

Recent developments in Estonian criminal law

Jaanus Tehver
TEHVER & PARTNERS

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New sanctions

- New measures of “post-sentence behaviour control” and “post-sentence detention” introduced
- Amendments to the Penal Code entered into force on July 24, 2009

Post-sanction behaviour control

- Applied after a convicted person has served a prison sentence of at least 2 years
- Grounds for imposing: “reason to believe” that the person *may* commit new crimes
- Includes the following measures: obligation to live at a designated location, meet regularly with a probation officer, avoid contact with certain persons, refrain from using alcohol or drugs, etc
- Duration of the measures: 12 months to 3 years
- Application decided by a court at the end of the person’s prison term (during the last 2 months of one’s sentence)

Post-sanction detention, I

- Applied after serving a prison sentence of at least 2 years for a violent crime
- Grounds for imposing: (a) prior convictions, or commission of several violent crimes, and (b) “reason to believe” that due to “criminal inclinations” the person will commit new violent crimes when freed
- Term of detention not determined (applied until the person is no longer “dangerous”)
- Detention can exceed 10 years only when the person committed a very serious crime (punishable by 10 years or life imprisonment), and there is “grave danger” that the person will commit new similar crimes when freed

Post-sanction detention, II

- Application decided by a court at the time of sentencing
- Review once a year, first review at the end of prison sentence
- A person can only be released “conditionally” and he/she is subjected to “behaviour control” for a period of 12 months up to 3 years
- When there is “reason to believe” that a conditionally released person *may* commit new violent crimes, the court can re-impose (!) post-sentencing detention

Challenges

- Both measures criticized by academics and lawyers prior to the adoption of the new legislation, criticism ignored by the government
- Compliance with the Constitution open to challenge, for that reason the Supreme Court refused to comment the proposed legislation at preparatory stage
- Government used other countries’ (esp Germany) example as an argument for pushing the legislation through, but in doing so, mislead the Parliament by referring to only certain examples and distorting the general picture