

# **Evaluation of Research at the Faculty of Law, University of Tartu**

## **Institutes Evaluated**

- **Institute of Public Law**
- **Institute of Private Law**

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### **1. APPROACH TO THE EVALUATION**

The evaluation team was asked to assess the research conducted at the Faculty of Law at the University of Tartu during the period 1996-2001. *Inter alia*, it was asked to comment on:

- the quality of published research at the Faculty of Law and its international impact
- the overall research capability of the Faculty of Law and its subunits
- the implementation opportunities for the results of the research and its importance for Estonian society

The team was also asked to identify any deficiencies in research at the Faculty of Law and, where appropriate, to make recommendations for improvement and development.

Members of the team received copies of a self-evaluation report outlining the work of the Faculty about a month in advance of the visit. The report contained observations concerning the development of the Faculty and its research environment, a list of the major areas of research, a list of publications, a list of theses (master and doctoral), and curricula vitae for the staff members.

The team thought that the self-evaluation report was thorough, honest and helpful. It covered all aspects of research in the Faculty and gave a realistic picture of its strengths and weaknesses. The team was provided with guidelines for the evaluation. These caused some discussion, particularly concerning the problems of applying the guidelines to legal research. However, despite these difficulties, the team tried faithfully to follow the “Principles and Criteria for Evaluation” as far as was sensibly possible.

The team is aware of the special situation of legal research in Estonia. Staff at the Faculty of Law at the University of Tartu have been involved in the task of creating a new legal order for Estonian society, a task from which members of the only research-based Law Faculty in Estonia could hardly be expected to abstain. The drafting of new laws has absorbed a great deal of time and energy.

Drafting is not by itself a research activity but the team accepted that, to be done successfully, drafting requires many legal skills and the documentation that accompanies such drafting would be expected to have “scientific status”. The team also took into consideration that research in the field of law in Estonia encounters the problem that

much of the relevant material is available only in foreign languages and that access to it may require visits abroad, although the creation of Internet has made things easier here.

The Faculty of Law is subdivided into two “Institutes”: the Institute of Public Law and the Institute of Private Law. Within these Institutes there are eleven Chairs: six in the Institute of Public Law and five in the Institute of Private Law. For convenience the Chairs and the staff under their control are referred to in this report as “Departments”. The evaluation team decided to exclude from the evaluation those members of the teaching staff who were not permanent members of the Faculty, but included all Departmental Heads, whether on permanent contracts or not.

Currently, only four of the Chairs are filled: three of the filled Chairs are in the Institute of Public Law (Professor Sootak, Professor of Criminal Law; Professor Merusk, Professor of Constitutional and Administrative Law and Dean; and Professor Narits, Professor of Comparative Jurisprudence and Head of the Institute of Public Law), one is in the Institute of Private Law (Professor Varul, Professor of Civil Law and Head of the Institute of Private Law). There are seven vacant Chairs:

#### **Institute of Public Law**

- **Professor of Criminalistics and Criminology (Acting Chair: Dr Ginter, Docent of Criminology, Assistant Dean)**
- **Professor of Procedural Law (Acting Chair: Visiting Professor Kergandberg, Justice, Supreme Court of Estonia)**
- **Professor of International Law and EU Law (Acting Chair: Mr Kortteinen, Head of Lectorship in International Law and European Community Law)**

#### **Institute of Private Law**

- **Professor of Labour Law and Social Welfare Law (Acting Chair: Emeritus Professor Orgo)**
- **Professor of Environmental Law (Acting Chair: Mr Veinla, Lecturer in Environmental Law)**
- **Professor of Private International Law (Acting Chair: Visiting Professor Pisuke, Advisor to the Minister of Justice)**
- **Professor of History of Law (Acting Chair: Dr Luts, Docent of Legal History)**

The evaluation team arrived in Tallinn on Tuesday 2 October 2001 and was transferred the same evening to Tartu. A two-day site inspection of the Faculty of Law followed. The team left Tartu on 4 October and remained a further two days in Tallinn while preparing the final report. The site inspection began with a short introduction by the Dean of the Faculty and the heads of the Institutes of Public and Private Law. Later the team had the opportunity to meet all but one of the Departments under evaluation, as represented by their heads and staff. At the request of the team all Departments furnished a list of four publications that they considered to be the most important published during the evaluation period. It was these publications, together with the interviews the team

conducted with staff members, that formed the basis for the assessments. Having only four days for the evaluation, the team was unable to read more than a handful of the other publications listed in Annex 3 of the self-assessment report.

