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Penal Code Implementation Act

Passed 12.06.2002
RT I 2002, 56, 350
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Amended by the following acts

Passed	Published	Entry into force
12.02.2003	RT I 2003, 26, 156	21.03.2003
17.03.2003	RT III 2003, 10, 95	17.03.2003 The judgment of the Supreme Court en banc declares the Penal Code Implementation Act to be in conflict with the second sentence of subsection 23 (2) of the Constitution in conjunction with the first sentence of subsection 12 (1) thereof in the part where the Act does not provide for the reduction in the punishment of a person who is serving a sentence of imprisonment imposed pursuant to the Criminal Code to the maximum imprisonment provided for in the respective section of the Special Part of the Penal Code.
27.09.2006	RT I 2006, 46, 333	01.01.2007
24.01.2007	RT I 2007, 13, 69	15.03.2007
20.06.2013	RT I, 05.07.2013, 2	15.07.2013
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, The titles of ministers replaced on the basis of subsection 107 ³ (4) of the Government of the Republic Act in the wording in force as of 1 July 2014.

Chapter 1

RELEASE FROM PUNISHMENT AND DELETION OF DATA CONCERNING PUNISHMENTS IN CRIMINAL MATTERS AND TERMINATION OF CRIMINAL PROCEEDINGS AND LEGAL ASSESSMENT OF OFFENCES COMMITTED PRIOR TO ENTRY INTO

FORCE OF PENAL CODE IN CRIMINAL MATTERS IN WHICH PROCEEDINGS ARE BEING CONDUCTED

§ 1. Release from criminal punishment and deletion of data concerning punishment

(1) A person who has been convicted pursuant to the Criminal Code (RT 1992, 20, 287 and 288; RT I 2002, 44, 284) of a criminal offence which is no longer punishable as a criminal offence pursuant to the Penal Code shall be released from punishment.

(2) A person who at the time of commission of a criminal offence is less than 14 years of age shall be released from punishment.

(3) A person who has been convicted of a criminal offence shall be released from punishment if the necessary elements of the criminal offence correspond to the necessary elements of a misdemeanour pursuant to the Penal Code or another Act.

(4) If a punishment is imposed on a person for several criminal offences or by several court judgments and the person should be released from the punishment for any of the criminal offences on the grounds provided for in subsections (1)-(3) of this section, a new aggregate punishment shall be formed pursuant to the Penal Code, without aggravating the person's punishment.

(5) Data concerning the punishment of a person specified in subsections (1)-(3) of this section shall be deleted from the punishment register and, in the cases specified in subsection (4) of this section, data concerning the punishment of a person shall be amended in the punishment register.

(6) A judge of the county or city court of the location of the conviction sitting alone shall decide, at the request of the prosecutor, on the release from punishment imposed for a criminal offence by a ruling in a written proceeding, without summoning the participants in the proceedings.

§ 2. Release from criminal punishment of person serving criminal sentence in Estonia pursuant to court judgment of foreign state and deletion of data concerning punishment

(1) A person who is serving a criminal sentence in Estonia and who was convicted by a court of a foreign state shall be released from punishment if the punishment is imposed for an act which is not punishable as a criminal offence pursuant to the Penal Code, unless otherwise provided by an international agreement.

(2) If a person is released from punishment pursuant to subsection (1) of this section, data concerning the punishment of the person shall be deleted from the punishment register.

(3) A judge of the Tallinn City Court sitting alone shall decide, at the request of a public prosecutor, on the release from punishment of a person serving a criminal sentence in Estonia pursuant to a court judgment of a foreign state by a ruling in a written proceeding, without summoning the participants in the proceedings.

§ 3. Termination of criminal proceedings and legal assessment of offence committed prior to entry into force of Penal Code in criminal matter which is being processed by court or pre-trial investigation authority

(1) Criminal proceedings concerning a criminal offence committed prior to entry into force of the Penal Code shall be terminated on the grounds provided for in subsections 1 (1)-(3) of this Act and any preventive measures applied with regard to the suspect, the accused or the accused at trial shall be annulled.

