Estonia's Fourth Periodic Report on the Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Contents

Introduction

The Republic of Estonia has acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention entered into effect in respect of Estonia on 20 November 1991. This report is submitted in accordance with Article 19 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which the State Parties to the Convention are required to submit periodic reports on the measures taken to implement the Convention and the progress achieved. Estonia submitted its first, second and third report in one document in June 2001. The Committee against Torture discussed Estonia's report in November 2002 and adopted conclusions and recommendations to the Republic of Estonia.

This report reflects legislative, administrative and other measures that have been taken in 2001-2004 to implement the rights provided for in the Convention. In drawing up the report also the questions put to Estonia by the Committee against Torture on the basis of Estonia's first, second and third consolidated report were taken into account. Great attention was also paid to the conclusions and recommendations adopted by the Committee during the discussion of Estonia's previous report.

The report was drawn up by the Ministry of Justice in cooperation with the Ministry of Foreign Affairs, Ministry of Social Affairs and the Ministry of Internal Affairs. Consultations were also held with the Office of the Chancellor of Justice. The Committee's questions with translation into Estonian were also forwarded to relevant non-governmental organisations for comments and proposals.

The Committee in its recommendations noted as a positive aspect the publication of Estonia's reports and the corresponding conclusions of the UN bodies on the homepage of the Ministry of Foreign Affairs. With the aim to continue informing of the public about the rights and duties enshrined in the Convention, the state's reports and corresponding recommendations will be published on the homepage of the Ministry of Foreign Affairs in Estonian and English also in the future.

As the first report was drawn up in English, it is available to the public on the homepage of the Ministry of Foreign Affairs in English. The fourth periodic report was drawn up in Estonian and translated into English and it will be published both in Estonian and English. Available on the homepage of the Ministry of Foreign Affairs are also the concluding recommendations of the Committee against Torture on the report in Estonian and English.

I. Measures and developments relating to the implementation of the Convention

A. Article 3

1. Amendment Act of the Refugees Act

Estonia has acceded to the UN Convention Relating to the Status of Refugees and the Protocol relating to the Status of Refugees of 31 January 1967 and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The implementation of these international legal acts is guaranteed pursuant to the procedures set out in the Refugees Act and the Aliens Act.

The Amendment Act of the Refugees Act entered into force on 1 May 2003. Chapter 1 of the Act was amended and a new chapter "1^1. Asylum Proceedings" was added, which regulates the stay of an applicant in the initial reception centre and also sets out the definitions of a safe country, prohibition of expulsion, etc.

The Act was amended due to the need to revise and specify the Refugees Act, regulate in more detail the issues relating to the reception of asylum applicants and ensure the expedited processing of asylum applications. The law was amended so that the authorities dealing with asylum applications would have the competence to make decisions on the granting or refusal of asylum and revocation of asylum. The aim was also to implement on a more extensive scale the expedited procedure of applications.

In the previous Refugees Act several important issues were regulated insufficiently or there were inconsistencies between the provisions. There was also no uniform procedure for the conducting of initial interviews and the acceptance of the required application for asylum in terms of sequence of steps in applying the expedited and ordinary procedure. It was also not clearly provided who would make the decision on the termination of the refugee status. The conditions of stay of the asylum applicant in Estonia as well as the conditions of stay in the reception centre were not regulated. With the new Refugees Act these shortcomings have been eliminated and the law also contains the notions of a safe country or country of permanent residence and a safe third country which are used in the legislation of European Union member states and which create clear criteria for applying expedited procedure.

According to § 8^4 of the Refugees Act, asylum proceedings can be terminated by a decision to reject the application for asylum also if the applicant arrived to Estonia through a country which can be considered as a safe country or there is reason to consider the applicant's country of nationality or country of permanent residence as a safe country of origin.

A safe country is a country that complies with the obligations provided for in Article 32 and 33 of the UN Convention relating to the Status of Refugees, Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 3 of the European Convention on Human Rights. Safe countries are also considered to be other countries where the applicant would be able to receive protection against persecution or expulsion to the applicant's country of

origin or other country where such protection would not be guaranteed to the applicant. A safe country of origin is considered to be a country where in general there is no serious threat of becoming a victim of persecution. In determining the safe country of origin it is also taken into account whether the country has acceded to the main international instruments on human rights and complies with them.

The safe countries and countries of origin are determined by the Citizenship and Migration Board.

The new law also provides that during the expedited procedure the applicant may also leave the border point when he or she is in need of emergency medical assistance. The previous version of the law did not provide for such a possibility and this was not in conformity with the generally recognised principles of humanity.

2. Extradition

Estonia has not received any requests for extradition which would have raised the issue of refusal in connection with the violation of human rights in the requesting state. On 25 August 2004 the Minister of Justice decided to refuse to extradite to Turkey a citizen of the Republic of Turkey and of the Kingdom of Sweden Heybet Acikgös (Hemo Amedsson) whom Turkey accused of terrorist offences. The request was refused due to expiration of the limitation period of the offence according to the Estonian Penal Code. The decision for refusal also referred to the fact that the person was a Swedish national and the Swedish authorities had requested him to be returned to Sweden where he had lived for more than 20 years. Estonia was of the opinion that while Amedsson was a Swedish citizen then that country had more exact information about his activities.

