

# Legal Policy Decisions and Choices in the Creation of New Private Law in Estonia

## 1. Periods of Development of Estonian New Private Law

Estonia regained its independence in August 1991; the Constitution was passed in June 1992 by referendum. A precondition for the survival and functioning of an independent state is the existence of an effective legal system. At the time Estonia became independent in 1991, the Soviet legal system was valid, but it was no longer possible to actually apply a large part of it due to the changed conditions, because both state administration and economic principles were radically changed. The drafting and establishment of all the necessary new laws was a primary task. The task was the largest and most complicated in the creation of new private law. It was also the most urgent task, because the former norms either conflicted new principles<sup>1</sup>, or there was no regulation or regulation was incomplete in many areas.<sup>2</sup> The drafting of new private law can be divided into the following periods:

1. 1988–1991: preparatory period for the creation of Estonia's own legal system. The goal toward restoration of an independent state and law was set, but account had to be taken of restrictions due to the fact that Estonia was still a Soviet Republic.
2. 1992–1993: period of decisions and choices. This was the most important period in choosing the private law system and model – legal policy decisions could be taken independently without potential interference by Moscow. The main choices were made in this period. The passing of the Law of Property Act<sup>3</sup> and its entry into force on 1 December 1993 was the cornerstone.
3. 1994–2000: this is a period of implementation of earlier decisions and choices, during which the majority of private law legislation was drafted and passed.

We can thus speak of three periods in the creation of Estonian private law – preparatory period (1988–1991), choosing period (1992–1993) and implementation period (1994–2000). Of course, this division as any division in time is conditional, since the periods are not clearly distinguishable. For example, the preparatory period did not only cover preparations, but also actual decisions and drafting, and implementation of choices, *i.e.* intensive legislative drafting was already going on in the choosing period, and continuous

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<sup>1</sup> For example, contract law in the Soviet civil law was mostly based on state planning principles and freedom of contract was not recognised; land was not in civil use but was fully owned by the state, etc.

<sup>2</sup> For example, competition and insolvency were not regulated at all.

<sup>3</sup> Asjaõigusseadus (Law of Property Act), passed on 9 June 1993 – Riigi Teataja (the State Gazette) I 1993, 39, 590; 1999, 44, 509.

deciding and choosing in single issues also characterise the implementation period when the drafting of new laws was primary.

Decisions have been made and implemented in all three periods, but the periods are distinguished according to which the primary task was at the time.

The following is a description and analysis of the development of Estonian private law in the three periods – why and due to which circumstances the particular legal policy decisions were taken in the development of private law.

## 2. Preparatory Period (1988–1991)

Preparation of the so-called Self-Sustained Estonia (*Isemajandav Eesti*, IME) concept<sup>7</sup> began in 1988. The objective and content of the concept was to search how Estonia could organise its state and social development independently of the central Soviet power. The IME concept also provided for the creation of a legal system independent of the USSR legal system. In private law, it meant the passing of legislation that would allow for the development of market economy. As the freedom to act was also limited as regards legal drafting since Estonia was a Soviet Republic, the task was not yet set at the changing of the entire civil law system. Only amendments were planned to be made in the applicable civil code to enable market economy regulation.

The period 1988–1991 can thus be characterised from the aspect of development of private law as a period of orientation to the drafting of single new laws to enable the development of market economy, but systematic reorganisation of the entire private law was not a reality yet. The main code of private law remained to be the civil code of the Estonian SSR.

However, many important legal policy decisions that affected private law were already taken during this period to create preconditions for private law reform.

The main legal policy decisions during this period were the passing of the Principles of Ownership Reform Act<sup>8</sup> (hereinafter: PORA) and its entry into force on 20 June 1991, and the passing of the Land Reform Act<sup>9</sup> and its entry into force on 1 November 1991. It was understood by this time that the transition to market economy principles and the restoration of the independence of the country were not possible without major reforms in the society. The main owner during the Soviet period was the state – the state was the sole owner of all land and owned most production means (buildings, facilities, equipment, machinery, transport, etc.) through state enterprises. The Enterprise Act<sup>10</sup> passed on 17 November 1989 established the freedom of enterprise and provided legal basis for the establishment of enterprises based on private property. The founding of public limited companies began after establishment of the “Statutes of Public Limited Company”<sup>11</sup> in autumn 1989, but the main production means were still owned by the state and it was not easy for the new public limited companies to compete with state enterprises. There were two options of giving new enterprises an actual possibility to operate: to privatise state enterprises and to attract as much as possible foreign investments to Estonia.

A major problem was that of the land. One of the new laws was the Farm Act<sup>12</sup> passed on 6 December 1989. The Farm Act was rather radical at the time – it was the first law in the Soviet Union that allowed private traders (farmers) to employ labour other than themselves. Land was granted for perpetual use under the Farm Act, which enabled private farms to be set up side by side with the former collective farms.

<sup>7</sup> The fact that Estonia was the first of the Soviet Republics at the time to take decisive, practical steps toward independence, has given Estonia the reputation of a progressive and bold reformer in the world. This reputation was strengthened by the following steps toward independence and carrying out reforms.

<sup>8</sup> Omandireformi aluste seadus (Principles of Ownership Reform Act), passed on 13 June 1991 – Riigi Teataja (the State Gazette) 1991, 21, 257; I 1997, 27, 391.

<sup>9</sup> Maareformi seadus (Land Reform Act), passed on 17 October 1991 – Riigi Teataja (the State Gazette) 1991, 34, 426; I 1997, 81, 1363.

<sup>10</sup> Ettevõtteseadus (Enterprise Act) – ENSV Ülemnõukogu ja Valitsuse Teataja (the ESSR Supreme Council and Government Gazette) 1989, 36, 551.

<sup>11</sup> Aktsiaseltsi põhimäärus (Statutes of Public Limited Company), passed on 22 November 1989 – ENSV Ülemnõukogu ja Valitsuse Teataja (the ESSR Supreme Council and Government Gazette) 1989, 37, 573.

<sup>12</sup> Taluseadus (Farm Act) – ENSV Ülemnõukogu ja Valitsuse Teataja (the ESSR Supreme Council and Government Gazette) 1989, 39, 611.

The return of lands nationalised in 1940 also became topical in the beginning of the 1990s but the Farm Act was not sufficient to solve this issue.

Two main questions required legal solutions in the beginning of the 1990s:

- 1) to provide legal bases for new forms of enterprise (public limited companies, private limited companies) and to allow people to act as sole proprietors;
- 2) to create legal bases for privatisation of state property and decide the restitution matters, to return land to the former owners insofar as possible.

Solving of these issues enabled to create a basis for freedom of contract and private autonomy, which were the source principles of new private law.

As mentioned above, the Enterprise Act and the Statutes of Public Limited Company created the legal basis for new forms of enterprise besides cooperatives – public limited companies and private limited companies, but also “experimental” intermediate forms such as collective enterprises and leased enterprises, which had only temporary importance.

