



COUNTRY REPORTS: ESTONIA

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I. How has parliamentary law-making practice changed during the pandemic in the state you are studying?

- **Briefly describe the new practices.**
- **Evaluate these practices. In your opinion, do these practices empower, disempower or not change anything regarding parliamentary law-making powers and practice?**

The main change in the parliamentary law-making in the COVID pandemic era concerned the adoption of the legislative changes to the law governing the procedure of the parliament (Riigikogu, 2020). These legislative amendments to the Riigikogu Rules of Procedure and Internal Rules Act were adopted in June 2020 to tackle the challenges to the legislative process posited by the spike in COVID-19 disease. In particular, the Law allowed for ‘remote-participation sittings’ of the parliament to be contacted by electronic means. The Board of the Riigikogu was given the prerogative to set remote sittings in the presence of a compelling necessity and at least 3 days in advance of such meeting. Additionally, the legislative amendments set the guarantees that parliamentarians shall not be impeded in their participation in the legislative process. The first remote-participation sitting was convened in early November 2020. Primarily, the new Law was framed as a technocratic issue and was not politicized across the political aisles. In the Estonian context, the new piece of legislation was perceived as continuing the trend of ‘digitalization’ of parliamentary work (Saks, 2021).

The parliamentary elections of 2019 have influenced the legislation-making output of Riigikogu the most so far. In January-March 2019, the Riigikogu adopted 46 laws and 6

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declarations in the legislative cycle that was ending. These were the laws put forward in previous calendar years and voted before the expiration of the legislative cycle of the Riigikogu due to the upcoming elections. These laws were passed in accelerated mode – although each enjoyed three plenary hearings, it was evident that the laws sometimes went through the 2d and 3d plenary session hearings in just a few working dates in January and February of 2019. Convening after the elections in April 2019, the parliament adopted 37 laws and 41 declarations, respectively, in its new legislative cycle in the remaining part of the calendar year. Overall, the drop in legislation making-output for the remaining part of 2019 can be seen as quite natural given that the new parliament was coming to grips with the legislative process while onsetting the new legislative cycle.

Conversely, in 2020 (the first COVID pandemic year) and 2021, the legislation-making output of the parliament has been growing consistently. In this regard, the number of legislative bills tabled before the parliament and the number of voted laws grew through the next calendar years. The changes to the parliamentary procedure did not influence the regular pattern of legislation-making. In 2020 and 2021, the parliament adopted roughly the same number of laws and non-legislative measures (parliamentary declarations).

A quite stringent framework on the types of laws enjoying shortened legislative procedure prevented the expansion of fast-tracked legislation in the parliamentary politics of the COVID era. The Riigikogu Rules of Procedures Act outlines several special proceedings regarding distinct types of bills and draft resolutions. These types of bills enjoy shortened procedure for parliamentary deliberations. This includes cases of the legislation ratifying international agreements, petitions requesting constitutional review by the Supreme Court, urgent financial bills, and others.

In 2019-2021, the Riigikogu voted for laws that enjoyed shortened procedures in the legislative process. In the composition of the legislation, these usually were the laws that ratified or denounced the international agreements of Estonia. In 2019, eight such laws were adopted following the shortened procedure (two rounds of plenary hearings instead of the usual three) outlined to ratify international agreements. In 2020 and 2021, the number of laws enjoying shortened procedures was higher with 16 and 10 laws. Again, the impact of parliamentary election explains a lower legislation-making output for 2019, which was due to the onset of the new legislative cycle following the spring 2019 elections to the Riigikogu.

As for legislative practices, a notable case of omnibus legislation was presented with the legislation tackling the spread COVID-19, which was adopted in the spring 2020 amid the pandemic crisis. The Law included diverse provisions concerning the prerogatives of the Health Board and amended a diverse number of other legislative acts. In particular, President Kersti Kaljulaid criticized the Law for ‘clustering’ changes to different regulatory laws without consideration for legal technique and good practice of parliamentary work. Although promulgating the Law itself, the President publicly criticized the center-right coalition in the parliament for using this dubious practice and infringing on the quality of the legislative process in a parliamentary democracy (ERR, 2020b).

Similarly, a more notorious case of passing the omnibus legislation raised similar concerns by the President. In spring 2020, the parliament amended 35 major regulatory laws by a single piece of legislation (Act Amending the Auxiliary Police Act and Other Acts) to tackle the spread of the COVID-19 disease. The controversial part of legislative amendments concerned the changes put into the Aliens Act that concerned working visas for non-EU nationals coming to Estonia seasonally (primarily Ukrainians). This part of the Law was propelled and relied on the support of the radical right partner (*EKRE*) of the parliamentary coalition in Riigikogu. The Law caused some political and public outcry for being a clear case of omnibus legislation (ERR, 2020a).

