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Relationship of the State and Political Parties in Estonia

1. Introduction

I consider the relationship of the state and political parties of Estonia by raising the question of what the role of the state is — and could be — in regulating and ensuring competition between political parties, such that power is exercised in the public interest and not in return for donations or any other grants a political party might receive.

When speaking of the state I refer to the system of state authorities as a whole, especially the legislative body and court system. According to the Estonian Political Parties Act[*1], a political party is a registered legal entity, a not-for-profit association that has at least one thousand members who are citizens of Estonia or any other Member State of the European Union with a right to vote. This is a legal definition. There is, of course, a wider definition under which it is possible to treat other unions oriented to executing political power (e.g., election coalitions of citizens) as political parties. That the concept of a political party and the state's activities is, in fact, formed by political parties both by making laws and by distributing the taxpayers' money while being the decision-makers on their own matters, among other things, is intriguing.

Political life in Estonia is led by political parties, which correspond to a strict legal concept and are represented in Parliament (the Riigikogu), and which have this right in front of other political parties and unions by advantages given in electoral laws, laws on political parties, the state budget, etc. The question is whether these privileges are justified. Is the political party landscape too closed, and should competition be activated? Perhaps it is the opposite: maybe the state should take additional steps to make the political party landscape more stable, strengthen political responsibility, and decrease the number of political parties. Should coalitions of citizens be represented in political life through political parties and by single court cases initiated in open proceedings? Has the concept of involvement lost all of its respectable content both for the state and for the citizens, and should involving norm-setters in setting the norms be strongly encouraged? What does public servants' political independence mean, and how should it be ensured in practice? How should financing of political parties by private sources be restricted, or should it even be completely prohibited? Should we aim to disclose lists of businessmen and lobbyists who are friends of political parties? Will the listing of income and expenses of political parties suffice? How can we find out who does favours for whom, and for what? Is journalism so independent that we can rely on it to reveal connections of business and politics? Is the border between decisions made in public interests and in private interests more easily detectable than the boundary between legal and ordinary politics? These are not the only questions that arise concerning the relationship of the state and political parties.

[1] Erakonnaseadus. – RT I 1994, 40, 654; 2007, 24, 126 (in Estonian).

2. Competition of political parties

Totally free competition of political parties would mean that establishment of political parties and obtaining of mandates in the representative body is, in a manner of speaking, artificially unrestricted by legal provisions: with no establishment restrictions, a threshold related to public support is not applied, establishment of factions in the representative body is not restricted, members of the parliament are not restricted from changing party affiliation, etc. In this scenario there are no measures implemented to ensure formal similarity of the prospect of being elected: each political party can nominate an unlimited number of candidates for elections, advertise freely, and so on. Unrestricted competition may result in a fragmented and unstable political party landscape and utter simplicity of evading accountability to election platforms and promises, or, in Estonian phrasing, insufficient political responsibility.

The following sections of the paper discuss the restrictions on free competition of political parties that are applicable in Estonia.

2.1. Requirement of 1000 members and publicising of membership

A political party is a not-for-profit association that is registered in a state register and has at least one thousand members who are citizens of Estonia or another Member State of the European Union and who do not belong to any other political parties registered in Estonia. Membership lists of political parties are made public on the Web site of the commercial register, at https://ar.eer.ee/erakonnad.py. This characteristic distinguishing them from 'ordinary' not-for-profit associations is prescribed by § 28 (1) 28 of the Public Information Act.*2

Both public and hidden election coalitions — the latter can be formed by allowing members of different parties to feature as candidates on one party's list — are prohibited in Riigikogu elections. In order to enforce this prohibition, the National Electoral Committee needs precise membership lists of political parties but not necessarily publicising of the membership lists. Publicising can be treated as a resource for checking the accuracy of the lists, but mandatory publishing of party membership lists can directly reduce the legitimacy of parties: the public nature of the information may inhibit people's willingness to join a certain party; moreover, there have been scandals concerning persons who have never joined a party and whose name nonetheless appeared on a party membership list.*3 The Web site of the commercial register has a search engine that enables easy determination of a person's membership in a political party.