Requests for extradition submitted by the Republic of Estonia have also not been refused on grounds of human rights violations or suspicion of violations in Estonia. Only once Estonia's request for extradition was denied – in 2002 the US denied a request for extradition due to legal nuances.
The following is an overview of requests for extradition submitted by the Republic of Estonia in the period 1 June 2001 until 15 October 2004:

Year	Number of requests	Granted	Refused
2001 (2nd half)	9	9	0
2002	35	34	1 (USA)
2003	29	28	0
2004	6	4	0

B. Article 4

Penal Code

The concept of the penal law reform was developed in 1995. One of the most important results of the reform was the drafting of the Penal Code which reformed the fundamental principles of penal law in general. The new Penal Code entered into effect on 1 September 2002.

The Penal Code contains a general part (necessary elements of the offences, punishments, rules for the imposition of punishments) for criminal offences and misdemeanours. Misdemeanour proceedings are regulated by the Misdemeanour Code since 1 September 2003.

Previously the age of criminal liability began from 15 years and in the case of certain offences from 13 years. The new Penal Code provides for a uniform age of liability – 14 years. The Penal Code also provides for a possibility to punish legal persons for the commission of a criminal offence.

The Code provides for several alternative punishments apart from imprisonment, for example the possibility of community work. The aim of establishing alternative punishments to imprisonment was to abandon the previous notion that serving of a punishment for an offence could only take place in a penal institution.

There are also possibilities for full or partial suspension of the punishment, either in combination with or without additional duties; the possibility to serve a punishment in parts is the so-called "weekend imprisonment".

The Chapter on Offences against Persons in the Penal Code also contains the necessary elements of offences of violence. According to the law, causing damage to the health of another person, or beating, battery or other physical abuse which causes pain, is punishable by a pecuniary punishment or up to 3 years' imprisonment (§ 121). Continuous physical abuse or abuse which causes great pain is punishable by a pecuniary punishment or up to 5 years' imprisonment (§ 122). A threat to kill, cause health damage or cause significant damage to or destroy property, if there is reason to fear the realisation of such a threat, is punishable by a pecuniary punishment or up to one year of imprisonment (§ 120).

Commission of an act of violence against a representative of state authority or any other person protecting public order, if committed in connection with the performance of official duties by such person, is punishable by a pecuniary punishment or up to 5 years' imprisonment (§ 274).

There is a separate chapter that provides for the punishment for causing serious health damage to judges, lay judges, preliminary investigators, prosecutors, criminal defence counsels, representatives of victims, or their close persons (§ 302 and 303). The use of violence against suspect, accused, accused at trial, acquitted person, convicted offender, witness, expert, translator, interpreter or victim is also punishable (§ 323).

According to § 324 of the Penal Code, an official of a custodial institution who, taking advantage of his or her official position, degrades the dignity of a prisoner or a person in detention or under arrest, or discriminates against such person or unlawfully restricts his or her rights, shall be punished by a pecuniary punishment or up to one year of imprisonment.

In addition to the types of criminal offences provided for in the Criminal Code and described in Estonia's previous report, the new special part of the Penal Code also introduced several new criminal offences, e.g. § 133 Enslaving; § 134 Abduction and taking of a person to a country where his or her personal freedom is restricted.

§ 133. Enslaving
(1) Placing a human being, through violence or deceit, in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such a situation, is punishable by 1 to 5 years' imprisonment.
(2) The same act, if committed:
1) against two or more persons, or
2) against a person of less than 18 years of age,
is punishable by 3 to 12 years' imprisonment.

§ 134. Taking a person to a state where personal freedom is restricted
(1) Taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state, is punishable by a pecuniary punishment or up to 5 years' imprisonment.
(2) The same act, if committed:
1) against two or more persons, or
2) against a person of less than 18 years of age,
is punishable by 2 to 10 years' imprisonment.

The Penal Code also provides for punishments for genocide and crimes against humanity and war crimes.

In addition, Estonia is party to international conventions concerning this field, such as the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, and the Rome Statute of the International Criminal Court.

We would like to note in this regard that the Criminal Code that was in effect at the time of the submission of the previous report did not contain a separate provision for punishment for the commission of the crime of genocide. Punishment for genocide was covered by the section on crimes against humanity (§ 61^1). However, as this section was not very clearly worded, it caused certain disagreement in its interpretation among Estonian courts. Lower level courts were, for example, of different opinion about the deportations of 1949, i.e. whether the deportations qualified as a crime against humanity or as genocide. In 2000, the Supreme Court Criminal Law Chamber in its decision (1-1-31-00) drew the attention to various necessary elements of a criminal offence in § 61^1 and found that the failure to distinguish genocide from other crimes against humanity caused the situation where courts interpreted the relevant provision of the Criminal Code differently.

In the Penal Code that was passed in 2001 and that replaced the previous Criminal Code, the necessary amendments have been introduced and genocide and crime

against humanity are dealt with under separate sections. Section 89 of the Penal Code provides for the punishment for a crime against humanity and section 90 the punishment for genocide.

Estonia ratified the Rome Statute on 30 January 2002. The regime established by the Rome Statute is particularly relevant in the case of torture. Inherent characteristics of the criminal offence – in particular the relation of the perpetrators to authorities – is the reason why perpetrators of the crime have gone unpunished. The establishment of the International Criminal Court is a means to prevent such a situation. Estonia as a founding member of the International Criminal Court has passed the implementing legislation of the Rome Statute. In addition to the cooperation regulation between Estonia and the ICC contained in the Code of Criminal Procedure, the Penal Code provides for the crimes of genocide, crimes against humanity and war crimes. In addition, a comprehensive legislative jurisdiction is established, whereas the basis for the exercise of the jurisdiction are the principles of territoriality, active and passive personality, universality and defence.

