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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**ESTONIAN LAW ON CONSTITUTIONAL
REVIEW COURT PROCEDURE**

**LAW
ON CONSTITUTIONAL REVIEW COURT PROCEDURE**

I. General Provisions

Article 1. Task of the Law

This Law shall establish the procedures of the constitutional review court and the authority of the courts.

Article 2. The Constitutional Review Court

- (1) The National Court shall be the constitutional review court. The constitutional review court panel shall be formed within the National Court.
- (2) The procedures for the formation and the number of members in the constitutional review panel shall be established by the Law on Courts.
- (3) In the cases stipulated in paragraph 3 of Article 9 of this law, the general assembly of the National Court shall try constitutional review cases.
- (4) The rules for the work of the constitutional review panel and the general assembly shall be established by the Rules of the National Court.

Article 3. The Principle of Constitutional Review

- (1) The National Court shall declare any legal act to be null and void, wholly or in part, if it contradicts the provisions and spirit of the Constitution.
- (2) The National Court shall not try legal disputes, which in accordance with the law are within the authority of other courts, as constitutional review cases.

Article 4. The Authority of the National Court in Constitutional Review

- (1) The National Court, in the cases and in accordance with procedures stipulated in this law, shall try:

- 1) whether laws adopted by the *Riigikogu* and which have entered into force are in accordance with the Constitution, and whether resolutions adopted by the *Riigikogu* and which have entered into force are in accordance with the Constitution and the law;
 - 2) in accordance with Article 107 of the Constitution, whether laws which have not been proclaimed and have not entered into force are in accordance with the Constitution;
 - 3) whether the edicts issued by the President of the Republic in accordance with Article 109 of the Constitution and which have entered into force are in accordance with the Constitution;
 - 4) whether legislative acts adopted by the executive and local government representative bodies and which have entered into force are in accordance with the Constitution and the law;
 - 5) whether foreign treaties concluded by the Republic of Estonia, but which have yet to enter into force, are in accordance with the Constitution;
 - 6) in accordance with Article 2 of the Law on the Application of the Republic of Estonia Constitution, whether legal acts adopted prior to the entering into force of the Constitution are in accordance with the Constitution.
- (2) The National Court shall not express a prior opinion on whether laws which are being drafted or the drafts of other legal acts or foreign treaties are in accordance with the Constitution and the law.
 - (3) The National Court shall try a constitutional review case in regard to whether a legal act or foreign treaty stipulated in this Article is in accordance with the Constitution and the law, only to the extent as this requested in the petition.

Article 5. Constitutional Review in the Trial of Court Cases

- (1) If in the trial of a case, a court concludes that the applicable law or other legal act contradicts the Constitution, the court shall declare it to be in contradiction with the Constitution and shall not apply it.
- (2) If a court with its decision has declared a law or other legal act to be in contradiction with the Constitution and has refused to apply it, the court shall so inform the National Court and the Legal Chancellor, by which constitutional review proceedings in the National Court shall be initiated.

Article 6. Who Has the Right to Directly Petition the National Court for Constitutional Review

- (1) The following shall have the right to directly petition the National Court for the court to determine whether a law, other legal act or foreign treaty is in accordance with the Constitution or the law:
 - 1) the President of the Republic, in the cases stipulated in Article 107 of the Constitution;
 - 2) the Legal Chancellor, in the cases stipulated in Article 142 of the Constitution and to determine whether a foreign treaty is in accordance with the Constitution;
 - 3) any court, in the cases stipulated in Article 5, paragraph 2 of this Law.
- (2) The proposal shall be made to the National Court in the form of a motivated petition.

II. RULES OF PROCEDURE

Article 7. Public Trials

- (1) The trial of constitutional review cases shall be public.
- (2) The court may decide to hold its session, wholly or in part, in closed session, if this is necessary to protect a state secret.
- (3) The court, after issuing a warning, may remove persons from the courtroom who disturb order in the court and thereby obstruct the trial of the case.
- (4) Persons present in the courtroom may make tape recordings of the session and may make written notes.
- (5) Court permission shall be required to film, photograph, videotape or transmit radio and television broadcasts.
- (6) The secretary of the panel or of the general assembly may be present during the adoption of a court decision, who shall be prohibited from disclosing any opinions or positions expressed in the course of deliberation and voting.