On 10 July 2007, the information system of the commercial register showed the total number of people belonging to political parties as 51,012 and the number of people belonging to several parties being 483 (even though belonging to several political parties at once is, in fact, prohibited). By 1 November 2007, the number of people belonging to several political parties at the same time had fallen to 128 and the total number of members of parties had increased by 363. Thus, less than 6% of people with a right to vote belong to Estonian political parties.

Table 1. Political parties in Estonia.

Political party	Number of members (date)	Results of the election in 2007: Votes (%), Riigikogu mandates
Estonian People's Union (Eestimaa Rahvaliit)	10,005 (9.05.2007)	39,315 (7.1%), 6
Estonian Centre Party (Eesti Keskerakond)	9,998 (18.01.2007)	143,518 (26.1%), 29
Union of Pro Patria and Res Publica (Isamaa ja Res Publica Liit)	8,676 (30.05.2007)	98,347 (17.9%), 19
Estonian Reform Party (Eesti Reformierakond)	6,294 (1.10.2007)	153,044 (27.8%), 31
Social-democratic Party (Sotsiaaldemokraatlik Erakond)	3,262 (10.04.2007)	58,363 (10.6%), 10

[2] Avaliku teabe seadus. – RT I 2000, 92, 597; 2006, 58, 439 (in Estonian).

[3] See Ü. Madise. Interneti teel hääletamise õiguslikke ja poliitilisi aspekte (Legal and Political Aspects of Internet Voting). – Juridica 2006/10, pp. 663–672 (in Estonian).

Estonian Christian Democrats (Eesti Kristlikud Demokraadid)	2,117 (18.01.2007)	9,456 (1.7%), 0
Constitutional Party (Konstitutsioonierakond)	1,597 (18.01.2007)	5,464 (1%), 0
Farmers' Union (Põllumeeste Kogu)	1,434 (1.07.2007)	Did not participate
Estonian Green Party	1,379 (30.08.2007)	39,279 (7.1%), 6
Russian Solidarity Party (Vene Ühtsuspartei)	1,314 (1.01.2002)	Did not participate
Russian Party in Estonia (Vene Erakond Eestis)	1,189 (18.01.2007)	1,084 (0.2%), 0
Republican Party (Vabariiklik Partei)	1,058 (18.01.2007)	Did not participate
Estonian Independence Party (Eesti Iseseisvuspartei)	1,011 (1.10.2007)	1,273 (0.2%), 0
Estonian Left Party (Eesti Vasakpartei)	1,041 (18.01.2007)	607 (0.1%), 0
Democrats – Estonian Democratic Party (Eesti Demokraatlik Partei)	1,000 (18.01.2007)	Did not participate
Total	**51,375 (1.10.2007)**	

The requirement for one thousand members undoubtedly consolidates the party landscape by preventing the emergence of regional and other small parties. Yet it constitutes a considerable restriction to the freedom of establishment. The number of citizens entitled to vote is approximately 900,000 dispersed over a territory of 45,227 km^2. According to the data of the Ministry of Internal Affairs, there are 227 local government units in Estonia, 181 of which have fewer than 5000 inhabitants (119 of these with fewer than 2000 residents).

As can be seen from Table 1, there are 15 political parties in total in Estonia, most of which have only a thousand members. The number of members of larger parties is increasing, and the number of members of smaller parties decreasing.

We can state on the basis of experience that, despite the 1000-member requirement, establishment of new parties in Parliament has been successful. In 2007, 61.91% of citizens entitled to vote, which is 550,213 citizens in total, participated in the elections of the XI Riigikogu. The Riigikogu mandates were gained by the five political parties with the largest membership and the Green Party established prior to the elections. A totally new party — Res Publica — emerged in the Riigikogu elections in 2003, gaining 24.6% of the votes and 28 mandates in the subsequent elections. In comparison of election results, this gave them second place after the Centre Party, which received only a few more votes. The parties that participated in the elections but did not obtain representation in the Riigikogu also had poor results in the elections in 2003. Although most parties in Estonia do not have a permanent following and people change election preferences easily, election results show that people do not vote for an existing small party but vote for either a new party or another successful party.