Interviews with the staff of each Department lasted between half an hour and an hour. The language of the interviews was English and in some cases German with translation provided by the German-speaking member of the team. General problems of communication did not arise.

1.

## **2. LAW IN ESTONIA**

Legal research in Estonia, which is carried out almost exclusively at the University of Tartu, has been heavily influenced by the fact that Estonia regained full sovereignty only in 1991. The need arose to develop a new government and court organisation and new laws. Many of the researchers appointed before 1991 are now retired or have left the Faculty and many of the Chairs are vacant. The new generation of researchers are therefore still young. Many of the teaching staff are not doctors but some are working on their doctor theses.

During the Soviet period research was strongly tied to Russia and the methods used were those found generally in the Eastern block, where short reports from “scientific” conferences were the most common form of publication. After independence, Estonian legal research had to find new methods. This process is still going on and will continue for some time. Estonian researchers have now to turn to the Western world, the European Union and other neighbouring countries for cooperation and inspiration. Many of the staff at the Faculty of Law have, during the evaluation period, been preoccupied with the process of drafting an entirely new Estonian law. A great part of the scientific work presented to us was in the form of short articles that commented on the law or on draft legislation. The ambition should be to make this work more “scientific”. Researchers need to be more ambitious in their approach, to ask new questions, and to elaborate on the arguments that are decisive when choosing between different solutions. Much research is concentrated on reviewing the conclusions of other researchers, often from other countries. EU-legislation, other EU-material, and material from other EU-countries is favoured. Germany and England seem to be the most important amongst these. This work is of great importance to Estonian society and, by its analysis, the Faculty has made a very valuable contribution to the development of the Estonian law. Now attention needs to focus on making an original

contribution which is of both national and international relevance to the development of thinking in these areas.

Of great value to the development of legal research in Estonia has been the development of the two law reviews that are published by the University of Tartu. *Juridica* is published in Estonian

ten times a year, *Juridica International* is published once a year in English.

3.

#### **4. EVALUATION OF LEGAL RESEARCH**

##### **Institute of Public Law**

- Department of Criminal Law

Chair: Professor Sootak, Professor of Criminal Law (interviewed)

Assitant (0.75): Mr Pikamae (master students, University of Tartu, 2000-current) (not interviewed)

The evaluation team spent thirty minutes with Professor Sootak discussing the research that had been conducted in the Department during the assessment period and acquainted itself with the publications that Professor Sootak had indicated were its best work. The team considered that Professor Sootak and his team had produced sound research in the field of criminal law. Some of the work, notably the article written by Professor Sootak and Mr Pikamae on “Criminal Law: Reform as a Path to Independence”, has appeared in international journals. The article on “Theories of Punishment and Reform of Criminal Law”, which was published in *Juridica International* in 2000, is scholarly and interesting. In addition, Professor Sootak has spent time studying abroad, including two visits during the assessment period to the Max Planck Institut, as well as trips to the University of Koln in Germany and the University of Stockholm in Sweden. Professor Sootak had secured a number of research grants, both from inside Estonia and, in collaboration with others, from outside Estonia. No masters or doctoral theses had been defended during the assessment period but two students (Pikamae and Randma) were working on masters theses. It would be highly desirable if the Department could recruit more doctoral and masters students. Like the majority of Departments in the Faculty of Law, some time has been spent drafting statutes and engaging with the process of law reform. But this does not seem to have had the same detrimental effect on the research output of the Department that we observed in other Departments in the Faculty. The main

task for the future will be to engage further with international scholarship, and to ensure that young scholars are recruited into the subject to ensure that a new generation is, when the time comes, ready and able to take over the mantle.

We judge the **research activities** of the Department as **good** and the **overall capability** as **good**.

