



**SEMINAR ORGANISED BY THE SUPREME COURT OF SPAIN IN COOPERATION WITH ACA-
EUROPE**

Madrid, 21 November 2022

Questionnaire

Application of general principles and clauses in the case law of contentious-administrative courts

ANSWERS BY THE SUPREME COURT OF ESTONIA

I. – GENERAL PRINCIPLES OF LAW IN THE SYSTEM OF SOURCES

1^o) What place and function do general principles of law have in the system of sources of your country's legal system?

- x They are applied where there are gaps in the law
- o They may be applied directly, even to the extent of displacing the initially applicable written law and prevailing over it.

Explain your answer briefly: According to the Constitution of the Republic of Estonia¹, generally recognised principles and rules of international law are an inseparable part of the Estonian legal system (§ 3 2nd sentence). The Constitution itself, as well as several laws, also incorporate a number of general principles of law into our legal order. Most often, general principles of law are used in the interpretation of concrete norms, and the interpretation that is most consistent with these principles is preferred. Gaps in law may also be filled using principles. Usually, general principles of law cannot displace written law. The exception is when a provision is found incompatible with the Constitution – in that case, any court must declare that provision (or whole law) unconstitutional and, in the case of 1st or 2nd instance courts, refer the case to the Constitutional Review Chamber of the Supreme Court for constitutionality review proceedings; if a chamber of the Supreme Court doubts a provision's constitutionality, it refers the case to the Supreme Court *en banc* for the same purpose (§ 16 3rd sentence of the Constitution; §§ 9 and 14 of the Constitutional Review Court Procedure Act²). This may include general principles of law enshrined in the Constitution – such as, for example, proportionality (§ 11), equality before law and non-discrimination (§ 12) or rule of law (§ 14).

¹ Available in English: <https://www.riigiteataja.ee/en/eli/530122020003/consolide>

² Available in English: <https://www.riigiteataja.ee/en/eli/512122019006/consolide>



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2º) Can it be said that the most relevant general principles of law in your culture and legal tradition have been positivised, i.e. enshrined with legal status in your country's judicial system?

- Yes
- Yes, the most relevant ones (please indicate briefly the most notable of these)
- No

3º) In the judicial practice of Public Law, are general principles of law frequently invoked and applied as a basis for decisions?

- They are frequently invoked and applied, and are also relevant and decisive in the settlement of disputes.
- They are frequently invoked and applied, although generally in a complementary manner, to reinforce challenging arguments based primarily on the interpretation and application of written rules.
- They are not frequently invoked and applied as a basis for decisions.

Explain your answer briefly: Probably the principle most often relied upon is the principle of proportionality, as this must be considered in any case where the administration's discretionary activities are disputed. But there are also other frequent examples, such as legitimate expectations, equal treatment etc.

4º) If you have answered yes to the previous question, can it be said that the invocation and application of general principles of law is done in a general and transverse way, in all areas or matters of Public Law?

- Yes
- Especially or particularly in certain matters, or in certain sector-specific areas (in this case, explain your answer briefly)

5º) In your country's legal system, are there general principles specific to Administrative Law, independent of other general principles of law?

- There are no general principles specific to Administrative Law
- There are principles specific to Administrative Law that may be applied in conjunction with other general principles
- There are principles specific to Administrative Law that exclude and displace the application of the other general principles





Explain your answer briefly: As the most obvious example, the Administrative Procedure Act³ lists several principles of administrative procedure (the whole subchapter 2 of chapter 1 is dedicated to them), such as the protection of rights, the administration's discretion and its limits, the principle of investigation, accessibility and data protection etc.

II. – COMMON INCORPORATION OF GENERAL PRINCIPLES OF LAW: EUROPEAN UNION AND HORIZONTAL DIALOGUE

6^o) Has your country's administrative legal system patently incorporated the general principles of European Union law?

- Yes, in general
- No special or specific incorporation has been necessary, because in general these principles were already recognised and enshrined in the country's legislation and practice.

