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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**Draft Proposal by the Supreme Court of Estonia**

**Constitutional Review Court Procedure Act**

**Draft Proposal by the Supreme Court of Estonia**  
**Constitutional Review Court Procedure Act**

**Chapter I**  
**General Provisions**

**§ 1. Purpose of the Act**

This Act shall establish the competence of the constitutional review court, and the procedure of constitutional review.

**§ 2. Constitutional Review Court**

- (1) The Supreme Court shall be the court for constitutional review.
- (2) The Constitutional Review Chamber shall be formed within the Supreme Court. The procedure for the formation of the Chamber and the number of its members shall be established by the Courts Act.
- (3) In cases stipulated by this Act, constitutional review cases shall be reviewed by the Supreme Court *en banc*.
- (4) The Constitutional Review Chamber of the Supreme Court or the Supreme Court *en banc* shall declare null and void any law or legislation, in whole or in part, if it is in conflict with the provisions and spirit of the Constitution.
- (5) If the cases when the procedures of reviewing and deciding cases are not stipulated by this Act, the Constitutional Review Chamber and the Supreme Court *en banc* shall observe the procedure prescribed by the Supreme Court Regulations.

**§ 3. Jurisdiction of the Supreme Court in constitutional review**

- (6) The Supreme Court shall exercise preventive and *ex posteriori* review, and shall apply special procedure to resolve issues stipulated by this Act.
- (7) By way of preventive control the Supreme Court shall review
  - 1) the constitutionality of international treaties which have not come into force;
  - 2) the constitutionality of laws which have not been promulgated.
- (1) By way of *ex posteriori* control the Supreme Court shall review
  - 1) the constitutionality of laws or other legislative acts which have come into force;
  - 2) the constitutionality of laws which have been promulgated but have not come into force, and the constitutionality of other legislative acts which have been published or made public but have not come into force;
  - 3) the constitutionality of legislative procedures in the cases and under the

circumstances stipulated by law.

- (4) By way of special procedure the Supreme Court shall
- 4) decide, pursuant to Article 83 (1) of the Constitution, whether the President of the Republic is incapable of performing his or her duties for an extended period;
  - 5) decide, pursuant to Article 64 (2) (4) of the Constitution, whether a member of the *Riigikogu* (the Parliament) is incapable of performing his or her duties for an extended period;
  - 6) decide, pursuant to Article 16 (1) (3) of the State Audit Office Act, on the termination of authority of Auditor General due to his or her state of health if it hinders performance of his or her official duties for more than six consecutive months;
  - 7) decide, pursuant to Article 83 (3), whether to give consent to the Chairman of the *Riigikogu*, acting as President of the Republic, to declare extraordinary elections to the *Riigikogu* or to refuse to proclaim laws;
  - 8) review the constitutionality and legality of referenda, the elections of President of the Republic and the *Riigikogu*.
- (1) The Supreme Court shall not exercise constitutional review to resolve legal disputes which, pursuant to law, belong within the competence of other courts.

#### **§ 4. The competence of the Supreme Court in exercising constitutional review**

- (1) Proceeding from the provisions and spirit of the Constitution the Supreme Court is entitled to
- 1) declare unconstitutional a foreign treaty or a part of it;
  - 2) declare unconstitutional a law which has not been promulgated;
  - 3) declare unconstitutional a law which has been promulgated but has not come into force, and any other legislative act which has been published or made public but has not come into force;
  - 4) declare invalid a law or other legislative act or their parts, which have come into force;
  - 5) declare void a legislative procedure which violates constitutional rights and freedoms.
- (1) In the cases of special procedure the Supreme Court is entitled to
- 1) declare the President of the Republic incapable of performing his or her duties for an extended period;
  - 2) declare a member of the *Riigikogu* incapable of performing his or her duties for an extended period, and a premature termination of his or her authority;
  - 3) declare termination of authority of Auditor General due to his or her state of health;
  - 4) give its consent to the Chairman of the *Riigikogu*, acting as President of the Republic, to declare extraordinary elections to the *Riigikogu* or to refuse to proclaim laws;
  - 5) declare legal organisation of referenda, the elections of President of the Republic and the *Riigikogu*, in whole or in part, unconstitutional or invalid.
- (1) The Supreme Court may leave an act in force, but give a legally binding interpretation of the Constitution for the application of the act.
- (1) Disputes on whether a case is within the competence of the constitutional review court shall be resolved by the court with its decision.

