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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**AMENDMENTS TO THE CONSTITUTION  
OF THE REPUBLIC OF ESTONIA  
CONCERNING  
THE SYSTEM OF CONSTITUTIONAL JURISDICTION**

**proposed by**

**the Expert Committee on the Analysis of the Constitution**

**Amendments to the Constitution  
of the Republic of Estonia  
proposed by the Expert Legal Analysis Committee  
of the Constitution  
concerning the constitutional jurisdiction system**

**1. § 15, paragraph 2**

Paragraph 2 of § 15 is considered paragraph 3 and a new paragraph 2 is added to the section in the following wording:

*“Everyone whose fundamental rights are violated has the right of recourse to the Constitutional Court, if there are no other remedies available or if the existing remedies have been exhausted.”*

(2<sup>nd</sup> list)

In case the Constitutional Court is established, this amendment provides for the possibility of fundamental rights action or individual constitutional complaint. The right of petition given to everyone and a court specialised in the protection of fundamental rights ensure better protection of fundamental rights than the present system. In order to avoid overloading the Constitutional Court it has been prescribed that the fundamental rights action shall be a subsidiary remedy. Similarly to the European Court of Human Rights, recourse to the Constitutional Court requires that other remedies be exhausted. The Court’s right not to apply unconstitutional legislation is dealt with in the amendment to § 152 (see also § 150 and 152).

**2. § 64, clause (2) 4)**

The words *“the Supreme Court”* in clause (2) 4) of § 64 shall be replaced by the words *“the Constitutional Court”*.

(2<sup>nd</sup> list)

This amendment proceeds from the establishment of the Constitutional Court (see also § 150).

**3. § 83, paragraph 1**

The words *“the Supreme Court”* in paragraph 1 of § 83 are substituted by the words *“the Constitutional Court”*.

(2<sup>nd</sup> list)

This amendment proceeds from the establishment of the Constitutional Court (see also § 150).

**4. § 107, paragraph 2**

The words “*the Supreme Court*” in paragraph 2 of § 107 are substituted by the words “*the Constitutional Court*” in the appropriate case forms.

(2<sup>nd</sup> list)

This amendment proceeds from the establishment of the Constitutional Court (see also § 150).

**5. § 142, paragraph 2**

The words “*to the Supreme Court*” in paragraph 2 of § 142 are substituted by the words “*to the Constitutional Court*”.

(2<sup>nd</sup> list)

This amendment proceeds from the establishment of the Constitutional Court. (see also § 150)

**6. § 148**

§ 148 is amended and worded as follows:

*“The court system shall consist of:*

- 1) county and city courts, and administrative courts;*
- 1) circuit courts;*
- 1) the Supreme Court.*

*The Supreme Court is the highest court in the state.*

*The creation of specialised courts with specific jurisdiction shall be provided by law.*

*The formation of emergency courts is prohibited.*

*Rules regarding court administration and rules of court procedure shall be established by law.*

*The rules of court procedure regarding representation, defence, state prosecution, and supervision of legality shall be provided by law.”*

(1<sup>st</sup> list)

**7. § 149**

§ 149 shall be amended and worded as follows:

*“The Chairman and members of the Supreme Court shall be appointed to office by the President of the Republic, on the proposal of the Riigikogu. Other judges shall be appointed to office by the President of the Republic, pursuant to the procedure provided by law.”*

(1<sup>st</sup> list)

**8. § 150**

§ 150 shall be amended and worded as follows:

*“The Constitutional Court:*

- 1) decides, on the basis of a request by the President of the Republic or at least one fifth of the membership of the Riigikogu, whether a law is in conformity with the Constitution;*
- 1) decides, on the basis of a request by the Legal Chancellor, whether legislation of general application of the legislative or executive powers or local governments is in*

