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Legislative Acts of Local Government Bodies and the Protection of Personal Rights and Freedoms

The problem posed by the author of the present article requires that we first turn to the Constitution of the Republic of Estonia.¹ The idea of freedom is known to be the basic principle of Estonian statehood. Pursuant to the second postulate of the preamble of the Constitution, the people of Estonia, with unwavering faith and a steadfast will, wish to strengthen and develop a state, which is founded on liberty, justice and law. Pursuant to the aforesaid and § 10 of the Constitution, which establishes the principle of a state based on democracy, social justice and the rule of law, the general principles of law are valid in Estonia. As R. Maruste has noted, the former principle is directly connected to paragraphs 1 and 2 of § 1 of the Constitution, which stipulate that "Estonia is an independent and sovereign democratic republic", and that "the independence and sovereignty of Estonia are timeless and inalienable", and to § 3, which establishes the principle of legality as follows: "The powers of state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith. Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system...".² Paragraph 1 of § 19 of the Constitution provides that everyone has the right to free self-realisation.³ Thus, the general right to freedom is given the status of a subjective constitutional right. Pursuant to paragraph 2 of the same section, everyone must honour and consider the rights and freedoms of others and observe the

law in exercising his or her rights and freedoms and in fulfilling his or her duties.⁴ Thus, the legislator has been given the right to restrict, by law, the right to freedom in accordance with the Constitution. Without engaging in a philosophical analysis of the idea of freedom, I would refer to only two documents, which are of fundamental importance in international law. The preamble of the Universal Declaration of Human Rights postulates that "... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ...".⁵ The preamble of the International Covenant on Civil and Political Rights also stresses that "... the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...", and that "... these rights derive from the inherent dignity of the human person".⁶ Consequently, personal rights and freedoms are of natural law origin (*jus naturale*), and it is the function of positive law, primarily of the constitution and laws, to guarantee these rights and freedoms.⁷ The catalogue of human rights and freedoms is, for example, included in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR").⁸ The Riigikogu⁹ ratified the ECHR on 13 March 1996. The convention became internationally binding on Estonia on 16 April 1996.¹⁰ There are no principal variances between

Chapter II of the Estonian Constitution entitled "Fundamental Rights, Freedoms and Duties" and the catalogue of fundamental rights of the ECHR. As the fundamental rights enumerated in the ECHR and in the Constitution have enjoyed comparative analysis in legal literature,¹¹ and the present article is intended to stress somewhat different aspects, I will only refer to the fact that for Estonia the requirement of respect to human rights and freedoms springs from international legal instruments as well as from the preamble and several provisions of the Constitution.¹²

Within the context of the present article it is essential to point to § 14 of the Constitution, pursuant to which the guarantee of rights and freedoms is **the duty** of the legislative, executive and judicial powers, and **of local governments** [added emphasis]. Thus, the powers of state of Estonia are bound by the obligation to guarantee rights and freedoms. Section 3(2) of the Local Government Organisation Act (hereinafter "LGOA") corresponds to the said constitutional provision, as it provides, inter alia, that one of the principles on which a local government is founded, is the mandatory guarantee of everyone's lawful rights and freedoms in the rural municipality and city.¹³ Essentially the same obligation is contained in § 2(1) of the same Act, pursuant to which a local government is the right, authority and **duty** of the democratically formed bodies of power of a local government provided for in the Constitution, a rural municipality or city, **to independently organise and manage local issues pursuant to law and based on the legitimate needs and interests of the residents of the rural municipality or city** [added emphasis], and considering the specific development of the rural municipality or city.¹⁴

Subsection 155(1) of the Constitution stipulates that the units of local government are rural municipalities and towns. Pursuant to § 154 of the Constitution the local governments, which operate independently pursuant to law, shall resolve and manage all local issues. Duties may be imposed on a local government only pursuant to law or by agreement with the local government.¹⁵ Article 3(1) of the European Charter of Local Self-government establishes, that local self-government denotes the right and the ability of local authorities within the limits of the law, to regulate and manage substantial share of public affairs under their own responsibility and in the interests of the local population.¹⁶ Section 56 of the Constitution provides that the supreme power of state shall be exercised by the people through citizens with the right to vote 1) by electing the Riigikogu; 2) through a referendum. As we can see, the said provision does not include electing local government councils. Still, the people exercise the power of state by electing local government councils. Law literature considers it a generally recognised fact that local governments exercise state power (indirect state administration).¹⁷ The

Constitutional Review Chamber of the Supreme Court has voiced the same view.¹⁸ The fact that local government is specifically referred to, alongside with the legislative, executive and judicial powers in § 14 of the Constitution, is not accidental but rather indicates the importance, which the constituent *pouvoir* has attributed to local governments in guaranteeing rights and freedoms. The constitutional provisions of the European countries, which regulate the guarantee of personal (human) rights, usually employ the general notion of "public authorities" (e.g. Article 9(2) of the Spanish Constitution¹⁹), the name of the state (Article 4(2) of the Bulgarian Constitution²⁰), refer to the Constitution (Article 1(1) of the Finnish Constitution²¹), etc. There is no essential difference as compared to the Estonian Constitution.