Article 8. Language of Court Proceedings

- (1) Court proceedings shall be held in the official language of the state.
- (2) Documents composed in other languages shall be made public as translations in the official language of the state.

- (3) Parties to the case who do not have a command of the official language of the state may appear before the court through an interpreter in their native language or in another language which they command.

Article 9. Collectiveness

- (1) The National Court shall resolve constitutional review cases collectively, in the sessions of either the constitutional court panel or the general assembly.
- (2) The constitutional court panel shall try cases in a composition of at least three members.
- (3) A case may be transferred to the general assembly for trial, if at least one judge on the panel has a dissenting opinion.
- (4) The general assembly of the National Court shall have a quorum if at least eleven of its members are present, including at least three members of the constitutional review panel.

Article 10. Due Dates for Submitting Petitions and the Trial of a Case

- (1) A petition to the National Court to determine whether a law or other legal act is in accordance with the Constitution or any other law may be made as of the day the same enter into force. In cases stipulated in Article 107 of the Constitution, a petition for constitutional review may be made in regard to a law which has not yet entered into force.
- (2) A petition to determine whether a foreign treaty is in accordance with the Constitution or the law may be made as of one day after the day of its signing.
- (3) The court shall try the case and shall announce its decision within two months from the time a petition is correctly filed with the National Court. This due date may be extended by the general assembly of the National Court by no longer than two months.
- (4) In cases stipulated in Article 107 of the Constitution, the court shall try the case and shall announce its decision within one month from the time a petition is correctly filed with the National Court. This due date may not be extended.

Article 11. The Content and Form of Petitions to the National Court

- (1) Petitions to determine whether a disputed law, other legal act or foreign treaty is in accordance with the Constitution or the law must indicate:
 - 1) to whom the petition is addressed;
 - 2) name and mailing address of the petitioner;
 - 3) the exact title and provisions of the law, other legal act or foreign treaty which allegedly contradict the Constitution, its date of adoption, date of signing or date of conclusion and place of publication;
 - 4) the provisions of the Constitution which the disputed law, legal act or foreign treaty contradicts;
 - 5) motivation for the petition.
- (2) The text of the disputed law, other legal act or foreign treaty shall be included with the petition together with other documents on which the petition is based. The petition shall be signed by the official stipulated in Article 6 or, in the cases stipulated in Article 5, by the chairman of the respective court.
- (3) The National Court shall have the right to demand supplementary documents and explanations from the petitioner.
- (4) Eight copies of the petition and supplementary documents shall be included with the originals.

Article 12. Refusal to Accept a Petition

- (1) The National Court shall justifiably refuse to accept or review a petition, if:
 - 1) the petition is not within the authority of the court of constitutional review;
 - 2) the petition is filed by a person not stipulated in Article 6 of this Law;
 - 3) the petition does not meet the requirements established in Article 11. The court may demand that inaccuracies in content and form be corrected on a petition. If the petitioner corrects inaccuracies in content and form, the National Court shall accept the case for trial.

Article 13. Demand for the Position of the Body Which Adopted the Legal Act

The National Court shall send a copy of the petition to the body which adopted the law or other legal act and may demand that the body present its position within a determined period of time.

Article 14. Parties to the Case

- (1) Parties to the trial of a petition in the National Court shall be:
 - 1) the official who filed the petition or his or her representative;
 - 2) a representative of the body which adopted the disputed law of other legal act;
- (2) Parties to the case shall be notified of the time and place of the trial, however their absence from the trial shall not obstruct the trial of the case.
- (3) If the National Court deems the appearance of a party to the case to be obligatory, the court, in the event of the party's failure to appear, may postpone the trial of the case.
- (4) In their capacity of office, the Legal Chancellor and the Minister of Justice, or their representatives, may participate in the court sessions of a constitutional review case, with the right to speak.

