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On the Field of Application of Sociology of Law[*1] to Law-making and Impact Assessment (The Experience of Estonia)

1. About law as the rule in communality

The 'roots' of continental European legal culture go back to ancient times, and from them 'sprouted' the law. But just as important as the law itself is the content of the law[*2] – as the ancient Roman jurist Celsus aptly stated, *ius est ars boni et aequi*. The aim for this article is to emphasise the significance and importance of legal sociology as a fruitful scientific method in Estonian law-making, especially in the search for solutions that are necessary for the legal order, that are enshrined in the law, and that are appropriate for the purview of the law itself. To reach this goal, we draw on the potential of legal sociology as a field of study, in combination with recent developments in the Estonian legal order itself, which enable harnessing the potential of legal sociology.

1 The discourse on the object and meaning of the sociology of law itself is relevant even today, and this interference with the sociology of law in the scientific world can be observed not only in European jurisdictions. The respective debates have a transnational character. In Europe, in any case, the birth of the sociology of law can be traced back to the beginning of the 20th century, when there was a certain confrontation between the legal sciences and the self-consolidating sociology. A good example of the 'timeless' character of the discourse is a journal special issue, published last year, that focused on the disciplinary distinction controversies: 'Jurisprudence and Sociology at the Beginning of the 20th Century', *Zeitschrift für Rechtssoziologie* 2021(41)/2. – DOI: https://doi.org/10.1515/zfrs-2021-frontmatter2. But the distinction itself leaves a number of important questions open. In Estonia too, there have been questions about whether there is any point in a sociology of law that goes beyond jurisprudence, and as to whether combining sociology and jurisprudence would enable us to gain new knowledge about law in society. As did those first posing these questions, the authors of this article have no doubts about the capacity of sociology of law to contribute as relatively independent jurisprudence to solution of the problems it faces. See M. Müürsepp. Õigussotsioloogia tulevik Eestis – kas on lootust? ['The future of sociology of law in Estonia – is there hope?']. *Riigikogu Toimetised* ('The Proceedings of the *Riigikogu*'), 2001/3, pp. 115–122 (in Estonian).

2 For finding the right solutions, several methods need to be known and used. It seems that, for the most part, we find in the legal literature approaches that point to the potential of law itself, even if the methods are outside the realm of dogmatic pressures. See, for instance, J.Veigel. 'Die funktionale Method bei der Rechtsvergleichung'. *Juridica International* 2021(30), pp. 71–80. – DOI: https://doi.org/10.12697/ji.2021.30.09; R. Narits & K. Merusk. 'Über das funktionale Wesen der Rechtsprinzipien und über ihre Anwendung in der estnischen Rechtsordnung beim finden einer dem Recht entsprechenden Entscheidung'. *Positivität, Normativität und Institutionalität des Rechts*. Berlin: Duncker & Humblot 2013, pp. 419–433. – DOI: https://doi.org/10.3790/978-3-428-54278-9.

By its very nature, law is a social normative institution with a number of specific functions. It is (1) a medium of moral standards[*3], serving as a means of communication between the members of society themselves and between the members of society and the legislator; (2) an instrument of legislative power for the governance of society and the exercise of power[*4]; and (3) a shaper of a protected, secure social space.[*5] For fulfilment of these functions, it is necessary to create a 'multi-level law'. Law is valid in many, quite different senses and forms, and the content of validity is not identical across them all. Above all, it is important to emphasise in this connection the distinction between the legal and the social validity of law.

A legal norm is legally valid if it has been enacted by the appropriate body in the manner prescribed for that purpose and is not unconstitutional.[*6] At issue here is the legal validity of a norm of social behaviour in light of the legislative action of the state. However, a legally valid norm can also be a 'dead law'; i.e., while not legally invalidated, it may have no social effect. This implies that for a law to be alive, as expressed in its realisation by society, it must also be socially valid. Therefore, it can be said that 'if a system of rules or a norm has no social effect, that system of rules or that norm cannot have legal validity. The concept of legal validity also includes elements of social validity'.[*7]

These functions and levels of validity of law are supported by the following factors. (1) In order for the legal order to regulate the various institutions of society and the general social community adequately, it is necessary to achieve a correlation between the legal order and social reality and a correspondence with the needs of life. This means that the legislator must avoid a situation in which the law regulates something that does not need to be regulated, or in which the regulations and rules laid down are too vague and do not take account of social reality. (2) Above all, if the law is to function as a medium for a moral standard, it is necessary for the legal texts to be comprehensible and clear to those to whom they are addressed. This encompasses the language of the law and the structure of the norm, as well as the structure of the law. It should be borne in mind that the language of the law ought to be more precise than general language and that such precision is given to the language of the law by means of professional terms.[*8] One should also remember, however, that specific terms may ensure the accuracy of the text but make it more difficult to understand. (3) There is a need to enforce the law, monitoring its implementation and compliance with it. The first two of these aims can be met primarily through the legislative process.

The need for legislation arises from relations in society that need to be regulated by law. The question of the extent to which legislation should intervene in the regulation of social relations is perennially topical. With this question, the legislator is aided by an ability to discern the optimal scope of the law, to recognise what it is necessary to regulate and to what extent, and to judge which social relations should remain within the scope of non-legal social norms.

Identifying the boundary between social relations that need legal regulation and those that do not can be quite difficult. This raises questions about the origin of law or, rather, the degree or extent of the social content of the matters addressed in law and the possibilities for representation of the component of justice that must be embodied in the law.

The emergence of legal norms from social structures has been vividly described by E. Ehrlich, who, considering law to be primarily social in origin, held that a legal norm is originally a judicial decision, shaped by the courts. If the 'unnecessary' part of each judicial decision is filtered out, leaving only the relevant, generally applicable part, we arrive at what is in essence a rule[*9]. This is also connected to the fact that a court can decide on a specific case while the legislature can only regulate those issues that have come to its awareness. In other words, any regulation presupposes the existence of a conflict or situation in society[*10], so the legal norms and law-making are directly derived from society, not from the state as legislator.

3 J. Dickinson. 'Legislation and the effectiveness of law'. *American Bar Association Journal* 1931(17)/10, p. 648.

4 E. Raska. Õiguse apoloogia. Sissejuhatus regulatsiooni sotsioloogiasse. ['Apology of law. Introduction to the Sociology of Regulation']. Tartu: Fontes 2004 (in Estonian), p. 143.

5 Ibid., p. 57.

6 R. Alexy. *Begriff und Geltung des Rechts*. Freiburg, Breisgau, München: Alber 2002, p. 143.

7 Ibid., p. 142.

8 R. Narits, K. Merusk. Õiguse olemusest ja seaduse võimalustest. [On the nature of law and the possibilities of law]: *Riigikogu Toimetised* , 2000/2, pp. 100–105 (in Estonian).

