THESIS ON HUMANITIES AND SOCIAL SCIENCES 16

Elections, Political Parties, and Legislative Performance in Estonia: Institutional Choices from the Return to Independence to the Rise of E-Democracy

ÜLLE MADISE

TUT PRESS

TALLINN UNIVERSITY OF TECHNOLOGY
Faculty of Humanities
Department of Humanities and Social Sciences
Chair of Governance

The thesis was accepted for the defence of the degree of Doctor of Philosophy in Public Administration on 5 July, 2007

Supervisor: Professor Dr. Wolfgang Drechsler, Tallinn University of Technology, Estonia

Opponents: Professor Dr. Markku Temmes, University of Tampere

Professor Dr. Rainer Kattel, Tallinn University of Technology, Estonia

Defence of the thesis: 30 August, 2007

Declaration: Hereby I declare that this doctoral thesis, my original investigation and achievement, submitted for the doctoral degree at Tallinn University of Technology has not been submitted for any other degree or examination.

ISSN 1406-4790
ISBN 978-9985-59-721-7

CONTENTS

LIST OF ORIGINAL PUBLICATIONS

The dissertation is based on the following original publications:

I **Madise, Ülle**; Sikk, Allan. (2007) Die Institution der politischen Partei in Estland, in: Tsatsos; von Alemann; Morlok; Schefold; Schneider (eds) *Die Parteien in den demokratischen Ordnungen der Staaten der Europäischen Gemeinschaft. Schriften zum Parteienrecht: Parteienrecht im europäischen Vergleich,* 2nd completely revised and enlarged edition, Baden-Baden: Nomos, in press. Main author. (In German).

II Pettai, Vello; **Madise, Ülle**. (2006) The Baltic Parliaments: Legislative Performance from Independence to EU Accession, *The Journal of Legislative Studies*, Vol 12, No 3-4, pp. 291-310.

III (a) Drechsler, Wolfgang; **Madise, Ülle**. (2004) Electronic Voting in Estonia, in: Kersting, Norbert; Baldersheim, Harald (eds) *Electronic Voting and Democracy. A Comparative Analysis*, Basingstoke: Palgrave Macmillan, pp. 97-108.

III (b) Drechsler, Wolfgang; **Madise, Ülle**. (2002) E-voting in Estonia, *Trames*, Vol 6, No. 3, pp. 234-244.

IV **Madise, Ülle**; Martens, Tarvi. (2006) E-voting in Estonia 2005: The first practice of country-wide binding Internet voting in the world, in: Krimmer, Robert (ed.) *Electronic Voting 2006*, Bonn: Gesellschaft für Informatik, pp. 15-26.

APPENDIX

V **Madise, Ülle**; Maaten, Epp; Vinkel, Priit. (2006) Internet Voting at the Elections of Local Government Councils on October 2005, Report on Internet voting to the National Electoral Committee, available at http://www.vvk.ee/english/report2006.pdf.

VI **Madise, Ülle**. (2006) Interneti teel hääletamise õiguslikke ja poliitilisi aspekte, *Juridica*, 2006/10, pp. 663-672. [Legal and political aspects of Internet voting].

VII **Madise, Ülle**. (2004) Kas Riigikogu valimise korra muutmine lahendaks rahva riigist võõrandumise probleemi?, *Juridica*, 2004/9, pp. 583-597. [Would a change of *Riigikogu* election rules solve the problem of political alienation?].

VIII **Madise, Ülle**. (2004) Milleks on Eestis vaja e-hääletamist?, *Riigikogu Toimetised*, 2004/9, pp. 130-135. [Why does Estonia need e-voting?].

IX Mäeltsemees, Sulev; **Madise, Ülle**; Aas, Krista; Vinkel, Priit. (2007) Administrative Culture in Estonia, in Thedieck, Franz (ed.) *Foundations of Administrative Culture in Europe*, Baden-Baden: Nomos, pp. 135-145.

INTRODUCTION

1. Scope and aim

The current dissertation deals with the most fundamental constitutive aspects of the Parliamentary Democracy which the Republic of Estonia has chosen as its form of political organization, or which it has become after regaining its independence. The institution of political parties and party democracy as well as the influence of constitutional institutions on legislative performance is discussed from several perspectives, with special emphasis on the most intriguing case of introducing Internet voting in Estonia.

By covering these aspects, hopefully a substantial inroad into understanding the current status and development of Estonian politics, policy and the Estonian State as such will be taken. Perhaps equally important, this dissertation is not only *about* Estonia, but it uses the Estonian *case* to illustrate and discuss wider and currently important issues of parties and legislation. The question of e-voting will be particularly stressed in this introduction; it is also discussed in **(IV)** and in three of the essays that form the appendix to the main body of the dissertation's texts (**V**, **VI** and **VIII**). The role of e-voting is the most interesting and important one, because Estonia's global function as a trailblazer in this respect turns Estonia into an issue of central concern even to those not particularly concerned with the country as such.

The essays that form the main body of the dissertation's text each represent one type or approach of scholarly article in the social sciences. Political parties are addressed in **(I)**, an essay co-authored by Allan Sikk, "Die Institution der politischen Partei in Estland" ("The Institution of the political Party in Estonia"), a large-scale survey and basic evaluation of the Estonian political parties, their history and their function. It is being published in the context of a handbook on European parties, and the focus is on a detailed and comprehensive view that combines realistic description with exact legal references.

(II), "The Baltic Parliaments: Legislative Performance from Independence to EU Accession", written with Vello Pettai, is a classical political science / legislative studies analysis of the patterns of political decision-making and effectiveness in parliamentary development. It is comparative in approach and studies the difference or similarity of legislative institutions and performance in the three Baltic states of Estonia, Latvia, and Lithuania. The factual information about Estonia as a basis for comparison was partially gathered in 2004 as a member of the editorial board and author of several comments on statistics about *Riigikogu* factions, committees, individual members, legislative output, forming governing coalition and government etc of the thorough overview-book of the three first parliaments after regaining independence. (Mõttus *et al* 2004)**.** An essay in the appendix, **(VII)**, complements this investigation by looking for the connection between the choice of electoral system, the legislative performance and the satisfaction of the people with the power institutions, especially the parliament and government.

(III), an essay on e-voting in Estonia, co-authored with Wolfgang Drechsler, is the most theoretical and speculative, inasmuch as it was written and published in the time that led to the first nation-wide e-elections, the municipal elections of 2005. It has been published twice, in quite similar form **(IIIa)** and **(IIIb)**, in a book and in a journal, so only one version, **(IIIa)**, is reprinted here.

Finally, in **(IV),** the legal / socio-political and purely technical points of view on Internet voting are presented alongside each other. Together with the aforementioned **(V)**, **(VI)**, and **(VIII)** in the **Appendix,** this essay brings the topic, empirically and analytically, up to 2006, and this introduction to 2007. It will do so, however, not in merely summarizing or repeating the contents of the four or nine essays, but it will set out, in a problem-oriented way and further developing the essays' ideas and findings, to discuss the structure and development of the problems and issues of party democracy, legislation, and especially e-voting in Estonia through unifying lenses that bundle the problems and put the wider challenges into perspective. The appendix also includes (**IX**), an essay that adds to several aspects of this discussion but focuses on public administration and administrative culture in Estonia and is thus not included in the main body of the text.

2. Social context and program of research

Being a sparsely populated Northern state with few strong traditions when it regained independence in 1989/1991, Estonia was and still is able to benefit from excellent opportunities for successful exploitation of new ideas. Regrettably, the small size of Estonia and the weakness of its traditions equally helped, and help, to implement harmful ideas. No unanimity has been reached, for instance, among scholars and politicians as to whether e-voting, which in the Estonian context always means remote Internet-based voting,[1] will strengthen democracy in Estonia or, to the contrary, undermine it. No extensive journalistic or academic discussion on the matter has taken place.

Although scenarios described in George Orwell's *1984* or Florian Henckel von Donnersmarck's *Das Leben der Anderen* are highly improbable in Estonia, the legitimacy of establishing a Gene Bank containing data on the entire population, an e-health program collecting medical information or any other national electronic super-database requires serious consideration. Does the state have the right to create prerequisites for producing a complete image of a person by a few mouse

[1] As a rule, publications employ the terms e-voting, e-voter and e-vote with respect to voting which takes place via the Internet regardless of the type of computer connected to the Internet, voters giving votes or votes given in this way. The concept of e-voting has mostly been used in the Estonian public debate in its narrowest sense. In the meaning defined in the recommendation Rec(2004)11 of 30 September 2004 of the Council of Europe to member states on legal, operational and technical standards of e-voting, the term has been used since the elections information system was introduced. The transfer of voting results, compilation of voters' lists and clarification of voting results along with other IT solutions fall beyond the scope of the e-voting concept in Estonia.

clicks? Do a few extra opportunities for doctors, scientists, statistics experts, the respective persons themselves, and voters outweigh the risks entailed by convenience? These discussions occasionally ensue within a small circle of experts (see e.g. Wilson 2004, Árnason & Árnason 2004), whereas the interest of the wider audience towards the issues mentioned above along with e-voting is rather modest. **(III a)** One of the initial reasons behind the choice of research directions was the notable weakness of public parliamentary debate, which can be noted in the decision-making process in new information society issues as well.

According to media-reflection, the risk to privacy which has accrued in the era of the Internet is hardly perceived, and it cannot be ruled out that certain new projects do not conform with the obligation stipulated in the Preamble to the Constitution of the Republic of Estonia – to protect the social progress and welfare of present and future generations and to preserve the Estonian nation and culture through the ages. (**VI**) Conversely, it could be argued that it is sensible to consciously keep pace with social, cultural, economic, political and technological changes that are manifestly taking place in today's world, rather than being dragged by them. Wolfgang Drechsler is probably right to forecast that "[t]he impulse to continually upgrade information and communication technology is so irresistible that much of the world will follow Estonia's e-voting example. It is the future of politics, notwithstanding the warnings of people such as Internet theorist Manuel Castells, who contends that e-voting poses risks to democratic legitimacy." (Drechsler 2006).

Because of this, one central aim of this dissertation is to analyze the institutional choices made in Estonia since it regained its independence – the impact of governance and the electoral system on democracy and the nature and legitimacy of remote Internet voting against the background of democracy problems in Estonia.

