

LINT NR. 4 - E. Harremoes, Taanist

Mr. Chairman, Ladies and Gentlemen, members of the Constituent Assembly:

It gives me great pleasure to be with you this morning and to bring you the greetings of Mme. Lalumiere, the Secretary General of the Council of Europe. It is indeed the first time that an official cooperation meeting is organized under the auspices of the Council of Europe in Tallinn after you have reached independence, after you have been granted official guest status with the Parliamentary Assembly of the Council of Europe, and after you have applied for membership in our organization. This gives a very special importance to our meeting. I need not insist upon the joy with which we in Strasbourg learned two months ago about your decision to become sovereign and independent after more than 50 years under foreign domination. I need not either insist upon the immense satisfaction that we felt when you so speedily obtained international recognition and I shall not insist either upon how we welcome the cooperation with you, first as a candidate for membership and then, in the future, as soon as possible as a member, one of our family.

Indeed, we warmly welcome your return to independence, your ~~return to a political system based upon the values and ideas which form the basis of European cooperation as pursued within the COUNCIL OF EUROPE~~, and I refer here to the observance of basic human rights, the pluralist democracy and the respect for the rule of law. As regards pluralist democracy, we recall that all European countries which wish to join the Strasbourg family of likeminded democratic countries must comply with standards of popular participation in the political process. The test for eligibility to join our organization is the holding of free elections with secret ballot and universal suffrage. Elections to parliament which enjoy a large measure of sovereignty, which is composed of representatives of political parties with freedom to organize themselves and express themselves. It is the multiparty system reflecting all shades of public opinion which is the essential barrier against despotism.

As regards human rights and fundamental freedoms, I recall the European Convention on Human Rights opened for signature in Rome in 1950, a Convention which has become the yardstick by which is measured the commitment of our member states to European standards for the concern, for the protection of the individual. This Convention is the cornerstone of the Council of Europe's endeavours to achieve more justice, more peace in the world. It is the confirmation that the human person should be the focal point of our thinking. A social system of a form of government which is to do justice, demand freedom, respect and tolerance. This is why it has become a political condition for joining the Council of Europe that this Convention on Human Rights is signed upon accession. And I sincerely welcome the commitment by the Estonian Government to sign, respect and observe this important legal instrument which has been in the past, and will be in the future instrumental in strengthening true democracy in all our member states.

As regards the third element of the acts of the Council of Europe - the rule of law - indeed one of the pillars of our activities, it should be recalled that this rule requires that law should be respected, domestic law within the state, international law between states. The state must rule out force, arbitrariness, injustice. It must itself abide in all its dealings with citizens by the law. History has told us that Estonia knows this better than most other countries that there can be no rule of law in a totalitarian state or in a dictatorship. Thus the rule of law is bound up with democracy. It includes the sovereignty of the people, the separation of powers, the equality between citizens and the equality before the law. The legislator must respect the constitution, the civil servant must respect the law and both must be answerable to an impartial judiciary.

These values - human rights, a pluralist democracy, and the rule of law - are so fundamental that they are - they should be - self-evident for any country wishing to become integrated in the European family of nations. These values are so fundamental that they mark the distinction, the separation from despotism, from dictatorship, from arbitrary rule and lawlessness. And they are so fundamental that it can rightly be said that the state acquires legitimacy only if it sets itself the aim of protecting human dignity within the proper legal framework. They are so fundamental that they must find their rightful place in the Constitutions of our member states. And that is why we are here today. I know that your country between the two wars, during the first period of independence, had a constitution which lived up to all democratic norms, standards and requirements. This is a tradition I am sure you will wish to follow.

I hope that we, coming from the Council of Europe and from the Venice Commission For Democracy Through Law shall be able during the two days we meet, to support and assist you in the search for solutions in which take you account of the exigencies of our period, the end of the 20th century, take account of your democratic traditions and aspirations, take account of the standards of the Council of Europe and the important texts adopted by the CSCE meetings, first in Copenhagen, then in Geneva, then in Paris, then in Moscow, over the past 18 months. In that case we shall all together contribute to ensure that Estonia within the very near future finds its right place in Strasbourg. That it will be able to make a valuable contribution to the future European architecture, to participate in all our activities for the benefit of more than 400 million Europeans and more than 1 million Estonians. Indeed, Estonia might be a small country - I come myself from a small country, so it is no disqualification - with a small population, but I am confident that your commitment to freedom, to democracy and to the rule of law, is second to none. I am sure that more than 50 years of adverse experience has strengthened your commitment to the ideals and the values which the Council of Europe has never stopped or failed to advocate. The long struggle for independence, the hardships which you suffered with such dignity and the willpower which you showed with such courage, must now, when the aim has been reached, be converted into a similar determination to make democracy safe for Estonia.

We are here in Tallinn today as representatives of an organization of 25, soon 26 states, we shall soon, with you and the other Baltic states, make 30. And we are here also as representatives of the Venice Commission For Democracy Through Law. This latter organization might need an explanation and an identification. It is a group of specialized, of professors of law, acting within the framework of the Council of Europe, and set up last year to give governments which so desire, advice on constitutional and related issues. It is a body which groups at present 21 countries and with associate membership and observers to include not only European states, but also United States and Canada. It is an organization in which we hope one day to be able to welcome also a representative from Estonia.

I shall, with your permission Mr Chairman, briefly introduce the experts who are here. There is from Sweden, the Swedish Ombudsman Mr. Ragnemalm, there is next to him Mr. Bertholdt, who is the legal advisor to the federal Chancellery of Austria, there is Mr. Russel who is the senior legal advisor to the Irish Government, and there is Mr. Suviranta who is from Finland and who is president of the Supreme Administrative Court.

It is with this expertise and on this background that, Mr. Chairman, Ladies and Gentlemen, I express my sincere wishes for the success of the important work of these two days but in general terms for the vital work which you are doing as members of the Constituent Ass on a new text which I hope will be completed in the near future, will reflect the aspirations of the Estonian people and will lay the firm and stable background for the exercise of democracy in Estonia.

Thank you for your attention.

LINT NR. 24 - E. Harremoes, Taanist

Ladies and Gentlemen:

Let me first of all say how encouraging I have found this meeting with Estonian experts. We have come from various systems in Europe, and North America, in order to provide you with the fruit of our experience of the knowledge, which we have of constitutional problems. We have not come here to teach you any particular system, nor to be sort of missionaries for any particular way of thinking on constitutional matters. We have been here to lay in front of you these thoughts and the experience of our various systems. (If) we've been able to expose them to you, you will have realized, that we do not always agree upon the replies to give to you in legitimat and pertinent questions. This is the very essence of the advice we can give you. We can tell you how we have tried in our countries to solve constitutional problems. It is for you to decide how you are going to solve your problems.

