

QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

SUPREME COURT OF ESTONIA

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

- **In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?**

The state may not enter into international treaties which are in conflict with the Constitution. As Estonia has a monist legal system, the provisions of international instruments become binding in the domestic legal order upon ratification. When laws or other Estonian legislation is in conflict with an international treaty ratified by the Riigikogu (the Estonian Parliament), provisions of the international treaty apply. Estonia also considers generally recognised principles of international law to be an integral part of the Estonian legal order.

- **What mechanism is used to invoke the international treaties in national court decision-making?**

Human rights are protected under the Constitution and specific legislation in certain areas. All public authorities, albeit legislative, executive or judicial, are obliged to respect human rights (Section 14 of the Constitution).

A statement of claim is filed with the court of first instance, an appeal with the court of second instance and an appeal in cassation with the court of third or the highest instance. A matter shall be heard in the Supreme Court only after all previous court instances have been passed. The filing of an appeal is governed by respective codes of court procedure. Only sworn advocates are allowed to present the case to the Supreme Court to ensure the legal and physical persons the best quality of legal aid.

- **Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.**

As Estonia has a monist legal system, the provisions of international instruments become binding in the domestic legal order upon ratification. When laws or other legislation of Estonia are in conflict with an international treaty ratified by the Riigikogu, provisions of the international treaty apply.

I.II Supranational catalogues of human rights (the Charter)

- **Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by “radiating” through the national catalogues (a substantive point of reference in other states)?**

Yes. Estonia is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, also to its optional Protocol as amended by Protocol No 11; Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the

Convention and in the first Protocol thereto; Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty; Protocol No. 7 to the Convention for the protection of human rights and fundamental freedoms as amended by protocol No.11; Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances; Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms. Estonia has signed the Protocols No. 12 and 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

- **Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?**

Yes.

- **Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?**

In the course of legal proceedings, Estonian courts may ask the Court of Justice for a preliminary ruling on the interpretation and application of European Union law. References for preliminary rulings are based on the recommendations of the Court of Justice to the national courts for a preliminary ruling (2018 / C 257/01). The reference for a preliminary ruling, provided for in Article 19 (3)(b) of the Treaty on European Union ('TEU') and Article 267 of the Treaty on the Functioning of the European Union ('TFEU'), is a fundamental mechanism of EU law.

I.III National human rights catalogues

- **Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?**

Yes, human rights are part of the Constitution and are described as fundamental rights. Human rights are protected under the Constitution and specific legislation in certain areas. All public authorities, albeit legislative, executive or judicial, are obliged to respect human rights (Section 14 of the Constitution). Human rights thus have paramount importance. The concepts used in the Constitution are general and open, allowing the application of the law. Fundamental rights are the subjective prerogatives of the constitutional force. Fundamental rights are contained chapter II of the Constitution. The ECHR was the main example in drafting the fundamental rights chapter. Fundamental rights are universal prerogatives and form the following principle structure: 1) The rights of the Liberal tradition to protect life and freedom, 2) The rights of the defence, which oblige the state to protect a person against attacks by third parties acting positively, 3) Political rights enabling members of society to participate in the process of shaping political will, 4) Social rights guaranteeing the existence of existential, 5) procedural rights that ensure the prior the realisation of rights (1–4). Freedom or control rights stem from, for example, § 16 (right to life) § 19 (1) (personal fulfilment), § 20 (1) (right to Liberty), § 29 (1) (freedom of residence), § 32 (right to property) and 34 (freedom of movement), § 38 (1) (Freedom of scientific), § 40 (Freedom of religion) and § 45 (freedom of expression), etc. The fundamental rights of defence are

the protection of public authority from attacks by other fundamental rights holders. The general right of defence is contained in paragraph 13 (1). The basic obligations of Constitution may be divided into two main obligations aimed at securing individual freedom and fundamental obligations aimed at securing overall prosperity. The first includes the general obligation of respect and responsibility (paragraph 19 (2)), the parental obligation (§ 27 (3), § 37 (3)), the obligation to care for the family (§ 27 (5)), the obligation not to act in the honour of another person or the good name (§ 17) and the general obligation to compensate (§ 25). Another type of main responsibility is the obligation to comply with the law (§ 19 (2)), the obligation to remain faithful to Constitution (§ 54 (1)), the obligation to protect independence (§ 54 (1)), the obligation of aliens and stateless persons to comply with the constitutional order of Estonia (§ 55), Tax liability (§ 113), the duty of defence (§ 124 (1)), an obligation to use property from a social society (§ 32 (2)), compulsory school attendance (§ 37 (1)) and the obligation to protect the environment (§ 53). Fundamental social rights are also rights to positive action by the State. The main expression of the social tradition in the Constitution is the right of citizens to state aid in the event of a shortage (paragraph 28 (2)), which lays down general social rights. Fundamental rights in the Constitution are therefore all subjective rights deriving from the Constitution, the bearer of which is an individual and the addressee of a public authority. About a quarter of the provisions of the Constitution are dedicated to human rights, 48 sections thoroughly depicting the range of human rights on the highest level of national legislation (in the Constitution). Citizens' rights and political rights are particularly protected. The concepts used in Constitution are general and open which enable implementation. Laws and regulations implement human rights. While laws are generally adopted by the simple voting majority of the Riigikogu, the following laws may only be passed and amended by a majority of the members of the Riigikogu: the Citizenship Act; the Riigikogu Election Act; the President of the Republic Election Act; the Local Authority Council Election Act; the Referendum Act; the Riigikogu Rules of Procedure Act and the Riigikogu Standing Orders Act; the Remuneration of the President of the Republic and of Members of the Riigikogu Act; the Government of the Republic Act; the Institution of Court Proceedings against the President of the Republic and against Members of the Government of the Republic Act; the National Minorities Cultural Autonomy Act; the National Budget Act; the Bank of Estonia Act; the National Audit Office Act; the Courts Act and Acts governing court procedure; Acts pertaining to foreign and domestic borrowing, and to financial obligations of the state; the State of Emergency Act; the Peace-Time National Defence Act and the War-Time National Defence Act. All of the laws mentioned above are related to human rights and therefore subject to more attention and scrutiny.