9 E. Ehrlich. The Sociology of law. *Harvard Law Review* 1922(36)/2 p. 135. – DOI: https://doi.org/10.2307/1329737.

10 Ibid., p. 140.

Ehrlich argues that the most fundamental features of legal orders are the same across different countries, if one proceeds from a social order rather than simply a legal provision. The social order in this sense is the rules and practices by which the society operates. The social order is based on certain institutions – marriage, property, inheritance, contracts, etc. – which have existed in society longer than the current legal order has, and the members of society act in accordance with them, whether or not they are written rules of law.[*11] In support of this conceptualisation, Ehrlich refers back to history and argues that society functioned as we know it today because of the social order even before the introduction of legal norms.[*12]

Legal norms began to take shape and to become more important with the rise of property and commerce, growth in the number of people, and the consequent increase in the complexity of relationships, because these developments were accompanied by an increase in the level of organisation of society on one hand and complexity on the other. Problems that individuals could not solve among themselves and that required the intervention of a third party multiplied. The role of the courts and the volume of case law increased, and so did the number of legal norms as rules for dealing with similar cases,[*13] which brings us back to the principle that the legal order is derived from society and that the legal norms are born through the action of the courts. Thus, in Ehrlich's view, law comes primarily from society, not from the state.

By this, he does not deny the existence of state law. Indeed, state law simply contains regulations enforced by the coercive power of the state in arenas such as the military, the police, finance, and welfare. It is above all a matter of administrative instructions and 'rules of decision'.[*14] The latter are procedural rules in the modern sense of the term, which are the law of lawyers.[*15]

By looking for links with today's law-making, we return to foundations in the fact that substantive law is based on society itself and that, accordingly, it is important to identify the norm that already exists in society. At the same time, however, these norms are also in a state of constant change,[*16] which is why the legal order that seeks to fix and enforce these rules should also be subject to constant renewal.

However, we must not lose sight of the fact that the autopoiesis of each legal system[*17] is normatively closed in the sense that only the legal system can give a legally normative quality to its elements and thus create them as elements. No legally relevant event can derive its normativity from outside the legal system. Cognitively, though, the legal system is an open system; i.e., it depends on the facts surrounding the legal system. Every legal operation, every act of legal information's processing, therefore adopts simultaneously a normative and a cognitive orientation.[*18]

In the process of renewal of the legal order, the component of justice incorporated into the law must not be lost. The essence of this matter has been formulated well by J. Rawls. The conditions that the theory of Rawls suggests should be met for a just legal order are (1) all acts that the law requires or forbids being those that people can reasonably be expected to perform or avoid, which, in turn, entails two presuppositions – the legislator must act in good faith and the good faith must be recognisable to the recipients of the law – where one indicator of the fulfilment of these presuppositions is that the person subjected to the relevant norms perceives those norms as enforceable; (2) similar treatment being meted out for similar cases, which entails a duty to state reasons; and (3) the principle of *nullum crimen sine lege* (i.e., without the relevant law, there can be no infringement) being applied, where the principle's content is broader than the mere requirement that a law exist. Furthermore, the final condition encompasses the need for the addressees to be aware of the law, and the laws must be clearly defined and published while also not deliberately harming any person or group. An additional element that Rawls included in the third condition is prohibition of the retroactive effect of the law.[*19]

11 Ibid., p. 131.

12 Ibid., p. 132.

13 Ibid., p. 134.

14 Ibid., pp. 136–137.

15 S. Kaugia. Õigusteadvuse olemus ja arengudeterminandid. ['The Essence of Legal Consciousness and Determinants of Development']. University of Tartu Press 2011, p. 70 (in Estonian).

16 E. Ehrlich (see Note 9), p. 139.

17 The word 'autopoiesis' is derived from the Greek *auto* (self, one's own) + *poiesis* (making, shaping) = self-made.

18 N. Luhmann. 'The unity of legal system' in *Autopoietic Law: A New Approach to Law and Society*. Berlin, De Gruyter 1987. – DOI: https://doi.org/10.1515/9783110876451.12.

19 J. Rawls. *A Theory of Justice*. Cambridge, MA: The Belknap Press of Harvard University Press 1971, on pp. 237–239. – DOI: https://doi.org/10.4159/9780674042605.

Legislation is, with regard to normativeness, collaboration of national organisations alone socially, it is a product of collaboration among numerous state bodies and social forces. It involves the main domains of society: the political, economic, and ideological-cultural spheres. However, the legislative process is triggered not by regulatory needs but by specific individuals and groups of individuals.

Law-making is associated primarily with power. Legally, the legislator is the executor of the will of the people; sociologically, the legislator's aim is to satisfy the interests of dominant groups. On one hand, power has produced a dominant position in society, while, at the same time, power as a social resource is unequally distributed in society and concentrated in the hands of individual groups. These powerful groups use both the control of cultural symbols and information channels and the imposition of new norms as means of securing power. Alongside the dominant group, other groups in the social structure have rights to decide on social processes, but they do not have the opportunity to do so such that they steer specific decisions in their own favour. Neither do they hold sufficient influence to do so.

Overall, the legislative activity of public authorities is triggered by impulses from outside, and there is a clash of interests between social groups with differing aims. In the case of law-making, therefore, the ability to organise interests within a group is an important factor, as is the ability of the group as a whole to impose its interests and the possibility of sanctions.

The capacity to assert one's interests depends on the internal discipline of the organisation. Through the process of harmonising diverging interests within the organisation, only those interests are organised that represent the social needs of a given social group.

In material terms, law-making is really in the hands of the administration.[*20] The administration prepares the draft decision by gathering and processing information and by checking for consensus of political parties and influential interest groups. The participation of political parties and interest groups in the legislative process is widely recognised today. Still, greater openness of the legislative process would be helpful, not only to ensure better political scrutiny but also to increase the (often paltry) amount of popular support.

To prevent the legislator and the people to whom the law is addressed from coming into sharp conflict that results from non-observance of laws that are far removed from life's realities, the legislator needs to develop ever better contact with society, to co-operate with it. The mechanisms of the origin and sources of law in the life of society continue to be a topical issue.

From the standpoint of understanding law, the objective basis for the creation of legal norms is the general elements of freedom and equality expressed in social norms. From a sociological perspective, it is important to identify the essential features of those social norms that have acquired or are acquiring the status of law, and why some norms deserve this status while others do not.

