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Influence of European Community Law on Estonian Law and, in Particular, Law-making

In a closer analysis of Article 220¹ (former Article 164) of the Treaty establishing the European Community, it may be noted that regardless of different national laws of its Member States, the European Community is founded on one single Community law, applicable to Community activities and equally binding on the institutions, Member States and citizens of the Community.² Thus Article 220 of the EC Treaty constitutes a key to the conception of the European Community as a community of law, which ensures material integrity of the Community.³ The community of law principle must be and is taken into consideration in preparing Estonia's accession to the European Union. Estonia must be ready for membership of the European Union in not only political and economic but also legal terms. Community law and harmonisation of Estonian law therewith must not be underestimated in the pre-accession process. It would be erroneous to consider legal matters as being of secondary importance in the European Community for the sole reason that it was created primarily in order to improve efficiency of economic co-operation between the Member States. Actually, the European Community is largely held together by the very existence of a strong legal framework, in which, *inter alia*, the Court of Justice of the European Communities has a very important role to play in exercising control and, partly, creating law.

The relationship of Estonian law, its creators and implementers, to European Community law can be conventionally divided into three stages. Firstly, one can regard adaptation to the European Community law, during which deeper knowledge is gained about the Community law. The next logical step onwards from gaining abstract knowledge will be taken in a far more practical direction — making European Community law a part of the everyday work of those involved in law-making. Increasingly, the Community law will begin to influence the work also of those who implement and enforce law. This will peak in Estonia's becoming a full member of the European Union. Prior to joining the European Union, we are only indirectly related to Community law, but upon accession, there will be a good reason to regard the relations between Estonia and the European Union through the third stage, at which Estonia is no longer a partner but rather a part of the European Union and will begin to actively participate in creating and developing European Community law.

During the initial years of the relationship between Estonia and the European Union, many EU experts regarded Estonia's application for accession and the subsequent approval thereof by the Commission as a marriage proposal.⁴ In order to further illustrate the above-described stages, the author of this article would regard the period of adaptation to Community law as two future family members

becoming acquainted, the performance of obligations under the association agreement and the pre-accession preparations as betrothal, and Estonia's membership in the European Union as marriage, in which equality of rights between the spouses must be ensured.

1. Adaptation to European Community Law

1.1. UNDERSTANDING EUROPEAN COMMUNITY LAW

Upon the first acquaintance with European Community law, the approach adopted by the harmonisers of Estonian legislation with European law in its narrower sense, i.e. Community law,⁵ is of conclusive importance. The following paragraphs regard in particular the state officials who harmonise Estonian legislation with Community law. Their very comprehension of Community law as such will to a large extent influence the consideration of Community law in the process of law-making in Estonia.

It is well understandable that at first, Community law is deemed alien: it seems rather a theoretical conception and distant future than a part of Estonian legal practice. Disregarding its supranational character, Community law is often treated as international law.⁶ On the other hand, European law is presently applicable in Estonia as international law. The Association Agreement, or Europe Agreement, concluded between Estonia and the EC is applicable to Estonia as a foreign agreement ratified by the Riigikogu,⁷ from the aspect of the Estonian Constitution, today, Community law cannot be regarded yet as directly applicable. In this point, it is nevertheless important that comprehension of Community law as supranational be created in Estonia and the attitude regarding Community law as international law be changed as from not later than the moment of accession.

The deepening of knowledge about Community law has been assisted by training in the field of European Community law organised for state officials, including judges and prosecutors.⁸ Whilst, in the beginning of the 1990s, training in the field of Community law was of quite a casual nature, today training programmes have become more systematic, although a stronger emphasis could be laid on coordinating various training.

