

**PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO
IMPRISONMENT ACROSS EUROPE**

**NON-CUSTODIAL SANCTIONS AND MEASURES
IN THE MEMBER STATES OF THE EUROPEAN UNION**

Estonia

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**Funded by
the European Union**

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November, 2021

Published by:

Instituto Jurídico
Faculdade de Direito da Universidade de Coimbra
Colégio da Trindade | 3000-018 Coimbra | PORTUGAL

www.uc.pt/fduc/ij



**Funded by
the European Union**

This report is part of the project ***Promoting non-discriminatory alternatives to imprisonment across Europe*** (PRI Alt Eur), funded by the European Commission under the programme JUST-JCOO-AG-2020 — action grants to promote judicial cooperation in civil and criminal justice.

The project is implemented together by Penal Reform International, the Institute for Legal Research of the University of Coimbra (Portugal) and the Hungarian Helsinki Committee.

The European Commission support for the production of this publication does not constitute endorsement of the contents which reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Non-custodial sanctions and measures in Estonia

I. LEGAL FRAMEWORK

1 – General framework of the Estonian system of penal sanctions

Estonian legal system makes difference between lesser offences that are called “*väärteod*” (misdemeanours) and more serious offences – “*kuriteod*” (criminal offences). In the case of natural persons principal punishment for criminal offences is:

- pecuniary punishment; or
- imprisonment;

and in the case of legal persons a pecuniary punishment.¹

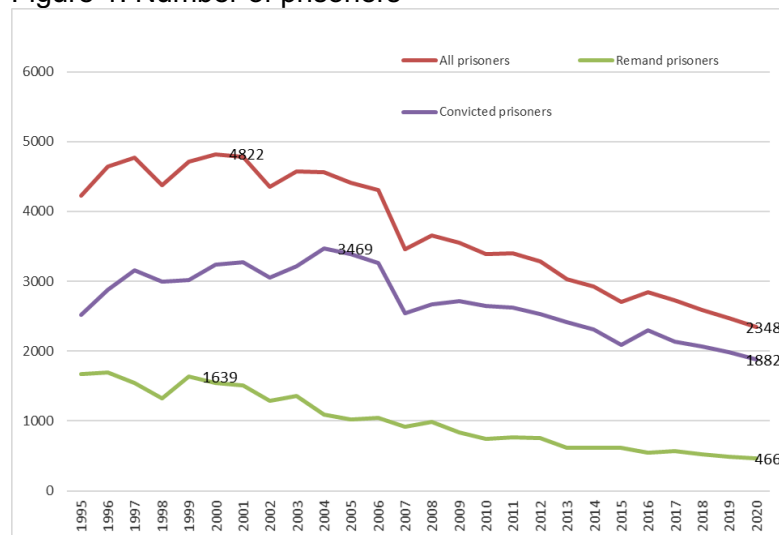
Principal punishment for misdemeanours is:

- fine;
- detention; or
- deprivation of driving privileges.²

Out of 461 reference sanctions for natural persons 4 reference sanctions include only pecuniary punishment, 262 include pecuniary punishment and imprisonment and 195 include only imprisonment.

For a criminal offence, the court may impose imprisonment for a term of thirty days to twenty years, or life imprisonment. Imprisonment for a term of more than ten years or life imprisonment shall not be imposed on a person who at the time of commission of the criminal offence is less than eighteen years of age.³ Number of prisoners has decreased substantially in correlation of decreasing crime rate (see Figure 1).

Figure 1. Number of prisoners



¹ The Penal Code (*Karistuseadustik*), Official Gazette RT I RT I 2001, 61, 364 as amended by RT I RT I, 21.05.2021, 8, <https://www.riigiteataja.ee/akt/121052021009?leiaKehtiv>, English translation available: <https://www.riigiteataja.ee/en/eli/ee/502062021003/consolide/current>, § 3 (2).

²The Penal Code, § 3 (3).

³ The Penal Code, § 45.

If a court imposes detention or imprisonment for a term of up to two years or enforces a conditional prison sentence, the court may substitute it by community service.⁴ If a court imposes imprisonment of up to one year, the court may substitute the imprisonment by electronic surveillance.⁵ If imprisonment of six months up to two years is imposed on a person for an act which he or she committed due to a treatable or controllable mental disorder, the court may substitute the imprisonment by treatment.⁶

The Penal Code does not limit how long custodial sentences may be suspended.⁷ But the Supreme Court has on the basis of a systematic interpretation of the Penal Code decided that conditional release from punishment must be based on the principle that the probation period of a conditionally released person must be longer than the original sentence imposed and as probation can be ordered for a period up to five years conditional release from serving a sentence for persons imprisoned for more than five years cannot be considered.⁸

If the Prosecutor's Office finds that a person who has committed a criminal offence when at least fourteen but less than eighteen years of age can be influenced without imposition of a punishment or a measure prescribed in the Penal Code for minors, the Prosecutor's Office may terminate criminal proceedings, caution the person and assign, with the consent of the person, as appropriate, the following obligations:

- 1) 10-60 hours of community service;
- 2) indemnification and remedy for damage caused by the criminal offence;
- 3) social program;
- 4) addiction treatment or another treatment;
- 5) conciliation service;
- 6) other relevant obligations.⁹

If the object of criminal proceedings is a criminal offence punishable up to five years' imprisonment and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the proceedings, the Prosecutor's Office may request, with the consent of the suspect or accused, that the court terminate the proceedings.

