Memorandum on conflicts of interest in the office of a Member of Parliament

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The Working Group on the Ethical Rules of Members of Parliament -, led by Deputy Speaker Pekka Ravi, asked me to prepare a report on the code concerning conflicts of interest of Members of Parliament that will be made available to Members of Parliament (MPs). For this reason, I respectfully state the following. [1]

On the specificity of codes concerning Members of Parliament and civil servants

Section 32 of the current Constitution of Finland, which entered into force in 2000, prescribes the following on conflicts of interests of Members of Parliament:

> "A Representative is disqualified from consideration of and decision-making in any matter that concerns him or her personally. However, he or she may participate in debate on such matters in a plenary session of the Parliament. In addition, a Representative shall be disqualified from the consideration in a Committee of a matter pertaining to the inspection of his or her official duties."

In the assessment of the significance and content of the provision, one essential question is the provision's relationship with other codes concerning conflicts of interest observed in public activities.

For many reasons, the provision on a Member of Parliament's conflict of interests must be regarded as a special provision on the basis of which an MP's disqualification is exclusively determined. The position of this special norm in relation to other disqualification norms in public law is created simply by the fact that the matter is laid down in the Constitution, in accordance with a long constitutional tradition that has remained unchanged in terms of its essential content. The key ideas of the current provision – a Representative may not participate in decision-making in a matter that concerns him or her personally but may take part in a debate within certain

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[1] The memorandum makes considerable use of my article called "Esteellisyydestä kansanedustajan toimessa" in the book "Avoin, tehokas ja riippumaton, Olli Mäenpää 60 vuotta juhlakirja", Helsinki 2010, pp. 339-353. The article was an edited and supplemented version of the statement I submitted to the Parliamentary Office Commission on 23 May 2010.

limits – has been stated in the Constitution since the Parliamentary Act of 1869[2]. As far as is known, the enactment phases of the provision in the current Constitution do not indicate that the provision would somehow be deemed to relate to disqualification codes concerning civil servants, or that the content and interpretation of those codes should somehow be taken into consideration in the application of this constitutional provision. Presumably, the situation has been similar in the enactment of earlier constitutional provisions on the subject: the regulation of the disqualification of a delegate to the Parliament has been viewed as a question independent of the disqualification codes of civil servants.[3] In the Constitution, enactment is related to the special nature of the object of the norm. As is common in public activity, even here the disqualification norm serves to instil confidence in the appropriateness of a made decision but, at the same time, the norm takes into account the nature of key functions of the Parliament that diverge from other public activities and the need to secure the freedom of Members of Parliament to fulfil do their duties without any limitation other than those deemed necessary.

Specificity of the disqualification code of Members of Parliament and other norms observed in public activity is created and also required by the fact that the Parliament has not been regarded as an authority and an MP in office has not been deemed to be a civil servant. This has clearly emerged, for example, in the previously enacted definition of criminal public liability in Chapter 2, section 12 of the Criminal Code, and the interpretation of competence by the

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[2] Section 48 of the Parliamentary Act of 1869 stated: "In a matter that personally pertains to a member of an estate, he or she may be present during a debate but not during the decision-making process." The provision in section 53 of the 1906 Parliamentary Act was similar in terms of the subject matter, but the wording had been brought up to date by addressing a matter that "personally concerned a Representative". Mere updating of the wording continued in section 62 of the 1928 Parliamentary Act that spoke of a matter that "personally concerned a Representative". Also, the following provision had been included in section 44(2) of said Parliamentary Act: "Let no-one whose official duties are inspected by a Committee, or whom the matter personally concerns, take part in a reading of such a matter." Said provisions of the 1928 Parliamentary Act were in force, as such, until the current Constitution entered into effect.

[3] Of the current provisions, see Government proposal HE 1/1998, pp. 85-86 and the underlying Committee report KOM 1997:3, pp. 155-156. In its report, the Constitutional Law Committee (PeVM 10/1998) did not take a position on the provision. I have not specifically studied the enactment phases of the earlier provisions in question. However, I should note that, in the context of these provisions, I have never seen any reference made to disqualification codes concerning civil servants. (Although there were no general disqualification provisions concerning administrative officials before, they did "exist" in the sense that provisions on grounds for disqualification of judges in the Code of Judicial Procedure could be applied to county governors, for example.) On the content of sections 62 and 44 of the 1928 Parliamentary Act, see, for example, *Hakkila's* commentary, pp. 551-552 and pp. 515-516, and briefly on the content of section 53 of the 1906 Parliamentary Act, for example, *Ahava's* commentary, p. 152.

Parliamentary Ombudsman based on it. It is also visible today in definitions contained in Chapter 40, section 11 of the Criminal Code which indicate, for instance, that a person elected to a public office is not regarded as a "member of Parliament acting in his or her Parliamentary mandate". The specificity of the codes is also manifested in that the State Civil Servants Act (750/1994), according to the definition of section 1, does not apply to the mandate of an MP and that the Administrative Procedure Act (434/2003) - where section 28 is a key provision concerning a conflict of interest of a civil servant - is, according to section 2 of the Act, only applied to "agencies under the Parliament".