2.2. Restrictions on submitting lists of candidates in electoral law

The Estonian proportional electoral system provides that mandates will be divided first divided among lists of candidates and thereafter among specific candidates. A five per cent threshold is applied. Not a single independent candidate has been successful in Riigikogu elections, and this prompts the important question of who may submit a list of candidates. Election lists for Riigikogu elections and the European Parliament elections can be submitted only by political parties. Standing with a common list of political parties, standing of a candidate of one party in the list of another party, and coalitions of citizens are not permitted in these elections.

The Local Government Council Election Act[*4] (LGCEA) as passed on 27 March 2002 and taking effect on 6 May 2002 reserved the right to submit lists of candidates to local government elections also only to political parties. The Chancellor of Justice disputed this act in the Supreme Court. Similarly to Riigikogu elections, local government elections use the proportional electoral system, which gives an advantage to candidates on election lists. Given the small populations of rural municipalities and towns, on one hand, and the strict terms for establishing political parties, on the other, it is not realistic to believe that existing parties can ensure fair representation of local communities in all local government units.[*5]

Another way to interpret the decision of the Supreme Court from 2002 is that the right to stand as a candidate is in keeping with the Constitution where there are enough organisations entitled to submit lists of candidates. These might be only political parties, but it is unjustified for local interests to be forced into a framework involving only one or two political parties. It is likely that the Riigikogu applied this interpretation, as the amendment act that was passed on 30 July 2002 and took effect on 7 August of that year permitted election coalitions again in the elections of 2002, but the LGCEA was supplemented with § 70[1], which states that the right to form election coalitions ends on 1 January 2005. Before the local government elections in 2005, the Chancellor of Justice disputed prohibition of election coalitions in the Supreme Court once again.

The experience from local government elections affirms the accuracy of the social-scientific reasoning of the Supreme Court. Not a single political party participated with its own lists in local government elections in 2005 in all towns and rural municipalities. Only four parties managed to submit their own list in more than a hundred local government units: the People's Union in 174, the Centre Party in 168, the Reform Party in 116, and Res Publica in 102 local government units. In eight rural municipalities there were no political parties participating; in some cases, an election coalition stood against one party and beat that party.[*6] In the court proceedings in 2005, the Chancellor of Justice submitted similar data for 2002: there were 14 local government units where none of the political parties submitted lists in 2002. In 46 local government units, only one party was represented. In the local government elections in 2002, the Estonian People's Union was represented with its own list in 159 local government units, the Estonian Centre Party in 157, and the Union for the Republic (Res Publica) in 117. Election lists of other political parties were represented in under 60 local government units.

In interpreting the data, it should be taken into account that permitting election coalitions could have changed the election strategies of political parties both in 2002 and in 2005. Nevertheless, it can be concluded that it would have been impossible to give the voters the possibility to choose between different lists without permitting election coalitions.

2.3. Restrictions on election advertising

Freedom of competition also gives the freedom to advertise oneself. The prohibition of outdoor advertising in electoral law extends to all persons, mostly to political parties and candidates. Prohibition of outdoor advertising was implemented with the Election Act Amendment Act passed in June 2005 and entering into force in July 2005 — thus a mere three months prior to local government council elections. As, in practice, advertising spaces are reserved in advance for a longer period, this might have been a violation of the legitimate expectations of political parties. Total prohibition of outdoor advertising during active campaigning (i.e., for more than a month before elections) may not be necessary for achieving the objective of the prohibition[*7] or less a violation of fundamental rights. This was also admitted by the Chancellor of Justice in his written report to the Riigikogu on 6 September 2005. The act in question was not sent forward for constitutional review proceedings.

Several legal disputes occurred, as the restrictions are provided for in a manner that can be interpreted in various ways[*8] and balancing on the borderline of the restriction is one of the advertising strategies. Most

4 Kohaliku omavalitsuse volikogu valimise seadus. – RT I 2002, 36, 220; 2007, 44, 316 (in Estonian).

5 Judgment of the Constitutional Review Chamber of the Supreme Court of 15 July 2002, 3-4-1-7-02, online at http://www.nc.ee/?id=428; Judgment of the General Assembly of the Supreme Court of 19 April 2005, 3-4-1-1-05, available at http://www.nc.ee/?id=391.

