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Assignment of Public Tasks to Private Legal Persons.
Legal Bases and Limits

1. Introduction

In the last decades, many states have started to pay serious attention to the economics of the public sector and the components of private economy. Decrease of the loads on the budgets of the public sector has become an important issue. In Estonia, these problems have become topical in the last few years. The draft of the national budget strategy for four years (2001–2004) developed by the Ministry of Finance focuses on reduction of the tax burden, decrease of the expenditures of the state and acceleration of integration into the EU. One objective of the administrative reform that is being introduced in Estonia is delegation of the functions of state government and through this decrease of expenditures, provided that the quality of fulfilment of the functions and their availability to citizens does not decrease. One important aspect here is assignment of public tasks to persons in private law. Even though this issue has mainly been discussed by politicians and economists, it also concerns lawyers. Estonia is a state of law according to its Constitution and the Constitution stipulates the general organisation of the institutions and functions of state and the most important requirements to administration. Therefore the main task of lawyers is to mark these legal limits to which the assignment of public tasks to persons in private law may proceed, and which are the risks and legal problems that may arise.

In the context of the administrative reform, the following factors may be pointed out as the objectives of assignment of public tasks to persons in private law.

1) Efficiency. The main argument here is that the state does not have the mechanism which in the fulfilment of public tasks would increase their efficiency and productivity.
2) More extensive use of the private sector and its mechanisms in the fulfilment of public tasks (provision of services). The state simply does not have the capacity to fulfil all the tasks arising from public interests.
3) Reduction of the budget load of the state. According to the draft of the national budget strategy, the objective is to reduce the expenses of the government sector to 34 per cent of GDP by 2004. In parallel with the reduction of government costs, assignment of public tasks to persons in private law also allows to bring private investments into the relevant fields, which in the long run should improve the quality of fulfilment of the tasks.

2. The Term “Public Tasks”

Determination of the term “public tasks” is important in analysing the problem at hand proceeding from the legal aspect as well as in specifying the object of the assignment of tasks (privatisation). The Constitution

of Estonia does not use the term "public tasks". But the term has been used in specific laws. In their essence, public tasks may be treated as objectively existing tasks determined by public interests, which have been sensed as such by the legislator and stipulated in laws as tasks of the state or given for fulfilment to different institutions of the society or voluntarily taken for fulfilment by the latter. In their essence, public tasks will remain public tasks even when the state assigns them – transfers them to persons in private law. Such treatment, however, is too extensive and fails to provide the exact legal criteria for determination of the legality of assignment of public tasks or for determination of the tasks themselves.

German lawyer Udo Di Fabio has determined public tasks as tasks that have been expressly acknowledged as such by law or can be derived therefrom by interpretation.[*7] He treats public tasks as the matter of administration.[*8] Austrian scholar Johannes Hengstschläger does not speak about public tasks within the framework of the given problem, but only about administrative tasks. In his opinion, administrative tasks are all such agenda that have been directly assigned to an administrative body by law or it has at least indirectly, proceeding from the idea and objective of the law, been made responsible for their fulfilment.[*9] It is important to note here that the definitions of both authors proceed from the relevant legal norm, which gives the answer to the question what a public task is in the specific case in the legal meaning.

Subsection 3 (1) of the Constitution of Estonia stipulates the strict requirement of legality based on law and the principle of reservation of the legislature related thereto – the power of the state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith.[*10] Therefore the requirement provided for in § 3 (1) of the Constitution must be observed in the assignment of public tasks.

On the basis of the principles of the legal order of Estonia, public tasks may legally be determined as tasks assigned to administrative institutions directly with law or pursuant to law and tasks which have been derived from the relevant legal norm by way of interpretation.