In the event of termination of criminal proceedings, the court may impose the following obligation on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or accused within the specified term:

- 1) to pay the expenses relating to the proceedings or compensate for the damage caused by the criminal offence;
- 2) to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;
- 3) to perform 10-240 hours of community service;
- 4) to undergo the prescribed treatment;
- 5) not to use narcotic drugs or psychotropic substances or alcohol;
- 6) to participate in a social programme;

⁴ The Penal Code, § 45.

⁵ The Penal Code, § 69¹ (1).

⁶ The Penal Code, § 69² (1).

⁷ The Penal Code, § 73 (1).

⁸ The Supreme Court Criminal Chamber judgement in the Case No 3-1-1-99-06. Available in Estonian: <https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-99-06>.

⁹ The Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), Official Gazette RT I 2003, 27, 166 as amended by RT I, 08.07.2021, 1, <https://www.riigiteataja.ee/akt/108072021009?leiaKehtiv>, English translation available: <https://www.riigiteataja.ee/en/eli/ee/509072021004/consolide/current>, § 201 (2).

7) to submit to surveillance of compliance with prohibition on consumption of alcohol by an electronic device;

8) to comply with other relevant obligations.¹⁰

If the object of criminal proceedings is a criminal offence punishable by up to five years' imprisonment, the Prosecutor's Office may request termination of the proceedings by a court with the consent of the suspect or accused and the victim if:

1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;

2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceedings.¹¹

If facts relating to a criminal offence punishable by up to five years' imprisonment which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the proceedings and the suspect or accused has reconciled with the victim in accordance with the rules provided the Code of Criminal Procedure, 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.¹²

The Prosecutor's Office may terminate criminal proceedings by an order if:

1) the criminal offence was committed outside the Estonian territory; or

2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft located in the territory of the Republic of Estonia; or

3) an accomplice to the criminal offence committed the criminal offence in the territory of the Republic of Estonia but the consequences of the criminal offence occurred outside the territorial applicability of this Code; or

4) a decision concerning extradition of the alleged criminal offender to a foreign state has been made.¹³

The Office of the Prosecutor General may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated.¹⁴

The Office of the Prosecutor General shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency provided for in the Competition Act and who is the first to submit a leniency application which contains information that suggests the commission of the criminal offence related to competition and makes it possible to commence criminal proceedings. This option does not apply if criminal proceedings concerning the criminal offence whose commission is suggested by the information provided by the applicant for leniency have been commenced before submission of the leniency application.¹⁵

2 – Non-custodial sanctions

The only non-custodial punishment available for criminal offences is **pecuniary punishment**. For a criminal offence, a court may impose a pecuniary punishment of thirty to five hundred daily rates. The daily rate of a pecuniary punishment is calculated on the basis of the average

¹⁰ The Code of Criminal Procedure, § 202 (1) and (2).

¹¹ The Code of Criminal Procedure, § 203 (1).

¹² The Code of Criminal Procedure, § 203¹ (1).

¹³ The Code of Criminal Procedure, § 204 (1).

¹⁴ The Code of Criminal Procedure, § 205 (1).

¹⁵ The Code of Criminal Procedure, § 205¹ (1).

daily income of the offender. Average daily income shall be calculated on the basis of the income subject to income tax received by the offender during the year immediately preceding the year in which criminal proceedings were commenced against the offender or, if the data pertaining to such year are not available, during the year preceding such year, less the income tax. The court may reduce the daily rate due to special circumstances or increase the rate on the basis of the standard of living of the offender. The daily rate applied shall not be less than the minimum daily rate. The minimum daily rate shall be 10 euros.¹⁶

The **community service** is applicable only if a court has imposed detention or imprisonment for a term of up to two years or enforces a conditional prison sentence and the court substitutes it by community service. One day of detention or imprisonment corresponds to one hour of community service which minimum duration is five hours. Hence, the maximum length of community service is 730 hours. Detention or imprisonment can be substituted by community service only with the consent of the offender.¹⁷

Probation and probation with subjection of offender to supervision of conduct is applicable in case of all criminal offences if imprisonment for up to five years or pecuniary punishment have been sentenced. Probation can be ordered for a period up to five years.¹⁸