### **§ 5. The extent of petitions**

- (2)The Supreme Court shall review petitions for constitutional review and fulfil other obligations to the extent requested in the petition or prescribed by the obligation.
- (3)The Supreme Court is entitled, presenting the motives, to exceed the extent requested in the petition, if it is necessary for the protection of fundamental rights and freedoms, legal order and public interests.
- (4)The motives presented in a petition are not binding on the Supreme Court.
- (5)If other violations which have not been pointed out in the petition, become evident during the review of a case, the Supreme Court is entitled to issue an order for the elimination of the violations. The order shall indicate to whom its is addressed, the unlawful circumstances, and fix a term to react to the order.

### **§ 6. Prior opinions**

- (6)The Supreme Court shall not render a prior opinion on the constitutionality and legality of legislative acts and procedures stipulated in § 3 of this Act.
- (7)The restriction established by paragraph 1 of this Article shall not extend to draft constitutions and to bills to amend the Constitution.

### **§ 7. Subjects entitled to petition for the review**

A direct petition to the Supreme Court may be submitted by:

- 1) the President of the Republic, in cases stipulated in Article 107 of the Constitution;
- 2) the Legal Chancellor, in cases stipulated in Article 142 of the Constitution, for the review of constitutionality of foreign treaties and in cases stipulated in sub-paragraphs 1,2,3 and 5 of paragraph 4 of Article 3 of this Act;
- 3) the majority of a local government, for the review of constitutionality of laws regulating the activities of local government, and other legislative acts, and for resolution of competence disputes between the central and local governments;
- 4) a court, if it has come to the conclusion, when deciding a case, that an applicable law or other legislative act is in conflict with the Constitution;
- 5) individuals, for the review of constitutionality of legislative acts and procedures, pertaining to the protection of rights and freedoms provided for in Articles 12, 13, 16, 18, 20, 21, 26, 52 of the Constitution, if other remedies have been exhausted;
- 6) the Board of the *Riigikogu*, in cases stipulated in sub-paragraphs 1,2,3 and 5 of paragraph 4 of Article 3 of this Act;
- 7) Chairman of the *Riigikogu*, acting as President of the Republic, in cases stipulated in sub-paragraph 4 of paragraph 4 of Article 3 of this Act;
- 8) at least 21 members of the *Riigikogu* minority, for the review of constitutionality of passed laws which have not been promulgated.

### **§ 8. Suspension of proceedings in the first and second instance courts and in the Administrative Law, Criminal and Civil Chambers and the special *ad hoc* panel of the Supreme Court**

- (1)If a court of the first or the second instance, or the Administrative Law, Criminal or Civil Chamber or the special *ad hoc* panel of the Supreme Court, when deciding a case, has

come to the conclusion that an applicable law or other legislative act is in conflict with the Constitution, it shall declare the act unconstitutional and shall not apply it.

- (2) A court shall declare a law or other legislative act unconstitutional with its decision, which must meet the requirements set for petitions in Article 13 of this Act, except the requirement stipulated in sub-paragraph 2 of paragraph 2 of Article 13. The court shall send copies of the decision to the Supreme Court and to the Legal Chancellor. Unless otherwise provided by law, the decision shall be considered a petition to the Supreme Court for constitutional review.
- (3) A court shall suspend the proceedings of the case with the decision in which it declared the law or other legislation unconstitutional, until the Supreme Court judgement pertaining to the case comes into force.

## CHAPTER II

### General Principles of Procedure

#### § 9. Public hearing

- (4) The Constitutional Review cases are, as a rule, heard in public.
- (5) The court may declare a session or part of it closed, if it is necessary for the protection of state or business secret, morals, or family and private life, or if the interests of juvenile, victim or justice so require.
- (6) If the circumstances permit, and with the prior written consent of the parties, the court may conduct written proceedings.
- (7) The court may, with a prior warning, remove from the court room persons who disturb order and thereby obstruct the hearing of the case.
- (8) Persons present in the courtroom may make tape recordings and take written notes without disturbing the session.
- (9) Court permission shall be required to film, photograph, videotape, transmit radio and television broadcasts.
- (10) The secretary to the Chamber or to the Supreme Court sitting *en banc* and the counsellor to the Chamber, may be present when the decision is being made, but shall be prohibited from disclosing views and opinions expressed in the course of deliberations and voting.