The second one of the above problems was basically solved by the passing of PORA in 1991. The following principal decisions arose from PORA:

- 1) it was determined which unlawfully expropriated property (mainly land and buildings) was to be returned or compensated for and under which conditions;
- 2) it was decided to carry out a large-scale privatisation of state property and to leave to the state only the property necessary for performing its functions.

The decisions related to the ownership reform were radical – it was decided to return or compensate for unlawfully expropriated property to a wide circle of entitled subjects, and state property was decided to be privatised on a very large scale.

The passing of PORA and the Land Reform Act was logically followed by the addition of the Agricultural Reform Act<sup>\*13</sup> in 1992 and the Privatisation Act in 1993.<sup>\*14</sup> These and all other reform acts are based on the ideology and decisions of PORA. PORA and the other reform acts based on it also opened up the possibility for foreign investments to Estonia. Foreign investors were further reassured by the Foreign Investments Act<sup>\*15</sup> passed in September 1991.

In conclusion for the first period in the development of Estonian private law: the preparation of laws necessary for reforms and hence the creation of preconditions for a new private law were primary.<sup>\*16</sup> Choice of the private law model was not yet topical and the old civil code applied. The laws that ensured freedom of enterprise and regulated various forms of enterprise were relatively simple and were passed mainly for the practical purpose of enabling alternative forms of enterprise besides state enterprise. If we assess the reform laws that reflected the legal policy decisions of the time, they can be regarded as successful. Implementation of these laws was successful and made civil use of property, which is a characteristic feature of market economy, possible for Estonia. The civil use of land is especially important because it enabled collaterals through mortgage and greatly helped to develop the credit system. Preconditions were created for a significant widening of the circle of owners.

### 3. Period of Decisions and Choices (1992–1993)

At least two important circumstances became decisive for the development of Estonian private law since 1992, or even the end of 1991:

- 1) Estonia’s regaining her independence in August 1991;
- 2) the passing of PORA in June 1991 and the Land Reform Act in October 1991.

Independence of the state allowed to organise legislative drafting and build a legal system without having regard to restrictions from the outside. It was now possible and necessary to take principal decisions on the passing of laws of permanent meaning.

<sup>13</sup> Põllumajandusreformi seadus (Agricultural Reform Act), passed on 11 March 1992 – Riigi Teataja (the State Gazette) 1992, 10, 143.

<sup>14</sup> Erastamiseseadus (Privatisation Act), passed on 17 June 1993 – Riigi Teataja (the State Gazette) I 1993, 45, 639. The Privatisation Act of 1993 was preceded by various laws on privatisation in 1990–1992; privatisation in Estonia already began in 1990, but a clear and comprehensive legal basis for this was provided with PORA and the 1993 Privatisation Act.

<sup>15</sup> Välisinvesteeringute seadus (Foreign Investments Act) – Riigi Teataja (the State Gazette) 1991, 31, 376.

<sup>16</sup> For comments on the main laws passed in 1990–1992, see P. Varul, V. A. Lappalainen. Viron kauppallista lainsäädäntöä. Eesti Kaubanduse seadused. Estonian Law of Business. Lakimiesliiton Kustannus. Helsinki, 1992.

PORA and the Land Reform Act set the pace – the laws provided for land ownership, while the civil code did not provide norms for real property. It was necessary to quickly establish legal regulation for real property and other, restricted real rights. Otherwise, the lack of property law norms would have prevented reforms and the formation of normal economic relations. However, the establishment of property law norms was not possible without knowing what private law as a whole should be like. The preparation of an essential part of private law, property law, required an exact idea of the private law model as a whole to answer the question: as a part of what kind of legal system should property law be drafted.

The first main problem to be solved was that of the choice of legal system and family of law. The goal could not have been the creation of an original private law for Estonia – in today's intensive harmonisation and unification of law, this would have been unreasonable and impractical. The goal was to create private law suitable for a democratic, market economy orientated state.

However, in the situation where Estonia was at the end of 1991, the possibility of not following any established model or existing legal system had to be analysed and an attempt made to build a structure combined from various models by selectively transferring rules and principles from different systems. In Estonia, this possibility was considered thoroughly, but it was concluded that one family of law has to be chosen to avoid eclecticism, while examples and solutions from other families of law can be considered for its different fundamental subcomponents. Mutual influences and the intertwining of different families of law are common. The legal system of the Nordic countries has been influenced by the continental European system (Romanistic-Germanic legal system), especially by the Germanic family of law and also by common law countries, but is still distinguishable as a separate legal system. The civil codes of the state of Louisiana and the province of Quebec are based on the Romanistic family of law, but are significantly influenced by the common law environment. One of the newest civil codes, the civil code of the Netherlands, which is also based on the Romanistic family of law, is significantly influenced by other legal systems and incorporates many innovative and original solutions.<sup>\*17</sup>

The main method used for private law in today's legislative drafting is the comparative method. The source material includes not only the laws of other countries, special literature and court practice, but also internationally harmonised legislation – both officially applicable legislation, such as the Vienna Convention on Contracts for the International Sale of Goods<sup>\*18</sup> and recommended acts, such as the Principles of European Contract Law<sup>\*19</sup> (hereinafter: PECL) and Principles of International Commercial Contracts<sup>\*20</sup> (hereinafter: PICC), and of course the directives and decisions of the European Union.

The choice of a particular legal model does thus not mean transfer of the private law of the countries that use that model, but only guidance by certain principles. What were the options?

K. Zweigert and H. Kötz distinguish between eight major legal systems in the world (1) Romanistic family, (2) Germanic family, (3) Nordic family, (4) common law family, (5) socialist family, (6) Far Eastern systems, (7) Islamic systems, and (8) Hindu law.<sup>\*21</sup>

Estonia could choose between the first four of these.

The Germanic family of law was chosen as the basis and Estonia can thus be said to belong to the Germanic family of law now. This does not imply the copying of German law in Estonia, but guidance by the bases characteristic to the private law of Germany, Switzerland, Austria and other countries belonging to the Germanic family of law.

K. Zweigert and H. Kötz have proposed criteria for distinguishing one family of law from another:

- 1) its historical background and development;
- 2) its predominant and characteristic mode of legal thinking;
- 3) especially distinctive institutions;
- 4) the kind of legal sources it acknowledges and the way it handles them; and

<sup>17</sup> See A. S. Hartkamp. *Civil Code Revision in the Netherlands 1947–1992*. New Netherlands Civil Code. Deventer, Boston: Kluwer Law and Taxation Publishes, 1990. Preparation of the Netherlands Civil Code took a long time which enabled thorough analysis and innovative solutions. The preparation time in Estonia was only a few years and therefore many ready solutions had to be adopted from other countries.

<sup>18</sup> United Nations Convention on Contracts for the International Sale of Goods: Vienna, 1980 – Riigi Teataja (the State Gazette) II 1993, 21/22, 93.

<sup>19</sup> The Principles of European Contract Law. Available at: <http://itl.irv.uit.no/trade-law/doc/EU.Contract.Principles.1997.preview.html>.