6 Data from the National Electoral Committee.

7 Draft Act No. 620 (Euroopa Parlamendi valimise seaduse, kohaliku omavalitsuse volikogu valimise seaduse ja Riigikogu valimise seaduse muutmise seadus (Act to Amend the European Parliament Election Act, Local Government Election Act, and Riigikogu Election Act)), X Riigikogu. See the principal progress of the draft act during readings and the explanatory memorandum enclosed with the original text. Available at http://web.riigikogu.ee/ems/saros-bin/mgetdoc?itemid=050950027&login=proov&password=&system=ems&server=ragne11 (in Estonian).

8 Section 6[1] of the Local Government Election Act sets forth the following: "Prohibition of political outdoor advertising. Advertising an independent candidate, a political party or a person standing as a candidate in the list of a political party, an election coalition or a person standing as a candidate in the list of an election coalition, or their logo or any other mark of identification or platform on a building, facility, public transport vehicle, or inside or outside part of a taxi and any other outdoor political advertising is prohibited during active campaigning."

well-known is the K-kohuke case[*9] (see judgment 3-4-1-27-05 of the Constitutional Review Chamber of the Supreme Court of 14.11.2005 and decisions 34 of 2.11.2005 and 39 of 18.11.2005 of the National Electoral Committee).[*10]

Prohibition of outdoor advertising without setting of a maximum limit for election campaign costs does not necessarily mean a decrease in amounts spent on advertising or a decrease in the scope of advertising. Eliminating one way of advertising leads to direction of costs to other advertising channels. Obligations to mediate election advertising set for public broadcasting and for private media should be reviewed separately. The Broadcasting Act[*11] provides that all political parties and political movements shall be granted transmission time to present their positions on balanced principles (§ 6^1, on political balance, states: "Upon granting transmission time to a political party or a political movement to present its positions, a broadcaster shall also provide an opportunity to grant transmission time in the same programme service for other political parties or movements without undue delay"). Grammatical interpretation of this norm leaves the obligations of a broadcaster unclear, although the objective of the provision is clear in its title.

However, the Estonian National Broadcasting Act[*12] specifies the principle of political balance in a wider sense. In addition to the requirement of political balance of programmes (above all, election programming) in § 6 (5), the act provides that a member of a management body of a political party registered in Estonia shall not be a member of the Management Board of the national broadcasting organisation, in its § 24 (4) 6). The requirements of the act are supplemented and specified by the principles of independence and balance of the programme of the National Broadcasting Company as approved by the Broadcasting Council.

Another restriction on creation of advertising strategies of political parties is the Personal Data Protection Act[*13], with, e.g., its restriction on access to the election lists.

2.4. Direct financing from the state budget

Enabling direct financing from the state budget for only those political parties represented in the parliament (the amount prescribed for other parties in § 12^5 (2) of the Political Parties Act is more of a formality: 1% of votes in Riigikogu elections gives an annual grant of 150,000 kroons and 4% of votes 250,000 kroons) can also be regarded as a restraint on fair competition, as it grants a distinct advantage to parties that are successful in Riigikogu elections. The question of when an allocation from the state budget encroaches on the uniformity of the right to stand as a candidate under the Constitution by virtue of size (see the total amount of allocations, in Table 2) has not yet been discussed in Estonia. We should take into account that allocations from the state budget are distributed according to Riigikogu mandates and not the number of votes (under § 12^5 (1) of the Political Parties Act) and that this transfers the amplification arising from the modified d'Hondt distribution method used in distributing compensation mandates (under § 62 (5) of the Riigikogu Election Act[*14]) to financing of political parties from the state budget.

As is commonly done in other countries, we should pay attention to indirect public financing in addition to direct financing from the state budget. Indirect public financing can take the form of the salaries paid to faction officials and advisers and to assistants of political officials, and opportunities to use office rooms and supplies. In practice, work tasks of political officials often involve work related directly to the political party and not to the institution paying the salary. Indirect public financing can have other forms as well. For instance, the Income Tax Act[*15] permits deducting donations and gifts that are given to a party and that can be certified from taxable income (§ 27 (1)). Subsection 10 (3) of the Local Tax Act[*16] exempts political parties, election coalitions, and independent candidates from local advertising tax.

[9] After outdoor advertising was prohibited before election, posters that had symbols, letters and colours very similar to the symbolism of a party participating in the election were exposed and the posters were instantly connected to the said party in the media.

