I prepared this paper for the 8th NISPAcee Annual (2000) Conference in Budapest, working session on “European Integration as an Agent of Public Administration Reform: Impact on Countries in Transition”. In this paper I deal with two different issues. First, I introduce briefly the concept of the administration of the Judiciary and second, the impacts of the European integration process on this domain in Estonia. In short, my aim is to demonstrate that the impact of integration could not only be acknowledged, but also identified, measured and classified.

ADMINISTRATION OF JUDICIARY

The Republic of Estonia is unquestionably a constitutional democracy with a written constitution. It includes all traditional components of constitutionalism with an aim to limit the governance for the protection of individuals. To name just most the important ones – the division of powers (Art. 4), the principle of the rule of law (Art. 3) and the protection of basic freedoms and liberties. It should not be surprising, therefore, that the Judiciary is an inherent part of these concepts, and equally as important as the other branches is the administration of the Judiciary.

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1 The Constitution of the Republic of Estonia and its implementation act were adopted by a referendum on 28 June 1992 and entered into force the following day.
2 Similarly to many other concepts in legal scholarship it appears to to be complicated task to give a good definition. While it can be done using teleological methods by defining the aim, it would be unrewarding to list the elements of the concept. After all, the constitutionalism is nothing more that set of principles, manners and institutional arrangements (Sajo, p. xiv), which is very specific to every legal and political culture.
3 Administration of justice can be and has been used with two different meanings. First, the court procedures to facilitate an adjudication process. Second, in very general terms it means
Despite of the accepted importance of the Judiciary, my personal impression is that the third power branch and its administration is not included in the scope of scholarly discussion. The questions related to the legislation in Parliament and its implementation by the Executive are more intriguing and rewarding subjects for the discussion. There can be several reasons for this phenomenon. First, as often is the case, political and legal scholars tend to concentrate on the interaction of the Executive and Legislature, thereby omitting the Judiciary and discounting its importance (for an overview see Tate article (pp. 7-33)). It is true that in past before the Second World War, the Judiciary was not considered being on equal terms with other branches (Stone, p. 226). Another reason can be that it was not deemed important to deal with an issue separately from the issues of general administration. For example, in Estonia, people working for the Judiciary other than judges, belong to the general class of civil servants under the same regulation (Public Service Act). Even more, in principle the a judge is also the a civil servant whose service relationship is not governed by contract but by the public law and draws his or her salary for being employed in state service. The difference is just that the judges have special status and regulation under the special law, The Judge’s Status Act. The third possible reason, actually opposing to the second one, can be that it was deemed to be the privilege and responsibility of Judiciary to take care of its own administration. Whatever were the reasons, the interest in studies regarding the Judiciary related issues were not really remarkable.

administrative organizations and procedures staffed with civil servants in order to support the administration of justice by independent judge. In addition to very trivial things ordinarily perceived as administration, it also covers the activities concerning the judges - their number, salaries, training and education etc. Please note for avoiding confusion and misunderstanding that I shall use the “administration of Judiciary” to refer to the latter concept.

4 The situation is different in United States, where early constitutional status and invented judicial review have guaranteed the solid status for the Judiciary in the system of separated powers. One can find academic discourse on the administration of the Judiciary (see Klein (pp. 6-10) on the role of Roscoe Pound and Arthur Vanderbilt in this development) and specialized research institutions (The American Judicature Society, Institute of Judicial Administration).

5 The Public Service Act [RT 1995, 16, 228]

6 The Judge’s Status Act [RT 1991, 38, 473]
Currently, where the situation seems to be different, is it not true that even after this period, the achievement of recognition is deceiving? It could be said that the interest has mainly been directed on review of constitutionality as to something significant from the legal and political point of view. Well, not really. We cannot say this without being unfair to the administration of justice’s point of view. Under the European Convention of Human Rights and through the activity of the European Court of Human Rights it has caused sufficient coverage and created an interest in related issues. An example of this is the interpretation of Article 6 for the protection of fair trial procedure and written commentaries on it. This has also had an influence on public administration in the Judiciary, because every attempt to change the court procedure results more or less in the adjustments of structures and procedures of the administrative support. However, determining this influence goes already beyond the limits of the paper. It is sufficient for us to notice that there are signs of an interest and the growing number of sources for research in the field.