#### § 10. Direct, oral and uninterrupted hearings

- (11) Petitions shall be examined directly at a public hearing. The court shall give a fair hearing to the explanations and opinions of the parties, to the opinion of a specialist or an expert, and shall examine the documents and explanations by a specialist submitted upon additional request prior to the session.
- (12) If the parties do not have a prior agreement to have written proceedings, the case shall be heard, as a rule, at an oral hearing by the same composition of the court. If a justice who had been included in the composition of the court, is forced to stay away for valid reasons, the hearing of the case may be continued if at least three justices of the initial composition remain in the composition of the court.
- (13) As a rule, a public hearing is uninterrupted. Breaks shall be made for rest or for other

valid reasons. The decision to interrupt a hearing shall be made by the court.

### **§ 11. Language of proceedings**

- (14) Proceedings shall be held in the official language of the state.
- (15) Documents composed in other languages shall be treated in the form of translations into the official language of the state.
- (16) Parties to a case who do not have a command of the official language of the state may appear before the court through an interpreter in their mother tongue or in another language which they command.
- (17) An unsworn interpreter shall swear an interpreter's oath before the court preparatory to interpreting.

### **§ 12. Time-limits for submitting petitions**

- (18) The petitions may be submitted as follows:
  - 1) for the review of constitutionality of a foreign treaty – as of one day after the date of signature;
  - 2) for the review of constitutionality of a law which has not been promulgated – as of the date of adoption;
  - 3) for the review of constitutionality of a law or other legislative act which has come into force – as of the date of coming into force.
  - 4) for the review of constitutionality of a law which has been promulgated but has not come into force, and other legislative act which has been published or announced but has not come into force – as of the date the law was promulgated or other legislative act was published or announced;
- (1)A petition for the review of constitutionality of a legislative procedure allegedly violating constitutional rights and freedoms, may be submitted as of the date of the procedure was performed, but no later than one month after the violation of rights and freedoms ceased.
- (1)A petition for the review of constitutionality of lawful organisation of elections shall be submitted without delay, but no later than 10 days before the results of the elections come into force.

### **§ 13. Content and form of petitions**

- (2)A petition shall be typewritten.
- (3)To determine the constitutionality of a law, other legislative act or foreign treaty and procedure, contested in the petition, the latter shall state:
  - 1) to whom the petition is addressed;
  - 2) name, post, and mailing address of the petitioner;
  - 3) exact title of the law, other legislative act or foreign treaty and the concrete provisions the constitutionality of which is disputed;
  - 4) the date and place of the adoption, signature or conclusion of the legislative act, or the time and place of the performance of the procedure;
  - 5) specific provisions of the Constitution, with which the disputed law, other legislative act, foreign treaty or procedure is not in conformity;
  - 6) legal motivation of the petition.

- (1) The text of the disputed law, other legislative act or foreign treaty, documents stating the performance of a procedure and other documents on which the petition is based, shall be included with the motivated petition. The petition shall be signed by an official stipulated in § 7 of this Act, *ex officio* head of the institution, at least 21 members of the *Riigikogu* minority, a judge, a Chairman of the court session, an individual or his or her authorised representative.
- (1) Eight copies of the petition and supplementary documents shall be included with the originals.

#### **§ 14. Collectiveness**

- (2) The petitions for constitutional review shall be resolved collectively.
- (3) To hear cases, the Constitutional Review Chamber shall be composed of at least three, the Supreme Court *en banc* of at least eleven justices. At least three members of the Constitutional Review Chamber shall be present at the hearing of a case by the Supreme Court *en banc*.
- (4) A case may be referred to the Supreme Court *en banc*, if the resolution of a case requires consideration of wider range of judicial opinions, or if during the examination of the case in the Chamber at least two justices so require.
- (5) The Constitutional Review Chamber shall refer a case to the Supreme Court *en banc* by its decision.