1.2. THE OBLIGATION TO TRANSPOSE ACQUIS COMMUNAUTAIRE

Proof that adaptation to Community law is not only a hobby for state officials but rather the fulfilment of foreign obligations assumed by the Republic of Estonia is provided by the agreements concluded between Estonia and the European Communities and their Member States and by the formulation of the ultimate objective under the agreements — accession to the European Union — in the official statement issued by the Government of the Republic of Estonia to the European Commission on 28 November 1995.⁹

Until the entry into force of the Treaty of Amsterdam, any European state could, under Article O (1) of the Treaty on European Union (TEU), apply to become a member of the European Union. The Treaty of Amsterdam amends that Article, in the form of the present Article 49 of the TEU, as follows: "Any European State which respects the principles set out in Article 6 (1) may apply to become a member of the Union". Article 6 (1) of the TEU, as amended by the Treaty of Amsterdam, provides that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States. These new requirements in the Treaty of Amsterdam originate from the criteria, also known as the Copenhagen criteria, established for candidate countries by the European Council at its Copenhagen summit of 1993 as follows:

- political criteria: a Member State should have stable institutions which would ensure respect for democracy, the rule of law and fundamental freedoms as well as the protection of minority rights;

- economic criteria: a Member State should have a functioning market economy; it should be able to adapt to the competition and market trends prevalent in the Union;

- the main condition of accession is, however, the transposition of *acquis communautaire*, i.e. the transposition of the political objectives and in particular the entire applicable Community law (primary and secondary legislation, unwritten law and case law of the Court of Justice). A candidate country should be ready to fulfil the obligations arising out of membership.

Chapter 3 of Part 5 of the Association Agreement, concluded between Estonia and the European Communities and their Member States, provides for Estonia's obligation of legislative approximation.¹⁰ Namely, under Article 68 of the Europe Agreement, Estonia will endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

Regardless of the concretisation of Article 68 following in Article 69, which indicates the fields whereto the legislative approximation primarily extends, Estonia's obligations under the Europe Agreement are formulated very generally, without providing details. Already the very circumstance that, under the Europe Agreement, Estonia "endeavours" to make its legislation compatible with EU law, is confusing.¹¹ *Nolens volens*, the question will arise of where the limits of transposing *acquis communautaire* are. Estonia must align its law with another, the creation of which it has not participated in. Secondary legislation of the Community — Regulations, Directives and Decisions — are adopted, with more or less participation by the European Parliament, by the Council of the European Union, which is composed of ministers of the EU Member States. As of now, Estonia is not yet a Member State but is, however, already bound by decisions taken in Brussels

without any chance of being influenced by representatives of Estonia. The situation seems not to improve even after Estonia's becoming a Member State, as a deficit of democracy in the European Union is complained about in professional literature of Member States.¹² However, the role of the European Parliament in the decision-making process has been increased in each instance of amending the Treaties. The Treaty of Amsterdam also extended the rights of the Member States' national parliaments in the EU decision-making process — the parliaments must be given six weeks to state their position before the governments of the Member States meet in Brussels to adopt a decision.¹³ Despite that, too wide a gap remains between the decision-maker and an ordinary citizen of a Member State.

Thus, having expressed our will to accede to the European Union and having bound ourselves by the Association Agreement, we face a situation in which we must familiarise our nationals with a hitherto unfamiliar law the rules for creating which we can only monitor as outsiders. It is also paradoxical that higher requirements have been established for namely the candidate countries than the Member States themselves, because the candidates must prove their capability of becoming members of the Union before the acquisition of rights equal to those of the Member States.¹⁴

On that basis, considerations of Community law have become an inseparable part of the day-to-day work of Estonian state officials involved in law-making — both in preparing new draft laws and amending the existing ones.

2. Working with European Community Law

2.1. THE PROCESS OF HARMONISING ESTONIAN LAW WITH EUROPEAN COMMUNITY LAW

Already by Estonian Government Order No. 79-k of 30 January 1996 "concerning the implementation of primary measures necessary for integration of the Republic of Estonia with the European Union",¹⁵ a sound institutional foundation was laid for integration of Estonia with Europe, including the beginning and efficient implementation of the process of harmonising Estonian law with that of the Community.