- Department of Criminalistics and Criminology

Acting Chair: Dr Ginter, Docent of Criminology, Assistant Dean (interviewed)

Researcher Extraordinary: Dr Pruks (interviewed)

The assessment team interviewed Dr Ginter at length and spent three-quarters of an hour talking to Dr Pruks. The team also read five articles that had been identified by Dr Ginter as the Department's best work. Dr Pruks informed the assessment team that having been Dean of the Faculty for several years in the 1990s he was now trying to restart his research career. His intention was to move away from Criminology and to work instead on "Cyber law". Such a change of direction is never easy to achieve. The team therefore would like to encourage Dr Pruks in his efforts and hope that they will result in reflective work in his new chosen area. The transition will, however, leave Dr Ginter as the only academic working in the area of Criminalistics and Criminology. Efforts need to be made to ensure the vitality of the subject by recruiting more members of staff. A masters thesis on "Victimology of Assault" had been successfully defended in 2000 by Laos under the supervision of Dr Ginter. Another student (Gilyermo) was working on a doctoral thesis. But, as with Criminal Law, new research students are urgently needed. The quality of the research produced during the evaluation period in the Department was encouraging. Serious attempts had been made to make use of different techniques (economic analysis on the one hand and the use of questionnaires on the other). The analysis was perhaps not at the cutting edge of the best European work but it did show imagination and reflection.

We judge the **research activities** of the Department as **good** and the **overall capability** as **satisfactory**.

- Department of Procedural Law

Acting Chair: Visiting Professor Kergandberg, Justice, Supreme Court of Estonia

(interviewed)

Lecturer: Mr Sillaots (doctoral student, University of Tartu, 2000-present) (not interviewed)

The Chair of this important subject has been vacant for a number of years after its previous holder had moved to the Supreme Court. This fact seems to have had a somewhat detrimental effect on the research activities of the Department. On the other hand, the Department has been intimately involved in drafting procedural legislation,

which has been directly reflected in the research output and its emphasis on the more practical aspects of procedural issues. Procedural problems have been approached from the viewpoint of human rights and the judiciary's role as a shaper of the legal system, but a large part of the Department's output nonetheless consists of a fairly descriptive analysis of the new legislation. While such works are certainly useful for legal practitioners, university researchers should also emphasise the theoretical side of procedural law research.

We judge the **research activities** of the Department as **good to satisfactory** and the **overall capability** as **unsatisfactory**.

- Department of Constitutional and Administrative Law

Chair: Professor Merusk, Professor of Constitutional and Administrative Law, Dean

(interviewed)

Lecturer: Mr Olle (doctoral student, University of Tartu, 1996-present) (not interviewed)

Lecturer: Dr Lehis (Lecturer of Financial Law) (not interviewed)

Assistant: Mr Roosma (doctoral student, University of Tartu, 1998-present) (not interviewed)

The Department has participated intensively in the drafting of constitutional and administrative law and this activity is likely to continue for the foreseeable future. The research activity, in turn, is focused on the new legislation thus allowing good insight into the preparatory works. At the same time, drafting commissions have imposed a constraint on the research activity. The research submitted for evaluation includes some conceptually and theoretically oriented work, especially on administrative law, but most of the output is based on dogmatic analysis. On the basis of the new legislation and future case law a broader theoretical basis for Estonian administrative law remains to be developed. There are several doctoral students and the outlook of the subject area is good.

We judge the **research activities** of the Department as **good** and the **overall capability** as **good**.

- Department of Comparative Jurisprudence

Chair: Professor Narits, Professor of Comparative Jurisprudence, Head of the Institute of

Public Law (interviewed)

Lecturer: Dr Kaugia (not interviewed)

In the Department of Comparative Jurisprudence research is done in the field of legal theory in its widest sense. Annex 3 of the self-assessment report shows that the Department's publications focus on sociological questions, legal linguistics and the general theory of law. The articles that were listed for evaluation reflected this to a

limited extent only. Nonetheless, their scientific standard – as far as the team were able to assess – was fair.

Apparently, the Department is in the process of integrating international theoretical discussions into Estonian legal science and trying to make itself heard internationally. It is not clear how far this has been successful. It is understandable on the other hand that, in the process of establishing a modern legal order in Estonia, general theoretical questions may not take a leading role. A doctoral thesis (Rosentau: “What Does it Mean to Know a Legal Norm”) and a masters thesis (Lillo: “Elaboration of the Law by Judge”) with clear theoretical themes are in progress.

It seems, though, that at present a wider interest in theoretical and methodical questions is being developed. Such interest was signalled to the evaluation team during the interviews we conducted with staff in the Department. It may also be that Dr Pruk’s planned work on “Cyber Law” would most suitably be housed within the Department.

We judge the **research activities** of the Department as **satisfactory** and the **overall capability** as **satisfactory** (but barely so).

