



Consiglio di Stato



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**“Law, Courts and guidelines for the public
administration”**

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Answers to questionnaire: Estonia



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FIESOLE (FIRENZE), 19 OCTOBER 2020

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE
ANSWERS BY THE SUPREME COURT OF ESTONIA

I SESSION

THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

1. The role of the Supreme Administrative Courts in the interpretation of law.

1.1. Does your legal system provide general rules for the interpretation of law?

No

Yes

1.2. What is the level of general rules for interpreting the law?

Law

Public authority regulations

Guidelines

Supreme Court rulings

Other

Please explain and give an example.

According to § 3 of the General Part of the Civil Code Act¹, “a provision of an Act shall be interpreted together with the other provisions of the Act pursuant to the wording, spirit and purpose of the Act.” While according to the wording of this act, it only regulates private law,

¹ Available in English: <https://www.riigiteataja.ee/en/eli/501082019001/consolide>.

the Administrative Law Chamber of the Supreme Court has stated that these principles of interpretation are also applicable outside private law.²

1.3 What are the criteria for interpretation of the law?

- X literal interpretation
- X reference to purpose of law (so-called *ratio legis*)
- X consistency within the legal system
- X reference to preparatory work
- reference to the advice of the SAC regarding the adoption of the law, if existing
- Other

Explain, if necessary.

1.4. What criteria do judges apply when there are gaps in the law?

- X Analogy (reference to similar *ratio* of other rules)
- X General principles of the legal system
- X Other

Explain, if necessary.

There is also an option to declare the omission by the legislator unconstitutional (§ 2 1) and § 15 (1) 2¹) of the Constitutional Review Court Procedure Act³).

1.5. Does the SAC elaborate general interpretative *criteria*?

- No
- X Yes

Please explain and give an example.

In its judgments, the Supreme Court of Estonia often gives general guidelines for the interpretation of relevant law, in addition to solving the specific case. In fact, one of the bases for giving leave of appeal is that decision on the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case law of the courts (§ 219 (3) 2) of the Code of Administrative Court Procedure⁴). For example, in judgment no 3-14-52793/59 (referred above), the Administrative Law Chamber of the Court explained that,

² Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 18.03.2019, no. [3-14-52793/59](#), p 21 (available only in Estonian).

³ Henceforth CRCPA. Available in English: <https://www.riigiteataja.ee/en/eli/512122019006/consolide>.

⁴ Henceforth CACP. Available in English: <https://www.riigiteataja.ee/en/eli/512122019007/consolide>.

unless clearly provided by law, terminology of private law used in public law provisions should presumably be interpreted in the same way both in public and private law (p 21).

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;
 never seldom sometimes often
- The European Convention of Human Rights and the general principles elaborated by the ECHR;
 never seldom sometimes often
- The general clauses of proportionality and of reasonableness.
 never seldom sometimes often
- The statements (or case law) of the Courts of other countries in similar cases;
 never seldom sometimes often
- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)
 never seldom sometimes often
- The results of regulatory impact analysis (AIR), if applicable;
 never seldom sometimes often
- The impact of the decision;
 never seldom sometimes often
- Other

Please specify.

2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

- No
- Yes

2.2. What other activities do these Services perform?

- X preparation of useful material for the most important judgments of the SAC ;
- X comparative studies;
- X information about new developments in the law and in the case law;
- X training of judges
- X other activities.

Please specify.

The Supreme Court has a Legal Information and Judicial Training Department, which is responsible for the systematisation, annotation and summarisation of Supreme Court judgments, as well as case law analysis that involves thorough analysis of specific issues in both the case law of the Supreme Court and judgments of lower court instances.⁵ The results of these tasks are published on the website of the court. If necessary, the chambers may also ask the department for help researching background information for a specific case or a group of cases (for example case law of other countries or the ECHR, information on the situation of a vulnerable group for an asylum case, etc). The department also plans and organises the training of judges and court officials, does statistical analysis of the work of the Supreme Court, participates in answering questionnaires of different organisations, etc.

2.3. Are administrative Court judgments stored on a searchable and free database?

- No
- X Yes

Please explain.

All court judgments that have entered into force (except in exceptional cases) are published in the same public database that also publishes laws and other general legal acts of Estonian legislative and administrative bodies, Riigi Teataja (the electronic Official Journal)⁶. In addition, the Supreme Court has its own website where its decisions are published⁷.

2.4. What kind of database do the administrative judges consult in their daily work?

- X public and free databases
- X private databases, provided by their institution
- other

Please explain.

⁵ See on the latter task: <https://www.riigikohus.ee/en/case-law-analysis>.