As an act of torture under certain conditions can be qualified as a crime against humanity, genocide or a war crime, the State Party must pass necessary legislation to enable it to be the primary forum for initiating court proceedings due to the complementary nature of the regime established by the Rome Statute.

According to § 89 of the Penal Code, torture is one of the possible acts relating to the objective aspects of the crime when other characteristics exist as a contextual element – large-scale or systematic nature of the acts or the existence of a political element, relation to the state, organisation or group, which distinguishes this crime from individual acts of violence. According to § 90, in the case of genocide, besides causing of health damage torture is another potential act which constitutes the objective side of the crime of genocide.

Sections 97, 99, 101 and 102 of the Penal Code, under the division of war crimes, classify torture as a criminal offence and as a serious violation of the 1949 Geneva conventions vis-à-vis the persons protected under the conventions. It is also important to note that Estonian legislation does not distinguish between international and domestic armed conflicts.

The notion of torture in Estonian legislation is explored in Part III of this report.

C. Article 5

Jurisdiction of the Republic of Estonia with regard to crimes under Article 4

Requirement of the Convention	**Corresponding provision in the Penal Code**
when the offence is committed in a territory under Estonian jurisdiction or on board a ship or aircraft registered in Estonia	§ 6. Territorial applicability of penal law (1) Estonian territory (2) ship or aircraft registered in Estonia
the alleged offender is an Estonian national	§ 7. Personal applicability of penal law

	3) the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act
the victim is an Estonian national and Estonia considers it appropriate to punish	§ 7. Personal applicability of penal law 2) the act is committed against a citizen of Estonia
the alleged offender is present in any territory under Estonian jurisdiction and Estonia does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article	§ 7. Personal applicability of penal law 3) the offender is a foreigner who has been detained in Estonia and is not extradited

D. Article 6

Cooperation in criminal procedure

Regulation of cooperation in criminal procedure contained in the Code of Criminal Procedure (§ 433-508) that entered into effect on 1 July 2004 guarantees compliance with the requirements of Article 6 of the Convention. International co-operation in criminal procedure comprises:

- extradition of persons to foreign states;
- mutual assistance between states in criminal matters;
- execution of the judgments of foreign courts;
- taking over and transfer of criminal proceedings commenced;
- co-operation with the International Criminal Court;
- extradition to member states of the European Union.
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In comparison with the previous Criminal Code the provisions on international cooperation have been elaborated in much more detail. The principle of direct applicability of international treaties is also applicable here.

E. Article 7

State Legal Aid Act

On 1 March 2005, the new State Legal Aid Act will enter into effect in Estonia. The new law in essence combines provisions on the regulation of legal assistance provided by the state which were previously contained in various procedural codes. The purpose of the Act is to ensure the timely and sufficient availability of competent and reliable legal services to all persons. Citizens of foreign states are guaranteed equal procedural rights with Estonian citizens with regard to legal aid.

In addition to court procedure, the law expands the possibility of receiving legal aid also within the pre-trial procedure, procedures carried out by administrative authorities and execution proceedings, as well as preparing legal documents and other legal counselling to a person or representing a person in another manner. What is particularly important is the preliminary oral counselling as a provision of legal first

aid, as in this stage the dispute is qualified which will determine the direction of all the subsequent actions.

An important principle is that the management of a law office must ensure that explanations concerning the bases and procedure for the receipt of state legal aid prescribed in this Act are provided to persons who need state legal aid and the law office must provide such explanations without charge.

The provision of state legal aid is financed from the money allocated for this from the state budget.
Separately, § 37 of the Act provides for a possibility to receive state legal aid for filing an appeal with the European Court of Human Rights in Strasbourg if the alleged violation of the European Convention on Human Rights or its Additional Protocols binding on Estonia has been committed by the Estonian state.

F. Article 8

International conventions

In the period 2001-2004 the Republic of Estonia has acceded to or ratified the following international conventions relating to criminal procedure:

1) Council of Europe "Convention on Mutual Assistance in Criminal Matters", 2nd Additional Protocol (2004);
2) European Union "Convention on Mutual Assistance in Criminal Matters" (2004);
3) Application of the provisions of the Council of the European Union framework decision on the European arrest warrant and the surrender procedures between the Member States of the European Union (since 1 July 2004);
4) ratification of the Council of Europe "European Convention on the International Validity of Criminal Judgements" (2001);
5) ratification of the European Union Convention relating to extradition and Convention on simplified extradition (2004).

Estonia acceded to the Second Optional Protocol to the UN Covenant on Civil and Political Rights, aimed at the abolition of the death penalty, on 12 November 2003.

On 3 May 2002 the Republic of Estonia signed Protocol No. 13 to the European Convention on Human Rights (entered into force internationally on 1 July 2003) which provides for the abolition of the death penalty in all circumstances, thus having a significantly stronger effect than the earlier Protocol 6 to the European Convention on Human Rights and the second optional protocol to the Covenant. Estonia ratified Protocol 13 to the European Convention on Human Rights on 25 February 2004.

