Having re-established independence, Estonia is celebrating the 15th anniversary of the national constitution. The conference about to begin is one of the weightiest on the list of anniversary events and certainly the most law-oriented in its content.

The Constitution of Estonia, which was passed by referendum on 28 June 1992, is the fourth fundamental document of our statehood, which will soon celebrate its 90th jubilee, while it is the first Constitution that has laid the basis for protection of human rights and the development of democracy and the rule of law. I dare say that our Constitution is a modern set of legal values and principles that has a clear regulatory impact on regulations and is therefore different from those many constitutions that constitute sets of eloquent declarations or political programme documents.

The Constitution is alive and working. The Constitution is respected. While certain indications of nihilism are apparent in the public discussion of the implementation of some other legal acts, then non-compliance with the requirements of the Constitution has not been accepted by the public. Rather, abidance by the Constitution and constitutional thought are used as arguments to criticise misconduct, meaning that the Constitution has a position of authority in public thought.

Fifteen years of validity have proved that all of our disputes of public affairs and society can be settled on the basis of the provisions of the Constitution. As a universal legal act, the Constitution has not allowed any serious constitutional crises to occur in Estonia, although the press has sometimes made ominous predictions.

The Constitution represents a national agreement made 15 years ago to strengthen and develop our state in unfaltering faith and unwavering will. This agreement is timeless, for the state and the law, being in constant change, cannot rely in their development only on a national agreement or national interest. Indispensably, this small nation had to choose the cultural area to which to belong, who to resemble, and whom to contrast against. The Constitution reflects this choice. The Constitution functions as the fundamental act of the legal order. A modern legal system has been built up relying on the Constitution, which is based on European legal values and principles and harmonises with the European legal area.

When speaking about the importance and strengths of the Constitution, we cannot overlook the constant discussion concerning whether Estonia needs a new constitution. Let us admit that the 15-year-old Constitution has passed the test of time. The Constitution is nowhere near flawless as a legal act, but what constitution is? The Constitution is, in the first place, a compromise between the political forces active at the time of its adoption, or, if you will, a public agreement made at the time of the greatest awakening of the nation, and only in the second place is it a legislative act. It is worth mentioning that those amendments that have been made to the Constitution over the past 15 years have not changed the nature, spirit, or idea of the Constitution. In its current form, the Constitution may be said to have guided the development of Estonia's statehood for the longest time when compared to our earlier constitutions, and it has in this time proved that an unchanged constitution is a serious constitutional value.

The Constitution Amendment Act, which was passed by referendum on 13 September 2003 for accession to the European Union, did not change the grammatical structure of the provisions or the underlying fundamental values of the Constitution. The amendment act changed the entire legal attitude to the Constitution itself.

The Constitution with its idea and spirit has provided underpinning for the dynamic development of our society and yet been detailed enough to ensure the protection of everybody's fundamental rights and freedoms. The Constitution has served Estonia well; celebration of its 15th anniversary with a high-level conference is a worthwhile endeavour.

The subject of the conference was not chosen by accident. 'Political Questions in Constitutional Review: What is the Dividing Line between Interference with Policy-Making and Routine Constitutional Review?' is a topical subject in rapidly developing legal orders, where the limits of the activities of judicial power and legislature need to be discussed to find a solution and in which the traditional principle of separation of powers needs to be developed further. It should be noted here that the Conference of European Constitutional Courts, of which the Estonian Supreme Court is a member, chose 'Legislative Omission of the Constitutional Jurisprudence' as the subject of its 2008 congress. These topics essentially spring from the development of constitutionalism as a branch of legal thinking and are more specifically confined to issues pertaining to the division of roles between parliaments and constitutional courts.

Allow me to put forth some general, introductory ideas related to the subject of the conference. Firstly, judicial constitutional review is such a new phenomenon in the Estonian legal order that 15 years ago a conference on this subject would have been unthinkable. As compared to today, when every seat in the conference hall is sold out, so to say, just a few years ago a conference on constitutionalism would have failed because of lack of participants. While I am glad of the great number of participants here, I want to apologise on behalf of the organisers to all those who were simply not able to attend today's conference because of the lack of space. Increasing interest in constitutional issues creates a favourable environment for the development of legal thought and provokes optimism for organising events on this subject for an even wider audience.

I cannot but mention the peculiarity of judicial constitutional review in Estonia, in which all courts — in total, 245 judges — may choose not to apply any law or other legal act when solving a case if the law or legal act is contrary to the Constitution. Time has shown that this diffuse system of constitutional review, in which the legislative activities of 101 Parliament members are checked by 245 judges in the course of legislative control, reveals no unresolvable conflicts inherent in the Constitution. If the press has published claims about possible interference of the courts with politics, these topics are especially related to the abstract legislative control activities of the Supreme Court, in which the President of the Republic of Estonia when having chosen not to proclaim a passed law or the Chancellor of Justice has been a party to the proceedings. The question of interference with politics has arisen when the Supreme Court has resolved matters close to politicians, whether related to elections or political parties. This discussion has thus arisen from the subject discussed in court, not the court's activities. It makes a big difference whether we speak about a case or the court's activities. Each case may have its political aspects and political consequences if one is looking for them, but solving a broadly publicised or politically sensitive case is not interference with politics. The court always makes a legal, not a political decision — regardless of the case.