On the specificity of the position of a Member of Parliament and of individuals in the government's civil servant and official apparatus, a quote can be included from a report presented by the Constitutional Law Committee at the 1982 parliamentary session concerning the report by the Ombudsman (PeVM 54/1983). The Committee stated, among other things,:

> "According to section 2(1) of the Constitution Act, the powers of the State in Finland are vested in the people, who are represented by the Parliament in session. Thus, the Parliament is the highest organ of the state that derives its powers directly from the people. The activities of the Parliament as a state power is not limited to decision-making during plenary sessions but includes all the procedures in Parliament required by constitutions that are necessary for the use of such powers. Correspondingly, measures that are part of this procedure mostly prescribed in the Parliamentary Act and those performing them, although subject to the law, cannot be subordinated to outside supervision directed at civil servants. Therefore, a Member of Parliament is subject to supervision other than by the Parliament only if this can be clearly derived from the provisions of the Constitution. The Parliament is not an authority, and a Member of Parliament is not a civil servant. During the enactment of the Constitution, and even after this, Members of Parliament have intentionally been left outside of public liability. The independence of Members of Parliament is specifically emphasised in sections 11–15 of the Parliamentary Act."

This position is not recent but, in my view, there is no reason to assume that the positions of the Committee have significantly changed on this issue. The position does not directly apply to the disqualification code, but it is a significant guideline on the specificity of regulation concerning action by Members of Parliament from regulation pertaining to the official apparatus and civil servants.

On the aforementioned grounds, there is reason to find that the disqualification of a Member of Parliament acting in his or her parliamentary mandate is exclusively determined on the basis of the disqualification norm in the Constitution. This can perhaps be deemed rather self-evident. My opinion is that the specificity of the provision on an MP's conflict of interest and the disqualification code observed in other public activity also means that other disqualification codes cannot provide a significant guideline for the interpretation of the provision in the Constitution which specifically pertains to a conflict of interest of a Member of Parliament. For this, the goals of the provisions and their application environments are too different.

What is a matter that "personally" concerns an MP?

The key criterion requiring interpretation in the provision in section 32 of the Constitution is whether a matter concerns a Representative personally. If a matter is deemed to concern a Representative personally, he or she is disqualified from consideration of and decision-making in the matter but may participate in the debate on such matters in a plenary session of the Parliament. The following was stated on this criterion in the motivations to the proposal that led to the enactment of the Constitution (HE 1/1998, p. 85):

> "…Matters concerning a Representative personally would include, for instance, those concerning the suspension of his or her office (section 28), charging or detaining him or her (section 30), accusing him or her of breach of conduct in the Parliament (section 31), or hearing a matter concerning the legal responsibility of a Minister (section 114).
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> However, even for a Minister, a personal matter would not include one involving an assessment of the politics carried out by the Government or an individual Minister. Thus the provision would not include Ministers, who are also Members of Parliament, from participating in a vote during a plenary session on the confidence enjoyed by the Government or an individual Minister."

In its report on this proposal, the Constitutional Law Committee did not discuss this provision (PeVM 10/1998).

How the nature of the content of the "personal" criterion was conceived even before the current Constitution is, for its part, illustrated by attitudes towards the possibility of Ministers serving as MPs to take part in votes concerning the confidence enjoyed by the Government. The demand that the Members of the Government (the Economic Division of the Senate) had to enjoy the confidence of the Parliament was introduced to the Constitution with an amendment made to section 32 of the 1906 Parliamentary Act on 31

December 1917. Initially, the question of the interpretation of the disqualification provision in section 53 of the 1906 Parliamentary Act in the context of votes of confidence raised a debate during the parliamentary session, and there were also doubts in the literature on whether a Representative serving as a Minister could take part in a vote on the confidence of the Government or a Minister. In 1939, *Esko Hakkila*, in a well-known commentary, emphatically expressed his view according to which "a procedure where members of the Government vote on confidence for themselves cannot be deemed to be in accordance with good parliamentary practices and legal principles generally pertaining to a sense responsibility. However, he had to immediately continue: "This, however, has not been observed in practice; it has been customary for Ministers to take part in votes of confidence as well."[4] According to a motion made by *Olavi Salervo*, the long-serving Secretary-General in 1977, the position according to which members of the Government are entitled to take part in votes of confidence has been followed in practice, "but applied such that sometimes members of the Government have seen it as their duty to refrain from voting, especially when the matter has involved a resolution of no confidence to an individual Minister."[5] The position, adopted with regard to votes of confidence and also stated in the aforementioned Government proposal, suggests that the criterion used in the provision "concerns... personally" specifically refers to interfering with an MP's legal or financial standing, but not influencing the MP's political position or benefits of a political nature. The list of examples on matters that would concern an MP personally in the motivations to the proposal, quoted above, clearly matches this premise.