Electronic surveillance can be applied if a court imposes imprisonment of up to one year, and the court decides to substitute the imprisonment by it.¹⁹ Electronic surveillance may include surveillance of compliance with restrictions of freedom of movement or prohibition on consumption of narcotic drugs or psychotropic substances or alcohol by an electronic device which is attached to the body of the offender and permits determination of the location of the offender or consumption of alcohol or narcotic drugs or psychotropic substances. Court may order electronic surveillance with the term of one to twelve months. Electronic surveillance can be applied as well as one supervision measure during the probation period.²⁰

If imprisonment of six months up to two years is imposed on a person for an act which he or she committed due to a treatable or controllable mental disorder, the court may substitute the imprisonment by **treatment**. Imprisonment is substituted by treatment only with the person's written consent which he or she can give after all the impacts of the treatment have been explained to him or her. The term of treatment shall not be shorter than eighteen months or longer than three years.²¹

Only pecuniary punishment can be applied directly. All the other alternatives are applicable only if at first imprisonment is applied and then it is considered that it may be substituted by some alternative.

The consent of accused person is required only for community service, electronic surveillance and treatment.

There are no persons to whom non-custodial sentences can not be applied. There are several criminal offences (e.g., human trafficking, pimping, abduction, rape of an underage person etc.) to which conciliation is not applicable.²²

There are several supplementary punishments available in the Estonian legal system.

¹⁶ The Penal Code, § 44 (1), (2) and (3).

¹⁷ The Penal Code, § 69 (1).

¹⁸ The Penal Code, §§ 73 and 74.

¹⁹ The Penal Code, § 69¹ (1).

²⁰ The Penal Code, § 75¹ (1) and (3).

²¹ The Penal Code, § 69² (1) and (4).

²² The Code of Criminal Procedure, § 205¹ (1).

- For a criminal offence relating to abuse of professional or official status or violation of official duties, a court may impose, as a supplementary punishment, a **ban on employment in a particular office or operation in a particular area of activity** for up to three years.²³
- For fraud, abuse of trust, giving or mediating a bribe, influence peddling, criminal offence against public trust, provision of employment for alien staying in Estonia without legal basis or economic criminal offence, a court may impose, as a supplementary punishment, prohibition to engage in enterprise for the term from one to five years. A person with respect to whom a court has imposed a **prohibition to engage in enterprise** shall not act as an undertaking, member of the management bodies of a legal person, liquidator or procurator of a legal person or participate in the management of the legal person in any other manner during the term specified by the court.²⁴
- For an offence relating to violation of the safe traffic rules or rules of operation of a motor vehicle, aircraft, water craft, tram or rolling stock, **deprivation of driving privileges** for up to three years may be imposed as a supplementary punishment.²⁵
- For a criminal offence relating to handling or use of weapons or ammunition, a court may **deprive the offender, as a supplementary punishment, of the right to acquire, store, supply, convey and carry weapons or ammunition** for the term of up to five years.²⁶
- For a criminal offence relating to violation of hunting or fishing rights, a court may **deprive the offender, as a supplementary punishment, of the hunting and fishing rights** for the term of up to three years.²⁷
- For commission of a prohibited act against an animal, a court may impose, as a supplementary punishment, **prohibition on keeping of any animals or animals of certain species** for up to five years in the case of a criminal offence.²⁸
- If a court convicts a person of a criminal offence and imposes imprisonment for a term of more than three years or life imprisonment, the court may, in the cases provided by law, impose a supplementary punishment according to which the **offender is to pay an amount up to the extent of the total value of all the assets** of the offender (fine to the extent of assets).²⁹
- If a court convicts a citizen of a foreign state of an intentional criminal offence and imposes imprisonment, the court may impose **expulsion** with prohibition on entry for up to ten years as supplementary punishment on the offender. If the spouse or a minor child of the offender lives with him or her in the same family in Estonia on a legal basis, the court shall provide reasons in its judgment for imposition of expulsion.³⁰
- A **pecuniary punishment** (in other cases it may also be the principal punishment) may be imposed as a supplementary punishment together with imprisonment unless imprisonment has been substituted by community service.³¹

The supplementary punishments can be applied in the situations that make use of these punishments reasonable. Fine to the extent of assets can be applied only if the application of the supplementary punishment is listed in the special part of the Penal Code.

3 – Rationale for sentencing: determining the type and term of a non-custodial sentence

In Estonian criminal procedure the sentence is decided in the same phase of criminal procedure as the guilt. The sentences are imposed by the trial judge. The trial judge may order

²³ The Penal Code, § 49.

²⁴ The Penal Code, § 49¹.

²⁵ The Penal Code, § 50.

²⁶ The Penal Code, § 51.

²⁷ The Penal Code, § 52.

²⁸ The Penal Code, § 52².

²⁹ The Penal Code, § 53.

