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I The independence of the constitutional court as an institution

1. Constitutional basis

According to Art 148 of the Constitution of the Republic of Estonia², the court system shall consist of county courts and administrative courts, circuit courts and the Supreme Court. By this, county courts and administrative courts are courts of first instance; circuit courts are courts of appeal and shall review judgments of the courts of first instance by way of appeal proceedings and the Supreme Court is the highest court in the state and shall review court judgments by way of cassation proceedings and it is also the court of constitutional review (Art 149 of the Constitution). According to Article 152, in a court proceeding, the court shall not apply any law or other legislation that is in conflict with the Constitution and the Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.

2. Regulatory autonomy

Rules regarding court administration and rules of court procedure shall be established by law³ (Art 149 of the Constitution): The Courts Act, which provides the legal bases for courts administration and court service (Art 1 of the Courts Act).⁴ According to Art 33 of the latter, the organization of work of the Supreme Court shall be prescribed in the internal rules of the Supreme Court approved by the Supreme Court *en banc* (General Assembly). The internal rules shall not include provisions concerning rules of court procedure.

Although there is no legislation to bind the Parliament to the duty of asking for the opinion of the Supreme Court when amending the organisation of the Court or the rules of the constitutional review procedure, both the Supreme Court as well as the Council for Administration of Courts are usually involved in the procedure of such legislation at the stage where opinions are asked.⁵

Also, the Minister of Justice has the right to participate in the Supreme Court *en banc*, except in cases where court decisions are being reviewed. The Minister of Justice has the right to speak in the Supreme Court *en banc*. The Chief Justice of the Supreme Court may also invite

² Estonian Constitution available in English at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus>

³ Courts Act available in English at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30065K4&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kohtute+seadus>

⁴ The texts of the legal acts are available in Estonian at www.riigiteataja.ee and in English at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>.

⁵ In Estonia, courts of the first and second instance (and not the Supreme Court) are administered by the Minister of Justice in cooperation with the Council for Administration of Courts. The Council for Administration of Courts comprises the Chief Justice of the Supreme Court (the chairman of the Council), five judges appointed by the Court *en banc* (General Assembly of all Estonian judges) for three years, two members of the *Riigikogu*, an attorney-at-law appointed by the Board of the Estonian Bard Association, the Chief Public Prosecutor or a public prosecutor appointed by the Chief Public Prosecutor, the Chancellor of Justice or a representative appointed by the Chancellor of Justice. The Minister of Justice or the representative appointed by the Minister participates in the Council having the right to speak.

to the Supreme Court *en banc* other persons to whom the Supreme Court *en banc* may grant the right to speak (Art 30 Sec 5 of the Courts Act).

3. Independent budget

The Supreme Court is financed directly from the state budget. The size and structure of the budget of the Supreme Court requires the approval of the Government. The drafting of the state budget is organised and coordinated by the Ministry of Finance pursuant to the requirements of the State Budget Act. According to subsections 6 (3) and 12 (1) of the State Budget Act (SBA), the Supreme Court itself negotiates its draft budget, notably the reasonableness and advisability of the budget expenditure with the Ministry of Finance.

With the help of the Director of the Supreme Court the Chief Justice ensures that the court's budget and, where necessary, the budget amendment draft are submitted to the ministry in a timely manner. The reasonableness and advisability of the budget expenditure is negotiated between representatives of the Ministry of Finance and the Supreme Court. Following the negotiations and resolution of disagreements at the governmental level the Ministry of Finance draws up the draft state budget and submits it to the Parliament via the Government. In the budget negotiations with the officials of the Ministry of Finance the Supreme Court is represented by the Director of the Supreme Court and in negotiations with the members of the Government and the Parliament by the Chief Justice.

According to subsection 15 (2) of the SBA, upon amendment or omission of amounts allocated to the Supreme Court in the draft state budget, the Government of the Republic shall present the amendments with justification therefore in the explanatory memorandum to the draft state budget aimed at the Parliament. According to subsection 21 (1) of the SBA, the *Riigikogu* adopts the state budget.

Inside the Supreme Court the Supreme Court's budget issues are, in accordance with article 9 of the internal rules approved by the Supreme Court *en banc*, are discussed in the management that comprises the Chief Justice, Chairmen of the Chambers and the Director of the Supreme Court or, at the request of the Justices, in the Court *en banc*. According to subsection 32 (1) of the CA, the salaries of the court officers of the Supreme Court, the procedure for payment of additional remuneration, bonuses and benefits shall be determined by the Chief Justice of the Supreme Court within the limits of the budget of the Supreme Court. The salary levels of the Justices arise from the Salaries of Civil Servants Appointed by the *Riigikogu* or President of the Republic Act.

