



In 1991, the Republic of Estonia was restored as a legal successor to the republic created in 1918. This wish that was felt to be the only correct and possible way—to invoke legal continuity—was so strong that it was considered to re-establish the pre-war constitution of 1938 as the basis of constitutional order. It should be mentioned here that this was the option preferred by several states. However, in Estonia it was understood in serious legal and political discussions that the constitution must take account of the current realities of society, of the development of law during the 50 years that had passed, reflect the spirit of the times and be forward-looking in its views. A new constitution was created as a result of a public understanding agreement.

The 1992 constitution created a totally different order both from the previous constitutions of the Republic of Estonia and from that of the Estonian SSR that had been in effect to that date. Instead of a presidential republic, the state was moulded into a parliamentary republic. The state acquired a simple organisational framework: classical branches of powers, unicameral representation of the people, a head of state with merely sufficient powers, a legal chancellor called to review constitutionality as an institution distinctive of Estonia. The simplicity of the organisational structure of the state is vividly illustrated by the judicial power created by the constitution—a unified, three-instance system with at least one opportunity to appeal where all cases start from the first instance without an exception.

Thus the constitution created a state that was easily perceivable by the people and as such was easy to accept. The constitution is emphatically about the focus on the people, that the state must serve the people and not the other way round. The list of fundamental rights is open and the number of freedoms protected by them is virtually unlimited. In implementing the fundamental rights, the courts chose to amalgamate the provisions of the constitution with the European convention on the protection of human rights and fundamental freedoms and the charter of fundamental rights of the European Union. There cannot be an instance that a person has less freedoms and rights under the Estonian legal order than provided for in the convention or charter.

What is also so simple is how a person can protect himself or herself against abuses of power. Within this clear-cut and independent judicial system we described above there are means to review the constitutionality of the state power. In a court, a person can invoke directly the rights granted to him or her by the constitution. All courts are required to disregard a law that is in violation of the basic rights.

Proportionality is the most potent keyword that the constitution has rooted in the political culture, law-making and state administration. At the same time, the principle that those that are equal must be treated equally and those that are not are to be treated unequally is becoming a given in social culture.

It was in part a reaction to the persecution of people by the Soviet Union on the grounds of belonging to a national minority (i.e., Estonian among others) that the constitution of 1992 is emphatically centred on the Estonian nation. The preamble sets out the preservation of the Estonian nation, language and culture through the ages as one of the goals of the state. On the other hand, the current constitution ensures the rights of national minorities to preserve and develop their national culture.

An abundance of experts also believe that the current constitution is characterised by being puissantly protective of classical sovereignty. Section 1 of the

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constitution sets out that the dependence and sovereignty of Estonia are timeless and inalienable. However, social and political consensus has supported flexible interpretation of the sovereignty provision. The preservation of the state and the Estonian nation does not seem to be possible in the world of the 21st century without surrendering some sovereignty in order to enjoy it together with the other nations and states.

During its 20 years of existence, the constitution successfully survived its biggest change when the Republic of Estonia acceded to the European Union. Unlike many other Member States, Estonia decided not to amend the core text of the constitution because of accession to the EU. The constitution was supplemented by an act under which the constitution applies to Estonia's membership in the European Union while taking into account the rights and obligations arising from the accession agreement. Hence, the old order continues to apply in the new constitutional situation insofar as it does not contradict the obligations arising from EU membership. This was an extension of the principle embraced when Estonia restored independence meaning that the legislation of the previous order continued to be enforceable insofar as it was not contrary to the new constitution. Thus, the old constitutional order is gradually replaced by a new possible order during EU membership. However, it is always possible to revert to the old constitution. Membership in the EU has an unsurpassable limit determined by the fundamental principles of the constitution which have to date not been specified in practical application of law.

It is difficult to say definitively whether the current Estonian constitution is principally a cultural, political or legal document, or whether it is a constitution of lawyers and experts or rather that of the politicians and people. Everyone can embrace this document. At the same time, the constitution has been implemented so well that it does not need to be directly invoked in day-to-day political activity, social life or legal practice. Political forces as well as the parliament and the public institutions that implement the constitution tend to abide by the constitution. Perhaps we can say to whom the constitution belongs when we celebrate its 50th anniversary. We may obviously predict that its place in the awareness of the people will be much more significant.



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