I think the main thing is that you realize that there are many answers to the same problems, and you have to see to what extent the answer you'll find will fit into your historical tradition, into your present political and social aspiration of the Estonian people. I think, from the point of view of the Council of Europe, any of the points (-----?) to reform your legislation in general.

I am myself a lawyer. I am in charge of the activities of the Legal Director of the Council of Europe, and I have understood from discussions with our Estonian friends, that you are - maybe together with your neighbours - in a very particular situation among the countries that are now getting toward democratic regimes. That is that for 50 years you didn't have a legal system of your own. In December 1940, your legal traditional system was swept aside and replaced by an alien system. Your task in the coming time, after you've adopted your Constitution, will be to replace that imported system by a system of your own. And that is where I think the Council of Europe can be of help to you in the future.

So with these few words, Mr. Chairman, I would like, once again, to reiterate the gratitude which we feel can be of some assistance to you, and wish you good luck in the continued examination of your Constitution.

Thank you.

LINT NR. 8 - H. Ragnemalm, Rootsli

I congratulate you all for the position you are now in, though I realize the difficulties before you. I am here as a member of the Venice Commission For Democracy Through Law as Mr. H. mentioned. It is composed by the members of the European Council and I am the Swedish representative in this Commission. Our task is to try to help the Eastern and Central European countries which have gained their freedom to create their new Constitutions.

Unfortunately, the draft Constitution of Estonia was presented to us yesterday night, so I have had little time to scrutinize it, as you will understand. May I just say that from a quick look my main impression is that it wants sound bases for a democratic constitution based on the free principles of pluralistic, multiparty system of human rights under rule of law.

If I have understood it properly, it is basically a parliamentary system but with a strong President and also, what interests me, probably with very strong officials with a duty to perform control duties.

And thinking of the STATE CONTROLLER and the LEGAL CHANCELLOR, I am myself part of the Swedish system of parliamentary control of the Government. These control duties in Sweden are divided between the Parliament itself and its Ombudsman in such a way that the Parliament supervises the Cabinet, the Cabinet of Ministers, and the Ombudsman supervises the Courts and the administrative authority that came under the Constitution.

The Legal Chancellor in your draft Constitution is a very powerful man. I have not observed such in any other Constituion. In fact, he seems to be a one-man Constitutional Court and a supervisor of all activities of the legal affairs in the country and he also seems to be an instance of appeal for the ordinary citizen. I am very impressed that anyone can perform that superman function and I would be very much interested to hear more about it.

Just for now I will finish by saying that my two colleagues in the group, Mr. Russel and Mr. Bertholdt will give some remarks.

Mr. Russell on the structure of the draft Constitution and Mr. Bertholdt will comment on the issue of some fundamental freedoms and rights.

So, once again, I am very happy to be here, would be very interested to follow the development in the constitutional process during these two days and I hope for the future. Thank you very much.

LINT NR. 26 - ? Ragnemalm Rootsist? (Käesolev lint on osalt kustutatud; alljärgnevas säilinud osad:)

... So I think there is providing for reasonable balance between these organs at the top level. The democratic system, however, also rests on another main pillar - the system of COURTS. In this connection, I will add a few remarks. In my opinion, it is crucial in the process of getting rid of a dictatorship to remove not only the dictator ...

... as the applying of the principle of communication that you give statements for reasons of jurisdiction, and so on. But that isn't enough. Of the utmost importance is the speedy handling of the cases, and the question of the cost. No system, how sophisticated it might be, has a real value, if it is too expensive for the ordinary citizen to use it. Besides the ordinary appeal processes involving the courts, it might be of some value to have access to other SPECIAL LAW PRESERVING ORGANS of more extraordinary character. I have discussed with our Estonian friends today the problem that I see in your proposed legislation concerning the LEGAL CHANCELLOR. I think that you should be a little careful to provide one man - although a competent lawyer - such power. I think that you should concentrate on the courts instead. The Legal Chancellor could be a good complement to the court protection system, but he shouldn't replace the courts, I'm afraid.

So thank you very much for inviting me here. They've been truly interesting and joyful days, I must say, in Tallinn, and I hope I'll be able to come back really soon. Thank you very much.

LINT NR. 12 - Mr. Bertholdt, Austriast (?) *Bertholdt*

First of all, I would like to join in congratulations of my colleagues already spoken to you, and I join in congratulations to your independence and I hope good luck for you for the future.

Now, again I got the draft of your Constitution last night and I spent only a part of the night to read it and I concentrated on the chapter on human rights and fundamental freedoms. And allow me very shortly to give some considerations to you.

What impressed me was first of all, that I do not find nearly no (LATUNA?) in this catalogue of FUNDAMENTAL RIGHTS of human beings, but there are some (LATUNA?) and they are obviously overlooked. For instance, there is - or I haven't found it - there is not a guarantee of the rights for life, no prohibition of torture, inhuman, degrading treatment, and there is not the

prohibition of death penalty. May I say to the last point, death penalty, this is a very difficult one problem, and, it cannot be said - the abolishment of death penalty would amount to a European standard. But it is for me personally, a special (-----?) always to fight against the death penalty, so I would like to (in) my personal capacity to appeal to you to consider the question if you can abolish the death penalty.

My 2nd point is the following one. All the human rights which are guaranteed within the Constitution or some other international instrument, they need of course certain RESTRICTIONS. And it is always agreed that such restrictions should be based on a law. And this is in your draft provided for, no problem. But in the European Convention on Human Rights even in some provisions of the UN Covenant of Political and Civil Rights, the restrictions are constructed in such a way that they must not only be based on a law but they should be based on certain material foundations. And I may give you an example of what I mean, in reading out such a restriction in the European Convention. According to Article 10 of the European Convention which guarantees the freedom of expression, it is said in a certain paragraph, (that) the exercise of these freedoms may be subject to such formalities - conditions - which speak of penalties as far (as) prescribed by law. That is the first point. And are necessary in a democratic society in the interest of national security, territorial integrity or public order. You see, restrictions are only allowed under these preconditions and not only based on the law but also based on the interest of national security, territorial integrity and public order.

And I am coming to the 3rd point. Professor Herzog who has spoken just before me, mentioned the fact that your draft constitution provides for the protection of human rights by COURT. And this is true. But the provision to my sentiment was a little bit unclear. If I have read correctly, you envisage to establish three levels of courts. District Courts and then two level and at the 3rd level - the Supreme Court. And if I am correct - the single level court of all these courts have the competence to decide whether there has been an infringement of human rights or not. If that is correct I do not know, but this is the point that should be probably discussed. If this is correct, you may face difficulties if there are great number of courts which may decide on human rights issues you have to think of different jurisprudence. And it might be asked whether the Supreme Court be in a position to guarantee so to say certain unity of this jurisprudence. This is a point which should be reconsidered and I have not found clear indication in your draft whether these courts could be competent in human rights cases which arise out of activities of administrative authorities. Could you go to such a court in a human rights issue if for instance police has seized your baggage or your property? Would it be possible to have so to say an action against the police officers in those courts? I was not sure when reading your draft Constitution whether this is the case or not.