The research for the thesis, conducted over the course of six years, started chronologically with the examination of the nature of electronic voting and its legal permissibility and the analysis of the proceeding of draft legislation enabling remote Internet voting (**IIIa**, **IIIb**, **VIII**); the current stage consists of studying the results of the first-ever case of country-wide legally binding remote Internet voting (**IV, V, VI**). In between, the analysis of the concepts of parliamentarism, electoral system and management (**I, VII**), political parties and other institutional choices was continued while preparing the Constitution of 1992 (**I, II, VII**), topics that relate to an even older research program.

Building on the results of the research, a legal basis for the Estonian Internet voting project has been established; other results of the research have equally been considered in said project. Current research, partially in (**IV**) and the appendix, partially formulated in this introduction as well, proposes a new way of approaching e-voting with an attempt to rule out faulty expectations placed upon remote Internet voting and to solve problems such as that of the mandatory secret vote. The latter is gaining some ground outside Estonia. For example, the teleological approach to the principle of secrecy of the vote along with the possibility to replace a vote given electronically, or *e-vote*, with another e-vote or a paper ballot with the aim of ensuring the principle of free suffrage caused perplexity amongst the audience of the report presented at the Worldwide Forum

on e-Democracy in Paris in 2001 and even in 2005. However, at an International Seminar held in Bregenz in 2006, Norwegian scholars, who remarked *inter alia* that they had arrived at similar principles before obtaining detailed knowledge about the Estonian Internet voting system (Skagestein, Haug, Nødtvedt, Rossebø 2006: 108), expressed clear support for the vote replacement aspect of this idea. Whether one agrees with this principle or not, it is surely worth considering in some depth.

Likewise, the rhetoric in support of Internet voting often refers to its favorable impact on voters' participation and democracy. In order to understand possible reasons behind public alienation from politics and to appraise the potential of Internet voting and its applications in enhancing participation (**IV, VI**), the impact of electoral system (**II, VII**), the shaping of representative party democracy in Estonia (including the re-shaping which began at the end of the occupation years) (**I**) and the development of parliamentarism, in broader terms the impact of post-independence institutional choices in Estonia, had to be analysed (**II**). However, the legitimacy of Internet voting cannot be judged solely on the basis of its impact on political alienation (**VI**). The legitimacy and constitutionality of Internet voting as well as its impact on democracy are only briefly discussed. It is too early to make strong statements on that topic – on the one hand, the remote Internet voting experience is too thin a basis for that, on the other, the socio-political environment is steadily changing. For instance, most recently, the massive cyber-attacks against Estonian official (and private) websites and servers in late April and early May 2007 (see e.g. Economist, 2007) could call for increased cautiousness.

3. The institution of the political party

In **(I),** the history of Estonian party democracy, the general legal framework, the advantages given to the political parties in electoral law, the lack of the guarantees for "fair competition", the conditions of establishing new parties, the role of political parties by shaping the constitutional institutions and public service, the independence / dependence of party MPs in legislative activities, party financing and the problematic control over that as well as the internal democracy of political parties are described and examined. Some of the most important findings and statements are pointed out as follows.

3.1. Definition

In Estonia, the legal definition of a party states that it is a registered non-profit organization that should have at least one thousand members being Estonian or other EU citizens with a right to vote (Political Parties Act § 1, § 5 and § 6). The one thousand member requirement undoubtedly consolidates party landscape by preventing the emergence of regional and other small parties. Yet, it constitutes a considerable restriction to the freedom of establishment.

The number of citizens entitled to vote in Estonia was 897,243 (March 2007, data of the National Electoral Committee) dispersed over the territory of 45,225 km^2.

There are 227 local government units in Estonia according to the data of the Ministry of Internal Affairs, 182 of which have less than 5,001 inhabitants and 118 less than 2,001 inhabitants. Taking into account the constitutional principle of autonomy of local governments, no dramatic decrease in the number of local governments is to be expected in the nearest future. An administrative reform initiated by the state would require clear justification. Wolfgang Drechsler reasonably remarked that the merger of weak and sparsely populated rural municipalities will improve neither economic efficiency nor the quality of public service. Furthermore, he maintains that, quite on the opposite, merging local governments can weaken democracy at the local level (1999: 101-7). Political parties represented in the parliament have at several instances attempted to transform local elections into purely party-based ones and thus grant parties a dominating position also in the local political life. However, pursuant to the National Court decisions with a view to ensure democratic elections, coalitions of citizens can equally present their membership lists in the elections of local government councils. The proportional system is applied to the elections of local government councils, which gives an advantage to candidates on election lists. Taking into account the small population of rural municipalities and towns on the one hand and the stringent terms of forming a political party on the other hand, it is inconceivable for the whole population to be fairly represented by party lists in all local government units (Decision Nr 3-4-1-7-02 from 15 July 2002 and Nr 3-4-1-1-05 from 19 April 2005 of the Chamber of Constitutional Review of the Estonian National Court).

The well-foundedness of the decision was confirmed by the local elections of 2005: none of the parties featured with their lists in all towns and rural municipalities. Only four political parties were represented with their lists in more than a hundred local government units: People's Union in 174, Center Party in 168, Reform Party in 116 and *Res Publica* in 102 local government units. None of the parties presented their list in 8 rural municipalities; there is even an example where only one election coalition was running in the election alongside one party, and the coalition won (data provided by the National Electoral Committee). If the legal definition of a political party in Estonia involves a requirement for 1,000 members, the statutes and other similar obligations, it should be acknowledged that in wider terms an election coalition participating in local government council elections is viewed as a political party as well. Thus, the legal party definition is narrower than the real political definition which comprises at least election coalitions.

3.2. Electoral volatility, electoral system and public alienation from authority

According to the studies of Allan Sikk, Eastern-European post-communist states share the common problem of the high level of electoral volatility and instability of party systems. There is a constant search for new political directions (not only for entirely new parties), and the success of new parties in elections indicates the instability of the party landscape. (Sikk 2005) The 21st century began in Estonia, Latvia and Lithuania with the rise of entirely new strong parties: in the year 2000, the Party New Union [Social Liberals] won in Lithuania with nearly 20 %, "New

Era" in Latvia in 2002 with 24 %, Res Publica in Estonia in 2003 (accompanied by slogans like "New Politics!"; "Strict order! / Choose order!"; or even "Vote [this single] time / Vote at once!"[2]) with 24.6 % of all votes given. In the Lithuanian elections of 2004, the Labour Party as a genuinely new party came up again, while the turnout of people was a mere 46.08%. The common feature of those parties was the simple newness, a cleansing of politics, not a reaction to the social divide or a link to a certain ideology. (Sikk 2006: 164, 191, 193) While examining the rise of this kind of parties using the example of Res Publica (e.g. Rein Taagepera has analyzed the unexpected rise and decline of Res Publica comparing it *inter alia* with the Latvian New Era and Bulgarian Popular Movement for Simeon II, see Taagepera 2005) what comes to mind are some features of the economic theory of democracy or political clientelism.

Estonia has experienced the negative consequences of public alienation from authority. In 1933, the Estonian people adopted the amendments to the Constitution of 1920 as a result of a referendum. The parliamentary political system was replaced with a presidential one, the proportional party-based system was replaced with a candidate-based one ruling out parties etc. The rise of authoritarianism characteristic of that time was preceded by a period when open debates accused parties and the pre-war *Riigikogu* of empty rhetoric and social issues required fast and reliable decision-making. The prevailing opinion at that time and even nowadays was that there are too many political parties. Having said that, at the time only a few individual voices could be heard that stated that the problem of Estonian parties did not lie in their number or size but in the weakness and vagueness of their ideological basis; a large party, however, is characterized by increased bureaucracy whereby real contact with people is apparently replaced with oligarchic ruling methods and populism.

This leads to internal democracy questions, i.a. the role of the parties' back-office in composing party candidates' list for elections and funding of candidates' campaign. At *Riigikogu* elections in Estonia, approximately 75 % of the mandates are given out in 12 districts, and only 25 % in the nation-wide compensation-round. As is usual in proportional electoral system, the mandates are shared between parties, but thanks to open Party lists, there is the question whether or not the sum of votes of the party's candidate should be taken into account while sharing mandates won by the party between the candidates. In districts, the candidates are listed on their party lists according to their personal voting result and the mandates are given to those who have more votes. On the nation-wide compensation list, the candidates receive the mandate according to their position on the party list. The less the candidate's chance to get elected depends on party back-office decisions, the more independent she or he probably can act. Although many parties practice internal elections to compose the party list for elections, the role of the executive board and back-office (they need not coincide) is remarkable.

---

[2] In the Estonian language, the sentence "Vali kord" can be understood in the four ways given here.

3.3. Advantages of political parties in the electoral system

The electoral system in Estonia, including the prohibition for election coalitions of citizens to participate in *Riigikogu* and European Parliament elections, the complex procedure of forming a political party and the rules regarding the state funding of political parties ensures the clear domination of parties in Estonian political life. At the same time, parties do not enjoy particular public trust. According to the data published in the non-profit associations and foundations register, only about 49,000 citizens (2006) are members of Estonian political parties, that is about 5% of the citizens entitled to vote. The total number of citizens belonging to parties in Estonia has demonstrated a slight increase in recent years. However, no data as to active party membership (membership fee payers, participants in party meetings) is available.

Given the minimal party membership requirement (1,000 members) and the competition between parties in terms of size, parties are apparently reluctant to bring their membership lists in line with reality. Publicizing membership lists of Estonian political parties as a rather serious infringement of fundamental rights manifestly hinders the achievement of all objectives. Both public and hidden election coalitions – the latter can be formed by allowing members of different parties to feature as candidates on one party's list – are prohibited in the *Riigikogu* elections. Precise party membership lists are required in order for this prohibition to be implemented. Mandatory publicizing of party membership lists can directly reduce the legitimacy of parties: the fact of publicizing may inhibit people's wish to join them; moreover, there have been scandals over persons who have never entered a party and whose name had appeared on a party membership list (**VI**).