Tasks of the state are one type of public tasks mentioned in literature.[*11] The Constitution of Estonia does not use the term "task of the state" expressly, but the term "duties of the state" has been used in § 154 of the Constitution. Pursuant to subsection 2 of the said section, the expenditure related to duties of the state imposed by law on a local government shall be funded from the state budget.[*12] In the given case assignment of the duties (tasks) of the state to the local government is meant. In the specific provisions of the Constitution, the wording "obligation of executive power", "a citizen of Estonia is entitled to the assistance of the state", etc., "the state shall organise vocational training", etc. is also used. Regardless of the difference in wording, the tasks of the state in respective fields can and may be derived here by way of interpretation. Apart from the tasks of the state arising from the Constitution, the fulfilment of which is obligatory and done through the immediate state administration, a legislator may with formal laws consider other agenda arising from public interest also as tasks of the state, even though they can not be directly derived from the Constitution and have prescribed their fulfilment through immediate state administration. Subsection 65 (16) stipulates the universal competence of the *Riigikogu* (parliament) in the resolution of issues concerning the life of the state, *i.e.* the right to determine with formal laws what are tasks of the state and what are not.

A major part of public tasks are fulfilled through indirect administration. This also includes the tasks of local governments. Subsection 154 (1) of the Constitution stipulates the principle of the universal competence of local government – local governments shall resolve and manage all local issues, and they shall act independently pursuant to law. The determination "independently" can be specified with the term "on their own responsibility", which means the right to decide on the tasks of local governments without the directions of the state.[*13] In Estonian legal order, the legislator has made fulfilment of some of the tasks of the local government (local issues), which are determined from heightened public interest, obligatory for the local government. In the given case, we see the so-called obligatory tasks. For example, according

7 U. Di Fabio. Privatisierung und Staatsvorbehalt. – Juristen Zeitung, 1999, No. 12, p. 586.

8 *Ibid.*

9 J. Hengstschläger. Privatisierung von Verwaltungsaufgaben. – Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer. Heft 54. Berlin und New York, 1995, p. 173.

10 K. Merusk, R. Narits. Eesti konstitutsiooniõigusest (About Constitutional Law of Estonia). Tallinn, 1998, pp. 14–15.

11 U. Di Fabio, pp. 587–588.

12 Eesti Vabariigi põhiseadus. Riigi Teataja toimetuse väljaanne (Constitution of the Republic of Estonia. Publication of *Riigi Teataja* Publications). Tallinn, 1994.

13 Ü. Anton. Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. aasta põhiseaduses (Guarantee of Local Government in the 1992 Constitution of the Republic of Estonia). – Juridica, 1998, No. 6, pp. 308–309.

to the Roads Act[*14], the building, repair, and organisation of the use of roads belonging to local governments are their tasks. This task is a classical substantial task of local government the fulfilment of which has been made obligatory for the local government by the legislator.

Some public tasks are fulfilled by persons in private law. Bearers of the mentioned administration, independent legal subjects, fulfil the tasks assigned to them with law. Thirty-seven persons in private law have been created in Estonia by today.

The specific features of Estonia as a transformation society must be considered in case of the public tasks fulfilled by the state and the local government. A huge amount of unnecessary production and tasks, which had to be got rid of, remained with the state and local government after Estonia regained its independence. During the ownership reform, the state of Estonia has managed to quickly privatise the production and property that the state did not need. Public tasks are being revised in the course of the current administrative reform. The tasks left from the Soviet period accrued to the state pursuant to the law that existed before the Constitution. According to § 2 (1) of the Constitution Implementation Act, the legal acts that were effective before the Constitution entered into force remained effective after the enforcement of the Constitution to the extent they were not contrary to the Constitution or the Constitution Implementation Act and until they are either annulled or made to comply fully with the Constitution.

Therefore, when public tasks are assigned to persons in private law, it is important to decide which tasks should be assigned, in which volume, with which guarantees, which tasks should be fulfilled by the state and local governments, etc.

3. Legal Limits of Assignment of Public Tasks

3.1. Constitutional Limits

Pursuant to the Constitution, the state has to fulfil its substantial tasks itself through direct state administration. It has been emphasised in the preamble of the Constitution that the state of Estonia has been created to protect internal and external peace and as a pledge to present and future generations for their social progress and welfare, which shall guarantee the preservation of the Estonian nation and culture through the ages.