The Chief Justice of the Supreme Court is responsible for the designated use of the budget funds of the Supreme Court approved by the Parliament. Day-to-day supervision over the implementation of the budget is the function of the Director of the Supreme Court.

4. Administrative autonomy

The Supreme Court itself chooses and develops its personnel politics, by itself appointing and managing the career of the personnel (especially court officers) of the court. The salaries of the court officers (law clerks – Art 31, director of court – Art 125, court security guards – Art 126 and other court officers – Art 127 of the Courts Act) of the Supreme Court, the procedure for payment of additional remuneration, bonuses and benefits shall be determined by the

Chief Justice of the Supreme Court within the limits of the budget of the Supreme Court (Art 32 of the Courts Act).

Additionally, the Chief Justice of the Supreme Court is chairman of the Council for Administration of Courts. The Council for Administration of Courts deals with general issues of administration of justice and issues of the courts of the first and second instance and does not decide or discuss issues concerning the Supreme Court or the Constitutional Review Chamber.

5. Constitutional court and the media

The basis of the relationship between the Estonian courts and the media is not to respond to criticism addressed against concrete court judgments. Our primary aim, in the broader sense, is to explain the functioning of the court system and, in the narrower sense, to explain the reasoning of most significant judgments. We proceed from the understanding that justice is administered in the name of the state and therefore we do not personally identify judges. The criticism addressed against judges or courts can not and must not influence a judge in his or her decision-making. The Courts Act establishes that a judge shall perform his or her official duties in an impartial manner and that no one has the right to interfere with the administration of justice. Naturally, indiscriminate and constant criticism may, in the broader sense, undermine the reputation and reliability of administration of justice. Estonian court system attempts, whenever possible, to respond to criticism with explanations.

For that reason a communications department has been set up in the Supreme Court with the task of fostering the good reputation of the judicial system and administration of justice. In the courts of both lower and higher instances there are press representatives; the bases for the courts' relationships with the media have been set out in the relevant recommendations of the Council for Administration of Courts.⁶

II The constitutional independence of judges

1. Independence of the judge of the constitutional court

According to Article 147 of the Estonian Constitution, judges shall be appointed for life. The grounds and procedure for the release of judges from office shall be provided by law. Judges may be removed from office only by a court judgment. Also, judges shall not hold any other elected or appointed office, except in the cases prescribed by law and the legal status of judges and guarantees for their independence shall be provided by law (Courts Act – hereinafter also CA).

A person who is an experienced and recognized lawyer may be appointed as a justice of the Supreme Court (Art 52 of the Courts Act).

Justices of the Supreme Court are appointed to office by the Parliament (the *Riigikogu*), at the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court

⁶ Available in English at <http://www.nc.ee/?id=683>

first considers the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate). On the basis of subsection 65 (7) of the Constitution, the *Riigikogu* shall, at the proposal of the President of the Republic, appoint to office the Chief Justice of the Supreme Court.

According to subsection 29 (1) of the Courts Act (hereinafter the CA), the Supreme Court has the Constitutional Review Chamber, which is comprised of nine justices of the Supreme Court (from the Civil Chamber, Administrative Chamber and Criminal Chamber). It is a body corresponding to a constitutional court. According to subsection (2) of the same section, the Chief Justice of the Supreme Court is the chairman of the Constitutional Review Chamber and other members of the Chamber are appointed by the Supreme Court *en banc*. According to subsection 29 (3) of the CA, the internal rules of the Supreme Court provide for the term of authority of the members of the Constitutional Review Chamber and the procedure for the substitution of members of the Constitutional Review Chamber. According to article 29 of the internal rules of the Supreme Court, each year the Supreme Court *en banc*, at the proposal of the Chief Justice of the Supreme Court, appoints two new members to the Constitutional Review Chamber, taking into account the position of the Administrative Law, Civil and Criminal Chambers of the Supreme Court and the equal representation of the Chambers in the Constitutional Review Chamber, and removes the two most long-serving members of the Constitutional Review Chamber. The internal rules of the Supreme Court are adopted by the Supreme Court *en banc*.⁷

A justice can be removed from the Constitutional Review Chamber only if the justice resigns from their position or if the Chief Justice resigns from his or her position. According to § 99 of the CA, a judge is released from office; at the request of the judge; if the judge has attained 68 years of age; due to unsuitability for office – within three years after appointment to office; due to health reasons that hinder work as a judge; if after leaving the service in the Supreme Court, the Ministry of Justice or an international court institution, a judge does not have the opportunity to return to their former position as a judge, and they do not wish to be transferred to another court; if a judge is appointed or elected to the position or office that is not in accordance with the restrictions on services of judges; if facts become evident, which, according to law, preclude the appointment of the person judge.

