



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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English only

## Committee against Torture

### Concluding observations on the fifth periodic report of Estonia

#### Addendum

#### Information received from Estonia on follow-up to the concluding observations\*

[Date received: 4 June 2014]

1. Estonia wishes to thank the Committee against Torture for the comprehensive work and observations made on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session in May 2013 (CAT/C/EST/CO/5).
2. Estonia herewith submits the follow-up information as requested in paragraph 27 of the Committee's concluding observations. The follow-up information has been compiled in close cooperation between the Ministries of Foreign Affairs, Interior, Justice and Social Affairs.
3. Estonian legal texts can be found at the *Riigi Teataja* (Official Gazette) website: [www.riigiteataja.ee](http://www.riigiteataja.ee), some of them with official English translations therein. Unofficial translations of several Estonian legal texts can be found at [www.legaltext.ee](http://www.legaltext.ee).
4. In addition, Estonia would like to announce that Estonia submitted its universal periodic review mid-term report to the United Nations in March 2014, containing also replies to some recommendations by States concerning the fight against torture.

### I. Conducting prompt, impartial and effective investigations

5. Estonia would like to state that, according to the Code of Criminal Procedure, investigation is started if there is a suspicion of brutality or excessive use of force by law enforcement personnel. Victims of such brutality can make a complaint to the police ([www.politsei.ee](http://www.politsei.ee)) or the Prosecutor's Office ([www.prokuratuur.ee](http://www.prokuratuur.ee)). In order to prevent possible abuse and brutality, these issues are systematically addressed by the Chancellor of Justice ([www.oiguskantsler.ee](http://www.oiguskantsler.ee)), also by means of visits of the Chancellor to police stations

\* The present document is being issued without formal editing.



and detention facilities. Victims of domestic violence receive help through victim support services and the system is regulated by the Victim Support Act. A victim of domestic violence has the opportunity to forward his or her complaint either as formal allegation to the police or to the victim support services. Also they can call a 24/7 helpline free of charge in case they feel unsure about starting a formal criminal procedure. It is possible to contact the victim support services and helpline anonymously.

6. Like many other countries, Estonia applies adversarial criminal procedure, i.e. the functions of accusation, defence and adjudication of the criminal matter are performed by different persons subject to the proceeding. Withdrawal of the charges releases the court from the obligation to continue the proceedings. If charges are withdrawn for the reason that the act of the accused comprises the necessary elements of a misdemeanour, withdrawal of the charges is the basis for termination of the criminal proceedings. Withdrawal of the charges in other cases is the basis for a judgement of acquittal. Therefore it is not possible for a court to continue proceedings against a suspect or accused if the prosecutor has dropped charges. Withdrawal of the charges is the basis for termination of the criminal proceedings or the basis for a judgement of acquittal. Moreover, it would be contrary to the principle of equality of arms if the court would continue with the accusation instead of the prosecutor. The court is an independent body and makes the decision on the basis of the evidence that has been submitted by the parties and examined during the trial. Therefore the court cannot take the role and perform the functions of the prosecutor.

## **II. Ensuring or strengthening legal safeguards for persons detained**

7. As regards the legal safeguards for detained persons, Estonia would like to provide the following detailed information. The rights and obligations of a suspect shall be immediately explained to him or her. Every suspect has, inter alia, the right: (a) to know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion; (b) to know that his or her testimony may be used in order to bring charges against him or her; (c) the assistance of a counsel; (d) to confer with the counsel without the presence of other persons; (e) to be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel.

8. When a person has been detained as a suspect an official of an investigative body shall explain the rights and obligation to him or her immediately. If the Prosecutor's Office is convinced of the need to take the person into custody, then the Office shall prepare an application for an arrest warrant and, within 48 hours of the detention of the person as a suspect, organize the transport of the detained person to the court where the preliminary investigation judge will adjudicate on the application. If the basis for the detention of a suspect ceases to exist in pretrial proceedings, the suspect shall be released immediately. A person detained as a suspect is given an opportunity to notify at least one person close to him or her, of his or her choice, of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of the Office.

9. As for convicted persons, a person is taken into a prison on the basis of a copy of a court judgement or court ruling entered into force. Therefore persons deprived of their liberty always know the reason for their imprisonment. Prisoners are always informed of their rights. The Imprisonment Act obligates prison officers not later than on the day following the prisoner's arrival in a prison, to meet the prisoner and give him or her explanations about his or her rights and obligations as a prisoner. A prisoner shall be given written information concerning the acts which regulate the execution of his or her

imprisonment, the internal rules of the prison and the submission of complaints. Upon arrival in a prison a prisoner is required to undergo a medical examination performed by a medical officer of a prison. Health care in prisons constitutes a part of the national health care system. Medical officers of prisons are required to supervise the state of prisoners' health on a constant basis, treat them in prison to the extent possible and, if necessary, refer them to treatment at relevant providers of specialized medical care. They also perform other duties assigned to medical officers. The availability of emergency care is guaranteed to prisoners for 24 hours a day.