(2) An offence which is committed prior to entry into force of the Penal Code and which is also punishable as a criminal offence pursuant to the Penal Code shall be legally assessed pursuant to the corresponding section of the Criminal Code in force at the time of the commission of the offence.

(3) If, after entry into force of the Penal Code, a punishment is imposed for a criminal offence committed prior to entry into force of the Penal Code, the punishment shall be based on the punishment provided for in the corresponding section of the Criminal Code in force at the time of the commission of the offence, in case the said section prescribes a lesser punishment.

(4) If, after entry into force of the Penal Code, a punishment is imposed for a criminal offence committed prior to entry into force of the Penal Code for several criminal offences or by several court judgments, the punishment shall be in accordance with the law in force at the time of the commission of the offence and an aggregate punishment shall be imposed pursuant to the Penal Code without aggravating the punishment of the accused at trial.

(5) If a punishment is imposed for criminal offences of the same type at least one of which has been committed prior to entry into force of the Penal Code, all the committed offences shall be legally assessed and the punishment shall be imposed pursuant to the Penal Code without aggravating the punishment of the accused at trial.

(6) Criminal proceedings in a matter being processed by a pre-trial investigation authority shall be terminated by an order of the preliminary investigator and with the permission of the prosecutor. Criminal proceedings in a matter being processed by a county or city court shall be terminated by a ruling of the judge and a copy of the ruling shall be sent to the prosecutor.

§ 4. Enforcement of court judgment with regard to person who is on probation pursuant to § 50 of Criminal Code or who is released from punishment pursuant to §§ 47, 55 or 56 of Criminal Code

(1) The enforcement of a court judgment with regard to a person who is on probation pursuant to § 50 of the Criminal Code shall be continued within two years as of the date of the beginning of the person's probation, in accordance with subsections 73 (1) and (4) of the Penal Code.

(2) The enforcement of a court judgment with regard to a person who has been released from punishment pursuant to §§ 47, 55 or 56 of the Criminal Code shall be continued in accordance with §§ 74 or 76 of the Penal Code as appropriate.

Chapter 2
RELEASE FROM PUNISHMENT IMPOSED FOR
ADMINISTRATIVE OFFENCE AND DELETION OF DATA
CONCERNING PUNISHMENTS AND TERMINATION
OF PROCEEDINGS IN ADMINISTRATIVE OFFENCE
MATTERS AND LEGAL ASSESSMENT OF OFFENCES
COMMITTED PRIOR TO ENTRY INTO FORCE OF PENAL
CODE IN ADMINISTRATIVE OFFENCE MATTERS IN
WHICH PROCEEDINGS ARE BEING CONDUCTED

§ 5. Release from punishment imposed on natural person or legal person for administrative offence and deletion of data concerning punishment

(1) If a punishment for an administrative offence which, pursuant to the Penal Code or another Act providing for the necessary elements of a misdemeanour, is no longer punishable as a misdemeanour or criminal offence has been imposed on a natural or legal person, the person shall be released from punishment.

(2) A natural person who at the time of commission of an administrative offence was less than fourteen years of age shall be released from punishment.

(3) Data concerning the punishment of persons specified in subsections (1) and (2) of this section shall be deleted from the punishment register.

(4) Release from punishment imposed for an administrative offence shall be decided, without summoning the participants in the proceedings, by a ruling of:

- 1) a judge of the county or city court which imposed the punishment sitting alone, at the request of an official of the agency which prepared a report on the administrative offence;
- 2) a judge of the county or city court of the location of the commission of the offence sitting alone, at the request of an official of the agency which imposed the punishment for the administrative offence.