Justices of the Supreme Court are released by the *Riigikogu* at the proposal of the Chief Justice. The Chief Justice of the Supreme Court is released by the *Riigikogu* at the proposal of the President of the Republic, but if the Chief Justice of the Supreme Court is unable to perform his or her duties for six consecutive months due to illness or for any other reason, the President of the Republic shall file a reasoned request to the Supreme Court *en banc* to declare by judgment that the Chief Justice of the Supreme Court is unable to perform his or her duties. In such an event a judgment of the Supreme Court *en banc* shall release the Chief Justice of the Supreme Court from office.

Thus, neither the *Riigikogu* nor the Government of the Republic has any chance of releasing a Justice exclusively from the position of member of the Constitutional Review Chamber.

Judges may be removed from office only by a court judgment (Art 3 Section 2 of the Courts Act). In addition, according to Article 153 Section 2 of the Constitution, criminal charges may be brought against the Chief Justice and justices of the Supreme Court only on the proposal of

⁷ The approval of the Council for Administration of Courts is required for adoption of the internal rules of the Supreme Court (clause 41 (1) 7) of the CA).

the Chancellor of Justice, and with the consent of the majority of the membership of the *Riigikogu*.

2. Qualifications of the judge

As a justice of Supreme Court can be a person who is an experienced and recognized lawyer (Art 52 of the Courts Act).

The following persons shall not be appointed as a judge (Art 47 Sec 2 of the Courts Act) :

- 1) persons who are convicted of a criminal offence;
- 2) persons who have been removed from the office of judge, notary or bailiff;
- 3) persons who have been expelled from the Estonian Bar Association;
- 4) persons who have been released from the public service for a disciplinary offence;
- 5) persons who are bankrupt;
- 6) persons whose professional activities as an auditor have been terminated except termination on the basis of the application of an auditor;
- 7) persons who have been deprived of the qualification of a patent agent, except deprivation of qualification on the basis of the application of a patent agent.

According to Art 49 of the Courts Act, there are some restrictions on holding office of judge:

- (1) Judges shall not be employed other than in the office of judge, except for teaching or research.
- (2) A judge shall not be:
 - 1) a member of the parliament, or member of a rural municipality or city council;
 - 2) a member of a political party;
 - 3) a founder, managing partner, member of the management board or supervisory board of a company, or director of a branch of a foreign company;
 - 4) a trustee in bankruptcy, member of a bankruptcy committee or compulsory administrator of immovable;
 - 5) an arbitrator chosen by the parties to a dispute.

The maximum age of a judge is 67 years (Art 48 of the Courts Act).

3. Responsibility of the judge

According to Article 146 of the Constitution, justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws.

A person may claim compensation for damage caused in the course of judicial proceedings or extrajudicial hearing of a matter concerning an administrative offence or a lease dispute, including damage caused by a court decision, a decision made in the matter of an administrative offence or a decision of a lease committee, only if a judge or the official who extra judicially heard the matter of the administrative offence or the lease dispute, committed a criminal offence in the course of these proceedings. The mentioned does not preclude state liability for damage caused by the acts of a court which are not related to administration of justice. (Article 15 of the State Liability Act)

4. Duties of the judge

According to Articles 70–74 of the Courts Act, there are five duties of the judges of the constitutional court (actually all the judges in Estonia): the general duties (1) and the duties of confidentiality (2), of confidentiality of deliberations (3), to supervise (4) and of professional development (5).

1. A judge shall perform his or her official duties in an impartial manner and without self-interest and shall comply with service interests also outside service. A judge shall behave impeccably in service and outside service and refrain from acts which may damage the reputation of court.

2. A judge shall not disclose information which becomes known to him or her at a court session held. A judge may disclose facts to which the duty of confidentiality applies in judicial proceedings or pre-trial procedure in criminal matters only with the permission of the Supreme Court *en banc*. In order to obtain the above mentioned permission, the court or investigative agency conducting the proceeding or a judge bound by the duty of confidentiality may address the Supreme Court *en banc*. The duty of confidentiality applies for an unspecified term and remains in force also after termination of the service relationship.