<sup>20</sup> Principles of International Commercial Contracts, Rome: UNIDROIT, 1994.

<sup>21</sup> K. Zweigert and H. Kötz. *Introduction to Comparative Law*. Oxford: Clarendon Press, 1992, p. 75.

5) its ideology.\*<sup>22</sup>

The criteria help to explain Estonia's choice of the Germanic system, or rather, the criteria served as a reason for the choice.

### 3.1. Historical Background and Development

When Estonia was part of Tsarist Russia, the Baltic Private Law applied from the year 1865.\*<sup>23</sup> The author of the law was professor Georg-Friedrich Bunge of the University of Tartu. The Baltic Private Law also applied in Estonia in 1919–1940 when Estonia was an independent state. The Baltic Private Law is a code based on the pandect system, containing the general part, property law, family law, law of succession and law of obligations parts, and can be classified as belonging to the Germanic family. The preparation of Estonia's own civil code began in the beginning of the 1920s. The civil code was ready for adoption in 1940, but was not passed. The draft civil code belongs to the Germanic family of law and is mainly based on the norms of the Baltic Code of Private Law, BGB, the Swiss civil code and the Austrian civil code. A leader in the preparation of the draft civil code, Professor Jüri Uluots, has pointed out the special influence of the Swiss civil code.\*<sup>24</sup>

There were thus two facts that played an important role in the choices made in 1992:

- 1) the Germanic legal model had been applied in Estonia until 1940;
- 2) the draft civil code prepared by 1940, which also belonged to the Germanic family of law, was a good source for preparing new drafts.

According to the Land Reform Act, former landowners and their heirs have the right to claim the land property nationalised from them. In view of historical consistency, it was useful to apply the same land register regime to returned lands.

Another important factor in the choice of a model was the urgency of passing the Law of Property Act. Law of property is a relatively more static part of the civil code when compared to *e.g.* contract law. The draft of 1940 was well suited for use in the preparation of the Law of Property Act, since relatively few changes had taken place in property law since 1940. But when the draft civil code was decided to be the major source of the new property law, it implied that private law will be based on a codified code with a pandect system, *i.e.* the Germanic model.

### 3.2. Distinctive Mode of Legal Thinking

The continental European legal system – the Romanistic and Germanic families of law – is characterised by a very precise formulation of the text of the law and the intention to provide rules in an abstract form. This is particularly apparent in the pandect system in the formulation of the general part norms.

Common law countries are characterised by a more descriptive style. The style difference arises from the two major differences between the Romanistic and Germanic law and common law:

- 1) in the civil law, large areas of private law are codified. Codification is not typical of the common law;
- 2) the civil law was strongly and variously influenced by Roman law. The Roman law influence on the common law was far less profound and in no way pervasive.\*<sup>25</sup>

Due to the above-described historical background, the style of Estonian lawyers is abstract, arising from codification. An important, though not decisive factor is that the system of the civil code of the Estonian SSR was also close to continental European law. The Soviet civil law cannot in its entirety be classified as belonging to the continental European private law, but the civil code of the Estonian SSR has many similarities to Romanistic and Germanic codes. The system of the civil code is more similar to the Germanic model, being close to the pandect system. Family law was not a part of the civil code – the family code was

<sup>22</sup> *Ibid.*, p. 69.

<sup>23</sup> The Baltic Private Law means Volume 3 of the Baltic Provincial Code: Provincialrecht der Ostseegovernements, Dritter Teil: Privatrecht. – Liv-, Est- und Curlaendisches Privatrecht.

<sup>24</sup> Explanation to the Draft Civil Code. Tallinn, 1940.

<sup>25</sup> A. T. von Mehren, J. R. Gordley. *The Civil Law System: An Introduction to the Comparative Study of Law*. Little, Brown and Company, 1977, p. 3.

an independent law; property law did not exist and the less regulative ownership law existed in its stead. Contract law was significantly influenced by planned economy and the freedom of contract was restricted.

While the civil code of the ESSR was more similar to the Germanic model with regard to its system, it was more similar to the Romanistic model with regard to its content – for example, the abstraction principle was not applied.

It had to be taken into account in 1992 that the civil code could be passed in parts – as five separate laws in accordance with the pandect system. This allowed for flexibility, the ready parts could be established more quickly without waiting for the next parts to be ready. Separate laws took the place of the respective chapters of the civil code, while the old chapters not yet replaced remained in force for a certain period of time. The fact that private law could only be renewed gradually caused the necessity to take account of the old law that was still applicable, at least as regards the system and structure. Under this criterion – distinctive mode of legal thinking – Estonia had basically two options, either the Romanistic or the Germanic system. The mode of thinking of Estonian lawyers in 1992 was closer to the Romanistic system, while historical background influenced the choice toward the Germanic system.

### 3.3. Certain Legal Institutions

Every legal system is characterised by certain specific legal institutions, whereas their existence is dependent on each other. An important choice that triggered many of the following preferences was the selection of a so-called strong land register maintained by courts where all real rights concerning real estate are recorded. A strong land register requires the application of the abstraction principle, by which the voidness of an obligation contract does not in itself render a disposal contract or real right contract void. A strong land register in turn should ensure legal certainty and contribute to economic development and stability.

The application of the abstraction principle to real property in turn caused it to be applied to movable property and claims, which attributes our private law an important characteristic of the Germanic family of law. The choice of the abstraction principle as an important principle of private law caused the establishment of the unfair enrichment institute as it exists in Germany.

### 3.4. Sources of Law

Due to historic tradition, the sources of law in Estonia have been law and customs. This is one of the reasons why common law was not chosen. Still, court practice, particularly judgements of the Supreme Court, have played an important role in the interpretation of law in Estonia since court reform in 1992–1993. Court judgements are also very important for legislative drafting in a situation where laws are incomplete and important parts of them are not yet established. This particularly applies to law of obligations – as the law of obligations act has not yet been passed, the respective provisions of the civil code are still applied, but due to the incompleteness of these provisions, courts have interpreted them to a great extent and applied analogy of law. Court judgements have been a basis for the preparation of the draft Law of Obligations Act.

### 3.5. Ideology of a Legal System

When Estonia separated itself from the Soviet Union and took the task of restoring and building up its own state and legal system, it passed the ideologies of Anglo-Saxon, Germanic, Romanistic and Nordic families of law, which are essentially so similar that the families can basically only be distinguished by other criteria.

As stressed above, the goal in the development of private law was not the creation of an original private law, but the establishment of rules already passed and tried in the West, in order to have an effective national law and enable Estonia to participate in international cooperation.

The choice made in 1992–1993 did not imply a decision to copy the law of any particular country; it was rather a choice of a system or a type of basic model and did not exclude the use of examples from other families of law in the preparation of separate parts of the system structure. The countries whose examples were used were the Netherlands, Denmark, France, Italy, the state of Louisiana, the province of Quebec, and other countries of the Romanistic and Germanic family, as well as Nordic countries.