The substantial tasks of the state include above all defence of the state, police, foreign relations, financial administration, tax administration, customs, compulsory fulfilment of legal decisions and administration of law. In principle, assignment of such tasks to persons in private law is not permissible. Otherwise the state as such and the idea and purpose of its existence shall disperse. Of course, drawing such a line is abstractly easier than solving the issue in each specific case. So some of the said tasks have been assigned to persons in private law. For example, according to § 21 (1) of the Probation Supervision Act[*15], the minister of justice may, on the basis of an administration agreement, assign the fulfilment of the probation supervision tasks to an appropriate nonprofit association who has requested it and which is located in the working area of the relevant court. On the basis of the Veterinary Activities Organisation Act[*16], the task of state supervision has been assigned to authorised veterinarians who are not civil servants, but persons in private law. The veterinarian has the right to have access to the supervised objects, necessary information, documents, etc. He or she issues veterinary certificates and deeds, may stop trading with animals that do not correspond to veterinary requirements, etc. A draft is currently prepared pursuant to which the enforcement of the judgements of civil courts shall be assigned to persons in private law. It is planned to follow a similar model with notaries. Some officials and politicians have spoken about the assignment of tax and customs administration to private legal persons. The Constitution does not stipulate clear prohibitions in the form of specific provisions here. These limits should, however, be looked for through the interpretation of the Constitution. Subsection 3 (1) of the Constitution, pursuant to which the powers of state, including administrative power, is exercised solely pursuant to the Constitution and laws which are in conformity therewith, presumes not only a legal basis for exercising the power in the form of a law, but also a national organisational form, which acts in the name of the state. In general, the state has to administer

[14] Teeseadus (Roads Act) – Riigi Teataja (the State Gazette) I 1999, 26, 377; 93, 831.

[15] Kriminaalhooldusseadus (Probation Supervision Act) – Riigi Teataja (the State Gazette) I 1998, 4, 62.

[16] Veterinaarkorralduse seadus (Veterinary Activities Organisation Act) – Riigi Teataja (the State Gazette) I 1999, 58, 608; 97, 861.

the power itself, which guarantees the fair and honest treatment of persons in the most optimal manner. At the same time it has to be admitted that within certain limits, assignment of tasks with the competence of power is possible without it damaging the principles arising from the Constitution. Therefore we may consider partial assignment of such tasks where persons in private law fulfil the so-called assisting function. For example, the tasks of probation supervision may be assigned to private legal persons on the basis of § 21 (1) of the Probation Supervision Act only partially. The main functions here are fulfilled by the probation supervision departments of county and city courts. The same applies to veterinary supervision. The Veterinary and Food Department conducts national veterinary supervision as a main task. Radical proposals about full assignment of customs and tax administration are very problematic in the opinion of the author of this article. Restriction of the rights and freedoms of persons and application of compulsion must generally be done through direct state administration. Another approach is possible in case of ordinary administration, which means provision of relevant public services.

Pursuant to § 13 (1) of the Constitution, everyone has the right to the protection of the state and of the law. Pursuant to § 14, the guarantee of rights and freedoms is, among others, the duty of the powers of the state and of local governments. Proceeding from this, it may be said that the state has to guarantee the rights and freedoms of persons and their protection through direct state administration and not only in the so-called negative meaning as protection of one person from another, but it has to create possibilities for persons to realise their constitutional rights and freedoms.

Section 10 of the Constitution of Estonia stipulates the principle of social state, which is rather abstract and needs additional interpretation and specification in ordinary laws. The general duty of the state to act socially and care for social justice arises from the principle of social state. The task of the state is to guarantee that all persons are treated equally and that their human dignity is respected.[*17] The principle of social state has found some specification in the catalogue of principal social rights. In general, it may be said that the minimum concept of principal social rights has been developed in the Constitution of Estonia.[*18]

Section 28 of the Constitution stipulates the right of everyone to the protection of health. It can not be read from this provision that the state has to fulfil the task (provide protection of health for everyone) in the organisational form of state. Pursuant to § 29 (3), the state organises vocational training and assists persons who seek employment in finding jobs. This does not include the prohibition to assign the said tasks to persons in private law. According to subsection 4 of the same section, working conditions shall be under the supervision of the state. Proceeding from this, the state has to exercise such control itself through its agencies. One principal social right is the right to education (§ 37). In order to make education accessible, the state and local governments have to maintain the requisite number of educational institutions pursuant to § 37 (2). At the same time the Constitution does not prohibit the opening of private schools. Pursuant to the provision in question, the state and local governments have to guarantee the accessibility of education through the schools of the state and local governments. This task can not be assigned to private schools in full extent, which also means a relevant prohibition. The state has to fulfil the said function itself and may not assign it to persons in private law.

