

Plea agreement institute in Estonian criminal procedure

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Types of criminal proceedings in Estonian law

- ▶ General procedure - the model, but is it the rule?
- ▶ Simplified procedure - necessary (evil)?

Some statistics

Percentage of cases solved in different proceedings (2022):

- ▶ Summary proceedings - 1%
- ▶ Abridged proceedings - 13 %
- ▶ **Plea agreement - 77 %**
- ▶ General procedure - 9 %

Length of criminal procedure in court (2022):

- ▶ General procedure - 245 days
- ▶ **Plea agreement - 31 days**

Types of criminal proceedings in Estonian law: general procedure

POSITIVE:

- ▶ Fair trial guarantees are fulfilled most closely

NEGATIVE:

- ▶ Resources spent and length of proceedings

Taking into account:

- principle of mandatory proceedings (Code of Criminal Procedure/CCP § 6);
- principle of two criminal files;
- cases with multiple accused and legal counsels;
- unforeseen circumstances (e.g COVID-19, change of judge)

<https://news.err.ee/1608944759/port-of-tallinn-court-case-restarts-with-two-judge-recusal-applications>

Types of criminal proceedings in Estonian law: simplified procedure

- ▶ Plea agreements (from 1996, i.e. even before the reform of the criminal procedure in 2004)

ALSO:

- ▶ Summary procedure (written procedure)
- ▶ Abridged procedure (on the basis of pre-trial criminal file)
- ▶ Fast-track procedure (48 hours)

Plea agreement procedure: main features

CCP §§ 239 - 250

- ▶ Agreement between the defendant, the legal counsel and the Prosecutor`s Office;
- ▶ Includes all the main elements of the judgement (e.g the qualification of the offence, the punishment, the confiscation, the costs, amount of civil or public law claim);
- ▶ Based on free will;
- ▶ Does not require a guilty plea as such;
- ▶ Confirmed by the court after the hearing in the form of a judgement (and is entered in the registry of criminal offences) - not an out-of-court settlement;
- ▶ The court can refuse the plea agreement;
- ▶ Plea agreement can also be reached during trial in general proceedings

Plea agreements: PROS and CONS

Positive:

- ▶ For the state - less resources spent/predictable outcome;
- ▶ For the accused - faster and thus cheaper procedure/predictable outcome/possibility to negotiate e.g the punishment, confiscation and costs;
- ▶ For the victim - faster outcome/getting the damage claim recognized (although the Prosecutor`s Office has a right to dismiss the claim as impermissible or unjustifiable)

Negative:

- ▶ For the accused - relinquishment of the procedural rights /possibility of mistakes/less possibilities for an appeal;
- ▶ For the state - possibility of mistakes/punishment as an object for negotiations

When are plea agreement procedure possible?

- ▶ The accused, the defence counsel and the Prosecutor`s Office have to consent;
- ▶ If present in the case, the victim, civil defendant or third party have to consent;
- ▶ Not possible for all the crimes (negative list: e.g murder or aggravated cases of rape, but also terrorist crimes are excluded)

Multiple co-accused

- ▶ Cases can be separated if only some of the co-accused (co-perpetrators) want to achieve plea agreements (CCP § 216 section 2 subsection 3);
- ▶ Co-accused (co-perpetrator) who entered into plea agreement can be heard afterwards as a witness in general proceedings, but has a right to refuse giving testimony (CCP § 71 section 2 subsection 2);
- ▶ Possibility to review the judgement in plea agreement procedure (that came into force) if a co-accused (co-perpetrator) is found not guilty in the general proceedings (CPP § 366 p 8)

Pre-trial phase

- ▶ The initiative can come both from the Prosecutor`s Office or the accused/the defence council - generally after the criminal file is prepared and introduced pre-trial;
- ▶ The Prosecutor`s Office must explain the rights to all the parties in the proceedings and ensure the consent;
- ▶ Negotiations between the accused, the council and the Prosecutor`s Office

The hearing in court

- ▶ The accused and the prosecutor must be present;
- ▶ The defence council does not have to be present (except when generally obligatory);
- ▶ The victim does not take part, but natural persons can ask to be informed of the time and date of the hearing;
- ▶ NO cross-examination or examining the evidence, but the accused is questioned by the judge to establish free will and understanding of the plea agreement

The competence and the role of the court

Two-tier check:

CCP § 245¹ - when a person is committed to trial

The judge receives the criminal file and verifies the jurisdiction AND either

- commits the accused to answer the charges OR
- returns the file to the Prosecutor's Office - if the grounds for the plea agreement procedure do not apply OR
- returns the file to the Prosecutor's Office, **allowing for the possibility of concluding a new plea agreement** - if the court rejects the legal designation of the criminal offence or the type or length or amount of the sentence OR
- returns the file to the Prosecutor's Office for proceedings to be continued - if the court rejects the use of the plea agreement procedure to dispose of the case OR
- holds a preliminary hearing - primarily if there are grounds for termination of proceedings

The competence and role of the court

CCP § 248 - after the hearing

- ▶ **BY AN ORDER:**
 - returns the criminal file to the Prosecutor's Office - if the grounds for using the plea agreement procedure are not fulfilled;
 - returns the criminal file to the Prosecutor's Office, allowing for the possibility of concluding a new agreement - if the court rejects the legal designation of the criminal offence or the type or the length or amount of the sentence, or the obligation to leave the Republic of Estonia for a host country accompanied by a ban on re-entry for a period of five to ten years that has been assumed by an alien under the plea agreement;
 - rejects the plea agreement procedure and returns the criminal file to the Prosecutor's Office - if the court has doubts based on § 306 of the Criminal Code;
 - an order by which it terminates criminal proceedings - if grounds listed in clauses 2-6 of subsection 1 of § 199 of the Criminal Code have come to light
- ▶ **BY A JUDGEMENT:** convicts the accused and imposes the sentence stipulated in the plea agreement
- ▶ **CANNOT ACQUIT**
- ▶ **THE JUDGEMENT SHOULD STILL BE BASED ON EVIDENCE**

The content of the body of the judgement

- ▶ The charges of which the court convicts the accused;
- ▶ The substance of the plea agreement;
- ▶ No analysis of evidence

Right to appeal

CCP § 318 section 4

Only when one of the following conditions is met:

- ▶ Procedural violation of the rules of plea agreement procedure;
- ▶ Serious violation of the law of criminal procedure in general (CCP § 339 subsection 1)
- ▶ The accused and the defence counsel can also appeal if the act described in the plea agreement:
 - is not a criminal offence OR
 - the legal designation of the offence according to the Penal Code is erroneous OR
 - if a sentence that is not prescribed by law has been imposed