



SEMINAR ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND
IN COOPERATION WITH ACA-EUROPE

**MAPPING THE MULTILEVEL PROTECTION OF FUNDAMENTAL RIGHTS IN EUROPEAN ADMINISTRATIVE
COURTS**

Answers by the Supreme Court of Estonia

I Background information

1. *The formal title of your court? Please include the country.*

Supreme Court of Estonia (Riigikohus), Administrative Law Chamber

The Supreme Court of Estonia has chambers for both civil and criminal law and administrative law, as well as a separate Constitutional Review Chamber. Henceforth, I will answer the questions as if 'your court' means the Administrative Law Chamber of the Supreme Court, rather than the whole Supreme Court, to make the results more comparable to other countries.

2. *The number of decisions your court gives annually (average)?*

During the last five years (2018–2022), the average number of decisions the Administrative Law Chamber of the Supreme Court made annually has been 683 (this consists of leave of appeal decisions which contain no reasoning, although they are published on the court's website).

3. *The number of published precedents your court gives annually (average)?*

The average number of published reasoned judgments and rulings (although not precedents in the strictest sense, as the Estonian legal system does not recognise precedent law) in the last five years (2018–2022) has been *ca* 72.

II Constitutionality of legislation and the applicability of fundamental rights norms. Mark your answer with bold letters.

4. *Does your country have a written Constitution?*

- Yes**
- No

5.a *Is your court authorised to apply the (written or unwritten) Constitution directly in its decisions?*

- Yes**
- No

5. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes**
- Often

5. c. *If yes, what areas of constitutional law are typically involved in these cases?*





- Fundamental rights**
- Democratic principles**
- Rule of law
- Federalism and local self-government
- Legislative process
- Finance
- Other. Please describe below.

5. d. If your court is not authorized to apply the Constitution directly, please explain briefly how your national system works.

N/A

6. a. Is your court authorised to repeal a piece of ordinary legislation if it is found unconstitutional?

- Yes
- No**

6. b. If yes, how often does this happen in practice?

- Rarely
- Sometimes
- Often
- Very often

6.c. If not, which institution, if any, has the power to decide on the constitutional validity of ordinary legislation (either in abstracto or in concreto)?

Normally the Constitutional Review Chamber of the Supreme Court, to whom any court may refer if they consider a legislative act or its provision unconstitutional. Cases where a chamber of the Supreme Court doubts the constitutionality of a legislative act or its provision are decided by the Supreme Court *en banc*.

7. During the last 10 years, has your court given precedents involving the following topics:

- Right to asylum**
- Social rights**
- Environmental rights**
- Rights of future generations
- Rights of indigenous peoples
- Human Dignity**
- Fundamental rights in the context of national security**
- Fundamental rights in the context of state of emergency**

8. In the cases where your court has referred to the Constitution, what kind of role has the Constitution had in the reasoning? Choose all applicable options.

- Symbolic / Decorative**
- An additional argument supporting a decision which is inherently based on ordinary legislation**





- A source of interpretation which provides for the correct application of ordinary legislation in the concrete case at hand (i.e. fundamental rights friendly interpretation)**
- A decisive role so that the decision is based solely on constitutional grounds in a situation where ordinary legislation is silent or unclear on the issue at hand**
- An overriding role so that otherwise applicable ordinary legislation is set aside/declared invalid on constitutional grounds**
- Other. Please explain and/or provide an example.

III Interplay of national and European fundamental rights and international human rights norms

9.a. *Is your court authorised to apply international human rights conventions and follow their international case law in its decisions?*

- Yes**
- No

9. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes**
- Often
- Very often

10.a. *Is your court authorised to apply the Charter of Fundamental Rights of the European Union (CFREU) in its decisions?*

- Yes**
- No

10. b. *If yes, how often does this happen in practice?*

- Rarely**
- Sometimes
- Often
- Very often

11. *When applying fundamental rights provisions of the Constitution, is your court also simultaneously applying similar provisions of the European Convention on Human Rights and Fundamental Freedoms (ECHR)?*

- Very rarely
- Sometimes**
- Often
- Very often

12. *When applying fundamental rights provisions of the Constitution in the field of application of European Union law, is your court also applying corresponding provisions of the CFREU?*

- Very rarely
- Sometimes





- Often
- Very often**
- My court does not apply the Constitution in the field of application of European Union Law.

13. In the cases where your court refers to the ECHR, what kind of role does the convention have in the reasoning? Choose all applicable options.