Another problem is whether the state and local governments still have tasks that arise from the principle of social state and the fulfilment of which they have to guarantee. The author of the article is of the opinion that according to the discussed principle, the state and local governments have to guarantee minimum existence for persons. This concerns fields that are essential for persons, such as water supply, sewage, heat economy, electrical power, etc. These are fields that are related to guarantee of the security of persons.[*19] The right of claim of persons against the state and local government also arises from here. Of course, the state or local government do not have to fulfil this task themselves, but have to guarantee the fulfilment thereof themselves.

In conclusion, it may be said that fulfilment of the social tasks arising from the Constitution need not generally be done by the state or local government themselves, but they may assign them to persons in private law while guaranteeing their fulfilment.

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[17] R. Maruste. Põhisedus ja selle järelevalve (Constitution and Its Supervision). Tallinn, 1997, p. 99.

[18] R. Alexy. Theorie der Grundrechte. 2. Aufl., Frankfurt am Main, 1994.

[19] H. Maurer. Allgemeines Verwaltungsrecht. 12. Aufl., München, 1999, p. 16; H. P. Bull. Allgemeines Verwaltungsrecht. 6. neub. Aufl., Heidelberg, 2000, p. 22.

3.2. Legal Bases of Assignment of Public Tasks

A relatively strict principle of legality has been stipulated in § 3 (1) of the Constitution pursuant to which powers of the state, including administrative power is exercised solely pursuant to the Constitution and laws that are in conformity therewith. Therefore the assignment of the tasks of the state to persons in private law requires the authorisation of formal law. In some aspects, this principle has been specified in the Government of the Republic Act.*[20] Pursuant to its § 41 (5), governmental institutions may not delegate the rights and duties placed within their competence to other governmental or local government institutions, unless otherwise provided for by law or unless this is prescribed in the administration agreement made pursuant to law. The said provision does not mention persons in private law, but pursuant to § 3 (1) of the Constitution, it is indisputable that assignment of tasks with competence of power to persons in private law may be done only on the basis of the authority of formal law. The principle of legality applies also to simple administrative tasks. This principle has been followed also in practice. The Government of the Republic Act prescribes such institutions as state institutions administered by government institutions, which are state institutions that in general do not have competence of power and that fulfil national tasks in the areas of culture, education, social affairs, etc. (§ 43). Pursuant to this law, such institutions may be formed by the Government of the Republic or state institutions pursuant to the procedure established by the Government of the Republic, unless otherwise provided for by law. Pursuant to the Foundation of and Participation in Legal Persons in Private Law by the State Act*[21], the state may establish legal persons in private law. The law stipulates that the objective of foundation of and participation in legal persons in private law by the state is above all to ensure enhanced performance of the functions of the state and the implementation of national economic policy (§ 1 (2)). Therefore the state may, on the basis of the general authorisation of the said laws, choose to fulfil simple administrative tasks either in the organisational form of state institutions or the organisational form of private law, which remains in the hands of public law. This can be done in the case when the Constitution or specific laws do not provide otherwise. Assignment of simple administrative tasks to persons in private law by the state has occurred either on the basis of special authorisation of formal law or the general authorisation of the Privatisation Act.*[22] State institutions were and are privatised on the basis of the Privatisation Act together with the relevant tasks.

The principle of legality arising from § 3 (1) of the Constitution and the reservation of law with regard to assignment of such tasks to persons in private law, which mean duties of the state (tasks of the state) and the substantial duties made obligatory for local government are applied to units of local government. Assignment of such tasks is possible only on the basis of authorisation of formal law. Pursuant to § 6 (1) of the Local Government Organisation Act*[23], the task of a local government unit is to organise social welfare and services, care for the elderly, work with youth, residential and communal economy, water supply and sewage, general order, territorial planning, public transport within the commune or town and maintenance of the roads of the commune and streets of the town in the given commune or town, unless these tasks have been assigned to another person with law. Some of the mentioned substantial tasks of local government have been made obligatory for units of local government by the legislator with specific laws, which also prescribe the organisational form of their fulfilment. In case of the remaining tasks mentioned in the discussed provision, it has been left for units of local government to decide on their fulfilment, whether to do it themselves or assign them to subjects in private law. The obligation to organise and guarantee their fulfilment remains with the local government unit. This is where the right of claim of citizens against local government units is created. Pursuant to subsection 2 of the said section, it is the task of local government units to organise the maintenance of pre-school children’s institutions, basic schools, gymnasiums and interest schools, libraries, community centres, museums, sports facilities, security and care homes, medical institutions and other local institutions in the given commune or town in case they are in the ownership of the local government units. The obligation to finance the relevant institutions belonging to the local government units either from the budget of the local government or other sources arises from the said provision. Pursuant to § 3 (2), the local government unit decides on and organises such issues of local life, which have not been assigned to any other person to decide on and organise with law. In the given case we are dealing with issues, which the local government unit has acknowledged as its task due to heightened

