Summaries in English

EDITOR-IN-CHIEF'S COLUMN

What we lack the most

Helle Ruusing*, editor-in-chief, Chancellery of the Riigikogu Information Service information adviser*

Estonia may lack money, ideas and capacity for engaging in cooperation. It seems to the writer, however, that most of all we are short on the ability to negotiate. When we debate, everyone holds their own monologue; everyone makes the loudest possible sound in the belief that the only satisfactory result is to have one's own idea come out on top. Estonians do not comprehend that participants in a debate have and will continue to have their own personal opinion – that perhaps this is the way it ought to be – and that this is not an obstacle to finding common ground. Debate oriented at finding common ground is something that is heard more seldom than one might hope. Topics that are important to society streak into view in the media like comets. For a week at best the matter is discussed, with full force; then the desire and will run out. A new comet glimmers on the horizon and it is time for the old one to make an exit. Yet often these are topics that could and should be discussed at length in the name of finding common ground. In the opinion of the writer, it would be logical in every respect for civic associations – which have gained more and more strength in Estonia in recent years – to raise topics and be the moving force behind discussion. Civic organizations are precisely the bodies that represent different interest groups and opinions. Both fortunately and unfortunately, government incubated the inception of civic society, and thus Estonia's civic associations are frequently all too ready to play by the government's rules. Estonia is a small society – there is always someone who knows someone in parliament, government, a ministry or a local government. Using such an acquaintance, the person gains an audience to make his positions known. Public debate is abandoned on the assumption that direct talks are more productive. They may be just that, otherwise they would not be utilized, but this is in conflict with the concept of a civic society. Civic associations do not necessarily have to be in opposition to government, but they should act as a check on power, and the authorities must know that their partner is a strong and independent one. I think that the transparency of lobbying should be increased. This would contribute honesty, and force us to discuss things publicly.
We can always learn what we do not yet know. The ability to discuss things is acquired by practice. By listening to others make their case, we learn to make our own. It is the right and obligation of citizens to be active co-thinkers and to express their opinion. Civic associations can only highlight and bring up problems and offer possible solutions. In a democratic state, the final decision on the legislative level is made by parliament.

ESSAY

The universality of human rights, or, what to do with others?
Lauri Mälksoo*, Associate Professor of International Law, University of Tartu*

This essay draws on the author's academic activities in the field of human rights law and scholarship. A major "ideological" controversy in the field is the question whether human rights are truly universal or culturally conditioned. Another, related question is what the human rights policy of the European states should look like.
The author is critical of blind spots and hypocrisy in Western human rights policies. In terms of the history of international law, there is a direct link between the collapse of the colonial rhetoric and the emergence of the international human rights discourse. As Jack Donnelly has argued, human rights have become today's standard of civilization. Unfortunately, this standard has a number of problems, one of which is that other different cultures are not always treated with sufficient respect. Secondly, it is much easier to criticize others for their human rights record than to see deficiencies at home. Thirdly, Western human rights rhetoric has often been mixed with pragmatic considerations of trade and profit – it has been easier to criticize Zimbabwe and Myanmar than China or Russia.

The last part of the essay deals with the human rights situation in the Russian Federation, especially in the context of the European Court of Human Rights, which Russia joined in 1998. Although Russia's accession to the Council of Europe and the Court was celebrated by most commentators as an opportunity to "gently civilize" Russia, the country that was meant to be "civilized" has already put up some resistance, e.g. in not ratifying Protocol 14, which is necessary for the reform of the Court. Secondly, Russian leaders have criticized certain judgments of the Strasbourg Court as "political" and even anti-Russian (e.g. the judgment related to Russia's state responsibility for activities in Transdniestria). It is important that Strasbourg court would also in the future be able to maintain its high standards of human rights protection without political compromises – the opposite would mean the demise of the Court. The Russian leadership should accept that the Strasbourg court is not a us vs. them political competition stage but a forum for the implementation of human rights in all countries of the Council of Europe.
Notwithstanding a number of contradictions, silences, hypocrisy and weaknesses of the human rights discourse, the world needs a common normative language. Human rights as "language" can be extremely useful – but the utility of the language does not lie in mere existence but in its use. We should therefore strive towards a more fair and less hypocritical use of the "language" of human rights.