However, the role of the Judiciary in the constitutionalism emphasizes above all the importance of the limitation of the state powers, protection of basic liberties and freedoms and the independent status of the judge leaving this way seemingly no room for other values. So, where does the rationale for an efficient Judiciary come from? I believe that although the main goal for the Judiciary is to provide the greatest amount of justice in society, this must be done within a reasonable time with efficient use of available resources and with consumer-friendly arrangement. First, it is obvious that in the conditions of scarce human and financial resources all affairs of the society should be managed in a sustainable way. Second, there is always a special concern for the arrangement of public expenditure – the manner in which the taxpayer money is spent. Third, the malfunctioning of public institutions, including the Judiciary, undermines the legitimacy of the whole system and is ultimately destructive to the concepts of constitutionalism, the separation of powers and the rule of law. In this respect there is nothing special about the Judiciary. The concern for the efficiency is always there, as is also for its independence and impartiality.

Therefore, in organizing a specific litigation procedure there should be a compromise made to find a balanced solution best suitable for the nature of dispute. The reforms in the federal judiciary of the United States are a good example, where the desired outcome was not only a just and fair litigation system, but also a system operating without undue expense and delay (see e.g. Newman, p.1151). Similar values can be found also in the European Convention of Human Rights, where the requirement of a reasonable time in Article 6 limits the time of litigation. The compromise appears clearly in the König case⁷, where the Court accepted that the assessment of reasonableness of the length of proceedings depends on the particular circumstances of the case. The factors to be taken into account are the complexity of the

⁷ see http://www.dhcour.coe.fr/Hudoc2doc\HEJUD\sift\97.txt [12/02/2000]
case, the conduct of the applicant and the conduct of the competent administrative and judicial authorities. Here the value of efficiency is compromised with the value of justice.

In parallel, for example, the public administration is expected to operate based on the doctrine of the rule of law, which would legitimize a positivist approach of regulation, even in its extreme version. However, this kind of situation is neither possible nor desirable because of the danger of tyranny of laws in a changing and complex society. The truth is that people expect both legality and efficiency from the administration, which in their extremes rule each other out. They can and must coexist with a reasonable compromise.

Here we come to the role of public administration in the administration of the Judiciary. I would argue that their close relationship is inevitable, because it makes achieving an ultimate goal, the efficient achievement of the greatest amount of justice, possible. The role of the public administration in the court system is to assist and support the administration of justice in a respectful way to the delicate issue of the independence of the whole system (Ludet, p. 8).

On one hand, the process of making justice is not so different from the process of manufacturing simple pens. The work is done more efficiently in conditions of specialization - the judges with special education and training can concentrate on a specific task of interpreting the law and the officials with different background support by taking care of administrative details. Clearly in the modern world, with conditions of massive and complex legislation even judges have to specialize in order to be able to fulfill the competency requirements. This process is often institutionalized by the creation of special courts, for example commercial, labor, taxation etc.

On the other hand, the “taking care of administrative details” must respect the independence of the judge. The main feature here is that the judge is subjected only to the law, while the public servant is part of a hierarchical structure of decision-making where getting the orders and being supervised is a part of everyday business. It is important to notice that the judges are not part of the administrative structure and they enjoy procedural independence in every

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8 Usually very few officials enjoy the comparable level of independence (e.g. in Estonia the Legal Chancellor and the State Comptroller).
respect. In their activity they are only subject to the law and they can be removed only for unlawful conduct.

EUROPEAN INTEGRATION

The history of Estonian involvement in European integration dates back to the August 1991, when the European Communities recognized the independence of the Republic of Estonia. Since this period both parties have concluded several treaties in the field of economic and political cooperation. This has been an intensive process for both sides, where in the current stage, concrete negotiations are going on regarding the Estonian accession to the European Union. As a basis of the negotiations Estonia will have to take over the *acquis communautaire* of the European Union, which also means the meeting of requirements in the field of administrative capacity and ability to apply the regulations by national institutions. The concern in administrative capacity of the Judiciary can easily be understood. European Union is interested in uniform application of the *acquis* throughout the whole Union, which is mainly ensured through the courts. The new European *ius commune* is being developed mainly in cooperation between national courts and the European Courts (Timmermans, p. 38). Therefore, it becomes crucial that the Judiciary in every member state would be able to operate with comparable effectiveness and consciousness in protecting the rights and solving the disputes under European regulations.

In the framework of this process, the European Commission has published several studies to evaluate the Estonian situation and capacity to meet the requirements of the Union - economic and political conditions known as Copenhagen Criteria’s (or Conditions). For our purposes the relevant requirement here is “the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”, which presupposes the development of administrative structures for effective implementation of the membership obligations through appropriate administrative and judicial structures.