To support the drafting of laws that are in tune with social realities, Estonia has established rules for law-making, which are set out in the relevant normative documents: the Rules for Draft Legislation Submitted for Legislative Proceedings in the Riigikogu, which are rules laid down by the board of Parliament[*21]; the Riigikogu Rules of Procedure and Internal Rules Act[*22]; and the Rules for Good Legislative Practice and Legislative Drafting (i.e., for *hea õigusloome ja normitehnika eeskiri*, or 'HÕNTE'). The last of these sets of rules is a regulation of the Government of the Republic that entered into force in 2012 and is addressed to government agencies[*23].

20 In Estonia, roughly 90% of draft laws are drafted by the Government of the Republic.

21 Decision 136 of the Board of the *Riigikogu*, of 27 December 2011.

22 State Gazette (*Riigi Teataja*, or RT) I 2003, 24, 148.

23 RT I 29.12.2011, 228.

2. On the formal aspects of law-making[*24]

HÕNTE lays out important steps in the law-making process in pursuit of higher-quality, more effective laws. Among other things, these rules introduced the obligation to prepare a drafting proposal and to create a concept for the draft law. The drafting proposal itself expresses the obligation to analyse the impacts and reflect on the corresponding results in the explanatory memorandum on the draft law. This not only extended the opportunities for stakeholders to participate in the various stages of the legislative process but also formed a major and necessary step in overcoming the 'fact/norm' divide.[*25] The standards document added several other requirements for the legislative process alongside these.

In fact, the main problem with law-making / legislative drafting, or legislative sociology, was precisely its normativity. The logic was simplistic: one could collect any quantity of concrete data, but one could not derive from those data the obligatory, the imperative. A norm cannot be deduced from facts. There is, in metaphorical terms, a separation of powers between the sociological and the legislative[*26]. To arrive at better understanding of this so-called mediated link between facts and legislation, we should begin by briefly considering the structural logic of the legislative acts of the Estonian legal order.

In its legal culture, Estonia follows a Continental legal system. Here, general legal acts – acts containing legal norms – are the sources of law holding primary significance. Doctrine, customary law, and case law are of secondary importance. In the Republic of Estonia, legislation is one of the core functions of state power, which the state may not delegate pursuant to Subsection 3 (1) of the Constitution, in conjunction with Section 59 and Subsection 65 (1). In Estonia, the law is both a means of ensuring order and security in society and a mechanism for reaching political objectives. Institutionally, the *Riigikogu* has the power to adopt laws in accordance with the Constitution for all matters related to the exercise of state power[*27]. The negative content of the clause on the exercise of state power stemming from the laws that are in conformity with the Constitution is the principle of the priority of the law. This principle of priority requires that a rule of less legal force be consistent with the rules that hold greater legal force – for example, that a regulation be consistent with an act of law. The principle of priority of the law has two sides: according precedence to application of the higher rule and giving priority to application of a lower-level, more specific rule. The former implies that no lower rule can dictate or furnish the content of a higher-level rule. In Estonia, it also means that the concepts articulated in the Constitution have independent meaning in their own right, with the power of interpretation lying with the Constitutional Review Chamber of the Supreme Court. On the other hand, if a lower standard with more specific subject matter exists, it must be applied as a matter of priority. In this connection, it is important to note that, although the Riigikogu, as the legislature with direct legitimacy from the people, has a prerogative of law-making under the rule of law, it does not hold a monopoly on law-making. The people too perform a normative function, by adopting by referendum those laws that the Riigikogu has decided to put to a referendum (see the Constitution's Section 56, para. 2 and Sections 105 and 106) and by amending the Constitution (per its Subsection 163 (1), para. 1, and Section 164).

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24 Recently, Estonian scholars have published articles in which we find, among other things, further development of the norm/fact approach (pioneered by Habermas), a characterisation of the sociology of law-making, empirical data (on various relevant social facts) that the authors try to make sense of, etc. For instance, see A. Kasemets. 'Institutionalization of better regulation principles in Estonian draft legislation: The rules of lawmaking, procedural democracy and political accountability between norm and facts'. *The Theory and Practice of Legislation* 2018(6), pp. 75–11. – DOI: https://doi.org/10.1080/20508840.2018.1430105; A. Kasemets. *Institutionalisation of Knowledge-based Policy Design and Better Regulation Principles in Estonian Draft Legislation*. Doctoral dissertation, University of Tartu 2018; J. Ginter et al. 'Legislation in Estonia' in Ulrich Karpen & Helen Xanthaki (eds), *Legislation in Europe: A Country to Country Study*. Oxford, UK: Hart Publishing 2020, pp. 151–165. – DOI: https://doi.org/10.5040/9781509924684.ch-009.

25 Attempts have been made to overcome the contradiction between fact and norm by means of various arguments: ontological, typological, logical, philological. However, the result has been that sociology remains primarily a desirable science for law-making. See H. Käärik. Õigussotsioloogia ja õigusloome ['Sociology of law and law-making']. *Riigikogu Toimetised* 2000/1, pp. 125–138 (in Estonian). It should be added that the article referred to was one of the first in Estonia to represent an attempt, proceeding from the views of M. Weber and moving through Luhmann and Habermas, to concrete studies linking jurisprudence, sociology of law, and law-making. Legal scholars themselves have been accused of wilful separation from other sciences. Reference is made, for example, to two conferences – Rule of Law and Law-making - Meeting Place for Legal Scholars and Social Scientists and the first annual conference of social sciences Boundaries of Legal Science (I.II) – where, allegedly, the most pre-eminent people in the profession were not present. See M. Müürsepp (see Note 1), p. 117.

26 See, for instance, J. Carbonnier. *Sociologie juridique*. Paris: Presses Universitaires de France 1978.

27 It is true that laws are not the only general legal acts in the Estonian legal order. There are other acts containing legal norms. The place of each of them, or its hierarchy, in the 'pyramid of the national legal order' is determined by the Constitution of the Republic of Estonia.

Likewise, the President of the Republic has the power to legislate (per the Constitution's Section 109 and Section 110). The *Riigikogu* can delegate to the Government of the Republic the power to issue decrees (see Section 87, para. 6). The power of a minister, in turn, to issue decrees is derived from the Constitution, per Section 94, para. 2, and the local government's power to issue decrees stems from its Section 154, para. 1. Other entities are relevant too; although we find the normative competence of the Bank of Estonia nowhere in the Constitution, it nevertheless issues regulations[*28]. According to the second sentence of Subsection 3 (1) of the Constitution, the immanent part of the Estonian legal order is composed of the universally recognised norms and principles of international law. This may be interpreted in favour of either a monistic or a dualistic solution. In any case, it reflects the formal aspect of the understanding of law and of law-making.[*29]

Obviously, however, 'precision' of the formal aspects of law-making does not supply the substantive 'precision' required for law-making; i.e., it is not possible to arrive at legal rules that reflect (contain) the substantive criteria of law by adhering to the formal aspects of law-making. We would say that, were we to divide the legislative process into a 'pre-project' and a 'project-based' phase, the formal requirements of law-making are able to guarantee the realisation merely of formal legality. To create a socially valid law that corresponds to the idea of law, one must proceed from mapping out the requirements of the 'pre-project' phase, legitimising them, and then adhering to them. And it is here that HÕNTE plays a major positive role, some of the positions of which are discussed below.