Three times, the Supreme Court has solved constitutional questions related to the advantages of the parties (represented in parliament) by means of local elections. Two of the decisions have been referred to before. The third concerns the compatibility of the *Riigikogu* mandate with the local government council mandate. On 27 March 2002, the parliament had adopted legal provisions to the effect that as of 17 October 2005, a member of the *Riigikogu* shall not be allowed to simultaneously be a member of a local government council and vice versa. On 12 May, shortly before the 2005 local elections, the parliament deleted that restriction again, which was declared unconstitutional as as response to the president's request (Judgement of the National Court Nr 3-4-1-11-05 from 14 October 2005). The court found that in the contested case, it was obvious that the changes introduced shortly before the elections were aimed at improving the position at local elections of those political parties that are in the parliament, in comparison to those political parties that are not and to election coalitions and independent candidates.

3.4. Party financing

Thanks to the advantages described above and in spite of the usual lack of permanent electorate (electoral volatility), the political life in Estonia is determined by the parties conforming to the strict legal definition, which are paradoxically largely funded from the state budget. Political parties are still regarded as purely

private associations whose funding control is extremely complicated. The weakness of controlling the (hidden) financing of political parties gives rise to doubts that not all decisions are made in the public interest. This in turn can further undermine public trust in political parties.

It is shown in (**I**) on a factual basis that following the tripling of state allocation at the beginning of 2004 (which occurred on the initiative of the two largest factions in *Riigikogu* – the Res Publica and Center Party factions – which were principally opposing each other in almost all other questions), more than half the parliament parties' income has been composed of allocations from the state budget.

In Estonia, as probably everywhere, the political parties represented in the parliament or in larger city councils also enjoy indirect financing from the public budget, e.g in terms of the salaries of politically recruited officials. The most problematic area in party financing seems to be hidden financing: the possible connection between donors and political decisions cannot be publicly analysed there. In practice, as political parties are private organizations, it is quite complicated to avoid hidden financing by means of legal remedies; it remains more the issue of political culture and independent media.

3.5. The role of shaping constitutional institutions and public service

As referred to above, the parliament and government are shaped by political parties. The third important, and in many states purely party political, figure – the President of the Republic – is formally independent from political parties. According to the constitution (§ 84), the President of the Republic shall suspend his or her membership in political parties for the duration of his or her term of office. This rare restriction should create the basis for acting as a balance between government and parliament. (Truuväli et al. 2002: 404, 429)

The attempt to allow judges, the legal chancellor and the auditor general as well other high public servants with the only exception of military forces to belong to political parties, failed. The respective law amendment was adopted on 18 December 2003 but annulled with another law on 11 October 2006 before entering into force. The judges, including National Court members, are appointed on the basis of competence. The rules according to which the judges are appointed by the President of the Republic on proposal of the National Court serve as warranty for that. The members of the National Court itself are appointed by the *Riigikogu* on proposal of the Head of the National Court. In practice, those are lawyers without any political ties. The only, albeit impressive, exception was the appointment of a former active party member and minister to the position of the President of the National Court in 2004.

The real spectrum of positions shared between ruling parties during coalition deliberations cannot be verified by means of facts, but it is clear that so far, the positions of "simple" public servants are not an object of political agreements.

4. Legislative performance

In **(II),** the possible relations between the constitutional framework and actual legislative output are studied using comparative methods. Estonia, Latvia and Lithuania have a great diversity of constitutional, electoral and parliamentary structures. The study brought about the paradoxical consequence that the simple necessity of getting the renewed state running and preparing for EU accession resulted in similar legislative performance despite the diversity of the constitutional framework of the legislative activity. In the following, some of most important elements of the study and its results are addressed.

4.1. Constitutional framework and the (in)dependence of MPs

A comparison with Latvia and Lithuania demonstrates that the level of participation and satisfaction with the political system and with the ability of individuals to influence politics are similar regardless of the difference in electoral systems and political order. Estonia is a parliamentary state; members of Parliament are elected on the basis of the proportionality principle, for which reason the Parliament enjoys considerable strength. Latvia is a parliamentary democracy as well. However, the Constitution grants dominant power to the executive branch. Among the three states, Lithuania is the only one to have a semi-presidential system where more than half the Parliament is elected on the principle of majority. Although Latvia has the most parliamentary regime as well as the weakest cabinet stability, its legislature is paradoxically the weakest in the Baltic region. This is the result of overarching powers vested in the executive by the Latvian Constitution, together with the nature of parliamentary procedure. The strongest parliament would appear to be in Estonia, where, although the government dominates the legislative agenda, a large degree of deliberative decision-making power remains in the hands of parliament.

The possibility for autonomous action of a member of the legislative body is related to his or her dependence upon the party: if he or she is elected from a district with a single mandate, she or he is more independent than if his or her parliament membership depends on his position within the party. In theory, the greater weight of the so-called autonomous members could enable a more efficient government control (insofar as parliamentary control in contemporary democracy is often confined to forming opposition since government coalition and the government often coincide) as well as the deputy's active work with the electorate and the wish to come to the front with independent initiatives. A rather similar impact can be achieved by means of the open list in the proportional electoral system in a multi-mandate-district, as shown in **(I)**. The so-called autonomous deputies in Lithuania have been nearly three times as active as their counterparts in terms of initiating draft legislation. Yet, statistical data demonstrates that such draft legislation is considerably less successful than that initiated by the government, which points to the fact that in the case of the former, we may be dealing with frivolous bills.

4.2. Level of public participation

Raising unrealistic expectations evidently deepens the level of dissatisfaction and disillusionment of voters. The conclusions made in (**I**) for Estonia appear to be valid also for Latvia and Lithuania. Regardless of the difference in the electoral system, the rate of participation has been similar in all three Baltic countries: in the case of parliamentary elections, the approximate percentage has been 60 (with the exception of Lithuania's 46.08 % in 2004 after the impeachment of President Rolandas Paksas some months earlier). Having said that, the participation rate is the lowest in Lithuania and it is not remarkably higher in the case of presidential elections (**VII**). Parliamentary culture and institutional stability have improved in all three states.

4.3. Procedural rules

The essence of legislative politics lies in the details of parliamentary procedures, and the most important question concerns control over the parliamentary agenda. While in Latvia and Lithuania, the president or government can propose amendments on parliament's agenda, in Estonia, the government is completely excluded from the official agenda-setting process.

A truly controversial question is the possibility to adopt legal acts using urgency or special urgency procedures; it means ignoring the usual time frames during which the legislative documentation should be made available to MPs. It was possible to justify urgency procedures with the need to plug loopholes in the laws or to harmonize national law with EU law quickly, but this justification may have lost its fair ground after EU accession and the transition period. The problematic consequence of urgency rules is that the executive can hasten the passage of legislation it deems politically important, sensitive or controversial. Such rules have come at the expense of legislative power and scrutiny. In Latvia, the percentage of acts adopted using urgency procedures was 39.1 (1993-2002) and 22.8 in Lithuania (1992-2004). In Estonia, by contrast, no such procedures exist and legislation generally takes at least three weeks to pass although it is possible to find some undue ways to avoid the time-expensive procedure rules, e.g. by adding some provisions to the draft law already at the stage of second reading.

The third sphere of parliamentary procedure concerns the rules for proposing amendments to legislative proposals. By agenda-setting and determining the time schedule, more power is vested in the executive than in Estonia, where the right to propose amendments to the drafts is reserved to the MPs, factions and permanent committees.

The facts above provide a basis for the conclusion that in Estonia, the balance between legislative and executive favors the parliament more than in Latvia and Lithuania: in Estonia, the procedure rules have been progressively tightened in the *Riigikogu's* favor.

4.4. Legislative output

In terms of the structure of legislative output, the Baltic States can be divided into two groups. Estonia and Latvia have witnessed a very conventional pattern which has seen the government dominate the initiation of legislation. In Estonia, individual MPs were relatively active in the first after-independence parliament and initiated one third of all draft laws. This was akin to the phenomenon of "over-parliamentarization". Tighter party discipline reduces the number of private bills. In Lithuania, the legislative activity is shared equally between the government and individual MPs. An examination of the sponsors of different bills in Lithuania between 2000 and 2004 indicates that those MPs who ran for parliament from single-member districts were on average nearly three times more active than those who ran only on a party list. However, the pattern of legislative success rates is more uniform: in all three countries the government comes out on top.

The dominant role of the government in the legislative process is most clearly evident in Latvia despite having a strongly parliamentary republic and fragile governments. Lithuania with its semi-presidential republic and quite stable coalitions has witnessed a much greater degree of policy-making by parliament. Estonia is in a middle position, manifesting some elements of parliamentary strength but generally following the executive's lead.

5. Launching Internet voting

The case of Estonian Internet voting is worthy of consideration in the context of this dissertation for at least two purposes: it illustrates the actual performance of political parties, parliament and other institutions on a contradictory test-case; and it shows a genuine qualitative change in the development of the electoral system and electoral administration. As shown below resuming (**III a**) and (**IV**), it has been possible to get out of the apparent trap of the legal principles of voting secrecy and equality on a rather practical level.

5.1. Parliamentary debates

It is likely that while deciding whether to support electronic voting, political parties in the parliament took into account the potential effect of remote Internet voting on their election results. The alleged impact of e-voting resting on the supposition that it would attract persons to the elections who would otherwise not concern themselves with going to the polling station is likely to increase or reduce the number of mandates in the proportional electoral system, provided that additional votes will not be distributed proportionally amongst political parties. Emblematic in its own way was the rhetorical question of the opponents of e-voting in the *Riigikogu*: "Are we totally going to the liberal swamp?" This question was probably inspired by the e-voting supporters' assumption that the State must trust the people and, if at all possible, not interfere in any of their decisions. (**IIIa**)

As explained in (**VIII**), the reason for launching Internet voting in Estonia was never the need to improve the vote-counting process, as has been the case in other countries, such as, notably, the United States: in Estonia, this process was already quick and deemed fair (in the sense that it was rarely, if ever, challenged). The publicly declared aim to increase voter turnout may also not be too serious a genuine reason since even without e-voting, the choice of voting methods was quite wide and the main cause of non-participation is not the lack of convenient voting methods. What remains is e-fascination and the aspiration to find 'innovative', i.e. new, solutions. While American scientists maintained, after having mapped the risks related to Internet voting, "we reluctantly recommend shutting down the development of SERVE immediately and not attempting anything like it in the future until both the Internet and the world's home computer infrastructure have been fundamentally redesigned, or some other unforeseen security breakthroughs appear" (Jefferson, Rubin, Simons, Wagner 2004: 3), Estonian information system security experts reached the opposite conclusion. Although the cited recommendation was given consideration in Estonia, this did not lead to a discontinuation of the voting project or its general discreditation. However, the controversial or absent experience in other countries and security of electronic voting systems belonged to the most discussed issues in the Estonian parliament. Other important questions were the digital gap and the value of the ritual of walking into a polling station. It could also be argued, although certainly some serious research is needed on that topic, that in Estonia as well as in many other countries that create and allow for widespread supplementary voting methods, voting at a polling division has virtually lost its significance as a ritual transforming people into the nation-state and the carriers of sovereign nationhood (see Monnoyer-Smith 2006: 64)

The main discussion was concentrated on the possible violation of constitutional principles of secrecy and equality through Internet voting. (**IIIa**).