- **What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?**

The present Constitution was enacted after a referendum on 28 June 1992. It incorporates elements of the Constitutions of 1920 and 1938. While retaining the presidency created in 1938, it restores the unicameral legislature established in 1920. It explicitly asserts its continuity with the Estonian state as it existed between 1920 and 1940, and thus provides a restitutive basis for Estonia's independence. The Constitution may only be amended by an Act which has been passed either by a referendum, two successive memberships of the Riigikogu, or the Riigikogu, as a matter of urgency. The Constitution has been amended five times. Section 156 was amended on 25 February 2003 in regard to local self-government; the term of local council was extended to four years. This amendment entered into force on 17 October 2005. In a national referendum on 14 September 2003 Estonian people decided that Estonia may belong to the European Union. This amendment entered

into force on 06 January 2004. The preamble was amended on 12 April 2007 to highlight the Estonian language, amendment entered into force on 21 July 2007. Another amendment to change the jurisdiction of the President was adopted on 13 April and entered into force on 22 July 2011. The latest amendment to the Constitution to date lowers the voting 18 age for local government council elections from the age of 18 to 16. This amendment entered into force on 18 August 2015.

- **What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?**

Estonia is a member of the EU since 2004. Estonia has actively stood for keeping its human rights priorities on the agenda during the shaping of the EU's Common Foreign and Security Policy (CFSP) and participated as a burden-sharer on the EU side during negotiations about those topics with third countries in the framework of the UN. The EU has defined human rights as an important aspect of its foreign policy and Estonia has supported the EU's achievement of important human rights objectives.

Estonia is a party to International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESR), International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1), Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), Convention on the Rights of the Child (CRC), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC), Convention on the Rights of Persons with Disabilities (CRPD), Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD), Rome Statute of the International Criminal Court and its Kampala Amendments, Convention on the Prevention and Punishment of the Crime of Genocide, United Nations Convention against Transnational Organized Crime and all its Protocols and several other important instruments.

Estonia has not submitted any reservations to the main human rights instruments referred to above. Estonia has recognised the compulsory jurisdiction of the International Court of Justice. Estonia has accepted individual complaints procedures under Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1); under International Convention on the Elimination of on All Forms of Racial Discrimination (ICERD, Art. 14) and under Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP).

Estonia has accepted inquiry procedures under the Convention against Torture (CAT, Art. 20) and under Convention on the Rights of Persons with Disabilities (CRPD, Art. 6-7). Estonia is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, also to its optional Protocol as amended by Protocol No 11; Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto; Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the

Death Penalty; Protocol No. 7 to the Convention for the protection of human rights and fundamental freedoms as amended by protocol No.11; Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances; Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms. Estonia has signed the Protocols No. 12 and 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. In 1996 Estonia made the reservation in accordance with Art. 64 [Article 57 since the entry into force of Protocol No 11] of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This reservation is now outdated as the pending amendments described in the reservation entered into force long ago. On 1 June 2015 Estonia became a party to the Council of Europe Convention on Action against Trafficking in Human Beings. Estonia made the declaration in accordance with Article 31 paragraph 2 of the Convention and therefore Estonia shall not adopt such legislative and other measures as might be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State; or against one of its nationals. On 2 December 2014 Estonia signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). Estonia is also taking steps to become party to the Convention on Enforced Disappearances and the UNESCO Convention against Discrimination in Education.