3. A judge shall not disclose discussions which take place at the time the decision is made. The duty of confidentiality of deliberations applies for an unspecified term and remains in force also after termination of the service relationship.

4. Judges shall supervise candidates for judicial office, candidates for assistant judge and university student trainees in preparatory service. No judge is required to supervise more than two candidates for judicial office or for assistant judge or university student trainees at a time.

5. A judge is required to develop knowledge and skills of his or her specialty on a regular basis and to participate in training.

5. Social guarantees of the judge

Chapter X of the Courts Act foresees in Articles 75–86 for judges various social guarantees like the judges salary (1) and the additional remuneration of judges (2); the pension (3), the old-age pension (4), superannuated pension (5), pension for incapacity for work (6), pension for judge's family member (7) and the allowance upon death of judge (8). Also, judge's holiday (9).

1. A judge's salary is provided by the Salaries of State Public Servants Appointed by the parliament or President of the Republic Act. According to Article 1 Section 1 and Articles 7 and 8 of the said Act the salaries of the Chief Justice and the Justices of the Supreme Court compose of 6,0 and 5,5 Estonian medium salaries and these salaries are annually (in the beginning of every year) amended according to the Estonian medium salary of the last year. As a temporary measure (induced by economical crisis), the salaries of the judges are on legal basis kept in years 2009 and 2010 at the same level as in year 2008. So in 2010, the monthly

salary of the Chief Justice of the Supreme Court was app. 4000 euro and the salaries of the justices' app. 3700 euro (plus additional remuneration for years of service).

Unfortunately, there have lately been some cases of bribery, where the judges of the first instance (receiving at least the salary, 4 times bigger as the Estonian medium salary) have been convicted as bribe takers.

2. In addition to a salary, judges shall receive additional remuneration for years of service as follows:

- 1) as of the fifth year in employment as a judge – 5 per cent of the salary;
- 2) as of the tenth year in employment as a judge – 10 per cent of the salary;
- 3) as of the fifteenth year in employment as a judge – 15 per cent of the salary.

The salary of a justice of the Supreme Court together with the additional remuneration prescribed above shall not be higher than the salary of the Chief Justice of the Supreme Court.

3. The following are judge's pensions:

- 1) judge's old-age pension;
- 2) judge's superannuated pension;
- 3) judge's pension for incapacity for work;
- 4) survivor's pension for judge's family members.

A judge's pension shall not be paid during employment as a judge. If a retired judge is employed elsewhere, he or she shall receive the judge's pension in full regardless of the amount of the earnings.

A judge's pension shall not be granted to a person who has been removed from office for a disciplinary offence or who has been convicted of an intentionally committed criminal offence. A judge's pension shall be withdrawn from a person who is convicted of a criminal offence directed against the administration of justice.

4. A person who has been employed as a judge for at least fifteen years has the right to receive a judge's old-age pension when he or she attains the pensionable age.

The amount of a judge's old-age pension shall be 75 per cent of his or her last salary.

The Chief Justice of the Supreme Court or a person who has worked as the Chief Justice of the Supreme Court has the right, after attaining the pensionable age, to receive a judge's old age pension in the amount of 75 per cent of the salary of the Chief Justice of the Supreme Court if the person has worked as the Chief Justice of the Supreme Court for at least seven years, and in the amount of 50 per cent of the salary of the Chief Justice of the Supreme Court if the person has worked as the Chief Justice of the Supreme Court for less than seven years.

If a judge attains pensionable age after leaving the office of judge, his or her judge's pension shall be calculated from the judge's salary in the court instance where the person was last employed as a judge valid at the time of granting the pension.

5. The right to receive a superannuated pension arises for a judge who has been employed as judge for at least 30 years, in the amount of 75 per cent of his or her last salary.

A judge's pension shall be recalculated upon a change in the amount of the salary payable for the position according to which the judge's pension has been calculated.

6. If a judge is killed as a result of a criminal attack while he or she is performing his or her duties of service, the family members of the judge who were maintained by him or her shall be paid a one-time benefit to the extent of five years' salary of the deceased judge.

7. Judges have the right to receive an annual holiday. The duration of a holiday of a justice of the Supreme Court is fifty six calendar days.

A judge has no right to the additional holiday provided for in the Public Service Act. The chairman of the court shall approve the holiday schedule of judges.