As a matter of fact, the tasks of ministries as regards law-making are also set by action plans approved by the Government of the Republic for each year from 1996 onwards. The preparation of the Government action plans involves all ministries separately in their fields of regulation; areas of competence have been divided in accordance with the Europe Agreement and chapters of the European Commission's White Paper, which is recommendatory for the associated countries. Interministerial division of work in fields falling within the competence of more than one ministry is also left to the ministries. A Government action

plan is compiled by the European Integration Bureau acting within the area of regulation of the State Chancellery and approved by the Council of Higher Officials before its presentation to the Government. The European Integration Bureau also monitors the implementation of the action plan. The ministries receive the approval of the Ministry of Justice for the preparation or arranging the preparation of draft Acts and, after a draft is completed, it is submitted to the competent ministry for approval.¹⁶ All draft Acts and Decisions of the Riigikogu must be sent to the Ministry of Justice.¹⁷ The Ministry of Justice examines the drafts with regard to their conformity with the national law, and in the EU Law Division of the Legislative Drafting Methodology Department, conformity of Estonian draft Acts with European Community law is monitored. For that purpose, a table comparing the respective sources of EU law and the Estonian draft Act must be enclosed with the explanation on the draft Act by the ministry which has prepared the draft.¹⁸

In different Member States and associated countries, harmonisation of national law with European Community law has been arranged differently. In Finland, for example, a European Union Law Service has been established under the Ministry of Justice but its tasks do not include the examination of all Finnish draft laws but rather the more substantial drafts relating to Community law. In Lithuania, on the other hand, both laws and regulations are examined by the Europe Committee, which stands separately from the ministries and has been established specifically for the purpose of European integration. In Germany, questions concerning Community law were once intensively dealt with by the Ministry of Economic Affairs; by now, this has become routine and part of the competence was assigned to the Ministry of Finance in connection with the introduction of the Euro.

In addition to organisational issues, the development and implementation of harmonisation methodology is also important in harmonising Estonian law with Community law.

2.2. METHODOLOGY FOR HARMONISATION OF ESTONIAN LAW WITH EUROPEAN COMMUNITY LAW

The methodology for harmonising Estonian law with European Community law was drawn up in the Ministry of Justice in 1997. Materials of such kind have also been used in other associated countries to facilitate the work of state officials.¹⁹ The methodology contains primarily more general constellations and was, at that time, certainly necessary in order to provide state officials with an overview of Community law. However, all problems arising out of the application of Community law could not be foreseen earlier and hence a multitude of questions keep emerging in the course of specific work. Therefore, a roundtable on European Union law has been regularly meeting in the Ministry of Justice since autumn 1998, attended by offi-

cials involved in the harmonisation and by a Swedish expert, who shares experience in respect of preparations for EU accession. The roundtable deals with horizontal questions but often it also regards specific drafts in preparation of which European Community Directives must be taken into consideration. Recently, the Ministry of Justice began to provide ministries, the Bank of Estonia, the European Integration Bureau and the Office of the Legal Chancellor with memorandums on harmonisation with Community law, which offer single solutions to problems that have arisen in the legislative harmonisation. A legal basis for drawing up the methodology and memorandums is provided for the Ministry of Justice under § 59 of the Government of the Republic Act, whereunder coordination of law-making falls within the area of government of the Ministry of Justice, and clauses 10 and 11 of the By-laws of the Ministry of Justice, whereunder the Ministry is entrusted with, *inter alia*, the task of drawing up general principles of legal technique and the methodology for harmonising Estonian law with the law of the European Union.²⁰

How has European Community law specifically influenced law-making in Estonia and what kind of problems have arisen in the course of harmonisation? In some regards, the Republic of Estonia is in a unique position: as a young re-independent state it must enact a range of new laws and in seeking the best solution, it can automatically take account of new trends applicable and underway in the respective field, particularly within the European Union and its Member States. The new Law of Obligations Act, for example, has been prepared in this manner. But preparation of new laws under EU law may not always be only positive — sometimes law-makers, carried away by harmonisation enthusiasm, are willing to adopt artificial laws intended only for transposition of Directives, forgetting the unique characteristics of the national legal system. For example, one national law is often sufficient for transposing two different Directives concerning the same field, instead of burdening the legal order with two separate laws, each conforming to one Directive.

Thus, on the other hand, it can be asserted that the Member States which had already established their own stable legal order only had to channel the harmonisation of Directives into the existing structure, mostly amending the applicable laws, but Estonia must yet make a place in its legal system for the respective law prior to harmonisation.

