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Coercive preventive measures in Estonia



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Legal framework

- Civil procedure and criminal procedure law
- Substantive and procedural regulations
 - Law on Obligations Act
 - Code of Civil Procedure
 - Code of Criminal Procedure
 - Penal code
 - Police and Border Guard Act



Efficiency of legal framework

- Article 13 of European Convention for the Protection of Human Rights and Fundamental Freedoms: *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.*
- Right shall be secured not theoretically or illusively, but practically and effectively (*Airey v. Ireland; Iovchev v. Bulgaria*), thus judicial remedy should be effective both in practice and in theory (*McFarlane v. Ireland*).
- Activity or inactivity of state authorities or officials should not unreasonably hinder the implementation of rights (*Aksoy v. Turkey*).
- There is no doubt about the necessity of this regulation in Estonia and about its importance in protection of human rights, however at the moment actual implementation efficiency of such measures is doubted.



Basis of application

- Continuous infringement
- Of rights to private life, other private rights and freedoms; bodily injuries; danger to health;
 - Or there is a well-grounded risk of invasion of rights
- Protection order in civil process is used after criminal process or in cases, when there is no basis for taking criminal proceedings as the harm has not reached minimal threshold of invasion set by the legislator.



Types

- Pluralism of coercive preventive measures results from the legal framework.
- The most suitable coercive preventive measure can be selected for each actual or legal condition:
 - (1) Prohibition to approach a particular person,
 - (2) Controlled stay at a shared residence,
 - (3) Limited communication (to meet and communicate via phone, mobile phone, Internet etc.).



Application order I

- Coercive preventive measures are applied by the court, investigating judge or police
 - **In the civil process** – the court after receiving application regarding a person who involves submitters rights and freedoms or puts them at risk
 - **In the criminal process** – victim or the prosecutor after consent of the victim asks the court to issue an order against the suspect or the defendant in the framework of the particular criminal process
 - **In the police process** – police after their own or someone's initiative against anyone if the immediate protection is needed for the good of society



Application order II

- Coercive preventive measures are an individual tool for protection of rights.
- It cannot be applied for protecting abstract interests of society.
- Separate and abstract standard of evidence in civil process and criminal process.
- Judge not only evaluates the arguments of the parties, but also summarizes the evidence.
- The decision shows the reasons for issuing the protection order and application conditions.



Application order III

- Duration of coercive preventive measures:
 - In civil process – up to 3 years
 - In criminal process:
 - In the pre-trial stage – through the criminal process
 - In the post-trial stage – up to 3 years



Implementation control

- *De jure* control is established, however *de facto* it is difficult to ensure its efficiency.
- From 2006 to 2012 restraining orders have been issued 112 times; there have been 102 violations.
- The violations mostly were done by the same persons. For example, in 2010 90% of the violations were done by two persons, while in 2011 70% of the violations were done by 4 persons.
- Partial solution - GPS technologies



Consequences of a violation

- Violation of court's regulations: 1) if a protection order issued by court has been violated thus creating threat to someone's life, health or property, or 2) if the protection order has been violated repeatedly, the violator is **held criminally liable** and fined or imprisoned for up to a year.
- Violation of a regulation issued by police: the violator is held criminally liable, fined (up to 200 fine units) or arrested.



Criminalising stalking

Estonia unlike other countries (Germany, Norway, Sweden etc.) has not criminalised actions limited by protection order as a separate crime yet (criminalising stalking).



Paldies!

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