10. Estonia has a database concerning prisoners, detained persons and persons in custody, which includes different kinds of prisoners' personal data. The Ministry of Justice regularly monitors the use of the database and turns prisons' attention to the shortcomings in documents or in the database. Therefore, constant monitoring of officers' compliance with the documentation requirements is being ensured.

11. Estonian authorities constantly take different measures to improve the living conditions of detainees. Serious attention is paid to ensure that the construction of planned prison buildings will continue according to the schedule. For example, Viru Prison and Tartu Prison already have no problem of overcrowding as at least four square metres of living space have been guaranteed to each inmate. Tallinn Prison and Harku-Murru Prison will have the same facilities as soon as the new Tallinn Prison buildings have been constructed and each detainee will have at least four square metres of living space. The new Tallinn Prison will be opened in 2018 and the old buildings will no longer be used as a prison.

12. With reference to the Committee's observation on effective and impartial mechanisms, Estonia would like to give the following information. The action of declaration of unlawfulness of the conditions of detention can be filed directly to the administrative court. If the court finds that the prison conditions were not compatible with respect for a prisoner's human dignity or that the manner and method of the execution of the measure subjected a prisoner to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention or the conditions did not meet the requirements prescribed by the law, the court decision is the basis to claim compensation for damages from the prison. A prisoner can make the claim directly to the prison and if not satisfied with the prison's decision, he or she has the right to complain to an administrative court.

13. Since 1 October 2011, a regulation of the Minister of Justice on the use of physical force and service weapons in prisons is in force. According to that regulation, every use of means of restraint or physical force must be recorded by the prison officer in a protocol and information on the use of restraints, including the reason for use, duration of use and particular method of restraint used, must be provided. Additional specific regulations concerning the use of restraints in prisons are in the process. The questions of prisoners' surveillance during the use of restraints will be regulated by those new regulations. All complaints about violations concerning the use of restraints are promptly and independently investigated. Prisoners have a right to correspondence and they have the possibility to write directly to the Prosecutor's Office and also to the Prison Department of the Ministry of Justice if they feel that they have been mistreated. If the officers find that there is sufficient ground for investigation, proceedings are initiated. Prison officers are also continuously trained on how to act in different difficult situations where they may have to use physical force and in more extreme cases restraint methods.

14. On 12 February 2014 the Parliament, *Riigikogu*, adopted the amendment to the Obligation to Leave and Prohibition on Entry Act. The amendment stipulates that the police may use handcuffs with a person to be escorted *only* in case of immediate threat and if there is reason to believe that he or she may: (a) attack another person, put up physical resistance to a police officer or an assistant police officer or damage property of great value;

(b) escape or he or she may be released unlawfully; (c) injure or kill himself or herself. This amendment will enter into force on 1 October 2014.

### III. Prosecuting suspects and sanctioning perpetrators of torture or ill-treatment

15. Estonian authorities take very seriously every allegation of denial of fundamental legal safeguards of persons deprived of their liberty. All complaints of violations are promptly and independently investigated.

16. The number of criminal investigations carried out against officers in prisons, is the following.

#### Article 291 of the Penal Code\*

Year	Total number of complaints received	Terminated due to the absence of the necessary elements of an offence	No proceedings initiated after preliminary inspection	Still in the process	Convictions
2011	8	2	5	0	3
2012	20	6	14	0	0
2013	20	0	20	0	0

\* Abuse of power – An official who unlawfully uses a weapon, special equipment or violence while performing his or her official duties shall be punished by a pecuniary punishment or by 1 to 5 years' imprisonment.

17. It is necessary to emphasize that in any case when the officer in prison has used force, weapons or other special equipment (handcuffs etc), the incident is thoroughly investigated and, if necessary, disciplinary or criminal proceedings are initiated. Data is collected about the disciplinary proceedings where prison officers and employees have been suspected of breaching their service obligations. For example in 2013, 76 disciplinary proceedings in different circumstances were conducted. In 26 cases officers were reprimanded or as sanction their basic salary was reduced up to 30 per cent for up to six months. It is also possible to discharge a prison officer dishonourably if the disciplinary infringement is severe. In practice, however, officers often leave the service themselves before discharge is imposed and therefore the statistics do not reflect this penalty.

18. Estonia is currently in the process of amending the Penal Code. Amendments have been submitted to the *Riigikogu* for consideration and adoption. The future definition of torture (art. 290) will include both elements of physical and mental abuse. The proposed sanctions would be from 1 to 7 years of imprisonment. In case the act of torture is committed against two or more persons or against a minor the proposed sanction would be from 2 to 10 years. The Penal Code will also be supplemented by a section (art. 58) that concerns domestic violence, amending the applicable circumstances, including commission of the offence against a person who is in a service, financial or family-related dependent relationship with the offender. A new subsection will be added to article 121 (physical abuse), which provides stricter punishment for the abuse if committed in a close or dependent relationship.

19. Finally, as regards the national human rights institution (NHRI), Estonia does not currently have an accredited NHRI. The respective ministries are looking for the best solution for the NHRI to be accredited in the future.