

ESTONIA/ESTONIE

- 1. What mechanisms have been put in place at national level to ensure compatibility of legislation (whether draft legislation, laws in force or administrative practice) with the Convention? How do these work (whether or not they are systematic, the competent authorities and any consultations – whether optional or mandatory)? What are the advantages of the mechanism chosen?**

According to the Estonian Constitution, the Convention is an integral part of the Estonian legal order and all domestic bodies vested with right of legislative initiative are warranted to ensure compliance of all national legislation with the Convention (§ 123). Additionally, by interpreting and applying national law, all public bodies must give due regard to the Convention provisions.

Mechanisms to ensure the compatibility of draft laws.

The Regulation no. 180 of the Government on the Rules for Good Legislative Practice and Legislative Drafting (effective as of 1 January 2012) prescribes that international conventions and treaties, including that of human rights that Estonia is a party to, must be considered during the preparation of legislation (§ 3 of the Rules). Hence, a body that initiates draft legislation is required to examine the compatibility of their draft with the Convention and to ensure that the draft law complies with it. In certain cases, if the draft law is likely to affect the Convention rights directly or entails essential considerations of the Convention rights, the legal department of the Ministry of Foreign Affairs or the Government Agent before the ECtHR (whose office is in the legal department of the MFA) could be consulted.

When a draft law is forwarded to the Parliament, it is accompanied by an explanatory memorandum which analyses the compatibility of the draft law with the fundamental rights of the Estonian Constitution and/or of the human rights set out in the Convention (§ 43 of the Rules). The questions on the compliance with the Convention are subsequently undertaken by the relevant parliamentary committee in charge of the preparation of the bill in the Parliament. Lastly, if relevant, the draft law's compliance with the Convention is addressed during the parliamentary debates.

After the legislation is adopted by the Parliament, the President of the Republic of Estonia needs to promulgate it for it to become valid. According to § 107 of the Constitution of Estonia the President may refuse to do so and return it to the Parliament for a new debate and for a new decision if the President assesses the law to be incompatible with the Constitution. If the Parliament, for the second time and without amending it, passes a law which has been returned to it by the President, the President either promulgates the law or applies to the Supreme Court for a declaration of unconstitutionality in respect of that law.

Mechanisms to ensure the compatibility with respect to laws in force.

As to the laws already in force, their verification in light of the Convention requirements is prompted normally by a case that concerns Estonia directly or following a judgment by the Court against another member state with relevance to Estonian legislator.

The Government Agent before the Court (MFA) communicates to all relevant authorities all judgments and decisions adopted by the Court in individual applications brought against Estonia. The ministry responsible for the subject area under question is also responsible for

scrutinising the compliance of existing regulations and practices with the Convention requirements, and for initiating legislative amendments if necessary.

The Government Agent and the officials dealing with human rights' issues in the Ministry of Foreign Affairs also systematically monitor the developments of the Court's case law and accordingly publish and disseminate the Court's judgments to draw attention of other ministries or the courts to certain developments in the Court's case law, especially concerning laws relating to areas in which there is a potentially higher risk of a violation of human rights.

Additionally, each year the Government Agent before the Court prepares an overview of the previous calendar year for the Government, outlining the judgments and decisions made in respect of Estonia and the various aspects relating to their execution, including the need to amend legislation. Drawing from the judgments made against other member states, the overview also identifies certain problematic areas in the Estonian legislation that require scrutiny in light of the developments of the Court's case law. The respective overview is also forwarded to the Constitutional Committee of the Parliament and to the Legal Affairs Committee of the Parliament.

The compliance of the laws to the Convention is also verified within the framework of the constitutional review procedure at the Supreme Court. A case to challenge a law's compatibility with fundamental rights and freedoms may be referred to the Supreme Court by any court processing a case raising such issue, and by the Chancellor of Justice.

Mechanisms to ensure the compatibility of administrative practice.

The compatibility of administrative practice to the Convention requirements is ensured by appropriate publication and dissemination of the relevant case-law of the Court to all the authorities concerned. When relevant and necessary, appropriate training is provided to the decision makers.

Additionally, courts are required to assess the conformity of administrative practice to the Convention standards if such compatibility issue rises.

The Chancellor of Justice contributes further to the assessment of the compatibility of the draft laws, existing laws and administrative practice to the Convention provisions. Under the Chancellor of Justice Act, it is the duty of the Chancellor to monitor that the authorities' actions are in conformity with the Constitution of Estonia and with its international agreements and that the fundamental rights and freedoms of people living in Estonia are protected. Within this competence the Chancellor analyses the petitions and proposals made to him or her concerning the amendment of acts, passage of new acts and activities of state agencies and, when necessary and appropriate, issues opinions, recommendations, requests and reports to the relevant body of authority.

2. What obstacles have been encountered in establishing or applying these mechanisms? How have these been overcome?

The factors that contribute to the obstacles in establishing and applying the mechanisms to ensure compatibility of legislation with the Convention include limited human and financial resources to analyse the fast-evolving case law of the Court at different levels of governance and to address all the possible Convention issues in a timely manner - there is always room

for improvement in this regard. Nevertheless, Estonia considers the present mechanisms to be adequate.

3. Is there any assessment (or planned assessment) of the appropriateness and effectiveness of the mechanisms in question? If so, how does this work? What obstacles have been encountered in setting up or carrying out such an assessment?

There has been no separate assessment taken place regarding the appropriateness and effectiveness of the mechanisms in question.