5.2. Teleological approach to the principle of secrecy

The secrecy of voting has traditionally been viewed in Estonia as the right and obligation to cast a vote while being by oneself in a voting booth. In the case of Internet voting, the state is not in a position to secure its privacy aspect. While elaborating draft legislation allowing remote Internet voting, legislators proceeded from the interpretation of the Constitution according to which secrecy of voting, drawing on its two sub-principles – the private proceeding of voting and vote anonymity – is required to ensure free voting and is not an objective *per se* (**IIIa**). Consequently, instruments aimed at securing secrecy can be adapted provided that voters are given the opportunity to freely vote for their preferred party without fearing condemnation or expecting moral approval or material reward. (**IV**)

The voter's right to anonymity during the counting of the votes is guaranteed to the extent to which this can be secured in the case of absentee ballots by mail; the so-called "system of two envelopes" used for absentee ballots by mail is both reliable and easy to understand for e-voters (**IV**). However, there is a debate about whether observing the privacy aspect of the secret ballot principle constitutes a

right or an obligation of the voter and, ideologically and legally speaking, this debate is central to the authorization of Internet-based voting.

This teleological interpretation of the principle of secrecy is clearly divergent from the traditional approach generally adopted in the scholarly literature, according to which "Mandatory secrecy is a principle which goes beyond constitutional law, its fundaments are based on the idea of auto-paternalism and it is understood as a mechanism of self-binding of autonomous citizens in order to avoid situations of external pressure or corruption. In this concept, it is not the individual him- or herself, but a warranted outside agent or authority – normally the state – that is responsible for providing the necessary means to allow for the secret ballot." (Buchstein 2004: 53). Hubertus Buchstein *inter alia* calls into question whether the re-interpretation of the principle of secrecy in Estonia (he explicitly refers to **IIIa,** saying that Estonian constitutional debate may be the possible starting point for a paradigmatic change) will hold water in the theory and practice of constitutional law and will put forward, as an argument in support of conducting a private voting procedure, the obligation of the state to deprive a person of all possibilities to show or prove his or her vote to another person (2004: 52-53).

The Liberal ideology characteristic of the Estonian post-independence years and, possibly, the legal historical background account for the room for interpretation regarding the principle of secret vote in the manner described above. If the suffrage debate in the mid-19th century England was based on the thesis according to which the right to vote is not a subjective right but a political duty of a citizen and solely public voting allows for the hope that the result of the voting reflect public opinion, which in turn rules out the emergence of oligarchy (Buchstein 2000: 624-43), and even nowadays the right to vote is still often described as fulfilling one's social duty, then in the (relatively young) political science in Estonia, the right to vote has predominantly been addressed as a subjective right exercised individually. Amongst other things, this implies that a citizen has a protected right to express in an election – according to the leading political scientist of the first independence period Artur-Tõeleid Kliimann – his or her personal wishes and desires (Kliimann 1931: 12). However, both Kliimann and his contemporary, Artur Mägi, noted that the right to vote has a dual character: on the one hand, it is a subjective right of an individual, while on the other hand, it is a function exercised in the general public interest (1931: 8-9; Mägi 1936). Nevertheless, this has not led to the development of legal thinking in Estonia which would at the present point challenge the interpretation of the secret vote principle or the authorization of Internet-based voting. At present, there is no debate about whether the ballot should be secret or open.

5.3. The right to change the e-vote as a required guarantee for free elections

In addition to the teleological interpretation of the Constitution, the Ministry of Justice led by the liberal Reform Party based provisions enabling Internet voting on the premise that the state has to trust the individual and to avoid, whenever possible, interference with decision-making at the individual level. The individual has to be aware of risks, i.e. technical risks, and he or she has to have the right to

decide whether or not to use the Internet voting opportunity which gives rise to certain problems, such as the fact that the liberal approach does not allow insisting on old rituals (**IIIa**). In order to guarantee the freedom of voting, e-voters have been granted the right to re-vote electronically an unlimited number of times and replace the vote cast on the Internet by a paper ballot. However, this can only be done within the advance polling days. In case of several e-votes the last one is counted; in case of contest between e-vote and paper ballot, the paper ballot is counted. If several paper-ballots are cast, all votes are declared invalid. Thus, the 'one vote – one voter' principle is ostensibly guaranteed. (**IV, VI, and VIII**).

In case of Internet-based voting, the possibility to change a vote (not the act itself, of course) is not just permissible; it is a constitutional obligation (**IV**, **VI**). The National Court equally adopted this position while processing the request of the President of the Republic to declare that the Act on Amendments to the Local Government Councils Election Act is in conflict with the principle of uniformity because of the possibility to change an electronically given vote contained in it.[3] In paragraph 32 of the judgement, the National Court states as follows:

> The Chamber is of the opinion that the infringement of the right to equality and of uniformity, which the possibility of electronic voters to change their votes for unlimited number of times can be regarded as amounting to, is not sufficiently intensive to outweigh the aim of increasing the participation in elections and introducing new technological solutions. The Chamber is of the opinion that the possibility to change one's electronic vote is necessary for guaranteeing the freedom of elections and secrecy of voting upon electronic voting. The Chamber is of the opinion that upon passing the contested regulation the legislator, having weighed different principles and the values underlying these, has appropriately balanced all electoral principles arising from the Constitution.

It is important in terms of resolving this dispute whether the legalistic method is employed to tackle state law problems or whether social reality is equally taken into consideration while grasping the content of a norm. While Wolfgang Drechsler and Taavi Annus claimed (quite reasonably with respect to the period 1992-2001) that in its interpretation of the Constitution, the Supreme Court of Estonia relies excessively on German legal theory and avoids the teleological and systematic interpretation method along with the social science viewpoint (Drechsler & Annus 2002: 489-90), the case of remote Internet voting and both cases of the so-called election coalition prohibition (Judgement Nr 3-4-1-7-02 from 15 July 2002 and Nr 3-4-1-1-05 from 19 April 2005 of the Chamber of Constitutional Review of the Estonian Supreme Court) indicate a shift or change here. It is true that the history of belonging to the German legal space and the influence of Hans Kelsen's ideas

[3] The judgement of the National Court mentioned above regarding the constitutionality of changing an electronically cast vote discusses the most of the issues related to the constitutionality of Internet voting, although the National Court remarked that it did not analyse the constitutionality of remote Internet voting in its integrity but solely to the extent of the President's request (**Decision Nr 3-4-1-13-05 from 1 September 2005 of the Chamber of Constitutional Review of the Estonian National Court**).

contained in *Reine Rechtslehre* on Estonian jurisprudence (Mälksoo 2004: 61-3) have reinforced the emphasis on pure discussion of norms rather than a focus on social reality. Yet, at least the ideas of public law reforms have already moved away from the technical positivist *Subsumtion* method, *inter alia* preventing German public law and jurisprudence from being simply transferred to Estonia without taking the context into account (Narits 1998; Narits and Merusk 2000, Madise 2003). Already in 2001, Raul Narits treated the discussion over the objective of the meaning and norm of law as a clear tendency in the late practice of the Supreme Court (Narits 2001: 543-51).

According to the opinion of the Supreme Court, the principle of the freedom of vote gives rise to the obligation of the state to protect voters from persons attempting to influence their choice. In keeping with this principle, the state has to create the necessary prerequisites in order to carry out free polling and to protect voters from the undesired pressure while making a voting decision. In paragraph 30 of said judgement, the National Court maintains the following:

The voter's possibility to change the vote given by electronic means, during the advance polls, constitutes an essential supplementary guarantee to the observance of the principle of free elections and secret voting upon voting by electronic means. A voter who has been illegally influenced or watched in the course of electronic voting can restore his or her freedom of election and the secrecy of voting by voting again either electronically or by a ballot paper, after having been freed from the influences. In addition to the possibility of subsequently rectifying the vote given under influence, the possibility of voting again serves an important preventive function. When the law guarantees a voter, voting electronically, the possibility to change the vote given by electronic means, the motivation to influence him or her illegally decreases. There are no other equally effective measures, besides the possibility to change the vote given by electronic means, to guarantee the freedom of election and secrecy of voting upon electronic voting in an uncontrolled medium. The penal law sanctions do have their preventive meaning but subsequent punishment – differently from the possibility of changing one's electronic vote – does not help to eliminate a violation of the freedom of election and secrecy of voting.

The Supreme Court thus confirmed the constitutionality of one of the main premises of the remote Internet voting project[4].

5.4. On possible violation of the principle of equality

The possibility to change one's vote may constitute a violation of the principle of equality. In all appearance, there was room for a serious violation before the second adoption of the Act[5] inasmuch as the Act allowed changing one's e-vote on

[4] Refer to the National Electoral Committee Resolution No. 75 of 25 July 2003 for more information on the electronic voting project. Website: http://www.vvk.ee/vvk-otsus-nr-75.html (12 December 2006).

[5] Bill on Amendments to the Local Government Council Election Act (Bill Nr 607 SE) in the legislative proceeding of the X *Riigikogu*, refer to different stages of proceeding of § 50 (6) in the Act.

Election Day: this provision would have created the possibility to change one's choice because of circumstances discovered in the period from Wednesday until Sunday. After the possibility to replace a vote was restricted to the three days of advance voting, e-voters were placed in the situation equal to that of persons voting during advance polls outside the polling division of their residence. One can claim on the basis of the experience of 2005 that there was no abuse of the possibility to change one's vote: there were only 364 e-votes and 30 paper ballot vote changes including demonstration votes[6].

The Supreme Court also clearly noted the fact that the principle of equality does not require for all voters to be set in an equal position by means of restricting the number of voting days and methods (**Judgement Nr 3-4-1-13-05,** § 14). Voters should have equal opportunities to influence the election results. In the context of the active right to vote, the principle of equality primarily means that all persons entitled to vote must have an equal number of votes and that all votes must have equal weight in terms of deciding upon the distribution of seats in a representative body.