⁶ <https://www.riigiteataja.ee/index.html>

⁷ <https://www.riigikohus.ee/>

In addition to free public databases like the electronic Official Journal, EUR-LEX and different case law databases, the most important database in daily use is the Courts' Information System (KIS), which contains digital files for all court cases, both finished and pending (obviously with restricted access). Many other public, although not necessarily free-access databases are also used when necessary (for example the e-Business Register⁸, the Public Procurement Register⁹, the e-Population Register¹⁰ etc). Private databases are used less often, but access to some (for example xLaw¹¹) has been provided by the court.

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- No
 Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.) *N/A*

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- No
 Yes
 Only if the SAC decides in special composition

The answer is both “yes” and “no”. Formally, opinions expressed in a judgment of the Supreme Court concerning the interpretation and application of the law are binding only on courts that continue proceedings in the same case (§ 233 (1) CACP). In addition, judgments of the full panel of the Administrative Law Chamber of the Supreme Court are binding on smaller panels of the chamber (§ 226 (1) 2) CACP), judgments of a Special Panel constituted of judges of several chambers¹² are binding on those chambers whose judges participated in the panel (§ 233 (2) CACP), and judgments of the Supreme Court en banc are binding on the

⁸ <https://ariregister.rik.ee/index?lang=eng>

⁹ <https://riigihanked.riik.ee/rhr-web/#/>

¹⁰ <https://www.rahvastikuregister.ee/>

¹¹ <https://xlaw.eu/en/index.html>

¹² The Supreme Court of Estonia has an Administrative Law Chamber, a Civil Chamber and a Criminal Chamber. A Special Panel may include judges from any two or all three of these chambers.

chambers and special panels of the court (§ 233 (3) CACP). In practice, in the majority of cases, lower courts follow Supreme Court judgments.

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%
- from 50% to 75%
- from 75% to 100%

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example.

As many lower court rulings and all judgments are appealable to the Supreme Court, making a decision not in compliance with the Supreme Court's case law risks the Supreme Court quashing that decision. One of the bases for giving leave of appeal is that decision on the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case law of the courts (§ 219 (3) 2) CACP).

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

- No
- Yes

If the answer is yes, please explain.

Not necessarily – such issues may be resolved by an ordinary panel consisting of three judges. However, there are several options to decide in a special composition. A case may be referred to the full panel of the Administrative Law Chamber, when 1) within the three-member panel of the Administrative Law Chamber dissenting opinions that raise a point of principle emerge with respect to the application of the law, or 2) the majority of the panel favours changing the position of the Administrative Law Chamber regarding the application of the law, or the panel considers referral to be needed for reasons of ensuring a uniform approach in the case law of the courts (§ 226 (1) CACP). A case may be referred to a Special Panel of the Supreme Court to 1) resolve conflicts of jurisdiction between common courts and administrative courts (§ 121 (3) CACP, § 711 of the Code of Civil Procedure¹³), as well as 2) in the case that a panel of the

¹³ Henceforth CCP. Available in English: <https://www.riigiteataja.ee/en/eli/512122019004/consolide>.

Supreme Court considers it necessary to derogate from the latest opinion of another chamber or of a special panel of the Supreme Court, or 3) if the referral is required in order to ensure the uniform application of the law (§ 227 (1) CACP). And a case may be referred to the Supreme Court en banc, if 1) the majority of the members of the Administrative Law Chamber adopts a position which differs from a principle of law which the Supreme Court en banc continues to recognize, or from that court's opinion concerning the application of the law, 2) in the view of the majority of the members of the Administrative Law Chamber, adjudication of the matter by the Supreme Court en banc is important from the point of view of uniform application of the law, or 3) resolution of the administrative matter requires adjudication of an issue that must be dealt with under the Constitutional Review Procedure Act (§ 228 (1) CACP).

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

No

Yes

It must be decided by a ruling of the panel dealing with the case (§ 226 (2) and § 227 (1) CACP) or, in the case of referring the case to the Supreme Court en banc, by a ruling of the full panel of the Administrative Law Chamber (§ 228 (1)).

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

it is not possible to disagree

it is possible to take a different decision, giving reasons

a new referral to the Court is necessary

The only thing the disagreeing judge can do is write a dissenting opinion, which is published alongside the judgment (§ 11 (7) CACP, § 22 (4) CCP). In the future, if the same issue arises in a new case, it is possible to use the same referral procedure.

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

No

Yes

If the answer is yes, please explain.

As Estonia only has one rather small Supreme Court (19 judges, 6 of them in the Administrative Law Chamber), the primary means of guaranteeing that consistency is informal communication and consultation. The additional methods used for this goal inside the Administrative Law Chamber are, firstly, a short presentation and discussion of all leave of appeal applications in a meeting where the whole Chamber is present, and secondly, sending the judgment agreed upon by the panel before its pronouncement to the whole Chamber, so that others can comment and raise issues which might need wider discussion or contradict earlier case law. If an issue arises in a case heard by one of the chambers that is relevant to another chamber, that other chamber is usually consulted: most often on the level of judicial advisors (who might then bring the issue to the attention of their chamber for discussion), or sometimes a panel is formed where one or more judges are brought in from another chamber.