I.IV The mutual relationship between different catalogues of human rights

- **Can you give examples from the case law of your court related to the use of any of the international catalogues?**

Yes, we have a number of court rulings that refer to the application of the ECHR. For example:

- 1) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-97> (in English)
The Constitutional Review Chamber considers it necessary to state that, from 16 April 1996, Estonia is bound by the European Convention on Human Rights. Pursuant to § 123 (2) of the Constitution, in the event of a conflict between law and the Convention, the Convention applies as an international treaty ratified by the Riigikogu.
- 2) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-3-13-03>
§ 123 (2) of the Constitution provides that if Estonian laws or other acts are in conflict with international agreements ratified by the Riigikogu, the provisions of the international agreement shall apply. March 13, 1996 The Riigikogu passed the "Ratification Act of the Convention for the Protection of Human Rights and Fundamental Freedoms (as supplemented by Protocols 2, 3, 5 and 8) and its Additional Protocols 1, 4, 7, 9, 10 and 11" issued March 22, 1996 (RT II 1996, 11/12, 34). Thus, the European Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty ratified by the Riigikogu and has priority over Estonian laws or other acts.
- 3) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-59-04>
Article 1 of the First Protocol to the European Convention on Human Rights, which guarantees the protection of property, does not contain a definition of 'fair compensation'. However, the second sentence of Article 1 (1) of Protocol No 1 to the

European Convention on Human Rights provides that no one may be deprived of his possessions except in the public interest and under the conditions laid down by law and in accordance with the general principles of international law. According to the convention's implementation practice, interference with the free transfer of property must not only pursue a legitimate aim in the "general interest" but must also comply with the principle of proportionality.

4) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-83-05>

Section 3 (2) of the Penal Code Implementation Act (KarSRS) provides that an act committed before the entry into force of the Penal Code, which is also punishable as a criminal offense under the Penal Code, shall be classified in accordance with the relevant section of the Criminal Code. Such regulation constitutes a formal guarantee of the principle, under Article 23 (1) of the Constitution and Article 7 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), that no one shall be convicted of an offense unless was in force at the time of the act.

5) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-44-13>

Neither the ECHR, other documents of the European Commission, nor the practice of the Court give persons who have been convicted and imprisoned for a crime the right to stand in local elections." (Article 21); 'Under Article 25 (b) of the Covenant, every citizen must have the right and the right to vote and to stand as a candidate in valid general elections, which shall be by universal suffrage and shall be free to vote and free of expression and without discrimination. The Chamber is of the opinion that excluding a person convicted of a criminal offense and serving a prison sentence in local elections is not discriminatory for the reasons set out in paragraph 13.

- **Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?**

Yes. When laws or other legislation of Estonia are in conflict with an international treaty ratified by the Riigikogu (the Estonian parliament), provisions of the international treaty apply.

- **Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)**

We do not have a separate procedure, but in case of conflict with national law, the provisions of the international treaties which have been ratified, are applicable.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 16 of the Constitution stipulates: "Everyone has the right to life. The right to life is protected by the law. No one may be arbitrarily deprived of his or her life."

- **Is it possible to restrict the right? If so, how and under what conditions?**

Article 16 of the Constitution does not exclude absolutely or entirely deprivation of life. This comes from the interpretation of sentence number 3 of Article 16 – no one may be arbitrarily deprived of his or her life. Deprivation of life might be lawful when another right needs to be protected. For example, the use of force, which could lead to a death of another person, might be justified and lawful if it is used in defence of any person from unlawful violence, also for the purpose of quelling a riot or insurrection. Deprivation of life cannot be the main purpose of the act. Deprivation of life can only be the regrettable result of protecting other constitutional rights. The use of potentially fatal force may be eligible on the beforementioned purpose only when it is absolutely necessary. Absolute necessity to use force means that a stricter proportionality test applies comparing to those fundamental rights, that have to be “necessary in a democratic society”.

In addition, article 130 of the Constitution enacts that in a state of emergency or a state of war, the rights and freedoms of individuals may be circumscribed and duties may be imposed upon individuals in the interests of national security and public order under conditions and pursuant to a procedure provided by law. According to the second sentence of article 130 of the Constitution, rights enshrined in article 16 may not be circumscribed.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Here are some examples of the case law of the Constitutional Review Chamber of the Supreme Court of Estonia:

- 1) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-10-10> (in English)

According to the Supreme Court of Estonia, the suspension, revocation and denial of a weapons permit of a suspect, accused or person who has been convicted are suitable and necessary measures to protect other people’s life and health. That being said, absolute restrictions, that exclude margin of appreciation, are not proportional. When applying those restrictions, circumstances or facts of the statement of charges or criminal proceedings, also other important circumstances and evaluation of personal characteristics, have to be taken into account. The Supreme Court held: “The Supreme Court has found previously that the legitimate objective of suspension of a weapons permit may be the protection of the life and health of persons. Restrictions on the possession of weapons may be established also arising from the need to ensure national security and public order, and there may exist other circumstances justifying these restrictions. The Chamber takes the position that revocation of a weapons permit of a person punished pursuant to the criminal procedure is also permitted in order to protect the life and health of persons and the national security and public order. The specified objectives are not in conflict with the Constitution. Revocation of a weapons permit may also be justified by other circumstances.”

