doi.org/10.1037/0033-2909.132.5.692>
- Gawronski, B., & Bodenhausen, G. V. (2014). Implicit and explicit evaluation: A brief review of the associative-propositional evaluation model. *Social and Personality Psychology Compass*, 8(8), 448–462. <https://doi.org/10.1111/spc3.12124>
- Greene, A. (2018). *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis*. Hart Publishing.
- Griglio, E. (2020). Parliamentary oversight under the Covid-19 emergency: Striving against executive dominance. *The Theory and Practice of Legislation*, 8(1–2), 49–70. <https://doi.org/10.1080/20508840.2020.1789935>
- Grogan, J. (2020). States of emergency. *European Journal of Law Reform*, 22(4), 338–354. <https://doi.org/10.5553/EJLR/138723702021022004002>
- Grogan, J., & Weinberg, N. (2020). *Principles to uphold the rule of law and good governance in a public health emergency*. RECONNECT Policy Brief. https://reconnect-europe.eu/wp-content/uploads/2020/08/RECONNECTPB_082020B.pdf
- Haavisto, I. (2020). *A state of political emergency: How the coronavirus crisis united Finns* (p. 81). Finnish Business and Policy Forum.
- Husa, J. (2020). Locking in constitutionality control in Finland. *European Constitutional Law Review*, 16(2), 249–274. <https://doi.org/10.1017/S1574019620000139>
- Jallinoja, P., & Väliverronen, E. (2021). Finns' trust in institutions and experts during the COVID-19 pandemic. *Media & Communication*, 44(1), 1–24. <https://doi.org/10.23983/mv.107298>
- Jukka, L., Keinänen, A., & Keskinen, L.-M. (2022). *Knowledge base and consultation of experts in coronavirus-based legislative drafting – does haste undermine good law drafting* (p. 24). Edilex. <https://www.edilex.fi/artikkelit/27487.pdf>
- Korkea-aho, E., & Scheinin, M. (2021). “Could You, Would You, Should You?” Regulating cross-border travel through COVID-19 soft law in Finland. *European Journal of Risk Regulation*, 12(1), 26–44. <https://doi.org/10.1017/err.2020.112>
- Kotkas, T., Kantola, A., Wass, H., & Husu, E. A. (2022). Finland: Legal response to Covid-19. In J. King & O. Ferraz (Eds.), *The Oxford compendium of national legal responses to Covid-19*. Oxford University Press. <https://doi.org/10.1093/law-occ19/e32.013.32>

- Lavapuro, J. (2016). *Human rights, Finland and the dangers of populism*. Perustuslakiblogi. <https://perustuslakiblogi.wordpress.com/2016/10/19/juha-lavapuro-ihmisoikeudet-suomi-ja-populismin-vaarat/>
- Lavapuro, J., Ojanen, T., & Scheinin, M. (2011). Rights-based constitutionalism in Finland and the development of pluralist constitutional review. *International Journal of Constitutional Law*, 9(2), 505–531. <https://doi.org/10.1093/icon/mor035>
- Louwerse, T., Sieberer, U., Tuttnauer, O., & Andeweg, R. B. (2021). Opposition in times of crisis: COVID-19 in parliamentary debates. *West European Politics*, 44(5–6), 1025–1051. <https://doi.org/10.1080/01402382.2021.1886519>
- Merkel, W. (2020). Who governs in deep crises? *Democratic Theory*, 7(2), 1–11. <https://doi.org/10.3167/dt.2020.070202>
- Merkel, W., & Lührmann, A. (2021). Resilience of democracies: Responses to illiberal and authoritarian challenges. *Democratization*, 28(5), 869–884. <https://doi.org/10.1080/13510347.2021.1928081>
- Neuvonen, P. J. (2020). The COVID-19 policy-making under the auspices of parliamentary constitutional review: The case of Finland and its implications. *European Policy Analysis*, 6(2), 226–237. <https://doi.org/10.1002/epa2.1098>
- Niemikari, R., & Raunio, T. (2022). Centralized leadership, ministerial dominance, and improvised instruments: The governance of COVID in Finland. *Nordisk Administrativ Tidsskrift*, 99(2), 1–19. <https://doi.org/10.7577/nat.4888>
- Petrov, J. (2020). The COVID-19 emergency in the age of executive aggrandizement: What role for legislative and judicial checks? *The Theory and Practice of Legislation*, 8(1–2), 71–92. <https://doi.org/10.1080/20508840.2020.1788232>
- Poyet, C., Niemikari, R., & Raunio, T. (2023). What makes democratic institutions resilient to crises? Applying a novel analytical framework to the case of Finland. *Journal of Contemporary European Studies*, 1–16. <https://doi.org/10.1080/14782804.2023.2230456>
- Repucci, S., & Slipowitz, A. (2021). *Freedom in the World: Democracy under Siege*. Freedom house. <https://doi.org/10.4324/9781351301800-10>
- Rizzi, M., & Tulich, T. (2022). All bets on the executive(s)! The Australian response to COVID-19. In J. Grogan & A. Donald (Eds.), *Routledge handbook of law and the COVID-19 pandemic* (pp. 457–470). Routledge. <https://doi.org/10.4324/9781003211952>
- Scheinin, M. (2022a). *The degradation of Finnish constitutional control*. <https://perustuslakiblogi.wordpress.com/2022/08/03/martin-scheinin-valmiuslain-ja-rajavartiolain-muutokset-eli-kuinka-oikeusvaltio-meni-pesuveden-mukana-osa-3-suomalaisen-perustuslakivalvonnan-alennustila/>
- Scheinin, M. (2022b). Assessing human rights compliance during COVID-19. In J. Grogan & A. Donald (Eds.), *Routledge handbook of law and the COVID-19 pandemic* (pp. 117–122). <https://doi.org/10.4324/9781003211952>
- Scheinin, M. (2022c). Finland's success in combatting COVID-19: Mastery, miracle or mirage? In J. Grogan & A. Donald (Eds.), *Routledge handbook of law and the COVID-19 pandemic* (pp. 130–142). <https://doi.org/10.4324/9781003211952>
- Stoltz, D. S., & Lizardo, O. (2018). Deliberate trust and intuitive faith: A dual-process model of reliance. *Journal for the Theory of Social Behaviour*, 48(2), 230–250. <https://doi.org/10.1111/jtsb.12160>
- Vogt, H. (2021). Covid-19 and freedom. *Social Science Information*, 60(4), 548–559. <https://doi.org/10.1177/05390184211050850>
- Waldron, J. (2009). Representative lawmaking. *Boston University Law Review*, 89(2), 335–356.
- White, J. (2021). Emergency Europe after Covid-19. In G. Delanty (Ed.), *Pandemics, politics, and society* (pp. 75–92). De Gruyter. <https://doi.org/10.1515/9783110713350>

AUTHOR BIOGRAPHY

Mikko Värttö is a postdoctoral researcher in political science at the University of Turku. He is currently working on a project that studies just recovery from the COVID-19 pandemic. His research interests include deliberative democracy theory, government communication, and crisis management. He is particularly interested in studying

parliamentary debates, policy processes, and government programs, especially with regard to post-pandemic governance.

How to cite this article: Värttö, M. (2023). Parliamentary oversight of emergency measures and policies: A safeguard of democracy during a crisis? *European Policy Analysis*, 1–17. <https://doi.org/10.1002/epa2.1190>