20 Vabariigi Valitsuse seadus (Government of the Republic Act) – Riigi Teataja (the State Gazette) I 1995, 94, 1628; 1999, 95, 845.

21 Riigi poolt eraõiguslike juriidiliste isikute asutamise ja nendes osalemise seadus (Foundation of and Participation in Legal Persons in Private Law by the State Act) – Riigi Teataja (the State Gazette) I 1996, 48, 942.

22 Erastamisseadus (Privatisation Act) – Riigi Teataja (the State Gazette) 1993, 45, 639; 1998, 30, 411.

23 Kohaliku omavalitsuse korralduse seadus (Local Government Organisation Act). – Riigi Teataja (the State Gazette) I 1999, 82, 755.

public interest and which it has started to fulfil voluntarily. Local government units have the right to decide on “whether” and “how”. In such a case the local government unit determines the relevant task and the form of its fulfilment in terms of law. These are voluntary tasks of local government.*[24] In case the local government unit starts to fulfil the relevant task itself, it will later have the right to assign it to a person in private law on the basis of its own right.

In conclusion, it may be said that local government units may assign state duties (tasks of the state), which have been assigned to it by the legislator and made obligatory for the local government unit, to persons in private law only on the basis of formal authorisation of law. The legislator may prescribe the freedom to choose the organisational form here, but in any case there must be the authorisation of the relevant law. Assignment of voluntary tasks of local government may be done on the basis of the decisions of the local government unit.

4. Legal Models of Assignment of Public Tasks

On the basis of legal regulation the following legal models may be differentiated in the assignment of public tasks.

4.1. Assignment of Tasks with Competence of Public Power to Persons in Private Law

The relevant tasks are fulfilled on the basis of the norms of public law (administrative law). Subjects in private law thereby become the carriers of administration (indirect state administration) and fulfil the tasks in their own name. In German legal space, such persons are known under the name *Beliehne.**[25] The authorisation for assignment of the relevant tasks may arise only from law and assignment shall take place either with an administrative deed or administration agreement. The already mentioned authorised veterinary and assignment of the tasks of probation supervision to nonprofit associations may be referred to again. Ticket inspectors, who have the right to fine persons who travel without a ticket in buses, trams, etc., notaries, construction supervision engineers, sole proprietors and nonprofit associations who provide fire fighting and rescue services may also be brought as such examples.

On the basis of this model, the so-called simple administrative tasks such as provision of archive services, etc. have also been assigned to persons in private law. Assignment of tasks with competence of power presumes the provision of state supervision over fulfilment of such tasks and solution of the issue of responsibility. However, the attention paid to these problems in valid legal order is not always sufficient. For example, the Planning and Building Act*[26] does not stipulate supervision over the activities of construction supervision engineers. The said act as well as the Veterinary Activities Organisation Act do not answer the question as to who shall compensate the damages caused by persons in private law while conducting supervision. The extent of such damages may be so large that the person in private law who performs supervision is not able to compensate it. The application of a professional liability system similarly to those applied to notaries could be considered here.

4.2. Assignment of Public Tasks to Persons in Private Law Formed by the State or Local Government Units or by Other Legal Persons in Public Law

What we have here is so-called administration organised in private law and formal assignment of public tasks. Here, the person in private law remains in the hands of public law. The said persons in public law may found public limited companies, private limited companies, foundations and nonprofit associations.

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24 R. Stober. Kommunalrecht in der Bundesrepublik Deutschland. 3. Aufl., Stuttgart, Berlin, Cologne, 1996, p. 39.