One cannot avoid the even more direct issue of a digital gap – in other words the question whether Internet-based voting exacerbates the difference of representation possibility between social groups. What is clear is that Internet-based voting removes physical barriers hindering the participation in elections of the aged, disabled or other groups of people with restricted mobility and with the right to vote (e.g. persons having tight work schedules or working abroad, parents of small children and persons living in regions with poor infrastructure).

Fabian Breuer and Alexander H. Trechsel concluded in the report prepared for the Council of Europe after first Internet voting experience in 2005 that

> [t]he result that e-voting is completely neutral with respect to such crucial variables as gender, income, education and the type of settlement (at least when we control for the entire set of independent variables) is of crucial importance. This finding is central from a democracy-theoretical perspective, as an opposite finding could have indicated that voting over the internet would lead to un-democratic biases in the electoral process. (Breuer & Trechsel 2006)

Indeed, in the conference presentation in Tallinn (27-28 October 2006), Trechsel named age as an important non-result of the study, together with gender, income and education (Trechsel 2006). Breuer and Trechsel have also argued that it can be shown that Internet voting has slightly increased the actual turnout of those who sometimes vote and sometimes do not. (Breuer & Trechsel 2006)

It may still be stressed that the actual impact of Internet voting on the change of turnout does not lend itself to objective analysis. One can determine the variations of turnout in different election years (comparing equivalent types of elections) and attempt to clarify the causes underpinning variations with the help of sociological studies. Perhaps the most important question is what share of the electorate would

[6] Refer to the e-voting website created by the National Electoral Committee www.valimised.ee (12 December 2006), exact e-voting statistics are available in the report (**V**).

not have participated in the voting, had the Internet voting opportunity not been provided. There exists no way of obtaining empirical evidence; one must, therefore, come to terms with unverifiable claims made by the voters themselves. The only exception is the case when Internet voting is the only possibility for the elector to vote and he or she uses this possibility. For example, the local government council elections in Estonia do not provide for voting abroad by postal ballot or at a diplomatic representation; nonetheless, they do envisage the possibility of voting on the Internet (**IV**).

Equality, and in broader terms justice, is the very core of almost every policy debate, and according to the agreement, fixed in the preamble of the constitution, and so underlying Estonian state, justice is an aim of every action performed by public authorities. It will be highly interesting to follow the development of arguments in the discussion about electoral principles between political parties and especially in the *Riigikogu*.

6. Conclusions

Being on the threshold of the 90th anniversary of the Estonian Republic and the 15th anniversary of the Constitution adopted by the people after regaining independence, it is possible to conclude that the state is running, the institutions are established, Estonia has become a member of the European Union, NATO and other important international structures and is regarded as a rather good example of modern governance fitting to the rule of law. Estonia is the first country in the world where Internet voting with binding results was successfully used countrywide in local and national elections; but also the first field of massive cyber-battle directed against an independent state.

The fact that no institutional order was established yet in the first years after regaining independence caused some unpredictability in politics and even institutional choices; on the other hand, it gave quite good opportunities to individual Members of Parliament to have real impact on most important decisions and to perform parliamentary scrutiny over the government. The faction and party discipline has tightened year by year; the government coalition and the majority in parliament typically coincide and the parliamentary scrutiny in its very form is weak if present at all, – that could be regarded as proof for an established and predictable decision-making process. The study (**II**) permits to argue that in Estonia, the parliament is quite strong indeed in comparison with its neighbours and counterparts Latvia and Lithuania in terms of legislative performance. The divergence of constitutional, electoral and parliamentary structures did not remarkably influence the legislative performance: this has been similar in all three Baltic countries because of the common aim to get the renewed state running and join the EU. The question of similarity or difference of legislative performance after the transition period is worth studying in the near future.

Estonian political life is clearly dominated by political parties fitting to the strict legal definition and largely financed from the state budget. The 1,000-member-requirement in the party-definition, the prohibition of electoral coalitions in national elections and temporarily in local elections, as well as the strict faction

formation rules in *Riigikogu*[7] have remarkably consolidated the party landscape. The study (**I**) brings out two contradictory trends: the parties represented in the parliament consequently try to increase the advantages given to them by electoral law, state budget, *Riigikogu* Internal Rules Act etc; other constitutional institutions mostly act as the plug which prevents advantages from endangering equality and fair elections. Indeed, examples of "self-stopping" are also not entirely missing. The law provisions permitting party membership to high civil servants were declared void by the parliament itself.

After the EU accession, the role of the parliament has changed. The legislative workload has notably decreased, while the amount of scrutiny tasks, especially in EU matters, has increased. Whilst the European Union Affairs Committee, which is to form a position on the draft legislation of the EU as well as supervise the activities of the government in implementing the policies of the European Union, was established mainly using the Finnish model already before entering the EU, the institutional and procedural changes needed to shape the new role of the parliament in dealing with domestic issues are still missing.

One of the last important decisions of the Estonian *Riigikogu* before the beginning of the "new era" in the legislation was to allow country-wide Internet voting with binding results. The legal solutions to the problems of secrecy and equality elaborated in the framework of the doctoral studies and described in (**III a**, **IV**, **V**, **VI**, **VIII**) have shown one possible way of thinking to many scholars and politicians in Estonia and abroad. Of course, Internet voting should not be viewed as a technological solution to the perennial problems of democracy. Whereas the use of the Internet produces new forms of politics and links people and information in unprecedented ways, it cannot solve problems by itself. It is just a voting technique. As long as universal and secure Internet access is not guaranteed, the doubts related to the political neutrality of this technique will probably remain.

The singular chance to rebuild the independent democratic Estonian state has offered wide opportunities to take contemporary, functional and logical decisions. The late president of the Estonian Republic Lennart Meri said in his speech at St. Olaf College in Minnesota on 6 April 2000 that the Estonian success is partly due to its smallness: "A super tanker needs sixteen nautical miles to change her course. Estonia, on the contrary, is like an Eskimo kayak, able to change her course on the spot." Whether development of Estonian politics, policy, and Estonia as such will bring to the state of "boring Northern-European country", as so many times hoped in public debates, will be seen.

[7] In § 32 of the judgement on the constitutionality of that rule (decision Nr 3-4-1-3-05 from 2 May 2005), the Supreme Court points out that the restrictions imposed on the formation of factions and the right to change the faction in the *Riigikogu* that has just convened serve two aims simultaneously, namely the aim of efficient functioning of the parliament and the aim of adequately reflecting the election results.

REFERENCES

Árnason, Vilhjálmur; Árnason, Gardar. (2004) Informed democratic consent? The case of the Icelandic Database, *Trames*, Vol 8, No 1/2, pp. 164-77.

Breuer, Fabian; Trechsel, Alexander H. (2006) E-voting in the 2005 local elections in Estonia: Report for the Council of Europe, available at the Council of Europe website http://www.coe.int/t/e/integrated_projects/democracy/02_Activities/02_e-voting/00_E-voting_news/FinalReportEvotingEstoniaCoE6_3_06.asp#TopOfPage.

Buchstein, Hubertus. (2000) *Öffentliche und geheime Stimmabgabe: eine wahl-rechtshistorische und ideengeschichtliche Studie*. Baden-Baden: Nomos Verlags-gesellschaft.

Buchstein, Hubertus. (2004) Online Democracy, Is it Viable? Is it Desirable? Internet Voting and Normative Democratic Theory, in: Kersting, Norbert; Baldersheim, Harald (eds) *Electronic Voting and Democracy. A Comparative Analysis*, Basingstoke: Palgrave Macmillan, pp. 39-58.

Drechsler, Wolfgang. (1999) Kommunale Selbstverwaltung und Gemeindegebiets-reform: Deutsche Erfahrungen, prinzipielle Erwägungen, estnische Perspektiven, in: Drechsler, Wolfgang (ed.) Die selbstverwaltete Gemeinde: Beiträge zu ihrer Vergangenheit, Gegenwart und Zukunft in Estland, Deutschland und Europa, Berlin: Duncker & Humblot, pp. 97-110.

Drechsler, Wolfgang; Annus, Taavi. (2002) Die Verfassungsentwicklung in Estland von 1992 bis 2001, in: Häberle, Peter (ed.) Jahrbuch des öffentlichen Rechts der Gegenwart, Tübingen: Mohr Siebeck, pp. 473-92.

Drechsler, Wolfgang. (2006) Dispatch From The Future, The Washington Post, 5 Nov 2006.

Economist. (2007) A cyber-riot, 12 May 2007, p. 30.

Jefferson, David; Rubin, Aviel D.; Simons, Barbara; Wagner, David. (2004) A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE). Available at http://www.servesecurityreport.org/paper.pdf.

Kelsen, Hans. (1934) *Reine Rechtslehre. Einleitung in die rechtswissenschaftliche Problematik*, Leipzig und Wien: Deuticke.

Kliimann, Artur-Tõeleid. (1931) *Hääleõigus ja hääletamissund: Interpretatsiooni-küsimusi maksvast riigiõigusest*, Tartu: K. Mattiesen.

Madise, Ülle. (2003) Eesti haldusõiguse reformi kandvatest ideedest, *Juridica*, 2003/1, pp. 38-44.

Monnoyer-Smith, Laurence. (2006) How e-voting technology challenges traditional concepts of citizenship: an analysis of French voting rituals, in: Krimmer, Robert (ed.) *Electronic Voting 2006*, Bonn: Gesellschaft für Informatik, pp. 61-8.

Mõttus, Aaro; Hillermaa, Rita, Kaskla, Giina; Laido, Anu; Madise, Ülle (eds). (2004) *Riigikogu VII, VIII ja IX koosseis : statistikat ja kommentaare*. Tallinn : Riigikogu Kantselei, Eesti Rahvusraamatukogu. [*The VIIth, VIIIth and IXth Riigikogu: statistics and comments*].

Mägi, Artur. (1936) *Valimisõiguslikke põhiprintsiipe ja nende rakendamine Eestis* de lege lata *ja* de lege ferenda, Tartu: K. Mattiesen.

Mälksoo, Lauri. (2004) Von der Demokratie bis zur Diktatur: ein verborgener Dialog zwischen Artur-Tõeleid Kliimann und Carl Schmitt, *Der Staat*, Vol 43, No 1, pp. 57-82.

