

Estonie
Cour suprême

Estonia
Supreme Court

The hierarchy of legal provisions in Estonia¹

Based on the principle of the rule of law, subordinate legislation cannot conflict with legislation of higher order, and all lower level legislation must be constitutional.

1- Constitutional provisions

The Constitution of the Republic of Estonia, passed by referendum on 28 June 1992

The Constitution of the Republic of Estonia Implementation Act, passed by referendum on 28 June 1992

The Constitution of the Republic of Estonia Amendment Act, passed by referendum on 14 September 2003

The first clause of § 3 (1) of the Constitution of the Republic of Estonia (Constitution) is the central provision of the basic principle of the rule of law, which provides for the principle of the rule of law or lawfulness, which in turn consists of the principles of the primacy of the Constitution, general legal reservation and legal priority.

2- International and European Union law

Constitution of the Republic of Estonia Amendment Act § 2 prescribes that to Estonia's membership in the European Union, the Constitution of the Republic of Estonia shall be adapted, taking into account the rights and obligations pursuant to the accession agreement.

Pursuant to the second clause of § 3 of the Constitution, generally recognized principles and rules of international law are an inseparable part of the Estonian legal system.

In constitutional review case no. 3-4-1-3-06², the Supreme Court of Estonia has stated that in the areas of activity where the European Union has exclusive competence or shared competence, and in the case of conflict between the Estonian legislation, including the Constitution, and the European Union legislation, the European Union legislation shall apply.

3- Constitutional laws

§ 104 (2) of the Constitution prescribes the laws that can be passed or amended only by a majority vote by the Estonian Parliament, Riigikogu. These include, for example:

-President of the Republic Election Act;

-Government of the Republic Act;

¹ Drafted by the Legal Advisers of the Administrative Law Chamber of the Supreme Court of Estonia

² Available in English <http://www.nc.ee/?id=663>

-State Budget Act;

-State of Emergency Act, etc.

In practice, these laws are called constitutional laws, because they are passed by special procedure and, unlike ordinary laws, their implementation, amendment or annulment by a decree of the President of the Republic is precluded.

4- Laws

Pursuant to § 65 (1) of the Constitution, the Riigikogu passes laws. Laws are usually legislative acts, laws in the material sense.

The declaration of laws occurs by publication. Observance is compulsory for only those laws that have been published.

In Estonia, it is possible to pass laws by referendum. The Constitution prescribes two cases in which the passage of laws by referendum is mandatory. These are amending the first and last chapters of the Constitution.

5- Decrees

Pursuant to § 109 of the Constitution, the President of the Republic can, in matters of urgent state need, issue decrees. Decrees are not laws in the formal sense, but they have equal legal force with laws, i.e. in the hierarchy of legal provisions they are at the same level as laws.

The President's legislative right is an extraordinary legislative right, the aim of which is to preserve legislative continuity and to establish generally valid regulations to resolve specific individual emergency situations.

6- Regulations

Regulations are sources of authority (§-s 87 and 94 of the Constitution), passed by the government and ministers pursuant to and for the fulfillment of the law. Functionally, regulations are legislative legal instruments; formally, regulations are the legal instruments of administrative bodies.

In order to issue regulations, a provision delegating authority must exist in the law.

In the case of *intra legem* regulations, the law must include a provision that clearly prescribes that the administrative body may issue an administrative legal instrument based thereon.

The provision delegating authority in the case of *praeter legem* regulations must clearly include permission for the legislative authority to issue such regulations based thereon. In addition to this permission, the provision delegating authority must also include the name of the administrative body competent to issue the regulation as well as the specific objective, content and scope of the regulation.

Pursuant to the principle of the separation of powers in Estonia, *contra legem* regulations are excluded by the Constitution.

7- Local government legislation

Pursuant to § 154 of the Constitution, local governments will act independently in deciding the matters related to local life. Therefore, local governments must pass legal acts in order to carry out their competence. Within the context of legislative acts, the local governments pass regulations.

8 - Case Law

In the Estonian legal system, the role of the courts is primarily to interpret the law. Although the primary source of authority is the law, pursuant to the Code of Criminal Procedure (§ 2 clause 4), the Supreme Court decisions can also be the source of criminal procedural law in matters that have not been resolved in other sources of criminal procedural law, but which have come up in the application of the law.

In connection with case no. 3-1-1-101-07, the Supreme Court has explained that, pursuant to the relevant provision, the decision of the Supreme Court can be the source of criminal procedural law, but in matters related to substantive law, the legislator has not, at least directly, assigned the same case-law-related meaning to decisions of the Supreme Court. The other codes of procedure do not include a similar provision. Pursuant to the Code of Civil Procedure and the Code of Administrative Court Procedure, the positions presented in the decisions of the Supreme Court, which are related to the interpretation and application of legal provisions, are compulsory for the courts upon the review of these same cases.

8- Soft Law

These are so-called “recommended” legal provisions, not binding legal acts *per se*. These provisions are included in diverse documents, which cannot be comprehensively listed. The following are some examples.

- Various instructions and guidelines that have been issued by the European Union institutions or domestic administrative bodies.
- Various methods and assessment instructions.
- Technical standards.
- In the Estonian legal order, it is within the competence of the administrative bodies to issue internal legal instruments, which are primarily directed at their own administration and are binding to the administrative bodies. At the same time, qualification of a legal instrument as an administrative rule does not preclude that the provisions also impact people outside the administrative body in their relations with public authority. The provisions of administrative rules

factually acquire external impact as a result of their application. These include, for example, the personnel regulations of state and local government agencies.

- The explanatory memoranda of draft legislation, which are of an informative nature in the interpretation of the law for both the addressees of the legal provision as well as the courts.

Contradictions in the hierarchy

Two principles are employed to resolve the contradictions between legislation on the same level:

- 1) *lex specialis derogat legi generali* – an act prescribing special regulations overrides an act prescribing general rules;
- 2) *lex posteriori derogat legi priori* – later acts override earlier acts.