I have simply listed some 3 or 4 points which came to my mind. (---) I read it very fast - your draft Constitution. I hope that in the workshop that is foreseen this afternoon we will be able to

enter into deeper discussion. Thank you.

LINT NR. 20 - J. Carcasain (?) - Prantsusmaal

Mr. Chairman, Ladies and Gentlemen:

I will not be very long, because in fact I had not foreseen to make a speech today, and also because it is quite impressing and moving for people from outside, for foreigners, to have an opportunity to talk to you. Naturally it is a very great pleasure and an honour, too, to have the possibility to talk in a newly independent and democratic country. And I should say, that, naturally, as a democrat and also as a lawyer, we both - when I say both, it is on behalf of my compatriot and colleague Professor Marshlong (?) - he is also coming from France - we are both very proud and very honoured to be here today and we would naturally would like to thank you very deeply for the honour you make to us, to all of us.

I will comment briefly and broadly on the draft that we have had in hand a few days ago. Naturally, there are a lot of very imaginative and creative ideas, some of them which are quite modern and do doubtlessly correspond to the necessities of modern countries. However, you will probably understand that I shall for the moment stress more about what might be a matter of discussion more than about all the very positive aspects of the draft.

I come from a country where in two centuries we had experience about 20 different constitutions. Twenty different systems which proved that we were very good at making mistakes. But, however, we are still going to make some. But, however, this multiplicity of different systems has been a very interesting way of gaining experience. (___?) and try to export it because we have a lot of difficulty to apply it in France.

I said that, naturally, in France, there is no ideal constitution. Napoleon used to say that a constitution should be short and dark. I would prefer to say that a constitution should be short and FLEXIBLE. And this may be the first thing I would like to point out. On some matters I do feel that the draft is not flexible enough. And I am afraid that institutions will not be able to live their lives if I may say so. As far as there are too many details on different matters, or as far as some things are quite rigid, for instance, claiming for the 5/6 of the parliament to be able to amend the constitution is almost certainly the warrant that the constitution would not be changed whatsoever.

On another hand, still on the idea that there is no ideal constitution, I feel that there are constitutions that work and constitutions that don't work.

What are the CRITERIA for the constitutions that work? In my opinion, as far as the relationship between President, Government and Parliament is concerned, I think that the best way, the best criteria for the constitution that (will) work is: first one, the possibility for people to make some clear choices when the elections come; and secondly, to be sure that those who have been chosen that way, democratically, will really have the means to

handle the power, to deal with it.

And it was on this particular ground that I will say a few words, and I must acknowledge that I am quite worried, when reading the draft, by the feeling of very high weakness of the EXECUTIVE POWER. Naturally, and we've known that in France several times after a period - especially a long period - of dictatorship or at least of an authoritarian system, the trend is quite evident to give more power to parliament - all power to the Parliament - and to be very much afraid of what looks like a strong Executive power. But I feel that this does not correspond any more to what modern constitutional life should be. In fact, naturally, with a body - a Parliamentary body - all the traditional difficulties, to have a will, able to exercise its power, do still exist - but there are a lot of other things which I will talk about in the commentaries this afternoon - they do. But to make it without any strong executive power - in fact, it is very difficult for a democracy to go on in a very satisfactory way. And I have the feeling, when reading this draft, that, in fact, there is the President or Elder, who has more a formal power, even if he is quite important from time to time, than a real one. And my main regret or critique, if I may say so, is that the PRIME MINISTER does not, in fact, exist. He is mentioned - he is mentioned a lot of times. I don't have a feeling that he exists. That is to say, there is no provision for instance, to just say that he is the head of the Government. He has no personal authority, neither upon the other members of the Government, nor in his relationship with the Parliament. So - what might quite easily happen - would be a system after several years, depending only on what the votes will give, in which there will be no clear majority or no stable coalition in Parliament, and in the meantime no real Executive power detained in some rather strong hands of someone responsible. I think that the thing is to be sure that the Executive power is democratically appointed, is regularly controlled, but another thing is not to have any real strong Executive power, or, in fact, I am afraid of that in the draft, not to have real Executive power. When you take a list of different Articles in which the Prime Minister is mentioned, you must see that there's not any reference to any personal power. Not even collective, but at least personal power. For instance, the initiative of laws is given to the Government. That is a good thing, naturally. It is said even that inside the Government decisions will be taken by a majority. All these things are in my opinion the negation of any real role for the Prime Minister, who is not the head of the Government. And as far as he is not the head of the Government, he is not, naturally, anything else. I am driven to the conclusion that, in fact, he is not really anything.

This is the main thing I wanted to say this morning. Naturally, we will have a lot of things to say this afternoon, but I just add another word about the length of the mandate of the Parliament.

I do agree with what has been said earlier by Dr. Reinhardt about that the 3-YEAR TERM makes, in fact, only one budget. The first year you are really living on the budget of the former assembly, the 3rd year you have a temptation to prepare a budget

in order to win the elections - so there is only one year in which general interest without any parasite may prevail. This might not be sufficient, especially in the coming years.

I end up with a few words I wanted to tell, stressing on that problem of the definition of the Executive power. Evidently, we will have a lot of things to say about in the commentaries this afternoon, about technicalities, but I wanted to stress that part this morning. And, above all, thank you once again for your hospitality.

LINT NR. 16 - Mr. Russel, Iirimaalt

Mr. President and distinguished members:
May I say first, what an honour it is to address a body which is creating history. In my country, Ireland, we have watched with emotion the events of the past 2 years in Estonia. We, too, have a long history as being a small country which has been influenced by the presence in close proximity of a (large?) and powerful neighbour. Since we gained our independence in 1922, we have established very happy and cordial relations with our large neighbour, and I know that you also hope to establish such a situation.

We have had, since 1937, our present Constitution. We didn't follow the example of Great Britain which has not a written Constitution, but a series of documents and (-----?). We have a written Constitution like yours, and it has worked very successfully. I speak not just as a person who is employed by the Government, but as a person who for many years acted on the other side. I was a lawyer, practising against the Government. So I can look at our Constitution from both sides. And there are one or two things in it which may be of interest to you, while considering your own Constitution.