3. Knowledge-based as a necessary prerequisite to good law-making

The discourse in Estonia on the quality of legal norms / law-making, its knowledge-based nature, the assessment of legal and regulatory impact, the gap between legislative norms and the facts of real life, assessment of the impact of law-making and the involvement of stakeholders, and the corresponding knowledge-based policies started some time ago, long before the adoption of HÕNTE. Debates displaying particular intensity seem to have existed at least since the first years of the millennium[*30]. One of the first strong formal reactions to the 'pre-project' phase consists of guidance on *ex-ante* assessment of the impacts of draft legislation and strategy papers and on providing information on stakeholder involvement via the explanatory memorandum accompanying draft legislation and strategy papers (Procedure for the Preparation and Processing of Draft Legislative Acts)[*31], and another was a set of requirements formalised for impact assessment

[28] Sections 1(5) and 11 (5 and 6) of the Bank of Estonia Act allow the President of that institution (Eesti Pank) to issue regulations as general acts. By granting such a power, the legislator (i.e., the Riigikogu) has arbitrarily extended the powers of Eesti Pank beyond the limits allowed by the Constitution. See – Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne ['The Constitution of the Republic of Estonia, Annotated Edition']. Tallinn: Juura 2017 (in Estonian), p. 752, comment on Section 112, para. 6.

[29] In principle, the rules of international law are directly applicable. At the same time, Estonian courts have been rather reticent in applying international law. If one tries to situate the norms of international law in the 'national pyramid' of the Estonian legal order, then, interpreting the second sentence of §3 (1) and (2) of the Constitution as meaning that the purpose of the provision is to ensure the compatibility of the Estonian legal system with the generally recognised norms and principles of international law, these norms should also be given priority over national laws. It is clear, however, that the hierarchy of the various legal acts, based on the position of the bodies competent to legislate in the organisation of the state, is inherent to domestic law and is not transferable to international law. Consequently, rules of international law that are derived from different sources (international treaties, customary law, and general principles of law) are *a priori* of equal legal force.

[30] See, for example, H. Käärik. 'Sociology of law and law-making' (see Note 25); A. Kasemets. Seadusloome kvaliteedi ja mõjude hindamise probleeme. ['Challenges to the quality and impact assessment of law-making']. *Riigikogu Toimetised* 2001/4, pp. 102–112 (in Estonian); R. Narits. Seadusloome õigusliku ja regulatiivse mõju hindamine. ['Assessing the legal and regulatory impact of law-making']. *Riigikogu Toimetised* 2001/4, pp. 97–101 (in Estonian); R. Narits. 'Good law making practice and legislative drafting conforming to it in the Republic of Estonia']. *Juridica International* 2004(IX), pp 4–13; E. Illing. Õigusaktide mõjude analüüsi areng Euroopas. ['Developments in the analysis of the impact of legislation in Europe']. *Riigikogu Toimetised* 2004/9, pp. 136–142 (in Estonian); A. Kasemets. Lõhe õigusloome normide ja faktide vahel mõjude hindamise ja huvirühmade kaasamise teabe esitamisel. ['The gap between legislative norms and facts in presenting impact assessment and stakeholder involvement information']. *Riigikogu Toimetised* 2009/19, pp. 104–115 (in Estonian); A. Kasemets et al. 'Parema õigusloome põhimõtete rakendamine Eesti sisejulgeolekupoliitikas. ['Implementation of better regulation principles in Estonian internal security policy']. *Riigikogu Toimetised* 2011/23, pp. 83–96 (in Estonian); A. Kasemets. Teadmistepõhise poliitika ja õigusloome kaksteist institutsionaalset eeldust. ['Twelve institutional prerequisites for knowledge-based policies and law-making']. *Riigikogu Toimetised* 2016/34, pp. 149–162 (in Estonian).

[31] The guide was based on points 5, 9, 10, 11, and 19 of the Decree of the Minister of the Environment Procedure for the Preparation and Processing of Draft Legislative Acts (*Õigusaktide eelnõude ettevalmistamise ja menetlemise kord*) and on

and involvement, set out in the Rules on Draft Legislation as approved by the Board of the Riigikogu on 6 March 2001 by Decision 59. The purpose of this code was to strengthen the system for assessing the efficiency and effectiveness of the drafting of legislation and strategy documents in the ministries' various areas of responsibility and their implementation; to improve compliance with the requirements set for assessment of social, economic, environmental, administrative, and budgetary impacts and the involvement of stakeholders; and to facilitate quality control related to explanatory memoranda for draft legislation. This normative document required that impact assessment and stakeholder involvement be considered for legislation in the cases of drafts for new regulations, concepts or draft amendments related to existing regulation, and reports on assessment of the effectiveness and efficiency of existing regulation. In the case of strategy papers – which are, after all, the basis for future legislation – impact assessments and stakeholder involvement need to be addressed in cases of cross-sector, sector-specific, or organisation-specific strategic development plans; budget strategies; and investment programmes.

4. On Assessing the impact of legal solutions

Above, we noted that, in the course of its development of knowledge-based law-making, Estonia adopted the HÕNTE system in 2011. Today, a little more than a decade has passed since the adoption of the relevant normative document. In a sense, it is a holistic solution, for guiding law-making as a whole. Since its passage, impact assessments have begun to take into account multiple target groups, to consider both direct and indirect effects, and to familiarise the legislator with sector-specific impacts. Already in 2016, however, A. Kasemets was asking why the norms and facts of law-making are still not in line with each other and why it is taking so long for a knowledge-based legislative culture to emerge that respects people, businesses, and nature.