In transposition of the so-called new approach Directives, which aim at mutual recognition of standards between the Member States, the question often arises whether to draw up one extensive Act consisting of general and specific provisions or to spread the specific provisions over different Acts.²¹

The process of harmonisation is certainly rendered more difficult by the absence of a hierarchy of provisions

in the European Union itself.²² The division between the primary and the secondary legislation of the Community is distinct but no definitions exist in more detail with regard to relationships between different categories of Community legislation. That problem could not be solved by the Intergovernmental Conference either and, therefore, the Treaty of Amsterdam failed to bring clarity as to hierarchy of provisions under Community law.²³

Another stumbling block can be posed by the language and wording used in Directives. The European Community has developed a specific kind of legal language, owing to differences between the legal systems and languages of different Member States. Concepts provided in Directives are sometimes difficult to comprehend in terms of both the language and the meaning. Officials involved in the harmonisation cannot always work with a translation into Estonian, and in such event, the text of the Directive in another language is used as a basis.²⁴ When conceptual problems arise, the situation is made even more complex by the principle, stated already in 1969 by the European Court of Justice in its judgement in the case of *Stauder*, that in linguistic interpretation of Community law, all official languages of the Community must be equally taken into account.²⁵ However, conceptual problems may also be other than linguistic: they may relate to differentiation between general and specific concepts or to how certain concepts are defined and distinguished in Community law.

Among the questions that have recently emerged in legislative harmonisation, two problems — references to Directives and harmonisation with Regulations — are worth longer discussion.

2.3. PROBLEMS WITH REFERRING TO DIRECTIVES

Estonian Government Regulation No. 199 of 1 July 1993 concerning the procedure of approval and legal examination of draft legislation presented to the Government of the Republic was amended by Government Regulation No. 16 of 27 January 1998. The amendment provided that “where Directives of the European Union have been taken into consideration in preparing a draft Act or Regulation, a list of such Directives accompanied by references to their publication in the Official Journal of the European Communities shall be indicated in the scope of application section of the draft Act or in the preamble of a Regulation”.

For EU Member States, references to Directives are obligatory and, in most events, such requirement is contained in Directives as a standard provision. Namely, in November 1990 the Council decided, in connection with the publication requirement for establishment of Directives, that a provision must be inserted in Directives whereunder the Member States must refer, in their national implementing provisions or in the process of publishing the Directive, to the Directives underlying the national pro-

visions. The method of such reference is decided by each Member State itself.²⁶ When one Directive is transposed into several national legislative acts, all of those must contain a reference to the Directive. The reference requirement is based on the reason that in the event of problems with interpreting the law harmonised with the Directive, the national courts of the Member State will know the underlying Directive and may, if necessary, request from the European Court of Justice a preliminary ruling on interpretation of the Directive. Such references provide individuals as well as the European Commission with information that the Member State has transposed the Directive in question. When the reference requirement is disregarded, the European Commission may file an action against the Member State with the Court of Justice under Article 226 of the EC Treaty for violating an obligation arising out of Community law.

Whether reference, in Acts passed by the Parliament of the Republic of Estonia, to legislation of a community of foreign states to which Estonia does not belong is correct or not is another question.²⁷ Therefore references to EU Directives, contained in the Government's draft, have sometimes been removed after the Act has been passed by the Riigikogu.

Although reference to but one "source of inspiration" in an Act may seem somewhat confusing, one should not forget that unlike many other circumstances — such as foreign agreements, judgements of the Supreme Court, etc. — taken into consideration by the Riigikogu in passing laws and not specifically pointed out in the law itself, Directives themselves contain the reference requirement. One alternative would be to limit reference to Directives only to letters of explanation accompanying draft Acts but, in contrast to many other European countries (like Sweden), letters of explanation are not subject to publication in Estonia and therefore it would later be very difficult to ascertain which Directive was transposed. Another alternative for reference to Directives in Acts would be to insert in the State Gazette the publication reference to the Directive and present Directives as technical notes. Introduction of the latter is still in an initial stage in Estonian legislative drafting methodology.