One of them, which is perhaps of particular relevance to you as parliamentarians, is the question of the legality, or CONSTITUTIONALITY OF LAWS. We have a Supreme Court, which is a powerful one. Our Constitution is based upon a separation of powers - legislative, executive and judicial. The Supreme Court, which is the highest court of the land, is a powerful one. Amongst its functions, there are two which might be of interest to you. Our President has a power to refer to the Supreme Court a bill which has been passed by the Parliament, which the President believes may be unconstitutional. I notice in your Constitution the State Elder may refuse to sign the bill which he believes is unconstitutional. But if I understand the draft, the bill may be passed a second time by Parliament, and then it'll become a law, even if the President believes it's unconstitutional. I hope I have understood the draft correctly.

That creates the problem, that the President has signed a bill, and it is now a law the President believes is unconstitutional. And I wonder - is there possibly the opportunity of another approach: that the President, your State Elder, could refer the bill before he signs it, to the Supreme Court. With us, the Supreme Court has 60 days to consider the bill, and to give an

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opinion as to whether it is constitutional or not. If it's not constitutional, then the bill is dead and will never become law. If it is constitutional, then the President must sign it. That is a possibility which you may care to consider. - Of course, the Supreme Court can also strike down as unconstitutional an act of Parliament, whether it be passed by Parliament 2 or 20 years ago, and they may do it without address of any citizen.

Another provision I notice in your draft is the power under Article 62 of PARLIAMENT to ASK QUESTIONS OF THE GOVERNMENT. It strikes me as being a weak provision, because - if I understand it correctly - only if one-fifth of the members of Parliament wish to present an inquiry, it must be answered. With us, we have a much stronger power of Parliament. Any individual member of Parliament may ask any question of the Government, and the Government must answer it in 3 days. - I want to tell you, that, speaking personally, I think 3 days is too short a time, because nowadays I spend a lot of my time trying to prepare answers for the Government to give to Parliament, which is sometimes difficult. It is also important, may I suggest, that you, when you prepare your questions, you do so with great care and precision. Because the civil servants who will prepare the answers for the Government will look carefully at the question, to see how much information they are obliged to give, and that is all they'll give. So you might consider a more extensive power of members.

Another provision in your Constitution, which I'll look forward to discussing in the working group today, or tomorrow, deals with the question of the relationship between INTERNATIONAL TREATIES AND DOMESTIC LAW. The Constitution, it seems to me at the time I had to read it, contains very many good things, and I look forward in the coming days to learning more about it, and to offer any assistance which is possible to make it even better.

Thank you very much.

LINT NR. 30 - Mr. Russel, Iirimaait

Mr. President, distinguished members -

In the course of the most interesting and illuminating - for me - discussions which we have had over the last two days, a number of talks have impressed themselves upon - on my mind.

One is to emphasize to you the importance, in my opinion, of your concentrating every effort to build up an independent and respected system of COURTS AND JUDGES. In my country, the judicial system is much more highly regarded by the ordinary people than any other branch. They think more highly of the judges than they do. I am sorry to have to tell you, of parliamentarians, in my country. And certainly they think more highly of the judges than they do of civil servants. The public must feel that they have somebody, somewhere, who will give them justice. Somebody to whom they can turn. And the belief that they will find this in the judges - I think they are correct in this - and I would urge you to concentrate on this, because it can relieve you of a lot of

unhappiness and tension in a society, if there is someone to turn to. You have already reflected this idea in the draft of your Constitution, where you refer to the independence of the judiciary. You could perhaps restate that sentence, to make it more clear, more emphatic, that the judges are totally independent of the Government and the Parliament.

I think your system of nominating is a good one. In my country the judges are nominated by the Government. In fact, despite that, the judges are completely independent of the Government and I speak as a member of the lower staff of the Government. The judges seem to decide most cases against the Government in my country. So, your system, I think, of nominating is a good one. You might add, perhaps, some other safeguards in the Constitution, that the judges' salaries cannot be reduced during their period of office. That prevents them being in any way dependent on the Government for continued office. As regards removal from office, and the possibility is that the judge could be removed for a stated misbehaviour, a specified misbehaviour, by Parliament - by a large majority - that is another way of dealing with a problem which will occasionally arise, where judges are unsuitable, not through ill health, which you have dealt with in the Constitution, but - and not through committing a crime, which you also have dealt with - but through general unsuitability of conduct. But that it must be specified, so that a judge cannot be removed merely on general grounds.

Another area, too, is in regard to strengthening the position of your PRIME MINISTER and GOVERNMENT. I have mentioned in the most interesting workshop, which we had today, the possibility of introducing collective responsibility on the part of the Government. That would mean that, once a decision has been taken in the Cabinet, then even members of the Government who have disagreed with the decision are now bound by the Constitution to take collective responsibility for the decision. And that means the Government must remain together. If a member of the Government disagrees violently on a question of high principle, then he can resign from the Government, but so long as he remains a member of the Government, he must be loyal to it and that is ensured by having a provision in the Constitution for the collective responsibility of the Government for decisions.

Again, your Prime Minister - his position could be strengthened by giving him the power to require a Minister to resign. This strengthening of the position of the Prime Minister and the Government can be balanced by improving your arrangements for parliamentary questions. When I first had the privilege of speaking to you on the opening day of these interesting talks, I mentioned that I was surprised of the rather weak type of questioning which Parliament is being given, the questioning by the Parliament of the Government. I have heard no reason why you should not give this power to each individual member of the Parliament to require a public explanation from the Government on something, which the member of Parliament feels is necessary. This would balance the strengthening of the Government and Prime Minister.

We have been told that it is not intended that your Prime Minister and Ministers should remain members of Parliament. This

has been explained to us that this is because of the heavy burden which membership of Parliament places on its members, and that a Minister could not do the two tasks adequately. I suggest that when you come to draw up your ELECTORAL LAWS you should bear in mind one heavy burden which rests upon parliamentarians in my country. Our electoral system is based on the multimember constituency. Several members - either two, three or four, or in some cases five members for each constituency. We have the system of proportional representation. This is the most fair electoral system, I believe, that exists. Because it means that the public gets the Government whom they vote for. In England, by contrast, where they have the first-past-the-post system, one can have a government which in fact got only about 48 percent - 47 percent - of the votes. That means about 53 or 54 percent of the people have voted against the government, but that is still the government they get. Our system has that advantage of fairness, and reflecting the wishes of the people. But it has the disadvantage, that a lot of the time of our members of Parliament is devoted to watching their back, not their front. They are looking over their shoulder at the other members of Parliament in their constituency, their rivals for the next election. They are also looking at other members of their own party, ambitious young men and women, who want to become a member of Parliament in place of the existing member. And the result of that is that many of our members of Parliament spend their time doing small jobs, delivering messages almost, for their constituents. Quite menial tasks. But they must do it. Because if they do not, then the members of their constituency, the members of the public, go to another deputy in the constituency. And he will do it. And the result is that a lot of time is wasted by members of Parliament on these trivial tasks, when they should be concentrating on their parliamentary duties, scrutinizing legislation, questioning the government, that sort of thing. So that is an element when you come to draft your electoral law, which you might bear in mind. You will not find it mentioned, perhaps, in the textbooks, but it is a very real problem.

