

Extract from Estonian**Criminal Procedure Code***(Unofficial translation)***Division 8****Surrender****Subdivision 1 - General Provisions**

§ 490. European arrest warrant

The European arrest warrant is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union for the detention, arrest and surrender of a person in order to continue criminal proceedings or execute imprisonment imposed by a court judgment which has entered into force.

§ 491. General conditions for surrender

(1) A person may be surrendered to a requesting state for the continuation of criminal proceedings with regard to him or her if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state.

(2) A person may be surrendered pursuant to the Estonian Penal Code regardless of the punishment for the act if imprisonment of at least three years is prescribed as punishment in the requesting state for commission of the following criminal offences:

- 1) participation in criminal organisations;
- 2) terrorism;
- 3) trafficking in human beings;
- 4) sexual exploitation of children and child pornography;

- 5) illicit trafficking in narcotic drugs and psychotropic substances;
- 6) illicit trafficking in weapons, ammunition and explosives;
- 7) corruption;
- 8) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests;
- 9) money laundering;
- 10) counterfeiting currency;
- 11) computer-related crime;
- 12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- 13) facilitation of unauthorised entry and residence;
- 14) manslaughter, causing serious damage to health;
- 15) illicit trade in human organs and tissue;
- 16) kidnapping, unlawful deprivation of liberty and hostage taking;
- 17) racism and xenophobia;
- 18) organised or armed robbery;
- 19) illicit trafficking in cultural goods, including antiques and works of art;
- 20) swindling;
- 21) extortion;
- 22) counterfeiting and piracy of products;
- 23) forgery of administrative documents and trafficking therein;
- 24) forgery of means of payment;
- 25) illicit trafficking in hormonal substances and other growth promoters;

- 26) illicit trafficking in nuclear or radioactive materials;
- 27) trafficking in stolen vehicles;
- 28) rape;
- 29) arson;
- 30) criminal offences which fall within the jurisdiction of the International Criminal Court;
- 31) unlawful seizure of aircraft or ships;
- 32) sabotage.

(3) Surrender of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsections (1) and (2) of this Article if at least four months of the sentence of imprisonment have not yet been served.

§ 492. Ground for refusal surrender of persons

(1) In addition to the provisions of Article 436 (1) 3) of this Code, surrender of a person is not permitted if:

- 1) the Estonian Penal Code may be applied to the criminal offence and an amnesty precludes imposition of a punishment in Estonia for the criminal offence which is the basis for an arrest warrant;
- 2) the person has been finally convicted or acquitted on the same charges in another Member State or, in the case of a judgment of conviction, the imposed punishment has been served or is served or the execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;
- 3) the person with regard to whom an arrest warrant has been issued is less than fourteen years of age;
- 4) an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia.

(2) Surrender of a person may be refused if:

- 1) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have been initiated with regard to the person in Estonia;
- 2) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have not been initiated or have been terminated with regard to the person in Estonia;
- 3) the Estonian Penal Code may be applied to the criminal offence and the criminal offence which is the basis for the arrest warrant has expired pursuant to the Estonian Penal Code;
- 4) the person has been finally convicted or acquitted on the same charges in a non-EU state or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;
- 5) the criminal offence which is the basis for the arrest warrant was committed outside the territory of the requesting state and the Estonian Penal Code cannot be applied to criminal offences committed outside the territory of the Republic of Estonia under the same circumstances;
- 6) in the case provided for in Article 502 (5) of this Code, additional information has not been submitted by the due date determined by the court.

(3) Estonia surrenders its citizens on the basis of a European arrest warrant for conducting criminal proceedings provided that the punishment imposed on a person in a Member State is enforced in the Republic of Estonia.

(4) If the European arrest warrant is issued for the execution of imprisonment with regard to a person who has been convicted in absentia and who was not informed of the time and place of the court session, the person may be surrendered on the condition that the requesting state has assured that the possibility of a new hearing of the criminal matter of the person is ensured.

(5) If life imprisonment may be imposed in a requesting state as punishment for a criminal offence which is the basis for an arrest warrant, the person may be

surrendered on the condition that the competent authority of the requesting state has assured that release of the person before the prescribed time is possible.

(6) If a person whose surrender is requested enjoys immunity or privileges in the Republic of Estonia, execution of the European arrest warrant shall be suspended until receipt of a notice from a competent authority concerning deprivation of the person of the immunity or privileges.

§ 493. Rules of speciality

(1) Criminal proceedings shall not be initiated, measures which restrict freedom shall not be applied and a court judgment for a criminal offence committed before surrender, except the criminal offence in connection with which the person was surrendered, shall not be enforced with regard to a person surrendered to Estonia.