[10] Decisions of the Supreme Court are translated into English and can be found on the website given in Note 5 above. As a rule, the judgments of the Electoral Committee are not translated into English, these are available only in Estonian.

[11] Ringhäälinguseadus. – RT I 1994, 42, 680; 2007, 10, 46 (in Estonian). Translation into English available at www.legaltext.ee. The translation does not include a few of the latest amendments.

[12] Eesti Rahvusringhäälingu seadus. – RT I 2007, 10, 46 (in Estonian). Translation into English available at www.legaltext.ee.

[13] Isikuandmete kaitse seadus. – RT 2003, 26, 158; 2007, 11, 53 (in Estonian).

[14] Riigikogu valimise seadus. – RT I 2002, 57, 355; 2007, 44, 316 (in Estonian). Translation into English available at www.legaltext.ee and the website of the National Electoral Committee.

[15] Tulumaksuseadus. – RT I 1999, 101, 903; 2007, 44, 316 (in Estonian).

[16] Kohalike maksude seadus. – RT I 1994, 68, 1169; 2005, 57, 451 (in Estonian).

Table 2. Allocations from the state budget to political parties for 1996–2008.

	Sum in millions of euros	Euros per person with the right to vote
1996	0.32	0.40
1997	0.64	0.81
1998	0.84	1.07
1999	0.54	0.63
2000	1.02	1.19
2001–2003	1.28	1.49
2004–2007	3.83	4.46
2008–...[*17]	5.77	6.33

An act was passed after the Riigikogu election in 2003 that provided tripling of allocations from the state budget as of 2004 and that declared invalid the provisions, which had not yet taken effect, according to which results of local government council elections would have been taken into account as well. The latter amendment of an act did not reach constitutional review proceedings, although state funding did constitute the majority of the officially declared total income of several political parties after the tripling of allocations from the state budget (see Table 3). The objective of increasing funding from the state budget and prohibiting donations of legal persons declared in public was to reduce illicit connections between private interests and decisions of public power arising from financing of political parties. To what extent this objective has been achieved needs separate study.

Table 3. Allocations from the state budget as a percentage of the officially declared total income of a political party.

	Centre Party	Reform Party	People's Union	Pro Patria	Res Publica	Social-democratic Party
2002-I	75%	92%	63%	54%	0%	87%
2002-II	49%	54%	32%	53%	0%	66%
2002-III	24%	30%	34%	46%	0%	39%
2002-IV	13%	12%	26%	23%	0%	32%
2003-I	8%	7%	10%	19%	0%	28%
2003-II	77%	29%	45%	23%	37%	65%
2003-III	89%	70%	53%	54%	47%	95%
2003-IV	23%	22%	19%	79%	21%	38%
2004-I	95%	79%	100%	92%	93%	88%
2004-II	90%	75%	93%	74%	95%	
2004-III	97%	77%	100%	73%	54%	
2004-IV	94%	87%	96%	48%	97%	
2005-I	97%	89%	97%	61%	97%	97%
2005-II	83%	85%	97%	53%	96%	97%
2005-III	71%	41%	57%	61%	75%	96%
2005-IV	74%	45%	83%	15%	82%	71%
2006-I	69%	78%	99%	95%	100%	98%
2006-II	73%	77%	74%	72%	83%	97%
2006-III	85%	68%	87%	54%	98%	95%

Source: Reports of political parties.[*18]

[17] There is an allocation in the amount of 90,000,000 kroons in the draft of the state budget for 2008 (122 SE I) prescribed for political parties. Information is available at http://www.riigikogu.ee/?page=pub_ooc_file&op=emsplain&content_type=application/vnd.ms-excel&file_id=149563 (in Estonian).

[18] Information from the fourth quarter of 2006 is still being collected and processed.

There are no more direct allocations from the state budget provided for political parties or any other political unions. Thus, for example, the Youth Work Act[*19] excludes a political party or its youth section from receiving allocations from that portion of the state budget prescribed for youth organisations (in § 8 (3)).