Explain your answer briefly (this question mainly concerns the work of the legislator, i.e. the “legislative system”). Most of the principles of EU law were either already recognised previously (such as legitimate expectation, proportionality, non-discrimination etc) or are applied directly on the basis of EU law (such as loyal cooperation, *effet utile* etc). Of course, in some areas of law where EU directives contain sector-specific principles (such as public procurement or environmental law), these must have been incorporated into the legislation transposing these directives

7^o) Is it common in your country's judicial practice for the specific general principles of European Union law to be invoked and taken into account in areas where there is no regulatory harmonisation?

- Yes, for certain matters
- No, not generally

Explain your answer briefly (this question mainly concerns the work of the judiciary, i.e. “judicial practice”). Usually, general principles of EU law are only invoked in areas where EU law is applied (or at least should be applied). In matters of purely national law, the judicial practice relies on general principles of national law (or, when relevant, international law).

³ Available in English: <https://www.riigiteataja.ee/en/eli/527032019002/consolide>





8^o) When applying the general principles set out in European Union law, and when it is found that the general European principle applicable to the dispute in question conflicts in some way with national law, has the dispute been resolved through a solution involving the displacement and non-application of the national rule in order to give way to the general European principle?

- Yes
- This solution has been chosen in some cases, while in others different solutions or answers have been used (in this case, explain your answer briefly)

9^o) Is it common in judicial practice for the principle of legitimate expectation to be invoked and taken into account?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- No

Explain your answer briefly. The principle of legitimate expectation is a general principle of Estonian law as well as EU law. It is enshrined in the Constitution and thus relevant to all branches of law.

10^o) Can taking the principle of legitimate expectation into account even result in the annulment of administrative decisions that are contrary to or violate those principles?

- Yes
- No, these principles are applied only in order to provide for compensation or reparation when they are violated in some way by the decisions of the Administration.

Explain your answer briefly. In case of administrative decisions, courts do not usually have to rely on the principle of legitimate expectation as a general principle of law (although the general principle is taken into account in interpretation). There are detailed rules on the amendment and repeal of administrative acts in the Administrative Procedure Act (§§ 64–70). The violation of these norms generally results in the annulment of the relevant act. Even if the aforementioned provisions are not relevant, violation of general principles of law (either national or EU law) may also result in the annulment of an administrative act.

11^o) Has the “principle of good administration” referred to in Article 41 of the Charter of Fundamental Rights of the European Union been adopted and applied in your country’s judicial practice?



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- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- Not commonly applied

Explain your answer briefly. While the principle of good administration is not encoded in any written law, it was applied in judicial practice already before Estonia's accession to the EU (2004). The first time was, to my knowledge, in a judgment of the Supreme Court in 2002⁴. In later jurisprudence⁵, the principle has been connected to § 5 (2) of the Administrative Procedure Act, which provides that administrative procedure shall be purposeful, efficient and straightforward and conducted without undue delay, avoiding superfluous costs and inconveniences to persons.

12^o) Can taking the principle of good administration into account even result in the annulment of administrative decisions that are contrary to or violate that principle?

- Yes, in some specific cases.
- This would never be possible because, among other reasons, this principle applies solely as a guideline for conduct within the Administration and cannot be invoked by the citizen.
- No

Explain your answer briefly. While the principle has usually been relied upon in jurisprudence as an additional argument to support the interpretation of more specific provisions, it cannot be excluded that violation of this principle (especially in situations where the administrative authority enjoys a wide margin of discretion, as procedure is especially important in those cases) may lead to the annulment of an administrative act.

13^o) Is it common in judicial practice for the principle of necessity and proportionality of administrative measures that limit or restrict access to or the exercise of an economic activity to be invoked and taken into account?

- Yes, this is a positivised principle whose non-observance results in the nullity of the measure or provision of a general nature.
- Yes, in certain matters and to different extents

⁴ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia in case No 3-3-1-17-02, 27.03.2002 (available in Estonian: <https://rikos.rik.ee/?asjaNr=3-3-1-17-02>), p 18.