³⁰ The Penal Code, § 54.

³¹ The Penal Code § 44 (6).

a pre-trial report. In the cases of minors the pre-trial report is mandatory. A pre-trial report on a accused person is prepared by a probation officer and contains a summary of the personal characteristics and social circumstances of the suspect or the accused, and an opinion on the probationary period and selected obligations to be applied with regard to the suspect, the accused or the convicted offender and the term of application thereof. A pre-trial report shall contain biographical facts and a psychological-social prognosis of a suspect, accused or convicted offender.³²

Punishment is based on the guilt of the person. In imposition of a punishment, a court or a body conducting extra-judicial proceedings shall take into consideration the mitigating and aggravating circumstances, the possibility to influence the offender not to commit offences in the future, and the interests of the protection of public order. Imprisonment may be imposed only on the condition that the aims of the punishment cannot be achieved by a less onerous punishment. If a section of the Special Part of this Code prescribes, in addition to imprisonment, less onerous punishments, the court shall provide in its judgment the reasons for the imposition of imprisonment. A minor may be imposed a punishment only in the case it is impossible to influence the minor not to commit offences in the future by sanctions applicable to minors.³³

Mitigating circumstances are:

- 1) prevention of harmful consequences of the offence, and provision of assistance to the victim immediately after the commission of the offence;
- 2) voluntary compensation for damage;
- 3) appearance for voluntary confession, sincere remorse, or active assistance in detection of the offence;
- 4) commission of the offence due to a difficult personal situation;
- 5) commission of the offence under threat or duress, or due to service, financial or family-related dependent relationship;
- 6) commission of the offence in a highly provoked state caused by unlawful behaviour;
- 7) commission of the offence by a pregnant woman or a person in an advanced age;
- 8) commission of the offence in excess of the limits of self-defence;
- 9) conciliation with the victim.

Circumstances not specified in this list may be taken into consideration in imposition of a punishment.³⁴

Aggravating circumstances are:

- 1) self-interest or other base motives;
- 2) commission of the offence with peculiar cruelty, or degradation of the victim;
- 3) commission of the offence knowingly against a person who is less than eighteen years of age, pregnant, in an advanced age, in need of assistance or has a severe mental disorder;
- 4) commission of the offence against a person who is in a service or financially dependent relationship with the offender, and against a former or current family member of the offender, against a person who lives with the offender or a person who is otherwise in a family relationship with the offender;
- 5) commission of the offence during a state of emergency or state of war;
- 6) commission of the offence by taking advantage of a public accident or natural disaster;
- 7) commission of the offence in a manner which is dangerous to the public;
- 8) causing of serious consequences;
- 9) commission of the offence in order to facilitate or conceal another offence;

³² Probation Supervision Act (Kriminaalhooldusseadus), Official Gazette RT I 1998, 4, 62 as amended by RT I, 20.12.2019, 1, <https://www.riigiteataja.ee/akt/120122019006?leiaKehtiv>, English translation available: <https://www.riigiteataja.ee/en/eli/506012020004/consolide>, § 24.

³³ The Penal Code, § 56.

³⁴ The Penal Code § 57.

- 10) commission of the offence by a group;
- 11) taking advantage of an official uniform or badge in order to facilitate commission of the offence;
- 12) commission of the offence against a minor with abuse of power or confidence;
- 13) commission of the offence against the person by an adult in the presence of a minor. The list of aggravating circumstances is exhaustive.³⁵

Imprisonment may be imposed only on the condition that the aims of the punishment cannot be achieved by a less onerous punishment. If a section of the Special Part of this Code prescribes, in addition to imprisonment, less onerous punishments, the court shall provide in its judgment the reasons for the imposition of imprisonment.³⁶

There are no sentencing guidelines in the Estonian legal system. The courts keep track of the sentences imposed earlier by other judges and endeavour to not diverge without clear cause substantially from the general trend.

The imposed sentences can be appealed by the offender and by the prosecutor.³⁷

4 – Implementation of non-custodial sanctions and consequences of non-compliance

A judge in charge of the execution of court judgments (*täitmiskohtunik*) is a county court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in the execution of decisions.³⁸

Täitmiskohtunik may **defer the enforcement of a sentence** of imprisonment by an order:

- 1) by up to six months if the convicted offender suffers from a serious illness and it is impossible to provide medical treatment for him or her in the prison;
- 2) by up to one year if the convicted offender is pregnant at the time of execution of the court judgment.

If a female convicted offender has a small child, the *täitmiskohtunik* may defer the enforcement of the sentence of imprisonment by an order until the child has attained three years of age.

A *täitmiskohtunik* may defer the enforcement of a punishment by an order for up to two months if immediate commencement of the service of the sentence of imprisonment would result in serious consequences for the convicted offender or his or her family members due to extraordinary circumstances.