A. Kasemets was asking why the norms and facts of law-making are still not in line and why it is taking so long to develop a knowledge-based legislative culture that respects people, businesses, and nature. Kasemets, asking why the norms and facts of law-making are still not in line and why it is taking so long to develop a knowledge-based legislative culture that respects people, businesses and nature: '[I]t is time to analyse and update the Rules for Good Law Making Practice and Legislative Drafting [...] including looking for opportunities for simplification in HÕNTE and distinguishing between short/quick and in-depth/time-consuming legislative procedures on the basis of clear criteria (e.g., a "fast track" for regulations with a smaller and known scope of impact and a more thorough impact assessment and involvement procedure for new drafts for which there is insufficient knowledge to assess the direct and indirect impacts/risks).'*[32]

A normative response to this problem and a robust – albeit merely principled – solution can be found in §1 (1), clauses 7–8 of the HÕNTE document. The regulations here require that the drafting proposal for the draft act contain answers for solving, *inter alia*, two sets of problems. The first involves what significant effects, in terms of frequency of occurrence, magnitude, size of the target population, and risk of undesirable effects, may result from the implementation of the law. Secondly, how are the significant effects to be analysed, and what is the rationale for not analysing those significant effects?*[33]

This problematic position is due to the fact that, apparently, there is no such thing as pure legal effect. However, law in the hands of the state is a means by which and through which that state can say something (*expressis verbis*) to all those subject to the law so as to achieve a certain quality of effect. If this is to occur, it is necessary to translate a part of real life into the language of the law at the outset and add a

Decree of the Government of the Republic 279, of 28.9.1999, titled 'Õigustloovate aktide eelnõude normitehnika eeskiri', or 'Technical Rules for Drafts of Legislative Acts'.

[32] A. Kasemets. 'Twelve institutional prerequisites' (see Note 30), especially p. 158. A few years earlier, the same author expressed concern about the gap between the norms and the facts when it comes to presenting information on impact assessment and stakeholder involvement; see A. Kasemets. 'The gap between legislative norms and facts' (see Note 30) In particular, the HÕNTE as a legislative normative document has been analysed in the literature. See S. Kaugia. 'Legislative intent of act in Estonia'. *Juridiskā zinātne / Law*. Journal of the University of Latvia 2019/12, pp. 162–172. – DOI: https://doi.org/10.22364/jull.12.11.

[33] In international practice, it is not exactly common for impact assessments to be carried out during the preparation of every draft law. Alongside Estonia, there are only eight other OECD member states with impact-assessment arrangements of this sort: Austria, Canada, Finland, France, Germany, Lithuania, South Korea, and Spain. See the OECD's Regulatory Policy Outlook 2021, p. 116. Available at https://www.oecd.org/publications/oecd-regulatorypolicy-outlook-2021-38b0fdb1-en.htm (most recently accessed on 25.2.2022).

legal consequence to the description of the facts of life thus produced. This implies, among other things, that law-making cannot be the exclusive preserve of lawyers. What is needed are experts whose knowledge-based proposals are to be translated into legal language. Since law cannot and indeed must not be separated from the larger picture of (normative) social regulation – after all, we know very well that there are several mechanisms available for regulating social life, of varying quality – sociologists and specialists with an even narrower field of specialisation, legal sociologists, must be regarded as the experts in this domain. It is in the legislative process that the state must think about how society can function in such a way as to ensure that the social environment and the members of the society work together successfully. Behind success are guarantors: the creation of decent living conditions for all social groups, the acceptance of objective justice, etc. Legislation too is certainly among these conditions guaranteeing success. For finding the social rules that suit the people best, J.-J. Rousseau considered it necessary even to have a 'higher mind' that is able to see all human passions yet not experiment with any of them – that is, to have no connection with human nature while at the same time possessing thorough knowledge of fundamental human nature. It is not the specialists who must take up this challenge.

5. On the nature of impact analysis and some of its methodological aspects

Impact analysis is only one of the methods used to shape legislation, alongside expert opinions, political positions, etc. The key point in this connection is that the value of impact analysis lies not in justifying decisions already taken but in using the analysis to inform the taking of decisions in the present.[*34] This requires solid grounding; however, the uneven level of detail in specific guidance material has created problems for this process in Estonia[*35].

Immediately after the adoption of HÕNTE, the Government of the Republic's regulations were supplemented with a provision for impact analysis[*36], found in Section 5 of ('Impact assessment'), which specifies that the preparation of draft laws, strategic development plans, and Estonia's positions referred to in subsections 20[1] (1– 2) of Section 201 of the Government of the Republic Act shall assess the effects of said laws, plans, and positions, with the same being true for preparations addressing other important matters to be decided upon by a ministry or submitted to the Government of the Republic for consideration.

To minimise inconsistencies, the Government of the Republic approved specific impact-assessment methodology in 2012, with the aim of thus providing guidance to government agencies on how to organise impact analysis in order to improve and harmonise the capacity for planning, implementing, and evaluating

34 In Estonia, the requirement for an impact assessment has been laid down in several pieces of legislation for some time, but it was initially very abstract, which has made it difficult to decide in practice when and to what extent it should be carried out. In fact, the legal basis for the analysis of the effects of legislation was created by the Decree of the Government of the Republic No. 279 of 28 September 1999 Technical Rules for Drafts of Legislative Acts, Subsections 28 (1), (6), Section 34 (obligation to analyse the effects of a law) and Subsection 53 (5) (obligation to analyse the effects of a regulation). Section 28 set out the parts of the explanatory memorandum of the draft Act, and according to Subsection 1 (6), one of the parts of the explanatory memorandum is an overview of the analysis of the effects of the Act. Section 34 specifies what should be dealt with in more detail in the section on the effects of the Act, outlining the types of effects for which an explanation is mandatory, including social effects, effects on national security, international relations, the economy, the environment, regional development, the organisation of public authorities and local government, including the training needs associated with the implementation of the Act. The list of impacts was left open, probably because it was mandatory to explain other direct or indirect consequences of the adoption of the law. The form of the impact analysis report was set out in the Annex to the Rules. – Technical Rules for Drafts of Legislative Acts. – RT I, 1999, 73, 695.

35 Thus, the guidelines for the assessment of economic impacts, environmental impacts, and social impacts required a focus on individual aspects of the analysis of impacts. This made it difficult to use such analyses in legislative practice. A few years ago, the Ministry of Justice's Development Plan (2012) articulated the harsh criticism that Estonian law-making is characterised by a lack of impact analysis. The drafting proposals for legislation were found to be vague and not include an assessment of the accompanying impacts. The critique stated that even where there is an impact analysis, it does not cover all stages of analysis required for draft legislation, since it is carried out after the preparation of the draft (not to be confused with *ex-post* impact assessment – S.K. and R.N.). The analysis is often limited to description of the subject of the analysis and rarely includes any estimation of the associated impacts. As a rule, there is no comparison across the range of alternative solutions either; only those within the competence of the central institution of the agency are assessed. The plan pointed to a lack of clear definition of responsibilities, obligations, and rights in connection with carrying out an impact analysis. See http://www.just.ee/33313 (most recently accessed on 20.11.2021).