With regard to the above, an important principal aspect is that the exercise of powers vested in a Representative according to the Constitution in one matter cannot make said matter one that would concern the Representative personally, in the sense of section 32 of the Constitution. For example, making a motion or signing a reminder concerning the legal responsibility of a Minister would not make it the Representative's "own" matter in any way. This merely involves exercising powers provided by the Constitution that cannot possibly – since nothing else has been prescribed – limit an MP's other powers based on the Constitution.[6]

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[4] *Hakkila, Esko*: Suomen tasavallan perustuslait, Porvoo 1938, p. 552.

[5] *Salervo, Olavi*: Eduskunnan järjestys- ja työmuodot 1907-1963, Suomen kansanedustuslaitoksen historia, X:1, pp. 148-150. The proposal also refers to cases that have occurred in practice.

[6] The author knows that when a reminder on the legality of the official duties of the Chancellor of Justice Nikula (M 2/2004) was dealt with at the 2005 parliamentary session, the Constitutional Law Committee discussed the question of whether MP Hoskonen, a member of the Committee and the first signatory to the reminder, could participate in the consideration of the reminder in the Committee. After the Committee had obtained

The text above means that matters considered in committees and plenary sessions are, in terms of their nature, rarely such that the question of conflict of interest referred to in the provision of the Constitution can become actualized. Usually, matters dealt with by committees and in plenary sessions are those that can be characterised as part of the Parliament's activity as an organ of the state. As a description, the activity of an organ of the state may not be precise but it has been used in, for instance, the proposal that led to the enactment of the Act on Civil Servants in Parliament (PNE 1/2003) and the report on it by the Constitutional Law Committee (PeVM 12/2003), and it demonstrates well the specific nature of the key functions of the Parliament.

These functions by an organ of the state are usually such that they either do not concern an individual's financial or legal position at all, or they only influence an individual's financial or legal position as a member of a group. Therefore, the question of an MP's disqualification usually cannot, in fact, emerge in the enactment of laws, decisions concerning the state budget, decisions on international relations or decisions concerning the implementation of the parliamentary system; also, an amendment of a law affecting a forest owner's financial or legal position cannot possibly cause a conflict of interest for MPs who own some forest. The fact that the application of the disqualification provision thus remains narrow in scope is fully harmonious with the fact that an MP's freedom of action in the Parliament's state-organ functions should not be restricted without grounds that are clear and based on the Constitution.

On the basis of the above, it can be deemed that a matter considered by a committee and/or in a plenary session concerns a Representative personally, as referred to in section 32 of the Constitution, especially in situations already referred to in the motivations to proposal HE 1/1998, quoted above. These decisions include the decisions referred to in section 28 of the Constitution on a release from office, suspension from office or a declaration on the termination of office; decisions referred to in section 30 on consent to the bringing of charges or deprivation of liberty, or consent to an arrest or detention; the decision according to section 31 on the issuing of a caution or suspension from sessions; and decisions referred to in sections 114 and 115 which would apply to charges against an MP who is or has been a member of the Government.[7] One decision included in these, but enacted outside of the

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information on the question of conflict of interest (15 February 2005; Tiitinen, Hidén), the question of any disqualification was not deemed to require any more attention.

[7] The inclusion of disqualification in the situations mentioned in the text corresponds to the policy adopted in previous opinions. *Ahava, Iivar*: Suomen suuriruhtinaanmaan valtiopäiväjärjestys, Porvoo 1914, p. 152, refers, as situations where the disqualification provision is applied, to section 11 of the 1906 Parliamentary Act on charges against a Representative and the deprivation of liberty, and section 22 which pertains to the

Constitution, includes the decision by the Parliament, referred to in section 2(3) of the Act on a Member of Parliament's Remuneration (216/2007), on the forfeiture of remuneration for non-participation in the work of the Parliament. One can also think of other situations, which remain highly unlikely in practice, where the application of the disqualification provision could become actualized. Such cases could perhaps include some *lex in casu* -situations – for example, if special statutes were enacted on the transfer of some fixed property of the state, with the beneficiary being a Member of Parliament.