25 H. J. Wolff, O. Bachof, R. Stober. Verwaltungsrecht. 10. Aufl., München, 1994, p. 201; U. Häfelin, G. Müller. Grundriss des Allgemeinen Verwaltungsrecht. Zurich, 1990, p. 260.

26 Planeerimis- ja ehitusseadus (Planning and Building Act) – Riigi Teataja (the State Gazette) I 1995, 59, 1006; 1999, 29, 398.

In general, such persons in private law are subjected entirely to the private legal regime, incl. law of competition. This model has been used in the sphere of education. Namely, pursuant to § 48 (3) of the Universities Act*[27], a public legal university may establish foundations together with the state, which in their turn have the right to establish private schools or private legal scientific and development institutions. For example, the University of Tartu and the state have established a foundation together with the state, which has created the private College of Information Technology in Tallinn. The Foundation Clinics of the University of Tartu is also in a private legal status and has been founded by the University of Tartu, Tartu Town and the state, and one of its tasks is organisation of medical education. For fulfilment of the said task, the clinics are financed partially from the state budget through the Ministry of Social Affairs under the Health Care Organisation Act (§ 26^2).*[28] No considerable legal or substantial problems have arisen in the foundation of legal persons in private law by the state and their functioning, but the same can not be said about local government units. For example, there is no unified approach in the selection of the organisational form of health care institutions. In practice, there are foundations, private limited companies, public limited companies as well as nonprofit associations, which makes the system of health care organisation too diverse. Even though all of these forms are more or less suitable for a hospital providing health care services, each of them has its good and bad sides. The optimal variant should be found here.

In certain cases, local government units have chosen the private legal organisational form without consideration of possible risks and threats. This is what has happened in the heating industry. Boiler houses and heat networks have largely been transferred to legal persons in private law formed by local government units (in general either public or private limited companies). Due to the loans taken, nonreceived debts and relatively low heat prices, which in their turn depend on customers with purchase power, some of these commercial undertakings have gone bankrupt or are on the verge of bankruptcy. This is an area determined by heightened public interest. Proceeding from the Local Government Organisation Act, the task of local government units is to organise residential and communal economy, therefore when the relevant commercial undertaking goes bankrupt, the local government unit shall not be released from the fulfilment of the task.

4.3. Assignment of Public Tasks to Persons in Private Law, Whereas the State or Local Government Unit Guarantees Fulfilment of and Supervision over the Task

This form is also called functional assignment of tasks.*[29] The example that can be given here is the Public Water Supply and Sewerage Act*[30], pursuant to which the appropriate supply of customers with water from public water supply and drainage and treatment of waste water through public sewerage is provided by a water enterprise. The latter shall be appointed with a resolution of the council of local government on the basis of the Competition Act*[31] (§ 7). Pursuant to the said act, a water enterprise has to guarantee the functioning and maintenance of the public water supply and sewerage according to the regulation on usage of public water supply and sewerage, which shall be approved by the council of the local government and the agreement made between the commune or town government and the water enterprise (§ 10 (1)). The law also prescribes that the price of the relevant service shall be approved by the council of the local government. Thereby the provision of the relevant service is guaranteed with the relevant provisions (obligation) of law, the regulations established by the local government unit, the concluded agreement and approval of the price of the service by the council of the local government unit. The second example that can be pointed out is the Public Transport Act.*[32] Pursuant to the act, the public transport service is rendered by the transporter, who is an enterprise who holds the relevant license or a legal person in private law. A public service agreement shall be made between the transporter and the relevant state agency or local government agency (§ 10), with which the transporter shall enter into the obligation to organise public route transport for a monetary fee proceeding from its business interest in the volume and under the conditions

[27] Ülikooliseadus (Universities Act) – Riigi Teataja (the State Gazette) I 1995, 12, 119; 2000, 25, 140.

[28] Tervishoiukorralduse seadus (Health Care Organisation Act) – Riigi Teataja (the State Gazette) I 1994, 10, 133; 1999, 97, 860.

[29] H. P. Bull, p. 23.

[30] Ühisveevärgi ja -kanalisatsiooni seadus (Public Water and Sewerage System Act) – Riigi Teataja (the State Gazette) I 1999, 25, 363.