The combined effect of Articles 1-2 of the Protocol excludes completely the application of the death penalty for any conceivable reason and under any circumstances. Considering that already since 19 June 1998 Estonian legislation ruled

out the possibility of the application of the death penalty under any circumstances, the ratification of the Protocol did not change the existing legal environment in Estonia. At the same time, however, it excludes the possibility in the future to introduce in the legislation the bases for the application of the death penalty in respect of acts committed in time of war or of imminent threat of war as mentioned in Article 2 of Protocol 6 to the European Convention on Human Rights and Fundamental Freedoms, because, according to Article 123 paragraph 2 of the Estonian Constitution, if laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu, the provisions of the international treaty shall apply.

Estonia has also signed the additional protocol to the CAT. At the UN General Assembly meeting in New York on 21-24 September 2004 the President of the Republic of Estonia signed the CAT protocol. The objective of the protocol is to ensure better the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

G. Article 10

1. The prohibition of torture, cruel and inhuman treatment in the legislation of the Republic of Estonia

The prohibition and punishment of torture, cruel and inhuman treatment is stipulated in Article 18 of the Estonian Constitution. The prohibition is guaranteed through criminalisation of torture in the Penal Code. Section 9(3) of the Code of Criminal Procedure provides that the participants in a proceeding must be treated without defamation or degradation of their dignity. The second sentence of the same provision contains the prohibition of torture, cruel and inhuman treatment, which is further guaranteed through the provisions of the Penal Code. The enforcement of the prohibition is guaranteed with the provisions of the Penal Code referred above. The prohibition of torture is also repeated in § 64(1) which regulates the collection of evidence.

Section 4(2) clause 1 of the State of Emergency Act provides for the prohibition of torture during the state of emergency in the context of restriction of people's rights and freedoms.

The Refugees Act and the Obligation to Leave and Prohibition on Entry Act make reference to the UN Convention against Torture.

2. Training of prison officials

The Ministry of Justice considers continuous development of in-service training of prison officials important. Another priority is the organisation of training to develop social skills. Prison officials receive basic training in the course of their preparatory service. The main focus of in-service training of prison officials is on communication psychology, law, social welfare and health care.

Prison officials are trained in two institutions: Tallinn Pedagogical Seminary trains future prison guards in a one-year preparatory service of prison officials, the Public Service Academy trains inspectors in a three-year preparatory service. In both institutions it is possible to choose between daytime study and distance learning. There is also regular in-service training of officials.

According to the Ministry of Justice development strategy, the above-mentioned two training courses for the training of prison officials will be merged in the academic year 2005/2006. The aim of the merger is unification of the training of prison officials and raising the quality of study.

H. Article 11

1. Amendment Act of the Juvenile Sanctions Act and of the Basic and Upper Secondary Schools Act

The law entered into effect on 1 July 2001. It establishes special conditions for the schooling of juveniles with special needs of education. Such conditions were so far not provided for in any laws; for example the possibility of placement of pupils in an isolation room for calming down in schools for pupils with special needs, but not for longer than 24 hours. These special conditions are necessary as educational means of influencing juveniles and at the same time protecting their rights and freedoms.

2. Communicable Diseases Prevention and Control Act

The Act entered into effect on 1 May 2004. Among other things, it also provides for involuntary treatment of persons suffering from a communicable disease. In principle, subjecting of a person carrying a communicable disease to involuntary treatment and isolation does not differ from isolating a criminal offender whose unlawful activity also endangers the health and life of other persons and which is recognised by our legislation. Previously, similar right was provided for in the Psychiatric Care Act. The Act provides for the involuntary placement in hospital for 48 hours of a person carrying a communicable disease. The application of involuntary treatment with the permission of an administrative judge for up to 182 calendar days and in the case of tuberculosis for up to 240 calendar days is based on the duration of treatment of various communicable diseases.

3. Tartu Prison

The first inmates to Tartu Prison were admitted on 16 October 2002 and with this the transfer of the Estonian prison system from the camp-based system to a cell-based system was started. Opening of Tartu Prison also laid a foundation to the creation of a regionally oriented prison system in Estonia. Thanks to the opening of Tartu Prison it was possible to merge the Central Prison with Tallinn Prison and close down the Central Prison on 31 December 2002.

Tartu Prison is located on an area of 93 763 m^2 in southern Estonia. The total floor area of the new prison is 23 000 m^2, which includes an administrative building, reception facilities, rest and sporting facilities, study classrooms, production facilities for metal, wood and textile work, rooms for religious services and maintenance rooms. There are 479 cells, the size of one cell is 10 m^2. Tartu Prison is the most modern prison in Estonia and the safety of the community is also guaranteed by more than 170 surveillance cameras, attack and alarm systems for the protection of the staff and special security systems for guarding the more than one kilometre long outer perimeter of the prison.

There are total 361 staff positions in Tartu Prison, of which 269 are prison officials. Only one in twelve officials employed in the prison have an earlier experience of working in a prison. Therefore, it is easier to adapt them to work in the new style of prison.

In May 2003, in cooperation between the Ministry of Justice Department of Prisons and the police structures a pilot project for the escort centre in Tartu Prison was launched. As a result of the pilot project the prisoner escort department was formed as an independent unit within the structure of Tartu Prison. The escort department deals with the organisation of escorting of inmates between penal institutions throughout Estonia.