The *täitmiskohtunik* shall decide the deferral of enforcement of the sentence of imprisonment after considering the opinion of the prosecutor and the representative of the prison.

A copy of an order which has entered into force shall be sent to the prison.³⁹

A *täitmiskohtunik* may, by order and at the request of the Office of the Prosecutor General, **waive the enforcement of a sentence** of imprisonment for a specified term if:

- 1) the convicted offender is extradited to a foreign state or expelled;
- 2) the convicted offender who is an alien and who has been punished for a criminal offence in the second degree by imprisonment, has assumed an obligation to depart from the Republic of Estonia to a host country together with prohibition on entry within for the term of five to ten years, and in the estimation of the Police and the Border Guard he or she can return to the host country.

³⁵ The Penal Code § 58.

³⁶ The Penal Code § 56 (2).

³⁷ The Code of Criminal Procedure § 318 (1).

³⁸ The Code of Criminal Procedure § 22.

³⁹ The Code of Criminal Procedure § 415.

It shall be taken into consideration upon waiver of enforcement of a sentence of imprisonment whether the convicted offender has remedied or has commenced to remedy the damage caused by the criminal offence and paid the costs of criminal proceedings or paid other public law claims.

The Prosecutor's Office shall request an assessment of the possibility of the alien to return to the host country from the Police and Border Guard Board which shall send such assessment to the Prosecutor's Office within 30 days as of receipt of the request.

Waiver of enforcement of a sentence of imprisonment includes the following:

1) the term of validity of the prohibition on entry imposed on the alien and the scope of application thereof;

2) the obligation of the alien to depart from the Republic of Estonia to the host country by the determined date;

3) the information concerning enforcement of the obligation to depart if the alien is held in custody or in imprisonment in Estonia or if his or her liberty is restricted in any other manner.

A *täitmiskohtunik* may enforce, at the request of the Prosecutor's Office, a sentence of imprisonment for a specified term if the convicted offender who was extradited or expelled returns to the country before the expiry of ten years as of his or her extradition or expulsion.

A *täitmiskohtunik* may, at the request of the Prosecutor's Office, enforce the sentence imposed on an alien to the extent not served, if the convicted offender does not perform the obligation to depart from the Republic of Estonia to a host country, he or she is suspected of commission of a new criminal offence before the performance of the obligation to depart, or he or she returns to the country before the expiry of term of the prohibition on entry imposed on him or her.⁴⁰

If a convicted offender **fails to pay the pecuniary punishment** to the extent of assets by the designated due date or comply with the terms for payment of an apportioned pecuniary punishment and the term for payment of the amount of pecuniary punishment or a fine to the extent of assets has not been extended or apportioned and a convicted offender has no assets against which a claim for payment could be made, the bailiff shall give notice to the county court that payment is impossible not later than three years after he or she accepted the pecuniary punishment or fine to the extent of assets for collection and not later than seven years after the entry into force of the court judgment. If there are no circumstances which preclude substitution of punishment, the *täitmiskohtunik* shall decide on the **substitution of the pecuniary punishment or fine to the extent of assets by imprisonment, community service or addiction treatment**. The court shall notify the convicted offender and bailiff of substitution of the pecuniary punishment or fine to the extent of assets.

If an amount of pecuniary punishment has been paid in part, the paid part shall be taken into account upon determination of the duration of the substitutive punishment in proportion to the paid amount. A copy of the order shall be sent to participants in proceedings concerned and to the bailiff.⁴¹

The *täitmiskohtunik* at the county court of the residence of a convicted offender **may waive the enforcement of a pecuniary punishment** by an order if:

1) a sentence of imprisonment is imposed on the convicted offender in another criminal matter and the sentence is enforced;

2) execution of the pecuniary punishment may endanger the resocialization of the convicted offender;

3) the convicted offender is extradited to a foreign state or expelled;

4) the convicted offender who is an alien and who has been punished for a criminal offence in the second degree by imprisonment, has assumed an obligation to depart from the Republic of Estonia to a host country together with prohibition on entry within for the term of five to ten

⁴⁰ The Code of Criminal Procedure § 416.

⁴¹ The Code of Criminal Procedure § 417 (3) and (4).

years, and in the estimation of the Police and the Border Guard he or she can return to the host country.