- Symbolic / Decorative
- An additional argument supporting a decision which is inherently based on ordinary legislation**
- A source of interpretation providing for the correct application of ordinary legislation in the concrete case at hand (i.e. human rights friendly interpretation)**
- A decisive role so that the decision is based solely on the ECHR in a situation where national legislation is silent or unclear on the issue at hand**
- An overriding role so that otherwise applicable ordinary legislation is set aside /declared invalid based on the ECHR.**
- Other. Please explain and/or provide an example.

14. It follows from the case law of the CJEU (see, eg, C-14/83, von Colson) that national courts must interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of EU law. Within the scope of the application of EU law, how frequently does this kind of interpretation and application of law appear in the argumentation of your court?

- Never
- Rarely
- Sometimes
- Often**

15. The obligation to interpret national legislation in line with EU law is extensive, but it is not without limits. According to the case law of the CJEU (eg, C-12/08, Mono Car Styling), that obligation is limited by the general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law contra legem. Where there is any inconsistency between national law and Union law, which cannot be removed by means of such a construction, the national court is obliged to declare that the provision of national law which is inconsistent with (directly effective) Union law is inapplicable (eg 152/84, Marshall). How frequently does this kind of reasoning appear in the argumentation of your court?

- Never
- Rarely**
- Sometimes
- Often

16. Has your court given any precedents regarding the application of Article 51 (Field of application) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).

No.





17. Has your court given any precedents regarding the application of Article 52 (Scope and interpretation of rights and principles) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).

The application of Article 52 of the CFREU has been very rare. However, the Administrative Law Chamber of the Supreme Court did apply Art 52 (1) in passing in its judgment of 21 November 2018 no. 3-12-1360/131¹, stating that fundamental rights could only be restricted by law (p 23 of the judgment). The judgment was made in a tax case and the specific issue was the legality of using surveillance data collected in criminal proceedings as the basis for a tax decision.

18. In the cases where your court has referred to the CFREU, what kind of role has the Charter had in the argumentation? Choose all applicable options.

- Symbolic / Decorative**
- An additional argument supporting a decision based on EU law and ordinary domestic legislation**
- A source of interpretation which provides for a correct application of EU law and ordinary legislation in the concrete case at hand**
- A decisive role so that the decision is based solely on the CFREU in a situation where EU law and national legislation is silent on the issue at hand
- An overriding role so that otherwise applicable ordinary legislation is set aside / declared invalid on grounds based on the CFREU

Other. Please provide an example.

19. Has your court given any precedents regarding the application of Article 53 (Safeguard for existing human rights) of the ECHR? If yes, please provide a brief description of the context and outcome of the decision(s).

No.

20. Has your court given any precedents regarding the application of Article 53 (Level of protection) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).

No.

21. Has your court applied fundamental rights laid down in the Constitution in a way that provides for a better standard of protection of individual rights than those provided for in international human rights conventions? If yes, please explain and/or provide an example.

Only very rarely. I found no examples in the case law of the Administrative Law Chamber, however, there is one from a constitutional dispute in a criminal case that was resolved by the Supreme Court *en banc* with the judgment of 21 June 2011 in case no. 3-4-1-16-10². The dispute concerned a provision of the Penal Code

¹ Available in Estonian: <https://rikos.rik.ee/LahendiOtsingEriVaade?asjaNr=3-12-1360/131>.

² Available in Estonian: <https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-16-10>.





which allowed and set the conditions for detention after service of sentence. § 20 (2) of the Constitution provides a *numerus clausus* list of situations where depriving a person of their freedom is allowed. The Supreme Court commented (p 78 of the judgment) that a very similar list was in Art 5 (1) of ECHR, but that the Constitution might provide for a better standard of protection. In the following analysis, the Court relied mainly on the Constitution, but also referred to a couple of ECtHR judgments. No specific difference in the standard of protection of the Constitution and the ECHR was mentioned.

22. *Has your court applied fundamental rights laid down in the Constitution in a way in which the substance of a fundamental rights provision has been defined by reference to either international human rights conventions or to CFREU, and the case law relating to them? If yes, please explain and/or provide an example.*

The Supreme Court quite often applies the fundamental rights provisions of the Constitution in the light of the ECHR and the case law of the ECtHR, or the CFREU and the case law of the CJEU. For instance, the protection of human dignity has been laid down both in the Constitution (§ 18) and in the ECHR (Article 3), but especially in the context of the rights of prisoners, has usually been applied based on the case law of the ECtHR. For an example where both the relevant provision of the Constitution and the ECtHR case law have been mentioned, see judgment of the Administrative Law Chamber of the Supreme Court of 21 April 2014 in case no. 3-3-1-17-14³.

³ Available in Estonian: <https://rikos.rik.ee/?asjaNr=3-3-1-17-14>.