POLITICAL FORUM

Local governments

Merger is a strategic decision from the standpoint of local development

RiTo conversation circle

The topic for the conservation circle in this issue of Riigikogu Toimetised is Estonian local governments and problems related to their legal basis, financing, small size and future development. The participants in the conversation circle were the following: two members of the Riigikogu, Jaak Aab (Estonian Centre Party) and Rein Aidma (Estonian Reform Party); Minister for Regional Affairs Siim-Valmar Kiisler (Pro Patria and Res Publica Union); managing director of the Association of Estonian Cities Jüri Võigemast; managing director of the Association of Municipalities of Estonia Ott Kasuri; and Tallinn University public policy professor Georg Sootla. RiTo editor-in-chief Helle Ruusing asked questions and made a selection from the responses. It was found that the legal basis that currently governs the actions of local governments is, in principle, in conformity with all of today's requirements. Thus the legal space does not hinder the furtherance of the local sphere; the questions are raised more by the practical side. Estonians want everything to be very fair and clear and laid out according to common principles – both obligations and financing. But it is very hard to construct universal models for local governments, which differ in population by a factor of 4000. This proportion is also reflected in local government budgets and financial opportunities. With such great disparities, it is extremely complicated to come up with common models that would be fair for both small and large local governments. Local communities work better in place where there are sufficient numbers of educated and informed people. Many non-profit organizations, volunteer fire departments, neighbourhood watch organizations, assistant police officers have been established in municipalities, showing indisputably that many citizens are prepared to put their free time and energy, even their money, in the service of the common cause. Unfortunately many local governments are still so small that there is not much financial leeway in their budgets, a large part of which goes to education. If there are a few hundred inhabitants in a rural municipality, it will not have much of a financial buffer and it just proceeds according to the functions and the money that the state gives it. Big cities are in this sense, more sovereign; as they have the corresponding monetary buffer, they can to some extent have their own law enforcement policy, their own business policy, create enterprise incubators etc. In talking about local government policy it was found that even though all Estonian political parties have sections in their programmes that deal with the local government, the section in the current government coalition agreement on local government is unfortunately a little thin. At the same time, local government associations have clearly said that one of the principles behind their activity is to increase the significance of local governments in organizing social life. They want Estonia to move in the direction of the Nordic model, where the share of local governments of the total volume of the public sector is larger and continually increasing.

Employment Contracts Act

The psychology of the new Employment Contracts Act

***Maret Maripuu**, Minister of Social Affairs, Estonian Reform Party*

The draft Employment Contracts Act – which had been discussed thoroughly and at length by social partners, with the parties finally reaching consensus on its main points – was presented to the public on the Estonian Television programme "Foorum". The response was not affirmative. Namely, four-fifths of callers found that that they were not satisfied with the new draft legislation, even before discussion had turned to the content of the Act. In this writer's opinion, it showed that, at least with regard to employment relations, our intellectual world is still slumbering in the good old Soviet days, the period from which the provisions of the current employment contracts act predominantly date. The writer acknowledges that attitudes cannot be changed overnight, but that it is necessary to change them in the long run. The changes pertain primarily to how people see themselves. Everyone must perceive him or herself as a person who is in charge of shaping his or her own life, including dealings on the employment market. In the broad view, the new act grants employees the very same guarantees that they consider important in actuality – the sense of security that they will not run into trouble when making the switch to a new job, that enough companies are creating jobs with good earning potential, and that everyone can participate in training in order to be prepared for new challenges. A key change that is part of the new Employment Contracts Act is precisely the fact that the security paradigm will be transformed. Large redundancy payments will be replaced by generous unemployment insurance compensation and well-functioning assistance in finding a new job.

Employment and law

***Eiki Nestor**, Member of the Riigikogu, Estonian Social Democratic Party*

The biggest flaw with the draft new Employment Contracts Act which was introduced in January lies in that the employer and the employee were treated as equal, even though the employee is the weaker side of the relationship. The second significant flaw was the denial of social partnership in the preparation of the draft. In the end, this produced an unrealistic draft, harmful to the employee. The saddest thing about it is that a majority of employees in Estonia are incapable of claiming a remuneration which complies with their skills and knowledge on the Estonian labour market. The number of collective employment contracts (collective agreements) is extremely small. There are trade unions which are proficient in such agreements, and others who would like to be, but are incapable of forcing or convincing the employees. There are also certain branches of production with no unions of employers or employees. The result is that, at best, we are currently able to modernise the labour regulations, but improvement of the flexibility will not prove possible until the employees and employers learn to reach agreements within their employment relationship.

