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Questionnaire
Report of the Supreme Court of Estonia¹

A. Description of the court²

The Supreme Court of Estonia is the highest court in the state and reviews decisions of lower courts by way of cassation proceedings. The Supreme Court is also the constitutional court. Constitutional review decisions of the Supreme Court are binding on the whole legal system. No other court has the competence to overrule or question the constitutional review decisions of the Supreme Court.

I. Basic texts

Sections 15, 149 (3) and 152 of the Constitution, Sections 26 (3), 29, 30 and 129 of the Courts' Act, the Constitutional Review Procedure Act and the Internal Rules of the Supreme Court of Estonia

II. Composition and organisation

1) Composition

The Supreme Court adjudicates cases in Civil, Administrative Law, Criminal and Constitutional Review Chambers and in Supreme Court *en banc* (i.e. the Plenary of the Court). Each of the 18 justices of the Supreme Court belongs to one of the Chambers, to Civil, Administrative Law or Criminal Chamber. Special Panels, consisting of members of the different Chambers, are set up if it is necessary to overcome the differences of opinions on application of law or jurisdictional disputes between Civil, Administrative or Criminal Chambers of the court.

The Chief Justice is *ex officio* the Chairman of the Constitutional Review Chamber. Other eight members of the Chamber are elected by the Supreme Court *en banc* of the Supreme Court, on the proposal of the Chief Justice. The members of the Constitutional Review Chamber are elected from among the members of the Civil, Criminal and Administrative Law Chambers. Every year, on the proposal of the Chief Justice, the Supreme Court *en banc* of the Supreme Court appoints two new members to the Constitutional Review Chamber and releases two most senior members of the duties of the member of the Constitutional Review Chamber, taking into account the opinion of and bearing in mind, as much as possible, the equal representation of the Administrative, Criminal and Civil Chambers within the Constitutional Review Chamber.

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² Revised and updated text of the CODICES database

2) Procedure of the Constitutional Review Chamber

The Supreme Court hears constitutional review cases in Constitutional Review Chamber or in the Supreme Court *en banc*. Depending on the nature and subject matter of the issue at stake, the Constitutional Review Chamber reviews cases in panels of three, five or nine justices.

When the Supreme Court receives a petition to declare a Member of the *Riigikogu* (the Parliament), the President of the Republic, the Chancellor of Justice or the State Auditor incapable of performing his or her duties for an extended period, to terminate the authority of a member of the *Riigikogu* or the activities of a political party, the matter is adjudicated by the Supreme Court *en banc*. Also, when constitutional review proceedings are initiated by the Administrative Law, Civil or Criminal Chamber or a Special Panel of the Supreme Court, the matter shall be heard by the Supreme Court *en banc*.

The Constitutional Review Chamber may refer a case to the Supreme Court *en banc* on its own initiative. In interpreting the contested norms in concrete norm control procedure, the Constitutional Review Chamber of the Supreme Court follows the interpretation of the other Chambers of the Supreme Court, if applicable. In cases, where uniform application of the norm seems to be of general importance, and an interpretation at the level of the Supreme Court of the contested norm is lacking, the Chamber might refer the case to the Supreme Court *en banc* which consists of the justices of the Civil, Administrative Law and Criminal Chambers of the Supreme Court (*de facto* the three highest courts of the three jurisdictions) and which will then rule on constitutionality of the provision at stake.

Whereas the Supreme Court decides whether to grant leave for appeal in regular cassation cases, all constitutional review matters have to be heard by the Court.

3) Jurisdiction/Powers

According to the Constitutional Review Procedure Act the petitions may be submitted to the Supreme Court by the President of the Republic, Chancellor of Justice, local government councils and by the lower courts. As of December 2005, the *Riigikogu* may request the Supreme Court to give an opinion on how to interpret the Constitution in conjunction with European Union law.

Individuals may approach the Supreme Court in constitutional review cases only in very limited cases. An individual who is of the opinion that his or her rights have been violated, may file with the Supreme Court a complaint against the resolutions of the *Riigikogu* and the Board of the *Riigikogu* and the decisions of the President of the Republic, and a complaint or a protest against the decisions and acts of electoral committees.