⁵ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia in case No 3-3-1-94-08, 09.03.2009 (available in Estonian: <https://rikos.rik.ee/?asjaNr=3-3-1-94-08>), p 19.





- No

Explain your answer briefly. As said before, the principle of proportionality is enshrined in our Constitution as well as the Administrative Procedure Act. The principle is applied rather often in administrative jurisprudence, when checking the legality of administrative measures (although its non-observance does not result in the nullity of the measure, but rather its annulment – nullity is very rare in our administrative law and may only occur in obvious cases). As for provisions of a general nature, there have also been quite many constitutional review cases where a restriction of the right to engage in enterprise has led to the unconstitutionality of a provision.

14^o) With regard to any of the above principles (legitimate expectation, necessity, proportionality or good administration) or other principles, has your country's Supreme Court taken into consideration the interpretation and manner of application of these principles by other European national high jurisdictions?

- Yes, on some occasions (in this case, explain your answer briefly)
- Never

While I am not aware of any case where the Administrative Law Chamber of the Supreme Court of Estonia has explicitly made references to the jurisprudence of other European national high jurisdictions, in difficult and novel cases we definitely research other countries' case law and may be inspired by that.

III. – GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS

15^o) According to Article 6, paragraph 3 of the Treaty on European Union, fundamental rights that result from the constitutional traditions common to the Member States shall constitute general principles of the Union's law. Has your country's Supreme Court identified any of these common constitutional traditions?

- Yes, especially on the basis of the case law of the Court of Justice or the European Court of Human Rights
- Yes, especially on the basis of the case law of the Supreme Courts of other Member States.
- No such identification has taken place.

Nonetheless, the Supreme Court has stressed in its jurisprudence that general principles of law recognised in the European legal tradition are valid in Estonia according to the Constitution. For example, the Supreme Court has reasoned based on such analysis





(while referring also to the Charter) that the fundamental right to good administration is contained in § 14 of the Constitution.⁶

16^o) What status and importance does the principle of non-discrimination and gender equality have in your country's judicial practice?

- It is a principle commonly and generally taken into consideration, across all areas
- It is a principle that is taken into consideration and applied in certain legal relations and sector-specific areas

Explain your answer briefly. According to § 12 of the Constitution, the right to equal treatment is a fundamental right. Thus, it is applicable in public-law relationships. On the other hand, non-discrimination in private relationships is regulated by the Equal Treatment Act.⁷ Even the Penal Code⁸ contains penalties for certain offences against equality (§§ 151-153¹).

17^o) In the judicial practice of your country, is the principle of protection of particularly vulnerable groups (e.g. minors, women, people with disabilities) invoked and applied?

- Yes, in a general, open and transversal manner
- Yes, for certain groups that are predetermined and identified in the different sector-specific rules (give a significant example)
- No

Explain your answer briefly. Such a principle has not been codified nor expressly recognised by courts. However, in practice, courts do take account of the vulnerability and need of assistance of parties to the proceedings. This is mostly done through application of the principle of investigation, which includes the court's (and administration's) duty to offer explanations to participants to the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant's interests remains unrecognised because of the participant's lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are cured (§ 2 (4) and (5) of the Code of Administrative Court Procedure⁹; §§ 6, 15 and 36 of the Administrative Procedure Act). Courts must be especially active on behalf of more vulnerable participants.

18^o) Do the judicial bodies demand enhanced reasoning in cases where the contested administrative measure or decision (e.g. eviction from housing, granting of

⁶ Judgment of the Constitutional Review Chamber of the Supreme Court of Estonia in case No 3-4-1-1-03, 17.02.2003 (available in Estonian: <https://www.riigikohus.ee/lahendid?asjaNr=3-4-1-1-03>), pp 14-16.

⁷ Available in English: <https://www.riigiteataja.ee/en/eli/507032022003/consolide>. This act transposes different EU directives on equal treatment.