Employment Contracts Act: employer wins, employee loses

***Marika Tuus**, Member of the Riigikogu's social committee, Estonian Centre Party*

The draft employment act prepared in January favoured the employer but was insulting and shocking to employees. What astonished this writer above all was the oral employment contract codified in the draft act – and the employee's right to change such a contract unilaterally with no written form, with only five days given to the employee to mount a challenge – along with some other provisions of the draft. If you compare the draft legal act introduced in January with today's version, a smidgen of improvement has taken place, but compared to the law currently on the books, employees' social rights are significantly decreased. The writer was amazed at why, after two and one half months of negotiations between employers, the government and the trade unions, the unions agreed to unbelievably little. Especially given the fact that, on top of everything else, they want to make it easier

to get rid of employee's representatives – trade union leader or shop steward. So there is thus no hope that more collective agreements will be signed in Estonia in the future. Yet at the same time, the ILO has criticized Estonia for a low level of in-company dialogue and the fact that we are lagging behind in terms of the signing of collective agreements. The writer believes that when the new draft law enters into force, the process will slow down even more.

The Law Enforcement Act

Problems with the draft Law Enforcement Act

Väino Linde, *Chairman of the Riigikogu Constitutional Committee, Estonian Reform Party*

The Riigikogu constitutional committee is of the position that a number of the provisions of the draft Law Enforcement Act, which has passed the first reading in parliament, are in serious conflict with the Constitution of the Republic of Estonia and require correction in the course of further proceedings. Were this draft act to be adopted in its present form, the existing system of public law and logic of legislation in Estonia would change significantly. In effect, the plan is to lay the foundation for new system of law-enforcement-related law, which in the draft act itself is defined so broadly as to encompass a majority of current public law. At the same time, drafters have not to this point been able to explain what exactly occasioned this fundamental change. The draft legislation talks little about the function of the state in honouring the principles of human dignity when it comes to safeguarding the public order, yet at the same time law enforcement bodies are granted the right to violate the constitutional rights of individuals in a relatively arbitrary fashion. A state governed by the rule of law cannot be characterized by a situation where the fundamental rights of individuals can be restricted on the basis of subjective assessments with the level of intensity that is currently the intent of the draft Law Enforcement Act. Neither is the constitutional committee satisfied with the fact that the draft Law Enforcement Act lacks an implementing act. Without an implementing act it is in fact not clear to anyone to what extent other legislative acts interrelated with the draft Law Enforcement Act will remain in force, and the Riigikogu thus lacks the necessary clarity as to what powers are actually to be given to the executive branch by adopting this given act and how extensive those powers will be.

Do we need the Law Enforcement Act?

Ain Seppik*, Member of the Riigikogu's legal committee, Estonian Centre Party*

The writer argues that the draft Law Enforcement Act being read in the Riigikogu contains a series of reforms and necessary standards and that the drafting of the act represents an immense amount of work with regard to amassing, cataloguing and codifying Estonia's experience in this field. At the same time, one is perforce left with the impression that, just as in the case of many other draft legal acts submitted to the legal committee, the draft Law Enforcement Act is guilty of trying to regulate everything at the same time. Due to this fact, it has become evident upon closer reading of the draft legislation that such a wide range of topics has exceeded the capacity of the authors of the bill. Many clauses have been developed superficially, which has resulted in need for endless revisions and corrections to the draft legislation. This has raised the justified question of whether the government, as the initiator of the bill, should review its work, which is now been changed beyond recognition, and take a position with regard to the new norms. On top of it all, a number of the provisions of the draft legislation are extremely questionable from the point of view of their constitutionality. A piece of draft legislation that is in clear contradiction to the Constitution may not be adopted by the Riigikogu even under the influence of political will and decision.