The strict definition of a political party and the complexity of establishment arising from it, and the organisation of financing favouring political parties in the parliament, has not excluded the forming of new political parties in practice; thus, there is no reason to regard rules set with the objective of regulating (stabilising) the political landscape as (at least not clearly) unconstitutional. The Supreme Court has noted repeatedly that strengthening the responsibility of elected representatives and avoiding confusion of voters are legitimate objectives. Resources for achieving these objectives must be appropriate to a democratic state based on rule of law and proportional to the objective. The Supreme Court noted in judgment 3-4-1-3-05[*20] that rules put in place since 1992 have become stricter to restrain the political landscape from changing between elections[*21], and there is no reason to declare unconstitutional the rule of one political party, one faction[*22], such that creating new factions between elections is precluded in a case where a group of representatives elected from one political party decide to leave the party and wish to create their own faction.[*23] At the same time, the Constitutional Review Chamber did not rule out the possibility of restrictions on creating a faction being unconstitutional when, after a political party has been divided, a new political party is formed that is clearly determined and has declared its position through the platform of the previous party.[*24]

3. Control of political parties' financing as a resource to ensure government in public interests

One of the most interesting topics of disputes related to democratic rule is the question of how to ensure a state of rule of law in its material definition or the exercise of state authority subject to laws, and legislation with the purpose of creating a fair and moral social order.

The possibility of creating an effective control system for financing of political parties is cast into strong doubt because of the fact that avoiding and/or discovering indirect financing would demand very intensive interference in the activities of a political party, including direct observation, surveillance, etc. of communication and persons, which is inconceivable in a democratic state of rule of law. Even the Surveillance Act[*25] provides that surveillance shall not be applied in favour of political parties or in order to discredit parties (in § 5 (3)). A mere connection with a political party should not be deemed sufficient cause for surveillance with the purpose of preventing a criminal action. Discovering indirect financing afterwards, in cases of actions performed for a specific cause, is unlikely. It can be presumed that exposing the making of decisions in private interests instead of public interests will be primarily possible for enquiring media and a challenge for political culture, as is the case in many other countries. This does not, however, mean that control cannot or should not be made more effective.

3.1. Public disclosure of income

According to § 12^3 of the Political Parties Act, a political party shall disclose all donations and donors on its Web site.[*26] Disclosure of election costs is regulated by electoral laws. A report of donations and gifts made to a political party shall be submitted to the Tax and Customs Board for every calendar year (see § 57^1 (3) of the Income Tax Act). Also, § 27 (1) 7) of the Taxation Act[*27] provides that a tax official is entitled to disclose the content of this report to anyone. Thus, disclosing of a party's income is rather thoroughly regulated.

But control of use of the existing money is not the problem. A private auditor or any other supervisor can easily check whether the money has been used legitimately: accounting is in order; taxes have been paid on salaries, etc. The main problem is how to discover hidden donations, indirect financing. The usual supervision methods are not of help here. How should events be classified that were not paid for by the political party yet either directly or indirectly serve the interests of the party? How can it be explained that it was not 10 citizens

[19] Noorsootööseadus. – RT I 1999, 27, 392; 2007, 45, 320 (in Estonian).

[20] Judgment of the Constitutional Review Chamber of the Supreme Court of 2 May 2005. Available at http://www.nc.ee/?id=389.

[21] *Ibid*., para. 28.

[22] *Ibid*., para. 19.

[23] *Ibid*., paras 33, 36, 40, and 48.

[24] *Ibid*., para. 43.

[25] Jälitustegevuse seadus. – RT I 1994, 16, 290; 2005, 39, 307 (in Estonian).

[26] This provision makes having a website practically compulsory for political parties.

[27] Maksukorralduse seadus. – RT I 2002, 26, 150; 2007, 44, 316 (in Estonian).

who donated 25 kroons each to the party but was a certain interest group that does not wish to be connected to the party or to a decision made in favour of the group?

According to § 12^3 (3) of the Political Parties Act, the management board of a political party is responsible for the accuracy of the data in the register of donations. Misdemeanour charges for violating the provisions on disclosing the income of a political party and their procedure are provided for in the Political Parties Act (§ 12^{14} to 12^{16}), and criminal offences are specified in the Penal Code[*28] (§§ 402^1 and 402^2). It is well known that under the penal provisions the guilty person must be clearly determined and proved. Who planned, who provoked, and who executed? In order to create an emotional image of the situation for the public, the state need not be involved; the media will handle that. A political party can be convicted and punished only by a court's decision (according to § 48 (4) of the Constitution) and by following a prescribed procedure.