Bearing in mind the classification of the basic functions of a legal order, the activities of a local government as a territorial corporation exercising public administration can be divided in two. A.-T. Kliimann, a famous Estonian administrative law scholar, relying upon A. Merkel, has put it as follows: "The functions of one group are fulfilled with the help of so called normative procedures, because the objective of such procedures is the creation of sets of norms. The functions of the other group are fulfilled with the help of such procedures, which are termed as factual or material, but also free of norms, because their objective is not the creation of norms but rather the creation or transformation of lawful factual conditions."²²

A local government is a democratic, decentralised and autonomous government. According to Kliimann, autonomous administration is the administration of all such corporate units, who have been attributed the right of self-regulation, which is manifested in the right to issue acts of general application. It goes without saying that an administrative unit must be able to exercise the administrative function in its material sense, i.e. to resolve the issues arising within its administration by legislation of specific application. Naturally, it must also be able to issue certain acts of general application. In order to be autonomous, the self-administrative unit's right to issue regulations must enable to issue *praeter legem* regulations, which have the same co-ordination level as the regulations of the central administration of the state.²³ The power of local government to issue the statutes in its own affairs is an expression of its *Satzungshoheit* (right to issue regulations) immanent to the local self-government law and an essential prerequisite for legal concretising of fulfilment of local functions. As R. Stober, a German scholar of municipal law has noted, the right to issue regulations is an essential component of a local self-government.²⁴ If a local government lacked the right to issue regulations, it would not be able to realise its constitutional status. The Administrative Law Chamber of the Supreme Court has even held that in issues, which fall within the exclusive competence of a

council, it shall only issue regulations.²⁵

Consequently, under Estonian legal order, the rural municipality and town councils issue regulations as legislation of general application. In the capacity of legislation of specific application a council issues decisions and a government issues orders (§§ 7(1) and (2) of the LGOA).²⁶

With their legislative activity the local governments guarantee the protection of personal (human) rights and freedoms only if they observe the provisions and the spirit of the Constitution. The following are examples to that effect.

Subsection 3(2) of the Constitution establishes that laws shall be published in the prescribed manner. Only published laws have obligatory force.²⁷ The same requirement applies to regulations. If regulations took force upon adoption or before publication, it would give rise to a situation where the interested persons would not be able to learn about the contents of the regulation affecting their rights and obligations (lack of *vacatio legis*). The LGOA stipulates that council regulations shall be disclosed prior to the entry into force thereof pursuant to the procedure provided for in the statutes of the rural municipality or city. The council regulations of general importance shall be sent to the State Chancellery for publication in the form of authorised copy both on paper and electronically, pursuant to the technical instructions of the State Chancellery, within a week after the act is signed. Council regulations of general importance enter into force on the third day after they have been published pursuant to the procedure provided for in the statutes of the local government unit, if the act itself does not stipulate for a different date. If a different date for entry into force is provided for in a regulation, such regulation enters into force on the date provided for therein (LGOA § 23(1)-(3)).²⁸ The different date can only be longer than three days. A council resolution enters into force on the date provided for therein and shall be forwarded to the person who shall execute such resolutions and to other persons concerned. Council regulations and resolutions and minutes of council sessions shall be accessible to everyone pursuant to the procedure provided by law and the statutes of the rural municipality or city (LGOA § 23(5)-(7)). With regard to the regulations and orders of a rural municipality and city government the LGOA establishes the following procedure: regulations and orders shall be made public prior to the entry into force thereof and made accessible to everyone pursuant to the procedure provided for in the statutes of the rural municipality or city. Data, the issue of which is prohibited by law or which is intended only for the internal use of rural municipality or city agencies, shall not be disclosed. Regulations enter into force on the third day after they are made public, if a later date for entry into force is not provided for in the regulation. Government orders enter into force on the date prescribed therein and shall be forwarded to the persons who shall execute such resolutions and other

persons concerned (LGOA §§ 31(1), (2), (4) and (5)).²⁹ Unfortunately, local governments are not always guided by the principle of legality, instead they interpret the constitutional and legal norms arbitrarily, which results in unlawful restrictions of persons' (human) rights and freedoms. For example, § 81(1) of an earlier version of Statutes of Tallinn established that **as a rule**, the council regulations shall be made public before they enter into force and pursuant to procedure provided for by the statutes and the working regulations of the city council.³⁰