Narits, Raul. (1998) Eesti õiguskord ja väärtusjurisprudents, *Juridica*, 1998/1, pp. 2-6.

Narits, Raul; Merusk, Kalle. (2000) Õiguse olemusest ja seaduse võimalustest, *Riigikogu Toimetised*, 2000/2, pp. 100-2.

Narits, Raul. (2001) Rechtssprache und juristische Semantik im sozialen Kontext der estnischen Rechts- und Lebensordnung, in: Krawietz, Werner; Narits, Narits (eds) *Rechtstheorie. Internationales Symposium der Estnischen Juristischen Fakultät in Tartu. Sonderheft Estland,* Vol 31, No 3/4, pp 535-51.

Postimees. (2004) USA loobub e-hääletamise plaanist, 6 Feb 2004.

Recommendation Rec(2004)11 of 30 September 2004 of the Council of Europe to member states on legal, operational and technical standards of e-voting.

Sikk, Allan. (2005) How unstable? Volatility and the genuinely new parties in Eastern Europe, *European Journal of Political Research*, Vol 44, No 3, pp. 391-412.

Sikk, Allan. (2006) Highways to power: new party success in three young democracies, *Dissertationes rerum politicarum Universitatis Tartuensis,* Tartu: University Press.

Skagestein, Gerhard; Haug, Are Vegard; Nødtvedt, Einar; Rossebø, Judith. (2006) How to create trust in electronic voting over an untrusted platform, in: Krimmer,

Robert (ed.) *Electronic Voting 2006*, Bonn: Gesellschaft für Informatik, pp. 107-16.
Taagepera, Rein. (2005) Meteoric Rise: Res Publica in Estonia, 2001-2004. *Center for the Study of Democracy.* Paper 05-02, University of California, Irvine, available at http://repositories.cdlib.org/csd/05-02.

Trechsel, Alexander H. (2006) Study of e-voting in the 2005 local elections in Estonia. Presentation of the Report for the Council of Europe, Conference on "E-voting: lessons learnt and future challenges", Tallinn, Estonia, 27-28 October 2006. Available at http://www.ega.ee/public/27.10.06_Alexander_H._Trechsel.pdf (accessed on June 21th 2007).

Truuväli, Eerik-Juhan; Madise, Ülle; Põld, Jüri; Reinsalu, Urmas. (2002) Põhiseaduse V peatüki kommentaar, in: Truuväli, Eerik-Juhan et al (eds) *Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne*, Tallinn: Juura, Õigusteabe AS, pp. 403-30.

Wilson, Sarah. (2004) Population Biobanks and social justice: Commercial or Communitarian models? A comparative analysis of benefit sharing, ownership and access arrangements, *Trames*, Vol 8, No 1/2, pp. 80-9.

Legal Acts[8]

Constitution of the Republic of Estonia
Riigikogu Election Act
Riigikogu Rules of Procedure Act
Riigikogu Internal Rules Act
Political Parties Act
Local Government Councils Election Act

Judgements of the Chamber of Constitutional Review of the Estonian Supreme Court[9]

Nr 3-4-1-7-02 from 15 July 2002. Petition of the Legal Chancellor to declare subsections 31(1), 32(1) and clause 33(2)1) of Local Government Council Election Act partly invalid.

[8] The English translation of the texts of Estonian legal acts are available at the website of the Ministry of Justice at www.legaltext.ee, it should be taken into account that the translations given there must not contain recent amendments to the legal acts. Electoral laws are also published in English on the official Website of the National Electoral Committee www.vvk.ee, and *Riigikogu* Rules of Procedure Act and *Riigikogu* Internal Rules Act on the official website of Estonain parliament www.riigikogu.ee.

[9] The English translations of the texts of the judgments of the Chamber of Constitutional Review of the Estonian Supreme Court are available at the official website of the Supreme Court www.nc.ee.

Nr 3-4-1-1-05 from 19 April 2005 Petition of the Chancellor of Justice to declare § 701 of Local Government Council Election Act and § 1(1), the first sentence of § 5(1) and § 6(2) of Political Parties Act partly unconstitutional.

Nr 3-4-1-3-05from 2 May 2005 Complaint of members of the Riigikogu P. Kreitzberg, S. Mikser and H. Õunapuu against the resolution of the Board of the Riigikogu of 14 December 2004, refusing the registration of the fraction of Estonian Social Liberals.

Nr 3-4-1-11-05 from 14 October 2005 Petition of the President of the Republic to declare the Riigikogu Internal Rules Act Amendment Act unconstitutional.

Nr 3-4-1-13-05 from 1 September 2005. Petition of the President of the Republic to declare the Local Government Council Election Act Amendment Act, passed by the *Riigikogu* on 28 June 2005, unconstitutional.

SUMMARY IN ESTONIAN

Valimised, erakonnad ja seadusandliku võimu sooritus Eestis: institutsionaalsed valikud taasiseseisvumisest e-demokraatiani

Iseseisva Eesti riigi taastamine andis võimaluse teha ajakohaseid mõistlikke riigiehituslikke otsuseid, võttes arvesse nii head kui ka halba ajaloolist kogemust. Kas ja mil määral see on õnnestunud, on võimalik õiglaselt otsustada alles pikema aja möödudes ja isiklike seoste tähtsuse hääbudes. Analüüsiks innustab see küsimus aga ikka. Väike riik on ju otsekui eskimo kajakk, mille kurssi saab muuta pika planeerimise ja suure pingutuseta kohapealgi: see annab ühtmoodi head võimalused nii erakordseteks õnnestumisteks kui paraku ka ebaõnnestumisteks. Käesolev doktoritöö ühendabki enam kui kuue aasta vältel Eesti erakondade, parlamentarismi, valimiste ja e-hääletamise uurimiseks tehtud töö, mille tulemused on avaldatud teadusartiklitena. Interneti teel hääletamise õiguslik lahendus on leidnud lisaks rahvusvahelisele kõlapinnale ka praktilise rakenduse Eesti kohaliku omavalitsuse volikogu valimistel 2005. ja Riigikogu valimistel 2007. aastal. Doktoritööks seotud artiklid – neli neist esitatud dissertatsiooni põhiosas ja viis selle lisas – esindavad igaüks veidi erilaadset sotsiaalteaduslikku lähenemist ühele eelnimetatud probleemidest.

Erakonda kui olulist poliitilist institutsiooni on analüüsitud Euroopa võrdleva erakonnaõiguse kirjutamiseks ette antud raamistikus, vaadeldes Eesti erakondade tekkelugu, õiguslikku staatust ja rolli esindusdemokraatias. (**I**) Erakonna institutsioon ei ole Eestis lõplikult välja kujunenud, erakonna määratluses on teatav pinge eraõigusliku ja avalik-õigusliku organisatsiooni tunnuste vahel. Ühelt poolt on tegemist justkui selgelt eraalgatusel põhineva mittetulundusühinguga, teisalt annavad erakonnale märgatava avalik-õigusliku värvingu ranged asutamis-tingimused, liikmete nimekirja avalikustamine ja avalikustatud nimekirjale õigusliku tähenduse omistamine, samuti püüd tugevdada kontrolli erakondade rahastamise ja tegevuse üle. Kui lisada eeltoodule fakt, et riigieelarvelise eraldise kolmekordistamise järel pärast 2003. aasta Riigikogu valimisi olid erakonnad suuremal või vähemal määral riiklikul ülalpidamisel, muutub küsimus erakondade era- või avalik-õiguslikust olemusest veelgi keerukamaks. Peaksid ehk olulisel määral riigieelarvest rahastataval erakonnal olema ka mõned avalikud ülesanded? Mil määral ja mil viisil on kontroll erakonna sissetulekute üle võimalik? Need küsimused on juba aastaid vaidluse objektiks.

Erakonnad domineerivad Eesti poliitilises elus üpris selgelt. Eelisseisundi kindlustab muu hulgas valimisõigus: Riigikogu ja Euroopa Parlamendi valimistel saab kandidaatide nimekirja esitada vaid registreeritud erakond, nii avalikud kui varjatud kodanike või erakondade valimisliidud on keelatud. Oma nimekirjaga osalemise võimalust ei ole järelikult ka erakonnana registreerimata kodaniku-ühendustel, kelle võimalused muul moel poliitikakujundamises osaleda on formaalselt olemas, ent tegelikkuses üpris piiratud. Valimisliidud on lubatud kohaliku omavalitsuse volikogu valimisel, seda õiguskantsleri ja Riigikohtu sekkumise tulemusel. Riigikogus esindatud erakondade kavatsust erakondade eeliseid süvendada ongi tõkestanud teised põhiseaduslikud institutsioonid, mis

annab tunnistust sellest, et põhiseaduslikud institutsioonid on ametnikega komplekteeritud kompetentsipõhiselt, seos erakondadega on nõrk või olematu ja institutsioonile on tagatud õigusriigis vajalik sõltumatus. Otsuse lubada erakondadesse kuuluda ka kõrgeimatel riigiametnikel, kes on seatud seadusandliku ja täidesaatva võimu tegevust tasakaalustama, muutis Riigikogu ise veel enne erakonna liikmelisuse piirangute jõustumist.