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9 Most important of them Free Trade Agreement, Europe Agreement.
Indeed, Estonia’s administrative capacity is prominently present in all Commission reports. Probably because, as we shall see later, it appears to be quite a problematic subject. The Commission Opinion on Estonia’s Applications for Membership of the European Union, delivered on July 15, 1997 in the framework of the AGENDA 2000 report, evaluated all fields of state administration. An opinion was given also about the Judiciary, which stated laconically that “concerning the judicial capacity effectively to apply Community law, a definite evaluation at this stage is difficult”.

After this first report, the Commission has delivered two Regular Reports on Progress towards Accession, so far. The first regular report, published on 4 November 1998, and also the second, published on 13 October 1999, were already more concrete and referred to several distinguishable problems in both administration of justice and administration of Judiciary in Estonia. I shall return to the substantive issues in the reports during the further elaboration of the paper below.

**PROBLEMS IDENTIFIED BY EUROPEAN UNION**

The first regular report from the Commission on Estonian progress toward accession referred to several painful problems apparent in Estonia, such as the heavy caseload of the courts, relatively small number judges, insufficient training and education of judges and difficulties to attract qualified lawyers to follow a career in the judiciary.

In general, the evaluation about administrative capacity to apply the *acquis* the Commission found that “There is a human resource problem in the judiciary; there are not enough judges and those in place are either young and inexperienced or have been trained under the previous regime”. Significantly, the statement about “An important need for training and career development in the judiciary” found its

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10 Information about this process can be easily obtained from http://www.vm.ee/euro/english/ and http://europa.eu.int/comm/enlargement/index.htm [10/02/2000]
11 see http://europa.eu.int/comm/enlargement/estonia/op_07_97/index.htm [12/02/2000]
place also in the short conclusion under the political criteria, along with another burning issue of naturalization of stateless children. To some extent this demonstrates clearly the main concern of the Commission and seriousness of the problem in the context of European integration.

The second regular report\(^\text{13}\) did not add anything new to the previous one. However, it did not also take anything off from the agenda, which would have shown at least some improvement in certain questions. The Commission again indicated the high case-load relative to the number of judges, unattractiveness of judge's profession and unsatisfactory performance of inexperienced judges. Those problems were seen to be present especially in the lower courts. Differently from the previous year, this report did not include the Judiciary in the conclusion. Nevertheless, it is difficult to accept it as a sign of the improvement, because in the chapters “Democracy and the Rule of Law” and “Administrative Capacity” the critical approach and targeted problems taken in the previous report basically did not change.

The problems identified with the Judiciary should not be taken separately and out of the context of reports. It is indisputable that similar problems are present in all fields of administration and therefore it would be hard, if not naive, to expect the administration of Judiciary to be at a substantially higher level. The development of human resources and institutional capacity are deemed to be the problems in general. However, at the same time, it must be also acknowledged that this problem is considered to be especially pervasive within the Judiciary.

**LOCAL PROBLEMS**

The biggest problem identified in Estonia seems to be at the same time a fundamental one - what institution bears responsibility for the administration of Judiciary? In theory there would be three possibilities. First, the court does this itself based on a budget determined by the Parliament. I must admit that I do not know any country with this kind of arrangement.

\(^{13}\) see http://europa.eu.int/comm/enlargement/estonia/rep_10_99/index.htm [12/02/2000]
In Estonia, for example, only the Supreme Court functions according to this principle. Second, this task is assigned to one of the ministries of the Government. In Germany, for example, the Ministry of Justice organizes the administrative affairs of all court levels. The third solution is a kind of compromise, where the administration of the court system is facilitated by an independent body under the law. This model can be found, for example, in Sweden and Hungary.

In Estonia, however, the current arrangement has led to heated public debate over the issue on the highest level. The public dissatisfaction with the operation of the court system was apparent from the articles that from time to time appeared in the media. However, it happened only recently that it became an issue to be discussed in public by high officials. In November 1999 the Minister of Justice, Märt Rask, addressed a letter to the Chief Justice of the Supreme Court, Uno Lõhmus, where he criticized the slowness of the court system, especially on the first level. We can only speculate whether the reason behind it was the cumulative public dissatisfaction, a sensitive issue to every politician, the critique by the Commission of European Union, or both. Whatever the reason, the fact remains that it created a public debate to which contributed the former and current Chief Justice of the Supreme Court, Rait Maruste and Uno Lõhmus, one of the top attorneys as well as others.