As I already noted, it is Chapter II of the Constitution that contains the catalogue of fundamental human rights and freedoms.³¹ Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted (§ 11 of the Constitution).³² Pursuant to the Constitution the fundamental rights and freedoms may be restricted by law. The Legal Chancellor has observed that this is the basic guarantee of a parliamentary system of government and its preservation.³³ The Constitutional Review Chamber of the Supreme Court has also pointed out that although the guarantee of rights and freedoms is the obligation of local government bodies, they must fulfil this obligation in accordance with the law. The exercise of state power must be legal, regarding both the content of legislation issued by the power, and the mode and form of the exercise of power.³⁴ Unfortunately, the activities of local governments have substantial drawbacks in this respect. Regulations are being issued without pertinent legal basis and without taking into consideration the fact that fundamental rights and freedoms are to be restricted by law(s). The Legal Chancellor has also highlighted this situation.³⁵ Essentially, this constitutes arbitrary exercise of state authority in the sense of § 13 of the Constitution, and everyone has the right of recourse to the courts against this (§ 15 of the Constitution).³⁶ Let me give a few pertinent examples. Among the motivations of the Constitutional Review Chamber of the Supreme Court to decision no. 3-4-1-3-79 (the decision declared null and void subsection 3.19 of section 1 of Valga City Rules, approved by Valga City Council regulation No. 1, dated 10 January 1996, to the extent that it restricts the right to freedom of movement of persons under 16 years of age) the following has been stated: "Section 34 of the Constitution provides for the possibility to restrict the freedom of movement in the cases and pursuant to procedure provided by law. In this constitutional provision the law means a law in its formal sense and not just any legislative act. The decision of the Constitutional Review Chamber of the Supreme Court of 12 January 1994 deals with the rights guaranteed in §§ 11, 26, 33 and 43 of the Constitution and states that the rights and freedoms may be restricted solely in accordance with the Constitution and in the cases and pursuant to procedure

provided by law. In another decision, made by the same Chamber the same day, it is stressed that the possible restrictions on basic rights and freedoms may be imposed only by legislative acts having the force of law. The Chamber found in its decision of 2 November 1994, that locking a wheel of a car, which has been parked improperly or without a valid ticket, constitutes both a local issue and restriction of ownership, and as there was no law giving local governments the right to restrict ownership by such means, the pertinent acts of local government were unconstitutional. Pursuant to the decision of 21 December 1994, the procedure for restricting basic rights and freedoms must be established by law. In the latter decision reference is made to § 34 of the Constitution, which regulates the freedom of movement. Thus, the Constitutional Review Chamber has consistently been of the opinion that the rights established in Chapter II of the Constitution, which have been referred to in the said decisions, may be restricted solely in accordance with law.³⁷ Another pertinent fact: until recently 35 local government bodies (29 city and rural municipality councils and six governments) had issued regulations approving unified fees for construction supervision procedures, which constituted unlawful payments.³⁸ As is known, § 113 of the Constitution establishes that state taxes, duties, fees, fines and compulsory insurance payments shall be provided by law.³⁹ Let me also refer to an example from Paide where, in order to determine the composition of offences against public order, the pertinent compositions of offences of the Criminal Code⁴⁰ and the Code of Administrative Offences⁴¹ were compiled into a new composition together with administrative liability sanctions,⁴² etc.

Pursuant to § 26 of the Constitution everyone has the right to the inviolability of private and family life. State agencies, local governments, and their officials shall not interfere with the private or family life of any person, except in the cases and pursuant to procedure provided by law to protect health, morals, public order, or the rights and freedoms of others, to prevent a criminal offence, or to apprehend a criminal offender.⁴³ Sections 29 and 31 of the Constitution⁴⁴ establish the right and freedom to engage in enterprise, and the Commercial Code⁴⁵ and Consumer Protection Act,⁴⁶ which correspond to the provisions, stipulate the general conditions and procedure for the exercise of the right. In conflict with the aforesaid the local governments have arbitrarily established payment for the issuance of authorisations to trade (in fact a local government fee), unlawfully restricting and ignoring everyone's constitutional and legal rights and freedoms.⁴⁷

Section 47 of the Constitution provides that everyone has the right, without prior permission, to assemble peacefully and to conduct meetings. This right may be restricted in the cases and pursuant to procedure provided by law to ensure national security, public order, morals, traffic safe-

ty, and the safety of participants in the meeting, or to prevent the spread of an infectious disease.⁴⁸ The Public Meetings Act⁴⁹ corresponds to this constitutional provision. Before the enactment of the said Act several local governments had established systems of permits by their regulations.