(2) The provisions of subsection (1) of this Article do not apply if:

- 1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;
- 2) the criminal offence is not punishable by imprisonment;
- 3) the criminal proceedings do not bring about measures which restrict freedom;
- 4) punishment does not bring about deprivation of liberty, except substitutive punishment which restricts freedom;
- 5) a person voluntarily consents to surrender and non-application of subsection (1) of this section in respect of him or her or, after entry into force of a surrender decision, has consented to the non-application of subsection (1) of this Article in respect of him or her;
- 6) a Member State which surrenders a person has granted its consent for the bringing of additional charges.

(3) A request for the extension of surrender shall be submitted to the competent judicial authority of the requesting state.

(4) A request for the extension of surrender submitted to Estonia may be satisfied if the request is based on a criminal offence to which a European arrest warrant may be applied.

§ 494. Surrender or subsequent extradition to third country

(1) A person surrendered to Estonia cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state, unless:

- 1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or he or she has returned to Estonia after leaving;
- 2) the person consents to the surrender or extradition;
- 3) the Member State which surrenders the person grants its consent for the re-surrender or extradition.

(2) A citizen of the Republic of Estonia who is surrendered to a Member State of the European Union cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state without the consent of the Minister of Justice.

§ 495. Multiply of requests

(1) If several countries request the surrender of a person, a court shall decide which European arrest warrant is executed. The decision shall be based, primarily, on the seriousness and time and place of commission of the criminal offences committed by the person, the order in which the European arrest warrants were submitted and whether the warrants have been issued for pre-trial proceedings or for the enforcement of a court judgment which has entered into force.

(2) If necessary, a court may ask the advice of Eurojust.

(3) If a European arrest warrant and a request for extradition have been submitted in respect of the same person, the Minister of Justice shall decide which request is executed, taking account of the circumstances specified in subsection (1) of this Article.

§ 496. Transit of surrendered person

(1) Permission for the transit of persons surrendered by other Member States through the territory of the Republic of Estonia shall be granted by the Minister of Justice.

(2) A request for transit shall set out the following:

- 1) the personal data and the citizenship of the person concerned;
- 2) a notation that the European arrest warrant has been issued with regard to the person;
- 3) information on the facts relating to and the legal assessment of the criminal offence.

§ 497. Handing over of property

(1) Handing over of property located in a requested state may be requested by an European arrest warrant if the property claimed has been acquired by a criminal offence which is the basis for the European arrest warrant or the property is required as physical evidence in the criminal proceeding.

(2) In Estonia, third party rights to property to be relinquished shall be preserved and the property to be relinquished shall be returned to the entitled person outside the proceedings after the entry into force of the court judgment.

Subdivision 2 - Surrender Procedure

§ 498. Authorities competent to execute European arrest warrant

(1) The following authorities are competent to conduct proceedings regarding a European arrest warrant and adopt a surrender decision:

- 1) Tallinn City Court if a person is arrested in Tallinn or in Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu county;
- 2) Tartu City Court if a person is arrested in Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga county.

(2) The central authority for co-operation in surrender procedure is the Ministry of Justice.

§ 499. Arrest pending surrender

(1) In order to ensure execution of a European arrest warrant, a person may be arrested pursuant to the procedure provided for in Article 217 (8) of this Code. A preliminary investigation judge shall decide on an arrest pending surrender at the request of a Prosecutor General's Office.

(2) A person may be detained pursuant to the procedure provided for in Article 217 (1) of this Code before the arrival of the European arrest warrant on the basis of a request for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) if the request contains a confirmation on submission of the warrant.

(3) Upon arrest of a person, the grounds for arrest shall be explained to him or her and the person shall be informed of the opportunity to consent to surrender.

(4) A person has, as of his or her arrest, the right to be assisted by a legal counsel and by an interpreter.

(5) If a European arrest warrant has not been sent within a term provided for in Article 500 (1) of this Code, the person shall be immediately released.

§ 500. Channels for communication of European arrest warrant

(1) The European arrest warrant shall be addressed to the Ministry of Justice not later than within three working days after the arrest of a person in Estonia. The Ministry of Justice shall send immediately the European arrest warrant to a competent court.

(2) A European arrest warrant received through the International Criminal Police Organisation (Interpol) shall be sent to the competent court immediately after the arrest of a person and a copy of the arrest warrant shall be sent to the Ministry of Justice.

(3) A copy of a European arrest warrant shall be immediately communicated to the Prosecutor's Office.

§ 501. Legal counsel in surrender proceedings

- (1) The legal counsel in a surrender proceeding must be an advocate.
- (2) Participation of a legal counsel in a surrender proceeding is mandatory after review of a request for the arrest of a person.