- 2) <https://www.riigikohus.ee/et/lahendid/marksonastik?asjaNr=3-4-1-3-00>

The practising of shooting poses a threat to life and health. For that reason, the requirements for the field firing ranges and the regulations of the use of those ranges have to secure that the use of weapons would not pose a threat to people close to the firing ranges, including officers of the Estonian Defence Forces.

- 3) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-2-05> (in English)

The suspension of driving privileges in the case of a traffic misdemeanour serves the purpose to protect people's lives. The general assembly is of the opinion that "in the present case the aim of the suspension of the right to drive, which is a punishment in the substantive sense, is a legitimate one, as one of the aims of suspending the right to drive of a person who has been driving while intoxicated is to protect the life, health and property of others. Thus, the referred restriction on the freedom of movement has been imposed for the protection of the rights and freedoms of others."

Examples from other Chambers of the Supreme Court:

4) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-65-15>

The use of life threatening force may in certain conditions be justified for the purpose of self-defence.

5) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-31-11>

It is still argued in the case law of the Supreme Court, whether a fetus has a subjective right to life or is it protected only by objective rights. According to the case law, the termination of pregnancy is allowed insofar as the women's right to self-realisation, including self-determination (stipulated in article 19 of the Constitution), prevails over the right to life of an unborn child (article 16 of the Constitution).

6) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-72-09>

In a case of admissibility of extradition the Supreme Court specified that if death penalty may be imposed in a requesting state as punishment for a criminal offence which is the basis for the request for extradition, the person may be extradited only on the condition that the competent authority of the requesting state has assured that death penalty will not be imposed on the person to be extradited or, if death penalty was imposed before the submission of the request for extradition, the penalty will not be carried out.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, there is not.

II.II Freedom of expression

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 45 of the Constitution stipulates: "Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be circumscribed by law to protect public order, public morality, and the rights and freedoms, health, honour and good name of others. This right may also be circumscribed by law in respect of public servants employed by the national government and local authorities, or in order to protect a state secret, trade secret or information received in confidence which has become known to the public servant by reason of his or her office, and to protect the family and private life of others, as well as in the interests of the administration of justice.

There is no censorship."

- **Is it possible to restrict the right? If so, how and under what conditions?**

Restrictions are brought out in sentences 2 and 3 of Article 45 of the Constitution: this right may be circumscribed by law to protect public order, public morality, and the rights and freedoms, health, honour and good name of others. This right may also be circumscribed by law in respect of public servants employed by the national government and local authorities, or in order to protect a state secret, trade secret or information received in confidence which has become known to the public servant by reason of his or her office, and to protect the family and private life of others, as well as in the interests of the administration of justice. This formulation gives the local governments the right to associate freedom of expression with formalities, conditions, restrictions or sanctions, that are stipulated in law and are necessary in a democratic society for the protection of state security, territorial unity or safety of the society; protection of health, reputation or rights; to prevent crimes; to protect information received in confidence or to preserve impartiality or the authority of adjudication.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Some examples of the case law of the Constitutional Review Chamber of the Supreme Court of Estonia:

- 1) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-33-09> (in English)

The right to stand as a candidate in elections protects foremost the candidate from preconditions stipulated in the law. When standing as a candidate, it is important for the candidate to freely disseminate and introduce his or her ideas or views. The first sentence of Article 45 enacts, that everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. The right to stand as a candidate in elections together with the freedom of expression (expressed in Article 45) embraces also the right of a candidate to introduce his or her political views and to take part in political discussions. Prohibition of political outdoor advertising, which is one of the conditions when standing as a candidate, restricts the candidates right to introduce himself or herself or the organisation he or she is representing. Thereof, the prohibition of political outdoor advertising restricts the right to stand as a candidate (stipulated in article 60 sentence no. 2 and Article 156) together with freedom of expression, which is stipulated in Article 45 of the Constitution. Opinion of the Supreme Court *en banc*: "The right to stand as a candidate is related to the obligation of the state to create the necessary conditions for exercising that right, which depart from the electoral principles specified in the previous paragraph. The obligation to establish the necessary conditions for the exercise of the right to stand as a candidate, inter alia, means the obligation to provide for how candidates and political associations (election coalitions and political parties) may organise and finance their election campaigns.

Primarily, the right to stand as a candidate provides protection from the preconditions or censuses established regarding standing as a candidate. Upon standing as a candidate for a representative body, the freedom of a candidate to disseminate and introduce his or her views is important. According to the first sentence of Article 45 of the Constitution, everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. In conjunction with the

freedom of expression provided for in Article 45 of the Constitution, the right to stand as a candidate also includes the right of candidates to introduce their political views to voters and to participate in political discussion.

The prohibition on political outdoor advertising which is one of the conditions for the exercise of the right to stand as a candidate, restricts the right of candidates to introduce themselves and also the association they represent. Therefore the prohibition infringes the right to stand as a candidate provided for in Article 60 (2) and Article 156 of the Constitution in conjunction with the freedom of expression provided for in Article 45 of the Constitution. Here, the state has also, at the same time, infringed the right upon performance of the obligation which is related to the right to stand as a candidate.”