The motivation (justification) of legislative acts of local governments, which is to guarantee everyone's right of recourse to the courts, in case their rights and freedoms are violated, as stipulated in § 15 of the Constitution,⁵⁰ is a different topic. The legal literature on administrative and municipal law contains fixed viewpoints in this regard. It is not accidental that R. Stober, a recognised German legal scholar has used the words "**Special** [added emphasis] observance of the obligation to motivate".⁵¹ The requirement to motivate also proceeds from § 3 of the Constitution, according to which the powers of state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith.⁵² There is a considerable amount of case law pertaining to the obligation to motivate administrative acts. Pertinent admissions can be referred to in the motivations of the Supreme Court decisions. "Administrative acts have to be motivated, because this is the only way to ensure that the acts can be reviewed as to their substance. When motivating an administrative act a reference must be made to a pertinent provision of law, and arguments have to be stated as to why the decision was reached. It is especially important to motivate such administrative acts, by which persons' rights and freedoms are restricted".⁵³ "It is necessary to motivate an administrative act in order that a person, to whom the act is addressed, would understand why and on what legal basis the act has been issued. The motivation of an administrative act is a means to ensure that a person, to whom the act is addressed, would understand whether his or her rights have been restricted lawfully and that he or she would be able to protect his or her rights if necessary. Also, the motivation of an administrative act enables the authority who is to review the legality of the act, including the courts, to decide whether the administrative act is legal. [...] An administrative act without motivation is illegal because it is not possible to check why and on what legal bases the act has been issued."⁵⁴ "If persons' rights and obligations, which are based on public law, are determined by an order, the order has to be motivated, i.e. in addition to reference to a provision of law the order must also contain arguments as to why the order was issued. To dispute an order a person has the right to know on what reasons the order, which affects his or her rights or interests, has been issued. This is the way to guarantee that orders can be reviewed."⁵⁵ The way local government bodies motivate their legal acts is — to put it mildly — far from satisfactory. Very often these contain no reference to the law's provision, which serves as a legal basis, or the reference is supplemented by a mean-

ingless phrase, such as "Having given a fair hearing to the rural municipality mayor X, the rural municipality council of Y hereby rules (or decides)...". It is rather common that by way of legal motivation a reference is made to an act as a whole or to a section, without taking into consideration the existence of subsections. The lack of factual motivation is also rather widespread. The Legal Chancellor has characterised the situation quite strikingly: "The preparation of correct legislation of local governments is impeded by extremely poor legal literacy, poor knowledge of the positive law of the state. As a result, on the territories of local governments, acts are being promulgated that are free in form, written in local language and according to local understanding."⁵⁶ In fact a few years ago approximately 50% of cases examined by administrative courts were protests against implementation legislation of specific application of local government bodies.⁵⁷

From the point of view of protection of personal (human) rights and freedoms the review of local government legislation is of essential importance. Under Estonian legal order the review of the constitutionality and legality of local governments' legislative acts is exercised by the Legal Chancellor (§ 139(1) of the Constitution;⁵⁸ Legal Chancellor Act). Copies of all legislative acts of local governments will be sent to the legal Chancellor within ten days of their adoption, signature or entry into force (Legal Chancellor Act⁵⁹ § 16). If the Legal Chancellor finds that legislation, in its entirety or partially, is in conflict with the Constitution or a law, he or she shall propose to the body which passed the legislation to bring the legislation into conformity with the Constitution or the law within twenty days. If a body which passed legislation has not brought the legislation or a provision thereof into conformity with the Constitution or the law within twenty days after the date of receipt of a proposal of the Legal Chancellor, the Legal Chancellor shall propose to the Supreme Court that the legislation or a provision thereof be declared invalid (§ 142 of the Constitution,⁶⁰ §§ 17 and 18(1) of the Legal Chancellor Act⁶¹). The actual situation of review is the following: pursuant to the Legal Chancellor's report of 1995, the amount of unconstitutional and illegal legislative acts adopted that year was regrettably large — i.e. 18.⁶² In the report for 1996 it is said that during that year the Legal Chancellor made 23 proposals to bring local governments' acts into conformity with the Constitution and the laws.⁶³ It appears from the report for 1997 that during the year 170 local governments had sent 1760 legislative acts to the Legal Chancellor. Considering all the additional local government regulations, which are published in the Riigi Teataja, it is only possible to review three quarters of the local governments' legislation. Conflict between the Constitution and these acts was ascertained in 52 cases, which is more than the year before.⁶⁴ The given data has to be viewed in the light of the fact that not every piece of

local government legislation, which is in conflict with the Constitution or the laws, implies the unlawful restriction of personal rights and freedoms.