It is remarkable that when it comes to disputes on 'political' subjects the obsolete notion persists that the passing of laws and development of the legal system is only a matter of parliamentary agreement between political forces and courts are wished to be seen only in the capacity of organs applying legal provisions. The conflicting forces in such disputes are differing understandings of the balance of law and politics, on the one hand, and an obsolete legal-positivistic approach and the modern constitutionalist approach to defining the role of the parliament and courts as the developers of the legal system, on the other.

It should be admitted that the activities of the Supreme Court in its capacity as the constitutional court are broader than traditional administration of justice. The contact point for the legislature's and court's activities is constitutional review with its clear legal policy dimension that dims the lines between traditional parliamentary policy and administration of justice. It is time to agree that developing the legal system is essentially a chain of legal policy decisions wherein the constitutional court actually has a duty to have its say.

As the Constitution assigns the right of judicial constitutional review to every court, and hence every judge via specific legislative control, there is no reason to speak about administration of justice outside politics, whether domestically or internationally. Without trying to define the heavily loaded and, in the public discourse, deeply devalued concept of politics, I must say that courts are not involved in daily policy or party policy decisions. However, courts have their weighty say in legal policy decisions via each and every judgment, while judgments made in the course of constitutional review are unarguably aimed at developing the legal system and should be regarded as an integral part of legal policy.

Domestically, non-application or repeal of a provision of law means going against the political will of the legislature and should be understood as a constitutional legal policy decision made by the court. In international relations, each judgement is understood as made by the Estonian state and thus has **only** a political dimension in that international context.

Courts implement the policy of the Republic of Estonia as defined by its laws, which is why pushing the concept of policy or politics out of the courts' realm is rhetorical self-deception. The word should not be feared or avoided. It need only be specified which policy is outside the court's scope and what the court's political activities are.

The Constitution gave the Supreme Court the right to repeal laws, accompanied by the rights of 'negative legislative drafting'. Estonian constitutional adjudication has so far followed the principle that the court

does not prescribe how the legislature should regulate a subject. Rather, the court may say that the existing regulation or its absence is contrary to the Constitution. The legislature can always take a new legal policy decision that is in line with the Constitution.

In constitutional review, the court does not express its own will as the parliament does under the nation's mandate; rather, it reminds the legislature how the nation as the highest power decided on the disputed issue when it adopted the Constitution. How actively the court reminds the legislature of the Constitution is a question of judicial activism, which will surely be the subject of interesting analysis in the speeches to be made at this conference.

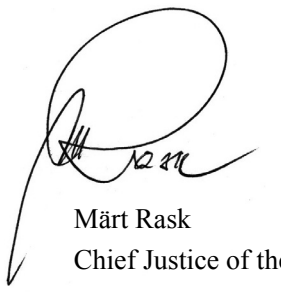
This somewhat simplified line of thought explains the nature of constitutional review on the axis of balance between legislative and judicial powers. However, the deeper reasons for courts still being considered part of the authority of the state, which should not have anything to do with parliamentary policy and which should apply provisions without argument and without critical assessment, are probably hidden deep in the public awareness.

The common understanding of adjudication is based on the legal positivistic way of thinking, according to which the court only applies provisions, regardless of which values the provisions are based on or which political regime they serve, without considering the compliance of the provisions with the Constitution or legal values. The understanding that authority equals law does not die easily.

One may agree that, as the role of values in legal thinking increases, law as a set of provisions is being transformed into law as a set of values and principles. In the system of written law we still read and study the provisions, and the legal way of thinking, if not provision-centred, is still very closely related to provisions. Apparently, the same applies to the study of law. Owing to the Constitution, all Estonian lawyers have had to undergo extensive complementary training in a short time, because the legal order has changed 100% when compared to what was taught 15 years ago. Studying is looking for truth. When we learn that our earlier knowledge is no longer applicable, this is new and better knowledge than sticking to the old. I do not doubt that we all expect that new and better knowledge from this conference, and that certain understandings that have restricted our thought will release their hold on us.

This conference, like many other events dedicated to the anniversary of the Constitution, has been organised owing to the co-operation among the Ministry of Justice, Office of the Chancellor of Justice, National Audit Office, and Supreme Court. The many participating delegations from other countries and international organisations add an international dimension to the conference. We are glad to welcome representatives of the Venice Commission, European Court of Justice, and European Court of Human Rights. We welcome the participants from the Constitutional Court of Bulgaria, State Council of the Netherlands, Constitutional Court of Lithuania, Constitutional Court of Latvia, Constitutional Court of Macedonia, Constitutional Court of Montenegro, Supreme Court of Norway, Constitutional Tribunal of Poland, Portuguese Constitutional Court, Constitutional Court of Romania, Federal Constitutional Court of Germany, Constitutional Court of Slovakia, Constitutional Court of Slovenia, Supreme Administrative Court of Finland, Court of Appeal of England and Wales, and Constitutional Court of the Czech Republic. Warm greetings to the researchers from Leiden University, the European University Institute in Florence, the University of Macerata, Heinrich Heine University of Düsseldorf, the University of Turku, the University of Helsinki, the University of Leeds, and the Central European University in Hungary who are participating in our conference.

Preparing for this conference without the support and the guest speakers from the Venice Commission would have been impossible. The organisers offer sincere thanks to all of you for responding to our invitation, and special thanks to Mr. Gianni Buquicchio of the Venice Commission, who found time to participate in our conference despite his busy schedule. We hope that the conference provides a good basis for intensifying genuine co-operation between the Supreme Court and the Venice Commission.



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