CHAPTER THREE

THE ROLE OF THE BALTIC STATES IN THE EU’S RELATIONS WITH RUSSIA

The question of Kaliningrad transit clearly illustrates the particular role of Lithuania in the development of EU-Russia relations. In combination with the regular tensions between Moscow and Estonia and Latvia regarding the treatment of Russian-speaking minorities or the conclusion of border agreements, it is obvious that EU membership of the Baltic States adds a new dimension to the EU-Russia relationship. The fear exists that Estonia, Latvia and Lithuania will bring their frictions with Russia into the EU, which could negatively impact the entire EU-Russia Strategic Partnership. On the other hand, voices have been raised that EU enlargement forms a unique opportunity to resolve the outstanding issues because one of the root causes of distrust, i.e. the Baltic security dilemma, has largely been overcome.260 Within the new political and legal context after enlargement, the main challenge for the Baltic States is, therefore, to find a balance between the deep-seated historical preoccupations vis-à-vis Russia, on the one hand, and the need for pragmatic co-operation on the other.

§ 1. The Legacy of the Soviet Period

1.1. A Continuous Challenge for the Baltic States

More than fifteen years after the restoration of their independence, the Soviet past remains a ‘hot topic’ with significant political and legal implications in each of the Baltic States. Apart from the demographic and geographic challenges, discussed above, the application of restrictions to former communist party members or secret service collaborators on the basis of so-called “lustration laws”261 raises interesting legal


261 Lustration in this context concerns the regulation of persons’ activities because of their involvement with the Communist regime. For comments, see: N. Letki, “Lustration
questions. In Lithuania, for instance, the “law on the evaluation of the USSR State Security Committee and the present activities of former permanent employees of the organization”, which was enacted on 16 July 1998, bans former KGB employees from being employed in a wide range of public and private sector institutions until 1 January 2009.\textsuperscript{262} In 2004 and 2005, the European Court of Human Rights found that the employment restrictions in private institutions violate Article 14 (prohibition of discrimination) and 8 (right to respect to private life) of the European Convention on the Protection of Human Rights and Fundamental Freedoms.\textsuperscript{263} Notwithstanding the legitimacy of the aims pursued by the law—i.e. the protection of the state’s national security—the wide scope of the restrictions, together with the fact that the KGB Act only entered into force a decade after the restoration of Lithuania’s independence and the applicants’ departure from the KGB, contributed to the overall assessment of the measures as being disproportionate and thus discriminatory.\textsuperscript{264} In 2007, the KGB Act still had to be amended in order to remove the restrictions on employment in the private sector. The Lithuanian legislation on this point is, in other words, not in compliance with the European Convention on the Protection of Human Rights and mutatis mutandis Article 6 (2) EU. The reluctance of the Lithuanian Parliament to rectify this situation illustrates the sensitivity of the debates.

A more or less comparable discussion is taking place in Latvia. In order to protect the state’s democratic order, independence and national security, Article 5 (6) of the Parliamentary Election Law and Article 9 (5) of the Municipal Election Law prohibit the inclusion in the candidate lists of persons that “belong or have belonged to the

\textsuperscript{262} The list includes nearly all jobs in state institutions as well as posts in banks and credit unions, companies providing detective or security services, communication enterprises, schools, etc. The persons concerned can also not work as lawyers or notaries nor can they perform “a job requiring a weapon”.

\textsuperscript{263} ECtHR, Judgment of 27 July 2004, Sidabras and Dziautas v. Lithuania, 55480/00 and 59330/00; judgment of 7 April 2005, Rainys and Gasparavičius v. Lithuania, 70665/01 and 74345/01.

\textsuperscript{264} ECtHR Sidabras and Dziautas v. Lithuania, at para. 60; Rainys and Gasparavičius v. Lithuania, at para. 36.