Finally, the question which the chairman of the working group asked this morning, the question of the TWO-CHAMBER system. In my country, we have the two-chamber system. We are not a federal country, like Austria, Germany and so on, so you may ask why do we have it? Why do we have a two-chamber system? Well, we are beginning to ask ourselves that question also. Because it is not immediately clear that it is producing very much in the line of good results. In theory, the second chamber should be a more reflective body. It should have greater time to think about legislation, it should come up with ideas which did not occur to the lower house. But, in fact, the realities, unfortunately, of this situation are that the members of the second house are very often either failed politicians who have lost in the elections for the lower house. Or they are ambitious people who want to become politicians, and they are using the second house to prepare themselves to become members of the first house. And they therefore like that independence of mind which is necessary. Because there are two problems about the second chamber. What you wanted to do, can you do it more effectively than the first chamber. And then,

secondly, how do you elect the second chamber? What is the method of election? If it is the general vote by the people, then it is simply a duplication of the first chamber, and an unnecessary one. Any other system of election might be undemocratic. With us, the second chamber is elected, some members are elected by the universities directly. This is supposed to provide the second chamber with wise professors, leaving aside the question whether every professor is wise. In fact, the reality is that the people who are elected by the universities are not always people of very great distinction. And the remaining members of the second house with us are elected by the local authorities, the district councils. And they simply elect politicians. Politicians, who have either failed to get into the first house, or who want to get into it in the future. So I have to say, and I am happy to say now that there are none of my fellow countrymen present who might repeat these disloyal remarks - I have to say that there is no very obvious result, good result, in my country from having a second chamber. I do not know enough about your position here to say whether things would be different here. I can only say that I am not aware of any particular element here, which would justify a second chamber. But this is very much a question of policy for you. I can merely tell you what our experience has been.

I would like to thank you for the honour you have done me in listening patiently to these few observations. They are intended to be helpful. They are not intended to suggest that your decisions are easy, because they are not. They must be your own decisions. There is no golden road to the model constitution. Each country must devise its own constitution, bearing in mind its destiny and its history. And that is a matter which only Estonians can do. The remarks of myself and my fellow observers have been directed to suggesting a few minimum things - the rest is for you. And I wish you every success in your labours. Thank you.

LINT NR. 28 - Berthold, Austriast

- Thank you, Mr. Chairman. Ladies and Gentlemen:
Just let me say at the outset that we have had a very vivid and interesting discussion on the problems which are posed by your draft of a Constitution. And since this is my first experience in going in a delegation of the Council of Europe to such a meeting, I was very pleased by the very vivid discussion we have had here.

Now let me elaborate a little bit on a few points which to my opinion are of certain importance. First of all, to the problem of HUMAN RIGHTS. Sooner or later Estonia will become a member of the Council of Europe, and will adhere to the European Convention of Human Rights and its additional protocols. Taking this point into consideration, I think that it would be advisable and for your benefit, that in drafting your constitution, you do it in a way which looks always on the text of the European Convention and try to draft your Constitution very much in conformity with the European Convention with its additional protocols. It will spare you, in the future, when you adhere to the European Convention, probably difficulties, because of the difficult wording, possible

different interpretation, and so on. This is my first point.

My second point is, that I missed in your draft one important quotation. That is a clearcut provision concerning THE RULE OF LAW. Somewhere in your Constitution, in my view, it would be advisable to insert a provision to the effect that judiciary and administrative authorities, in their decisions, they will be based only on the law.

A third point I would like to make is the point which is connected to the LEGAL CHANCELLOR. I share to a certain point the view of my Swedish colleague here, that the Legal Chancellor, as it is envisaged at the moment in your draft, will be a very, very strong man. That might be in your advantage, but it might be a disadvantage. And since we do not know what is coming up in the future, it is probably better to give not too much competences to the Legal Chancellor. And so, in my opinion, it would be useful if you streamline, so to say, the competences and functions of the Legal Chancellor to the functions which are the functions of an Ombudsman in other Scandinavian countries. But to go away from the functions of the Legal Chancellor all those competences which rely to the protection of human rights. And you have not only the possibility to give competences in the field of the protection of human rights to the normal, ordinary courts, or a new establishment, administrative courts. But you may consider to establish a CONSTITUTIONAL COURT, which is a specialized court and has the advantage to concentrate the competence concerning protection of human rights to one court for whole Estonia. I may say from our experiences that it has shown, that such a concentration of competence in this field before a constitutional court has a lot of advantages. Especially the advantage that there is not different jurisprudence between several courts.

Now, let me go on to a further point I should like to mention here. And this is the point whether or not the existence of POLITICAL PARTIES should be mentioned anywhere in the Constitution. I may say that there is in this field not a common standard in Europe. There are European constitutions which do mention political parties, and there are constitutions which do not mention political parties. It could be considered to insert two points concerning political parties in your draft. First of all, the principle of plurality of political parties has a momentum of democracy. And the second point could be that you create a freedom to create, to establish political parties. These two points may be advantageous for you.

This morning - and this is my last point, Ladies and Gentlemen - a very interesting question came up, and was not yet resolved, but it was said it could be mentioned in our meeting now. And this is the question whether you should create a ONE-CHAMBER system in your legislation, or a TWO-CHAMBER system. As far as I am

concerned, I would say, for your use, a one-chamber system would be enough. I come from a country in which we have a two-chamber system. But this is due to the fact, that Austria is a federal country, and the second chamber is a representation of the Länder. And therefore there is some substance to have a two-chamber system. But if you create here in Estonia a two-chamber system, you have first of all to answer the question: who should be represented by

the second chamber? And at the moment I cannot see who could be represented in such a chamber. I think that it is not the question to establishment a two-chamber system or not. It is not the question whether or not this would improve legislation. That might be. But experience in my country shows that it must not be. And therefore, this seems to me not a convincing reason to go either way. The important reason, which I cannot give you an opinion on, because I do not know enough about the political infrastructure of your country, is whether there is a possibility, or even a need, that certain circles of the population should be represented in a second chamber. If you answer this question in the affirmative Yes - then I would say you should create a two-chamber system. But if you say, We have no need for representation of certain circles of the population, aside from the Parliament based on general elections - then I think you should not consider to establish a second chamber.

Having said this, I have come to an end, and I would take the opportunity to thank you for your hospitality and for your vivid discussions we had in the last two days. Thank you very much for your attention.

LINT NR. 32 - Suviranta, Soomest

Thank you Mr. Chairman. Väga ystäväliset kuulaiset. Thank you very much for the opportunity to come here. I was, unfortunately, too late here yesterday morning to hear the much-commented speech by President Rüütel, but after that I have had a very good experience of all the meetings and discussions here. And it seems that you are making hard work to get a very good Constitution. I don't have very much to say in addition to what my brethren have already said. I would have had very much to say in points. As they have had, I am not going to repeat much of that.