⁸ Available in English: <https://www.riigiteataja.ee/en/eli/510052022003/consolide>.

⁹ Available in English: <https://www.riigiteataja.ee/en/eli/519052022001/consolide>.



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nationality) affects these vulnerable groups (e.g. minors, women, people with disabilities) or has an impact on other constitutional values such as protection of the family?

- No special grounds are required in these cases
- Yes, and their absence results in the nullity of the decision

Explain your answer briefly. There is no such obligation regarding vulnerable groups in particular. However, the Supreme Court has stated that the administration must give its reasoning in such a manner that the subject of the administrative act is able to actually understand it.¹⁰

19^o) In your judicial practice, have disputes been raised regarding the issue of the principles of transparency, equality and non-discrimination in relation to decisions based on artificial intelligence or predictive data management systems?

- Yes
- These principles are not frequently invoked, but some examples exist
- No

Explain your answer briefly. No such disputes have reached the Supreme Court yet.

IV. – GENERAL PRINCIPLES IN CERTAIN SECTOR-SPECIFIC AREAS OF PUBLIC LAW

IV.1. – ORGANISATION AND ADMINISTRATIVE PROCEDURE

20^o) In the administrative organisation, do the principles of decentralisation and subsidiarity apply?

- Yes
- No
- Not generally, but in certain areas or sectors (in this case, explain your answer briefly)

¹⁰ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia No. 3-17-1110/84, 05.09.2019 (available in Estonian: <https://www.riigikohus.ee/lahendid?asjaNr=3-17-1110/84>), p 18.





21^o) Are the general principles set out below applicable to the procedure for formulating administrative acts and provisions?

Principle of publicity and transparency

- Yes
- No

Principle of proportionality

- Yes
- No

Principle of impartiality

- Yes
- No

Principle of anti-formalism

- Yes
- No

Principle of gratuitousness

- Yes
- No

Principle of self-correction (executory decision, without the need for judicial assistance).

- Yes
- No

(If you consider it appropriate, please indicate any other general principles of administrative procedure different from the above)

IV.2. – ADMINISTRATIVE SANCTIONS

22^o) Are the general principles of criminal law applied or projected in the area of administrative sanctions law? (Indicate the answer that you consider best reflects your legislation and practice)



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- Yes
- Yes, although with nuances arising from the different natures of criminal offences and administrative offences
- Not in respect of minor, lesser or trivial infractions
- Only in relation to infractions that can be characterised as “criminal” in accordance with the doctrine of the ECHR

Explain your answer briefly. First, it should be noted that currently the scope of administrative sanctions law is quite limited in Estonia, since there is no classic system of administrative infractions and even the least serious offences (misdemeanours) are subject to the general part of criminal law and jurisdiction of the criminal courts. However, there exist administrative sanctions which are punitive in nature (e.g., disciplinary penalties of prisoners or civil servants). In these cases, the Supreme Court of Estonia has applied general principles of criminal law which arise from the Constitution and the case law of the ECHR.

23^o) If you have answered yes to the previous question, could you specify whether or not the following general principles are applied for administrative sanctions, or to what extent?

Principle of presumption of innocence and right not to incriminate oneself or plead guilty:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principles of legality and definition of the constituent elements of the offence:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of non-retroactivity of sanctioning provisions:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of culpability:

- Yes
- No
- With nuances (in this case, explain your answer briefly)



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Principle of proportionality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of defence and legal assistance:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of hearing:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of separation between investigating authority and decision-making authority

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Administrative sanctions are decided by administrative authorities which also investigate the cases. However, these decisions are subject to review in the administrative court system which has full jurisdiction to examine all questions of fact and relevant law.

Principle of reasoning of the sanctioning decision

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of time-barring of administrative offences and sanctions

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of judicial protection



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- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of double instance

- Yes
- No
- With nuances (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general principles of administrative sanctions law different from the above)

IV.3. – SUBSIDIES AND PUBLIC AID

24^o) Is the principle of proportionality applied in order to modulate the consequences of non-compliance by a beneficiary of public subsidies, aid or resources, or in the area of regulated sectors?