The choice of the model of a legal family meant a decision to codify civil law on the basis of a pandect system – the civil code was to be the core of private law. The Commercial Code was planned to be the second basic act of private law, but not similar to the example of Germany and Austria where commercial codes also regulate trade transactions. Taking guidance from today's developments of contract law, the Principles of European Law and the Principles of Commercial Contracts, we did not follow the dualism characteristic to the Germanic family of law, according to which trade transactions are regulated separately from the civil code by trade codes. In Estonia it was decided to regulate all transactions by the Law of Obligations Act, whereas the most general norms for transactions are provided in the General Part of the Civil Code Act.<sup>\*26</sup> The civil code and the commercial code were to be the fundamental, codified codes of private law. Other laws regulating the area of private law were planned to be passed as single laws.

The content of the decisions made in the choosing period was chiefly determined by the proposals and positions of jurists. An expert committee for civil law consisting of jurists was set up in 1990 and continued from 1992 as the chief committee for the civil code and the commercial code. The committee has taken all the major decisions concerning the preparation and development of private law, and has been an expert committee for drafts prepared by working groups.

An important, and eventually decisive factor in the making of decisions was political will that was primarily targeted at the restoration of the state and its legal order.

In 1992, the Supreme Council of the Republic of Estonia passed the decision that the preparation of the legal system had to be guided by the principles applicable in Estonia before the year 1940.<sup>\*27</sup> For private law, this implied guidance mainly by the principles characteristic to the Germanic family of law.

## 4. Implementation of Decisions and Choices (1994–2000)

The urgency of passing the Law of Property Act was due to the need to ensure that reforms are carried out. The part laws of the Civil Code were therefore passed in an illogical order. It would have been logical to pass the General Part first.

After establishment of the Law of Property Act in 1993, the order of preparation of other parts of the Civil Code was determined: general part, family law, law of succession, law of obligations. The preparation and content of these parts of the Civil Code and the Commercial Code reflect the main characteristic features of the development of Estonian new private law. The following analysis therefore focuses on the decisions made during processing of these draft laws.

### 4.1. General Part of the Civil Code Act

Preparations for the General Part of Civil Code Act (hereinafter: GPCCA) began immediately after passing the Law of Property Act. GPCCA was passed on 28 June 1994 and entered into force on 1 September 1994.<sup>\*28</sup>

The main institutes of the general part are persons and transactions, but also the exercising of civil rights and the main methods of their protection, including lapse of action. The general part also includes the norms of international private law as a separate part. International private law was very superficially regulated in the civil code of the ESSR – this was due to the political trend to restrict communications between natural and legal persons and persons of other countries as much as possible. The new norms for legal persons had a very important meaning. The treatment of legal persons as it was in the Soviet period was not suitable for the new conditions. In the Soviet law, legal persons were divided into two groups:

<sup>26</sup> The General Part of the Civil Code provides the definitions of transaction and declaration of intention, the grounds for voidness and contestability of transactions, and norms for the forms of transactions.

<sup>27</sup> Eesti Vabariigi Ülemnõukogu otsus 6. juulil 1992 Eesti Vabariigi pankrotiseaduse rakendamise kohta (Decision of the Supreme Council of the Republic of Estonia of 6 July 1992 concerning the Implementation of the Republic of Estonia Bankruptcy Act) § 7 (7) – Riigi Teataja (the State Gazette) 1992, 31, 404.

<sup>28</sup> Tsiiviilseadustiku üldosa seadus (General Part of the Civil Code Act) – Riigi Teataja (the State Gazette) I 1994, 53, 889.

- 1) legal persons that owned their property;
- 2) legal persons that were not owners.

A typical example of the first group was a cooperative society, and of the second group, a state enterprise that was a legal person, but administered property belonging to the state. The state itself was not considered to be a legal person. Local governments were not regarded as owners at all, although they administered state property too. The picture was very much unclear concerning legal persons in the beginning of the 1990s. Different kinds of new legal persons were set up, including leased enterprises and collective enterprises; very different state and municipal bodies were regarded as legal persons. The legal basis for founding legal persons was not clear – should it always be the law, or may other legal persons not prescribed by law also be founded? The situation was greatly changed already by the Law of Property Act, but mainly by the GPCCA in 1994. The general rules for legal persons provided in the GPCCA reflected the most important of the decisions taken in the preparation and passing of the GPCCA with regard to the further development of private law, particularly with regard to legislation concerning legal persons. The GPCCA laid down the general rules for legal persons: legal persons are either legal persons in private law or legal persons in public law. Legal persons in private law could be established only on the basis of a law regulating the particular type of legal persons. Legal persons in public law were the state government and local governments; other legal persons in public law could be established only on the basis of a law regulating the particular legal persons.<sup>\*29</sup>

Already the Law of Property Act laid down the rule that every legal person can be an owner. The provisions of GPCCA became the basis for further development of legal persons. State agencies and local governments were no longer regarded as legal persons; they only represented the state or local governments. Separate laws were passed regarding legal persons in private law – the Commercial Code<sup>\*30</sup> (public limited company, private limited company, general partnership, limited partnership), the Nonprofit Associations<sup>\*31</sup> and the Foundations Act.<sup>\*32</sup> The Associations Act<sup>\*33</sup> had already been passed earlier; the draft of a new commercial associations act has been prepared now to replace it and will be passed this year.

A clear classification of legal persons was thus formed on the basis of GPCCA after its passing and the respective laws were prepared.<sup>\*34</sup> The categories of legal persons in private law have been established by now – these are:

- a) commercial undertakings: public limited company, private limited company, general partnership, limited partnership and commercial association<sup>\*35</sup>;
- b) nonprofit associations; and
- c) foundations.<sup>\*36</sup>

The need to renew the GPCCA arose in the preparation and implementation of other parts of the Civil Code. A new draft GPCCA has been prepared by now<sup>\*37</sup>; it is currently in the legislative proceeding of the *Riigikogu* (parliament) and will be adopted at the end of 2000.

The new draft is an elaboration of the 1994 act. The main changes concern natural persons, transactions, and lapse of action. Choices and decisions have been greatly influenced by the so-called model laws – PICC and PECL, as well as the civil codes of other countries. The civil code of the Netherlands as the newest

<sup>29</sup> Legal persons in public law are, under their own laws, the University of Tartu, the Bank of Estonia, the National Opera “Estonia”, the National Library, etc. Single legal persons in public law may be added, but their number cannot grow much larger – legal persons in public law are established in areas where the state transfers some of its functions, allowing for a greater autonomy of organisations that have gained the status of a legal person in public law, particularly the possibility to be an owner.

<sup>30</sup> *Äriseadustik* (Commercial Code), passed on 15 February 1995 – *Riigi Teataja* (the State Gazette) I 1995, 26–28, 355; 1998, 91–93, 1500.

<sup>31</sup> *Mittetulundusühingute ja nende liitude seadus* (Nonprofit Associations and Unions Thereof Act), passed on 23 March 1994 – *Riigi Teataja* (the State Gazette) I 1994, 24, 425. The Act was replaced by a new act in 1996: *mittetulundusühingute seadus* (Nonprofit Associations Act), passed on 6 June 1996 – *Riigi Teataja* (the State Gazette) I 1996, 42, 811; 1998, 96, 1515.

