CHAPTER FOUR

CONSEQUENCES FOR THE INTERNAL LEGAL ORDER OF THE BALTIC STATES

§ 1. The Constitutional Framework for the Implementation of the EAs

The European Court of Justice is exclusively competent to determine the scope and application of association agreements in the Community legal order. In the domestic legal order of the associated countries, on the other hand, the status of the agreements depends on the principles for application of international treaties in those countries.274 Essentially, a distinction has to be drawn between countries adopting monist or dualist approaches to the relationship between international and national law. Whereas the latter presupposes the existence of two separate legal orders, the doctrine of monism departs from a unitary view of law.275 Although it has been argued that “it is very difficult to identify a State which has clearly followed the principles of monism or dualism in its municipal law”,276 it is generally accepted that the legal systems of Estonia, Latvia and Lithuania all reflect a monist approach.

1.1. Estonia

In Estonia, Article 3 of the Constitution defines that “generally recognized principles and rules of international law form an inseparable part of the Estonian legal system”.277 In combination with Article 123 (2) of the Constitution, according to which treaty provisions are applied if Estonian laws or other acts are in conflict with an international treaty ratified by the Parliament, it follows that ratified international

agreements take precedence over domestic law. The EA clearly fell within the category of international treaties which are subject to ratification by the Parliament.\textsuperscript{278} From its entry into force, the EA therefore became an integral part of the Estonian domestic legal order with a status superior to Estonian laws and other legal acts. The primacy of the EA did not apply in relation to the Constitution. The hierarchical supremacy of the latter derives from the prohibition to conclude unconstitutional treaties\textsuperscript{279} and the authority of the Constitutional Court to review international treaties in the light of the Constitution.\textsuperscript{280}

Since constitutional review is only possible before an international agreement enters into force and no questions were raised on potential conflicts between the EA and the Estonian Constitution before ratification of the Parliament, this agreement was considered to be in harmony with the Constitution.\textsuperscript{281} However, the constitutionality of the harmonisation process under the EAs has been questioned in the light of sovereignty and legitimacy.\textsuperscript{282} According to Anneli Albi, Estonia’s unilateral obligation to harmonise its legal system under Articles 68 and 69 EA formed “a serious subordination of state independent decision-making power [which] requires, in the light of the internal strict constitutional protection of sovereignty, a constitutional authorisation.”\textsuperscript{283} In this regard, reference was made to the EA judgment of the Hungarian Constitutional Court.\textsuperscript{284} In this case, the applicant claimed the unconstitutionality of Article 62 (2) of the Hungarian EA, which obliged Hungary to apply its competition rules according to criteria

\textsuperscript{278} Pursuant to Article 121 of the Constitution “the Riigikogu shall ratify and denounce treaties of the Republic of Estonia 1) which alter state borders; 2) the implementation of which requires the passage, amendment or repeal of Estonian laws; 3) by which the Republic of Estonia joins international organizations or unions; 4) by which the Republic of Estonia assumes military or proprietary obligations; 5) in which ratification is prescribed”.

\textsuperscript{279} Article 123 (1) of the Constitution.


\textsuperscript{283} Ibid., p. 201.