The wording of section 32 of the Constitution can be deemed to mostly refer to decision-making through voting, but not to elections held at the Parliament. The fact that disqualification does not pertain to participation in elections can be regarded as a phenomenon more commonly associated with elections – all those who have a right to vote and are eligible for office are in the same position; the election does not concern anyone personally. Thus, an MP is usually not disqualified from participating in elections held in the Parliament, regardless of whether this involves electing one person or several persons and how likely this person's election is. However, if choosing a person for a position, in the form of an election, in fact resembles a procedure for filling a vacant office, the application of the disqualification provision may be warranted. [8]

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possibility of examining a Representative's eligibility. He also states that the Speaker cannot preside over the debates when the Parliament decides on reimbursing costs incurred by the Speaker, in accordance with section 43 of the Parliamentary Act. *Erich, Rafael*, Suomen valtio-oikeus I Helsinki 1924, s. 319, mentions as provisions on matters referred to in the disqualification provision, besides the aforementioned sections 11 and 22 of the Parliamentary Act, section 8 (release from office), section 15 ("sentencing" the forfeiture of remuneration), section 45 (possibly referring to a committee member's right to include a dissenting opinion to a report), and section 48 (sanctions imposed on an MP for misuse of the right to speak). *Hakkila*: ibid., p. 551, mentions as examples of matters that concern an MP personally, cases required in the section 10 of the 1928 Parliamentary Act (release from office), section 13 (possibility to bring charges for a statement made during a parliamentary session), section 17 (forfeiture of remuneration), section 24 (examination of an MP's eligibility), section 51 (possibility to "sentence" an MP who has neglected work in a committee), section 57 (pertains to an MP's right to speak in a plenary session), and section 58 (sanctions imposed on an MP for misuse of the right to speak).

A description approximately matching *Hakkila's* "list" is also given by *Salervo*, ibid., pp. 147-148.

[8] Hence, a Representative's conflict of interest also does not apply to the procedure observed in the election of the Prime Minister according to section 61 of the Constitution. Although the general rule in the procedure under the provision is a vote on the election of a candidate, it can be deemed – as is the case with the possibility of participating in votes of confidence – that the situation does not involve a matter that concerns a Representative's legal or financial position, him or her "personally", but a decision pertaining to the political position and confidence of the Representative and the Representative's background group. - A different scenario would involve an imaginary

Specific statement on a procedure concerning the legal responsibility of a Minister

The consideration of matters concerning the implementation of the legal responsibility of a Minister may involve some specific features in terms of the question on conflict of interest. With regard to the disqualification rules on a judge's activities, it can be deemed obvious that a Member of Parliament who has been elected as a member of the High Court of Impeachment by the Parliament cannot take part in the hearing of the matter in the High Court of Impeachment, if he or she has considered the question of the Minister's legal responsibility as a member of the Constitutional Law Committee. On the other hand, in terms of the conflict of interest of an MP, there are no grounds on which the MP would find himself or herself disqualified due to membership in the High Court of Impeachment – the matter does not concern him or her personally, in the way referred to in section 32 of the Constitution. In terms of an MP's freedom of action, it would be justified for the MP not to disqualify himself or herself in such a situation where the roles converge – member of the Constitutional Law Committee and member of the High Court of Impeachment – but would disqualify himself or herself in the High Court of Impeachment if the matter is referred there. Such a procedure would also be favoured by the fact that matters on the legal responsibility of a Minister considered by the Constitutional Law Committee have, in practice, rarely led to the bringing of charges. On the other hand, perhaps one cannot fully ignore the fact that members of a court of law should probably avoid knowingly making themselves disqualified in a matter that may be heard by the court. [9]

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situation where an MP seeks the office of the Secretary-General of Parliament and the selection is made via an election according to section 16(2) of the Rules of Procedure. Although this is an election according to the terminology of provisions, in fact the procedure is a decision (on filling a vacant office) that concretely concerns the person's legal and financial position in such a manner that the MP's participation in the election during a plenary session could not be deemed appropriate in terms of section 32 of the Constitution.

[9] As a recent practical situation, one can refer to the consideration of a notification, issued by the Chancellor of Justice, pursuant to section 115 of the Constitution, concerning former Prime Minister, Matti Vanhanen (M 6/2010; 16 September 2010), in the Constitutional Law Committee. The minutes of the Committee, dated 21 September 2010, state (section 2): "MP Kiviranta reported that he would not participate in the consideration of the matter referred to in section 3 at this meeting or subsequent meetings, because he is a member of the High Court of Impeachment." Section 3 of the same minutes state: "MP Manninen reported that he did not regard himself as disqualified. His duty as the chairperson of Finland's Slot Machine Association began in 2009." MP Manninen's declaration was justified because a matter concerning a Minister's legal responsibility may include details due to which the matter personally concerns a Member of Parliament who is not the subject of the reminder, and the Chancellor of Justice's notification involved Vanhanen's action in decisions made on the distribution of subsidies to Finland's Slot Machine Association, the last decision being made in January 2009. - When a plenary session decides to bring charges against a Minister, an individual

What is included in the inspection of official duties referred to in section 32 of the Constitution?

According to the last sentence of the provision in section 32 of the Constitution, a Representative shall be disqualified from consideration in a Committee of a matter pertaining to the inspection of his or her official duties. In part, this prohibition applies to, for example, in terms of the consideration in a Committee of charges against a Minister, the same situations as the general prohibition to participate in the consideration of and decision-making on a matter than concerns the Representative personally. On the other hand, inspection of an official duty can also include matters that would not necessarily be regarded as personal. Here, official duties can refer to all such measures under public liability which the Representative has carried out alone or as a member of a body with multiple members. These may thus also include measures the Representative has carried out before being elected into office, insofar as these can be inspected by the Parliament.