<sup>32</sup> *Sihiasutuste seadus* (Foundations Act), passed on 15 November 1995 – *Riigi Teataja* (the State Gazette) I 1995, 92, 1604.

<sup>33</sup> *Ühistuseadus* (Associations Act), passed on 27 August 1992 – *Riigi Teataja* (the State Gazette) 1992, 36, 477; I 1998, 95, 1513.

<sup>34</sup> On legal persons in this period see A. Vutt. *Legal Persons in Estonian Law*. – *Juridica International. Law Review*. University of Tartu, 1996, pp. 84–85.

<sup>35</sup> Commercial undertakings will be discussed further in the text in connection with the Commercial Code.

<sup>36</sup> There are several subclasses of nonprofit associations regulated by separate laws, such as the *Korterühistu seadus* (Apartment Associations Act) passed on 27 June 1995 – *Riigi Teataja* (the State Gazette) I 1995, 61, 1025; 1999, 42, 498. The disputed issue is the classification of churches and congregations as legal persons. The *Churches and Congregations Act* (*Kirikute ja koguduste seadus*) is currently applicable: passed on 20 May 1993 – *Riigi Teataja* (the State Gazette) I 1993, 30, 510, according to which churches and congregations are a subcategory of nonprofit associations. They could also be classified as a separate class of legal persons.

<sup>37</sup> Available at: <http://www.just.ee> (in Estonian).



civil code has been especially important, and the German and Swiss civil codes, as well as those of the province of Quebec, the state of Louisiana, Italy, Austria and Russia, were analysed for comparison. While the main changes in 1994 concerned the regulation of legal persons, the most important ones in the new act concern natural persons. The concept of active legal capacity was altered – all minors below the age of 18 have restricted active legal capacity, whereas the court may increase their active legal capacity from the age of 16. The mentally ill and mentally retarded who cannot adequately comprehend the meaning of their actions and cannot control their actions also have restricted active legal capacity. While under the current GPCCA, the court declares a person as having restricted active legal capacity or divests a person of active legal capacity, then under the new draft, the court may only establish the existence of restricted active legal capacity. This change of regulation should better protect those persons who permanently cannot comprehend their acts due to mental disorder – presently, their acts can only be contested after the court has divested them of active legal capacity, but the new regulation allows to contest the acts of mentally ill and mentally retarded persons retroactively. Relevance is given to the mental condition of persons at the time of concluding a transaction, and not to whether the court has earlier restricted their legal capacity or not. As a general rule, a person with restricted active legal capacity may enter into transactions with the consent of their legal representative; the consent can also be given after the transaction. The Civil Code discards the institute of complete incapacity. Presently, children under the age of 7, mentally ill and mentally retarded persons divested of active legal capacity by court have no active legal capacity whatsoever. Active legal capacity can no longer be restricted on the grounds of a person having placed his or her family in an economically dire situation through consumption of alcohol or drugs or by squandering.

While changes in the approach to active legal capacity mainly serve the interests of persons with restricted active legal capacity, the question remains of how such changes affect legal certainty – it may come as a surprise for the other party of a transaction that the representative of the first party can contest the transaction on grounds of the party having restricted active legal capacity.

The main change regarding transactions concerns the procedure for contestation of transactions. According to the present GPCCA, a transaction can be contested in court on grounds such as fraud, error, threat, etc., and the court may declare the transaction void on these grounds. According to the new draft law, a notice of contestation is sent to the other party to the transaction if grounds for contestation exist, and the transaction is deemed to be void. This provides better protection of persons whom the grounds for contestation concern – persons who were deceived or threatened, who made an error, etc.

The limitation periods for actions are also changed. The general limitation period for actions is currently 10 years after the person became or should have become aware of the infringement of his rights. The limitation period applies both to breach of contractual obligations and causing of noncontractual damage. The draft law provides 3 years as the limitation period for actions arising from a transaction and also 3 years as the limitation period for actions arising from causing damage. In the former case, limitation is calculated from the moment of breach of a contractual obligation, in the latter case from the time when the entitled person became or should have become aware of the damage or of the person obligated to compensate for the damage. The law also provides for limitation periods different from the general ones – for example, the limitation period for actions arising from family rights or inheritance rights is 30 years after the date on which the action could have been filed. The new system is more flexible, excluding long limitation periods where possible, by extending the limitation periods in cases where it is important to ensure long-term protection of infringed rights.

An important change is the stipulation and following of the principle of negative mandatory capacity in the draft act. Although negative mandatory capacity is characteristic of the present Estonian civil law, it is restricted – an agreement of parties deviating from the law is allowed only if it arises out of legal norms. Such restricted negative mandatory capacity also means a restricted freedom of contract. The draft sets out the negative mandatory capacity in the reversed way – by agreement of parties, the provisions of law may be deviated from, unless the law provides or suggests that deviation is not allowed. Deviation from law is not allowed when it contradicts public policy or good morals. Such an approach to the negative mandatory capacity principle in the preparation of the text of the law and its application must ensure the freedom of contract required for a democratic state based on market economy, and allow the private autonomy principle to be applied.

The draft International Private Law Act has been separated from the new draft GPCCA.<sup>\*38</sup> This separation is due to the need to regulate the area of international private law more extensively and in greater detail. The law will probably be passed in spring 2001.

## 4.2. Family Law Act

The Family Law Act<sup>\*39</sup> was prepared at the same time with the GPCCA. It was passed on 12 October 1994 and entered into force on 1 January 1995. The Family Law Act replaced the former marriage and family code. The main change was that the Family Law Act became a part of the Civil Code, while the former marriage and family code was separate from the civil code. As a part of the Civil Code, the GPCCA became applicable to the Family Law Act. When compared to the other parts of the Civil Code, there was no need to make urgent radical changes in the new Family Law Act. The Family Law Act was therefore largely based on the former marriage and family code, although substantial amendments and corrections were made to it. The main change concerned the regulation of the proprietary relations of spouses. The former single main rule was that all property acquired during marriage was the joint property of spouses, except their personal belongings and property received by gift or succession. Property acquired prior to marriage was the separate property of spouses. The Family Law Act provided for the possibility to enter into a marital property contract to specify a procedure for determining joint and separate property different from that arising from the law. Where no marital property contract is concluded, the provisions of law apply – the principle of joint property remained to apply to property acquired during marriage.

A marital property contract (Family Law Act §§ 8–13) may be concluded prior to marriage or during marriage. A marital property contract may specify which property belonging to a spouse before the marriage remains the separate property of the spouse and which property becomes joint property of the spouses, and which of the property acquired or to be acquired during the marriage is joint property and which is separate property. A marital property contract may also specify how to possess, use and dispose of joint property of the spouses, how to divide joint property of the spouses, the mutual maintenance duties of the spouses during the marriage and upon termination of the marriage, and other mutual proprietary rights and obligations of the spouses that they consider necessary.