Thus, before accession to the European Union, references to Directives can serve primarily an informative purpose, and notations on taking Directives into consideration have no legal meaning.²⁸ However, as from the moment of accession, such references will become obligatory for Estonia and therefore, it is already important to find a uniform method for referring to Directives now.

2.4. PROBLEMS WITH TRANSPOSITION OF REGULATIONS

Several problems in drafting Estonian legislation have recently emerged in connection with European Community Regulations. As already noted, on the one hand, Estonia

must adopt the *acquis*, but on the other hand, Estonia is not an EU Member State yet and therefore, Regulations are not directly applicable in Estonia and can be taken into account only by their transposition into national laws. However, EU Member States may not duplicate Regulations in their national law.²⁹ Hence, Estonia will automatically be in violation of Community law when national provisions overlapping Community Regulations are applicable in Estonia after the accession and the Commission can initiate proceedings against Estonia for violation of the EC Treaty under Article 226 thereof.

Thus, drafters of Acts should refrain from rewriting European Community Regulations into Estonian draft legislative acts. When this proves to be impracticable — in particular for the reason that Estonia cannot develop and meet EU requirements in certain areas without establishing the structure provided in the respective Regulation — definitions of concepts and other provisions contained in the Regulations should be transposed into Estonian laws provisionally. Prior approval by the European Commission during the preliminary screenings or negotiations would be desirable.

Sometimes, Member States must make implementation provisions even for Regulations, with regard to establishment/definition of competent institutions or application of sanctions. This can happen because the Community may be lacking competence in those fields. In such events, the EC Regulation itself will provide that in certain questions, Member States may adopt implementing provisions and then a law of the Member State implementing the EC Regulation is not in conflict with Community law. In Estonia, such laws may be drawn up even now in order to fulfil the obligations for integration with the European Union. The Acts implementing Community Regulations may, however, not be enforced prior to Estonia's accession to the European Union and before the Regulations have been published in the Estonian language and are binding on Estonia. Therefore, at present, Acts implementing EC Regulations may be adopted only on condition that they enter into force upon Estonia's accession.³⁰ In drafting such Acts, a notation should be inserted in the implementing provisions that the Act will enter into force at a time prescribed in a separate Act, i.e. upon Estonia's accession to the EU, a range of Acts will be given effect by virtue of one Act. Such a method has also been used by Finland and approved by Swedish experts.

2.5. NEED FOR FOLLOW-UP CHECKS

A longer analysis is needed for possible introduction of follow-up checks on laws. Such checks could include the inspection of the already adopted Acts with regard to their conformity with Community law and, if necessary, initiation of Acts for amending Acts. Which institution would be competent for such activity and under which system the checks could be carried out remains, however,

unclear as yet.

2.6. IMPLEMENTATION OF EUROPEAN COMMUNITY LAW AND EUROPEAN COMMUNITY LAW AND LEGAL PROTECTION

Without moving beyond the framework of this article, in which harmonisation with Community law is discussed from the aspect of legislative preparation, the importance of enforcement of Acts harmonised with Community law and establishment of institutions related thereto must still be emphasised.

During the pre-accession stage, Estonian courts probably have the least contact with Community law.³¹ At the same time, it is commendable that judgements of the Estonian Supreme Court and in particular the special opinions of the former Chief Justice of the Supreme Court have taken Community law into consideration and done so even before Estonia's membership in the European Union.³² On the other hand, the Supreme Court Judgement of 30 September 1994³³ states, *inter alia*, that in working out general legal principles in Estonian law, account is taken, besides the Constitution of the Republic of Estonia, also of general legal principles developed by the institutions of the Council of Europe and the European Union. That naturally means respect for the principles of Community law created by the European Court of Justice and, therefore, the objectives of the Supreme Court Judgement are beyond criticism. However, consequences of such a judgement may be unintentionally serious from the viewpoint of Community law.

More specifically, uniform interpretation of Community law might be jeopardised when Estonian courts begin to interpret Community law under the judgement of the Supreme Court in creating Estonian legal principles, because as long as Estonia is not a member of the European Union, Estonian courts cannot request from the European Court of Justice preliminary rulings for interpreting Community law.