§ 502. Surrender proceedings in court

- (1) In order to hear a European arrest warrant and decide on the surrender of a person, a court hearing shall be held within ten days after the receipt of the European arrest warrant by the court. If a person consents to the surrender, a court hearing shall be held within five days after the receipt of the European arrest warrant by a court.
- (2) Surrender proceedings shall be conducted by a judge sitting alone.
- (3) The following persons are required to participate in a court session:
 - 1) the prosecutor;
 - 2) the person whose surrender has been requested;
 - 3) the counsel of the person.
- (4) In a court hearing, the court shall:
 - 1) verify whether the person consents to surrender;
 - 2) inform the person of the provisions of Articles 493 and 494 of this Code;
 - 3) hear the opinions of the person, his or her counsel and the prosecutor.
- (5) A court may grant a term to a competent judicial authority of a requesting state for the submission of additional information.
- (6) A court shall make a decision provided for in § 503 of this Code within twenty days after the receipt of an European arrest warrant by the court and, if the person subject to surrender proceedings consents to his or her surrender, within ten days after the arrival of the European arrest warrant in Estonia.
- (7) If a surrender decision cannot be made within a prescribed term, the term for the making of the surrender decision shall be extended by thirty days. Authority who

submitted the request shall be immediately informed of such extension of surrender proceedings.

§ 503. Court decisions in surrender proceedings

(1) Upon deciding on surrender of a person to a foreign state, a court shall make one of the following rulings:

- 1) to satisfy a European arrest warrant and consent to the surrender of the person;
- 2) to refuse to satisfy a European arrest warrant and to refuse the surrender of the person.

(2) A decision shall set out:

- 1) the name, personal identification code or date of birth, and place of birth of the person subject to surrender proceedings;
- 2) the content of the European arrest warrant reviewed;
- 3) the opinions of the persons who participated in the court hearing and, if the person consents to his or her surrender, the consent of the person;
- 4) the court decision and reasons for the consent or refusal to consent to surrender;
- 5) the conditions of surrender provided for in Article 492 (3)-(5) of this Code;
- 6) the period during which a person subject to surrender proceedings was kept in detention;
- 7) the procedure for appeal.

(3) If a European arrest warrant contains a request for the confiscation of assets, the court shall decide on confiscation of the assets in surrender proceedings.

(4) If a court decides to grant the European arrest warrant and surrender a person, a court applies arrest pending surrender to the person until the person is surrendered.

(5) If a court decides to refuse surrender, arrest pending surrender is applied to the person until a decision on surrender or on refusal to surrender enters into force.

(6) A copy of a ruling shall be sent to the custodial institution where the person to be surrendered is kept under arrest pending surrender and the ruling is made known to the person to be surrendered against signature.

(7) A copy of a ruling which has entered into force and is issued in surrender proceedings shall be immediately sent to the Ministry of Justice who shall communicate it to the requesting state.

§ 504. Appeal in surrender proceedings

(1) An appeal against a ruling on surrender made in surrender proceedings or an appeal against a ruling on refusal to surrender may be filed pursuant to the procedure provided for in Article 386 (2) of this Code within three days as of receipt of the ruling.

(2) An appeal against a decision of Tallinn City Court shall be filed with Tallinn Circuit Court and an appeal against a decision of Tartu County Court shall be filed with Tartu Circuit Court.

(3) An appeal against a decision shall be heard in a written proceeding in a circuit court within ten days as of receipt of the matter in the circuit court.

(4) A decision of a circuit court is final.

§ 505. Surrender of person

(1) A copy of a decision on surrender which has entered into force shall be sent to the Central Criminal Police who shall notify the requesting state of the time and place of surrender of the person and organise the surrender.

(2) A person shall be surrendered within ten days as of entry into force of the decision on surrender.

(3) If the hindering circumstances are independent from the requested and requesting state, a person shall be surrendered not later than within twenty days as of entry into force of the decision on surrender.

(4) If a person is not surrendered with a term specified in subsections (2) and (3) of this Article, he or she shall be released.

§ 506. Postponement of surrender and temporary surrender

(1) The Ministry of Justice may postpone the execution of a surrender decision which has entered into force if postponement is necessary for the purposes of the criminal proceeding conducted in Estonia with regard to the person to be surrendered or for the purposes of execution of a court judgment made with regard to him or her.

(2) By a written agreement with a requesting state, a person whose surrender has been postponed may be temporarily surrendered to the requesting state.

Subdivision 3 - Submission of Arrest Warrant to Member State of European Union

§ 507. Submission of European arrest warrant

(1) In pre-trial proceedings, a Prosecutor's Office which conducts proceedings regarding a criminal offence which is the basis for a European arrest warrant is competent to submit the European arrest warrant.

(2) The Ministry of Justice is competent to submit a European arrest warrant for the execution of a court judgment which has entered into force.

(3) A European arrest warrant shall be done in Estonian and it shall be translated into the language determined by the requested state by the Ministry of Justice.

(4) A European arrest warrant shall be sent to a requesting state through the Ministry of Justice.

§ 508. Form and transmission of European arrest warrant

(1) The form of a European arrest warrant shall be put in operation by the Minister of Justice.

(2) An arrest warrant shall be transmitted to a requesting state by post, by electronic mail or in a form capable of producing written records.