Some examples from the Civil Chamber:

2) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-18-13>

The Chamber repeated its previous opinion that, when exercising freedom of speech, including freedom of media, one must respect and take in consideration other people's rights and freedoms and follow the law. The Supreme Court is of the opinion that public figures get more public attention and therefore they have acknowledge that they might get more criticism.

3) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-43-09>

The case arose when a popular news portal (Delfi) in Estonia published an article about the ferry connection with the islands in Estonia and the news portal enabled users to comment on news articles. Among the comments were 20 comments that according to the claimant, the majority shareholder of the ferry transport company concerned, infringed his personality rights.

According to sentence no. 1 of Article 45 of the Constitution everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be circumscribed by Article 17 of the Constitution, which stipulates „no one's honour or good name may be defamed.“ The Civil Chamber specified that Article 17 does not exclude all breaches, it only prohibits the defamation of a person, inter alia by unjustified use of the his or her name, which is regulated in § 1046 of the Law of Obligations Act. When a news portal removes peoples comments from its website, it is a breach of freedom of expression for the commentators. Nevertheless, in this case the removal of comments was justified, taking in consideration Article 17 of the Constitution and § 1046 of the Law of Obligations Act.

The case was appealed to the European Court of Human Rights and referred to the Grand Chamber. The Grand Chamber found that the judgement of the Supreme Court of Estonia finding that Delfi is liable for the offensive comments had been a justified and proportionate restriction on the portal's freedom of expression and the steps taken by Delfi to remove offensive comments without delay after their publication had been insufficient.

An example from the Criminal Chamber:

4) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-80-97>

Even if there is not a direct implication to a name in a descriptive sentence, it is possible to identify a person within the context (and taking in consideration the content) of other sentences. According to the Criminal Code, the term “indecent” does not solely mean the use of vulgar or inappropriate words, it also applies to situations when negative and

disparaging figurative expressions are being used. Indecent could also be something nonverbal, for example a caricature. The use of (Estonian) words "rongaema" and "abielulõhkuja" is not justified due to lack of synonyms.¹ Offending is also possible in the form of a question.

This case was appealed to the European Court of Human Rights and the court held that there has been no violation (Tammer v. Estonia, 41205/98).

5) Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

No, there is not.

II.III Right to privacy/right to respect for private life/right to private life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 26 of the Constitution enacts: "Everyone is entitled to inviolability of his or her private and family life. Government agencies, local authorities, and their officials may not interfere with any person's private or family life, except in the cases and pursuant to a procedure provided by law to protect public health, public morality, public order or the rights and freedoms of others, to prevent a criminal offence, or to apprehend the offender."

- **Is it possible to restrict the right? If so, how and under what conditions?**

Sentence no. two of article 26 stipulates an exception: government agencies, local authorities, and their officials may not interfere with any person's private or family life, except in the cases and pursuant to a procedure provided by law to protect public health, public morality, public order or the rights and freedoms of others, to prevent a criminal offence, or to apprehend the offender.

In general, the list of restrictions should be exhaustive. Nevertheless, the Supreme Court of Estonia has found that the preservation of Estonian people and Estonian culture through the ages, which is enacted in the preamble of the Constitution, and therefore the right to national identity qualifies as an exception that is not listed in sentence no. 2 of Article 26 of the Constitution.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Some examples of the case law of the Constitutional Review Chamber of the Supreme Court of Estonia:

- 1) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-42-13> (in English)
Extensive breaches to the right to private life may be the consequence of surveillance activities, that are stipulated in the Criminal Procedure Law, or similar activities that are stipulated in the Security Authorities Act. Depending on the substance of the specific covert surveillance operation, such an activity by the state may infringe different rights

¹ The word "rongaema" indicated that a mother had not cared for her child, and the word "abielulõhkuja" indicated a person who had harmed or broken up someone else's marriage. Both phenomena had always been condemned in Estonian society and this was also reflected in the language.

and freedoms safeguarded in the Constitution. The aforesaid covert surveillance operations infringe particularly the inviolability of privacy and family life safeguarded in Article 26 (1) of the Constitution, which protects, as a general provision, the privacy overall, but the infringement may also concern the fundamental rights that protect specific aspects of privacy. Here, the relevant fundamental rights may include the inviolability of a dwelling and the lawfully occupied premises and workplace safeguarded in Article 33 (1) of the Constitution, the confidentiality of messages safeguarded in Article 43 (1) of the Constitution, the freedom of conscience, freedom of religion and freedom of thought safeguarded in Article 40 of the Constitution, the prohibition of gathering information about the beliefs of persons provided for in Article 42 of the Constitution as well as the general fundamental right of freedom safeguarded in Article 19 (1) of the Constitution.

2) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-3-09> (in English)

The objects of protection of Article 26 of the Constitution includes all spheres of life that are not protected by special rights (inc. e.g. Article 43 of the Constitution). The Chamber agrees with the Chancellor of Justice that the sphere of protection of Article 26 of the Constitution also includes the right of a prisoner's spouse to send to prison, by letter, documents and items the holding of which is not prohibited in prison.

