



Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE D'ESTONIE/REPUBLIC OF ESTONIA/ REPUBLIK
ESTLAND/ ЭСТОНСКАЯРЕСПУБЛИКА**

The Supreme Court of Estonia Riigikohus

Anglais / English / Englisch / английский

**XVIIth Congress of the Conference of European Constitutional Courts
Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles**

Abstract

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

The Constitutional Court of the Republic of Slovenia regularly refers to constitutional principles when exercising its competences. It applies constitutional principles either directly as the major premise – i. e. the criterion of review – or as value-oriented criteria for the interpretation of other provisions of the Constitution, especially those guaranteeing human rights and fundamental freedoms. Constitutional principles refer not only to the principles explicitly stated in the Constitution, but also to principles that are only implicitly contained in individual constitutional provisions and were developed by the Constitutional Court through its case law.

The Slovene Constitution does not establish a hierarchy of constitutional principles, and constitutional principles do not take precedence over other provisions of the Constitution. In instances of conflicts between different constitutional principles, the Constitutional Court weighs the competing principles to determine which of them has to be given priority in the case at issue. Individual principles, such as the principles of democracy, a state governed by the rule of law, a social state, the separation of powers, the separation of the state and religious communities, legality, and the prohibition of retroactive effect, are expressly enshrined in individual constitutional provisions. The principle of the protection of human rights and fundamental freedoms is for example also concretised throughout the entire Chapters II and III of the Constitution, which contain a catalogue of human rights and fundamental freedoms. In addition, with regard to human rights the Constitutional Court frequently applies the general principle of equality, the prohibition of discrimination, and the principle of the highest protection of human rights. The principle of protection of human dignity must be singled out as probably the most important implicitly determined constitutional principle. Furthermore, from among such principles also the principles that the Constitutional Court derived from the principle of a state governed by the rule of law should be mentioned, e. g. the principle of clarity and precision of regulations, the principle of trust in the law, the principle that the law must adapt to social relations, and the general principle of proportionality.

While constitutional principles can constitute an independent basis for the review of the constitutionality of regulations, they cannot be independently invoked in constitutional complaint proceedings. A constitutional complaint can namely only invoke violations of human rights and fundamental freedoms.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.

The Constitutional Court also frequently relies on international law and the law of the European Union. With regard to constitutional principles, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR) are of particular importance for the work of the Constitutional Court. It should further be noted that the Constitutional Court deems that fundamental principles of European Union law are constitutional principles.

Since its adoption on 23 December 1991, the Slovene Constitution has been amended six times with nine constitutional acts. The Constitution regulates the procedure for its amendment and does not impose any absolute or relative prohibition or other formal restriction for amending its provisions. The amendment procedure is uniform, i.e. the Constitution does not regulate different procedures for amending its individual provisions according to their scope, importance, or role. A proposal to initiate the procedure for amending the Constitution may be submitted by 20 deputies of the National Assembly, the Government, or at least 30,000 voters. Draft constitutional acts are drafted by a special working body of the National Assembly, i.e. the Constitutional Commission. A constitutional amendment is adopted if at least 60 deputies of the National Assembly (i.e. a two-thirds majority) vote for its adoption. Such may be followed by an optional third phase, in which the amendment is submitted to the voters for approval at a referendum. The constitutional amendment enters into force upon its promulgation in the National Assembly.

The Constitutional Court does not have the power to review constitutional provisions and, as constitutional acts amending the Constitution have the same legal status as the Constitution, it is also not competent to review such acts.