I would have a couple of points concerning the chapter on courts. My main point in the committee this morning was that there is no specific mention on the ADMINISTRATIVE JURISDICTION in that chapter. That does not mean that you should necessarily have separate administrative courts. As Mr. Ragnemann said, administrative jurisdiction can also be handled by the ordinary courts. But in my opinion, it would be a good thing to have a provision stating the duties of administrative jurisprudence. That is, for the rights of the citizens as regards administrative jurisprudence. That is, that as a general rule, the citizens shall have a remedy in administrative - a remedy in courts against unlawful decisions of the administration. That is not only against a unconstitutional decisions, but also against other unlawful decisions of the administration.

Another point which we discussed this morning was the use of LAY MEMBERS IN COURTS, whether all judges, or all members of courts should be learned in law, or whether you can use also lay members in the courts. And there are many possibilities, and the only thing we could suggest is, not to decide this question in the Constitution, but to be regulated in ordinary legislation that you can also change if need be.

And then I will come to the question of a SINGLE-CHAMBER or TWO-CHAMBER representation in the Parliament. Coming myself from a country with a single representation, one of the very first Parliaments with single representation since 1907, I would think that for a country like Finland, and perhaps still more for a country like Estonia, a small unitary country without a federal system or any similar system, a single chamber should be sufficient and more democratic. The quality of the legislation can be taken care of by a good COMMITTEE SYSTEM in the Parliament. There should be regulations, perhaps in the Constitution, or at least in other legislation, on the composition, working and duties of parliamentary committees. And then the committees, they can hear professors and other wise people as experts, and see through the Government bills, not just to approve them, but to prepare reports on the Government bills to be presented to the plenary session of the Parliament, and maybe there should be special rules as to what happens when the Parliament does not approve the committee report as such, but makes some amendments, which often - I shouldn't say often, but which sometimes have not been thought through very carefully. So there should be an opportunity for the same committee, or another committee, still to look through the amendments the Parliament made to the committee report. Or the last word shall rest with the plenary session, or the Parliament.

Well, that is what I had to say. And now to say - Thank you very much. It has been a very rewarding experience to be with you here. Nägemisi.

LINT NR. ___ - Germer, Taanist

Right Honourable President, Mr. Chairman, distinguished members of the audience:

First of all, I wish like other speakers before me to congratulate you on your draft prepared by J. Adams. It is an impressive document and it is especially impressive that Mr. Adams has been able to prepare this draft in such a short time. Sometimes a concentrated effort of a short period of time results in a more beautiful, consistent and simple Constitutional document than prolonged preparations.

I have studied Mr. Adams's draft carefully over the last 2 days - I got it 2 days ago - and I have a list of some 30 comments and suggestions which I hope to have the opportunity to discuss with some of you (later during these days). Most of these suggestions (represent) minor points, and therefore they can easily wait. However, I want to use this occasion to draw your attention to 3 points. - I know that Mr. Adams's draft has been subject to amendments already, and I've not been informed about the contents of these amendments. And therefore some of my remarks may be obsolete, but I shall take the risk anyway.

The first point concerns the question of POLITICAL PARTIES. Mr. Adams's draft contains provisions on freedom of association, which undoubtedly applies to political parties. But the draft contains no specific provisions concerning political parties. I

think that a modern democratic Constitution should contain specific provisions which demand that the internal structure of political parties comprise of democratic principles. In this regard I want to mention, that provisions to this effect are found in the German Constitution. Mr. R. Herzog can tell you much more about that. And I could mention other, more recent European Constitutions, such as the Constitutions of Spain, Portugal and Greece, which have provisions to this effect - just to mention a few.

Speaking of political parties, I wanted to criticize the provision contained in Article 18, Section 4, which says that associations or leagues, whose aim is to incorporate Estonia or part of it with RUSSIA, shall be prohibited. This is not a democratic provision. Political tolerance is a basic element of democracy, and this provision does not fulfil the requirements of my principles of political tolerance.

My second point, as I am present here for the next 4 months as an advisor to the Estonian Foreign Ministry - therefore my second point concerns INTERNATIONAL AFFAIRS. Under Article 43 Section 5 and Article 45 Section 2 of the draft, all treaties shall be ratified by the Riigikogu and signed by the State Elder. My question is: is this really necessary? Wouldn't it be advisable to have a more simple procedure for some categories of treaties, so that, for instance, the Foreign Minister or some other Minister might have the power to sign treaties of minor importance. In this connection I want to mention that the draft contains no provision concerning transferral of power to SUPRANATIONAL ORGANIZATIONS like the European Community. It may not happen in the near future, but some day Estonia may join the European Community, and then you might want to have - you might need - a special constitutional provision to this effect. In most countries there are special provisions to that effect, and I suggest that you take up the idea of introducing in your Constitution a special provision concerning transfer of powers to supranational organizations like the European Community.

My 3rd and last point I raise as a Scandinavian lawyer - is an idea concerning having a constitutional provision concerning an Ombudsman institution. This is, most Scandinavian lawyers believe, a Scandinavian invention. We think that gives the citizens protection towards administrative authorities, and we are proud that this idea has been exported to many countries all over the world. In many countries now there are Ombudsman institutions established after the model of Scandinavian Ombudsman. Of course, Mr. Ragnwald will be able to tell you much more about this institution in the coming discussions today and tomorrow.

Well, I think my 10 minutes are up. Thank you for your attention.

LINT NR. 36 - Germer, Taanist

Thank you, Mr. Chairman.

I shall be very brief, because the other experts have said most of what I intended to say.

I think you are on the right track. You have a draft before you - well, you have more than one draft, but you have before you the draft prepared by Jüri Adams. And it has all the basic elements of a democratic constitution. It has separation of powers, and I shall say a few things about the basic institutions.

I am not in favour of a too strong Executive. I am in favour of PARLIAMENTARY SUPREMACY, the parliamentary model, parliamentary sovereignty, if you wish. Of course, I am in favour of INDEPENDENT COURTS, as so many other - that the other experts have talked about. And there you have some work to do. But I understand that you are working on it, already. In J. Adams' draft, you have very good provisions concerning HUMAN RIGHTS. Of course, there could be additional provisions concerning additional human rights. And some information might be gained from international documents concerning human rights, as was stated by other experts. There are on many points various solutions, and you have been - by these various experts, you have been exposed to a variety of solutions. Mr. Haremoes, yesterday, at our dinner party, emphasized that there is no general agreement between the experts - that's because they were not brought up under the Soviet system, so they didn't have to agree. So they could take a non-dogmatic approach. That may be one reason. Another reason may be that experts, at least in the West, never do agree on _____ questions, like questions of constitutional law. So a variety of solutions have been put to you, and as Mr. Russel said, it is not for the experts to decide, it is for you to make the choice, it is for you to make the decisions. And, as I said earlier, I think you are definitely on the right track. Thank you.

