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## Legal Reform in Estonia

PRIIDU PÄRNA\*

Estonia restored its independence in 1991 following the unsuccessful coup attempt for in Moscow. Within six months, the Constitutional Assembly created a draft of a new constitution based on Estonia's constitution of 1938. Estonia's subsequent legal reforms have been based on the *Constitution* adopted in 1992 reinstating a parliamentary democracy founded on legal continuity.<sup>1</sup> Supreme power is vested in the people, and this power is exercised through a single chamber parliament.

One major issue for the newly independent Estonia was how to decide to what extent the legislation adopted during the Soviet occupation would remain in force in the new republic for the sake of continuity. The *Constitution Implementation Act* established that the legislation that was in force during the Soviet occupation would continue to be valid in so far as such legislation was not in conflict with the new Constitution, and until new laws were adopted in place of the old Soviet-era laws.<sup>2</sup> Any dispute on the issue of the conformity of legislation with the Constitution was to be adjudicated by the Supreme Court. Thus, the Parliament's first task was to adopt legislation in accordance with the Constitution that would provide the

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<sup>1</sup> Eesti Vabariigi põhiseadus (The Constitution of the Republic of Estonia), in Riigi Teataja (State Gazette, hereinafter RT) 1992, 26,349 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000&keel=en&pg=1&ptyyp=A&tyyp=X&query=01>

<sup>2</sup> Eesti Vabariigi põhiseaduse rakendamise seadus (The Constitution of the Republic of Estonia Implementation Act), in RT 1992, 26, 350 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0003&keel=en&pg=1&ptyyp=A&tyyp=X&query=01>

foundation for the functioning of state bodies, citizenship policy and the exercise of suffrage.

In the autumn of 1992, parliament adopted a resolution on consistency of legislative drafting.<sup>3</sup> According to this resolution, legislation must be drafted based on the laws which were in force before the Soviet occupation, that is, in 1940. With this resolution, parliament made an important legal policy choice regarding legal reform. Before World War II, the Estonian legal system belonged to the Central European legal family, and was most influenced by Czarist Russian and Germanic law. The post-Soviet Ministry of Justice proceeded to organise legal reform following these examples. The Ministry relied heavily on the state's only university – the University of Tartu (1632) Faculty of Law, but it also relied on the assistance and examples of other European countries.

Besides setting the state apparatus in motion, the greatest priority in the reform process was to provide legal basis for economic reforms. At the beginning of the 1990s, on the grounds of ownership reform laws, the state began to return immovable property to its rightful owners, privatise state property and set the stage for free enterprise. The land hitherto owned by the state came to civil use. This required the rapid reform of private property law. In 1992, in the interest of speed, a decision was made to pass the new civil code one part at a time, and the *Law of Property Act* entered into force in 1993.<sup>4</sup> This act made it possible to transfer immovable property and to secure loans. Land registers were introduced in the courts, and independent notaries' offices began to operate.

In subsequent years the new *Family Law Act*, *Succession Act*,<sup>5</sup> and laws to regulate intellectual property were adopted. Civil law reform was for the most part completed with the entry into force of the *Law of Obligations*

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<sup>3</sup> Riigikogu otsus seadusloome järjepidevusest (Decision of the Riigikogu on the consistency of legislative drafting), in RT 1992, 52, 651 (in Estonian).

<sup>4</sup> Asjaõigusseadus (Law of Property Act), in RT I 1993, 39, 590 (in Estonian). English version available: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0004K7&keel=en&pg=1&ptyyp=A&tyyp=X&query=08>

<sup>5</sup> Family Law Act: Perekonnaseadus (Family Law Act), in RT I 1994, 75, 1326 (in Estonian). English version available: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1017K6&keel=en&pg=1&ptyyp=A&tyyp=X&query=10>. Succession Act: Pärimisseadus (Law of Succession Act), in RT I 1996, 38, 752 (in Estonian). English version available: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1001K3&keel=en&pg=2&ptyyp=A&tyyp=X&query=08>

*Act* in 2002<sup>6</sup>. The *Law of Obligations Act* organised the system of contractual and non-contractual obligations. The entry into force of the *Commercial Code* in 1995, the introduction of the commercial register within the court system and the establishment of a simple tax system were crucial in shaping the business environment.<sup>7</sup> Currently, the parliament's priorities include updating civil and execution procedures to increase the speed with which a person's rights can be defended. Future plans include the codification of civil law.

The rapid reform of private property law is widely regarded as one of the grounds of Estonia's economic success. New legal guarantees forged the way for investment. Of equal importance was the fact that the European Union requirements were incorporated into all draft legislation. No attempt was made to create a unique private property law system, rather lawmakers set modern rules that reflected European attitudes and were comprehensible to investors. Excessive regulation has been avoided, and Estonia's rank in the Index of Economic Freedom (4<sup>th</sup> place in 2005) reflects it very well.<sup>8</sup> In addition to the EU rules, private law has been most influenced by the Germanic law.

At the same time as private property law was being modernised, preparations were being made for the reform of penal law. Soviet penal law was very repressive, state-centred and ignored human rights. Immediately after the restoration of Estonian independence, some quick amendments were made to the Soviet era laws, but fundamental reform had to wait until the turn of the century. As one of the more immediate steps, the Prosecutor's Office was transferred out of parliamentary control and given the status of a governmental authority, and penal institutions were placed under the authority of the Ministry of Justice.