Human development report

The Estonian human development report: prospects for trialogue between scientists, political decision-makers and media

***Ülo Kaevats**, Professor of Philosophy, Tallinn University of Technology*

The Estonian Human Development Report 2007, which has become a kind of a yearbook for Estonian social scientists, is the second report published by the Estonian Cooperation Assembly. The previous publication – the Estonian Human Development Report – was issued when the publisher still operated under the name of the Public Understanding Foundation. A total of 9 human development reports were issued between 1995 and 2003. With the last two HDRs, similarly to earlier ones, scientists have made a dignified, solid, and utterly reliable contribution to the public dialogue – even a trialogue, if we consider the media – between scientists and political decision-makers. Even though each report separately is a partial representation of the society, due to its inevitable thematic, volume and time restrictions, the succession of reports has given us a kind of an academic view and overview of the Estonian society in 1995–2007 (with gaps in 2003–2005, but these too have been described in later reports). The author hopes that the scientists' offering will become a permanent and substantial part of the trialogue. As hope alone could prove insufficient, the author advises the Estonian Cooperation Foundation to initiate a seminar series to introduce the Estonian human development reports as study material. For this purpose, the reports must be made easily available. The author also advises to conclude co-operation agreements with media publications in order to institute permanent category headings for responsible discussion over Estonia's future.

CONSTITUTIONAL INSTITUTIONS

The Lisbon Agreement: superficially reform of the existing situation, but in essence the Constitution?

***Julia Laffranque**, President, Estonian Association for European Law; Associate Professor, University of Tartu*

The Lisbon Agreement signed in Lisbon on 13 December 2007 does not represent a new Treaty Establishing a Constitution for Europe – at least not in the formal sense. This agreement only changes, and does not supersede, the current European basic agreements, but on the other hand, the changes are in essence similar to those which would have resulted if the European Constitution had entered into force. For this reason, most EU member states chose to ratify the Lisbon agreement in their parliaments – a hallmark of foreign treaties. For the Estonian parliament, this situation brings up the question of whether the draft legal act for the ratification of the agreement –or more precisely the Lisbon agreement itself, which is attached to the draft act – requires additional analysis before approval or whether the 2005 positions of the constitutional law working group for the Treaty establishing a Constitution for Europe (formed by the Riigikogu's constitutional committee) are applicable with regard to the Lisbon Agreement? The writer believes that the parts of the Lisbon agreement that differ from the primary law valid in the European Union should be reviewed, because the valid law in the sense of "agreements that must be kept" (*pacta sunt servanda*)is already encoded into the Estonian rule of law by an act supplementing the Constitution. Thus the legal assessment must treat the provisions of the Lisbon Agreement that differ from both valid legislation as well from the treaty establishing a Constitution for Europe. There should not be too many norms which establish completely new law. One possible list of such provisions is provided by Annex 5 to the explanatory memorandum developed by the government to the draft legal act ratifying the Lisbon Agreement, which specifies the major amendments to the Lisbon Agreement compared to the Treaty establishing a Constitution for Europe. A legal analysis must undoubtedly be made before the Riigikogu ratifies the Lisbon agreement. The adopting of more thorough positions in the matter of how the Estonian Constitution and the act supplementing the constitution would function in a changed European Union would remain for future expert opinions to resolve.

The role of the Chancellor of Justice in defending the Constitution

***Allar Jõks**, Advisor under a UN mandate to the office of Ombudsman of Georgia*

The model of the Estonian Chancellor of Justice is unique. No other country combines the function of constitutional supervision and ombudsman. In this article, the writer shares some of his ideas from his seven years in the post of Chancellor of Justice regarding the role of the Chancellor of Justice qua constitutional institution, focusing on the aspect of the activity of the Legal Chancellor pertaining to constitutional supervision. Among other issues, the article touches on the question of how active the Chancellor of Justice should be allowed to be. Insofar as the power of the Riigikogu cannot be absolute, someone must make sure that a parliamentary majority does not abuse its majority over a minority. The smaller the number of people who hold majority power, the more dangerous it is to the constitutional rule of law. If a democratic system functions impeccably, lawyers ordinarily have no need to start "prodding" at it from the side. Estonia's political culture, partly due to its young age, has too much wheeling and dealing and is too clannish, and there is the illusion of the omnipotence of the political agreement. For this reason, both the Supreme Court and the Chancellor of Justice must interpret the Constitution and legislation, and shape practices, in a manner that ensures the best possible protection of fundamental rights and liberties and the basic principles of the Constitution.

