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Pekka Vihervuori

Human Rights and the Procedural Autonomy of National Decision-Making: Starting Points for the Theme

As the general theme of the current session of the group *Legal protection and administration* has been assigned *Human rights and the procedural autonomy of national decision-making*. Our judicial starting-points hence cover the scientific fields of human rights law, administrative law and procedural law, all of which here interact with each other in interesting ways. The delighting fact that our group consists of several experts on both administrative law and procedural law will undoubtedly appear to be fruitful.

Exogenous legal requirement and restraints impacting judicially the decision-making in national public authorities, and particularly that in courts of justice, are today reality in the European states. The situation is rather different from the era of autonomous national procedural regimes that continued to prevail only a few decades ago. That is not to say that foreign influences were unknown at those times. Such influences have of course always existed, but their legal nature has been different.

The main reason of the debates around autonomy of decision-making e.g. in Finland is the European Convention of Human Rights, or should we say the dynamic and sophisticated case-law of the European Court of Human Rights. Sometimes even suspicions within the national judiciary have been aroused. Of course European Union law and the European Court of Justice may have a say also in the procedural respect, but mainly regarding sectoral questions. The grasp of the latter is hence clearly less overwhelming.

The procedural impacts of the European Convention of Human Rights mainly concern procedures before national courts of justice, but in some respects they also may cover the procedures in national administrative bodies. E.g. the relevant total duration of proceedings may include the administrative stage prior to the court stage, according to several rulings of the Strasbourg Court. However, we should be careful with generalisations.

It is naturally also possible that the various purely national (e.g. constitutional) safeguards of legal protection of individuals impact the procedures further and deeper than those derived from the European Human Rights Convention. But in many cases these two spheres of judicial protection overlap, without being necessarily identical, as is the case often in Finland. This may make the basic legal reason for a single outcome more or less unclear.

The complex of questions related to access to justice and access to court is a self-evident basis for the discussions of this group. An overview on this fundamentally important item will be presented us by professor *Iain Cameron*. After that, we shall concentrate more generally on the procedural impacts of the Convention. I am certain that our discussions will once again also show that there is really much in common between the traditional fields of procedural law and administrative law – and that relevant differences still remain.