#### **§ 15. Objective resolution of cases**

- (6) The constitutional review court is independent in its activities. It is prohibited to influence the court, directly or indirectly, in the process of resolving cases.
- (7) A justice is not allowed to participate in the hearing of a case and has to withdraw from the case if he or she has direct or indirect personal interest in the outcome of the case or if other circumstances give rise to suspicion of bias.
- (8) A justice who has participated in assessing and deciding on the constitutionality of a case in civil, criminal administrative law or administrative law infringement proceedings, may not participate in the Constitutional Review Chamber in the resolution of the review petition arising on the basis of the same case.
- (9) The fact that a justice has participated in the hearing of a case in a cassation court, does not prevent him or her from participating in the Supreme Court *en banc* in the hearing of the constitutional review petition that originated from the case.
- (10) The withdrawals shall be decided by vote by the justices who review the case. The justice whose withdrawal is being decided does not participate in the vote.

#### **§ 16. Time limits (for deciding cases)**

- (11) The Supreme Court shall resolve a petition and announce a judgement within 3 months from the date of the decision to review the petition. The term may be extended by the Supreme Court *en banc*, by a motivated decision, but for no more than two months.
- (12) In cases stipulated in paragraph 4 of Article 4 of this Act, the court shall resolve the case and announce its judgement urgently, but no later than within a month from the date the petition was duly filed with the Supreme Court. This term can not be suspended.
- (13) The judgement on the constitutionality of legal organisation of elections shall be made

within three working days.

### **§ 17. Court decision**

The Constitutional Review Chamber or the Supreme Court *en banc* has the right to pass decisions:

- 1) to arrange the preparation and hearing of cases;
- 2) to resolve procedural matters emerging during the proceedings;
- 3) to draw attention to violations of law which become evident during the proceedings, to legal circumstances pertaining to the enforcement of court decisions, to deficient legal circumstances, their possible consequences, and to the need to amend the legal circumstances;
- 4) to give interpretations to constitutional review decisions;
- 5) to close a case when the grounds for the petition cease to exist;
- 6) to impose fines;
- 7) pertaining to other important procedural issues.

### **§ 18. Counsellors to the court**

Each member of the Constitutional Review Chamber shall have a counsellor to help him or her with the preparation and hearing of cases.

## **Chapter III**

### **Pre-trial proceedings**

### **§ 19. Preliminary hearing**

(1) A case is prepared for hearing during the preliminary hearings of the Constitutional Review Chamber, chaired by the Chairman of the Chamber or by a member of the chamber appointed by the Chairman. At a preliminary hearing the Constitutional Review Chamber shall:

- 1) check whether the petition was submitted by a legally justified subject;
- 2) check whether the content and form of the petition meet the requirements set forth in Article 13 of this Act;
- 3) decide whether the petition comes under the jurisdiction of the Constitutional Review Chamber;
- 4) decide whether any additional documents, explanations and opinions are required for the resolution of the case and determine how these are to be obtained;
- 5) decide whether it is necessary, for the resolution of the case, to involve specialists and experts or to consult international organisations or bodies;
- 6) decide whether the case shall be heard orally and in public or by way of written procedure;
- 7) determine the time and place of the main hearing;
- 8) appoint one member of the Chamber to prepare the case for hearing by the Chamber and to be responsible for drafting the decision;



- 9) determine the composition of the court for the hearing and, if necessary, the issues of withdrawal;
- 10) determine who shall be invited to the hearing.
- (1) The first preliminary hearing shall be held within ten days from the date the documents are filed with the Supreme Court.
- (1) Counsellors to the members of the Chamber shall take turns in making preparations for preliminary hearings.

#### **§ 20. Giving notice of hearings**

- (2) The secretary to the Chamber shall send at least one month's written notice to the parties, experts, the Legal Chancellor and the Minister of Justice of the time and place of the main hearing.
- (3) The summons to the invited persons shall state whether the appearance before the court is compulsory and consequences for failure to appear.
- (4) The court has the right to examine a petition if the parties fail to appear.
- (5) Those who have been invited to appear before the court have the obligation to inform the court of their failure to appear.

