



XVI^e Congrès de la Conférence des Cours constitutionnelles européennes
XVIth Congress of the Conference of European Constitutional Courts
XVI. Kongress der Konferenz der Europäischen Verfassungsgerichte
XVI Конгресс Конференции европейских конституционных судов

**Rapport national / National report / Landesbericht /
национальный доклад**

RÉPUBLIQUE D'ESTONIE / REPUBLIC OF ESTONIA /
REPUBLIK ESTLAND / ЭСТОНСКАЯ РЕСПУБЛИКА

The Supreme Court of Estonia
Riigikohus

Anglais / English / Englisch / английский

XVIth Congress of the Conference of European Constitutional Courts in 2014

Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives

Report of the Supreme Court of Estonia¹

I. Constitutional courts between constitutional law and European law

1. Is the constitutional court obliged by law to consider European law in the performance of its tasks?

Under article 2 of the Constitution of the Republic of Estonia Amendment Act since Estonia acceded to the European Union, the Constitution of the Republic of Estonia is applied without prejudice to the rights and obligations arising from the Accession Treaty. Therefore, European law has to be applied. Under article 3 (1) sentence 2 of the Constitution generally recognised principles and rules of international law are an inseparable part of the Estonian legal system.

2. Are there any examples of references to international sources of law, such as

- a) the European Convention on Human Rights,**
- b) the Charter of Fundamental Rights of the European Union,**
- c) other instruments of international law at European level,**
- d) other instruments of international law at international level?**

The Supreme Court has referred to the European Convention on Human Rights, also to the practice of the European Court of Human Rights in several times. For example in the judgement of the Constitutional Review Chamber (case No 3-4-1-25-09) from 15 December 2009 (available in English at <http://www.nc.ee/?id=1139>).

The Court has also referred to the Charter of Fundamental Rights of the European Union, for example in the judgement of the case No 3-4-1-12-10 from 7 June 2011.

The Court has referred to directives and other European legal instruments, for example in the judgement of the case No 3-4-1-24-11 from 31 January 2012.

The court has referred to other international acts, too. For example in the judgement in case No 3-4-1-4-07 from 8 June 2007.

¹ For additional information please contact Ms Mari-Liis Lipstok, Legal Adviser to the Chief Justice of the Supreme Court of Estonia by mariliis.lipstok@riigikohus.ee

3. Are there any specific provisions of constitutional law imposing a legal obligation on the constitutional court to consider decisions by European courts of justice?

Yes. See answer to the question No 1.

4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European courts of justice?

The Court has referred in its judgements to the judgements of the European courts of justice. In other cases it is not possible to say whether there is any influence. It is not known that any judgement of the Constitutional Review Chamber of the Supreme Court of Estonia would be in contradiction with the jurisprudence of the European courts of justice.

5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?

Yes, the Supreme Court has referred to both, to the jurisprudence of the Court of Justice of the EU and to those of the European Court of Human Rights in several cases. See e.g. judgement of the Constitutional Review Chamber (case No 3-4-1-9-10) from 4. April 2011 (available in English <http://www.riigikohus.ee/?id=1298>). In points 44 and 55 of this judgement, numerous judgements of the European Court of Human Rights have been analysed to illustrate the European Convention of Human Rights' criteria in offering long term visits to persons under custody (like *Messina vs. Italy* No 2, 28.09.2000, No 25498/94; or *Dickson vs. Great Britain*, 4.12.2007, No 44362/04). See also the Supreme Court *en banc* judgement in case No 3-3-1-85-09 from 22. March 2011 (available <http://www.riigikohus.ee/?id=1257>) concerning compensation for non-proprietary damage, part II. In the Supreme Court *en banc* judgement in case No 3-2-1-62-10 from 12. April 2011 (available <http://www.riigikohus.ee/?id=1297>), point 57.3, the reference is made to the judgement of the the European Court of Justice from 22. December 2010 (No C-279/09) *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH vs. Bundesrepublik Deutschland*. This judgement is used as a source to help by analysing what an effective remedy in terms of Art. 47 of the Charter of Fundamental Rights of the European Union in the context of granting an exemption from making a prepayment of procedural expenses is.

6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?

There are no examples like this. On the contrary, the Supreme Court has provided bigger protection concerning f. Ex. the detention after the service of sentence. See judgement of the Supreme Court *en banc*, case No 3-4-1-16-10 from 21. June 2011 (available <http://www.riigikohus.ee/?id=1302>).

7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?

The national courts of lower instance of Estonia also consider the jurisprudence of European courts of justice. As this is an obligation set by the law, this happens independently and despite of the fact that the Supreme Court often refers to the case law of European courts (see answers to question No 1).

8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?

From Estonian perspective, only the legal situation in Estonia has been used as an illustrative example in judgements of European courts of justice (see e.g. *Anchugov and Gladkov vs. Russia* 04.07.2013, No 11157/04).

II. Interactions between constitutional courts

1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?

In the judgements of the Constitutional Review Chamber of the Supreme Court of Estonia, no references can be found to the case law of other constitutional courts. However, in drafting process, the judgements and the case law of other constitutional courts is widely considered (e.g. the case law of the *Bundesverfassungsgericht* of Germany or of the *Conseil Constitutionnel* of France).

2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?

The Supreme Court of Estonia is the only constitutional court in the Estonian language area. In fact, Estonia is the only state where Estonian language is used as an official language.

3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?

No comments, see answer to the question No 1 of this section.

4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?

As far as it is known, other constitutional courts have not yet referred to the judgements of the Estonian Supreme Court. Therefore it is very hard or even impossible to assess the influence of the case law of the Supreme Court of Estonia as a constitutional court on the jurisprudence of foreign constitutional courts.

5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?

Estonian Supreme Court's foreign contacts lay mainly within the various networks and international organisations, where the Supreme Court of Estonia acts as a member. As the court fulfils the functions of the court of highest civil, criminal and administrative jurisdiction and also constitutes a court of constitutional review, the Court is a member of several European Union level organisations uniting the judges and high courts, such as the Conference of the European Constitutional Courts²; the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU³ and the Network of the Presidents of the Supreme Judicial Courts of the EU⁴. The legal advisers of the Constitutional Review Chamber participate in the work of the Joint Council on Constitutional Justice of the Venice Commission of the Council of Europe⁵.

² <http://www.lrkt.lt/conference.html>, <http://www.confcoconsteu.org/>

³ <http://www.juradmin.eu/>

⁴ <http://www.network-presidents.eu/>

⁵ http://www.venice.coe.int/site/main/presentation_E.asp

III. Interactions between European courts in the jurisprudence of constitutional courts

1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?

The Supreme Court of Estonia has not yet solved a case where referring to this particular judgement of the European Court of Justice would have been relevant.

2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?

It is not possible to evaluate the influence of the judgements of the Supreme Court of Estonia in such a way.

3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?

There has been no case yet where described differences would have affected the adjudication of the case in the Supreme Court.