*conformity with the Constitution or the law;*

- 1) *settles every person's complaints concerning the violation of fundamental rights, if there are no other remedies available or the existing remedies have been exhausted;*
- 1) *settles the complaints of local governments concerning the protection of their constitutional competence, if there are no other remedies available or the existing remedies have been exhausted;*

*The Constitutional Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.*

*The decisions of the Constitutional Court are final and shall be published, together with dissenting opinions, pursuant to the procedure for the publication of legislation.*

*The decisions of the court enter into force as of the date of their publication. Court may postpone the date of entering into force of a decision invalidating a law, but for no longer than one year."*

(2<sup>nd</sup> list)

The committee wishes to stress that first, the necessity of establishing the Constitutional Court should be decided on, and only after that the competence of the court can be specified. The necessity to establish the Constitutional Court, separate from the Supreme Court and specialising only in the constitutional disputes, arises from the fundamental rights action, created for the better protection of fundamental rights. The Constitutional Court secures the development of the Constitution, keeps the state authorities within the limits of authority provided for in the Constitution, and ensures the protection of fundamental rights, helping, *inter alia*, avoid the losses of the Estonian state in the European Court of Human rights.

## **9. § 151**

§ 151 is amended and worded as follows:

*"Members of the Constitutional Court shall be elected by the two-thirds majority of the Riigikogu and appointed to office by the President of the Republic.*

*An experienced and recognised lawyer may be elected as a member of the Court.*

*Members of the Court are elected for the term of twelve years. One quarter of the members shall be elected once every three years. No one may be re-elected to office.*

*The Chairman of the Court shall be elected by the Court from among its members and shall be appointed to office by the President of the Republic for a term of three years.*

*Rules regarding the Constitutional Court procedure shall be provided by the law."*

(2<sup>nd</sup> list)

Wide powers of the Constitutional Court require strong democratic legitimisation which is guaranteed by electing the members of the court by the Riigikogu. The two-thirds majority vote requirement and periodic rotation of the members of the court prevent the polarisation of the Court according to political parties. Upon appointing a member of the Court to office, The President of the Republic shall exercise constitutional supervision; for practical reasons the President cannot refuse to appoint a member to office. The fact that the members of the Court are appointed to office by the President emphasises their impartiality and independence. A fixed term of office and periodic change of membership avoid the "petrification" of the court and secure continued renewal of legitimisation. The prohibition of re-election strengthens the

independence of the members of the Court.

**10. § 152, paragraph 1**

Paragraph 1 of § 152 is amended and worded as follows:

*“If a court establishes, in a court proceeding, that an applicable law is in conflict with the Constitution, it shall suspend the proceedings and refer the matter to the Supreme Court for a decision. If the Supreme Court has declared a law invalid, the court shall not apply it.”*

(1<sup>st</sup> list)

To strengthen the authority of the Riigikogu as people’s representation and to secure legal certainty, the non-application of a law in a court proceeding is made dependent on the decision of the Supreme Court. The committee did not reach an agreement on whether the Constitutional Court should have the constitutional monopoly to decide whether legislation ranking lower than the Acts is in conformity with the Constitution and the law. Amendments to sections 142 and 150 also relate to this issue.

In case the Constitutional Court is established, the words *“the Supreme Court”* in paragraph 1 of § 152 should be substituted by the words *“the Constitutional Court”*, in the appropriate case forms.

**11. § 153**

§ 153 is amended and worded as follows:

*“Criminal proceedings may be initiated against a judge only on the proposal of the Supreme Court, and with the consent of the President of the Republic.*

*Criminal proceedings may be initiated against the Chairman and members of the Supreme Court only on the proposal of the Legal Chancellor, and with the consent of the majority of the membership of the Riigikogu.”*

(1<sup>st</sup> list)

In case the Constitutional Court is established, paragraph 2 of § 153 should be amended and worded as follows: *“Criminal proceedings may be initiated against the Chairman and members of the Supreme Court and members of the Constitutional Court only on the proposal of the Legal Chancellor, and with the consent of the majority of the membership of the Riigikogu.”*