The ancillary powers of the Supreme Court include the competence of holding a member of the *Riigikogu*, the President of the Republic, the Chancellor of Justice or the State Auditor to be incapable of performing his or her duties for an extended period; termination of the mandate of a member of the *Riigikogu*; giving a consent to the Chairman of the *Riigikogu*, acting as President of the Republic, to declare extraordinary elections to the *Riigikogu* or to refuse to proclaim laws; and termination of the activities of a political party.

Section 152 (2) of the Constitution stipulates that the Supreme Court declares invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.

According to Sections 15, 24, 31, 36, 46 of the Constitutional Review Procedure Act, the Supreme Court has the power:

- 1) to hold a legislative act, which has not entered into force, to be unconstitutional;
- 2) to hold a legislative act or its provision, which has entered into force, to be unconstitutional and invalid;
- 3) to hold a legislative omission to be unconstitutional;
- 4) to hold an international treaty, which has or has not entered into force, to be unconstitutional;
- 5) to annul a decision of the *Riigikogu* to submit a draft act or other national issue to a referendum;

- 6) to hold the contested legislative act, international treaty or the respective legislative omission to have been unconstitutional at the time of submitting the petition;
- 7) to give an opinion on how to interpret the Constitution in conjunction with European Union law;
- 8) to annul a decision of the *Riigikogu*, the Board of the *Riigikogu* or the President of the Republic;
- 9) to hold a member of the *Riigikogu*, the President of the Republic, the Chancellor of Justice or the State Auditor to be incapable of performing his or her duties for an extended period;
- 10) to terminate the mandate of a member of the *Riigikogu*;
- 11) to give a consent to the Chairman of the *Riigikogu*, acting as President of the Republic, to declare extraordinary elections to the *Riigikogu* or to refuse to proclaim laws;
- 12) to terminate the activities of a political party;
- 13) to annul the decision of an electoral committee;
- 14) to hold a procedural act of an electoral committee to be contrary to the law;
- 15) to oblige an electoral committee to adopt a new decision or to undertake a new procedural act;
- 16) to annul the voting results in a polling station, constituency borough, town, county or state, presidential or parliamentary elections, if the infringement of law has or might influence the voting results essentially;
- 17) to annul the mandate in case the division and registration of mandates of Members of Parliament, Members of European Parliament, members of local government council, their deputies and additional mandates was not made according to the law;
- 18) to dismiss a motion.

4) Effects of the judgments of the Constitutional Review Chamber

Supreme Court judgments on questions of constitutionality are final and binding for all courts and governmental authorities, national and local, as well as for all individuals and legal persons. The opinions of the Supreme Court on how to interpret the Constitution in conjunction with European Union law, are however not legally binding.

The judgments and opinions of the Constitutional Review Chamber and the Supreme Court *en banc* are published in the *Riigi Teataja* (Official Journal of Estonia) and on the official website of the Supreme Court www.riigikohus.ee/en. On the latter, constitutional review judgments of the Supreme Court which have been translated into English are also available.

B Social Integration

1.1. – 1.3. If social conflict is to be understood as clashes or disagreements between various parts of the society, then the following should be stated with regard to constitutional review. Issues concerning social integration and conflict have not been dominant issues in Estonian constitutional review. Therefore, the Supreme Court has not had to deal with issues concerning clashes and disagreements between various parts of the society when carrying out constitutional review. Also, at the moment there do not seem to be any developments in the society that could lead to potential social conflicts in the future that the Supreme Court would have to adjudicate in constitutional review.

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

According to the second sentence of subsection 3 (1) of the Constitution of the Republic of Estonia, generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. Pursuant to subsection 123 (2) of the Constitution, when laws or other legislation of Estonia are in conflict with an international treaty ratified by the *Riigikogu* (the parliament), provisions of the international treaty apply. Estonia has ratified several international treaties, including, for example, the United Nations Convention on the Rights of

Persons with Disabilities. When implementing national provisions, the Supreme Court takes these regulations into consideration.