3. Participation in European Community Law

In the beginning of this article, participation in European Community law was referred to as the third and final stage in the relationship between Estonia and the European Union. As Estonia is not a member of the European Union yet, the author of this article will have the opportunity to discuss this subject from a practical viewpoint probably not earlier than in the year 2003(?). At present, Estonia can undergo only theoretical preparations for participation in Community law-making. That means amending the Constitution of the Republic of Estonia, so as to first enable Estonia's accession to the European Union, and regulating the relations between the Government of the Republic and the Riigikogu, in order to ensure that the

Government takes into consideration the positions of the Riigikogu.³⁴

Notes:

¹ In this article, references to Articles of the Treaty establishing the European Community are made in accordance with the new Article numbers introduced in the EC Treaty by the Treaty of Amsterdam, which entered into force on 1 May 1999. I would like to call attention to the fact that, in the translation to the Estonian language (Euroopa Liit. Amsterdami leping. Konsolideeritud lepingud. Eesti Õigustölkke Keskus, 1998), Article 220 has been translated as follows: "Euroopa Kohus tagab, et käesoleva lepingu tõlgendamisel ja kohaldamisel peetakse kinni seadusest." [The term *seadus* being synonymous both with "law" in its objective, general sense as well as with "law" meaning an Act as a specific category of legislation. — Translator's note] In the English language, "law" means both law in general and a specific law indeed but, for example, the German or French texts of the EC Treaty use the terms *Recht* and *droit*, respectively, which mean law in its general, not specific sense (the latter would be *Gesetz* and *loi*, respectively). Therefore it should be understood that in the Article concerned, adherence to law in general — moreover, to Community law — is implied. Although the word *seadus* encompasses an extensive range of meaning in the Estonian language, there is no specific category of legislation designated as "law" or "Act" in the European Community and, secondly, in Estonia, *seadus* does not include court judgments; the Community law, however, also includes unwritten law and, in particular, judgements of the European Court of Justice. Therefore the author of this article is of the opinion that the term *seadus* as used in the Estonian-language version of the EC Treaty is somewhat confusing for the reader.

² In this point, reference should be made to some of the most important judgements of the European Court of Justice, namely, *Van Gend en Loos v. Nederlandse Administratie der Belastingen*, case 26/62 [1963], ECR 583, and *Costa v. Enel*, case 6/64 [1964], ECR 585, which stated that the Community has established a new legal order.

³ Q.v.: Hallstein. *Europäische Reden*. 1979, pp. 341 ff.

⁴ Such parallels were drawn, for example, by representatives of the Friedrich Naumann Foundation at the seminary held at Pühajärve in 1995 on European law for M.A. students of the University of Tartu Faculty of Law, but also at the seminary on European Community law held in 1996 by the German International Legal Cooperation Foundation for government officials and members of parliaments of the Baltic countries.

⁵ One has to agree with Tanel Kerikmäe (Q.v.: *Supranational Law as International Law and Vice Versa*. *Juridica International III*. 1998, pp. 43 ff.) that in Estonia, the term *Euroopa Liidu õigus* ("European Union law") is often used for actually referring to "European Community law". In addition, the word *euroõigus* ("eurolaw"), which is often used by journalists and also state officials and has a prejudicial undertone, is also incorrect as unfortunately used to erroneously denote the entire Community law rather than provisions concerning the European single currency unit.

⁶ Q.v.: Julia Vahing. *Euroopa Ühenduste Kohtu ja Euroopa Liidu liikmesriikide kohtute ning Eesti kui võimaliku liikmesriigi kohtute vaheline koostöö*. (Cooperation between the Court of Justice of the European Communities, courts of the Member States of the European Union and courts of Estonia as a candidate state) *Juridica*. No. 5. 1998, pp. 250 ff., in which the author is afraid that one of the factors influencing future requests for preliminary rulings from the European Court of Justice will be Estonian judges' attitude towards Community law as international law. Such a problem has also been observed in the case of Greece by Calogeropoulos in "The Greek Courts and the Preliminary Reference Procedure According to Article 177 of the EEC Treaty: Some Remarks". *Article 177 EEC: Experiences and Problems* (ed. by Schermers, Timmermans, Kellermann and Watson). Asser Institute. 1987, pp. 122-128.