§ 6. Termination of proceedings in administrative offence matters and legal assessment of offences committed prior to entry into force of Penal Code in administrative offence matters processed by court or official

(1) Proceedings in an administrative offence matter of a natural or legal person which have been commenced concerning an administrative offence committed prior to entry into force of the Penal Code shall be terminated on the bases provided for in subsections 5 (1) and (2) of this Act.

(2) An offence which is committed by a natural or legal person prior to entry into force of the Penal Code and which is punishable as a misdemeanour pursuant to the Penal Code or another Act shall be legally assessed pursuant to the appropriate section of the Code of Administrative Offences or another Act which prescribes the necessary elements of an administrative offence.

(3) If, after entry into force of the Penal Code, a punishment is imposed on a legal person for an administrative offence committed prior to entry into force of the Penal Code, the punishment shall be based on the punishment

provided for in the corresponding section of the Code of Administrative Offences in force at the time of the commission of the administrative offence, in case the said section prescribes a lesser punishment.

(4) If, after entry into force of the Penal Code, a punishment is imposed on a legal person for an administrative offence committed prior to entry into force of the Penal Code, the punishment shall be based on the punishment provided for in the corresponding section of the Act providing the administrative liability of legal persons in force at the time of the commission of the administrative offence, in case the said section prescribes a lesser punishment.

(5) If, after entry into force of the Penal Code, a punishment is imposed on a natural or legal person for an administrative offence committed prior to entry into force of the Penal Code for several administrative offences, the punishment shall be in accordance with the law in force at the time of the commission of the administrative offence and the punishment shall be imposed pursuant to the Penal Code without aggravating the punishment of the administrative offender.

(6) Proceedings in an administrative offence matter of a natural or legal person which is being processed by an official shall be terminated by an order of the official. Proceedings in an administrative offence matter of a natural or legal person which is being processed by a county or city court shall be terminated by a ruling of a judge sitting alone.

Chapter 3

APPLICATION OF SUBSTITUTIVE PUNISHMENT AND ASSESSMENT OF DAMAGE CAUSED BY CRIMINAL OFFENCE AND GRAVITY OF PHYSICAL ILLNESS

[RT I 2003, 26, 156 - entry into force 21.03.2003]

§ 7. Application of substitutive punishment

Substitutive punishments may be imposed, under conditions provided for in the Penal Code, on a person who has been convicted pursuant to the Criminal Code and is serving the sentence.

§ 8. Assessment of damage caused by criminal offence

[Repealed - RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 8¹. Assessment of gravity of physical illness

[Repealed - RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 8². Assessment of large scale of criminal offence

[Repealed - RT I, 12.07.2014, 1 - entry into force 01.01.2015]

Chapter 4

APPEAL AGAINST RELEASE FROM OR FAILURE TO RELEASE FROM CRIMINAL PUNISHMENT

§ 9. Lodging of appeal against failure to submit request for release from criminal punishment

(1) A complaint against a prosecutor's failure to submit a request for release from punishment on the basis of subsections 1 (1)-(3) of this Act may be lodged with the county or city prosecutor's office of the location of the conviction within one month after expiry of the term provided for in subsection 33 (1) of this Act.

(2) Upon the receipt of a complaint provided for in subsection (1) of this section, the prosecutor shall submit a request for a person's release from punishment or for a person not to be released from punishment to the county or city court within one month.

§ 10. Procedure for filing and review of appeals against rulings

(1) A convicted offender or a prosecutor may file an appeal against a ruling releasing a person from criminal punishment or denying a person release from criminal punishment which is made by a county or city judge.

(2) An appeal against a ruling shall be submitted to the Supreme Court in writing within five days as of the date of receipt of the ruling of a county or city court.

(3) An appeal against a ruling submitted to the Supreme Court shall be scheduled for review not later than on the day following the date of receipt thereof.

(4) The Supreme Court shall review an appeal against a ruling within one month after the scheduling of a hearing of the appeal.