- Department of International Law and EU Law

Acting Chair: Mr Kortteinen, Head of Lectorship in International Law (interviewed)

Lecturer: Dr Land (interviewed)

Lecturer: Ms Kiviorg (doctoral student, University of Tartu, 2001-present) (interviewed)

The chair is presently vacant. Guest lecturer Kortteinen is responsible for the Department as well as for co-operation with the EuroFaculty. The research in this Department is mainly on EU law, human rights issues, and international law. The research activities compare well with similar small units in Europe although access to the state of the art publications has to be arranged partly via German and Finnish libraries. The scholarly atmosphere within the Department is ambitious; the researchers are highly motivated and the Department is active in arranging researcher training in co-operation with institutes abroad. Several links to other European research networks have been established and the potential for researcher mobility is high.

We judge the **research activities** of the Department as **good** (but on the high side of good) and the **overall capability** as **excellent**.

### **Institute of Private Law**

- Department of Civil Law

Chair: Professor Varul, Professor of Civil Law, Head of the Institute of Public Law

(interviewed)

Lecturer: Ms Kull (doctoral student, University of Tartu, 1998-present) (interviewed)

Lecturer (0.5): Ms Kullerkupp (doctoral student, University of Tartu, 2001-present) (not interviewed)

Lecturer (0.5): Mr Tampuu (not interviewed)

Assistant: Ms Hussar (masters student, University of Tartu, 2000-present) (not interviewed)

Assistant (0.5): Mr Jerofejev (not interviewed)

Assistant: Mr Leesment (not interviewed)

Assistant: Ms Liin (not interviewed)

Assistant: Ms Soodla (not interviewed)

Assistant: Mr Vutt (not interviewed)

Research in civil law in the Department has been to a very large extent oriented towards drafting Estonian codes and ensuring their harmonisation with the laws of the EU. This is very valuable work for the Estonian society and at least some of it has been of high quality. But most of the work done by the lecturers and assistants could not be considered to be “scientific”. It is very important that the big staff of this Department broaden their perspective and try to add some more “scientific” dimensions to their work. This does not mean that they necessarily have to find areas of research other than those connected to drafting and commenting on laws, even if it would be valuable if some of them did. Rather, when writing on this topic, they should reflect more deeply and critically on the drafting process, on the theoretical foundations of their subject and on the methodology appropriate to it, and on the issues of principle and policy that need to be resolved when producing a sound set of legislative provisions.

We judge the **research activities** of the Department as **satisfactory** (but on the high side of satisfactory) and the **overall capability** as **satisfactory**.

- Department of Labour Law and Social Welfare Law

Acting Chair: Emeritus Professor Orgo (interviewed)

Lecturer: Dr Muda (interviewed)

Lecturer: Dr Tavits (interviewed)

The Chair is presently vacant following the retirement of Professor Orgo. The Department has actively participated in drafting the basic legislation in Estonia in this area. Much of the research has centred on explaining and/or analysing new legislation but without higher theoretical ambitions. The two recently published doctoral theses focus on forming a conceptual and theoretical basis for Estonian labour law. Their standard is on a par with similar Central European theses and would seem to indicate a positive future for research in this area. New challenges lie in analysing the requirements of EU law on domestic law and the largely neglected area of social security law.

We judge the **research activities** of the Department as **satisfactory** and the **overall capability** as **satisfactory**.

- Department of Environmental Law

Acting Chair: Mr Veinla, Lecturer in Environmental Law (doctoral student, University of Tartu, 1999-present) (interviewed)

Assistant: Ms Tael (masters degree completed at University of Tartu, 1995) (not interviewed)

The Chair is vacant and acting professor Veinla is mainly responsible for this broad and important area of law. The activities of the Department have mainly concentrated on the practical aspects of Estonian environmental law: participation in the codification process, preparing an introductory textbook on the subject, and disseminating information about the newly-created Estonian legislation to a wider audience. Although the main thrust of these activities has been oriented towards practical outcomes, there is also an evaluative and critical approach to be noted in the research. The subject area would be of high priority also with regard to more legal research with more theoretical or conceptual aspirations. At the moment the results are mainly of interest to a domestic readership but there may be potential for more serious scholarly output. Junior researchers could also be encouraged to focus on environmental law issues.

We judge the **research activities** of the Department as **satisfactory** and the **overall capability** as **satisfactory**.