On the same bases a *täitmiskohtunik* may also waive collection of the procedure expenses from the convicted offender.⁴²

If, during a period of probation, an offender fails to comply with the supervisory requirements or perform the obligations imposed on him or her or commits a misdemeanour similar to the criminal offence, which was the basis for the punishment, the probation officer may issue a written notice cautioning him or her or the court may impose additional obligations pursuant to the probation rules, extend the period of probation by one year or enforce the punishment.⁴³

If an offender evades community service, fails to comply with supervisory requirements or perform the obligations imposed on him or her, the official enforcing the punishment may issue a written notice cautioning him or her or the court may impose additional obligations on the offender in accordance with the probation rules, extend the term for the performance of community service, taking into consideration the general term for performance of community service, or enforce the detention or imprisonment imposed on the offender. In the case of enforcement of detention or imprisonment, the sentence shall be deemed to be served to the extent of the community service performed by the offender, whereas one hour of community service corresponds to one day of detention or imprisonment. In the case of enforcement of detention of less than ten days, the sentence shall be deemed to be served to the extent of the hours of community service performed by the offender in proportion to the detention imposed.⁴⁴

If an offender does not submit to electronic surveillance, fails to comply with supervisory requirements or perform the obligations imposed on him or her, the probation officer may issue a written notice cautioning him or her or the court may enforce the imprisonment substituted. If an offender withdraws his or her consent for application of electronic surveillance prior to expiry of the term of punishment, the court shall enforce the imprisonment substituted.⁴⁵

If an offender evades treatment, fails to comply with supervisory requirements or perform the duties imposed on him or her, the probation officer may issue a written notice cautioning him or her or the court may impose additional obligations on him or her in accordance with the provisions of subsection 75 (2) of this Code and additionally submit the offender to electronic surveillance with his or her consent or enforce the imprisonment imposed on the offender. If an offender withdraws his or her consent for application of treatment prior to the end of the term of treatment or if treatment is suspended with respective prescription of a doctor due to side effects of the treatment or other medical indications, the court shall enforce the imprisonment imposed on the offender.⁴⁶

If a person suffers from a terminal illness, the court may release him or her from bearing the punishment. In such case, the court shall take into consideration the circumstances relating to the criminal offence committed, the personality of the offender and the nature of the illness.

If a person is mentally capable at the time he or she commits a criminal offence but, before or after the making of the court judgment, becomes mentally ill or feeble-minded or suffers from another severe mental disorder and the person is incapable of understanding the unlawfulness of his or her act or to act according to such understanding, the court shall release the person from the punishment or the bearing thereof. In such case, the court applies coercive psychiatric treatment.

⁴² The Code of Criminal Procedure § 418.

⁴³ The Penal Code 74 (4).

⁴⁴ The Penal Code 69 (6).

⁴⁵ The Penal Code 69¹ (2).

⁴⁶ The Penal Code § 69² (9).

If the person recovers before the expiry of a limitation period of the criminal offence, the court may enforce the punishment or the unserved part thereof.⁴⁷

5 – Early release

A court may release an offender convicted in a criminal offence punishable by up to five years' imprisonment or negligently committed criminal offence punishable more than five years' imprisonment on parole, if he or she has actually served:

- 1) at least one-third but not less than four months of the term of the imposed punishment and agrees to the application of the electronic surveillance; or
- 2) at least one-half but not less than four months of the term of the imposed punishment.

A court may release an offender convicted in an intentionally committed criminal offence punishable more than five years' imprisonment on parole, if he or she has actually served:

- 1) at least one-half but not less than four months of the term of the imposed punishment and agrees to the application of the electronic surveillance; or
- 2) at least two-thirds but not less than four months of the term of the imposed punishment.⁴⁸

The judge in charge of execution of court judgments (*täitmiskohtunik*) at the county court of the place of execution of a punishment may release a convicted offender on parole after the convicted offender has served the term of punishment provided for in the Penal Code.

If the *täitmiskohtunik* refuses to release a convicted offender on parole, the judge may, taking into account the requirements provided in the Penal Code, determine a new term for hearing the matter of release.

A *täitmiskohtunik* may, by an order, waive the application of supervision of conduct with regard to a convicted offender on the basis of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

A *täitmiskohtunik* may enforce the unserved part of the sentence if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.⁴⁹

There is no mandatory early release.

If an offender fails, during a period of probation, to comply with supervisory requirements, perform the obligations imposed on him or her or fails to submit to electronic surveillance or commits a misdemeanour similar to the criminal offence, which was the basis for the punishment, a probation officer may issue a written notice cautioning him or her or the court may impose additional obligations according to the provisions of probation rules, extend the term of supervision of conduct up to the end of the period of probation or enforce the part of the punishment which was not served.⁵⁰ The time spent on conditional release is not taken in account as prison time.

6 – Sanctions or measures applicable to vulnerable persons and minority groups

The only vulnerable group having more protection regarding sanctions are the persons under eighteen years of age. Imprisonment for a term of more than ten years or life imprisonment shall not be imposed on a person who at the time of commission of the criminal offence is less than eighteen years of age.⁵¹

⁴⁷ The Penal Code § 79.

⁴⁸ The Penal Code § 76 (1) and (2).

⁴⁹ The Code of Criminal Procedure § 426.

⁵⁰ The Penal Code § 76 (7)

⁵¹ The Penal Code § 45 (2).