STUDIES AND OPINIONS

Work methods of courts

Modern working methods used by constitutional courts in conditions where Continental legal culture meets common law approach

***Raul Narits**, Professor of Comparative Jurisprudence, University of Tartu*

Instead of viewing the modern state and the constitutional state from an abstract point of view, the writer grounds his approach in legal dogmatics and legal principles.
It can be assumed that the use of both principles of law and legal dogmatics includes a certain legal policy component. It is natural that this process will thrive, because courts, like any other governmental power centres, tend to take on more powers and tasks rather than give them away. In some ways this also concerns constitutional jurisprudence. Its task is not stop or reverse that process, but the process must change constitutional jurisprudence. It is also clear that it is more and more difficult to rationally mould and organize contemporary legislation and even more so constitutional review by means of dogmatic theories. In legal policy dispute it is correspondingly more and more difficult to forecast constitutional court judgments by the means of merely traditional legal rules. What position should constitutional judges take in that situation? They should probably engage actively in critical discourse with colleagues and also the public. Discourse with other colleagues in the same profession (the so-called judge dialogue) is especially needed. It should be noted here that in jurisprudence the most important cognitive method is free discourse, which draws inspiration namely from the practice of law, and especially from administration of justice. Yet, sitting judges are required to distance themselves from the current political debate. This is primarily necessary for the protection of the profession of judge as politically neutral.
In encouragement of constitutional courts it should also be said that also many legal scholars do not have the patience to wait for legislators to come up with solutions, and they see jurisprudence as a value-adding science, while remaining aware that rational legal policy has several obstacles and hindrances.

Economy

Estonian economic situation and prospects for development

***Urmas Varblane,**Professor of International Business, University of Tartu*

On the order of the Estonian Development Fund, a work group set up at the Faculty of Economics and Business Administration in the second half of 2007 investigated the international competitiveness of the Estonian economy and the prospects for its development in a longer, 5-10-year perspective. The Estonian economy has done superbly so far. Our success is the result of the macroeconomic reforms of the 1990s, which facilitated quick restructuring and allowed to exploit our cost advantage. More particularly, the current success is built on the cost-advantage-based foreign economic competitiveness and a huge increase in domestic demand, supported by the quick increase in private loan volumes. The loan-based demand, however, created wage increase pressure, conditioning a rapid increase in personnel expenses. Since the beginning of 2006, the gap between the wages paid and the labour productivity has rapidly widened. The record growth in wages is not sustainable from the point of view of corporate competitiveness. The new economic growth cycle should be based on the concept that, due to the limited domestic market of a small country such as Estonia, economic growth must be built on successful sales in the global market. Implementation of the concept requires changes in corporate behaviour as well as in the state innovation system.

Globalisation, delocalisation and attempts of controlling the process

Alari Purju, *Director of the Institute of Social Sciences, Estonian Business School*

This article, which uses the "Relocation of production in labour-demanding branches of industry" survey conducted within the framework of the EU Framework Programme VI as a source, reflects on the factors which guide international companies in the globalisation process with respect to activities based predominantly on private property and profit-seeking. The main consequence of globalisation is that regions, processes and people located far apart become mutually dependent on each other. The currently unanswered question is – do the global processes, including industrial delocalisation, condition the need for a stronger international government? Solutions to problems are, above all, sought through international organisations, even though several of them have, for a longer period of time, been facing serious problems themselves. One of the reasons behind complications is undoubtedly the nations' interests represented in such organisations – interests which often contradict and may be intertwined with industrial interest. The possibility of effecting the related regulations also proves to be a bottleneck in international organisations. At the same time, significant results have been achieved through negotiations and co-ordinations over the years.

Medium to long-term development scenario for the Estonian economy

Janno Reiljan*, Professor of International Economics, University of Tartu*

The purpose of this article is to pinpoint the central problems faced by the Estonian economy in the medium to long perspective.Since 1999, Estonian companies and the government have considered it their primary goal to reduce public sector expenses as a proportion of the gross domestic output. Due to this attitude, the public sector has not been given an active role in increasing the competitiveness of the economy – either that, or development plans that have been compiled have been left unimplemented due to lack of financial coverage. The position of the public sector in the development of the Estonian economy – both to this point and as planned for the medium to long term – can be described as a monitoring scenario. The factors of extensive development that have been responsible for economic growth to this point are beginning to run dry, and the low cost of labour, the primary component of competitiveness, is starting to fade. The economy must inevitably adjust to the new circumstances.
Estonian economic development crisis scenarios on one hand and the scenarios of inducing a positive shift in the economy's competitiveness on the other hand might persuade representatives of Estonian misgovernment and business community of the need for a radical change in the role of the public sector. Naturally, the actual development itself has much greater persuasive power than any scenario. Unfortunately the only thing that comes of their own accord are, for the most part, crises; and learning from crises is costly, both in economic and social terms. To achieve a positive development shift, there

will be a need to work in concerted manner toward specific goals and to provide the necessary resources for this work.