In relation to judicial review, § 15 of the Constitution stipulates: "Everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation or procedure to be declared unconstitutional. The courts shall observe the Constitution and shall declare unconstitutional any law, other legislation or procedure which violates the rights and freedoms provided by the Constitution or which is otherwise in conflict with the Constitution."⁶⁵

The judicial review of legality of the legislation of local governments is exercised by the Constitutional Review Chamber of the Supreme Court (§ 4(4) of the Constitutional Review Court Procedure Act⁶⁶). The legal Chancellor and the courts are entitled to directly petition the Supreme Court for the review of constitutionality or legality of a legislation of a local government. The courts shall do so if they have, by a decision, declared a legislation of a local government to be unconstitutional and have not applied it. In such cases the courts inform the Supreme Court and the Legal Chancellor of the decision, whereby the constitutional review proceedings in the Supreme Court are initiated (§ 5(2) of the Constitutional Review Court Procedure Act⁶⁷). So far the courts have only once submitted a petition to this effect.⁶⁸

Section 160 of the Constitution establishes, that the supervision of the activities of local governments shall be provided by law.⁶⁹ Under Estonian legal order a county governor has the right to exercise supervision over the legality of legislation of specific application of the councils and governments of local government units of the given county (§ 85(1) of the Government of the Republic Act⁷⁰). A county governor has the right to demand copies of legislation of the councils and governments of local government units of the county which have entered into force (§ 85(2) of the Government of the Republic Act⁷¹). Consequently, this constitutes subsequent control (review of acts which have entered into force). Local councils and governments are required to submit the copies not later than on the seventh day after receipt of the demand of the county governor. If a county governor finds that legislation of specific application of a local government council or government is, in full or in part, in conflict with the Constitution, a law or other legislation issued pursuant to law, he or she may submit a proposal in writing to bring the legislation of specific application or a provision thereof into conformity with the Constitution, the law or other legislation within fifteen days. If the council or government does not or refuses to bring the legislation of specific application or a provision thereof into conformity with the Constitution, a law or other legislation within fifteen days

after receipt of the written proposal of the county governor, the county governor shall file a protest with an administrative court pursuant to procedure prescribed in the Code of Administrative Court Proceedings (hereinafter "CACP") (§ 85(4) of the Government of the Republic Act). Administrative courts review the legislation of specific application of the local government bodies.⁷⁴ As more detailed discussion of the presently valid administrative court proceedings is outside the scope of the present article, and presuming that a subsequent issue of *Juridica International* will contain a thorough treatment of the new CACP⁷⁵, let us hereby confine ourselves to a brief overview of such review.⁷⁶

Everyone who finds that a legislation [which is not law-creating in content — § 4(3) of the CACP⁷⁷] of a local government body violates his or her rights or restricts his or her freedoms, has the right to file a complaint with an administrative court to protect himself or herself. Associations of persons, including associations which are not legal persons, may have the recourse to an administrative court in the interests of its members or other persons if the founding act or statutes of the association or the law provide for such a right (§ 5(1) of the CACP).⁷⁸ The legislation of specific application of a local government body (i.e. rural municipality or city council or government) may be protested in an administrative court by a county governor (§ 5(3) of the CACP⁷⁹, see also the aforesaid). A complaint or protest shall be filed with an administrative court within the period provided by law. If no such period is provided by law, a complaint or protest shall be filed within one month after the date the person became or should have become aware of a violation of his or her rights or freedoms (§ 7(1) of the CACP).⁸⁰ The principle of investigation is dominant in the administrative court proceedings. An administrative judge may decide not to satisfy a complaint or a protest or to declare the complained or protested legislation illegal fully or in part (§§ 20(1) and (2) of the CACP).⁸¹ If an administrative court declares the complained or protested act illegal, it shall propose, in its decision, that the pertinent body review the issue and make a new decision (§ 20(2) of the CACP).⁸² Subsection 5(4) of the CACP establishes that if the law prescribes for a pre-trial procedure for resolution of certain categories of complaints or protest, it is possible to have a recourse to an administrative court only after the complaint or protest concerning the violation of rights or restriction of freedoms was denied in whole or in part under pre-trial procedure.⁸³ Pursuant to the Local Government Organisation Act everyone has the right to apply to a rural municipality or city government for the amendment or repeal of legislation passed by the rural municipality or city government if such legislation unlawfully restricts the rights of the applicant. If a rural municipality or city government does not amend or repeal such legislation, the applicant has the right of

recourse to the courts for resolution of the issue (§ 33).⁸⁴ It is important to stress with regard to this provision that it does not establish an obligatory pre-trial procedure for the examination of complaints against legislation of local governments. The Administrative law Chamber of the Supreme Court has taken the same position.⁸⁵ The right to initiate legislation is related to the problem under discussion. Namely, not less than one per cent of the residents of a rural municipality or city with the right to vote, however not less than five residents with the right to vote, have the right to initiate the passage, amendment or repeal of legislation of the rural municipality or city council or government concerning local issues; such initiatives shall be debated not later than within three months (§ 32(1) of the Local Government Organisation Act).⁸⁶

In relation to the proportion of local government bodies' legislation of specific application disputed pursuant to the administrative court procedure it has already been said that it constitutes approximately one half of all disputed acts. This has been attributed to the fact that the county governors' review has become more effective.⁸⁷

It can be noted, by way of conclusion, that within the process of law creation the local governments, just like other institutions exercising powers of state, are to observe the provisions and the spirit of the Constitution. There is no qualitative difference between these institutions. The protection of personal rights and freedoms must have a central role in the activities of a local government. A prerequisite for the fulfilment of this constitutional obligation by local governments is essential improvement of legal knowledge among the employees of rural municipalities and cities, as well as of national policies, especially fiscal policy, which observes the principles of the European Charter of Local Self-government.