In 1998, the criminal probation system was introduced throughout the court system. There were three key legislative enactments that formed the basis of Estonia's new penal law:

1. The *Imprisonment Act*, entered into force in 2000.<sup>9</sup>

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<sup>6</sup> Võlaõigusseadus (Law of Obligations Act), in RT I 2001, 81, 487 (in Estonian). English version available: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&keel=en&pg=3&ptyyp=A&tyyp=X&query=08>

<sup>7</sup> Äriseadustik (Commercial Code), in RT I 1995, 26/28, 355 (in Estonian). English version available: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&keel=en&pg=3&ptyyp=A&tyyp=X&query=08>

<sup>8</sup> Marc A. Miles, Edwin J. Feulner and Mary Anastasia O'Grady, *2005 Index of Economic Freedom* (Washington: The Heritage Foundation/Wall Street Journal, 2005). Available online: <http://www.heritage.org/research/features/index/index.cfm>.

<sup>9</sup> Vangistusseadus (Imprisonment Act), in RT I 2000, 58, 376 (in Estonian). English version available:

2. The *Penal Code* entered into force in 2002.<sup>10</sup>
3. The *Code of Criminal Procedure*, which took effect in 2004.<sup>11</sup>

The goals of penal law reform have been to protect human rights, expand the role of the prosecutor, provide more comprehensive procedural options with the introduction of simplified proceedings, enact a wide range of alternatives to imprisonment, and establish criminal liability for legal persons. Penal law reform has been most influenced by German and French law, as well as by Italian law with regard to procedure.

As the third main area of reform, the modernisation of administrative law began in the second half of the 1990s. Administrative law is the vast area of law that regulates the use of the environment, restrictions on economic activities, and a host of other activities. The biggest challenge to overcome when dealing with administrative law was the lack of clear general provisions to support the numerous specific laws that had been passed. As a result, these laws were often contradictory, duplicated one another or provided too many possible solutions to a single problem. In establishing the general provisions of administrative law, a good cooperative relationship was forged with German and Dutch legal scholars who had modernised their own administrative laws. Since 2001, the *Administrative Procedure Act*, *Substitutive Enforcement and Penalty Payment Act*, and *State Liability Act* have all been adopted.<sup>12</sup> In addition to reorganising the work of the

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<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30079K4&keel=en&pg=1&ptyyp=AT&tyyp=X&query=02>

<sup>10</sup> Karistusseadustik (Penal Code), in RT I 2001, 61, 364 (in Estonian).

English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30068K5&keel=en&pg=1&ptyyp=A&tyyp=X&query=12>

<sup>11</sup> Kriminaalmenetluse seadustik (Code of Criminal Procedure), in RT I 2003, 27, 166 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60027K3&keel=en&pg=1&ptyyp=A&tyyp=X&query=13>

<sup>12</sup> *Administrative Procedure Act*: Haldusmenetluse seadus (Administrative Procedure Act), in RT I 2001, 58, 354 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40071K3&keel=en&pg=1&ptyyp=AT&tyyp=X&query=02>

*Substitutive Enforcement and Penalty Payment Act*: Asendustäitmise ja sunniraha seadus (Substitutive Enforcement and Penalty Payment Act), in RT I 2001, 50, 283 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40074K1&keel=en&pg=1&ptyyp=AT&tyyp=X&query=02>

*State Liability Act*: Riigivastutuse seadus (State Liability Act), in RT I 2001, 47, 260 (in Estonian). English version available:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40075K2&keel=en&pg=1&ptyyp=AT&tyyp=X&query=01>

administrative courts, the institution of the independent Ombudsman was introduced in 1999. The Independent Ombudsman is the individual to whom the citizens can turn to in case of arbitrary actions of public institutions. Currently, work continues on draft legislation to readjust the public service and state administration.

Estonia has been the member of the EU since May 1, 2004. In the mid-1990s, due consideration of the requirements of EU legislation became an integral part of the legislative drafting process. The volume of the European legislation to be harmonised exceeded 80,000 pages. Two processes were thus merged: the creation of new Estonian legislation and its harmonisation with European Union law. This has resulted in a modern legal system that is fully in line with European standards. Estonia has had the opportunity to learn from the experience of others and to use best practices. Her goal has been to create a simple legal system that is comprehensible to those outside, not to create unique or cryptic law. The latter would have been pointless, particularly as European law continues to become more and more unified.

Estonia's closest neighbours, as well as legal scholars from elsewhere in Europe and America, have been of great assistance in drafting and implementing Estonia's new legislation. The quality of legislative drafting has nonetheless suffered due to Estonia's rush to join the European Union, and by legislation being drafted following too many models. As a result, there are often gaps and contradictions in the laws. Additionally, the rules of legislative drafting have not always been faithfully followed by Estonia's legislators. Furthermore, the fact that many legislative drafters have been very young and without extensive experience has also left its mark. In application, the limited theoretical knowledge of the administrators or executors of legislation is also apparent. But looking towards the future, Estonia's goals are to maintain the stability of her legal system, to rein in the current rate of legislative amendments, and to focus on the codification and simplification of Estonia's laws.