A court may release on parole an offender who was younger than eighteen years of age at the time of commission of the criminal offence:

1) in the case of a criminal offence punishable by up to five years' imprisonment or a negligently committed criminal offence punishable more than five years' imprisonment. if he or she has actually served at least one-third of the term of the imposed punishment but not less than four months;

2) in the case of an intentionally committed criminal offence punishable by more than five years' imprisonment if he or she has actually served at least one-half of the term of the imposed punishment but not less than four months.

A court releases on parole an offender who was younger than eighteen years of age at the time of commission of the criminal offence, in the case of a criminal offence punishable by up to five years' imprisonment or a negligently committed criminal offence punishable more than five years' imprisonment if he or she has actually served at least one-half of the term of the punishment imposed but not less than four months.⁵²

A court may apply the following alternative sanctions on persons who are at least fourteen but less than eighteen years old and have committed a crime and whose level of moral and mental development and ability to understand the unlawfulness of their acts or to act according to such understanding is limited:

- 1) admonition;
- 2) social program;
- 3) indemnification and remedy for damage caused by the criminal offence;
- 4) addiction treatment or another treatment;
- 5) conciliation service;
- 6) subjection to supervision of conduct pursuant to the provisions of probation rules;
- 7) 5-60 hours of community service;
- 8) restriction of freedom of movement, as appropriate together with submission to electronic surveillance;
- 9) placement in closed children's institutions in compliance with the principles; of placement in closed children's institutions provided for in the Social Welfare Acts;
- 10) any other obligation voluntarily assumed by the relevant person.⁵³

II. NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE

1 – How non-custodial sanctions and measures work in practice

Unfortunately, there are no published data on use of alternative sanctions in Estonia. There have been only narrow overviews of sentencing practice regarding some few concrete criminal offences. E.g. the analysis of the Estonian criminality of 2009 found that according to court decisions that entered into force in 2009, almost half (46%) of those convicted of sexual offenses were released on parole and 42% were sentenced to imprisonment, couple of persons were fined or their imprisonment was substituted for community service. Imprisonment was mainly applied for rape, suspended imprisonment and pecuniary punishment were more likely to imposed for pimping and pornography⁵⁴.

The majority of court sentences impose pecuniary punishment or suspended imprisonment. Only small portion of sentences involve unconditional imprisonment.

⁵² The Penal Code § 76¹ (1) and (2).

⁵³ The Penal Code § 87 (1).

⁵⁴ Ministry of Justice, Kuritegevus Eestis 2009 (Estonian criminality – 2009).

https://www.kriminaalpoliitika.ee/sites/krimipoliitika/files/elfinder/dokumendid/12_kuritegevus_eestis_2009.pdf.

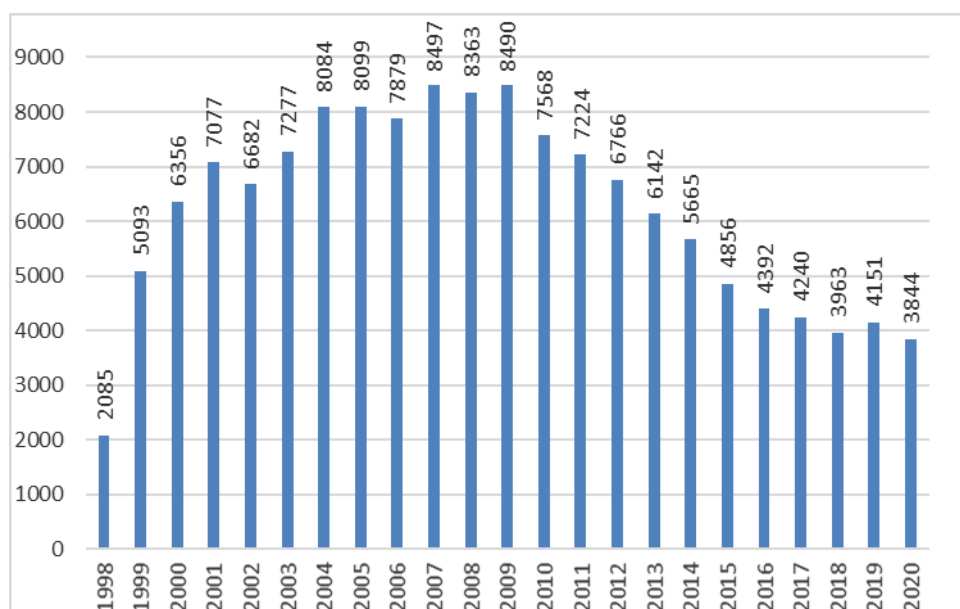
Courts review the materials of approximately 1,400 convicts on parole each year, and according to average statistics for the last six years, 32% of convicts are released on parole.⁵⁵ There is no data available concerning different distinct vulnerable groups of convicts.