An extraordinary holiday for up to one year without pay may be granted to a judge by the Chief Justice of the Supreme Court with the consent of the full court of the court where the judge is employed.

6. Disciplinary independence of the court system

The Estonian court system is disciplinary independent.

A disciplinary punishment may be imposed on a judge for a disciplinary offence (Art 87 Sec 1 of the Courts Act), that is a wrongful act of a judge which consists of failure to perform his or her official duties or inappropriate performance of official duties; an indecent act of a judge is also a disciplinary offence (Art 87 Sec 2).

There are following disciplinary punishments (Art 88 Sec 1):

- 1) a reprimand;
- 2) a fine in an amount of up to one month's salary;
- 3) a reduction in salary;
- 4) removal from office.

If a retired judge does not comply with the duty of confidentiality or the duty of confidentiality of deliberations, his or her judge's pension may be reduced by not more than 25 per cent as a disciplinary punishment: the pension shall not be reduced for longer than one year (Art 88 Sec 2). Only one disciplinary punishment may be imposed on a judge for one and the same offence, but a criminal punishment or a punishment for a misdemeanor imposed for the same act does not preclude the imposition of disciplinary punishment (Art 88 Sec 3).

Upon imposition of disciplinary punishment, the nature, gravity and consequences of the disciplinary offence, also the personal characteristics of the judge and other circumstances related to the offence shall be considered (Art 88 Sec 4). A disciplinary punishment imposed on a judge shall be entered on his or her service record (sec 5) and a disciplinary sanction shall expire if the judge does not commit a new disciplinary offence within one year after the entry into force of the decision of the Disciplinary Chamber – the Disciplinary Chamber may also cancel a disciplinary punishment before the prescribed time (Sec 6).

Disciplinary proceedings shall be commenced if elements of a disciplinary offence become evident. Disciplinary proceedings are commenced by preparation of disciplinary charges (Art 91 sec 1). According to art 91 sec 2, the following have the right to commence disciplinary proceedings:

- 1) the Chief Justice of the Supreme Court, against all judges;
- 2) the Chancellor of Justice, against all judges;
- 3) the chairman of a circuit court, against judges of courts of first instance in his territorial jurisdiction.
- 4) the chairman of a court, against the judges of the same court;

5) the Supreme Court *en banc* against the Chief Justice of the Supreme Court. Also a person who commences a disciplinary proceeding may gather evidence and demand explanations which are necessary to adjudicate the disciplinary matter (Art 91 Sec 3).

According to Article 93 of the Courts Act, for the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance for the term of three years.

The Disciplinary Chamber shall hear matters of disciplinary offences of judges and impose disciplinary punishments to judges. A five-member panel of the Disciplinary Chamber shall hear a disciplinary matter at a court session. Upon hearing of a disciplinary matter, the chairman of the Disciplinary Chamber is the presiding judge. If the chairman of the Disciplinary Chamber does not participate in the hearing of a matter, he or she shall appoint a member of the Chamber as the presiding judge. (Article 94 of the Courts Act)

If the culpability of a judge is proved, the Disciplinary Chamber shall make a decision by which the judge is convicted of the commission of a disciplinary offence and a disciplinary punishment is imposed on the judge. If the judge has not committed a disciplinary offence, the Disciplinary Chamber shall make a decision by which the judge is acquitted of the disciplinary charge. A judge on whom a disciplinary punishment is imposed may file an appeal to the Supreme Court *en banc* within thirty days after the decision is pronounced.

The Supreme Court *en banc* shall according to Art 30 Section 2 Subsections 4 and 5 of the Courts Act resolve appeals filed against the decisions of the Disciplinary Chamber and decide the commencement of disciplinary proceedings against the Chief Justice of the Supreme Court, and notify the parliament, *Riigikogu* thereof.

III Operating procedures of courts

1. General questions

1) Text *ultra petita* or the withdrawal of the claim

According to Article 14 of the Constitutional Review Court Procedure Act, in the adjudication of the matter the Supreme Court is not bound by the reasons of the request, court judgment or court ruling.⁸

The Supreme Court shall verify the conformity of legislation of general application, the refusal to issue an instrument of legislation of general application or the conformity of an international agreement with the Constitution on the basis of a reasoned request, court judgment or ruling. The President of the Republic, the Chancellor of Justice, a local government council and the *Riigikogu* may submit such requests to the Supreme Court.