2.2. Does your Court apply specific provisions on social integration that have an international source or background?

The Constitution of the Republic of Estonia was drafted in 1991–1992. The international standard was taken into consideration when developing the Constitution. See also the answer to the previous question.

2.3. Does your Court directly apply international instruments in the field of social integration?

See the answer to question 2.1. – when a national legislation is in conflict with a convention, the national provision shall not be applied. There has not been any such practice in this field.

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

It varies: references are made, as are considerations by default.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

There have not been any conflicts between national and international law in the field specified.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, Staatszielbestimmungen, ...?

In cases concerning social integration, the Supreme Court applies social fundamental rights provided for in the Constitution (e.g. section 28 of the Constitution that grants the right to protect a person’s health and government assistance in the case of need), the general principles of the Constitution (e.g. the principle of social justice founded on the rule of law provided for in section 10 of the Constitution), and the relevant instruments of international law (e.g. the European Social Charter).

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

Estonian legislation does not allow individuals to directly access the Supreme Court as a constitutional review court with an application to inspect violation of fundamental rights. Though, Supreme Court has once acknowledged such a possibility on the basis of the Constitution (in order to ensure effective protection of fundamental rights) in a situation where a person lacked any other efficient opportunities to protect his/her fundamental rights. All other such applications have been rejected by the Supreme Court.

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

No, the Supreme Court cannot directly interfere with social conflicts except when adjudicating cases.

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

It is within the Supreme Court’s jurisdiction to declare a legislative act that has entered into force to be unconstitutional and repeal it, or declare a legislative act that has not entered into force to be unconstitutional. The Supreme Court can also declare an inactivity – failure to adopt a legislative act – by the legislator to be unconstitutional.

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

The competence of the court that allows the court to declare a legislative act that has not entered into force, can be preventive. Such an application can be filed to the Supreme Court by the Chancellor of Justice (Ombudsman) or the President of the Republic. The Supreme Court's judgments concerning constitutional review are binding to state bodies and to the lower courts foremost through the fact that if a new dispute should arise on a similar issue and it reaches the Supreme Court again, it is expected that the Supreme Court will make a similar judgment. The Supreme Court does not have any other binding mechanisms for cases concerning constitutional review. However, it should be noted that constitutional review cases are often adjudicated by the Supreme Court *en banc* by way of the so-called hybrid procedure, adjudicating both the subject-matter of the main proceedings and the constitutional issue. The decisions of the Supreme Court *en banc* are binding to all chambers of the Supreme Court and the decisions of the chambers of the Supreme Court are binding to all lower court levels (for the adjudication of the same case). In criminal proceedings, decisions of the Supreme Court in the issues that are not regulated by other sources of criminal procedural law but which arise in the application of law are the sources for criminal procedural law.

3.6. Has your Court ever encountered difficulties in applying these tools?

In dealing with social issues, the Court often finds it difficult to decide on which solution would be the best for the society – it is largely a political decision that mostly concerns the distribution of resources within the society. The Court does not always have sufficient information for making such decisions.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

Most of the constitutional review cases commence in courts of lower instance whose right and duty is not to apply an unconstitutional provision whereby the lower courts initiate constitutional review proceedings in the Supreme Court. In Estonia, such decisions are mostly made by administrative courts or by administrative chambers of the appellate courts. Constitutional review cases may also be commenced by the chambers of the Supreme Court that often use that right. Applications for constitutional review are often made by the Chancellor of Justice (Ombudsman), and less often by the President of the Republic or local governments.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Supreme Court can only deal with issues that have been brought to the court pursuant to law. In doing so, the Court can examine the case fully and make a decision that adheres to all the principles of the Constitution and all fundamental rights.

4.2. Does your Court de facto act as 'social mediator', or/and has such a role been attributed to it?

The Court may act as a social mediator only when the parties of the social conflict are parties to the case.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?

Political parties or any other interest groups cannot commence constitutional review in general matters, it must be a legal dispute between two parties.