Public procurements

Priorities of environment-friendly public procurements and options for regulative management

***Aare Kasemets**, Vice-Principal of University of Tartu EuroCollege*

The article focuses on the measures for implementation of the EU directives 2004/17EC and 2004/18/EC, the Public Procurement Act of the Republic of Estonia and the Estonian environment-friendly and sustainable public procurement priorities 2007-2009, the implementation of which requires that the state and local government authorities have interdisciplinary knowledge of sustainable consumption, production and public procurement options as well as leadership capability. The article aims at giving an overview of the directions of regulative management of environment-friendly public procurements in the European Union and Green-7 member states, as well as analysing the main problems and political choices in Estonia.
Environment-friendly public procurement became a matter of Estonian domestic policy and foreign policy when Estonia regained its independence. The first step was to join the resolution of the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). This involved making an agreement to consider environmental concerns in public procurements. However, for various reasons, it was not until 2004 that the matter re-emerged in the government in connection with Estonia's accession to the European Union. In the EU, the topic of environment-friendly public procurements is integrated in economic, social and environmental policy, including the Lisbon Strategy and the European Sustainable Development Strategy.
As co-author of the national priority and activity plan (2005-07), the author of the article is convinced that environment-friendly (i.e. green, sustainable) public procurement regulations are (or could serve as) an effective tool for protecting people's health and living environment, pursuing a sustainable policy and cutting state budget expenses. The author emphasises that consideration of the environment and health information required for implementation of the Public Procurement Act is associated with ethical, scientific, educational, political, economic, environmental, administrative and state budgetary concerns which require the corresponding competence.
In Estonia, implementation of the Public Procurement Act is co-ordinated by the Ministry of Finance, supported in the environment-friendly public procurement measures (including environment indicators of 10 product teams, procurement instructions, training, web, etc) by the Ministry of the Environment.

The need for public procurement-related training

***Jarlo Dorbek**, Public Procurement Specialist, Legal Division of the Ministry of Justice*

According to several institutions, the public procurement area has quite a few problems. The author used a questionnaire to ascertain how the officials of the corresponding area in state authorities and local government authorities are satisfied with public procurement-related training. Investment in the training of public procurement organisers is especially important, if we consider that the expenses incurred through these officials make up 30% of the state budget. The survey reveals quite some dissatisfaction with the training. Training sessions are mainly organised in the form of shared training, while the trainees wish to participate in differentiated training and replace theoretical training with more practical training. Trainees are also dissatisfied with the public procurement-related study materials and guidelines, as these contain no examples or sample documents. To remedy the situation, we must start organising public procurement training in accordance with the systematic training principles (map the needs, organise training on the basis of these needs, and evaluate the results) and co-ordinating the training activity on the state level. We must focus on practical tasks and involve practicians as trainers. We should also consider preparing sample public procurement documentation.

The resources invested in public procurement-related training are several times smaller than the damage caused by incompetent public procurement organisers.

Labour Law

Estonian employment regulations need to be renewed

***Merle Muda**, Associate Professor of Labour and Social Welfare Law, University of Tartu*

A new draft Employment Contracts Act has been prepared in Estonia. In the opinion of the author of this article, its biggest advantage lies in a comprehensive approach to regulation of individual employment relationships, as well as the aim of making employment relations flexible. The concept of the draft is built around the safe flexibility principle which is gaining popularity in the European Union. This means that the regulation of employment relationships must allow the parties to shape their employment relationship, considering the needs and interests of the contractual parties in the best possible way, making it easier for the employer to hire and dismiss employees while providing the necessary guarantees to the employee. A task of such magnitude is a true challenge for any EU member state. Finding a compromise where the employer would be able to flexibly amend the employment conditions in accordance with the economic and competitive situation is beyond complicated, if not completely impossible. Therefore, the objective established with the draft could be considered quite ambitious, making Estonia a pioneer in the field, if achieved. So far, European countries have failed to implement the safe flexibility principle for the entire employment relationship system, except for Denmark and the Netherlands where this approach was initiated in the first place. Reforms only affect certain single concerns, and the discussion of the concept of safe flexibility and its positive and negative consequences continues.