By this, a request shall be reasoned and shall set out the provisions or principles of the Constitution which the contested legislation of general application, international agreement or resolution of the *Riigikogu* is not in compliance with (Art 8 Sec 1).

So, the Supreme Court is still bound by the questioned norm and can not become so active, as to find a new norm to be reviewed in constitutional cause or to extra widen the boundaries of the request (the judgment or ruling). The Supreme Court is entitled to control the constitutionality of the questioned norm, comparing it with the whole Constitution, not only with the norms or principles that are mentioned in the request (the judgment or ruling). Still it has become a practice of the Supreme Court to include to the constitutional review the norms that are tightly bound with the norms which constitutionality has been questioned in the failed request (or the judgment or ruling).

Also, in the adjudication of the matter on the basis of a court judgment or court ruling the Supreme Court may repeal or declare to be in conflict with the Constitution legislation of general application, an international agreement or a provision thereof or the refusal to issue an instrument of legislation of general application which is relevant to the adjudication of the matter. The Supreme Court shall not adjudicate legal disputes which are subject to adjudication pursuant to the provisions of court procedure applied in administrative, civil, criminal or misdemeanour cases. A case referred by a ruling by the Chamber of the Supreme Court or Special Panel shall be adjudicated by the Supreme Court *en banc* in all relevant issues and the procedural law corresponding to the case and the Act in question apply concurrently (Article 14 of the Constitutional Review Court Procedure Act).

After withdrawal of the claim as a general rule, the Supreme Court closes the case and is not any more entitled to judge upon the constitutionality, as the reasoned request as a basis for constitutional review has disappeared (see Art 4 Sections 1 and 2 of the Constitutional Review Court Procedure Act).

⁸ Constitutional Review Procedure Act in English: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

In case of constitutional review initiated by court judgment or ruling (Art 4 Section 3 of the Constitutional Review Court Procedure Act: *The Court shall commence proceedings by forwarding the court decision or ruling to the Supreme Court*), the Supreme Court has ruled that the withdrawal of a claim, that initiated the court proceedings during which the constitutionality of a norm was questioned, also ends the constitutional review procedure in the Supreme Court, as there exists no relevant legislation any more (Art 9 Sec 1 of the Constitutional Review Court Procedure Act).

2) The manner of reviewing the case

According to Article 51 Sec-s 1 and 2 of the Constitutional Review Court Procedure Act, as a rule, a case is reviewed by way of written proceedings and shall be reviewed by way of oral proceedings if this is deemed necessary by the panel of the court which reviews the matter. The court shall determine oral proceedings at the request of a participant in the proceedings or on own initiative. Review of the case by way of oral proceedings shall be open, but the court may declare that proceedings or a part of the proceedings closed if this is necessary in order to maintain a state or business secret, to protect morals or the private and family life of a person, or where the interests of a minor, a victim, or justice so require, and the court may remove from the courtroom, after they have been warned, the persons who violate order in a court session and thereby hinder the discussion of the matter. Persons who are present in the courtroom may make audio-recordings of the session and take written notices on their places without disturbing the session and a permission of the court is required for filming, photographing and radio and television broadcasting.

Requests to declare a member of the *Riigikogu*, President of the Republic, the Chancellor of Justice or the Auditor General incapable of performing his or her duties for an extended period shall be reviewed by way of oral proceedings and requests for opinion on the interpretation of the Constitution in conjunction with the European Union law shall be reviewed by way of written proceedings. (Art 51 Sec-s 3 and 4)

Also, all the sessions of the Constitutional Chamber (Supreme Court *en banc*) are made public at the web page of the Supreme Court (www.riigikohus.ee).

3) Dissenting opinion

According to Art 57 Sec 5 of the Constitutional Review Court Procedure Act a judge who disagrees with the judgment or with the reasons thereof has the right to annex a dissenting position to the judgment. The dissenting position may be shared. The dissenting position must be submitted by the time of pronouncement of the judgment and it shall be signed by all judges who hold a dissenting position. The dissenting opinion shall be published on the website of the Supreme Court together with the judgement.

4) Rapporteur member

The organization of work of the Supreme Court shall be prescribed in the internal rules of the Supreme Court approved by the Supreme Court *en banc* (Art 33 Sec 1 of the Courts Act). According to the internal rules of the Supreme Court, the *rappoteur* members are appointed to all constitutional review cases either adjudicated by the Supreme Court *en banc* or in the Constitutional Review Chamber. As a rule, the names of the *rappoteur* members and the law clerks to specific cases are not made public; this information is only for internal use.