The interference of state authority with the right to the inviolability of private and family life, established in Article 26 of the Constitution, does not necessarily amount to a violation of the right. Legislation which infringes a fundamental right does not violate this right when the legislation is constitutional, i.e. in conformity with the Constitution in the formal and in the substantive sense.

3) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-6-01> (in English)

The Court states out, that the right to change a family name as well as the right to your own image (<https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-152-09>) falls under the scope of Article 19 (1) and Article 26. In case no. 3-4-1-6-01 the Chamber was of the opinion that the right of a person to change his or her name has been restricted. A surname is an important element of a person's identity. It constitutes a link to a certain group of persons - family unit or family. Names are means for distinguishing people or for linking the bearers of a given name to a family. European Court of Human Rights has examined the issues related to change of names under Article 8 of the European Convention on Human Rights - the right to respect for private and family life (see *Burgharz v Switzerland*, judgment of 22 February 1994, § 24; *Stjerna v Finland*, judgment of 25 November 1994, § 37). The more extensive list of fundamental rights and freedoms in the Constitution makes it possible to place the freedom to change one's name, depending on circumstances, either under the scope of protection of § 26, which provides that everyone has the right to the inviolability of private and family life, of § 19, which stipulates that everyone has the right to free self-realisation, or of some other fundamental right. In the light of the argument that the complainant justified her request to change her surname by her desire to add to her surname the name of her family, the Chamber considers the refusal to change the name as an infringement of the inviolability of the complainant's family and private life.

There may be a breach of both articles (Article 19 and 26) when a person is being wire-tapped or recorded (<https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-25-03>).

Some examples from the Criminal Law Chamber:

- 4) For the reason that the right to confidentiality of messages is more restricted in the Constitution than the right to private and family life, the Court has assessed several times the boundaries between those two articles (Article 43 and 26). In the case of surveillance activities, it is necessary to assess private communication (<https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-25-03>) and access to received and recorded messages (<https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-93-15>) from the aspect of Article 26.
- 5) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-51-14>
Metadata, which does not reveal the content of the message, falls under the scope of right to private life (Article 26).

One example from the Civil Law Chamber:

- 6) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-152-09>
A person has to have the right to decide, if and how he or she wants to himself or herself to be publicly imaged. An image could be in the form of a picture or a motion picture.

One example from the Administrative Law Chamber:

- 7) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-3-12>
The Administrative Law Chamber of the Supreme Court has noted, that the collection, retention, processing and disclosing of personal data qualifies as a breach of private life.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, there is not.

II.IV Freedom of religion

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 40 of the Constitution stipulates: "Everyone is entitled to freedom of conscience, freedom of religion and freedom of thought.

Everyone is free to belong to any church or any religious society. There is no state church.

Everyone is free to practise his or her religion, alone or in community with others, in public or in private, unless this is detrimental to public order, public health or public morality."

- **Is it possible to restrict the right? If so, how and under what conditions?**

The right to practise religion is not absolute. The last sentence of Article 40 of the Constitution refers that everyone is free to practise his or her religion, alone or in community with others, in public or in private, unless this is detrimental to public order, public health or public morality. Paragraph 8 subparagraph one of the Churches and Congregations Act adds two elements to this list: unless it damages the rights or freedoms of others. This beforementioned restriction arises from sentence no. two of Article 19 of the Constitution: when exercising his or her rights and freedoms and fulfilling his or her duties, everyone must respect and observe the rights and freedoms of others, and obey the law. Although

Article 40 stipulates restrictions to the right to practise religion, paragraph 8 of the Churches and Congregations Act mentions also that these restrictions apply to the following situations: the right to freely choose, profess and declare religious beliefs.

In addition, paragraph 9 subparagraph 1 of the Churches and Congregations Act adds some disparity to Article 40 of Constitution, enacting that persons staying in medical institutions, educational institutions, social welfare institutions and custodial institutions and members of the Defence Forces have the right to perform religious rites according to their religion unless this violates public order, health, morals, the rules established in these institutions or the rights of others staying or serving in these institutions.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Example from the case law of the Constitutional Review Chamber of the Supreme Court of Estonia:

1) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-96> (in English)

Everyone's right to freely belong to any church or any religious society means also the freedom for the procedure for membership in the religious associations and churches and also the opportunity to freely leave from the religious associations and churches. Exclusion from religious associations and churches has to be in accordance with the law and the statute of the organisation.

Article 40 of the Constitution enacts that everyone is free to practise his or her religion, alone or in community with others, in public or in private. Therefore the Constitution protects both – individual and collective freedom of religion and beliefs.

One example from the Administrative Law Chamber:

2) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-82-06>

Freedom of religion, which is guaranteed in Article 40 of the Constitution, does not include the right to refuse alternative service.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, there is not.

II.V Prohibition of discrimination

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 12 of the Constitution enacts: "Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds.

Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law."

- **Is it possible to restrict the right? If so, how and under what conditions?**

There are some exceptions stipulated in the Constitution, which permit to restrict some rights on the basis of citizenship. For example:

Article 28 (2): "Every citizen of Estonia is entitled to government assistance in the case of old age, incapacity for work, loss of provider, or need. The categories and extent of the assistance, and the conditions and procedure for its allocation are provided by law. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonia enjoy this right equally with citizens of Estonia."

Article 29 (1): "Every citizen of Estonia is entitled to freely choose his or her area of activity, profession and position of employment. The law may provide conditions and procedures for the exercise of this right. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonia enjoy this right equally with citizens of Estonia."

Article 31: "Eesti kodanikel on õigus tegelda ettevõtlusega ning koonduda tulundusühingutesse ja -liitudesse. Seadus võib sätestada selle õiguse kasutamise tingimused ja korra. Kui seadus ei sätesta teisiti, siis on see õigus võrdselt Eesti kodanikega ka Eestis viibivatel välisriikide kodanikel ja kodakondsuseta isikutel."

The Supreme Court is of the opinion that it is possible to restrict the right to equality when the purpose of the restriction is in accordance with the Constitution. Unequal treatment is justified when there is a reasonable and relevant cause for it.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Some examples of the case law of the Constitutional Review Chamber of the Supreme

1) <https://www.riigikohus.ee/en/constitutional-judgment-5-18-5> (in English)

In view of the ECtHR jurisprudence, as well as the principles of human dignity (Article 10) and equal treatment (Article 12(1)) guaranteed under the Estonian Constitution, the Court en banc is of the opinion that the fundamental right to family guaranteed under the first sentence of § 26 and § 27(1) of the Constitution also protects the right of same-sex people to lead a family life in Estonia. The Court en banc agrees with the opinion expressed by the Supreme Court Administrative Law Chamber that "[T]he text of the Constitution does not make protection of family life from interference by the state dependent on the sex of the family members or their sexual orientation. Such restrictions cannot be found from the Constitution through interpretation either" (Supreme Court Administrative Law Chamber order of 27 June 2017 in case No 3-3-1-19-17, para. 16). That is, similarly to different-sex people, same-sex people living in a stable partnership may form a family within the meaning of the constitutional fundamental right to family, and the Constitution protects their family life from interference by the state authority.

Apart from the fundamental right to family, the Aliens Act, in the relevant part, also interferes with the fundamental right to equality (§ 12(1) Constitution). Although same-sex people cannot contract a marriage in Estonia, on certain conditions a marriage contracted by same-sex people abroad is also deemed to be valid in Estonia (see para. 53 of the judgment). Therefore, based on the provisions of the Aliens Act regulating issue of a residence permit to settle with a spouse in Estonia, it is also possible to issue a temporary residence permit to the same-sex spouse of an Estonian citizen.

2) <https://www.riigikohus.ee/et/lahendid?asiaNr=3-4-1-51-14>

To assess whether there has been a breach of the right to equality or not, it is necessary to find a comparable and equal group, who is been treated better.

3) <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-52-13> (in English)

The fundamental right of equality arising from subsection 1 of Article 12 of the Constitution is infringed if comparable groups are treated in a different manner in a similar situation

Not every kind of different treatment is in conflict with subsection 1 of Article 12 of the Constitution, but only such for which there is no justification. The fundamental right of equality and the free possession, use and disposal of property provided for in subsection 2 of Article 32 of the Constitution can be restricted for any constitutional purpose.

4) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-23-11>

The Supreme Court has specified that the breach of the right to equality means that people in the same situation are treated differently.

To identify an infringement of the fundamental right of equality, a group of persons that are in a situation similar to that of the appellant and in comparison with whom the appellant is being treated worse must be found (<https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-15>, in English).

The Chamber referred to previous case law: “The Supreme Court en banc found in the case concerning judges’ pensions that the legitimate aim of the infringement of the fundamental right of equality set out in subsection 1 of § 12 of the Constitution is the economical use of public funds (the 26 June 2014 judgment in case no. 3-4-1-1-14, para. 115). In the case concerning police officers’ pensions (the 6 January 2015 judgment in case no. 3-4-1-18-14, para. 59), the Supreme Court en banc found that the legitimate purpose of the amendment of the system of office-related pension is the more practical use of public funds, which include ensuring the long-term functioning of the given office-related pension as well as the entire pension system, taking account of what society is actually able to afford itself. Pensions are a long-term and increasing obligation of the state, which must be foreseeable and which must have a cover. Among other things, the Supreme Court relied on the 21 February 2014 report of the National Audit Office titled “Sustainability of the Pension System of the State”, which stated that, in order to ensure the sustainability of the pension system, a long-term plan is required, taking into account the decrease in the number of people of working age, the increase in the number of retired people and the rise in life expectancy. The expenses of the state pension insurance exceed social tax revenue and this deficit will increase in the future, and without the amendments the huge deficit will remain for decades. The number of recipients of office-related pensions has increased over 21 times between 2000 and 2012; between 2005 and 2012 the number of new recipients of special pensions rose by approx. 30% and, on average, office-related pension is received for 29 years, while the average period of receipt of the old-age pension is 18 years. The state spends three times more money on maintaining one office-related pensioner than on an average pensioner (see page 3 et seq in the report of the National Audit Office).”

