

## Restorative justice in Estonia<sup>1</sup> (up to date until February 2008)

### 1. Legal base

In accordance with the Council Framework Decision 2001/220/JHA of the European Union, mediation in criminal proceedings has been regulated by the Code of Criminal Procedure of Republic of Estonia (see: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> ) since February 18, 2007.

Excerpt:

*§ 203<sup>1</sup>. Termination of criminal proceedings on the basis of conciliation*

*(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or the accused has reconciled with the victim pursuant to the procedure provided for in § 203<sup>2</sup> of this Code, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:*

*1) in criminal offences specified in §§ 122, 133, 134, 136, 138, 139, 141–143, 214 and 263 of the Penal Code [editor's note: these criminal offences include torture, enslaving, abduction, unlawful deprivation of liberty, illegal conduct of human research, illegal removal of organs or tissue, rape, satisfaction of sexual desire by violence, compelling a person to engage in sexual intercourse, extortion, aggravated breach of public order];*

*2) in criminal offences committed by an adult person against a victim who is a minor;*

*3) if the criminal offence resulted in the death of a person;*

*4) in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.*

*(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the conciliator, the prosecutor, the victim, the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.*

*(3) In the event of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet some or all of the conditions of the conciliation agreement provided for in subsection 203<sup>2</sup> (3) of this Code on the suspect or accused. The term for the performance of the obligation shall not exceed six months. A copy of the ruling shall be sent to the conciliator.*

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(4) If the judge does not consent to the request submitted by the Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(5) If a person with regard to whom criminal proceedings have been terminated pursuant to subsection (1) of this section fails to perform the obligations imposed on him or her, the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by an order.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the grounds specified in subsections (1) and (3) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (5) of this section.

(7) A victim has the right to file an appeal against a ruling on termination of the criminal proceeding made on the basis of this section within ten days as of receipt of a copy of an order on termination of the criminal proceedings pursuant to the procedure provided for in §§ 228–232 or §§ 383–392 of this Code.

(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)

#### § 203<sup>2</sup>. Conciliation proceedings

(1) The Prosecutor's Office or court may, on the bases provided for in subsection 203<sup>1</sup> (1) of this Code, send the suspect or accused and the victim to conciliation proceedings with the objective of achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation proceedings. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

(2) The Prosecutor's Office or court shall send the order or ruling on application of conciliation proceedings to the conciliator for organisation of conciliation.

(3) The conciliator shall formalise the conciliation as a written conciliation agreement which shall be signed by the suspect or accused and the victim and the legal representative or guardian of a minor or a person suffering from a mental disorder. A conciliation agreement shall contain the procedure for and conditions of remedying of the damage caused by the criminal offence. A conciliation agreement may contain other conditions.

(4) The conciliator shall send a report with a description of the course of conciliation to the Prosecutor's Office. In event of conciliation, a copy of the conciliation agreement shall be annexed to the report.

(5) After the termination of the criminal proceedings, the conciliator shall verify whether or not the conditions of the conciliation agreement approved as an obligation pursuant to the procedure provided for in subsection 203<sup>1</sup> (3) of this Code are met. A conciliator has the right to request submission of information and documents for confirmation of the performance of the obligation. The conciliator shall notify the Prosecutor's Office of performance of the obligation failure to perform the obligation.

(6) The conciliator has the right, in performing his or her duties, to examine the materials of the criminal matter with the permission of and to the extent specified by the court. A conciliator shall maintain the confidentiality of facts

*which have become known to him or her in connection with the conciliation proceedings. A court or a Prosecutor's Office may summon a conciliator for oral questioning in order to clarify the content of the agreement of the conciliation proceedings.*

*(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)*

The mediation (conciliation) procedures are carried out as a public service offered by the Social Insurance Board Victim Assistance Department within the Ministry of Social Affairs. The provision of the service is regulated by paragraphs 6<sup>3</sup> and 6<sup>4</sup> of the Victim Assistance Act (see: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> ) which supplemented prior legislation and took effect on February 18, 2007.

Excerpt:

*Chapter 2<sup>2</sup>*

*(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)*

*Conciliation Service*

*(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)*

*6<sup>3</sup>. Conciliation service*

*(1) For the purposes of this Act, conciliation service is a public service which consists of organisation of the conciliation procedure provided for in § 2032 of the Code of Criminal Procedure and monitoring of compliance with the requirements of a written agreement entered into as a result thereof.*

*(2) Application of a sanction provided for in clause 3 (1) 4) of the Juvenile Sanctions Act is also deemed to be conciliation service.*

*(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)*

*§ 6<sup>4</sup>. Provision of conciliation service*

*(1) The provision of conciliation service shall be ensured by the Social Insurance Board in accordance with the principle of regionality.*

*(2) The procedure for conducting conciliation service shall be established by the Government of the Republic.*

*(17.01.2007 entered into force 18.02.2007 - RT I 2007, 11, 51)*

The process of conciliation and other necessary procedures are delegated by statute to be regulated by government decrees. The procedure for conducting conciliation services is established by Decree No. 188 of the Government of the Republic of Estonia, dated July 13, 2007, entitled "Procedure for Carrying Out Conciliation Proceedings".

The method for carrying out the conciliation procedure for minors is regulated by the Juvenile Sanctions Act § 3 (see: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> ) paragraph 1, point 4, which in authorized the Social Ministry to promulgate its Decree No. 44 of July 31, 1998, which confirmed the Conciliation Procedures. Thus, minors and juveniles can also be referred to conciliation [mediation] by Juvenile Commissions.

