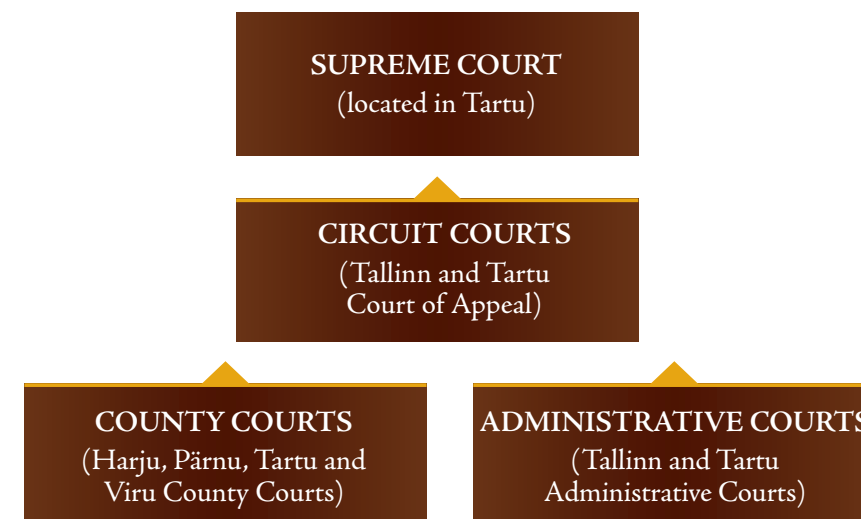


## Examples of analyses carried out

- ♦ Transfer of enterprise in the comparative case law of civil and administrative courts
- ♦ Prohibition on business in bankruptcy proceedings
- ♦ Procedural assistance in civil proceedings
- ♦ Over-criminalisation
- ♦ Analysis of criminal cases annulled by the Supreme Court and sent back to a lower court for a new hearing
- ♦ Service of procedural documents in civil proceedings
- ♦ Public law contracts
- ♦ Enforcement of constitutional review judgments (2004-2009)
- ♦ The meaning of reasonable time in civil proceedings
- ♦ Excessive court fees as impediments to access to justice
- ♦ Case law on approval of reorganisation plans in reorganisation proceedings
- ♦ Case law on payment orders
- ♦ Disciplinary disputes in public service
- ♦ Analysis of administrative cases annulled by the Supreme Court of Estonia or courts of appeal and sent back to a lower court for a new hearing
- ♦ Compensation for non-material damage arising from the cause of death of someone close
- ♦ Case law of the European Court of Human Rights in the decisions of the Supreme Court of Estonia

## Estonian court system

The structure of the Estonian court system is one of the simplest in Europe. The first instance comprises county courts and administrative courts; the second instance comprises courts of appeal; and the third instance is the Supreme Court. In addition to being the highest court of general jurisdiction and the highest administrative court, the Supreme Court is also a constitutional court.



There are 242 judges in Estonia: 152 in county courts, 28 in administrative courts, 43 in courts of appeal and 19 in the Supreme Court. There are about 17.7 judges per 100,000 inhabitants.

More materials about CLA are available in English  
on the website of the Estonian Supreme Court at  
[www.riigikohus.ee](http://www.riigikohus.ee)



## Analysis of case law as an innovative tool for measuring the uniform application of law

### The experience of the Supreme Court of Estonia

Every state based on the rule of law has to ensure legal certainty and the uniform application of law. But as the legal environment becomes more and more complicated, different courts could start interpreting the same provisions of law differently.

Various tools can be used to achieve the uniform application of law: judges can be trained regularly, decisions of higher courts can be discussed and so on. In addition, Estonia has introduced a special tool – case law analysis (hereinafter CLA) – that is an innovative and effective instrument in helping to improve the uniform application of law.



**Nature of case law analysis**

CLA is carried out in the Supreme Court by analysts who work in a separate department and are not involved in adjudication. The standpoints and findings expressed in the analysis are not binding upon judges.

CLA is a process of studying every aspect of court judgments and orders (and, where necessary, other court documents) in order to identify problems in the uniform application of law by the courts. In the course of such research, an analyst identifies the scope of problems that exist in the field of application of substantive and/or procedural provisions.

CLA does not mean counting numbers, although numerical statistics collected by the Ministry of Justice to illustrate certain findings may sometimes also be used. Nor does it represent research carried out by advisors working with judges in the framework of a specific case. CLA means studying cases and drawing essential conclusions on how courts apply certain provisions and how they interpret them.

The results of an analysis are presented in a document of 10-40 pages, including a summary of 1-2 pages. All key results must be published so that other legal professionals have the opportunity to obtain information about case law. Analyses help to identify topics on which judges need training, and they sometimes also lead to the initiation of legislative changes.

Case law today has also become an important source of law in civil law countries, however much we refuse to admit it, making CLA a useful tool for civil law countries as well. Estonia initially launched this project because we had to cope with a rapidly developing legal system and needed quick access to legal interpretation. The development of the European Union also results in a lot of urgent changes throughout legislation and case law. CLA allows judges to keep up with these changes – comparing and disseminating their opinions and experiences.

**How does the research carried out by analysts differ from the academic research carried out at universities?**

CLA takes a more practical approach, because its aims directly derive from the needs of the court system and legal practice. CLA research questions are more practical in nature and specific analysis can be carried out faster – usually within 2-4 months. We should emphasise that CLA can never replace academic research or vice versa. Legal scholars, first and foremost, uphold discussion with academic researchers from other countries; case law analysts, on the other hand, bear the interests and needs of the court system in mind. In conclusion, the difference between CLA and academic research is quite similar to the difference between teaching students and training practitioners: the underlying idea is the aspect of practicality.

**How are topics for analysis chosen?**

Research topics arise from legal reality. For example, a judge can call an analyst and describe a problem they have encountered. Several topics are raised at national or international law conferences and meetings. Also, the chambers of the Supreme Court often suggest special issues for study. Last but not least, analysts themselves often identify problems that need further investigation, since they study multiple court cases on a daily basis.

CLA is a tool that helps to fill the gaps that inevitably appear in the development of law when certain types of problems are ‘left unattended’ in the court of first instance – in such a situation neither the appeal courts nor the Supreme Court get the chance to further the case law. In most cases the law provides for the right to file an appeal, but in certain types of cases the parties for some reason

hardly ever exercise this right. For example, analysts studied cases where mentally ill people were placed in a closed institution by a court order. Prior to the analysis there was hardly any case law about this legal institute at the level of the Supreme Court. After the analysis identified shortcomings in both case law and legislation, some cases reached the Supreme Court, which then had the opportunity to explain several important aspects of proceedings of this type and the appropriate amendments to legislation were soon made.

**Valuable experience to share**

It was in 2006 that CLA as a permanent activity was introduced in the Supreme Court of Estonia. Since then our analysts have carried out over 70 analyses, produced relevant compendiums and a large number of articles in law and social science magazines.

Ensuring legal certainty and legal peace is the task of every democratic state, and every state is entitled to choose its own tools to do so. One of the methods Estonia has chosen is CLA. Feedback has proven that CLA is a necessary and useful measure for the uniform application of law.

We are also constantly improving our research methods and distribution forms. CLA has also become an important tool in training judges.