Notes:

¹ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.

² R. Maruste. Põhiseadus ja selle järelevalve. Võrdlevad selgitused. Kommentaarid. Tekstid. (The Constitution and the Constitutional Review. Comparative Explanations. Commentaries. Texts.) — Tallinn: Juura Õigusteabe AS, 1997, p. 57.

³ Eesti Vabariigi Põhiseadus (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.

⁴ Ibid.

⁵ Universal Declaration of Human Rights (1948). — Human Rights in International Law. Basic Texts. — Council of Europe Press, 1992, p. 9-17.

⁶ International Covenant on Civil and Political Rights (1966). — Human Rights in International Law. Basic Texts. — Council of Europe Press, 1992, p. 31-57.

⁷ Q.v. also R. Maruste. Op.cit., p.58.

⁸ RT (Riigi Teataja = the State Gazette) II 1996, 11/12, 34.

⁹ Riigikogu = the parliament of Estonia.

- ¹⁰ R. Maruste. Euroopa inimõiguste ja põhivabaduste kaitse konventsiooni staatus eesti õigussüsteemis. — Euroopa Nõukogu, Eesti Vabariigi Välisministeerium. Tallinnas 30.-31. mail 1996 toimunud seminari Eesti tegevjuristidele "Inimõiguste ja põhivabaduste kaitse konventsiooni" õiguslikest tagajärgedest ettekanded (The Status of the European Convention on Human Rights in the Estonian Legal System. — Council of Europe, The Foreign Ministry of the Republic of Estonia. Seminar for Estonia's practicing lawyers on legal consequences of the Convention for the Protection of Human Rights and Fundamental Freedoms, on 30-31 May in Tallinn). — Tallinn, 1996, p. 48.
- ¹¹ Q.v. e.g. R. Maruste. Põhiseadus ja selle järelevalve. Võrdlevad selgitused. Kommentaarid. Tekstid. (The Constitution and the Constitutional Review. Comparative Explanations. Commentaries. Texts.) — Tallinn: Juura Õigusteabe AS, 1997, pp. 75-76. R. Narits, Fundamental Rights and Freedoms in Estonian Constitution.— *Juridica International*. III 1998, pp. 25-26.
- ¹² Q.v. also R. Maruste. *Op. cit.*, p.77.
- ¹³ RT I 1993, 37, 558; 1994, 12, 200; 19, 340; 72, 1263; 84, 1475; 1995, 16, 228; 17, 237; 23, 334; 26-28, 355; 59, 1006; 97, 1664; 1996, 36, 738; 37, 739; 40, 773; 48, 942; 89, 1591; 1997, 13, 210; 29, 449 and 450; 69, 1113; 1998, 28, 356; 59, 941; 61, 984; 1999, 10, 155; 29, 401.
- ¹⁴ *Ibid.*
- ¹⁵ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.
- ¹⁶ RT II 1994, 26, 95.
- ¹⁷ Q.v. e.g. H. Maurer. *Allgemeines Verwaltungsrecht*, 10. Aufl. München, 1995, § 23; E. Forsthoff. *Lehrbuch des Verwaltungsrecht*. Band I Allgemeiner Teil., 10., Aufl. München, 1973, p. 490; also K. Merusk, I. Koolmeister. *Haldusõigus. Õpik Tartu Ülikooli õigusteaduskonna üliõpilastele.* (Administrative Law. Textbook for Students of the University of Tartu Faculty of Law.) Tallinn: Õigusteabe AS Juura, 1995, pp. 63, 69.
- ¹⁸ 3-4-1-3-97 – Supreme Court Judgements 1997. Tallinn: Juura, Õigusteabe AS, 1998, pp. 13-16.
- ¹⁹ Spain — Constitution. Available: <http://www.uni-wuerzburg.de/law/sp00000.html>, 8 April 1999.
- ²⁰ Bulgaria — Constitution. Available: <http://www.uni-wuerzburg.de/law/bu00000.html>, 8. April 1999.
- ²¹ Finland — Constitution. Available: <http://www.uni-wuerzburg.de/law/fo00000.html>, 8 April 1999.
- ²² A.-T. Kliimann. *Õiguskord. (Legal Order.)* — Tartu: Akadeemilise Kooperatiivi Kirjastus, 1939, p. 205.
- ²³ R. Eliaser. *Haldusõiguse üldosa. Autoriseeritud konspekt. (General Principles of Administrative Law. Authorised lecture notes.)* — Tartu, 1939, pp. 39-40.