Preventive management

Preventive management as the future model

***Madis Ernits**, DeputyChancellor of Justice-Adviser*

Encounters between citizens and the police mostly revolve around punishment for misdemeanours. Entry into force of the draft Law Enforcement Act currently proceeded by the Riigikogu would significantly change the Estonian public law system. It would create the foundations for a new mindset, transforming the image of the state and the police from that of a punisher and parking ticket issuer to aid and protector of citizens. The society is in dire need of a new outlook — the shortcut to punishment for misdemeanours is no longer fitting for the present-day world. For the police, the new law would make life more complicated. Prior to implementing any measure, a police officer would need to evaluate the potential damage, its probability, and implement the principle of proportionality, with all of these steps retaining verifiability in court. The life of judges, too, would be rendered more complicated. In order not to make things too complicated for everyone, an adequate implementation period should be introduced. In a state based on the rule of law, establishment of verifiable criteria for police evaluation of administrative proceeding under substantive law is inevitable.

Local governments

Options for multi-level government in the legal organisation of the Estonian local government

***Leif Kalev**, Director of the Institute of Political Science and Public Administration, Tallinn University, Associate Professor of State Theory and State Law*

The structure of the Estonian local government is kept as simple as possible: municipality and city, with municipality district and city district on the lower level. The diversity options stipulated in the Constitution have, for the most part, been ignored. This structure, which is more fitting for the post-

Soviet transition period, no longer provides any potential for development. Unfortunately, the local government reform developed by the central government as a solution in 2001 fell flat for political reasons. Local government matters have been avoided in public policy ever since, with sluggish implementation of the reform plan supported through voluntary mergers of local governments. Problems in the core of the local government reform have not, however, disappeared — they have grown. In the author's opinion, the use of multi-level government-type solutions would be the most refreshing solution for the local government system. Changes would only be introduced in a way which would not damage the capacity of local government units. The process could be started with tested models on the voluntary co-operation level, moving on to more innovative solutions thereafter.

Problems related to local government audit, supervision and inspection in Estonia

***Raivo Linnas**, PhD candidate in public administration, Tallinn University of Technology*

In many cases, local governments have not been able to act according to the needs and interests of municipal residents and in adherence to the principles of local government. This is an indication of problems in the system for audit supervision and inspection of municipal government units. The writer articulates fundamental principles for developing operable solutions for studying the system of audit supervision and inspection of municipal government units. These principles could serve as philosophical tenets based on which a scientific investigation of the system could be planned and carried out, and well-developed solutions suitable and practical for the actual environment could be found. No system can be perfect and perpetually reliable. A system will not result in security if even one subsystem does not ensure security. Complete reliability cannot be achieved in the case of societal systems even if the system is integral and working. In the case of treating and creating a system of municipal government audit supervision and inspection, it is likewise not possible to count on anything else but the possibility to reduce the level of risk.
It remains to be hoped that politicians and state and municipal officials will start directing more attention to the audit supervision and inspection of municipal governments and that they will find a solution that ensures an equilibrium between internal and external audit, supervision and inspection, and reasonable proportions of audit, supervision and inspection.

Communication

Co-operation of government agencies and their associated groups in the field of legislation

***Kati Varblane**, Master of Public Relations*

The main empirical goal of the article is to explain how communication of government authorities and their associated groups in draft legal act preparation affects legislative process before the draft act reaches the Parliament, and achievement of the legitimacy of the draft act. The article reflects on the results of the social and labour survey which was conducted by the author in 2006–2007 and which analysed two draft legal acts of the Ministry of Social Affairs. The survey revealed that the associated groups in the social and labour area have great interest both in the information provided by the Ministry of Social Affairs and participation in the legislative process. Above all, these groups want to be kept informed of the draft legal acts. There is a somewhat smaller, but equally prevalent desire to contribute to the draft preparation process. As the associated groups' awareness of the draft legal acts was mediocre rather than good, the ministry should pay more attention to educating these groups in order to enhance efficiency. Another problem lies in the fact that officials tend to hold negotiations with associated groups from an authority position. This reduces the officials' openness to new ideas, and inhibits any dialogue between the parties.

