EU law and Baltic states: case law on constitutional relationship

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When regaining independence Baltic States declared that they are willing to join Western democracies and their priority is to become members of the EU. However, the constitutional approach to restoration of independence was different in three republics which influenced the amendments to constitutions and subsequent debates.

Apart from constitutional mandate, further interpretation of constitutional provisions has been left with the courts which have had several occasions to pronounce on the relationship between the EU and national constitutional law.

The aim of this presentation is to draw short account on the main constitutional provisions in three Baltic States and discuss several rulings of highest national courts. This will be done under three main headings for each of the States – constitutional mandate, general relationship between the EU and national law, and finally application of and references to EU law in domestic legal order.

Lithuania: open constitution, conservative court

a) Constitutional amendments:
   - Restoration on basis of new Constitution of 1992
   - Threshold for amending basic provisions remain high
   - Main concern – low turn-out
   - Amendment to the Constitution under modified procedure
   - Result: EU part of Lithuanian legal order and supreme over laws and other legal norms.

b) Constitutional Court:
   - EU law constituent part of legal order

* Magistrada del Tribunal Constitucional de Letonia
• Priority of application
• “Save the Constitution itself”

c) Constitutional Court on application:
• Competencies of the EU shall be respected
• ECJ has the same role as ECtHR
• Role of ECJ in construction of law.

Estonia: open constitution, open courts

a) Constitutional amendments:
• 1938 Constitution restored
• Openness to international law but closeness to independence and sovereignty
• Exceptional constitutional amendment adopted without integrating amendments to constitution itself
• Result: fixed delegation of powers in accordance with fundamental principles of Constitution.

b) Supreme Court
• There has been material amendment of the entirety of the Constitution
• Provisions of the Constitution that are not compatible with the European Union law are inapplicable, and suspended

c) Supreme Court on application
• No constitutional review procedure available
• Supremacy of application
• Rights of the Commission under Article 226 EC Treaty
• No obligation to request preliminary ruling

Latvia: confusing constitution, conservative court

a) Constitutional amendment:
• Constitution of 1922
• Article 1 independence; Article 2 sovereignty
• Compromise on procedural amendments for accession (Article 68 and 79)
• Ongoing debate on adequacy of amendments

b) Constitutional Court
Latvian law must be interpreted so as to avoid any conflicts with the obligations of Latvia towards the European Union, unless the fundamental principles incorporated in the Constitution are affected.

c) Constitutional Court on application:
   - EU law as tools for interpretation
   - Land use and detailed planning.
   - Obligations towards third States remain unaffected after accession

d) Lisbon Treaty
   - Right of individuals to participate
   - Right of Parliament to ratify

Conclusions

- Conflict of approach between Constitutional and European Courts. Currently the divide is unclear.
- East- European political orientations as well as re-emergence of State interests in overall European politics.

- Baltic openness (welfare, political belonging) v. constitutional conservatism.
- Baltic response to recent constitutional critique of the ECJ?

Useful links:

Constitution and case-law by Latvian Constitutional Court
http://www.satv.tiesa.gov.lv/?lang=2

Constitution and case-law of Lithuanian Constitutional Court
http://www.lrkt.lt/index_e.html

Constitution and case-law of Supreme Court of Estonia
http://www.nc.ee/?id=377