3.8. If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

Conflicts of jurisdiction are resolved by the Supreme Court – more precisely, by a Special Panel of the Supreme Court formed of two members of each of the relevant chambers and the President of the Supreme Court.

SESSION II.

THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain.

According to § 177 (1) CACP, a judgment which has become final is binding on participants in proceedings insofar as it adjudicates any claim made in the action in relation to the facts which constitute the cause of the action. To the extent that the judgment annuls an administrative act or ascertains the nullity of such an act, that judgment is applicable to every person (§ 177 (2) CACP). However, the binding effect of judgments has been somewhat widened by case law. According to § 41 (3) CACP, when granting a mandatory action, the court may order the respondent both to issue an administrative act or to take an administrative measure, and to make a new decision concerning the issuing of an administrative act or the taking of an administrative measure. The latter half is usually applicable in cases where the administration has a discretionary power. According to case law, a court judgment that has

entered into force may restrict that discretionary power.¹⁴ When the court grants a mandatory action and orders the administrative body to make a new decision, the court's legal positions and guidelines for the administration found in the grounds of the judgment are also binding for that administrative body. Ignoring these positions might lead to the administrative body repeating its abuse of discretion, which would mean repeating the court dispute and could lead to the breach of Article 6 (1) of the ECHR.¹⁵ This binding effect of the judgment may disappear, if factual circumstances that formed the basis for the judgment change after the judgment enters into force.¹⁶ In another case, the Supreme Court has explained that, while the operative part of a judgment concerning a reparation action should be as precise as possible to guarantee effective legal protection and prevent future disputes, if the administration has a wide discretion to choose between different options for reparation, the court may leave the decision open to the administration's discretion.¹⁷

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

No

Yes

Please explain.

As written above, a judgment which has become final is only binding on participants in proceedings insofar as it adjudicates any claim made in the action in relation to the facts which constitute the cause of the action (§ 177 (1) CACP), except for annulment, which is applicable to every person (§ 177 (2) CACP). In practice, though, parties sometimes present arguments to the court relating to (administrative) practice and problems that exist or might arise on a wider scale, and at least the Supreme Court's judgments certainly influence administrative practice, as when the case law is not followed, that may lead to new court disputes and to the annulment of administrative decisions.

An indication of this wider influence is perhaps that trainings (especially those led by judges or court officials) introducing and explaining the latest case law of the Supreme Court are quite sought after by both public servants and lawyers, and that some round table discussions are organised from time to time between judges and officials of a certain administrative body (for example the Tax and Customs Board, prisons, ministries).

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

¹⁴ Judgments of the Administrative Law Chamber of the Supreme Court of Estonia, 13.03.2018, no. [3-17-643/15](#), p 10, and 27.05.2015, no. [3-3-1-14-15](#), p 27.

¹⁵ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 27.05.2015, no. [3-3-1-14-15](#), p 27.

¹⁶ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 27.05.2015, no. [3-3-1-14-15](#), p 30.

¹⁷ Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 24.04.2018, no. [3-17-725/33](#), p 13.

- No
 Yes

Please explain.

While there is no formal mechanism for this, the administration has some ways to extend the effects of a judgment on its own initiative to other similar cases. For example, after a Supreme Court judgment, the administration may offer a compromise to an applicant in an analogous case (§ 154 CACP), or admit the action (§ 159 CACP). The administration also has the option to repeal its own administrative act – as long as this is done on the grounds that the administrative act was unlawful, the annulment is in favour of the addressee and there are no negative effects to other persons, there are no restrictions on this (§ 65 (1) of the Administrative Procedure Act¹⁸).

SESSION III

IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

- No
 Yes

There is no public monitoring of the execution of administrative judgments. However, if failure to execute a court decision or a compromise approved by the court is brought to the court's attention, the court may impose a fine of up to 32,000 euros on the participant in proceedings whose fault this is (§ 248 (1) CACP). In imposing the fine, the court takes into consideration the time that has elapsed since the judgment became final, as well as any other circumstances, which possess significance in relation to the imposition of the fine and the setting of the amount of the fine. If a period of time reasonable for execution of the court decision has elapsed since the imposition of the previous fine, yet the decision has still not been executed, the court may impose the fine again (§ 248 (2) CACP).

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

On average, in the years 2017–2019, this remedy was used in approximately 0.2% of the cases.

¹⁸ Available in English: <https://www.riigiteataja.ee/en/eli/527032019002/consolide>.

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment? *N/A*

3. If there is such a judicial remedy, does it require the judgment to become final?

No

Yes

Please explain.