⁷ Riigikogu = the parliament of Estonia.

⁸ One example thereof is the training programme on European law, implemented under the agreement between the Ministry of Justice and the Estonian Legal Centre and aimed at state officials involved in legislative harmonisation;

presently, the training is mostly carried out by Swedish professors and state officials. In parallel, local teachers are being trained, who could prospectively share their knowledge of European law with Estonian state officials in their native language.

⁹ For further information about agreements between Estonia and the European Union and about European integration arrangements in Estonia, q.v.: Heiki Pisuke. Estonia and the European Union: European Integration in Estonia. *Juridica International* I. 1996, pp. 2-5.

¹⁰ RT (Riigi Teataja = State Gazette) II 1995, 22-27, 120.

¹¹ In this point, a question of interpreting the Association Agreement arises. Although the Europe Agreement contains no provisions concerning the European Court of Justice and its jurisdiction, the Court of Justice has in practice also construed the provisions of the Association Agreement (*Haegeman v. Belgium*, case 181/74 [1974], ECR 449). Even though it can be noted, by relying on the referred precedent, that the European Court of Justice may construe agreements concluded with third countries, questions concerning those agreements may be presented to the Court of Justice for a preliminary ruling under Art. 234 of the EC Treaty only by national courts of the EU Member States rather than non-Member States being a party to such association agreement. Until now, no precedents exist in which any associated country would have wished to initiate amendment of the association agreement although theoretically, this should be possible.

¹² Q.v. e.g.: Matthias Pechstein, Christian Koenig. *Die Europäische Union: die Verträge von Maastricht und Amsterdam*. Tübingen. Mohr Siebeck, 1998.

¹³ Q.v.: Sally Langerish. *The Treaty of Amsterdam: Selected Highlights*. *European Law Review* 23/1998, p. 5.

¹⁴ For Estonia, this is more difficult than it was for Finland, Sweden and Austria, who became Member States in the recent wave of accession and had previous experience of participation in EFTA and in EEA and had transposed a part of the *acquis* already under the European Economic Area Agreement which included an obligation to harmonise part of the EU *acquis*. On the other hand, Spain, Greece and Portugal failed to transpose 100 per cent of the *acquis* prior to their accession, but at that time, the European Communities were at a stage of development rather different from the present.

¹⁵ RT I 1996, 8, 170; amended in May 1997 and January 1998.

¹⁶ Q.v.: The Government of the Republic Regulation No. 199 of 1 July 1993 concerning concordance and organisation of expert legal analysis of draft legislation to be submitted to the Government of the Republic of Estonia (RT I 1993, 68, 980).

¹⁷ Q.v.: clause 8 of the procedure of concordance and organisation of expert legal analysis of draft legislation to be submitted to the Government of the Republic of Estonia confirmed by Regulation of the Government of the Republic No. 199 of 1 July 1993 (RT I 1993, 68, 980).

¹⁸ That requirement was established under Regulation of the Government of the Republic No. 200 of 30 July 1996 amending the Regulation of 1 July 1993.

¹⁹ E.g. in pre-accession Finland — Q.v.: Niilo Jääskinen. *Kohanemine euroopaliku seadusandlusega. Üldisi tähelepanekuid ja Soome kogemusi*. (Adaptation to European Legislation. General Observations and Finland's Experience.) Ministry of Foreign Affairs of Finland. Helsinki, 1996.

²⁰ RT I 1992, 45, 574.

²¹ E.g. in the preparation of the Professions Act, discussions on the conception whether to transpose the specific Directives concerning the free movement of persons, beginning of a profession and provision of services, and mutual recognition of diplomas, certificates and other official evidence on qualification into one extensive Professions Act or into separate Acts. An argument against compiling one extensive Act is that in the EU, only some professions are regulated by specific Directives, and therefore, one Act would not be exhaustive.