- Yes (in this case, explain briefly in what areas and with what consequences or effects)
- No

Especially in the area of structural funds, the principle of proportionality has been taken into account in jurisprudence when considering sanctions for non-compliance – as is also foreseen by relevant EU Regulations.¹¹ In the area of regulated sectors as well, the law requires relying on the principle of proportionality, for example when deciding about the revocation of an activity licence.¹²

¹¹ See, for example, judgment of the Supreme Court in case No 3-3-1-37-16, 03.11.2016 (available in Estonian: <https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-37-16>). In that case concerning the European Fisheries Fund, the issue was recovery of aid on the basis of Article 96 (2) of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund. As this provision expressly foresees, account must be taken of the nature and gravity of the irregularities and the financial loss to the EFF. This expression of the principle of proportionality was considered important by the Court, and while the relevant national provision could also have been interpreted as giving no discretion to the authority, the interpretation conforming with the principle was preferred. In this case, the non-compliance was mostly technical and the purposes of the aid were still fulfilled, which is why the Court took the view that partial recovery of the aid might be proportionate.

¹² § 37 (2) 2) of the General Part of the Economic Activities Code (available in English: <https://www.riigiteataja.ee/en/eli/515042021004/consolide>) provides that an authority may revoke an activity licence in case of a material violation of an economic activity requirement in the subject of review of the activity licence or a secondary condition of the activity licence.



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(If you consider it appropriate, please indicate any other general principles of subsidies or public aid different from the above) Freedom of economic activity, legitimate expectations, good administration, no subjective right to receive aid (but right to fair procedure)

IV.4. – CONTRACTING BY PUBLIC BODIES

25^o) Is contracting by public bodies governed by different principles from contracting between private individuals and entities?

- Yes. Although based on a common foundation, administrative contracting is governed by different principles from civil or private contracting.
- There are specific principles applicable to contracting by public bodies as regards the procedure for advertising and selecting contractors and the award of the contract, but the performance, execution and effects of the contract are governed by principles substantially the same as those applicable to private contracting.
- No, public and private contracting are essentially governed by the same rules and principles.

(If you consider it appropriate, please indicate any other general principles of contracting by public bodies different from the above) general principles of public procurement (transparency, verifiability, proportionality, equal treatment and non-discrimination, effective use of competition and of public funds, non-distortion of competition, no conflict of interest, economic and purposeful use of funds)¹³, cost-effectiveness, no harm to public interests and the rights of persons in respect of whom the duty is to be performed¹⁴

IV.5. – TOWN PLANNING AND ENVIRONMENT

26^o) Could you say whether the following principles of environmental law are invoked and applied in your judicial practice?

Precautionary principle

- Yes
- No

¹³ § 3 of the Public Procurement Act, available in English:
<https://www.riigiteataja.ee/en/eli/513072020002/consolide>.

¹⁴ § 5 of the Administrative Co-operation Act, available in English:
<https://www.riigiteataja.ee/en/eli/522112021003/consolide>.



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- Occasionally, or on a limited basis (in this case, explain your answer briefly)

“Polluter pays” principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general town planning or environmental principles different from the above) principle of high-level protection of environment, principle of integration (considerations ensuring a high level protection of the environment must be taken into account in guiding the development of all fields of life in order to ensure sustainable development), principle of prevention, principle of economical use of natural resources

IV.6. – TAXATION

27^o) In tax matters, are the following principles applied in your legislation and judicial practice?

Principle of legality: Tax liability can be established only by rules with legal status.

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of economic or contributory capacity

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principles of equality and generality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of progressiveness and its limit: non-confiscatory taxation

- Yes
- No
- With nuances (in this case, explain your answer briefly)



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(If you consider it appropriate, please indicate any other general principles of tax law different from the above)

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