- ²⁴ R. Stober. *Kommunalrecht in der Bundesrepublik Deutschland*. 3. Auflage. — Stuttgart, Berlin, Köln: Verlag W. Kohlhammer, 1996, p. 259.
- ²⁵ 3-3-1-38-96 - Riigikohtu lahendid 1996. (Supreme Court Judgements 1996.) — Tallinn: Juura Õigusteabe AS, 1996, pp. 140-143.
- ²⁶ RT I 1993, 37, 558; 1994, 12, 200; 19, 340; 72, 1263; 84, 1475; 1995, 16, 228; 17, 237; 23, 334; 26-28, 355; 59, 1006; 97, 1664; 1996, 36, 738; 37, 739; 40, 773; 48, 942; 89, 1591; 1997, 13, 210; 29, 449 and 450; 69, 1113; 1998, 28, 356; 59, 941; 61, 984; 1999, 10, 155; 29, 401.
- ²⁷ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.
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- ²⁹ *Ibid.*
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- ³¹ Some other constitutional provisions, not located under Chapter II, also contain fundamental rights and freedoms (§§ 57, 60(1), etc.). — Q.v. K. Merusk, R. Narits. Eesti konstitutsiooniõigusest. (On Estonian Constitutional Law.) — Tallinn: Juura Õigusteabe AS, 1998, p.172.
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- ³⁶ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.
- ³⁷ 3-4-1-3-97 — Supreme Court Judgements 1997.— Tallinn: Juura Õigusteabe AS, 1998, pp. 13-16.
- ³⁸ J. Liventaal. Tüüpilistest vigadest kohaliku omavalitsuse organite õigusloometegevuses (ettekanne EAÕS-i Tallinna sektsiooni koosolekul 26.11.1998 EV õiguskantsleri järelevalvemenetluses olnud probleemidest [On typical mistakes in the legislative activities of local government bodies (Report at the meeting of the Tallinn section of the Estonian Academic Law Society on 26 November 1998 on the problems under the review procedure of the legal Chancellor of the Republic of Estonia).] 25 November 1998, p. 5.
- ³⁹ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.
- ⁴⁰ RT 1992, 20, 288; RT I 1999, 38, 485.
- ⁴¹ RT 1992, 29, 396; RT I 1997, 66-68, 1109; 73, 1201; 81, 1361 and 1362; 86, 1459 and 1461; 87, 1466 and 1467; 93, 1561, 1563-1565; 1998, 2, 42; 17, 265; 23, 321; 30, 410; 34, 484; 36/37, 552 and 553; 38, 562; 51, 756 and 759; 52/53, 771; 60, 951 and 952; 64/65, 1004; 86/87, 1409; 98/99, 1574; 102, 1695; 108/109, 1783; 1999, 4, 53; 16, 271, 272 and 276; 23, 350; 29, 398 and 404; 30, 415; 31, 425.
- ⁴² J. Liventaal. *Op. cit.*, p.13.
- ⁴³ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.
- ⁴⁴ *Ibid.*
- ⁴⁵ RT I 1995, 26-28, 355; 1996, 52-54, 993; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360.
- ⁴⁶ RT I 1994, 2, 13; 1995, 20, 297; 1996, 49, 953; 1997, 93, 1561; 1999, 10, 156, 24, 359.
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- ⁵⁰ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992. Q.v. also 3-3-1-30-97 — Riigikohtu lahendid 1997. (Supreme Court Judgements 1997.) — Tallinn: Juura Õigusteabe AS, 1998, pp. 145-148.
- ⁵¹ R. Stober. *Op. cit.*, p. 265.
- ⁵² K. Merusk, I. Koolmeister. *Op. cit.*, pp. 103-107.
- ⁵³ III-3/1-26/95 — Riigikohtu lahendid 1995. (Supreme Court Judgements

1995.) — Tallinn: Juura Õigusteabe AS, 1996, pp. 89-93.

⁵⁴ 3-3-1-14-97 — Riigikohtu lahendid 1997. (Supreme Court Judgements 1997.) - Tallinn: Juura Õigusteabe AS, 1998, pp. 79-82.

3-3-1-32-97 — Ibid. pp. 153-158.

⁵⁵ III-3/1-35/95 — Riigikohtu lahendid 1995. (Supreme Court Judgements 1995.) — Tallinn: Juura Õigusteabe AS, 1996, pp. 124-127.