Excerpt:

*§ 3. Sanctions*

*(1) One or several of the following sanctions may be imposed on a minor:*

*1) warning;*

*2) sanctions concerning organisation of study;*

3) *referral to a psychologist, addiction specialist, social worker or other specialist for consultation;*

4) *conciliation;*

5) *an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home;*

*(16.05.2001 entered into force 01.07.2001 - RT I 2001, 50, 288)*

6) *community service;*

7) *surety;*

8) *participation in youth or social programs or rehabilitation service or medical treatment programs;*

*(08.12.2004 entered into force 01.01.2005 - RT I 2004, 89, 603)*

9) *sending to schools for students with special needs.*

*(16.05.2001 entered into force 01.07.2001 - RT I 2001, 50, 288)*

*(2) The following may be imposed on a minor:*

1) *warning, referral to a psychologist, addiction specialist, social worker or other specialist for consultation, conciliation, obligation to live with a parent, foster-parent or guardian or in a children's home, surety, participation in youth or social programs or rehabilitation service in the cases provided for in subsections 1 (2) and (3) of this Act;*

*(08.12.2004 entered into force 01.01.2005 - RT I 2004, 89, 603)*

2) *community service in the cases provided for in subsections 1 (2) and (3) of this Act;*

*(16.05.2001 entered into force 01.07.2001 - RT I 2001, 50, 288)*

3) *sanctions concerning organisation of study in the cases provided for in clause 1 (3) 1) of this Act;*

4) *referral to medical treatment in the cases provided for in clause 1 (3) 2) of this Act;*

5) *sending to a school for students with special needs in the cases provided for in subsection 1 (2) of this Act in accordance with § 6 of this Act.*

*(16.05.2001 entered into force 01.07.2001 - RT I 2001, 50, 288)*

In accordance with the Penal Code of Estonia § 57, paragraph 1, point 9, conciliation with the victim is a mitigating factor with regard to punishment.

(see: <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022> )

Conciliation procedures are used as one of the resocialization methods employed in prisons and within the criminal care system.

## **2. Scope**

The provisions for conciliation in criminal matters are mainly aimed at securing a better position for victims of crime. They also have some elements that focus on the resocialization of the offender. In addition to the requirement of restitution for the victim, the offender's agreement to participate in social programs or treatment programs can be among the possible outcomes of conciliation. The conciliation process is directed by an independent conciliator.

Conciliation can result in the waiver of criminal prosecution in crimes that are punishable by a maximum of 5 years imprisonment (following the opportunity principle). In cases of more serious crimes, the penalty may be decreased. There is only one special provision for minors which states that minors and juveniles may also be referred to conciliation by Juvenile Commissions. The primary official responsible for deciding which cases should be handled by conciliation is the public prosecutor.

### 3. Implementation

#### 3.1. Agencies: establishment and structure

It is possible to terminate criminal proceedings against a person accused of the aforementioned second degree crimes if the parties to the crime have completed an out-of-court conciliation procedure. This out-of-court conciliation procedure is voluntary for both the victim and the accused and the goal of the procedure is increase the chances of success for the resocialization of the perpetrator of the act through the conciliation of the parties (victim and perpetrator) and to compensate the victim for injuries and loss suffered. Specialists serving in Social Security Victim Assistance Department within the Ministry of Social Affairs serve as the mediators [conciliators]. Twelve such professionals have received special schooling in carrying out mediation procedures both in 2006 and 2007. (The national system for providing victim assistance services with 35 workers in 16 local victim assistance centers was established in Estonia in 2005.)

#### 3.2. Agencies: practice and intervention type

According to the State Prosecutor's figures, conciliation procedures were used in connection with 31 crimes perpetrated by 21 individuals during 2007.

Type of Crime	Number of cases resolved through conciliation procedures
<b>Physical Abuse</b>	<b>23</b>
<b>Assault</b>	<b>3</b>
<b>Failure to Pay Child Support</b>	<b>2</b>
<b>Theft</b>	<b>1</b>
<b>Unauthorized Use of Property</b>	<b>1</b>
<b>Breaking and Entering</b>	<b>1</b>
<b>Total</b>	<b>31</b>

In addition to conciliation procedures reflected in the statistics of the State Prosecutor, Victim Assistance workers at the local government level have handled a number of cases and therefore their statistics reflect a greater number of procedures that have been carried out.

Conciliation procedures carried out by Victim Assistance workers:

Conciliation figures for the year 2007

	Number of Mediations Carried Out	Unresolved by mediation
1. Viru District Prosecutor	3	
2. Southern District Prosecutor	15	
3. Western District Prosecutor	11	1
4. Northern District Prosecutor	4	2
5. Harju County Court	1	
6. Viru County Court	1	

Total:

35

3

The use of conciliation procedures by Juvenile Commissions by year (the percentages represent the proportion of conciliation procedures as a part of all sanctions).

<b>1</b>	<b>Sanction</b>	<b>1999</b>	%	<b>2000</b>	%	<b>2001</b>	%	<b>2002</b>	%	<b>2003</b>	%	<b>2004</b>	%	<b>2005</b>	%	<b>2006</b>	%
	Conciliation	15	1	16	1	20	1	9	0,3	20	0,5	21	0,4	3	0,1	21	0,4

Mediation procedures are used as one of the resocialization methods employed in prisons and within the criminal care system.

#### **4. Evaluation**

The requirements established by the Council Framework Decision 2001/220/JHA of the European Union have been fulfilled. Alternative forms of punishment have been developing constantly since the creation of probation supervision in 1998. A formal legal basis and a competent institutional framework have been created to support the realization of the conciliation procedure. The funding of the conciliation procedure has been guaranteed by the State budget. The preliminary prognosis for the next several years is that there will be between 50 to 100 conciliation procedures carried out per year.