In practice, there has been some ambiguity pertaining to what should be regarded as an inspection in the application of the aforementioned provision. For example, if a measure during the consideration of a report comes under an official assessment, it can be thought that the consideration by the committee pertains to the "inspection" of that measure. In my opinion, however, in the approach to such situations, one should concur with the views presented by the Government in the context of the constitutional reform, in the motivations for the disqualification provision (HE 1/1998, pp. 85-86):

> "However, in recent years, the consideration of reports in Committees has changed such that it usually involves mostly general assessment of the policies carried out and recording of the need for development. For example, the consideration of the report by the Government in the Committee is often aimed at general development of activity, rather than an inspection of the activity during the year in question. In situations like this, one cannot find automatic grounds for a conflict of interest among the Committee members any more. Consequently, an inspection of the report by the Government in the Committee would no longer necessarily mean that a member of the Committee, who was a

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MP's opinion does not easily, in practice, have such actual significance as an individual member's opinions when the Constitutional Law Committee considers a matter related to a Minister's legal responsibility. However, since the plenary session's decision is legally decisive for the bringing of charges, the idea of the incompatibility of serving as a judge in the High Court of Impeachment and participating in the consideration of a Minister's charge in Parliament should also be extended to the decision to bring charges in a plenary session.

member of Government during the year under review, is disqualified when the report is inspected by the Committee. A member would only become disqualified if, during the consideration of the report, the Committee begins to acquire information to be able to assess the official duties of the Committee member in question or the entire Government." [10]

A disqualified Representative's right to participate in a debate

According to a specific reservation included in the disqualification provision, a Representative may, in spite of his or her conflict of interest, ("however"), participate in the debate on the matter in a plenary session. An arrangement where a member of a decision-making organ may participate in the debate on a matter within the organ, although they may not participate in decision-making on the matter for a reason of conflict of interest, can be regarded as unconventional to a certain extent. An arrangement like this cannot be considered in the decision-making of an administrative authority. However, a plenary session is not an authority-type decision-making organ but the highest political decision-maker and representation organ, and in its activity, a Representative's free right to speak must be secured as reliably as possible. This is why the right to speak should also be protected from limitations that would be based on different interpretations of the item "concerns him or her personally" in section 32 of the Constitution. [11]

Supervision of compliance with the disqualification provision is part of the Speaker's general duty to supervise the constitutionality of the procedure in a plenary session. The same supervisory duty in the Committee is entrusted to the chair. Also, every Representative is obliged to ensure, on their own

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[10] The opinion in the proposal can be seen as a reaction against the strict interpretation of disqualification that the Constitutional Law Committee appears to have adopted in statement PeVL 1/1980, which pertained to the annual report of the Remuneration Delegation (provisions on it were repealed in 1991). The statement begins: "Since the chair and vice-chair of the Committee have been members of the Remuneration Delegation for part of the year under review, and thus disqualified from considering the matter of the statement, the Committee chose MP Ben Zyskowicz as the temporary chair." - In light of the position in memorandum PeVM 54/1982, quoted above, the measures taken by the members of the Remuneration Delegation, chosen from among MPs, could hardly have been regarded as official duties.

[11] The reservation on the right to participate in a debate in a plenary session has been included in the disqualification provision of the Constitution since section 53 of the 1906 Parliamentary Act. Regarding situations of practical application, reference can be made to a case mentioned in a protocol from 1974, pp. 2199-2200, where it was deemed that a Representative who had the right to participate in the debate but not in decision-making, did not have the right to make or support motions concerning a decision in the matter in question.

initiative, that they do not participate in a debate or decision-making in which they are not entitled to participate according to section 32 of the Constitution.

A "big and "small" case example from practice

Pursuant to section 11 of the Nuclear Power Act (990/1987), construction of a nuclear facility of considerable general significance shall require a Government decision-in-principle ensuringthat the construction project is in line with the overall good of society." According to section 15 of the Act, the Government decision-in-principle, made under section 11, shall be forwarded, without delay, to Parliament for perusal. According to the same provision, Parliament may reverse the decision-in-principle as such or may decide that it remains in force as such. The decision-in-principle and its approval in Parliament are necessary preconditions for the construction of a nuclear facility, or rather for the progress of the entire construction process (including applications for different permits).