4. Viru Prison

Viru Prison will have a capacity of 1000 inmates and will be opened in Jõhvi town in Ida-Viru County in 2007. At Viru Prison also a 75-place open prison department and 150-place jail will be opened. The jail and the high-security prison will be surrounded with the same barrier. The open prison will be in their immediate proximity. There will be 305 staff in Viru Prison. The training project for the staff to be employed at Viru Prison includes the most comprehensive human rights course that has so far been offered to prison officials.

Viru Prison will be built with the aim of further development of the system of regional prisons and increasing the capacity of prison facilities that meet modern-day requirements.

Thanks to the opening of Viru Prison the proceedings of criminal offences will speed up and therefore also the terms of holding persons in custody pending trial will shorten. The convicted offenders will be serving their sentence in a prison in their home region and this will contribute to maintaining of contacts with the relatives and acquaintances.

5. Merging of Rummu Open Prison with Murru Prison

At the end of 2003, the merging of Rummu Open Prison and Murru Prison, which are located a few hundred metres from each other, was started. The main purpose of merging the prisons was:

- saving of costs;
- increasing the financial and staff flexibility of the organisation;
- raising the quality of prison work.

As a result of merging the prisons, on 1 April 2004 an open prison department was added to Murru Prison. The merging was of organisational character and the underlying principle was that the exercise of all functions of the open prison should be maintained at least on the existing level and quality: inmates should have at least the same possibility for sporting, work, library services, etc.

6. Central Hospital of Prisons

The Central Hospital of Prisons that was so far housed in the premises of the former Central Prison belongs under Tallinn Prison until the completion of the new hospital of prisons. On 1 November 2004 the Central Hospital of Prisons was merged with the health department of Tallinn Prison. By the end of the first half of 2005 the health department of Tallinn Prison will move to the premises of the former Maardu Prison.

7. Merging of Maardu Prison with Tallinn Prison

On 1 November 2004, Maardu Prison was merged with Tallinn Prison. The arrested persons and imprisoned persons in Maardu Prison will be transferred to other prisons. During the first half of 2005 necessary building work will be done in order that by the end of the first half of 2005 the Tallinn Prison health department that is currently operating in the premises of the former Central Prison could move to the premises of the former Maardu Prison.

8. Contact person

The most important development in the personnel sphere of prisons in 2003 was the introduction of contact persons in the whole prison system. The project started in 2002 and its aim was to create a post for coordinating relations between inmates inside the prison. The person holding the post would not only be watching that the inmates don’t escape from the prison but they would also be a person to whom the inmates would first come with their problems. The persons to take up the new posts as well as their direct managers were given in-service training. In addition to effective distribution of work, also work satisfaction has increased. For many public servants this was a career advancement and the post of the contact person has made it possible to hire new staff. The post of the contact person will enable officials to display their professional competence.

J. Article 13

1. Code of Criminal Procedure

On 1 July 2004 the new Code of Criminal Procedure entered into effect. To guarantee speedier and more effective criminal proceedings, the new Code of Criminal Procedure offers a possibility to terminate criminal proceedings for reasons of expediency. The application of this measure allows to use procedural resources for dealing with more serious crimes. The Code of Criminal Procedure also provides for forms of simplified court proceedings, and this should help to speed up the proceedings in court.

The roles of parties to the proceedings have been defined in more detail. In addition to guaranteeing the legality of pre-trial proceedings, the prosecutor's office is also responsible for the efficiency of pre-trial proceedings. To fulfil this role, the prosecutor's office has the right to terminate the criminal proceedings in the phase of pre-trial investigation (both on the general basis as well as on grounds of expediency), the prosecutor is also the only person having the right to request from the preliminary investigation judge the application of procedural acts that restrict fundamental freedoms of persons. The new Code of Criminal Procedure also introduced some additional elements of adversarial principle in the court procedure in order to ensure impartial and objective adjudication of the cases by the judge. According to the Code of Criminal Procedure, witnesses and the accused are questioned in the form of cross-examination. The adversarial principle is also expressed in the fact that dropping of the charges by the prosecutor will result in acquittal, i.e. the court does not have the right to continue proceedings at its own discretion.

The following new principles deserve to be mentioned in connection with human rights:

- the creation of the institute of the preliminary investigation judge – during pre-trial proceedings, at the request of the prosecutor's office the preliminary investigation judge authorises procedural acts that restrict fundamental freedoms (taking under arrest, search, surveillance activities, e.g. wiretapping of a private conversation and viewing of correspondence, seizure of property). When the judge has acted in the capacity of a preliminary investigation judge, having granted an authorisation to take a person under arrest, to apply a bail, or having reviewed other requests or complaints relating to taking a person under arrest then if hearing of the matter continues pursuant to the general procedure that judge must withdraw from the proceedings.
- avoiding of a predetermined decision by a judge – in addition to the above-mentioned basis for withdrawal of the judge, the new Code of Criminal Procedure also provides for a procedure according to which in an ordinary court procedure involving cross-examination the judge will receive the case file only in the initial phase of court examination, and not when the matter arrives in the court. This helps to avoid the situation that before the hearing of the matter in substance the judge has already "learnt the file".
- long-distance hearing and hearing by telephone to defend the victim or witness (§ 67, 69, 287).
- more effective control over holding a person under arrest – since 1 January 2005, the general term of holding a person under arrest is six months (in the

transition period from 1 July until 31 December 2004 the maximum term is one year). A person can be held under arrest for a longer term only at the request of the Chief Public Prosecutor if the case involves international cooperation in criminal proceedings or is particularly extensive or complicated.