Another interesting topic is determination of the existence and status of political corruption and lobbying. This has not been reasonably settled in Estonia and other countries in Europe. Even Siim Kallas asked in his speech before the European Parliament on 16 July 2007: "But if the lobbying professionals question that money does bring influence, I wonder why they are in business at all? And why does this business appear to be growing? In fact, if spending money on lobbying gives no influence, I wonder what the lobby professionals say to their clients when they bill them."

3.2. Organisations related to political parties

According to § 11 (4) 8) of the Income Tax Act, an association is deemed to be a political association if it is a political party or election coalition or if the main objective of the association or the principal activity of the political party or election coalition is organising campaigns or collecting donations for or against a person running for an elected or appointed office of a political party or election coalition, or an office for the performance of public duties. Such associations are not entered in the register of not-for-profit associations given tax incentives. This shows that related organisations consist of any political associations the activities of which are directed to achieving the main objective of the political party. At the same time, the Political Parties Act gives a much more narrow definition of a related organisation; it is basically unregulated (§ 12^6 restricts donations of persons who are not members of the political party to the not-for-profit association of which the political party is a part; by this provision, political parties are permitted to make donations to such not-for-profit associations).

The Act to Amend the Political Parties Act as passed in the Riigikogu at the end of 2003[*29] abandoned the initial plan to define related organisations (see Draft Act No. 184 in process of the X Riigikogu[*30]). The initial text of the draft includes a much wider definition, similar to that set forth in the Income Tax Act. The wording of § 12^{12a} of the initial text was as follows: "Donations to a related organisation of a political party. Requirements of a political party provided for in § 12^7 to 12^{12} of the present Act extend to not-for-profit associations and foundations of which the political party is a member or to any other legal entity the activities of which are directly or indirectly directed to achieving the objective of the political party (related organisation of the political party)."

In conclusion, donations of legal entities to not-for-profit associations that support an election campaign of a political party or a candidate or collect donations are permitted, and they are not subject to disclosure. It is very dubious whether such associations' support for a political party is regulated by § 12^1 (3) of the Political Parties Act, which specifies that an indirect donation is transfer of any goods, services, or proprietary or moral rights to a political party under conditions that are not accessible to other persons. Another thing that should be analysed here is whether the concept of indirect donation is narrower than the concept of indirect financing.

3.3. Influence of political parties on formation of constitutional institutions and public service

When political parties in the parliament have — without a doubt — tried to increase their advantages in maintaining and regaining power, politically independent constitutional institutions have worked against this. Both cases concerning local government election coalitions, but also a decision (3-4-1-11-05[*31]) made in constitutional review proceedings on the possibility to unite the mandates of membership of the Riigikogu

[28] Karistusseadustik. – RT I 2001, 61, 364; 2007, 45, 320 (in Estonian).

[29] Erakonnaseaduse muutmise ja sellest tulenevalt teiste seaduste muutmise seadus. (The Act to Amend the Political Parties Act and other acts arising from that act). – RT I 2003, 90, 601 (in Estonian).

[30] Explanatory memorandum, available at http://web.riigikogu.ee/ems/saros-bin/mgetdoc?itemid=033100017&login=proov&password=&system=ems&server=ragne11 (in Estonian).

[31] Judgment of the Constitutional Review Chamber of the Supreme Court, 14 October 2005. Available at http://www.nc.ee/?id=563.

and of a local government council can be cited as examples. In the latter judgment the court clearly noted that "In the present case it is obvious that the changes introduced shortly before the elections are aimed at improving the position in local elections of those political parties that have seats in the parliament, in comparison to those political parties that do not, and in comparison to election coalitions and independent candidates"*[32] and declared invalid the amendment of an act that would have restored the provision, which was declared invalid but had not yet taken effect, that one cannot simultaneously work in local government and be a member of the Riigikogu. Thus a member of the Riigikogu cannot serve as a member of a local government council. The court did not take a fundamental position on whether uniting mandates is contrary to the principle of separation of powers or restrictions of employment of a member of the parliament.