- Department of Private International Law

Acting Chair: Visiting Professor Pisuke, Advisor to the Minister of Justice

Lecturer (part-time): Ms Nurmela (doctoral student, University of Tartu, 2000-present) (not interviewed)

Assitant (part-time): Mr Siibak (not interviewed)

Assistant: Ms Aua (master student, University of Tartu, 2000-current) (not interviewed)

interviewed)

Professor Pisuke was in Moscow and thus not available for interview. Mr Siibak provided a list of four publications but as the publications themselves were not made available to the team, these could not be assessed by the team.

We were **unable to assess** the **research activities** of the Department or its **overall capability**.

- Department of History of Law

Acting Chair: Dr Luts, Docent of Legal History (interviewed)

Lecturer: Dr Anepaio (Lecturer of Legal History) (interviewed)

The Department of History of Law has concentrated in its research on the history of law in Estonia during the 19th century. This might seem as a limitation since history of law can be understood in a much broader sense, comprising the history of Roman Law and other major legal traditions. Under the personal and financial conditions operating in the Faculty of Law at the University of Tartu this restriction seems sensible. It underscores the general attitude of the Faculty, which regards itself as a traditional legal faculty.

The history of law in Estonia has to be seen in the wider context of the legal history of the Baltic provinces, which has been thus far largely unexplored by legal researchers. The topic is of general interest since it adds an important facet to the knowledge of the general development of legal science in continental Europe in the 19th century. On the evidence of the publications submitted to the team the work done by the Department on history of law in Estonia has been based on meticulous original research. The Department has been able to raise international interest in its work. Contributions of the Department have been published in leading international journals. Seemingly this Department, of all those that we visited, has made the most significant contribution to modern Estonian legal research, especially when viewed from an international perspective.

We judge the **research activities** of the Department as **excellent** and the **overall capability** as **good**.

## 1. RECOMMENDATIONS

- **Time for Research:** The research output of the Faculty could be improved if the time spent on legal drafting were reduced. It would also be helpful if teaching were to be restructured so as to guarantee more time for legal research. Sabbatical leave is an important part of the research strategy of all European “research-led” universities. In the Faculty of Law sabbatical leave is, in principle, available to all members of staff. They are entitled to take one semester’s leave every five years. However, members of staff who take advantage of this entitlement are required to

complete twice the amount of teaching in either the term before or after the period of leave. This practice creates a considerable disincentive to taking leave. Indeed, one senior member of staff told us that she did not consider it worthwhile taking leave because of the “displaced” teaching burden.

- **The Nature of Legal Research in the Faculty:** Much of the work that is done in the Faculty today is orientated towards legislation. Some of this work is of high quality but little of it could be considered “science”. This has to change if the quality of the Faculty’s research output is to improve.
- **Researcher Training:** This should be intensified and improved. Steps to be taken should include:
  - doctoral seminars and workshops
  - promotion of researcher mobility
  - increased co-operation with other faculties of law
  - greater assistance with foreign travel and the provision of travel allowances
  - improving supervision, both for masters and doctoral students and for those who have their doctorates but have just started out as lecturers in the Faculty
  - building a “research culture” throughout the Faculty
  - developing a series of (regular and frequent) staff seminars on legal methodology: interested legal academics from other countries could be invited to these seminars to present and discuss their ideas; and staff within the Faculty should be prepared to give papers on their current research and to present their work for discussion, criticism and theoretical review.
- **Staff:**
  - The Faculty has a serious shortage of senior full-time members of staff. One of the major tasks over the next seven years (in other words before the time of the next research evaluation) must be to ensure that every effort is made to appoint suitably-qualified members of staff to all eleven Chairs.
  - Many research staff are young people who have not yet obtained their doctorates. One important threat is that the most skilled amongst these will be attracted by government or private employers in Estonia or elsewhere in the European Union to leave the university. Salaries and working conditions must be sufficiently attractive to ensure staff retention.
- **Publication of Research:** *Juridica International* is a good step forward but the journal should be improved further in order better to reach the international academic community. In particular, a stronger and more consistent system of peer

review should be established and the Editorial Board should include leading legal academics from outside Estonia.

- **Library Resources:** While gradually improving, law holdings are still clearly insufficient to bring the library up to a good European standard. Measures should be taken to allocate more funds for the library.
- **Co-operation with other Faculties and Departments in the University:** Some Departments already have good contacts with other Faculties and Departments in the University of Tartu. However, the Faculty of Law would benefit from extending, developing and strengthening these connections.

**Tallinn October 6, 2001**

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