- new procedure for appeal against an investigator or prosecutor (§ 228-232) – unlike the previous procedural code, the new Code of Criminal Procedure provides for a clear regulation how to appeal against the activities of the investigator and prosecutor in the pre-trial procedure and which court is competent to hear such an appeal.
- collection of evidence through surveillance measures – the Code of Criminal Procedure contains a regulation for collecting evidence through surveillance activities, according to which any violation of law in the course of performing a surveillance activity will render the evidence collected through such an activity inadmissible. The amendments also established a new situation where the surveillance activities that restrict fundamental freedoms and for which an authorisation from a judge is needed can only be performed in the framework of criminal proceedings. However, there is special regulation for collection of evidence to guarantee national security.

2. Code of Administrative Procedure

The Administrative Procedure Act entered into effect on 1 January 2002. The main objective of the Act is to guarantee that administrative acts are given pursuant to a simple and modern procedure taking into account the rights of persons. The Administrative Procedure Act is a general Act from which exceptions can be made by specific acts. The administrative procedure does not regulate the activities of the parliament *(Riigikogu)* or the courts, nor criminal procedure or proceedings of misdemeanour cases. The special part of the administrative procedure also regulates challenge proceedings (i.e. administrative complaints). Challenge proceedings involve the review of the legality and expediency of an administrative act or measure in an administrative body at the request of a person. Challenge proceedings give persons a possibility of protection of their rights before turning to an administrative court.

K. Article 14

The Victim Support Act

The Victim Support Act entered into effect on 1 February 2004. Victim support is a public service aimed at maintaining or improving the victim's coping ability. Victim support involves counselling of victims and assistance in communicating with various institutions. All persons who have become victims of negligence or improper treatment, physical, mental or sexual violence are entitled to victim support, i.e. every person who has been caused suffering or loss has the right to victim support. The actual commission of a criminal offence is not a precondition for receiving of support.

The range of persons entitled to compensation by the state was also expanded. Compensation is now also paid to victims of violent crime committed due to negligence. The new law also increased the amount of compensation paid by the state and the medical treatment expenses now also cover psychological counselling and psychotherapy.

2. Amendment of legislation with a basis for review of a court case

In December 2004, the Government approved a bill that provides for the amendment of the Code of Civil Court Procedure, Code of Administrative Court Procedure, Code of Misdemeanour Procedure and Code of Criminal Procedure with a new basis for a review of a court case in order to establish a basis for a full implementation of the judgements of the European Court of Human Rights. The bill also provides for amendments in the State Liability Act in order to establish state liability if a person was caused damage through a legislative act, activity of the court or court decision and the European Court of Human Rights ascertained a violation of the European Convention on Human Rights in this case and the compensation of the violation is not possible by any other means (e.g. through review of the court case). The precondition is that the finding of a violation by the European Court of Human Rights in itself was not a sufficient compensation to a person whose rights were violated.

II. Additional information to the Committee

1. Direct applicability of the Convention

According to Article 123 paragraph 2 of the Constitution, international treaties that are binding on Estonia and have been ratified by the Riigikogu have supremacy over national regulations. The implementing practice of international treaties shows that international treaties binding on Estonia are an integral part of domestic law, which means that domestic subjects can request the application of the norms of an international treaty by the implementer of law (article by H. Vallikivi “Euroopa inimõiguste konventsiooni asend Eesti õigussüsteemis” [Position of the European Convention on Human Rights in the Estonian legal system], *Juridica* 2001, No. VI, pp 399-407). Domestic implementation also means that an international treaty is used for interpreting domestic law.

In the commented edition of the Estonian Constitution, published in 2002, the substance of the prohibition of torture in Article 18 of the Constitution is explained on seven pages. There is also a page dedicated to the CAT and the notion of torture according to Article 1 of the CAT: The author of the comment, Judge Rait Maruste of the European Court of Human Rights elected in respect of Estonia expresses a clear view in his comment, stating that in interpreting the notion of torture the CAT should be directly applied if necessary.

The analysis of case law of the courts shows that year-by-year the number of court cases is increasing where the decision is based on international conventions or where

parties to the proceedings make reference to such conventions. For example, in the judgements of the Supreme Court, the number of references was as follows: 11 times in 2001, 13 times in 2003, 29 times in 2003, and 12 times until October of 2004.

It should be noted that the most widely used international treaty is the European Convention on Human Rights. However, the CAT has also been used by Estonian courts in making a decision, e.g. the Tallinn Administrative Court decision of 12 April 2004 in the administrative case No. 3-560/2004 (contesting of a decision of the Citizenship and Migration Board to refuse the residence permit and making a precept to expel). The Ministry of Justice unfortunately lacks information about the use of the CAT by courts that hear criminal cases. However, considering that Article 3 of the European Convention on Human Rights provides even a wider definition of the prohibition of torture than the CAT, we are of the opinion that the independence of courts and the protection of the victims of torture is guaranteed in the Estonian system of justice.

For the above reasons, more attention was paid to the European Convention on Human Rights also in the training of judges and prosecutors. At the end of October 2004 the Ministry of Justice carried out a brief survey among judges about the CAT. Respondents made up one fifth (48 judges) of all the first and second instance judges and only three of them were unaware that Estonia is a State Party to the CAT. The remaining judges were aware of the Convention either through training, the State Gazette or other sources.