On 6 May 2010, the Government made positive decisions-in-principle on an application by Teollisuuden Voima Oyj for the construction of a nuclear power plant unit, on Posiva Oy's application for the construction of a nuclear fuel disposal facility, and on Fennovoima Oy's application for the construction of a nuclear power plant (M 2, M 3 and M 4/2010). The decisions-in-principle were submitted to Parliament, in accordance with section 15 of the Nuclear Energy Act, and the only consideration on whether the decisions should be repealed or remain in force was held on 29 June - 1 July 2010. Due to the exceptional significance of the matter, it was understandable that different questions concerning the decision-making procedure also raised a discussion. One visible subject of the discussion was that members of the Committees – especially of the Commerce Committee which held a key position in preparations – or persons close to them were members of the decision-making organs at companies that were significant shareholders in Fennovoima Oy. The question was whether a Member of Parliament could be deemed disqualified from participating in a committee reading in preparation for decision-making on the approval or rejection of the decision-in-principle and, correspondingly, in decision-making in a plenary session on the grounds that the MP or a person with a family relationship that generally results in disqualification was, or had during a significant phase been, a member of a decision-making entity at the company that applied for the decision-in-principle, or in a decision-making bodyof a company that is a significant owner of such a company.

The decision by Parliament referred to in section 15 of the Nuclear Energy Act on whether the Government's decision-in-principle should be repealed as

such or remain in force as such is very limited, in terms of its content and technical form. However, that is not a simple administrative decision but, as the Constitutional Law Committee noted in its statement on the Government Bill for the Nuclear Energy Act (PeVL 17/1985), an extremely important matter in terms of its significance for social policy and the national economy. The Parliament's inclusion in the decision-making on the matter is "completely natural" and, due to its significance, the Parliament must be able to make the decision with a solid foundation of knowledge. The fact that decision-making in Parliament was based on a separate statute has no impact on the fact that this was clearly a decision entrusted to the Parliament's activity as an organ of the state.

In my opinion, the answer to the aforementioned question is very clearly a negative one. The negative answer is not solely due to the fact that it is difficult to conceive of a key decision-in-principle concerning the construction of a nuclear facility of considerable general significance as being a decision that concerns an individual personally. A more significant aspect is that this is clearly a decision entrusted to Parliament's activity as an organ of the state, and the only limitations that can be made to the rights of MPsto participate in the preparation and making of such decisions in Parliament are those indicated in the Constitution. The norm laid down in section 32 of the Constitution includes some limitations. However, in views expressed thus far, this norm has not at all been extended to situations that do not concern so much a financial or legal benefit enjoyed by a Representative or due to him or her, but rather merely a question of following views of disqualification observed in the official administration. When the question is a Representative's right to participate in Parliament's functions as an organ of the state, any expansive interpretation of norms that contains limitations should be approached with a clear rebuff. – As far as is known, none of the Members of Parliament disqualified themselves from the consideration of the matter in this case.

In general guidelines for committees issued by the Speaker's Council on 11 December 2007 (Valiokuntaopas 2008), section 2.7 deals with the disqualification of a Committee member and deputy member and therein, for example, conflict of interest in the inspection of an official duty. In this respect, the guidelines state, for instance:

> *"A general consideration of a report* or the acquisition of information of a general nature about a report is not regarded as an inspection of an official duty in the sense referred to in section 32 of the Constitution. Thus, a Committee member is not disqualified from participating in the consideration of a report matter when the Committee evaluates or examines circumstances that are the subject of the report, at a general level. However, if the Committee begins to acquire explanations to

> evaluate a concrete official duty by the member in question or an organ that has issued the report, the Committee member who has been involved in said official duty must withdraw from the consideration of the report matter due to a conflict of interest (HE 1/1998, pp. 85-86)."

The guidelines continue:

> "If the *consideration of the report* becomes a concrete inspection of an individual official duty, the following rules shall be applied to the disqualification of a Committee member:
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> Committee members who have served as members of the Administrative Council of the Finnish Broadcasting Company may not participate in the consideration of *the report by the Administrative Council of the Finnish Broadcasting Company* in the Transport and Communications Committee in the year under review.

The indicative content of the guidelines do not call for more comments here, considering that the "rules" presented only pertain to the consideration of the report "if it becomes a concrete inspection of an individual official duty".

The duties of the Administrative Council of the Finnish Broadcasting Company are laid down in section 6 of the Act on Yleisradio Oy (1380/1993). According to wording of the provision that remained in force until the end of 2012, the Administrative Council shall submit to Parliament, every other year, a report "on the implementation of public service" concerning two years of operation. The report issued for 2011 and 2012 was considered, in a preparatory manner, by the Transport and Communications Committee in May 2013. As far as is known, during the consideration of the report there was a discussion – perhaps inspired by the public discussion on the financing model of the Finnish Broadcasting Company – on whether those Committee members, who were also members of the Administrative Council, could participate in the consideration of the report in the Committee. The minutes of the Committee, among other things, seem to suggest that the end result was that none of the four Committee members who also served as members of the Administrative Council of the Finnish Broadcasting Company officially disqualified themselves; however, all four – apparently referring to aspects of appropriateness – refrained from the decisive consideration of the matter in the Committee.[12]