Marital property contracts are entered in the marital property contract register. A marital property contract not entered in the register is valid in the relationship of spouses when it is notarised. The proprietary rights of a spouse arising from a marital property contract are valid with respect to third persons if an entry concerning the marital property contract is made in the marital property contract register before the claim of the third person arises. The marital property contract register is maintained pursuant to procedure provided by law in a land registry of a court.<sup>\*40</sup>

Other important changes were also made to the Family Law Act. Deciding on adoption was placed in the competence of courts – earlier, adoption was decided pursuant to administrative procedure. Regulation concerning parentage was also elaborated, the procedure for divorce was somewhat simplified – while divorce was earlier in the sole competence of courts, it is now possible to divorce pursuant to administrative procedure if there are no disputes. Regulation of maintenance obligations was made more exact.<sup>\*41</sup>

The Family Law Act in its present form has performed its functions quite well and no insuperable problems have arisen in practice, but when compared to other parts of the Civil Code and similar laws of other countries, our Family Law Act is relatively less regulative. A new draft Family Law Act is being currently prepared. Its purpose is not a family law reform, but to improve the degree of regulation of the law, especially concerning adoption, maintenance obligations, the proprietary rights and obligations of spouses, but also guardianship and parentage. The new Family Law Act also has to be adjusted to the new GPCCA prior to the establishment of the former. The new Family Law Act will hopefully be passed at the end of 2001 or in the first half of 2002.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Perekonnaseadus (Family Law Act) – Riigi Teataja (the State Gazette) I 1994, 75, 1326.*

<sup>40</sup> *Abieluvararegistri seadus (Marital Property Contract Register Act), passed on 9 November 1995 – Riigi Teataja (the State Gazette) I 1995, 87, 1540.*

<sup>41</sup> A thorough review of the Family Law Act is provided in: E. Salumaa. *The Family Law Act. – Juridica International. Law Review. University of Tartu, I, 1996, pp. 94–98.*

### 4.3. Law of Succession Act

Law of succession was paid relatively little attention in the Soviet period, since the right of ownership of natural persons was limited. A natural person could not own land or hold shares; he or she could own only one house, etc. The Law of Property Act and GPCCA provided for equal passive legal capacity, including the capacity to be an owner, for all persons. This in turn greatly increased the importance of the right of succession, because any property could now be estate.

The new Law of Succession Act<sup>\*42</sup> was passed on 15 May 1996 and entered into force on 1 January 1997.

When compared to the law of succession contained in the former civil code, the new Law of Succession Act is much more regulative. Law of succession, like law of property, is relatively more static than, for example, contract law. This means that the 1940 draft Civil Code could be used as source material similarly to the preparation of law of property. Law of succession in the Civil Code of 1940 was greatly influenced by the German BGB, but also by the Swiss, Austrian and Italian civil codes. Quite a lot has been transferred from the Baltic Private Code. The new Law of Succession Act was largely based on these and also the civil code of the Netherlands.

The group of intestate successors was significantly extended. The placement of the spouse among successors changed – while the spouse was formerly a first order successor, he or she now succeeds together with all other successors (Law of Succession Act § 16). The possibility to succeed by testamentary contract was provided besides the will. The form of will was made more liberal. Domestic will is recognised besides a notarial will (Law of Succession Act §§ 23–26).<sup>\*43</sup> The reciprocal will of spouses was introduced. The procedure for succession – the management, acceptance and renunciation of estate – as well as the rights and obligations of successors and liability upon succession were specified in much greater detail than before. A basic problem was whether to choose the acceptance of estate or renunciation of estate system. The choice was made in favour of the acceptance system, mainly due to the influence of the 1940 draft Civil Code. The fact that the acceptance system is somewhat simpler and less expensive in its legal structure was decisive. In this regard, the Law of Succession Act differs from its main example, the BGB, and is close to the regulation of Austrian and Italian civil codes. The establishment of a succession register in the Tallinn City Court was a new development.<sup>\*44</sup>

### 4.4. Law of Obligations Act

The Law of Obligations Act is the largest part of the Civil Code. Preparation of the draft Law of Obligations Act began immediately after establishment of the GPCCA in 1994. When compared to other part laws of the Civil Code, there were more difficulties in choosing the source materials. It became clear that the initial idea to use the 1940 draft Civil Code as the source similarly to property law and law of succession was not justified. The draft of 1940 was outdated when compared to new developments and was no longer suitable as the main source material.

The main source materials for the Law of Obligations Act were the Principles of European Contract Law, Principles of International Commercial Contracts and the 1980 Convention on International Sale of Goods, and also the civil codes of Germany<sup>\*45</sup>, Switzerland, the Netherlands, Quebec, Louisiana, etc. and the contract law directives of the European Union.

Important source principles of the Law of Obligations Act are the negative mandatory capacity and freedom of contract principles also contained in the new draft GPCCA and the Law of Obligations Act, as well as the principles of reasonability and good faith. The Law of Obligations Act is by and large more regulative than the present obligations act which is the only part of the old civil code still applicable. The Law of Obligations Act consists of two parts – general part and special part. The latter in turn is divided in two –

<sup>42</sup> Pärmissaadus (Law of Succession Act) – Riigi Teataja (the State Gazette) I 1996, 38, 752.

<sup>43</sup> An example of the influence of the civil code of the Netherlands is the rule provided in § 25 of the Law of Succession Act, by which a domestic will becomes invalid if six months have elapsed from the date of its making and the testator is alive at the time.

<sup>44</sup> On the development of law of succession in Estonia related to the passing of the Law of Succession Act, see U. Liin. On Reform of Estonian Succession Law. – *Juridica International. Law Review*. University of Tartu, III, 1998, pp. 105–109.

<sup>45</sup> Proposals to BGB were used besides and even more than BGB.

one contains special types of contracts, the other is dedicated to compensation for damage, unfair enrichment, and norms on administration without mandate and public permission of remuneration.<sup>\*46</sup>

When compared to the present law of obligations, several important regulations are changed or new ones established – for example, the new law established the principle of *culpa in contrahendo*; liability is not related to fault like in the present law, but liability may be excusable only; means of legal protection in case of breach of contract are specified in great detail; the institution of unfair enrichment is given new content; liability of risk is stipulated; termination of contract is provided for through withdrawal from contract and rescindment of contract. New quality is given to protection of the rights and interests of the consumer – the use of standard terms is provided for in Estonia in accordance with EU Council Directive 93/13/EEC. From the aspect of the interests of the consumer, deviation from the freedom of contract and negative mandatory capacity principles through regulation of standard terms is justified to protect the consumer as the “weaker party”. Differently from the general rule for interpretation of contracts, objective interpretation of standard terms is provided for – they are interpreted from the aspect of the understanding of a reasonable person, and where disagreement arises, to the detriment of the user of the term (Law of Obligations Act § 27). New for Estonia are the norms on door-to-door contracts and contracts concluded by means of communication, based on EU Council Directives 85/577/ECC and 97/7/EEC and aimed at additional protection of the consumer in these contracts. The list of provisions of the Law of Obligations Act that are new for Estonia could be continued, as the Law of Obligations Act will be the largest law in Estonia, containing more than a thousand sections.<sup>\*47</sup>

Together with the new GPCCA, the Law of Obligations Act is the most thoroughly prepared and modern part of the Civil Code. The Law of Obligations Act has not been passed yet, but is likely to be passed by the end of 2000.<sup>\*48</sup>

All parts of the Civil Code should thus be passed by the end of 2000, and a systematic and relevant Estonian Civil Code should be thereby created.