LINT NR. 18 - I. MacPherson, Kanadast

Thank you, Mr. President. Honoured guests:

May I say what a great pleasure it is to me to be the foreign expert invited from furthest away, to come to be with you people today. Everyone who's here is European, but I guess in a way we in Canada (have) some Europeans, and otherwise Europeans settled us centuries ago. So I guess today I can be as a European. So I'm glad to be amongst this group of experts.

May I congratulate you on your independence, and tell you that there was celebration in Canada in late August when you declared your independence. We have a fairly large Estonian community in Toronto, which is Canada's largest city, and then a number of smaller Estonian communities further in the Canadian West, which are the prairie provinces stretching for thousands and thousands of miles across Western Canada. And the lead story in our national news that night in late August was what was happening here in Estonia, and then the pictures of all the parties in various communities and Toronto and the prairies had celebration on what you had achieved.

I've had your Constitution for 4 days. I'm not sure what shall be the case in the farthest dely, but I got the copy of Adams' Constitution on Wednesday, and I had a chance to read it.

And let me begin by saying how very impressed I am with the

document. We in Canada have been engaged in a long process of constitutional revision. We always seem to be at it. There are always problems in our country that some people think can be solved while changing the Constitution. And we have just released - last month - the federal government's proposals amending our Constitution in important respects. Let me tell you that your document is much better than that document we're looking at in Canada right now. Let me also tell you that I hope that there are no Canadian journalists here to hear me say that back in Canada.

It seems to me that your document can be admired, as it does most of the things that modern constitutions should do. And let me tell you what I think those are. A Constitution should obviously support and protect and declare the rights of the people in the society. And our European guests have talked mostly at that level about the importance of constitutional document for protecting basic human rights. Your document has done that in some detail.

But a Constitution also has to do other very important things. Secondly, it should establish the basic institutions of your Government, and you've done that through establishing in your Constitution a legislature, an executive and a judiciary, and by creating a national Government and local governments, providing for their structure and their powers in your draft Constitution.

Thirdly, a constitutional document should try to enunciate the basic values of the society, its historical roots from which the Constitution flows, and the current values, to bind the people together, a sense of the aspirations of the people as they look to the future. And what I read in your document - and I am not knowledgeable very much about Estonia's history - it strikes me that your document does a very fine job trying to enunciate history, values and aspirations for the future.

I think also that your document is quite consistent with good Constitutions on the world stage, including Canada's, and with leading international constitutional rights documents - for example, international human rights documents. I think you obviously have read those, studied those, and have drafted your own Constitution to reflect the best of some of those documents.

There are also many individual provisions of your Constitution that I admire. Perhaps I leave those to speak about at the working session later in the day, but just to list some of these. Your provision about INTERNATIONAL LAW and its role in Estonian Law; your provision that tells how you are going to treat in Estonia CITIZENS OF OTHER COUNTRIES AND STATELESS PERSONS; your FAMILY provision, Article 21. And this is an interesting one - your EDUCATION provision, Article 22. I found all of those very, very interesting and quite admirable.

Constitutions we tend to think of are Constitutions that impose limits on governments, that say governments cannot do things. What's interesting to me about your Article 22 - the education document - is that it imposes AFFIRMATIVE DUTIES on Governments to do positive things. That's a debate we're having in Canada right now, whether a Constitution not only prevents Governments but also (commands) it to do things positively, in education, and housing, and welfare. And your education provision goes further than ours. And I think it's a very valuable provision.

I also work in the working group this afternoon, (I'll) remark upon some other sections of your document, which I think (are) right, (and) I'll do some more explanation.

There are always problems, as I see it. But let me - because that's a very broad section - raise 3 of them. This morning, when I read them, I think that maybe improvements need to be made, or else (an) explanation to outsiders is one that would clear up for us.

The first is exactly the same point Mr. Bertholdt from Austria made. - All constitutions declare what rights there are - then have to impose LIMITATIONS on them. All of us can do whatever we want in our society, but we're limited by the rights of others, and by issues of security, morality and maybe others. Most of your sections - not all of them - describe the limitation just in terms of limitations prescribed by law. And that's important. If you're going to have limitations on rights, they do need to be prescribed by law. There has to be that procedure or mechanism for doing it. But you need to go beyond that. There must also be a qualitative component to any limitation on rights. It's not enough to limit rights simply because the parliamentarians say they're going to limit them. Because the parliamentarians, in moments of emergency, or stress, or high politics, may impose limitations that violate some of the rights of the Charter. So it seems to me you need some concept of not only procedure, how you're going to limit it - and you've got that right, in my view - "prescribed by law". But what are the merits of certain limitations? In Canada we do that by a clause that's called a "reasonable limit" clause. Restrictions on rights must be prescribed by law, but they also must be reasonable limits, consistent with the other values of your Constitution. And I would put that forward to your consideration.

My second point would be to just refer to your Article 10 of your Constitution, which is the EQUALITY section. You have a good equality section there. It would prohibit discrimination of a number of important phrases, including nationality, race, and sex, and language. Let me suggest to you, though, that there are other categories that you should consider protecting in that sector. In Canada, for example, in addition to those, we also protect people on the bases of religion, physical and mental disability, and age. And I would recommend that you at least consider including in your equality phrase protection of the people of these categories.

And the 3rd and final point I'd make, deals with your concept of PARLIAMENTARY GOVERNMENT. I've been told - and I think it's clear from the document - that we had a debate between the model which was largely presidential, on the one hand, and largely parliamentary, on the other hand. And at least the draft we've seen reflects the decision to go the parliamentary route. And I guess as a Canadian, I would say that after a hundred and 23 years of history under a parliamentary model, that's a model that I certainly would say is a good model. So I had no trouble with the basic decision you've made. And most of the provisions you have - describing your parliamentary model, and how it would work - make sense to a Canadian. In the constitution, what we would understand (as) a parliamentary model operates.

With one big exception. You have one provision here, which is

very different than any provision in most parliamentary ones, and let me point it (out) to you. It's Article 69. Under your draft, the PRIME MINISTER AND MINISTERS are not allowed to continue as members of our national assembly. I can't pronounce this correctly - Riigikogu. Your Prime Minister and Ministers - they may be elected to that body, but then, if they're chosen to be Prime Minister and Ministers, they are lifted out of that body and put somewhere else, as Government. Article 71 says they can come back and participate in Riigikogu, but they're not members of it.