One example from the Administrative Law Chamber:

5) <https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-101-06>;
<https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-47-03>

The prohibition of discrimination on the basis of citizenship does not apply to some situations, for example, when there is a question about the issue of residence permit or a visa – this is a question for the state to decide.

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, there is not.

II.VI Right to liberty

- What is the original wording of the provision protecting this right in your national catalogue?

Article 20 of the Constitution stipulates: "Everyone has the right to liberty and security of person.

No one may be deprived of his or her liberty except in the cases and pursuant to a procedure provided by law: 1) to enforce a judgment of conviction rendered or a detention ordered by a court; 2) for the case of non-compliance with a direction of a court, or to guarantee fulfilment of a duty provided by law; 3) to prevent a criminal or administrative offence, to bring before a competent authority a person in relation to whom there is reasonable suspicion that he or she has committed such an offence, or to prevent such a person from absconding; 4) to place a minor under disciplinary supervision or to bring him or her before a competent authority to determine whether to impose such supervision; 5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such a person is a danger to himself or herself or to others; 6) to prevent illegal settlement in Estonia and for removing a person from Estonia or for extraditing a person to a foreign state.

No one may be deprived of his or her liberty on the mere ground of inability to fulfil a contractual obligation."

Article 20 of the Constitution is implemented together with § 21 which stipulates "Everyone who has been deprived of his or her liberty must be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and be given an opportunity to notify those closest to him or her. A person suspected of a criminal offence must also be promptly given an opportunity to choose a counsel and to confer with him or her. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be circumscribed only in the cases and pursuant to a procedure provided by law to prevent a criminal offence or in the interests of ascertaining the truth in a criminal case.

No one may be held in custody for more than forty-eight hours without a specific authorisation of a court. The decision of the court must be promptly communicated to the person in custody in a language and manner which he or she understands."

- **Is it possible to restrict the right? If so, how and under what conditions?**

Exceptions are stipulated in Article 20 of the Constitution: 1) to enforce a judgment of conviction rendered or a detention ordered by a court; 2) for the case of non-compliance with a direction of a court, or to guarantee fulfilment of a duty provided by law; 3) to prevent

a criminal or administrative offence, to bring before a competent authority a person in relation to whom there is reasonable suspicion that he or she has committed such an offence, or to prevent such a person from absconding; 4) to place a minor under disciplinary supervision or to bring him or her before a competent authority to determine whether to impose such supervision; 5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such a person is a danger to himself or herself or to others; 6) to prevent illegal settlement in Estonia and for removing a person from Estonia or for extraditing a person to a foreign state.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

A sentence of imprisonment interferes with the fundamental right to physical liberty guaranteed under § 20 (1) of the Constitution. The Constitution does not allow arbitrary interference in anyone's liberty except for the purposes listed in § 20 (2) (see Supreme Court en banc judgment of 10 April 2012 in case No 3-1-2-2-11, paras 48–49). Under § 20 (2) clause 1 of the Constitution, a person may be deprived of their liberty under the law to enforce a judgment of conviction. Under § 11 of the Constitution, interference with a fundamental right should be proportionate to the aim sought.

The Chamber noted that arbitrary deprivation of liberty also includes imposing a clearly excessive sentence of imprisonment. Deprivation of liberty on the basis of a conviction under § 20 (1) and (2) clause 1 of the Constitution is constitutional when, on the one hand, it has taken place in accordance with the procedure prescribed by law, while, on the other hand, it has brought about applying a sentence of imprisonment in respect of a person which is proportionate to the level of injustice of their act, i.e. the gravity of the offence committed, and the degree of guilt of the person arising from this. Deprivation of liberty as a criminal sanction for a longer duration than required by the gravity of the offender's act is not compatible with the prohibition of arbitrary deprivation of liberty under § 20 of the Constitution. In accordance with the principles of human dignity and rule of law under § 10 of the Constitution, a person may be punished for a specific act but not more than required by the gravity of the offence committed (the principle of individual guilt). Sanctions prescribed by law comply with the requirement of proportionality arising from § 11 of the Constitution and are compatible with the principles of human dignity and rule of law if the provision establishing a sanction, including the minimum sanction, enables the court to impose a sentence which is not excessive in view of the level of injustice of the act and the aim of preventing commission of new offences and protecting the legal order (Supreme Court en banc judgment of 27 June 2005 in case No 3-4-1-2-05, para. 57). Proceeding from these guiding constitutional principles, the legislator must develop a system of sanctions allowing for differentiation of penalties corresponding to the gravity of offences (<https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-13-15>, in English).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, there is not.