(5) The Supreme Court shall adjudicate on an appeal against a ruling by a ruling in a written proceeding, without summoning the participants in the proceedings.

(6) A ruling of the Supreme Court on the adjudication of an appeal against a ruling is final and shall enter into force as of the making of the ruling.

(7) Appeals against rulings shall be reviewed pursuant to the provisions of the Code of Criminal Court Appeal and Cassation Procedure (RT I 1993, 50, 695; RT I 2002, 29, 174) unless otherwise provided for in this section.

Chapter 5

APPEAL AGAINST RELEASE FROM OR FAILURE TO RELEASE FROM PUNISHMENT IMPOSED FOR ADMINISTRATIVE OFFENCE

§ 11. Lodging of complaint against failure to submit request for release from punishment imposed for administrative offence

(1) A complaint against failure to submit a request for release from punishment on the basis of subsection 5 (1) or (2) of this Act on the part of an official of the agency which imposed a punishment for an administrative offence or prepared an administrative offence report may be lodged with the agency which imposed the punishment for the administrative offence or prepared the administrative offence report within one month after expiry of the term provided for in subsection 33 (1) of this Act.

(2) Upon the receipt of a complaint provided for in subsection (1) of this section, an official of the agency which received the appeal shall submit a request for a person's release from punishment or for a person not to be released from punishment to the county or city court within one month.

§ 12. Lodging of appeal against release from or failure to release from punishment imposed for administrative offence

(1) A natural or legal person who has been punished or an official of the agency which imposed a punishment for an administrative offence or prepared an administrative offence report may lodge an appeal against a ruling releasing the person from punishment or denying the person release from punishment which is made by a county or city court with the Supreme Court within five days as of the date of receipt of the ruling.

(2) An appeal lodged with the Supreme Court shall be scheduled for review not later than on the day following the date of receipt thereof.

(3) The Supreme Court shall review an appeal within one month after the scheduling of a hearing of the appeal.

(4) The Supreme Court shall adjudicate on an appeal by a ruling in a written proceeding, without summoning the participants in the proceedings.

(5) A ruling of the Supreme Court on the adjudication of an appeal is final and shall enter into force as of the making of the ruling.

(6) An appeal provided for in subsection (1) of this section shall be reviewed pursuant to the procedure provided for in the Code of Misdemeanour Procedure unless otherwise provided for in this section.

Chapter 6

AMENDMENT AND REPEAL OF ACTS

§ 13.–§ 29.[Omitted from this text]

§ 30. Meaning of administrative offence, administrative detention, imprisonment, coercive treatment, bodily injury, seizure, danger to society, criminal law and Criminal Code in Acts passed prior to entry into force of Penal Code

(1) The terms used in Acts passed prior to entry into force of the Penal Code shall be interpreted as the corresponding terms within the meaning of the Penal Code as follows:

- 1) "*haldusõiguserikkumine*" [administrative offence] shall mean "*väärtegu*" [misdemeanour] in the appropriate case form;
- 2) "*haldusarest*" [administrative detention] shall mean "*arest*" [detention] in the appropriate case form;
- 3) "*vabadusekaotus*" [imprisonment] shall mean "*vangistus*" [imprisonment] in the appropriate case form;
- 4) "*meditsiinilise iseloomuga sunnivahend*" [coercive treatment] shall mean "*psühhiaatiline sundravi*" [coercive psychiatric treatment] in the appropriate case form;
- 5) "*kehavigastus*" [bodily injury] shall mean "*tervisekahjustus*" [damage to health] in the appropriate case form;
- 6) "*erikonfiskeerimine*" [seizure] shall mean "*konfiskeerimine*" [confiscation] in the appropriate case form;
- 7) "*ühiskonnaohtlik*" [dangerous to society] shall mean "*õigusvastane*" [unlawful] in the appropriate case form;
- 8) "*kriminaalseadus*" [criminal law] and "*kriminaalkodeks*" [Criminal Code] shall mean "*karistusseadustik*" [Penal Code] in the appropriate case form.