In the context of this paper it is significant to emphasize that the education and training of the judges merited almost no attention and references were mostly made in relation to the quality of preparation of cases during investigation and prosecution phase and some procedural issues on trial. However, several comments addressed to the root problem. Namely, there is actually no institution that would feel a responsibility for organizing and developing the quality of justice in the whole system. Only this way can happen that the Ministry of Justice, who is made responsible for drafting legislation, initiating reforms and administration of Judiciary on two lowest level, accuses another institution, which has neither responsibility nor resources to deal with those issues. The problem has been earlier addressed from another perspective, the independence of the Judiciary, by the former Chief

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14 Rait Maruste is currently the judge in the European Court of Human Rights.
15 See the articles by Mattson, Maruste (1999), Lõhmus, Glikman, Vahtre.
Justice, Rait Maruste.\textsuperscript{16} He claimed that the administrative responsibility of the Ministry over the court system was threat to the independence and should be substituted with the system enabling more self-administration. Summing up those problems it shows quite clearly that some acceptable solution to this fundamental problem is urgently required. Without this, it is hard to expect that other administrative and procedural problems could be effectively dealt for the common benefit.

Definitely the most informative sources to find out about the specific administrative problems of the administration of the Judiciary in Estonia are the National Plans for European Integration issued annually for coordination of the state reforms and developments. The two most recent national plans cover the years 1999 and 2000.

\textit{NPAA for 1999}

The National Programme for the Adoption of the \textit{Acquis} for 1999 set out basically three directions for the Government action in the field of administration of the Judiciary. First, the Government took an obligation to analyze the structures of the administration of two lower levels of courts under the Ministry of Justice and to draft the development plan of the court system. Second, a considerable attempt was planned to undertake in the field of training and supplementary education of the judges (and also prosecutors), both in Estonian and EC law. Third, the plan foresees the increase of the number of the judges, and also the prosecutors and assistant judges.

It is important to notice that for the purposes of continuity the plan was not limited to the one year and in second part it covered directions for the years 2000 – 2003. The reason for this time scope was declared goal to become ready for accession for the year 2003. In this part of the plan the Government mentioned the continuation of the reform in private law, penal law and administrative law. However, the main emphasize was put on administration of Judiciary issues, not on substantive law. For example, the plan declared the intent to strengthen the courts department of the Ministry of Justice, to carry out the reform of the structure in the administrative courts, increase the number of judicature, guarantee the supplementary training for judges and promote the publication of modern legal literature.

\textsuperscript{16} See Maruste (1997).
Separate and quite detailed chapters can be found about material basis of the courts (to guarantee the functioning of the courts with supplementary material resources – adequate financial budgets, buildings, information technology, office equipment etc.) and training of judges in EU matters (e.g. in cooperation with Federal Republic of Germany, the Stockholm University and the European Law Academy Trier).

I obtained from the Office of European Integration a report about the activities undertaken in the field of Judiciary covering the period from October 1, 1998 to June 1, 1999.17 From this report one can see the concrete activities that were organized for the implementation of the plan and improvement of the court system. For example, several training programs were organized on EC law in cooperation of Trier European Law Academy, TAIEX and the Ministry of Justice. I and several of my colleagues from the Estonian Supreme Court had an opportunity to participate at the seminar “The Europe Agreement and the Judiciary” (May 13-14, 1999). A training program on EC law was organized by the Foundation for Studies in European Law and Politics in Sweden, SIDA (Swedish International Development Agency) and the Ministry of Justice. In February 1999 the round table on protection of intellectual property rights was organized for the administrative court judges. Within the framework of the twinning agreement with Germany several post-training programs for judges and prosecutors were carried out. And finally, the judges and prosecutors had supplementary training on variety of issues in the Estonian Law Centre on continuous basis.

**NPAA for 2000**

The most recent plan was adopted in January 2000, where the Government defined the short-term goals for the year 2000 and mid-term years for the period 2001-2003. In the former case the Government outlined a concrete plan for restructuring the first level court system with aims to increase the quality of administration of justice, optimize the work-load of judges and enable the efficient use of resources. In addition, already traditionally, high priority was given to the training and education of judges. Fresh ideas for the year 2000 were

17 The Ministry of Justice wrote this for the report to be addressed to the European Commission.
the performance appraisal of some categories of public officials\textsuperscript{18} and the development of information systems. The plans for years 2001-2003 did not introduce anything new and followed same lines - restructuring, training and education, sufficiency of resources and information technology.

