

President Ilves adopted a resolution not to promulgate the Law Amending the Penal Code, Public Services Act, Aliens Act, Citizenship Act, Local Government Council Election Act and Law of Criminal Procedure. Today, President Toomas Hendrik Ilves adopted a resolution not to promulgate the Law Amending the Penal Code, Public Services Act, Aliens Act, Citizenship Act, Local Government Council Election Act and Law of Criminal Procedure,” passed by the Riigikogu on 15th June 2009.

“I do support the initiative of the Government and the Riigikogu to determine, more specifically, the nature of crimes committed against the state of Estonia and related punishment; however, I do not agree with the sporadic ambiguity and lack of clarity of the law amendments,” President Ilves remarked.

“There’s no doubt that Estonia’s legislation must contribute to the prevention and detection of crimes against the state and mete out punishment to those people who act against Estonia’s independence, self-governance, territorial integrity, and constitutional order,” the Head of State wrote in his resolution. “However, I am also of the opinion that a democratic state based on the rule of law must not be sacrificed for that purpose. Furthermore, the fundamental rights of a free society should not be restricted easily. They include freedom of assembly, freedom to criticise public authority, and freedom to be involved in creative work and reach research conclusions that differ from common understanding.”

President Ilves contested four law amendments.

The President does not agree with the intent to allow a compromise procedure in the case of manslaughter, extortion, terrorism and other serious crime. Currently, such compromises are not allowed.

“A compromise procedure, in which the prosecutor and criminal defence counsel agree upon a punishment without a judicial investigation of evidence may simplify the work of the prosecutor’s office in collecting evidence and decrease the burden of courts; however, it will diminish the meaning of the administration of justice, above all, in the case of serious crime, regardless of whether this is directed against the state or a specific individual,” the Head of State commented.

Secondly, President Ilves does not agree with a law amendment that threatens the organisers of demonstrations with being convicted for a crime against the state.

“People must have assurance that their constitutional right to organise non-violent meetings and the liability for acts committed by others must not be extended to the organisers,” said the Head of State, who also deplores the fact that in this instance “disorder” has not been clearly defined; therefore, categorising unregistered public meetings under this definition cannot be ruled out.

“If people are being punished for merely inviting others to participate in a “disorder,” which may be accompanied by looting, destruction or arson, the constitutional freedom of assembly will lose its meaning,” President Ilves commented, emphasising that other events and actions may accompany any event or action.

“It is also important to observe the principle, which states that the Penal Code cannot focus on issues of probability but must provide for legal clarity, above all, in relation to actions which may have criminal law consequences,” President Ilves commented. “Total clarity of definitions and liability must govern such issues and this has also been repeatedly stressed by the Supreme Court.”

Thirdly, in his resolution, the Head of State challenged law amendments that automatically deprive naturalised Estonian citizens of their citizenship in cases where the individuals have been convicted for crimes, though those crimes do not pose a threat to the security and stability of the state.

“Depriving people of citizenship, e.g., for exceeding the limits of artistic freedom when handling the flag or national anthem of Estonia is neither appropriate nor required by a democratic state based on the rule of law,” President Ilves said. “Therefore, depriving people of citizenship for an action that does threaten the security of the state conflicts with the principles of a democratic state based on the rule of law and, more specifically, the principles of proportionality.”

According to the Head of State, the legislative drafting of a modern democratic state must adhere to the statement made in ancient Rome more than two thousand years ago: Laws must not be inspired by anger; they must be inspired by justice.

President Ilves also challenged a law amendment, which concerned the promulgation of false information, damaging to the Republic of Estonia, if accompanied by a threat to public order.

“This will impose an illicit restriction on research and expression,” the Head of State commented. “A democratic country must not use the force of law to ensure the “one and only” historical truth. A state based on the rule of law must rule out the threat of fear, experienced by researchers and journalists, as an enforcement power of the state.”

According to the Head of State, the similar necessary elements of a criminal offence in Finland and Germany, which were used as examples for the elaboration of the law amendment passed by the Riigikogu, have been defined more explicitly. “For example, punishment may be imposed for deliberate promulgating of false information against the state when pertaining to the state’s national defence capabilities or views on international politics; however, if we administer punishment for the distribution of false information of any kind, we may have court hearings with experts on the accuracy of the interpretation of historical facts.”

President Ilves considers it necessary for the Riigikogu to discuss again the Law Amending the Penal Code, Public Services Act, Aliens Act, Citizenship Act, Local Government Council Election Act and Law of Criminal Procedure,” passed by the Riigikogu on 15th June 2009 and bring it into conformity with the Constitution of the Republic of Estonia.

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