36 See RT I, 19.01.2011.

government policies across all agencies. In 2021, the articulation of that methodology was updated to bring it fully in line with the current form of the regulation of which it is a part, and the structure, terminology, and stages for impact assessment were further clarified.

At present, the objectives for impact assessment state that its role in the development of the Estonian legal order are that it

(a) aids in critically assessing the need for public intervention;
(b) enhances the credibility and transparency of the policy-making process, in terms of such elements as results, costs, and side effects, and thereby helps preclude unintended consequences;
(c) improves the quality of policy decisions by increasing decision-makers' awareness of the policy options available and of their positive and negative impacts both, inclusive of how the policy decision and each option contributes to reaching the strategic objectives of the state;
(d) helps to reduce the subjectivity of the analysis and conclusions by means of compliance with the requirements for an appropriate impact assessment; and
(e) contributes to knowledge-informed policy-making.

We can see that impact assessment has a meaning far beyond simply drafting one or another piece of legislation. It is a process of gathering evidence of the merits and drawbacks of decision-makers' policy choices for, thereby, assessing the possible consequences. In Estonia, the systematic assessment itself has even come to be referred to as the 'core policy-making process'.

It is not only crucial to policy but also to some extent a universal approach, applicable to EU law, national strategy papers, and legislation. The methodological model employed for impact assessment, at least in the European legal area, is encapsulated in the European Commission's Impact Assessment Guidelines[*37]. The steps can be summarised thus:

(a) defining the problem
(b) setting the target(s)
(c) analysing the policy options
(d) performing *ex-post* evaluation

The analysis of impacts should be proportionate to the importance of the issue to be decided upon. To this end, the areas of impact must be mapped, (in step *a*), for which purpose appropriate checklists must be developed, to be used as the process proceeds. A more in-depth impact assessment may require studies to be carried out in these early stages.

In the legislative process, impact assessments may be initiated at any of several stages. The timing depends upon, for example, whether the need is for a preliminary impact assessment or, instead, building on any previous impact assessments. At the latest, preliminary impact-mapping should be initiated at the stage that involves drafting of the legislative proposal.[*38]

It cannot be left unsaid that the problem is linked to the crisis that has already prevailed for years now in relation to COVID-19. In particular, making an exception to a general rule – i.e., the requirement of having completed an impact assessment – should not entail *carte blanche* for emergency rules adopted in a hurry, without any consideration of their impact. Once the immediate pressures of the crisis have relaxed, public administrations may use any of several instruments to ensure that the impact of these emergency measures does get assessed (the universal importance of this is accentuated by the 2012 OECD recommendation citing *ex-post* evaluation as an essential tool to 'close the policy cycle'). Legislation adopted through fast-track procedures can be subject to **careful *ex-post* scrutiny** or post-implementation reviews to examine their effectiveness. Where the emerging phenomenon is an epidemic or pandemic, policy officials should take every opportunity to gather information on the virus, its impact on particular population groups across the landscape, and the effectiveness of the various crisis-response mechanisms available.[*39] In practice, during the drafting process, each of the ministries concerned would have to check the implications for its respective area of responsibility and, if necessary, make proposals addressing these. Let us add that, as stakeholders usually are involved, they can come forward with their own proposals.

37 Available at http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf (most recently accessed on 7.7.2022).

38 In the case of a description of the effects of a law already set out in the Explanatory Memorandum document for the draft, the guidelines for drafting it are presented at https://www.just.ee/sites/www.just.ee/files/eelnou_seletuskirja_mojude_osa_koostanise_juhend.pdf (most recently accessed on 12.2.2022).

39 See https://www.oecd.org/coronavirus/policy-responses/regulatory-quality-and-covid-19-the-use-of-regulatory-management-tools-in-a-time-of-crisis-b876d5dc/ (most recently accessed on 12.2.2022).

6. Another quick look at the potential of sociology of law to 'participate' in the law-making process and one effective method of impact research

The literature on sociology of law points to the two-pronged nature of putting social information to use in law-making. Firstly, some of the information is a result of surveys that reflect both the society's value orientations and the individual respondents' judgements and implicit attitudes. Secondly, it can involve quite narrowly scoped sociological studies, which may be focused, for example, on mapping (i.e., measuring) the performance of laws. Hence, the legitimacy of the law resting with the people and the effectiveness of the law (assessed in the experts' terms instead) may even be out of phase with each other to some extent. Some have argued that one cannot rule out the possibility that the adoption of laws that lack legitimacy for the citizen undermines the legitimacy of the legal system as a whole. Admittedly, a definitive answer to this question would require specific empirical studies*[40]. In the meantime, however, the perception that legal sociology in law-making is something non-egalitarian has been overcome. Notwithstanding the corresponding sense that it has a legitimate place, many legal scholars and legal sociologists alike are of the opinion that the power of the sociology of law is limited to only offering **recommendations** for law-making. The proposal J. Habermas offered for the design of the legislative process stands out here. To the end of legitimately informing legislation the system must employ a principle of discursivity – i.e., of a form of communication based solely on argumentation, in which discourse itself is conceived of as the normative realisation of all social information in law-making*[41].

If one tries to generalise the differential relevance of empirical research (in the broad sense) in law-making, one can view the law-making process in Estonia as expressing the third class in the following set of categories of application: the use of social information in law-making is not legally regulated; the use of social information in law-making is not mandatory; the use of the social information collected has moved (or is moving) toward the information's use being mandatory. Therefore, the authors of this article do not share the pessimistic view that, although attempts to realise the principle of discursiveness have been made, they have been reduced to instances of the dominant system trying to collect the information the system needs; that is, we do not find that it strives to motivate individuals in its own service, to do what the system needs and to channel tensions without any real discursive communication taking place.*[42]

The multi-criteria method*[43] is designed to assess the positive and negative impacts of particular possible developments arising from the conditions, specifically in a situation wherein the information (mostly of a qualitative nature) may be incomplete and indicators with a possibly quite problematic qualitative element need to be taken into account. In this method, it is useful to assign 'weights' to the impacts assessed (i.e., accord each a given value).

This method has advantages:

(a) It can take into account the complexity of the problem.
(b) It allows analysis and comparison of data of multiple types. The method even takes into account variability in the level of uncertainty.
(c) One is able to formulate the questions in a clear and transparent way and to highlight the 'right' points for consideration.
(d) It enables the highlighting of distribution-related issues.

It also displays disadvantages:

(a) There is a subjective stage: a part of the process in which experts have to decide on the relevance of each criterion.