**PUBLIC ADMINISTRATION**

When writing about the administration of the Judiciary, one cannot skip another approach to the administration – that is the basic principles of organization, the functions and personnel management of the public service. After all, the people working in the court system on positions other than judges belong to the general class of civil servants, thus being under general regulation.\textsuperscript{19} For example, the regulation of service conditions are regulated with the regular Public Service Act and State Public Servants Official Titles and Salaries Act. There is no special regulation concerning the service conditions like can be seen in the case of prosecutors, police officials, state auditors. There is a new draft law on courts foresees only few minor changes to the current situation.\textsuperscript{20} According to this law the basic principle, that the court officials belong the general class of civil servants based on same law, will remain in force.

It is significant that similarly to the administration of justice and Judiciary, the administrative capacity is often criticized in public commentaries and also in the Commission’s reports.\textsuperscript{21} This has made the reform of public administration to be one of the priorities of the current Government. The Office of Public Administration at the State Chancellery has been made

\textsuperscript{18} This quite strange provision, because the first periodical performance appraisal of all public officials must be done for the end of the year 2000, anyway.  
\textsuperscript{19} The service of judges are regulated with the Judges Act [RT 1991, 38, 473]  
\textsuperscript{20} Estonian version can be retrieved from the homepage of Ministry of Justice (www.just.ee)  
\textsuperscript{21} See chapter 4.1. “Administrative structures”. Short conclusion states that “Civil Service reform has made some progress but is far from completed. Staff quality and professionalism is not guaranteed due to insufficient transitional arrangements in the 1996 Public Service Act. Efforts are needed concerning the separation between political and professional positions, recruitment and promotion criteria, and the salary system. Capacity for coordination of civil service management is lacking. The lack of a cross-government structure negatively affects other aspects of the civil service by endangering the effective enforcement of legislation. Homogeneous standards applicable to all public administration settings are unlikely under present
responsible for analyzing and coordination of the development of public administration. The Government has prepared a document called "Starting Points of the Administrative Reform Program of the Government of the Republic", which divides the activity is six chapters:

1) Determining of the functions of executive power and the exclusion of the unnecessary ones for offering better public service;
2) Increasing of political responsibility and the developing of the mechanisms of political management corresponding to this;
3) Determining of the areas of activity and management mechanisms of the ministries, boards;
4) Developing of public service;
5) Application of information technology in public administration;
6) Conduct of the administrative-territorial reform.

In addition, several more concrete actions are described in “National Programme for the Adoption of the Acquis” for the year 2000.

CONCLUSION

What can be said for the conclusion? I hope that I managed to demonstrate one main phenomenon in Estonia – European integration has had an influence on the process of recognizing and reacting to the problems in administration of Judiciary. This helps not only to identify the most crucial obstacles appearing in the functioning of the system, but also clearly motivates to undertake concrete activities for improvement. Actually, in the context of integration it would be correct to say that it helps preventively to identify the problems, which may be likely to appear after would-be accession. The best example here could be probably education and training of the judges in all fields of regulation, but especially in Community law.

arrangements. Coordinating and monitoring mechanisms for personnel management are not sufficiently developed. Staffing and career conditions are up to each ministry and institution.”

22 English version of this paper can be obtained from www.riik.ee/riigikantselei/ahbindx_en.html [12/02/2000].
Another interesting observation can be made in respect to cooperation of the EU and Applicant State in pre-accession period. The reports demonstrate that the Commission is not really concerned, how Estonia is planning to deal with the question and leaves this to the Applicant State to decide. For example, the heavy caseload relative to the number of judges can be solved through procedural reforms, structural arrangements or increasing the number of judges. At least, in the Commission’s reports one cannot find any suggestions in this concern and the answers can be found in corresponding Estonian national plans, instead. Even less is the Commission concerned with the question, who should bear the responsibility for administration and developing the administration of justice and Judiciary. At the same time, this is and should be a most important question in Estonia.

From the positive side I would also like to emphasize the motivating effect of the integration process. No question, the perspective of the accession motivates Estonia to make an effort and deal with the elimination of problems and the development of the system. First, as can be seen also from NPAA’s there is a political goal to be ready for the accession for the year 2003. One must agree that the deadline is very far and this expects Estonians to demonstrate some significant improvement for this time. Second, it seems that Estonian political elite takes the accession to be a healthy competition with other applicant states and hopes to be ready for the accession in the first line.

Finally, we should not forget that the question of accession is far from being decided. Although the political battle over it is yet to come, this kind of concentrated attempt to upgrade the system of administration and integrate the legislation should still be welcomed. Leaving aside the speculations, whether the accession will indeed occur, it seems that there is nothing to lose from the integration process, at least in the field of the administration of the Judiciary.
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