2. Consular assistance in the case of detention

The tasks of consuls abroad also include communication with detained Estonian citizens and guaranteeing of their rights. The main reason for the detention of Estonian citizens abroad is their illegal stay in another country which is followed by expulsion.

The activities of Estonian consular services in guaranteeing the rights of Estonian citizens under arrest or serving a sentence is regulated by the Consular Act. The activities of a consular official in organising consular protection to detained Estonian citizens must conform to the principles of international law and the legislation of the receiving state and of the Republic of Estonia. The activities of a consular official may not be of the kind that the receiving state could interpret them as interference within its jurisdiction.

If an Estonian citizen is detained in the receiving state, at the request of the detained person the competent authorities of the receiving state should immediately notify the Estonian representation. Each case must be immediately notified to the consular bureau of the consular department which coordinates the protection of Estonian citizens.

Consular officials must observe that the detained person is guaranteed all rights in the criminal proceedings, including the right to contact the Estonian representation, the right to translation and interpretation, assistance of a legal counsel (in a foreign country only the lawyer having the right to operate in that country can represent the

detained persons). If these rights are not guaranteed, a relevant request to the authorities of the receiving state should be made.

Consular officials are required to visit regularly an Estonian citizen (at his or her request or consent) who is imprisoned.

The information learned in the course of criminal proceedings is considered to be confidential personal information which can be forwarded to third parties, incl. to the media, only with the consent of the detained persons and the Ministry of Foreign Affairs.

Persons convicted by the court can request their transfer to Estonia for serving a sentence. The relevant agreements have been concluded with the Russian Federation and the Kingdom of Thai, and this issue is also regulated with the European Convention for the Transfer of Sentenced Persons.

In 2003, the surrender to Estonia of Estonian citizens serving a sentence in Thai was finally completed. The process had lasted for several years. Four Estonians who were arrested in Thai in 1995 for smuggling of drugs and an Estonian man arrested in 1998 accused of murder now serve their sentences of imprisonment in Estonia.

When travelling or staying for a longer period in a foreign country, Estonian citizens can now register themselves or provide information about themselves in case something happens in the region which requires prompt reaction from the Estonian foreign representation. It is possible to register in Estonian representations and in the consular department of the Ministry of Foreign Affairs.

3. Case law on admissibility of evidence

The following descriptions of court cases that ended with conviction will also give a good overview of the evidence that the courts used as a basis for conviction.

Case No. 1[1]: a female constable used physical violence when taking statements in her office from a female victim, by repeatedly hitting her on the body with a baton. As a result, the victim received light injuries. The constable was convicted of abuse of authority, as she had used illegal violence when exercising her professional duties as an official. The conviction by Harju County Court was upheld by Tallinn Court of Appeal with a decision of 5 June 2002. Transcript from the decision of the Court of Appeal: “The County Court has assessed the defendant’s statements in combination with other evidence: including the statements of the victim, witnesses and the forensic medical examination. … The criminal law chamber shares the opinion expressed in the decision of the County Court and states that the defendant’s guilt was proved by the victim’s statements that the defendant repeatedly hit her all over her body with a baton. Such statements have been given by the victim since 1 September 1998. Her statements relate to the certificate issued by Tallinn Central Hospital on 1 September and the forensic medical examination report of 23 September 1998, according to which the extravasations on the surface of the victim’s body in the area of the left

[1] Criminal case from Tallinn Court of Appeal, No. 2-1/564/2002.

shoulder, upper arm, forearm and hip were found. In the expert's opinion the injuries could have been caused by four hits with a baton or similar item on 31 August 1998."

Case No. 2[2]: on the order of the criminal police official a detained person on the basis of a fictitious story and with a fictitious name was placed in a jail among detained and arrested persons to collect information. The agent used violence with regard to his cellmates, including a baton and handcuffs. The police official was aware of this but did nothing to stop the illegal activity. He was convicted by Rapla County Court on 27 October 2004 for misuse of official position. The court's decision was mainly based on witnesses' statements. As additional evidence, the court took into consideration the forensic medical examination reports, reports of presentations for identification and registers of work in the jail.

Case No. 3[3]: a member of the Defence Forces was convicted of abuse of authority on two counts. First, having noticed an open button on a private's uniform, he grabbed the private by the button, pulled him towards himself, ordered him to lie down and having placed his foot on the private's back was talking to other conscripts. Secondly, the offender used violence with regard to a private who was caught smoking, by pulling him towards himself as a result of which the victim fell, he told the victim to eat the cigarette butt but the latter refused. The court decision was based on statements of witnesses and victims and materials in the official investigation file.

In the commented publication of the Estonian Constitution, explanations relating to Article 18 of the Constitution (torture) also emphasise the standard of proof used by the European Court of Human Rights: "beyond reasonable doubt". The author of the comment, judge Rait Maruste of the Court of Human Rights, also expresses an opinion that although domestic courts are not bound to use this standard of proof, it would be reasonable to use a similar approach. The author also points out the opinion of the Court which emphasises that "where an individual is taken under the control of the authorities (e.g. taken into custody) in good health and upon release is found to have clear and evident injuries and the person has informed the authorities (e.g. the police, prosecutor, court) about this then the burden of proof is transferred to the authorities".