(2) The terms "*haldusõiguserikkumine*" [administrative offence] and "*haldusarest*" [administrative detention] used in the Constitution shall have the same meaning as the terms "*väärtegu*" [misdemeanour] and "*arest*" [detention] in the Penal Code.

§ 31. Publication of consolidated texts of Acts

Within two months after entry into force of this Act, the Government of the Republic shall organise the publication of the Penal Code, the Code of Criminal Procedure, the Code of Criminal Court Appeal and Cassation Procedure, the Code of Enforcement Procedure, the Punishment Register Act, the Probation Supervision Act, the Imprisonment Act and the Juvenile Sanctions Act in the Riigi Teataja, whereupon the date of entry into force of the versions of the Acts provided for in this Act shall be distinctly indicated.

Chapter 7 PROVISIONS DELEGATING AUTHORITY AND ENTRY INTO FORCE OF ACT

§ 32. Establishment of instructions

(1) Rules for the legal assessment of offences pursuant to the Penal Code shall be established by the minister responsible for the area.

(2) The procedure for the calculation of average daily income, the making of deductions from average daily income, the determination of standard of living and the procedure for the request for and submission and documentation of data needed for the calculation of average daily income and the determination of standard of living shall be established by the Government of the Republic.

(3) The procedure for ascertaining damage to health by forensic medical examination shall be established by the Government of the Republic.

§ 33. Term for submission and review of requests for release from criminal punishment or punishment imposed for administrative offence

(1) A prosecutor or an official of the agency which imposed a punishment for an administrative offence or prepared an administrative offence report shall submit requests for release from punishment on the grounds provided for in §§ 1, 2 and 5 of this Act to a county or city court within four months after entry into force of the Penal Code.

(2) A county or city court shall review the submitted requests within six months as of entry into force of the Penal Code.

§ 33¹. Term for submission and review of requests for application of electronic surveillance

(1) The technical readiness for the application of electronic surveillance shall be ensured not later than within six months from the entry into force of clause 75 (2) 9) and § 75¹ of the Penal Code.

(2) The application for potential release on parole together with electronic surveillance of a convicted offender who has served the term provided for in clause 76 (1) 1) or clause (2) 1) of the Penal Code shall be reviewed and the release or refusal to release shall be decided within six months after the creation of the technical possibilities for the application of electronic surveillance as of the entry into force of clause 76 (1) 1) or clause (2) 1) of the Penal Code.

(3) The materials for the potential release on parole of a convicted offender who has served the term provided for in clause 76 (1) 2) or clause (2) 2) of the Penal Code whose request for release has not been earlier reviewed by a court shall be prepared and the release or refusal to release shall be decided within six months as of the entry into force of clause 76 (1) 2) or clause (2) 2) of the Penal Code. The obligation provided for in subsection

76 (4¹) of the Penal Code may be imposed by a court on a convicted offender after the creation of the technical possibilities for the application of electronic surveillance.
[RT I 2006, 46, 333 - entry into force 01.01.2007]

§ 33². Application of subsection 391 (1) of Penal Code

(1) The wording of subsection 391 (1) of the Penal Code which entered into force on 15 July 2013 applies retroactively to persons who have been convicted on the basis of the specified provision prior to 15 July 2013 and who are serving an imprisonment.

(2) The prison in which the person specified in subsection (1) of this section is serving an imprisonment shall inform such person of the retroactive effect of the amended wording of subsection 391 (1) of the Penal Code and submit information to a judge in charge of enforcement of court judgments for a decision on the release of the person pursuant to the procedure provided for in subsection § 431 of the Code of Criminal Procedure.
[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

§ 34. Entry into force of Penal Code and Penal Code Implementation Act

The Penal Code and the Penal Code Implementation Act enter into force on 1 September 2002.