#### **§ 21. Suspension of an act or a procedure**

The Supreme Court is entitled, on proposal by the parties or on its own initiative, in the interests of the protection of constitutional rights and freedoms or the constitutional order, to suspend the effect of a procedure or an act with a motivated decision made at a preliminary hearing, until the constitutional review judgement comes into force.

#### **§ 22. The rights of the Supreme Court in eliminating the deficiencies of content and form of the petitions**

- (6) The Supreme Court shall have the right to demand, that:
  - 1) the petitioner eliminate deficiencies of the petition, arising from non-observance of the requirements for the content and form of the petitions stipulated in Article 13 of this Act;
  - 2) the petitioner submit additional documents and explanations;
  - 3) the body that adopted the disputed law or other legislation submit a written opinion on the dispute, as well as additional documents and explanations;by a fixed date.
- (1) The deficiencies arising from non-observance of the requirements set for the content and form of petitions shall be eliminated, additional documents shall be submitted, and explanations and opinions shall be given by the date fixed by the Supreme Court.
- (1) The time needed to eliminate the deficiencies of content and form of the petition, which hinder the review of the petition, and the time needed to collect additional data and documents, shall not be included in the time-limit for the review of the case.
- (2) The Supreme Court shall proceed with the case after the deficiencies arising from the non-observance of the requirements set for the petitions' content and form have been eliminated.

#### **§ 23. Rejection of petition**

The Supreme Court shall refuse to accept and review a petition, if it:

- 1) is not within the jurisdiction of a constitutional review court;
- 2) was submitted by a person not stipulated in Article 7 of this Act;
- 3) does not meet the requirements set forth in Article 13 of this Act;
- 4) is manifestly ill-founded and an abuse of the right of petition;
- 5) is substantially the same as an earlier petition.

## **Chapter IV**

### **Main proceedings**

#### **§ 24. Parties to case**

(1) Parties to the review of a petition in the Supreme Court are:

- 1) the individual or the official who submitted the petition or their representatives;
- 2) an authorised representative of the body that adopted the disputed law or legislative act;
- 3) the official who performed the disputed procedure or his or her authorised representative.

(1) The parties or their authorised representatives shall be informed of the time and place of the hearing.

(1) The Supreme Court may suspend a hearing if the party to the case, whose appearance before the court had been declared compulsory by the Supreme Court, fails to appear.

#### **§ 25. Participants**

(2) The Minister of Justice and the Legal Chancellor or their *ex officio* representatives, if they are not parties to the case, may participate in the hearing of constitutional review cases with the right to be heard.

(3) The chairman or a judge of the court that submitted the petition, may participate without the right to be heard.

#### **§ 26. Procedure of hearing**

(4) The sessions of the Constitutional Review Chamber shall be presided over by the Chief Justice of the Supreme Court, or, in his or her absence, by the senior justice of the Chamber.

(5) In the introductory part of a hearing, the chairman shall announce the agenda and the petition to be reviewed, shall introduce the composition of the court, check the presence and letters of attorney of the summoned persons, shall explain and resolve withdrawal issues, and, if necessary, shall explain the rights and obligations of the parties and shall *preside over the hearing of the case*.

(6) Substantial review of the case at the session of the Chamber or the Supreme Court *en banc* shall commence with the introductory report by a member of the Chamber. Then the floor shall be given to the petitioner or his or her representative; to the representative of

the body or the official or the representative of the official that adopted the disputed law or other legislative act, or to the official who performed the disputed procedure or his or her representative; to the Legal Chancellor and the Minister of Justice or their representatives.

- (7) The petitioner or his or her representative may specify the petition with the aim of limiting its scope.
- (8) The specialist or expert, who has been summoned, shall present an oral summary of his or her written opinion.
- (9) The members of the Chamber or the Supreme Court *en banc* may question the reporting judge, the parties to the case, the participants, specialists and experts during the examination of the case. The parties to the case may question each other through the court.
- (10) The parties to the case may present their final comments at the end of the session.