## 4.5. Commercial Code

The other basic code of private law besides the Civil Code is the Commercial Code. The Commercial Code was passed on 15 February 1995 and entered into force on 1 September 1995. The Commercial Code regulates the foundation, activities and dissolution of commercial undertakings and sole proprietors. According to the Commercial Code, commercial undertakings are: public limited company, private limited company, general partnership and limited partnership. Differently from the traditional approach, general partnerships and limited partnerships are legal persons under the Commercial Code. Still, as opposed to public and private limited companies, general partnerships and limited partnerships are not capital undertakings, but associations of persons, hence the differences in their foundation, management, and liability when compared to public and private limited companies.

In analysing the general partnership in the Commercial Code, M. Vutt reaches the conclusion that the “concept of a general partnership established by the Estonian Commercial Code lies somewhere between German and French law, and although the Estonian general partnership is a formal unit similar to a private limited company or a public limited company, the relations between partners are to a very large degree determined by the partners themselves. The fact that a general partnership is a legal person, does not decrease the importance of the personal aspect or change the nature of the corresponding commercial understanding”.<sup>\*49</sup>

<sup>46</sup> The Law of Obligations Act is closest to the BGB in its structure: *see* N. Horn, H. Kötz and H. G. Leser. German Private and Commercial Law: an Introduction. Oxford: Clarendon Press, 1982, pp. 66–67.

<sup>47</sup> The Law of Obligations Act is so large that it cannot be analysed comprehensively in this article. For the draft Law of Obligations Act, *see e.g.* I. Kull. Effect of Harmonisation of European Civil Law on Development of Estonian Law of Obligations. – *Juridica International. Law Review.* University of Tartu, III, 1998, pp. 98–102; I. Kull. Legal Remedies Provided in the Estonian Draft Law of Obligations Act for Breach of Contractual Obligations. – *Juridica International. Law Review.* University of Tartu, IV, 1999, pp. 147–159.

<sup>48</sup> The draft Law of Obligations Act is available at: <http://www.just.ee> (in Estonian).

<sup>49</sup> M. Vutt. The General Partnership in Estonia. – *Juridica International. Law Review.* University of Tartu, I, 1996, p. 88.

For the Commercial Code as a whole, the main examples were the respective laws of Sweden and Germany, as well as the EU Directives on corporate law.<sup>\*50</sup>

Public limited company and private limited company are typical limited liability capital undertakings under the Commercial Code for which capital requirements are prescribed by law. The new development in the Commercial Code was the establishment of commercial registers in courts.<sup>\*51</sup> The Estonian commercial register is generally based on the principles of the German commercial register. Estonia is divided into four commercial register regions. Reform of commercial undertakings took place in 1995–1999 through establishment of the Commercial Code that amended requirements for the foundation of commercial undertakings and prescribed regulation of their activities which were much stricter than before, and through introduction of the commercial register. From 1 September 1995, commercial undertakings could be founded only by entry in the commercial register. All undertakings founded earlier than 1 September 1995 had to be entered in the commercial register by 1 September 1997; from 1 September 1999, the share capital of all public and private limited companies had to comply with the minimum size prescribed by law – 40,000 kroons<sup>\*52</sup> for private limited companies and 400,000 kroons for public limited companies. Commercial undertakings that did not comply with these requirements by 1 September 1997 and by 1 September 1999 were subject to compulsory liquidation.

A register of nonprofit associations and foundations was set up after the commercial register.<sup>\*53</sup>

A great number of new commercial undertakings were founded in Estonia in the first half of the 1990s, particularly private and public limited companies, but also other legal persons such as nonprofit associations and foundations. Due to the gaps in legislation, the requirements for these undertakings were not adequately formulated<sup>\*54</sup> and there was no overall and exact record of legal persons in the country. This made various kinds of malpractice possible. Owing to the passing of the Commercial Code, establishment of the commercial register and the register for nonprofit associations and foundations, and compulsory liquidation of noncomplying legal persons, only registered legal persons that comply with the requirements of law are now acting.

## 4.6. Other Areas of Private Law

Alongside with the basic codes of private law – the Civil Code and the Commercial Code – the majority of other necessary private law laws were passed and implemented in the 1990s.

In the area of intellectual property, the main laws have been passed and the major international conventions joined.<sup>\*55</sup> The Copyright Act<sup>\*56</sup> was passed on 11 November 1992 and entered into force on 12 October 1992. Other new laws included the Patent Act (1993)<sup>\*57</sup>, Utility Models Act (1994)<sup>\*58</sup>, Industrial Design

<sup>50</sup> See A. Vutt. Harmonisation of Estonian Company Law: Pre-Conditions in Existing Law. – *Juridica International. Law Review*. University of Tartu, II, 1997, pp. 100–102; A. Vutt, M. Vutt. Defending the Rights of Minority Shareholders in Estonia. – *Juridica International. Law Review*. University of Tartu, IV, 1999, pp. 160–165.

<sup>51</sup> See A. Vutt. Problems in Harmonisation of Acts Regulating Commercial Register Entries. – *Juridica International. Law Review*. University of Tartu, III, 1998, pp. 103–104.

<sup>52</sup> 1 euro = 15.65 Estonian kroons as of 1 July 2000.

<sup>53</sup> The Nonprofit Associations Act passed in 1996 provided for the establishment of a register for nonprofit associations and foundations. The registrars are the registrars of the commercial register. All nonprofit associations and foundations had to be registered by 1 October 1998 (with the exception of political parties, for which the deadline was 1 March 1999). Nonprofit associations and foundations that did not comply with this requirement were subject to compulsory liquidation.

<sup>54</sup> For example, it was possible to found a public limited company with the share capital of 300 kroons; the members of the management board were not entered in the public register, etc.

<sup>55</sup> See H. Pisuke. Developments in Estonian Intellectual Law: Some Issues Concerning Copyright and Related Rights. – *Juridica International. Law Review*. University of Tartu, IV, 1999, pp. 166–171.

<sup>56</sup> *Autoriõiguse seadus* (Copyright Act) – *Riigi Teataja* (the State Gazette) 1992, 49, 615; I 2000, 16, 109. The Copyright Act was the first law in the area of intellectual property, a new draft Copyright Act is being prepared now.

<sup>57</sup> *Patendiseadus* (Patent Act), passed on 16 March 1994 – *Riigi Teataja* (the State Gazette) I 1994, 25, 406; 1998, 74, 1227.