In general, a court decision is executed after it has become final. The court may establish a time-limit for execution of a judgment which starts to run when the judgment becomes final (§ 246 (1) CACP). So in general, this judicial remedy requires not only that the judgment has become final, but also that some time has elapsed after that (if the court sets no time-limit, then a reasonable time).

However, there are certain situations where a court decision must be executed without delay, and in these cases, the decision is enforceable before it has become final. This must be ordered specifically by the court (§ 247 (1) CACP). Decisions which are enforceable without delay include decisions which reinstate an official in a public service position, decisions which order payment of due remuneration not received (§ 247 (2) 1) and 2) CACP), interim relief measures (§ 252 (3) CACP) and other cases provided by law (§ 247 (2) 3) CACP). The court may, on the basis of an application of a participant in proceedings, declare a court decision to be enforceable without delay also in any other case where execution of the decision at a later date would materially harm the rights of a participant in proceedings, or would be subject to difficulty or impossible. When declaring a court decision to be enforceable without delay, the court must have regard to the rights of other participants in proceedings and the public interests (§ 247 (3) CACP).

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

No

Yes

Please specify.

No such power has been given to administrative courts – the only remedy is the fine described above, repeated if necessary.

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

No

X Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example.

Yes, state liability claims are within the competence of administrative courts (§ 37 (2) 4 CACP). Unless law provides otherwise, only the public authority is liable for the damages, not the specific official who performed the functions of the authority (§ 12 (2) of the State Liability Act¹⁹).

There have not been many examples of claims for damages against public authorities due to the non-execution of court judgments. One of the recent instances was a case where the court had annulled the use permit for a group of windmills, i.a. due to insufficient impact assessment regarding noise – the windmills were quite close to the applicant's home. However, even after the judgment entered into force, the municipality responsible for these permits did not forbid the continuing use of the windmills. Impact assessment was carried out and new use permits issued for the windmills, but the applicant claimed damages from the municipality for the period during which the windmills had been used without a permit. In this case, 1st and 2nd instance courts agreed that the municipality's inactivity was unlawful, but the Circuit Court found that there was no evidence of damage, so the claim for damages was not granted.²⁰ The Supreme Court did not grant leave of appeal.

SESSION IV

THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.

1. Does the SAC play advisory functions for the government or for the public administration?

X No

Yes

The Administrative Law Chamber of the Supreme Court has no such functions. However, the Supreme Court in general – more specifically the Constitutional Review Chamber or the Supreme Court en banc – does have an advisory function, albeit a very limited one. The Parliament (Riigikogu) may file a petition with the Supreme Court for an opinion on interpreting the Constitution in conjunction with the law of the European Union, if the interpretation of the Constitution is of decisive importance for the passing of a legislative bill

¹⁹ Available in English: <https://www.riigiteataja.ee/en/eli/507062016001/consolide>.

²⁰ Judgment of the Tallinn Circuit Court, 19.12.2018, in case no. [3-17-1398](#).

which is necessary for fulfilling Estonia's obligations as a Member State of the European Union (§ 7¹ CRCPA).

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply. *N/A*

- primary legislative acts (of parliament or of government)
- governmental and ministerial regulatory acts
- resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.
- Other

Please specify.

2. The SAC's advice in its consultative role is: *N/A*

- optional and non binding
- mandatory and binding
- mandatory but not binding
- optional and, once required, binding
- it depends on circumstances (please clarify)

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations? *N/A*

- No
- Yes
- In certain circumstances only (please specify)

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

- No
- Yes

According to § 58 (1) of the Courts Act²¹, a judge may be transferred to the state public service, including the service of the Supreme Court or the Ministry of Justice, as well as to the position of a member of the teaching staff at a university in public law, at his or her request and with the consent of the chairman of the court, or appointed as Prosecutor General. During the period of employment in the state public service and a university in public law, and upon appointment as the Prosecutor General, the authority of a judge shall be suspended, but he or she shall retain other judge's guarantees. The judge's salary is retained, unless the new post's salary is higher (§ 58 (1¹) CA). In addition, according to § 58¹ (1) of the CA, upon election or appointment of a judge to the position of a judge of an international court institution or an equivalent position, as well as the judge's participation as expert in international civil mission, the authority and service relationship of the judge shall be suspended. Participation of a judge as expert in an international civil mission shall be coordinated with a chairman of a court and in case of judges of the courts of the first instance and judges of courts of appeal also with the minister responsible for the area (§ 58¹ (2) CA). Outside of these transfers or secondments, judges may (and do) also teach or do research on a smaller scale without stopping their work as a judge (§ 49 (1) CA).

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

No

Yes

²¹ Henceforth CA. Available in English: <https://www.riigiteataja.ee/en/eli/519122019009/consolide>.