Eesti, Läti ja Leedu põhiseaduslikud, valimisõiguslikud ja parlamendi kodukorra erinevused pakuvad tänuväärset võimalust selgitada ühe või teise institutsionaalse valiku mõju parlamendi rolli ja töötulemuse kujunemisele. Analüüsi tulemusena selgus paradoksaalsel moel, et märkimisväärsetest tegevuskeskkonna erinevusest (näiteks erinevast kohustuslike lugemiste arvust, lugemiste vaheaegade erinevast pikkusest, valitsuse erinevatest võimalustest määrata parlamendi päevakorda jmt) hoolimata on seadusandliku võimu sooritus olnud kolmes Balti riigis üsna sarnane. Ilmselt on see olnud tingitud vajadusest riik n-ö taaskäivitada ja teha ettevalmistusi Euroopa Liiduga ühinemiseks. Teine paradoksaalne järeldus on, et seadusandja aktiivsuse poolest tugevaimaks saab pidada pool-presidentaalse Leedu parlamenti. Nõrgim on parlamendi roll poliitikakujundamisel Lätis, keskmisele positsioonile asetub Eesti Riigikogu, olgugi et põhiseaduslik ja parlamendiprotseduuride raamistik võimaldaksid Eestis valitsuse tugevamat positsiooni kui Lätis. See viib uurimistöö ühe olulisima järelduseni, mille kohaselt põhiseaduslik raamistik ja valimissüsteem, mis iseenesest võiksid soosida tugeva parlamendi kujunemist, kaotavad oma tähenduse, kui täidesaatvale võimule on antud ulatuslikud võimalused legislatiivprotsessi mõjutamiseks. (**II**) Madalavõitu valimisaktiivsus ning valijaskonna volatiilsus on aga Eesti, Läti ja Leedu ühiseks probleemiks põhiseaduslike institutsioonide vahelise rollijaotuse ja valimissüsteemide erinevusest hoolimata. (**I**)

Kaks doktoritöö põhiosasse kuuluvat artiklit käsitlevad Interneti teel hääletamist: varasem artikkel (**IIIa**) peegeldab ettevalmistusi selleks intrigeerivaks ja maailmas teed rajanud valimishalduslikuks muudatuseks, muu hulgas lahti mõtestades Riigikogus toimunud arutelusid; hilisem artikkel (**IV**) kirjeldab Interneti teel hääletamist võimaldavat õiguslikku lahendust ning peegeldab esimesi kogemusi Interneti teel hääletamise rakendamisest üleriigilistel valimistel.

Interneti teel hääletamise lubamine eeldab valimisõiguse aluspõhimõtete ümbermõtestamist. Pole ju mõeldav üksinda ja salaja hääletamise tagamine riigi sunnijõuga, kui iga valija võib vabalt valida sobiva koha ja hetke e-hääletamiseks. Nõnda on valimiste salajasuse põhimõtet käsitletud kahe alampõhimõtte kaudu. Valimiste saladuse põhimõte koosneb hääle saladusse jäämise ehk hääletaja anonüümsuse põhimõttest ja hääletamise kui toimingu privaatse sooritamise põhimõttest. Kumbki nimetatud alampõhimõtteist ei ole aga eesmärk iseenesest, vaid on suunatud valiku vabaduse tagamisele. Kui valijale on võimalik luua piisavad tingimused vabaks hääletamiseks muul moel, saab Interneti teel hääletamist käsitleda Põhiseadusega kooskõlas olevana. Eesti e-hääletamise projektis käsitletakse hääletamise vabaduse tagatisena valija õigust elektrooniliselt antud häält eelhääletamise päevade vältel piiramatu arv kordi uue e-häälega või valimisjaoskonnas pabersedelil häälega muuta. (**IV**)

Seesugune lähenemine näib rajanevat liberalistliku ideoloogia alusel: riik peab usaldama kodanikku ning rakendama piiranguid ainult siis, kui see on tõepoolest

vajalik. (**IIIa**) Kuni juurdepääs Internetile ei ole kõikidele valimisõiguslikele isikutele võrdselt tagatud, säilib põhimõtteline küsimus Interneti teel hääletamise kooskõlast ühetaolisuse põhimõttega. Samas on selge, et hääletamine on paratamatult, ka siis, kui see toimub valimisjaoskonnas, ühele valijale hõlpsam kui teisele ja ükski hääletusviis ei poliitiliselt täiesti neutraalne. Interneti teel hääletamist saab lähiajal siiski rakendada vaid tavahääletamise alternatiivina, kusjuures valimisjaoskondade hulga märgatav vähendamine ei pruugiks Põhiseadusega kooskõlas olla.

Hea meel on kokkuvõtteks tõdeda, et õigusriik on taastatud ja Eestist on saanud Euroopa Liidu ja NATO liige. Kas aga Eestist kujuneb tugeva poliitilise ja õigusliku kultuuriga „igav põhjala riik“, nagu avalikes aruteludes sageli loodetud, näitab järgmine aastakümme.

ACKNOWLEDGEMENTS

First of all, I would like to deeply thank my *Doktorvater* Professor Wolfgang Drechsler for many inspiring and intriguing discussions about the essence of social sciences and for opening up to me the world of social and political science. I greatly admire his wise reactions to my passionate protest against 'metatext of metatext' as proof of scientific accuracy and his fascinating style in writing. Professor Drechsler provided me with quick, reasoned and calm critiques, even in areas where he did and does not agree with my judgement and evaluation (such as in several aspects of e-voting), which helped me through the stagnant moments or brought me back from wrong ways I had chosen out of pure curiosity. A thousand thanks for that!

My special thanks belong also to Professors Raul Narits, Kalle Merusk and Justice Jüri Põld from the Law Faculty of the University of Tartu. The fruitful cooperation in carrying out public law reform, as well as discussions raised while solving legal problems together, have shaped the mode of my legal thinking. Our common criticism towards the *Reine Rechtslehre* and the ideas of simple reception of German administrative law resulted in the change of the initial direction of the administrative law reform in the years 1998-2002, and brought me together with Professors Drechsler and Tiina Randma-Liiv and Dr. Taavi Annus from the Social Sciences Faculty of the University of Tartu. Truly, this explains my choice to aspire for a PhD instead of a Dr. iur – to improve my performance in public law.

I am grateful to Dr. Allan Sikk, Professor Vello Pettai, Priit Vinkel, Aaro Mõttus, Jüri Adams, Oliver Kask, Tarvi Martens, Epp Maaten and my brother Mart Anton for lively debates on elections, Internet-voting, democracy, political parties, parliamentarism etc. as well as for several common writings, speeches and new ideas. Professors Martin Morlok and Jörn Ipsen, Minister of Justice in the years 1999-2003 Märt Rask and Heiki Sibul have created a framework for the presentation or even implementation of the results of my studies, each in different form. I have noticed it and I appreciate it very much. Several people named before, and Professor Rainer Kattel, gave the necessary spark when I was becoming overwhelmed with dissatisfaction with my dissertation, I am really grateful to them all.

I would like to thank the *Riigikogu's* Library and especially Tiina Kallas, who, during the years which this endeavor lasted, provided me with books, articles and any other kind of information I needed. I am also grateful to all those colleagues and acquaintances not named here who also played important roles at several stages of my scientific work.

It is impossible to put into words my thanks to my entire family and best friends, who have understood my aspirations and encouraged my effort since its beginning, and who have forgiven the odd working hours even on weekends. It is difficult not to mention the role of my dear father, Justice Tõnu Anton, whose creative, fair and absolutely logical approach to every problem has fascinated and inspired me all my life. It is to him, and to my dear mother, that this dissertation is dedicated.

PUBLICATIONS

Article I

Madise, Ülle; Sikk, Allan. (2007) Die Institution der politischen Partei in Estland, in: Tsatsos, von Alemann, Morlok, Schefold, Schneider (eds.) *Die Parteien in den demokratischen Ordnungen der Staaten der Europäischen Gemeinschaft*. *Schriften zum Parteienrecht: Parteienrecht im europäischen Vergleich,* 2nd completely revised and enlarged edition, Baden-Baden: Nomos, in press.

Article II

Pettai, Vello; **Madise, Ülle**. (2006) The Baltic Parliaments: Legislative Performance from Independence to EU Accession, *The Journal of Legislative Studies*, Vol 12, No 3-4, pp. 291-310.

Article IIIa

Drechsler, Wolfgang; **Madise, Ülle**. (2004) Electronic Voting in Estonia, in: Kersting, Norbert; Baldersheim, Harald (eds.) *Electronic Voting and Democracy. A Comparative Analysis*, Basingstoke: Palgrave Macmillan, pp. 97-108.

Article IV

Madise, Ülle; Martens, Tarvi. (2006) E-voting in Estonia 2005: The first practice of country-wide binding Internet voting in the world, in: Krimmer, Robert (ed.) *Electronic Voting 2006*, Bonn: Gesellschaft für Informatik, pp. 15-26.

APPENDIX

Article V

Madise, Ülle; Maaten, Epp; Vinkel, Priit. (2006) Internet Voting at the Elections of Local Government Councils on October 2005, Report on Internet voting to the National Electoral Committee, available at http://www.vvk.ee/english/report2006.pdf.

Article VI

Madise, Ülle. (2006) Interneti teel hääletamise õiguslikke ja poliitilisi aspekte, *Juridica*, 2006/10, pp. 663-672. [Legal and political aspects of Internet voting].

Article VII

Madise, Ülle. (2004) Kas Riigikogu valimise korra muutmine lahendaks rahva riigist võõrandumise probleemi?, *Juridica*, 2004/9, pp. 583-597. [Would a change of *Riigikogu* election rules solve the problem of political alienation?].

Article VIII

Madise, Ülle. (2004) Milleks on Eestis vaja e-hääletamist?, *Riigikogu Toimetised*, 2004/9, pp. 130-135. [Why does Estonia need e-voting?].

Article IX

Mäeltsemees, Sulev; **Madise, Ülle**; Aas, Krista; Vinkel, Priit. (2007) Administrative Culture in Estonia, in Thedieck, Franz (ed.) *Foundations of Administrative Culture in Europe*, Baden-Baden: Nomos, pp. 135-145.

CURRICULUM VITAE

Ülle Madise

1. Personal data

Date and place of birth	11. 12. 1974, Tartu
Citizenship	Estonian Republic
Marital status	married

2. Contact information

Peeter Süda Str 2a – 3
Tallinn 10118
+372 51 07 874
ylle.madise@riigikontroll.ee

3. Education

University of Tartu	2001	*magister iuris (cum laude)*
University of Tartu	1998	law, BA *(cum laude)*

4. Language skills

Estonian	mother tongue
Germany	high
English	high
Russian	medium
French	basic

5. Professional Employment

2006 - ...	National Electoral Committee, member
2005 - ...	National Audit Office, Director of Audit
2005 - ...	Tallinn University of Technology, lecturer (constitutional and administrative law)
2002 – 2005	Constitutional Committee of the *Riigikogu* (Estonian Parliament), Adviser and Head of Secretariat
2002	adviser of the minister of justice in parliamentary matters
2001-2005	Tartu University, lecturer (election administration; parliamentarism)
1998-2002	Ministry of Justice, Head of Public Law Department
1997-1998	Ministry of Justice, specialist, Public Law Department

6. Final theses

2001	Master thesis: „Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. aasta põhiseaduses" [The

	warranty of the local government in the Constitution of the Republic of Estonia]
1998	Bachelor thesis: „Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. aasta põhiseaduses" [The warranty of the local government in the Constitution of the Republic of Estonia]

7. Main research areas

The legal status and role of the constitutional institutions, electoral law, political parties, Internet voting, *New Public Management*, the boundaries of the law reception, contemporary democracy issues, administrative culture.