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[12] See minutes of the Transport and Communications Committee dated 21 May 2013, 22 May 2013, 23 May 2013, and on the decisive consideration on 30 May 2015, as well as

In my view, there would have been no grounds under section 32 of the Constitution for finding the Committee members disqualified, in a legal sense, from the consideration of the report. As far as I have observed, nothing in the report issued by the Committee (LiVM 11/2013) suggests that, apart from questions at a general level, any individual acts emerged during the consideration which could have involved personal questions of responsibility. It could even be unclear to which extent the duties of the Administrative Council at that time, in general, included tasks that could justifiably be regarded as "official duties" referred to in the provision in section 32 of the Constitution.[13]

As is indicated at the end of this memorandum, I have great reservations on the development of some kinds of factual withdrawal practices alongside the actual, legal application of the disqualification norm. However, it is of course justified to question the appropriateness of a situation where a Parliament organ, performing a concrete inspection of a report addressed to Parliament, has a significant number of members of the organ that issued the report, and how this enhances respect for the Parliament's practices. Perhaps remedies for any "credibility deficit" arising from such a situation should be sought from the selection of members for such organs, instead of withdrawal practices.

Some setting of boundaries: on administrative matters within Parliament

Above, it is suggested that the disqualification provision in section 32 of the Constitution (mostly) applies to measures of preparation and decision-making that can be described as the Parliament's functions as an organ of the state and which mostly take place in committees and plenary sessions. A key

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the Committee report on the matter LiVM 11/2013. Members of the Administrative Council of the Finnish Broadcasting Company in the Committee were chair Jokinen and members Alatalo, Tossavainen and Vehkaperä.

[13] Amendments to sections 6 and 6 a of the Act on Yleisradio Oy (474/2012) that entered into force at the beginning of 2013 have designated new and significant duties related to prior evaluation of the Finnish Broadcasting Company's new services and functions and whether the service or function is to be started or not. However, these duties hardly warrant any change to the concept on the application of section 32 of the Constitution presented in the text. In terms of the interpretation of section 32 of the Constitution, and also the concept of an "official duty" used in the provision, it is interesting how the Constitutional Law Committee, in its statement on said proposal on the amendment, assessed a decision by the Administrative Council on whether a service or function should be started or not, on the basis of such a prior evaluation. In its statement, the Committee noted, for instance, that "a decision on the operation of the Finnish Broadcasting Company as described... shall not be regarded as an administrative decision." For more details, see PeVL 14/2012, esp. pp. 2-4.

principal factor in terms of the application of this provision is the nature of these measures, their position as part of a democracy's highest national decision-making body which, as such, also requires special protection. Naturally, this provision does not apply to preparation and decision-making within Parliament that is the duty of the civil servants. With regard to the setting of boundaries for the application of the provision, of interest are the Parliament's other organs (in addition to the plenary session, committees, the Speaker's Council and the Speaker's Office) where the members are MPs. In terms of the application of the provision, the essential question in these cases is the nature of the matters being prepared and decided.

If a matter prepared and decided on by an organ of Parliament, where the members are required to be MPs, is essentially a part of Parliament's functions precisely as the highest organ of the state, it appears justified to apply the disqualification provision in section 32 of the Constitution, which diverges from other regulation on disqualification in public activity, to the consideration of the matter in that organ. On the other hand, if the matter in question is not essentially a part of Parliament's function as an organ of the state or, for example, does not pertain to the necessary and direct preconditions of state-organ functions but is, perhaps, entirely comparable to matters ordinarily decided in the official administration in terms of the matter's content, one has to ask on what grounds the provision in section 32 of the Constitution, which diverges from disqualification provisions applied in official administration, should be applied to such a matter. The question could also be asked as follows: In a situation like that, is the fact that the members of the organ in question are MPs enough as grounds for applying section 32 of the Constitution?

It is clear that the descriptions used above – is or is not part of the activity of an organ of the state, is comparable to matters in the official administration – include a great deal of discretion. I do not attempt to formulate any precise formulations or recommendations for interpretation. Instead, I merely present some perspectives concerning the Office Commission which may take slightly different directions.

In state government, the key general provisions on disqualification are issued in sections 27–30 of the Administrative Procedure Act (434/2003). According to section 2 of the Act, with regard to Parliament, it is only applicable in "agencies under the Parliament". With regard to this item, the motivations of the proposal that led to the enactment of the Act (HE 72/2002) state:

> "The Parliament is not an administrative authority of the state, and thus the Administrative Procedure Act would not be applicable to decisions made by the Parliament. Instead, agencies under the

> Parliament that manage its internal administration would be included within the concept of an authority referred to in the Act. Consequently, the Act would be applicable to the Parliamentary Office, the Office of the Parliamentary Ombudsman, the Office of the Parliamentary auditors, and the National Audit Office organised within Parliament.

