



Dear reader,

Most of the articles published in this issue of *Juridica International* focus on the problems of public law. The ever globalising world, international and European Union law as well as the objective, including economic, processes under way in society, increasingly affect the development of public law. This inevitably also brings about problems of a constitutional nature. Hence, § 1 of the Constitution of the Republic of Estonia Amendment Act is still topical and provokes discussion. It sets out that Estonia may belong to the European Union in accordance with the fundamental principles of the Constitution of the Republic of Estonia. What are the principles that cannot be sacrificed as a member of the European Union and that have to be considered when applying European Union law? These questions are addressed by Professor Raul Narits in his article ‘About the Principles of the Constitution of the Republic of Estonia from the Perspective of Independent Statehood in Estonia’.

The whirl of reforms and changes can create a danger that the legislator loses touch with the Constitution and sacrifices values that make up the core of a democratic state based on the rule of law. Over the past years, it has become more and more topical in many countries, including Estonia, to transfer public functions to persons in private law. The main arguments stem from economic considerations as the state is no longer able to perform all the functions, from the need for an improved use of the knowledge and experience of the private sector, as well as from the economy of resources. This gives rise to a question about the constitutional limits and boundaries of transferring public functions. There are several problems of this kind that have also been brought before the Supreme Court. For example, in its judgment of 18 May 2008, the Supreme Court ruled that the delegation of an offence procedure and the related penal power of the state to a person in private law were unconstitutional. The Court established that the delegation of penal power to a legal person governed by private law was not only unconstitutional because of the failure to observe the requirement of legal reservation but the delegation of penal power to a legal person governed by private law was also in conflict with the requirement arising from the first sentence of § 3 (1) of the Constitution and the requirement arising from § 10 of the Constitution that state authority shall be exercised pursuant to the Constitution, i.e., the authority of the state cannot delegate the functions that it is obliged to perform, according to the spirit of the Constitution and which therefore form the core of the functions of the authority of the state, to a legal person governed by private law.

Considering the popularity of the topic, the Faculty of Law of the University of Tartu organised an international conference *Principles of and Experience in Transfer of Public Functions to the Private Sector* in Tartu, from 17 to 18 October. The conference and the publication of the related papers were supported by the Estonian Science Foundation, within the framework of grant No. 6464. The conference was also attended by outstanding German scholars in the field. The papers of the conference will also be published in this issue of *Juridica International*. In his paper, Professor Hartmut Maurer, of the University of Konstanz, discusses the constitutional boundaries of the privatisation of public functions in Germany; the paper by Professor Friedrich Schoch, from the University of Freiburg, is dedicated to the involvement of the private sector in maintaining law and order in Germany; Professor Franz-Ludwig Knemeyer, of Würzburg University, examines privatisation and modern self-governing enterprise in his paper. Of the presenters from Estonia, you can read the papers by Nele Parrest ‘Constitutional Boundaries of Transfer of Public Functions to Private Sector in Estonia’, Ene Andresen ‘State Tasks of the Public Office of Notary — Belonging to the Domain of National or European Union Law’ as well as by Kalle Merusk and Vallo Olle ‘On Assignment of Local Government Tasks to the Private Sector in Estonia’.

We are hopeful that the readers come across fascinating and thought-provoking ideas in these papers, and why not also solutions to the legal problems that have developed.

Kalle Merusk