⁵⁶ VIII Riigikogu stenogramm (Stenographs of the 8th Riigikogu.) Available: <http://www.riigikogu.ee/ems.stenograms/1997/09/t97092503.html>, 20 March 1999.

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⁵⁸ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.

⁵⁹ Ibid.

⁶⁰ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.

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⁶² VIII Riigikogu stenogramm. (Stenographs of the 8th Riigikogu.) Available: <http://www.riigikogu.ee/ems.stenograms/1995/09/t95092803.html>, 20 March 1999.

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⁶⁶ RT I 1993, 25, 435.

⁶⁷ Ibid.

⁶⁸ 3-4-1-3-97 - Riigikohtu lahendid 1997. (Supreme Court Judgements 1997.) — Tallinn: Juura, Õigusteabe AS, 1998, pp. 13-16.

⁶⁹ Eesti Vabariigi Põhiseadus. (Constitution of the Republic of Estonia.) — Tallinn: Olion, 1992.

⁷⁰ RT I 1995, 94, 1628; 1996, 49, 953; 88, 1560; 1997, 29, 447; 40, 622; 73, 1200; 87, 1468; 52, 833; 81, 1361; 81, 1362; 1998, 28, 356; 36/37, 552; 40, 614; 107, 1762; 111, 1833; 1999, 10, 155; 16, 271 and 274; 27, 391; 29, 398 and 401.

⁷¹ Ibid.

⁷² RT I 1993, 50, 694; 1994, 16, 290; 28, 425; 1995, 29, 358 and 359; 1996, 37, 739; 1997, 16, 260; 30, 472; 87, 1468; 93, 1557; 95/96, 1575; 1998, 17, 265; 61, 981; 1999, 16, 271.

⁷³ RT I 1995, 94, 1628; 1996, 49, 953; 88, 1560; 1997, 29, 447; 40, 622; 73, 1200; 87, 1468; 52, 833; 81, 1361; 81, 1362; 1998, 28, 356; 36/37, 552; 40, 614; 107, 1762; 111, 1833; 1999, 10, 155; 16, 271 and 274; 27, 391; 29, 398 and 401.

⁷⁴ Proceeding from the title of the present article, it does not deal with real procedures of local governments, which fall under the jurisdiction of administrative courts.

⁷⁵ RT I 1999, 29, 406.

⁷⁶ Administrative court proceedings in Estonian legal order have more thor-

oughly been treated by K. Merusk, I. Koolmeister, and other. Q.v. K. Merusk, I. Koolmeister. Haldusõigus. Õpik Tartu Ülikooli õigusteaduskonna üliõpilastele. (Administrative Law. Textbook for the University of Tartu Faculty of Law Students.) Tallinn: Õigusteabe AS Juura, 1995, pp. 125-127; K. Merusk. Halduskohtu mõiste, organisatsioon ja pädevus haldusvaidluste lahendamisel. (The Notion, Organisation and Competence of Administrative Courts in Resolution of Administrative Disputes.) — Juridica 1994 No. 2, pp. 47-50; K. Merusk. Otsustusmenetlus. (Decision Proceedings.) Ibid., pp. 54-55; I. Koolmeister. Protsessiosialised halduskohtumenetlused. (Parties in Administrative Court Proceedings.) — Ibid., pp. 51-53.

⁷⁷ RT I 1993, 50, 694; 1994, 16, 290; 28, 425; 1995, 29, 358 and 359; 1996, 37, 739; 1997, 16, 260; 30, 472; 87, 1468; 93, 1557; 95/96, 1575; 1998, 17, 265; 1998, 61, 981; 1999, 16, 271.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ RT I 1993, 37, 558; 1994, 12, 200; 19, 340; 72, 1263; 84, 1475; 1995, 16, 228; 17, 237; 23, 334; 26-28, 355; 59, 1006; 97, 1664; 1996, 36, 738; 37, 739; 40, 773; 48, 942; 89, 1591; 1997, 13, 210; 29, 449 and 450; 69, 1113; 1998, 28, 356; 59, 941; 61, 984; 1999, 10, 155; 29, 410.

⁸⁵ III-3/1-9/94. — Riigikohtu lahendid 1993/1994. (Supreme Court Judgements 1993/1994.) — Tallinn: Õigusteabe AS Juura, 1995, pp. 93-95.

⁸⁶ RT I 1993, 37, 558; 1994, 12, 200; 19, 340; 72, 1263; 84, 1475; 1995, 16, 228; 17, 237; 23, 334; 26-28, 355; 59, 1006; 97, 1664; 1996, 36, 738; 37, 739; 40, 773; 48, 942; 89, 1591; 1997, 13, 210; 29, 449 and 450; 69, 1113; 1998, 28, 356; 59, 941; 61, 984; 1999, 10, 155; 29, 401.

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