[31] Konkurentsiseadus (Competition Act) – Riigi Teataja (the State Gazette) I 1998, 30, 410; 1999, 89, 813.

[32] Ühistranspordiseadus (Public Transportation Act). – Riigi Teataja (the State Gazette) I 2000, 10, 58.

as ordered by the state or local government unit (§ 9 (1)). The price of one kilometre or the ticket price shall also be established by the relevant state or local government agency (§ 24). Supervision over provision of the public transport service, which is limited to supervision of legality, is also provided for in the said act.

The third example that can be mentioned here is the Waste Act.*33 Pursuant to the said act, the local government unit organises removal of household waste in the territory under its administration (§ 14 (1)), whereas it may fulfil this task itself or assign it to a waste removal company on the basis of a relevant agreement pursuant to the procedure provided for by law (§ 15 (1)). The local government unit has been granted the right to establish the waste regulation of the local government, whereas the local government unit may with its regulation establish conditions to the organised disposal of household waste, which deal with the relationships between the possessor of waste and the waste treatment enterprise, organisation of waste disposal and the regions covered with disposal of household waste (§ 21 (2)). On the basis of the right to discretion, the local government unit may establish the upper limit of the service fee charged for treatment of the waste covered with organised household waste removal (§ 23 (1)). Pursuant to law, the waste treatment enterprise is a person in private law who obtains the waste permit from the relevant state agency. The law also provides for supervision over fulfilment of the said task.

When we generalise the aforementioned regulations, it may be said that there is no uniform systematic treatment of legal regulation. Supervision also generally borders only on legal supervision, less attention has been paid to the quality of fulfilment of the task, the extent of supervision and the measures applied in the course thereof are also different.

4.4. Assignment of Public Tasks to Persons in Private Law and Subjecting of the Fulfilment of Tasks Entirely to Free Competition

What we have here is so-called material assignment of public tasks.*34 Influencing of the fulfilment of the task by the state is minimal. It may even be said that in the given case, the state relinquishes the tasks as public tasks. In the Estonian legal order, the said model has been used mostly for these state-owned enterprises whose tasks have been economic activities, *i.e.* earning income. However, this includes also such important units of infrastructure as mail, telecommunication, etc. Here, it is necessary to mention that after the Commercial Code*35 was passed in 1995, state-owned enterprises could be transformed into private or public limited companies or state institutions. Most of the state-owned enterprises were transformed into commercial undertakings of the state (private or public limited companies). Assignment of tasks according to the discussed model is done mainly by way of privatisation of the commercial undertaking of the state. Privatisation of the railway, Narva power stations and some other commercial undertakings of the state that are important from the standpoint of infrastructure is being discussed at the moment. One must regard the use of this model with caution, especially in case of tasks that are determined by heightened public interest. Assignment of public tasks can not proceed only from economic considerations and the wish to decrease the budget load, but the high quality fulfilment of the task must also be kept in mind.

5. Conclusions

Pursuant to the Constitution, the state has to fulfil its substantial tasks itself, which above all concerns exercise of administration of power. Here the assignment of public tasks to persons in private law is possible only to a certain extent. Fulfilment of tasks arising from the principle of social state need not necessarily be done by the state or local governments themselves, but they may be assigned to persons in private law much stricter than before, providing at the same time supervision over their fulfilment. The legality principle provided for in § 3 (1) of the Constitution presumes that assignment of the tasks of the state requires

33 Jäätmeseadus (Waste Act) – Riigi Teataja (the State Gazette) I 1998, 57, 861.

34 H. P. Bull, p. 23.

35 Äriseadustik (Commercial Code) – Riigi Teataja (the State Gazette) I 1995, 26–28, 355; 1999, 57, 596.

authorisation of formal law and it may be done with law or on the basis of law. Local government may assign state obligations assigned to it and local government tasks made obligatory for it by the legislator to persons in private law also on the basis of the authorisation of formal law. Assignment of optional tasks of local government may be done on the basis of the resolutions of the local government itself. Selection of the legal models for assignment of public tasks should proceed from the principle that the fulfilment of the task and its quality should be provided. Supervision by state and the possibility of intervention by state should be stipulated upon assignment of public tasks determined by heightened public interest.