²² Q.v.: Pierre Yves Monjal. *La Conférence intergouvernementale de 1996 et la hiérarchie des normes communautaires*. RTDE. 1996.

²³ Q.v. also: Melanie Piepenschneider. *Der Vertrag von Amsterdam Analyse*

und Bewertung. Konrad Adneauer Stiftung. Sankt Augustin, 1998.

²⁴ The Estonian Translation and Legislative Support Centre is primarily involved in translating Regulations; translations of Directives are usually ordered by the ministries themselves from private translation companies.

²⁵ *Erich Stauder v. City of Ulm*, case 26-96 [1969], ECR 419.

²⁶ Niilo Jääskinen. *Kohanemine euroopaliku seadusandlusega. Üldisi tähelepanekuid ja Soome kogemusi*. (Adaptation to European Legislation. General Observations and Finland's Experience.) Ministry of Foreign Affairs of Finland. Helsinki, 1996, p. 17.

²⁷ For that reason, references to Directives are considered incorrect by the Legal Department of the Office of the Riigikogu.

²⁸ That has also been mentioned in the letter of explanation accompanying the Government Regulation of 1 July 1993 amending Regulation No. 199.

²⁹ In accordance with Art. 249 (2) of the EC Treaty, EC Regulations are generally applicable. Regulations are binding in entirety and directly applicable in all Member States. Therefore, it would be in conflict with the written Community law if a Member State incorporated a Regulation into national law by means of a legislative act. Moreover, duplication of Regulations into national law of a Member State is in conflict with rulings of the Court of Justice. In its rulings of 7 February 1973 in the case 39/72, *Commission v. Italy* and of 2 February 1977 in the case of *Amsterdam Bulb*, the Court of Justice has stated that Regulations enter the legal order of any Member State automatically and transposition of a Regulation would be not only unnecessary but also in conflict with Community law and the Member State's own constitution, whereunder the Community is vested with the right to enact directly applicable Regulations.

³⁰ One Act of such kind - the Act implementing the Council of the European Union Regulation (EEC) No. 2137/85 concerning European Economic Interest Groupings - was prepared by the Ministry of Justice in the beginning of 1999 and sent to Brussels for examination.

³¹ About possible cooperation between Estonian courts and the European Court of Justice upon Estonia's accession to the European Union, Q.v.: Julia Vahing. *Euroopa Ühenduste Kohtu ja Euroopa Liidu liikmesriikide kohtute ning Eesti kui võimaliku liikmesriigi kohtute vaheline koostöö*. (Cooperation between the Court of Justice of the European Communities, courts of the Member States of the European Union and courts of Estonia as a candidate state.) *Juridica*. No. 5. 1998, pp. 250 ff.

³² For example, the special opinion of Mr. Rait Maruste on the Supreme Court Judgment III/4-1-4/98 of 27 May 1998, in which he considered, in interpreting Estonian labour law, the former Articles 3 (c) and 48 (2) of the Treaty establishing the European Community, referring to Article 68 of the Association Agreement, whereunder approximation of laws is required. Also the special opinion of Mr. Rait Maruste on Judgment III/4-1-3/97 of 6 October 1997, in which he points out an example of the legal force of the Court of Justice rulings.

³³ Supreme Court Judgment III-4/A-5/94.

³⁴ Preparations for constitutional amendments were within the competence of the Committee for Legal Examination of the Constitution, established in 1996, which has proposed solutions for providing for these matters in the Constitution by inserting, in Chapter 9, § 1231 as follows: "Estonia may, under the principle of mutuality and equality, delegate state powers arising out of the Constitution to bodies of the European Union for their common exercise by the Member States of the European Union to such extent as is necessary for implementing the Treaties on which the Union is founded and provided that this will not conflict with the fundamental principles and tasks provided in the Preamble of the Constitution. The Government of the Republic shall as early and widely as possible inform the Riigikogu about questions concerning the European Union and shall, in the law-making of the European Union, take into consideration the positions of the Riigikogu. A more detailed procedure in the event of Estonia's membership shall be provided by law." Source: Public Law Department of the Ministry of Justice, *Constitutional Amendment Proposals with reasons*, as of March 1999.