40 H. Käärik (see Note 25), p. 137.

41 Ibid., p. 138.

42 Ibid.

43 In many disciplines, multi-criteria decision-making, or MCDM, has been one of the most rapidly growing areas for addressing problems. The central problem is how to evaluate a set of alternatives against multiple criteria. Although this problem is very relevant in practice, few methods are available, and their quality is difficult to ascertain. Therefore, the question of which method is best for a given problem has become one of the most important and challenging; e.g., see *Multi-Criteria Decision Making Methods: A Comparative Study*. Kluwer 2000.

(b) For some types of data, it is not always possible to establish clarity as to the scale of the benefit/harm.
(c) It is difficult to take into account the time dimension.

Multi-criteria analysis is particularly suited to examining impacts in situations wherein both qualitative and quantifiable data are scarce. The method is intended for systematically contrasting information on the effects of each policy option. The contrasts can be developed, for example, by stakeholder group or impact type, or one might articulate the positive vs. negative impacts of each option considered. It is appropriate to complement this method with an evaluation framework, whereby the qualitatively expressed impacts identified via the multi-criteria analysis are rendered comparable by rating each impact on the framework-based scale of 'importance'. The rating itself is, of course, rooted in experts' judgement, which involves human analysis of the array of information.

A typical multi-criteria method usually proceeds in accordance with the following process:

(a) defining the target;
(b) describing the means of reaching that target;
(c) agreeing on the criteria to be used in assessing the options;
(d) assigning weights to the criteria that correlate with the decisions;
(e) weighing the options against the criteria;
(f) ranking the options by combining them with scores;
(g) if deemed necessary, performing a 'sensitivity analysis' to test the adequacy of the ranking;
(h) ranking the options;
(i) verifying that, somewhere along the line, those involved have obtained a 'bottom-up' sense of the impact of uncertainty in the decision-making process.[*44]

7. Some observations motivated by legal policy

Finally, we would like to make a few observations on legal policy tied in with the theme of this article: the relevance of the use of legal sociology in Estonian law-making. Firstly, approval of the Basic Principles for Legislative Policy until 2030 (*Õigusloomepoliitika põhialused aastani 2030*, or ÕPPA)[*45] has been agreed upon as part of the long-term vision for Estonian legislative policy. A corresponding general orientation for draft laws, the development of the country's legal language, and the organisation of legislation is to be developed over the next 10–12 years. Clearly articulating and enforcing policy directions is important for stakeholders and society at large if one truly wishes to ensure the visibility and openness of legislative policy. Point 12 of the above-mentioned normative document continues to place the emphasis on what the text of Article 1, paragraphs 7 and 8, of HÕNTE implies for the procedure for draft legislation: 'Preparation of a drafting proposal, involvement, impact analysis, and *ex-post* evaluation are essential elements of effective law-making.'

The Ministry of Justice of the Republic of Estonia compiled a review of the implementation following from the approval of the Basic Principles for Legislative Policy until 2030 through to the year 2021[*46]. The latter served as a substantive basis for the review presented to the Riigikogu by the Minister of Justice in March 2022. An especially noteworthy aspect of the Ministry of Justice's review of the legislative process in the context of the coronavirus crisis is that it also examined the quality of the draft laws submitted to the

44 The main requirements for the impact report are:
(a) An overview of the impact analysis process (who carried it out, details of the presentation of the report, details of the consultations, etc.);
(b) Background and scope of the analysis (description of the subject of the analysis and key concepts, description of the tools used, content and scope of the problem studied so far);
(c) The purpose of the analysis and the target audience (why the impact assessment was needed and what was of interest and on which topic). Include the analysis questionnaire (if available);
(d) The methodology applied for the impact analysis (what was/were the method(s) used, how and where were both primary and secondary data collected;
(e) The findings of the analysis, which forms the main body of the report (what were the results of the impact assessment?);
(f) Conclusions and recommendations.

45 See the material on approving the Basic Principles for Legislative Policy until 2030: RT III, 17.11.2020.

46 See file:///C:/Users/User/Downloads/OPPA_taitmise_ulevaade_2021.a_kohta%20(1).pdf (most recently accessed on 11.3.2022).

ministry. The review report states: 'The vast majority of the drafts submitted to the Ministry of Justice for approval have few technical deficiencies and the drafts generally comply with the standard of the written language. Quality of the impact assessment (spacing by us S.K.; R.N) has been improving steadily. In international comparison, Estonia's impact assessment system is considered to be very good. According to the OECD's 2021 Legislative Policy Study, Estonia ranks fourth out of 37 countries in terms of the quality of its impact assessment system for draft legislation.'*[47] This speaks to the important positive developments manifested in the growing proportion of socio-legal approaches.

Irrespective of the positive assessments, there is room for improvement in impact research in Estonia. A case in point comes from 2021 when the *Riigikogu* was debating implementation of its decision 'Approval of the Basic Principles for Legislative Policy until 2030', one of the bases for which was the expert opinion prepared by the advisory board of the Estonian Constitutional Law Foundation at the Academy of Sciences (SA Riigiõiguse Sihtkapital) on that implementation,*[48] with assistance from the advisory board of the Estonian Academy of Sciences on behalf of the Ministry of Justice. For submission to the *Riigikogu* in connection with the report of the Government of the Republic to Parliament on the implementation of the rules of good legislative drafting and the drafting of proposals. Among other things, it presents analysis of the situations in which, in the case of drafts that are the subject of an opinion, the lack of identified effects led to no drafting proposal being prepared at all. The report stated:

With reference to the lack of significant effects of the draft within the meaning of Section 1, para. 2 and para. 5 of HÕNTE, a drafting proposal was not prepared on two occasions: for the draft Act amending the Anti-Corruption Act (re. compliance with GRECO recommendations and the Act restricting the publicity of declarations of interest of heads of security bodies) (323 SE) and the draft Act amending the Code of Civil Procedure (securing an action based on infringement of intellectual property) (231 SE) [...]. However, the situation was markedly different when the justification for the drafting proposal not being prepared was that the draft would not have a significant impact. Since this is by its very nature a highly evaluative criterion, if the reason for not preparing a drafting proposal is given in the explanatory memorandum for the draft only by a formal reference to said grounds and no substantive justification or analysis is provided, it is very difficult to determine *ex post* whether the drafting of the draft itself without going through the draft-planning stage was justified in substance. This conclusion is illustrated by the two drafts that are the subject of this opinion – the law on the Amendment of the Anti-Corruption Act (compliance with GRECO recommendations and the law on the restriction of the publicity of declarations of interests of heads of security authorities) (323 SE) and the law on the amendment of the Code of Civil Procedure (safeguarding actions based on infringement of intellectual property) (231 SE) – for which no drafting proposal was prepared, for the reason that they lack significant impact. Undoubtedly, in the case of these two draft laws (as in the case of any other draft law in general), one cannot speak of a lack of impact; otherwise, there would be no point in their processing and adoption. Accordingly, Section 1, para. 2 and para. 5 of HÕNTE and point 12.1.3(4) of the ÕPPA can only be interpreted in such a way that in the case of grounds for not drawing up the relevant development plan, the lack of significant effects as a quantifying characteristic is deemed to be the decisive factor. However, the explanatory memoranda for these two drafts do not provide the relevant justifications, which leads to the conclusion that the drafting intentions for these drafts were left unprepared arbitrarily.