### **§ 27. Review of cases by way of written procedure**

- (11) A case may be reviewed by way of written procedure, if the parties have expressed their prior written consent to that effect.
- (12) Written procedure does not include an oral public hearing.
- (13) The use of written procedure shall be decided on by the Chamber at its preliminary hearing.

### **§ 28. Special procedure**

Cases stipulated in paragraph 4 of Article 3 of this Act shall be reviewed by way of special procedure.

### **§ 29. Records of sessions**

- (14) The course of the session and opinions expressed shall be recorded pursuant to the procedure established in the Supreme Court Regulations.
- (15) The parties may present their written opinions for the record before the end of the session.
- (16) The parties to the case have the right of access to these (written opinions) before the end of the session.

### **§ 30. Passing and announcing judgements**

- (17) Judgements shall be motivated and follow the rule of confidentiality of deliberations, and be made by simple majority vote.
- (18) The justices shall resolve all disagreements in deciding a case by simple majority vote. No justice shall have the right to refuse to vote or to abstain. In case of a tie vote, the vote of the Chairman, who shall vote last, shall be decisive.
- (19) A judgement shall be given in a written form, and signed by the Chief Justice of the Supreme Court or, in his or her absence, by the senior justice of the Chamber or the Supreme Court *en banc*, who participated in the resolution of the case.
- (20) Dissenting opinion of a justice or justices, which must be presented by the time the judgement is announced, shall be included with the judgement.

- (21) Parties to the case shall be notified of the date when the judgement will be announced after the hearing of the case is concluded.
- (22) A judgement shall be announced or made accessible to the public no later than one month after the hearing is concluded.
- (23) A copy of the judgement shall urgently be sent to the parties to the case without delay.
- (24) A copy of the judgement shall urgently be sent to *the Riigi Teataja* (Official Gazette) for publication.

### **§ 31. Obligatory force of court judgements**

- (25) Judgements of the Supreme Court shall be binding on all state authorities, local governments, courts, officials and legal and natural persons of the Republic of Estonia.
- (26) The opinions expressed in constitutional review, and constitutional review judgements may be changed by the Supreme Court itself in its subsequent judgements.

### **§ 32. Effective date of court decisions and judgements**

- (27) A court judgement or decision shall take effect as of the date when it is made or as of the date fixed in it.
- (28) The court may, upon presenting the reasons, suspend the effective date of its judgement or decision until the date fixed in its judgement or decision, in the interests of constitutionality and general legal certainty.
- (29) Court judgements shall be final and shall not be subject for further appeal.

## **Chapter VI**

### **Final proceedings Trial expenses and fines**

#### **§ 33. Publication of judgements**

- (30) Judgements of the Supreme Court shall be published in the *Riigi Teataja*.
- (31) If the court deems it necessary, it may also present decisions for publications.
- (32) If the court deems necessary, it may present its judgement or decision for publication in the press.

#### **§ 34. Correction of errors**

- (33) After a judgement or decision is made, the court shall have the right, on its own initiative or at the initiative of the parties to the case or the participants of the case, to correct spelling errors, inadequate phrasing or manifest formal inaccuracies of the judgement or decision.
- (34) The erroneous copies which have been issued shall be recalled and corrected or substituted by the Supreme Court.

#### **§ 35. Enforcement of court judgements and decisions**

- (35) The Supreme Court shall exercise supervision over the enforcement of its judgements and decisions.
- (36) In case the judgements or decisions are not observed, the Supreme Court shall have the right to call the pertinent institution's attention to the fact or impose a fine.

**§ 36. Trial expenses**

- (37) Expenses related to the review of a case shall be defrayed from the state budget.
- (38) Resolution of cases of violation of constitutional rights and freedoms shall not be restricted by limited financial means.

**§ 37. Fines**

- (39) For the failure to appear before the court without good reason, if the appearance was compulsory; for the obstruction or disruption of the work of court, and for the display of contempt of court, the Supreme Court may amerce the offenders in the sum of up to 200 days' salary.
- (40) For the failure to enforce a court decision or judgement, or for resultant activity that prejudices constitutional rights and freedoms, the court may amerce the persons stipulated in Articles ..... of this Act in the sum of up to 1000 days' salary.