The amendment of the act, which had waited to take effect and which provided that certain high officials (including the Chancellor of Justice, judges, and the Auditor General) are permitted to hold membership in a political party, was declared invalid by the Riigikogu on 11 October 2006 — i.e., before it was due to take effect.

The Constitution and other laws use two different methods in providing restrictions on membership of political parties: one method restricts membership of political parties itself, and the other restricts participation in activities of political parties. Most of the restrictions on membership of political parties are set forth in § 5 (3) of the Political Parties Act. In addition to the Political Parties Act, restrictions on membership arise from other acts as well. For example, § 35 (3) of the Personal Data Protection Act bars the Director General of the Data Protection Inspectorate from participating in activities of political parties, and § 20 (1) 3) of the Security Authorities Act*[33] prohibits officials of a security authority from belonging to political parties.

Several acts prohibit hiring members of a management board or management body of a political party to work in certain positions. The pertinent clause of the National Broadcasting Act is referred to above. Another provision of relevance here is § 12 (4) of the Notaries Act*[34], which prohibits notaries from belonging to political parties and from belonging to political associations of a foreign country.

Decisions exist on cases in the Estonian legal order that are directed at restricting fusion of political parties and coalitions of citizens. For example, the Consumer Protection Act*[35] provides that a consumer association shall be independent from all political parties (in § 15 (3) 2)); the National Defence League Act*[36] specifies that the National Defence League is an organisation that does not belong to a political party, and thus that activities of political parties or any other political associations in the National Defence League are prohibited (see § 6).

4. Conclusions

One can presume that anyone who can, by reasoning unambiguously and clearly, suggest a justified, moral, and law-based but functioning model for the relationship of the state and political parties and a scenario for enacting it as laws deserves both a Nobel Prize and an Academy Award. The author does not aspire to such honours. However, the author does wish to suggest avoiding decisions that weaken the political responsibility of political parties, destabilise the political party landscape, or lead to politicisation of constitutional institutions put together more or less on the basis of competence.

Careful analysis and resourceful development should be applied to measures of financing political parties and adhering to the procedure of financing. There is not a single element in the system of financing political parties, the separate change of which would give useful results. For instance establishing an independent body for inspecting the financing of political parties would not be useful, as the body would not have authorities that would complement the authorities of the select committee of Riigikogu of implementing Anti-corruption Act. The main problem is detecting the donations that are not reflected in any of the four income reports of political parties or the amount or the donor of which is reflected incorrectly. As a rule, it is not possible to identify the missing entry only by viewing the register of donations, the income report submitted to the Tax and Customs Board, the annual report or the income report of a political party. Making existing entries public, which is provided in Estonian legal system for years already, gives, in addition to the body inspecting the financing of political parties, to others the possibility to draw the attention of the police or the public prosecutor's office to possible misdemeanours or criminal offences. Even if the new body inspecting the financing of political parties is granted the authority to give notices, a qualitative change compared to the results of the present inspection will not be expected. Efficient proceeding of violations of the procedure of making donations public would require skilful police work. Capability of investigating economic offences is limited not only in Estonia but

[32] *Ibid*., para. 22.

[33] Julgeolekuasutuste seadus. – RT I 2001, 7, 17; 2006, 48, 357 (in Estonian).

[34] Notariaadiseadus. – RT I 2000, 104, 684; 2006, 7, 42 (in Estonian).

[35] Tarbijakaitseseadus. – RT I 2004, 13, 86; 2005, 71, 547 (in Estonian).

[36] Kaitseliidu seadus. – RT I 1999, 18, 300; 2005, 64, 484 (in Estonian).

also in other counrties and resources are rather spent on restricting money laundering than on investigating smaller offences with poor results. The slogan "DO SOMETHING!" is particularly absurd as it does not know all aspects of the system on financing political parties and ignores reality. In order to do something useful, one should, at first, know what should be done and what is useful, and then it should actually be DONE, without just raising panic among people.

The relationship between the state and political parties of Estonia can probably be assessed as traditionally European, meaning that a certain balance has been achieved but that, analogously to driving a speeding car on a bumpy road, the course must always be adjusted slightly. Rushing into a ditch in a moment of distraction cannot be ruled out as impossible.