2 – Supervision of the implementation of non-custodial sanctions/ measures

Probation, community service, treatment and parole is supervised by probation officers⁵⁶. Estonian Probation System was created in 1998. At first probation departments began working at county and city courts. A law that came into force ten years later added probation to the prison system.⁵⁷

The number of probation officers has increased over the years and by the end of 2005 there were 195 in all of Estonia probation officers who dealt with 8099 probationers⁵⁸. Since 2005 the number of probationers have declined in correlation with the decline in crime rate (see Figure 2). The number of probation officers has not declined.⁵⁹

Figure 2. Number of probationers



Estonian probation service is clearly oriented on a rehabilitative purpose, providing activities aimed at addressing needs or root causes of offending and at promoting reintegration. Discussing the developments in the probation service the 2018 Prison Service Yearbook asserts that “[t]he probation service naturally includes more social programs and their quality is more consistent. In the past, some programs in certain small areas were needed so rarely that officials tended to forget their training, and sometimes the officials did not even have the

⁵⁵ Ministry of Justice, Certain crimes may preclude early release in the future, (in Estonian), <https://www.just.ee/et/uudised/teatud-kuriteod-voivad-tulevikus-valistada-ennetahtaegse-vabanemise>.

⁵⁶ Probation Supervision Act, § 2.

⁵⁷ Ministry of Justice, 15 years have passed since the re-establishment of Estonian probation, (in Estonian), <https://www.just.ee/et/uudised/moodus-15-aastat-est-i-kriminaalhoolduse-taasasutamisest>.

⁵⁸ Ministry of Justice, Estonian Prison System and Probation Supervision Yearbook, 2006, https://www.vangla.ee/sites/www.vangla.ee/files/elfinder/dokumendid/aastaraamat_2006_kodulehele.pdf, p. 11.

⁵⁹ Ministry of Justice. Prison Service 2020 Review, (in Estonian), <https://www.vangla.ee/et/uudised-ja-arvud/vanglateenistuse-2020-aasta-ulevaade>.

skills required. At present, specialists are rendering need-based services to both target groups, enabling participation in very specific programs everywhere⁶⁰. The probation service has attracted many probation volunteers⁶¹.

The probation service applies IT as far as applicable including electronic monitoring.

III. IMPACT OF THE COVID-19 PANDEMIC ON THE IMPOSITION AND IMPLEMENTATION OF NON-CUSTODIAL SANCTIONS AND MEASURES

1. Non-custodial sentences or measures aimed at reducing the prison population as a means of preventing the spread of the virus within prison facilities

Estonia did not choose to decrease the prison population as a means of preventing the spread of the virus within prison facilities.

The spread of virus was decreased by introducing additional security measures: locking the prisoners into their cells for the period, suspending scheduled activities, cessation of the visits, etc.⁶²

2. Impact of the pandemic on non-custodial sanctions/measures

Probation was transferred to electronic channels. Probationers who were obliged by a court judgement to undergo a social program were assessed whether it is possible to do so on an individual basis. If so, the program was carried out by telephone if possible, materials were distributed by e-mail. Group programs requiring face-face meetings were postponed. Probation officers notified probationers individually of changes in the organization of work.

The sites for community service and the performance of hours were changed, agreements were made through technical solutions. It was taken into account that community service can not be organized in institutions where the elderly, children or other people at risk are present. Potential contacts in the workplace also were reduced. That made opportunities to choose employers more limited than usual.

Employers who still accepted community service workers generally offered only outdoors assignments. If there were more than one community service worker at work, the employer had to ensure that they were at least two meters apart. The community service had to be organized in such a way that it did not create additional direct contacts with other persons. Community service workers with obvious symptoms were not allowed to do community service and were referred to a family doctor.⁶³

3. Impact of the pandemic on the future of non-custodial sanctions

The use of electronic communication will certainly be more commonplace after the Covid 19 crisis is over.

⁶⁰ Ministry of Justice. Prison Service Yearbook, 2018, https://www.vangla.ee/sites/www.vangla.ee/files/elfinder/dokumendid/vanglateenistuse_aastaraamat_2018.pdf, p.24.

⁶¹ Ministry of Justice, Legal Order Performance Scoreboard, 2020, (in Estonian), https://www.just.ee/sites/www.just.ee/files/oiguskorra_tulemusvaldkonna_2020_aasta_aruanne.pdf.

⁶² Introduction of additional security measures, locking of departments and scheduled activities. Directive No. 1-1 / 54 of the Deputy Director of Tartu Prison of 18.03.2020, (in Estonian), <https://adr.rik.ee/tartuv/fail/7514249/subfile/0>.

⁶³ Ministry of Justice, Emergency rules due to COVID-19 virus, (in Estonian), <https://www.just.ee/et/covid-19-viirusest-tingitud-eriolukord>.