Well, let me tell you that in Canada most important members of the National Parliament are the Prime Minister and Ministers. And we want them to be in that body, because that's the best way of keeping control over them. If they are members of the Parliament, if they have to appear there every day, answer questions every day, and if they have to be part of the Parliament in order to get their legislative program through, I think all of them are good things. And there may be important current reasons why you'd want your Prime Minister and Ministers to be outside your Parliament - and I'd be interested to know what these reasons are. Because at least to my eyes, to take them outside the national body moves you back towards the presidential model quite sharply.

In the U.S., the Cabinet Ministers and the President are not part of the Congress. And that's a presidential model. In Canada, the Prime Minister and the Ministers are part of the national model and that's essential, too, the parliamentary system of government. So I would erase the one provision of Article 69. It's something to consider.

And I'm looking forward to meeting many of you within small groups this afternoon. Well, to conclude on this note, I think a Constitution is not important only as a legal document and a political document that speaks to lawyers and politicians. If in a Constitution you describe your institutions and protect the rights of your people faithfully, I think that the document has an important educational role to play with the public at large. And I think your document that as currently drafted has a good chance to play that very important educational role with the people of Estonia. And at the bottom, that's the thing I'd congratulate you most of all, drafting the document that simple, elegant and understandable.

LINT NR. 34 - I. MacPherson, Kanadast

Thank you, Mr. President,
 May I join my colleagues from Europe to say to you how happy I am to have spent these last two days meeting with people who have drafted your draft Constitution and with many other people who are going to be involved in deciding what to do with your Constitution. You may have learned a little bit from us. I think all of us have learned a great deal from you. It has been a very fine educational experience for people like myself, who are, back in our home countries, educators.

Let me say that I leave Tallinn every bit as impressed with

your draft Constitution, and your process for discussing it, as when I came two days ago. Perhaps even more impressed than when I came, because I now think that I now understand the process on which you are embarked, and I have got to know some of the people involved in that process, and I am very impressed with those, as well as with the actual document.

The basic comments I would make are that I think your Constitution does a good job of articulating the shared history and values and ambitions for the future, that Estonians have. I think Constitutions should try to state those values, and that yours does that very successfully. I also think that your provisions that deal with civil liberties and human rights are very strong provisions, that would stand up well in the international community. I think that you have done a good job at trying to articulate the same human rights that are protected in most free and democratic countries in the world. But I would join with Mr. Berthold and say to you, that a very simple way of doing that is to read the United Nations Declaration on Human Rights in 1948, and other human rights documents. And I guess, since you are in Europe, especially the European Convention on Human Rights. Because if you are consistent with those two documents, in the international community you will be very well regarded as a protector of human rights.

I think that your description of your basic institutions is by and large a good one. I think that I understand what you intend the powers of the State Elder to be. And I think I understand what you intend the powers and the role of your Prime Minister and your Cabinet Ministers, and of your Parliament, the Reegy Coagoo. I think I understand all those. But I sense that you will have a bit of a problem down the road, dealing with the relationship between, on the one hand, the Riigikogu and on the other hand your Prime Minister in power. I think, at the moment, what you are planning is to keep them totally separate, so that members of the Riigikogu, if they are elected and then become Prime Minister and Cabinet Ministers don't continue as members of the Riigikogu. And the explanation we heard for that this morning was that the jobs are so important, and that you really want to make sure that only one person does each. And I understand that. But on the other side of the coin is the point that it will be essential, that your Prime Minister and your Cabinet and your Parliament work together. And unless you think of some ways to mix the two, to make sure that they overlap, that they have to cooperate, I fear that you will have conflict between them, rather than the cooperation that you need.

And finally I will deal with this area of the courts. And I think I can be very brief here. I think, having been here for two days, I understand your concern about your COURT SYSTEM. Because, as I understand it, the courts, the judges in Estonia, for many years now, have been part of the dictatorship, and not part of the opposition to the dictatorship. And you are fearful of the continuing role that courts and judges may play in your country. And I can sympathize with that. But I think, as you take the long view, what you will need to have, is an independent court system - a very independent court system, with independent judges, completely removed from politics. And I suspect what that means is

that you will need a new generation of judges, and a new generation of professional lawyers. And probably a new system of legal education in your country. But I think you should think of how to move towards those. Because the rule of law in a society - and the rule of law is perhaps the most important constitutional principle - the rule of law can only be central in your country, if two conditions are met, it seems to me: One - your politicians are democratically elected, and that will be the case in your country, under your draft constitution. And Two - that the law is interpreted and enforced by independent judges. And I would urge you to move towards that as quickly as you can.

Well, that's all the - I should make one other comment on the institutions, because we were asked a specific question this morning: whether we would recommend a SINGLE CHAMBER in the Riigikogu, OR TWO CHAMBERS in the Riigikogu. And my answer to that would be: definitely one chamber. Not two. And I agree with my colleagues from Europe on that. The theoretical reason for having two chambers is that there are two different roles you want two different bodies to perform. And usually you would have two chambers in a very big country, a large country, with a lot of people and a lot of diversity amongst those people. That's the situation in Canada. But if you don't have that, if you have a very small country, with not a lot of diversity, and not a lot of people, then I think one chamber is enough. Two chambers - we have two chambers in Canada, we have two chambers in our national parliament - it's a disaster. It doesn't work. One chamber makes laws and represents the people. The other chamber is a graveyard for discredited politicians. Nothing more. So you don't want to have a second chamber here. The problem with a second chamber, the problems are, in my view: it's confusing. Because if you have two, they are always going to fight. It costs a lot of money. You got to pay all these politicians more salaries. And it's too many politicians. And what most countries need is fewer politicians, not more. So, have one chamber instead of two - would be my view. Two chambers in the United States - it doesn't work. Two chambers in Canada - it really is horrible. And my friend says, two chambers in Ireland, and he isn't sure anymore why they have two chambers. So I think the experience around the world is sufficient, and I would say, my advice to you is: Start with one chamber. Keep it simple. And if it doesn't work, think of something different. But don't start with two.

The final point I make is just to compliment you on your constitutional process. In Canada, we debate constitutional issues endlessly, for year, decades, centuries. And we almost never solve any of them. I have a sense that you people have decided, that you are going to deal with the constitution as best you can, but quite quickly. You are going to do it within months. Because I think you understand that you will at least need to identify your basic institutions, and allocate powers to them, so that they can get on with their job of restructuring your country. What that means, I think, is that once your constitution is settled, you will be able to move, as parliamentarians, to questions of economic policy, and health, and education, and agriculture, and all the other matters which to ordinary people are far more important than your

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constitution. We in Canada are not very successful at moving them those other questions. And I have a sense that you people have decided you are going to devote just a small amount of time to your constitution, and then move on with the things that are important to ordinary people. And I would compliment you on that - I think that's a very good idea.

Thank you for your hospitality while in Tallinn. It has been a real honour to be amongst you these three days.