So far, the Estonian parliamentarians have been successful in requesting judicial review of the COVID-era changes to the parliamentary procedure. In late November 2021, Priit Sibul, a parliamentarian of the right-wing *Isamaa* faction, filed a complaint to the Supreme Court questioning the decision of the parliament to switch to remote-participation sitting earlier in November. The parliamentarian argued that there was no compelling and sufficiently acute reason to switch to a remote-participation type of plenary sittings (ERR, 2021). The Supreme Court supported the reasoning of the complaint and argued that the Riigikogu decision was not justified enough and infringed on the realization of a popular mandate of the parliamentarian. Moreover, the Court argued that the nature of parliamentarian mandate in a parliamentary democracy requires the most direct and unhinged participation in the legislative process (Riigikohus, 2021)[\[i\]](#).

II. Looking at formal changes and the practice of law-making in the state you are studying, has respect for the rule of law increased, decreased or not changed at all during the pandemic? Please elaborate on the question.

The respect for the rule of law did not change during the COVID-pandemic period. There is no noticeable trend or evidence for the quality of democracy deteriorating in Estonia due to COVID-era legislative changes to the parliamentary procedure. In general, Estonia has reached a considerable level of democratic consolidation, including in the domain of parliamentary politics (Pettai, 2021). This argument can be extended to the domain of the legislative process and the parliamentary law-making practices as well. Foremost, this is evidenced by the framework governing the legislative procedure of the Riigikogu. Regarding the formal regulations, the Riigikogu Rules of Procedure specified the cases when the legislative process is governed with a special (shortened) procedure to consider separate types of draft laws. In recent years, these requirements were routinely adhered to in passing the legislation ratifying international agreements (the legislation enjoys two rounds of plenary sitting readings instead of the usual three). Moreover, the legislative changes of 2020 to the Riigikogu Rules of Procedures safeguarded guarantees for the rights of parliamentarians to participate in the legislative process in a remote mode of a plenary sitting. A notable case confirming the trend of democratic consolidation in the country is presented with a recent case of an Estonian parliamentarian successfully litigating the decision of the parliament to hold a remote-participation plenary session.

[1] The Supreme Court argued against the decision of the parliament to hold a remote-participation sitting without questioning the legal validity of the legislative bills adopted in November 2021.

References

ERR. 2020a. “President proclaims second cluster law despite concerns,” 04.05.2020, <https://news.err.ee/1085316/president-proclaims-second-cluster-law-despite-concerns>

ERR. 2020b. “President issues statement expressing controversial emergency law fears,” 15.05.2020, <https://news.err.ee/1090411/president-issues-statement-expressing-controversial-emergency-law-fears>

ERR. 2021. “Государственный суд: удаленные заседания Рийгикогу противозаконны,” 23.12.2021, <https://rus.err.ee/1608444980/gosudarstvennyj-sud-udalennye-zasedanija-riigikogu-protivozakonny>

Riigikogu, 2020. *Riigikogu kodu- ja töökorra seaduse muutmise seadus*, 12.06.2020, <https://www.riigiteataja.ee/akt/102062020002>

Riigikohus. 2021. Kohtuotsus Priit Sibula kaebus Riigikogu 9. novembri 2021. a otsuse peale, <https://rikos.rik.ee/?asjaNr=5-21-32/8>

Pettai, Vello. 2019. "Estonia From Instability to the Consolidation of Centre-Right Coalition Politics," in *Coalition Governance in Central Eastern Europe*, edited by Torbjörn Bergman, Gabriella Ilonszki, Wolfgang C. Müller pp. 170-206. Oxford: Oxford University Press

Saks, Ahto. 2021. "Digitalisation of Work in Estonian Parliament Riigikogu," *International Journal of Parliamentary Studies*, 1 (1), pp. 181-188

Annex 1: Formal changes

Country	Legal act changing formal rules of law-making (in original language)	Chamber concerned (in original language)	Short description of the content of the reform (in English)	Which year? 2019, 2020 or 2021
ESTONIA	Riigikogu kodu- ja töökorra seaduse muutmise seadus, Riigikogu 12.06.2020, link: https://www.riigiteataja.ee/akt/102062020002	Riigikogu	The legislative amendment changed the original Act on Riigikogu's Rules of Procedure by a) allowing for remote sittings of the parliament to be conducted by 'digital' means, that is online; b) outlining a procedure for convening a remote sitting through the Board of the Riigikogu: notification of the parliamentarians at least three days in advance etc.	2020

Annex 2: Law-making practice

Country	Chamber concerned (in original language)	Year	Number of ALL legislative bills	Number of resolutions/decisions/statements (various non-legislative measures)	Number of fast-tracked legislation (debate limited and/or shortened legislative process, including omnibus laws)	Most common forms of fast-track measures	Number of decree laws/gov decisions (no parliamentary consent)	Number of working days (parliament)	Number of oral questions to the government	Number of written questions
ESTONIA	Riigikogu	2019	146 (adopted 83)*	47	8	shortened legislative process*	0	102	291	52
		2020	309 (adopted 98)	26	16	shortened legislative process	0	111	386	90
		2021	503 (adopted 96)	33	10	shortened legislative process	0	120	319	72
			*see explanation for this number in the report		*2 hearings instead of 3 for a legislative bill					