<sup>58</sup> *Kasuliku mudeli seadus* (Utility Models Act), passed on 16 March 1994 – *Riigi Teataja* (the State Gazette) I 1994, 25, 407.

Protection Act (1997)<sup>\*59</sup>, Protection of Layout-design of Integrated Circuit Act (1998)<sup>\*60</sup>, Trade Marks Act (1995).<sup>\*61</sup>

In the Soviet period, the area of intellectual property was only regulated by three chapters of the civil code that contained relatively few norms on copyright, right of discovery and right of invention. The principles that served as the basis for the preparation of the Civil Code were important in the preparation of these new laws separate from the Civil Code, but the influence of foreign and international conventions is dominant. As the area of intellectual property is more internationally unified and harmonised than many other areas of private law, we can speak about the influence of general international development on the Estonian legislation without stressing the differences between families of law.

Important new laws not contained in the Soviet system were the Bankruptcy Act<sup>\*62</sup> and the Competition Act.<sup>\*63</sup> Both were hurriedly passed in 1992 and in 1993. In view of the complete lack of own experience in these areas, the task was set at preparing a new wording of these acts after a few years, taking into account Estonia's own practice and international experience. The Bankruptcy Act was substantially amended and added to at the end of 1996<sup>\*64</sup>; the new Competition Act was passed in 1998.<sup>\*65</sup>

## 5. Conclusions

A private law corresponding to the European requirements for a democratic state has been developed in Estonia during the last 10 years. This has happened due to the hard work of Estonian jurists and the good will of politicians. The role of foreign experts in the preparation of our laws has been of great importance. Contacts with German and Dutch jurists and law experts, as well as those of other countries, have been the closest. Expert opinions and consultations in private law have been provided in the course of preparation of laws and making fundamental decisions by Professors G. Brambring, P. Schlechtriem, B. Grunewald, K. Schmidt, W. Rolland, S. von Lewinski, H.-W. Eckert, F.-J. Semler, N. Reich and G. Hager from Germany, E. Gras, A. F. Salomons, A. L. Mohr, P. Abas, H. van Zijst, H. W. Wiersma, I. H. H. van Erp, H. de Groot and A. van Plateringen from the Netherlands, T. Wilhelmsson, J. Liedes and J. Peltonen from Finland, E. Nerep, B. Westlund and G. Karnell from Sweden, H. Fontain from Belgium, A. N. Yiannopoulos and J. Ginsburg from USA, B. Stauder from Switzerland. The list could be continued. Of foreign organisations, the German Foundation for International Legal Cooperation has provided the greatest help. The hard preparation work has distinguished a number of Estonian jurists who had the historical chance to be among the creators of the new legal system – V. Kõve, A. Zeno, M. Käerdi, A. Vutt, I. Kull, H. Pisuke, M. Seppik, A. Glikman, J. Ikla, P. Pärna, H. Mikk, E. Silvet, I. Mahhov, J. Odar, M. Kingissepp, M. Vutt, M. Kairjak, R. Sõlg, etc.

The choices and decisions made have justified themselves until now. A new challenge for lawyers will be the implementation of the new Law of Obligations Act. Now that the intensive period of legislative drafting of private law is becoming to an end, complementary training of lawyers and quality education in law is primary, because successful implementation of new laws is not possible without it. Little legal literature has been written by Estonian authors.<sup>\*66</sup> This is understandable, because most of their time and energy has been spent on the preparation of legislation. The emphasis in the forthcoming years will be on the preparation and publication of comments to laws and other scientific literature.

<sup>59</sup> Tööstusdisaini kaitse seadus (Industrial Design Protection Act), passed on 18 November 1997 – Riigi Teataja (the State Gazette) I 1997, 87, 1466.

<sup>60</sup> Mikrolülituste topoloogia kaitse seadus (Protection of Layout-design of Integrated Circuit Act), passed on 25 November 1998) – Riigi Teataja (the State Gazette) I 1998, 108/109, 1783.

<sup>61</sup> Kaubamärgiseadus (Trade Marks Act), passed on 27 August 1992 – Riigi Teataja (the State Gazette) 1992, 35, 459; I 1998, 15, 231.

<sup>62</sup> Pankrotiseadus (Bankruptcy Act), passed on 10 June 1992 – Riigi Teataja (the State Gazette) 1992, 31, 403.

<sup>63</sup> Konkurentsiseadus (Competition Act), passed on 16 June 1993 – Riigi Teataja (the State Gazette) I 1993, 47, 642.

<sup>64</sup> Pankrotiseaduse muutmise seadus (Bankruptcy Act Amendment Act), passed on 18 December 1996 – Riigi Teataja (the State Gazette) I 1997, 5/6, 32; 18, 302. On the development of bankruptcy law in Estonia see: P. Varul. On the Development of Bankruptcy Law in Estonia. – *Juridica International. Law Review. University of Tartu*, IV, 1999, pp. 172–178.

<sup>65</sup> Konkurentsiseadus (Competition Act), passed on 11 March 1998 – Riigi Teataja (the State Gazette) I 1998, 30, 410; 1999, 89, 813.

<sup>66</sup> Quite a lot of articles have been written on private law, but the number of larger studies, comments on laws and monographs is small – I. Kull. *Lepinguõigus I (Contract Law I)*. Tallinn, 1999; P. Pärna, V. Kõve. *Asjaõigus: Kommenteeritud väljaanne (Law of Property: Commented Publication)*. Tallinn, 1996.

The Estonian legislative drafting has been substantially influenced by the goal to become a member of the European Union. As Estonia is a candidate member to the European Union, the requirements of EU directives have been taken into account in the preparation of legislation. In the area of private law, this mainly concerns corporate law, contract law, competition law, consumer protection, and intellectual property. This gives a certain advantage – when we become a member of the European Union, we will not need to make major changes to our laws, as they are already adjusted to the EU law.

Last but not least – what is the future direction of development of Estonian private law? The five part laws of the Civil Code could be codified into a single code. Though, such a codification is not absolutely necessary, because the part laws function as a single code.<sup>\*67</sup> The idea of compiling the five part laws into a single text could be the additional revision of the entire material to ensure the fluent functioning of all parts without any contradictions. The development of Estonian private law is undoubtedly influenced by the international harmonisation of law, particularly in the framework of the European Union. The carrying out of the idea of the European civil code is highly interesting. The European civil code has certainly had a major impact on the national legislation of European countries. There should also be an opposite influence – in preparing the European unified codes, it is important to learn from the latest codification experience, *i.e.* that of the East European countries.<sup>\*68</sup>

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<sup>67</sup> Examples of parts of a code existing as separate laws can be brought from elsewhere – for example, the Swiss Federal Code of Obligations is a part of the Swiss Civil Code; the Netherlands Civil Code also consist of separate laws with a separate numeration of sections.

<sup>68</sup> See E. H. Hondius. European Contract Law: The Contribution of the Dutch. *Europäisches Vertragsrecht: Referate und Sitzungsbez.* – Baden-Baden, pp. 52–53.