We share the view of the authors of the expert opinion. The situation described in that opinion unjustifiably narrows the scope of application of sociology of law in legislative drafting, and it runs counter to good legislative practice and, moreover, to the Estonian legal order itself. One conclusion of the experts offering this opinion cannot be supported, however: 'As a rule, the preparation of a drafting proposal does not precede the preparation of draft legislation initiated by the Government of the Republic and adopted by the *Riigikogu*. To improve the situation, we recommend critically assessing the feasibility of the grounds for not preparing a development plan set out in §12.1.3 of the ÕPPA and Section 1, para. 2 of HÕNTE or, alternatively, waiving the requirement to prepare a development plan altogether.' We find our view to be supported by the fact that the 'Basic Principles of Legal Policy until 2030' instrument provides in its point 12.1.2 that the drafting proposal shall be submitted both for public consultation and to the *Riigikogu*. This refers to the relevant committees of the legislature, which, according to the Rules of Procedure and Internal

47 Report available at https://www.just.ee/uudised/justiitsminister-andis-hinnangu-oigusloomele-koroonakriisis (most recently accessed on 10.3.2022); OECD Regulatory Policy Outlook 2021, p. 71. See also https://www.oecd.org/publications/oecd-regulatory-policyoutlook-2021-38b0fdb1-en.htm (most recently accessed on 25.2.2022).

48 See file:///C:/Users/User/Downloads/Arvamus_6PPA-riigi6iguse-sihtkapital.pdf (most recently accessed on 14.3.2022).

Rules Act of the *Riigikogu*, are the steering committees involved in the procedure for the respective legislative drafts. Obviously, this change in legal policy has only increased the intrinsic importance of drafting proposals for our legal order. However, the advice from the foundation's board to abandon the drafting proposal contradicts a whole series of other provisions set forth in the Basic Principles for Legislative Policy until 2030 (in points 12.3.1, 12.3.2, 12.3.3, and 12.3.4). We hope that there is insufficient political will to abandon the drafting proposal in the manner suggested as one alternative in the opinion of the advisory board of the Estonian Constitutional Law Foundation at the Academy of Sciences. Above, we refer to the Justice Minister's presentation to Parliament. Looking at the minutes of the presentation, we find:

Before a draft law is drawn up, a drafting proposal (*väljatöötamiskavatsus*, abbr. VTK) is prepared. Its broader value is that it makes law-making more visible and transparent, [and it] allows for early public consultation and stakeholder involvement [...]. It is often argued that the preparation of a VTK is excessively bureaucratic, is too formal, and unnecessarily prolongs the legislative process. But no-one is saying that it should not be done in a substantive and useful way.

M. Jürgenson, a member of the Legal Affairs Committee of the *Riigikogu*, was of a similar opinion, stating that 'we expect the Government of the Republic to carry out drafting proposals [read: drafting] for the drafts they develop, and we do not consider it right to abandon this legislative stage. Of course, yesterday in the Legal Affairs Committee we discussed this with the Minister [M. Lauri]. I asked her personally, and the Minister confirmed that it is not reasonable to abandon drafting proposals'.[*49]

Of the policy documents, the long-term development strategy of the state, titled 'Estonia 2035'[*50], deserves special attention. This is a strategy-oriented document. The document, which sets forth strategic goals for the Estonian state and people for the coming years and indicates the changes needed for reaching them, outlines the development needs of Estonia's most important sectors – the tasks that need to be completed and taken into account in policy-making (including the setting of legal policy). In the area of governance, which can only operate in the legal environment, the capacity of the state to use research to bring about the necessary changes must be improved via researchers' involvement in policy-making. There is a direct implication that all legislative decisions must be knowledge-based.

Before concluding the article, we would like to emphasise once again that the situation that developed a decade ago, in which legislative 'tools' for quality in the sociology of law found their way into the legislative 'toolbox', has been vindicated. Our HÕNTE has stood the test of time. The pre-legislative function of the sociology of law has come into the legislative process so that it remains involved in the 'preparation' of planned legislation for an audience. We believe that the link between jurisprudence and law-making needs to be further strengthened. In fact, this is already referred to as a requirement, articulated in the above-mentioned long-term development strategy Estonia 2035, adopted by the *Riigikogu* on 12 May 2021: according to the OECD, Estonia does not make enough use of research and experts in the field when making decisions and the efficiency of the government agencies' activities is mediocre relative to that of other Member States. The body stated that the country's capacity to use research to bring about the necessary changes and to involve researchers in policymaking needs to improve. It is important to ensure that research is more closely geared to Estonia's development needs.[*51].

In conclusion, it should be noted that legal sociology, as a field of applied law-making, continues to exhibit potential, which Estonia has ample room to use. It is not enough to adopt a legal-dogmatic angle and related approaches in aims of arriving at a legal interpretation by means of and through the law. One would also hope that the example cited in this article of a call to, in essence, ignore the capacity of legal sociology is not in any way a tendency but, rather, a failed solution to a problem. We must not ignore, or call on others to ignore, the requirement for analysis of the significant effects of legislation, for this is inherent in the Estonian legal order itself and closely linked to legal sociology. At the same time, however, the analysis should be based on the frequency of occurrence of the significant impacts pinpointed in connection with the legislation, the scale of the impact in question, the size of the relevant target group, and the risk of the undesirable effects that may result from the implementation of the law. The strategic documents that have been drawn up to provide substantive solutions for legal policy in Estonia give reason to hope that it will not be possible to imagine law-making in Estonia without involving sociology of law.

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49 See https://stenogrammid.riigikogu.ee/et/202203091400 (most recently accessed on 14.3.2022).

50 RT III, 15.5.2021, 12.

51 See file:///C:/Users/User/Downloads/Eesti%202035_PUHTAND%20%C3%9CLDOSA_210512_1.pdf (most recently accessed on 14.3.2022).