The Administration Committee did not touch upon this item in its report (HaVM 29/2002). The proposal was not considered by the Constitutional Law Committee. There is no mention of the Office Commission in the provision or the motivations. If a law is meant to be applicable to the Parliamentary Office, considering the duties prescribed for the Parliamentary Office, it is very difficult to think that the law would not be applicable to the Parliamentary Office, at least with regard to typical administrative decisions (such as the appointment or dismissal of a civil servant). Therefore, the disqualification provisions in the Administrative Procedure Act should be applied to decisions made at the Office Commission with an ordinarily administrative content, at the very least. This can be deemed well justified in terms of the subject matter, besides following the aforementioned provisions of the Administrative Procedure Act.

On the other hand, there are also characterisations of the position of the Office Commission that seem to suggest more regarding it as an activity of the organ of the state, rather than the possibility of direct application of general provisions concerning administration. In its report PeVM 54/1982, quoted above, the Constitutional Law Committee found that the Office Commission does not act under public liability and is thus not covered by supervision of the Ombudsman. The Committee also stated:

> "...the Constitutional Law Committee finds that the activity of a Member of Parliament in the Office Commission, and thus also the activity of the Office Commission and of the Parliament's other organs selected or appointed by the Parliament, for which only a Member of Parliament is eligible for office and whose appointment and duties are laid down in the Parliamentary Act or in statutes issued on the basis of it, must be regarded as an activity referred to in section 13 of the Parliamentary Act for which the realisation of legal responsibility requires the Parliament's consent."

The aforementioned provision in section 13 of the 1928 Parliamentary Act (that, in terms of the relevant item, fully corresponds to the current section 30(2) of the Constitution), which pertains to a Representative's right to speak and immunity, is of course a provision separate from the disqualification provision. Also, the Committee's position is not quite recent. However, if all action within the Office Commission is deemed to meet the criterion in the Constitution "owing to opinions expressed in the

Parliament or owing to conduct in the consideration of a matter", consistency would appear to support that the criterion set in the disqualification provision would also be deemed to be met in the activity of the Office Commission.[14] - The drawing of boundaries may be difficult in some situations. At least in the imaginary, escalated situations – where a decision by the Office Commission would involve a possible appointment in office of a spouse of a member of the Office Commission, for example – compliance with disqualification norms prevailing in state administration is, however, inevitable in my view – precisely as legal norms, not merely as withdrawal grounds related to consideration of appropriateness.

Final question: is there a need for changes?

In terms of its key content, the provision in section 32 of the Constitution is an old norm. Even in the case of constitutional provisions, it may sometimes be warranted to consider – even in the absence of a topical reason – whether the content of the norm should be developed or how, in general, one should approach different possibilities to develop such a norm. Of course, opinions on whether such changes are necessary may vary. I do not see any significant need for changes in this provision of the Constitution or in its current interpretations. I believe that, in some respects, any development of a norm should be approached with clear reserve.

With regard to the above text, it may be asked if we should try to bring the disqualification norm on the mandate of an MP closer to disqualification norms observed in public administration, and whether we could think of attempting this by developing the interpretations, i.e., without seeking amendments to provisions. I have already state above that any expansive interpretation of norms that contain limitations on the office of an MP should be approached with a clear rebuff. I also have great reservations of the idea that an MP, when participating in the Parliament's activity as an organ of the state, should be compared with, for example, a civil servant working in public government on a question of disqualification, through legal amendments if necessary. The duties, operating environment, responsibility and supervision are too different for such a comparison, in terms of their grounds alone.

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[14] On partially critical evaluation of the aforementioned report by the Constitutional Law Committee, see, for example, my article called "Valvonta, vastuu, tulkinta, Perustuslakivaliokunnan mietinnön n:o 54/82 vp virittämiä pohdiskeluja, Lakimies 1983, pp. 271-313.

It may also be asked that even if a legal norm concerning disqualification were not explicitly applied, shouldn't one favour some kind of factual withdrawal practice in situations like the ones described above? In other words, a Member of Parliament would state that is no legal impediment but would refrain from participating in decision-making by referring to, for instance, public credibility. Individual cases may remain as isolated events. However, in the context of the Parliament's functions as an organ of the state, I do not see it desirable to even start such a procedure, which may lead to a formation of the next procedure into a "habit" that is followed more frequently. One general reason is simply that, where the Parliament's functions as an organ of the state are concerned, one should not develop any practices justified by "reasons of hygiene", for example, which would be conducive to blurring ideas of how special the freedom of a Member of Parliament in the management of that mandate is intended to be, and how important and closely protected it is. As a practical perspective, one could also note that if such withdrawal from decision-making were occasionally applied for reasons of hygiene/appropriateness, someone could attempt to use it (referring to it) as an instrument of making policy in a situation with a tight balance of power.

If it is deemed necessary to develop the trust directed at the activity of a Member of Parliament in different situations of debate and decision-making, the methods hardly lie in expanding the disqualification norm, but rather in increasing the openness concerning private interests and connections.