Article 15. Preparations for Trial

- (1) The following shall be subpoenaed or summoned to court:
 - 1) the parties to the case;
 - 2) experts to give testimony, as the National Court sees fit.
- (2) Persons who are to appear in court shall be sent a subpoena or summons in due time before the trial. The subpoena or summons shall indicate that appearance before the court is obligatory and the consequences for failure to appear.
- (3) The National Court shall have the right:
 - 1) to demand additional documentation and explanations from the body which adopted the legal act;
 - 2) to appeal to international organisations for consultation;
- (4) The courts and state and local government bodies shall be obligated to present required documentation and explanations to the National Court within a determined period of time.

Article 16. Trial Procedures

- (1) Trial procedures shall be determined by law and by the Rules of the National Court.

- (2) The chairman of the constitutional review panel shall be the Chairman of the National Court, or, in his or her absence, the senior member of the panel.
- (3) Sessions of the constitutional court panel or of the general assembly of the National Court shall open with a presentation by a member of the court panel and with a statement by the petitioner or his or her representative.
- (4) Experts summoned to court shall present an opinion and the parties to the case shall have the right to question the expert.
- (5) Members of the National Court may in the course of the trial question the member who makes the presentation, the parties to the case, and the experts.

Article 17. Trial Records

A record of the course of the trial and of statements made shall be made in accordance with procedures established in the Rules of the National Court.

Article 18. Passing and Announcing a Decision

- (1) Decisions shall be made with justification and in observance of the confidentiality of meetings.
- (2) Judges shall resolve any disagreement in regard to a decision through a vote. No judge shall have the right to refuse to vote or to abstain. In the case of a tied vote, the deciding vote shall be cast by the chairman, who shall vote last.
- (3) Decisions shall be recorded in writing and shall be signed by the Chairman of the National Court, or, in the case of his or her absence, by the senior member of the panel who participated in the trial of the case.
- (4) The dissenting position of a judge in the minority, which must be submitted by the time the decision is announced, shall be included with the decision.
- (5) Parties to the case shall be notified of the time of the announcement of the court decision after the trial of the case has concluded. The decision shall be announced no later than two weeks after the trial concludes.
- (7) A copy of the decision shall be forwarded to the parties to the case.

Article 19. Authority of the National Court in the Trial of a Case

- (1) The Court shall have the right:
 - 1) to decide against a petition;
 - 2) to decide for a petition and to declare a law or other legal act null and void, either wholly or in part.
 - 3) declare a foreign treaty to be in contradiction with the Constitution.
 - 4) declare a law to be in contradiction with the Constitution, in the trial of cases stipulated in Article 107 of the Constitution.
- (2) If a law or other legal act is declared null and void in part, the court decision must indicate exactly which parts of the law or other legal act are declared null and void.

Article 20. The Entering Into Force of a Decision

- (1) A decision shall enter into force as of the day of its announcement.
- (2) Decisions shall be final and shall not be subject to appeal.

Article 21. Interpretation of National Court Decisions

- (1) Decisions made in constitutional review cases shall be interpreted by the National Court.
- (2) The interpretation shall be recorded in writing.

Article 22. Correction of Errors

- (1) After a decision has been announced, the court which adopted the decision shall have the right, on its own initiative or at the request of a party to the case, to correct spelling errors in the decision, inadequate phrasing or apparent inaccuracies.
- (2) All erroneous copies which have been issued shall be recalled and shall be corrected or substituted by the court which made the decision.

Article 23. Obligatory Force of Court Decisions

National Court decisions shall have obligatory force for all Republic of Estonia state and government bodies, local governments, courts, officials, legal persons and natural persons.

Article 24. Publication of Decisions

- (1) National Court decisions shall be published in the *Riigi Teataja*.
- (2) If the National Court deems necessary, decisions shall be released to the press for publication.

Article 25. Trial Expenses

Expenses related to the trial of a case shall be defrayed from the state budget.

Article 26. Fines

- (1) If a person who is obligated to appear before the court fails to appear before the court without a justifiable excuse, or if a person obstructs or disrupts the work of the court or displays apparent disrespect for the court, the National Court may impose a fine of up to 200 days salary.
- (2) The order to fine shall be executed in accordance with procedures established by law for executing court decisions.

Article 27. The Entering Into Force of this Law

This Law shall enter into force as of the day of its publication in the *Riigi Teataja*.

Chairman of the Riigikogu

Ü. Nugis

Tallinn, May 5, 1993