Foreign policy

The measurability problem in foreign policy decision-making models

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Foreign policy theory describes and explains the foreign-policy decision-making process – how decisions are reached and carried out. Decision-making mechanisms are ordinarily depicted and analyzed with the help of a rational and bureaucratic model. These are two parallel intellectual methods of approach, which, just like the sides of the same coin, do not exclude each other, as most foreign-policy decision-making processes can be explained simultaneously from both sides. The models provide a good overview of the adoption of foreign policy decisions and enable us to better understand what is going on in international relations. Could the models have another purpose besides their descriptive value; for example, could they be used to derive formulas and schemes for developing a more efficient decision-making system? For this purpose we would need to have a knowledge of the models and assign quantitative value to variables which could in turn allow us to make comparative analyses regarding the foreign policy of states. It is here that we collide with a difficulty that is a general characteristic of foreign-policy theory, namely the measurability problem, which impedes operationalization. Operationalization is the bridge between theory and observation. It is a process in the course of which we find suitable measurable observable indicators for abstract terms.
Even though most of the variables in both the rational and the bureaucratic model are quantifiable, we cannot in this manner give the theory noteworthy value added. For one thing, the operationalization of variables involves conditions that would make the conceptual level much more complicated, without increasing the trustworthiness and applicability of the theory, yet simultaneously decreasing its descriptive value. Secondly, both the rational and bureaucratic model contain nuances that cannot be translated into the language of numbers; taking these nuances into account however depends largely on the subjective opinions of the researcher.
On the basis of the above discussion, it can be asserted that the operationalization of the bureaucratic and rational models of the decision-making process is not expedient, although it may be possible on certain conditions. The theory would lose more in terms of practical value than it would gain.

CIVIC SOCIETY AND STATE AUTHORITY

Animal protection

Estonian Society for the Protection of Animals as protector of the weak

Helen Roosimägi*, Member of the Management Board of the Estonian Society for the Protection of Animals*

Animal protectors who have joined the voluntary Estonian Society for the Protection of Animals worry not only about pets but the welfare of all animals, including wild animals and farm animals. For instance, people have been informed of the condition of hens kept in cages, and advised us to purchase the eggs of hens kept in the open. The Society has made public several cases involving cruelty towards farm animals. Animal protectors consider the biggest animal protection problem to lie in the fragmentation of the particular area between a large number of authorities and agencies, starting with state authorities and inspectorates and ending with local governments. The Estonian Society for the Protection of Animals has therefore proposed to establish a single national animal protection board to handle animal protection and animal welfare issues.

HISTORY OF THE PARLIAMENT AND INTERNATIONAL RELATIONS

Tibet

Tibet's glorious past and fragile present

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Although only a few westerners truly explore the depths of the Tibetan culture, its effect on western thinking is remarkable. Another topic which attracts attention is the country's political fate. Whether the holding of the Olympic Games 2008 in Beijing can be considered immoral in the context of the Tibetan situation, or whether it can be used as a clever way of drawing wider attention to the human rights issues in China, is a topic of endless discussion. On the one hand, China has failed to change its pattern of behaviour despite international pressure, unless we want to be cynical and consider the change of victim numbers from thousands to "mere" dozens or hundreds to be a success. The fact that monks are severely punished for mere possession of an image of Dalai Lama speaks for itself. On the other hand, the attention drawn to Tibet should not be underestimated. Although the People's Republic of China has counted on the Olympic Games as a means of successful self-promotion, the attention drawn to Tibet and the human rights shows that the modern world will not be fooled by propaganda.

LITERATURE AND DATABASES

Writings by members of the Riigikogu in nationwide and local newspapers

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The writer of this article was responsible for shaping the content of the newspaper *Postimees* for many long years. Her current position as information specialist with the Estonian National Library allows her to view the process from the other side – compiling bibliographies of articles and helping library users find the information they need on particular topics. A function of journalism is to disseminate the positions of representatives of the supreme legislative branch to the public, as the decisions adopted in parliament determine the framework for life in society – a framework in which people operate on a daily basis. However, the publication of opinions of members of parliament cannot be the goal in and of itself. The opinions must be relevant to the reader, give an exhaustive answer to the burning questions of the day, shed light on the background for decisions, and offer a solution to problems. In 2007, according to data from the Estonian National Library, members of the Riigikogu were credited with a total of 2,906 published pieces. These, among other genres, included articles by, interviews and Q&As with, and short opinion pieces by current and former members. Analysis of articles and interviews published in county newspapers leads us to state that on one hand members of the Riigikogu consider county newspapers an important channel through which they can communicate their (and their party's) ideas to readers. On the other hand, there is a sense of them making concessions regarding quality – compared to writings in papers with a national circulation, articles in county newspapers display a more sloganeering trend.