8. Publications

"Administrative Culture in Estonia", with Sulev Mäeltsemees, Krista Aas and Priit Vinkel; in: Franz Thedieck (ed.), Foundations of Administrative Culture in Europe, Baden-Baden: Nomos, 2007, pp. 135-145.

"Die Institution der politischen Partei in Estland", with Allan Sikk, in: Tsatsos / von Alemann / Morlok / Schefold / Schneider (eds.), Parteienrecht im europäischen Vergleich, 2nd completely revised and enlarged edition, Baden-Baden: Nomos, 2007, in press.

"The Baltic Parliaments: Legislative Performance from Independence to EU Accession", with Vello Pettai, The Journal of Legislative Studies, vol. 12, no s 3-4, September – December 2006, pp. 291-310.

"Interneti teel hääletamise õiguslikke ja poliitilisi aspekte", Juridica, 10/2006, lk. 663-672.

"E-voting in Estonia 2005: The first practice of country-wide binding Internet voting in the world", koos Tarvi Martens; in: Robert Krimmer (ed.), Electronic Voting 2006, Bonn: Gesellschaft für Informatik, 2006, pp. 15-26.

"Internet Voting at the Elections of Local Government Councils on October 2005", Report on Internet voting to the National Electoral Committee, with Epp Maaten and Priit Vinkel, available at http://www.vvk.ee/english/report2006.pdf

"Riigikogu aastal 2004", Riigikogu Kroonika 01.01.-31.12.2004, Tallinn: Eesti Rahvusraamatukogu, 2005.

„Kas Riigikogu valimise korra muutmine lahendaks rahva riigist võõrandumise probleemi?", Juridica 9/2004, lk 583-597.

"Riigikogu aastal 2003", Riigikogu Kroonika 22.03.-31.12.2003, Tallinn: Eesti Rahvusraamatukogu, 2004.

"Milleks on Eestis vaja e-hääletamist?", Riigikogu Toimetised nr 9/2004, lk 130-135.

"Riigikogu VII, VIII ja IX koosseis: statistikat ja kommentaare", peatoim. Aaro Mõttus, toim. Rita Hillermaa, Giina Kaskla, Anu Laido, Ülle Madise, Tallinn : Riigikogu Kantselei : Eesti Rahvusraamatukogu, 2004.

"Electronic Voting in Estonia", with Wolfgang Drechsler, in: Norbert Kersting and Harald Baldersheim (eds.) Electronic Voting and Democracy. A Comparative Analysis. Basingstoke: Palgrave Macmillan, 2004, pp. 97-108.

"Erakondade rahastamise põhimõtted", Juridica eriväljaanne "Erakonnaõigus", 2003, lk. 40-45.

"Abiks Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami sooritajale", koos Jüri Põld ja Oliver Kask, Tallinn: Riiklik Eksami- ja Kvalifikatsioonikeskus, 2003.

"Eesti haldusõiguse reformi kandvatest ideedest", Juridica 1/2003, lk. 38-44.

"Põhiseaduse täiendamise seaduse eelnõust", koos Julia Laffranque, Kalle Merusk, Jüri Põld ja Märt Rask, Juridica, 8/2002, lk. 563-568.

"E-voting in Estonia", with Wolfgang Drechsler, Trames, 2002, vol. 6, no. 3, pp. 234-244.

Põhiseaduse V ptk kommentaar, koos Eerik-Juhan Truuväli ja Urmas Reinsalu, Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, toimetuskolleegium: Eerik-Juhan Truuväli, Oliver Kask, Lasse Lehis, Heiki Lindpere, Uno Lõhmus, Ülle Madise, Kalle Merusk, Raul Narits, Vallo Olle, Jüri Põld, Heinrich Schneider, Tallinn: Juura, 2002, 403-430.

Põhiseaduse XIV ptk kommentaar, koos Vallo Olle, Arno Almann, Jüri Liventaal, 2002, lk. 639-669.

„Eesti riigikontseptsioon, *New Public Management* ja haldusreform", Riigikogu Toimetised nr 2/2000, lk. 129-134.

..... 19. VII 2007

ELULOOKIRJELDUS

Ülle Madise

1. Isikuandmed

Sünniaeg, -koht	11. detsember 1974, Tartu
Kodakondsus	Eesti Vabariigi kodanik
Perekonnaseis	abielus

2. Kontaktandmed

Peeter Süda tn 2a – 3
Tallinn 10118
+372 51 07 874
ylle.madise@riigikontroll.ee

3. Hariduskäik

Tartu Ülikool	2001	*magister iuris (cum laude)*
Tartu Ülikool	1998	õigusteadus, BA *(cum laude)*

4. Keelteoskus

Eesti keel	emakeel
Saksa keel	kõrgtase
Inglise keel	kõrgtase
Vene keel	kesktase
Prantsuse keel	algtase

5. Teenistuskäik

2006 - ...	Vabariigi Valimiskomisjoni liige
2005 - ...	Riigikontroll II auditiosakonna peakontrolör
2005 - ...	Tallinna Tehnikaülikooli lektor (riigi- ja haldusõigus)
2002 – 2005	Riigikogu põhiseaduskomisjoni nõunik, sekretariaadi juhataja
2002	justiitsministri parlamendinõunik
2001-2005	Tartu Ülikooli lektor (valimishaldus; parlamentarism)
1998-2002	Justiitsministeeriumi avaliku õiguse osakonna juhataja
1997-1998	Justiitsministeeriumi avaliku õiguse osakonna spetsialist

6. Kaitstud lõputööd

2001	„Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. aasta põhiseaduses” (magistritöö)
1998	„Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. aasta põhiseaduses” (bakalaureusetöö)

7. Teadustöö põhisuunad

põhiseaduslike institutsioonide õiguslik staatus ja rollid, valimisõigus, erakonnaõigus, Interneti teel hääletamine, *New Public Management*, õiguse retseptsiooni piirid, demokraatia kaasaegne käsitlus, halduskultuur.

8. Publikatsioonid

„Administrative Culture in Estonia", with Sulev Mäeltsemees, Krista Aas and Priit Vinkel; in: Franz Thedieck (ed.), Foundations of Administrative Culture in Europe, Baden-Baden: Nomos, 2007, pp. 135-145.

„Die Institution der politischen Partei in Estland", with Allan Sikk, in: Tsatsos / von Alemann / Morlok / Schefold / Schneider (eds.), Parteienrecht im europäischen Vergleich, 2nd completely revised and enlarged edition, Baden-Baden: Nomos, 2007, in press.

„The Baltic Parliaments: Legislative Performance from Independence to EU Accession", with Vello Pettai, The Journal of Legislative Studies, vol. 12, no s 3-4, September – December 2006, pp. 291-310.

„Interneti teel hääletamise õiguslikke ja poliitilisi aspekte", Juridica, 10/2006, lk. 663-672.

„E-voting in Estonia 2005: The first practice of country-wide binding Internet voting in the world", koos Tarvi Martens; in: Robert Krimmer (ed.), Electronic Voting 2006, Bonn: Gesellschaft für Informatik, 2006, pp. 15-26.

„Internet Voting at the Elections of Local Government Councils on October 2005", Report on Internet voting to the National Electoral Committee, with Epp Maaten and Priit Vinkel, available at http://www.vvk.ee/english/report2006.pdf

„Riigikogu aastal 2004", Riigikogu Kroonika 01.01.-31.12.2004, Tallinn: Eesti Rahvusraamatukogu, 2005.

„Kas Riigikogu valimise korra muutmine lahendaks rahva riigist võõrandumise probleemi?", Juridica 9/2004, lk 583-597.

„Riigikogu aastal 2003", Riigikogu Kroonika 22.03.-31.12.2003, Tallinn: Eesti Rahvusraamatukogu, 2004.

„Milleks on Eestis vaja e-hääletamist?", Riigikogu Toimetised nr 9/2004, lk 130-135.

„Riigikogu VII, VIII ja IX koosseis: statistikat ja kommentaare", peatoim. Aaro Mõttus, toim. Rita Hillermaa, Giina Kaskla, Anu Laido, Ülle Madise, Tallinn : Riigikogu Kantselei : Eesti Rahvusraamatukogu, 2004.

„Electronic Voting in Estonia", with Wolfgang Drechsler, in: Norbert Kersting and Harald Baldersheim (eds.) Electronic Voting and Democracy. A Comparative Analysis. Basingstoke: Palgrave Macmillan, 2004, pp. 97-108.

„Erakondade rahastamise põhimõtted", Juridica eriväljaanne "Erakonnaõigus", 2003, lk. 40-45.

„Abiks Eesti Vabariigi põhiseaduse ja kodakondsuse seaduse tundmise eksami sooritajale", koos Jüri Põld ja Oliver Kask, Tallinn: Riiklik Eksami- ja Kvalifikatsioonikeskus, 2003.

„Eesti haldusõiguse reformi kandvatest ideedest", Juridica 1/2003, lk. 38-44.

„Põhiseaduse täiendamise seaduse eelnõust", koos Julia Laffranque, Kalle Merusk, Jüri Põld ja Märt Rask, Juridica, 8/2002, lk. 563-568.

„E-voting in Estonia", with Wolfgang Drechsler, Trames, 2002, vol. 6, no. 3, pp. 234-244.

Põhiseaduse V ptk kommentaar, koos Eerik-Juhan Truuväli ja Urmas Reinsalu, Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, toimetuskolleegium: Eerik-Juhan Truuväli, Oliver Kask, Lasse Lehis, Heiki Lindpere, Uno Lõhmus, Ülle Madise, Kalle Merusk, Raul Narits, Vallo Olle, Jüri Põld, Heinrich Schneider, Tallinn: Juura, 2002, 403-430.

Põhiseaduse XIV ptk kommentaar, koos Vallo Olle, Arno Almann, Jüri Liventaal, 2002, lk. 639-669.

„Eesti riigikontseptsioon, *New Public Management* ja haldusreform", Riigikogu Toimetised nr 2/2000, lk. 129-134.

..... 19.VII 2007