4. Definition of detained persons

The Imprisonment Act of Estonia divides in detention into detained persons, arrested persons (persons in custody) and imprisoned persons. A detained person is a person who is serving detention or administrative detention in jail. An arrested person is a person who is arrested as a preventive measure, and who is serving custody pending trial in a ward prescribed for custody pending trial in a high-security prison or in jail. An imprisoned person is a convicted offender who is serving a sentence of imprisonment in a prison.

[2] Criminal case from Rapla County Court, No. 1-112/03.
[3] Criminal case from Tallinn City Court, No. 1/1-510/01, criminal case from Tallinn Court of Appeal No. 2-1/83.

Prisoners are placed in a prison according to a treatment plan, taking into account the length of sentence to be served, the age, sex, health and character of the person.

The following persons are segregated in prisons:

1) men and women;
2) minors and adults;
3) imprisoned persons and persons in custody;
4) persons convicted for the first time and persons convicted repeatedly;
5) persons serving a detention and persons serving an imprisonment;
6) persons serving a life sentence;
7) persons who due to their previous professional activities are in risk of revenge.

According to Chapter 2, division 3-6 of the Imprisonment Act, prisoners must be ensured all basic rights: meetings with the close ones, education in accordance with the national curriculum, if possible work and remuneration for it, appropriate living conditions. Health care in prison is part of the state health care system.

Prisoners are allowed: short-term visits (§ 24); long-term visits (§ 25); short-term prison leave (§ 32) or short-term prison leave under supervision (§ 33); unrestricted visits from criminal defence counsel and minister of religion (§ 26); right to correspondence and use of telephone (except mobile phone) if relevant technical conditions exist (§ 27); possibility to read national daily newspapers and national periodicals in a prison, subscribe for a reasonable number of newspapers, periodicals and other literature out of their personal resources (§ 30); possibility to listen to radio broadcasts and watch television broadcasts in a prison; with the permission of the director of a prison, a prisoner is allowed to possess a personal radio, television set, audio tape recorder, video tape recorder or other items necessary for the spending of leisure time (§ 31). Possibility to acquire basic and general secondary education on the basis of national curriculum (§ 35). If possible, prisoners are provided with work, the working conditions must comply with the requirements established by labour protection law; prisoners may be required to work overtime, on their days off and on public holidays only with the consent of the prisoners themselves (§ 39). Prisoners who work shall receive remuneration (§ 43).

The dwellings of prisoners must be in conformity with the requirements for dwellings; the dwellings must have windows to ensure suitable lighting of the premises (§ 45). The provision of food for prisoners shall be organised in conformity with the general dietary habits of the population and with a view to meet the food requirement necessary for survival (§ 47). Prisoners may, through the mediation of the prison, buy foodstuffs, toiletries and other items the holding of which is permitted in prison, out of the funds deposited in their personal accounts pursuant to the procedure provided for in the internal rules of the prison (§ 48). Health care in prisons constitutes a part of the national health care system (§ 49), the availability of emergency care twenty-four hours a day shall be guaranteed to prisoners (§ 53).

According to § 26(1) of the Imprisonment Act, prisoners have the unrestricted right to receive visits from their criminal defence counsel and ministers of religion. Visits from criminal defence counsel and ministers of religion shall be uninterrupted. According to subsection 2 of the same section, it is prohibited to review the content of the written material brought along by criminal defence counsel.

Visits of prisoners with representatives in the meaning of administrative or civil law take place in the framework of short-term visits. Prisoners are allowed at least one short-term visit a month with a duration of up to three hours. In addition to short-term visits, it is possible to use other channels of communication – telephone and correspondence.

5. Women in prisons

The number of convicted female offenders in Harku Prison in 2001-2004:

	Convicted
1 Jan 2001	126
1 Jan 2002	136
1 Jan 2003	129
1 Jan 2004	129

According to the Imprisonment Act, men and women are held separately in prisons. Currently, convicted female prisoners are held in Harku Prison. Some major construction work in the prison has included building of the new medical department and department for mothers and children, renovation of the room for long-term visits and the canteen, as well as the reception centre of prisoners and the storage for personal belongings. There are also plans to build an open prison department and a separate department for juveniles in Harku Prison.

Harku Prison has a separate department for mothers and children which helps to ensure a less damaging environment and contribute to the normal development of children in prison conditions. Special conditions for mothers and children have been created – separate dwelling from other prisoners, better living conditions, possibility to cook food, children's playground etc. Children can go to a local kindergarten outside the prison. In the department for mothers and children, prisoners who are mothers can live together with their child until the child attains four years of age. At the beginning of 2004, there were three children in the prison.

In the production facility of Harku Prison, prisoners produce various sewing products, and assemble and package different goods.

6. Education and employment in prisons

According to the Imprisonment Act, all convicted offenders and juveniles held in custody must be ensured the possibility to acquire education. It is possible to acquire education in all prisons. On average 26% of the convicted offenders are involved in acquiring education. Instruction takes place in Estonian and Russian. The Ministry of Education and Research is responsible for guaranteeing the availability of general and vocational education in prisons. The prisons are required to provide rooms necessary for tuition. The Ministry of Education and Research drew up a development plan "Education in prisons 2004-2005" which was approved by the Government in

February 2004. According to the development plan, the reform of education in prisons was launched – the operation of closed special vocational schools in prisons will be terminated and the provision of general and vocational education in prisons will be taken over by local upper secondary schools and vocational training centres. Local educational institutions have already taken over the organisation of teaching in Tartu, Maardu and Pärnu Prison. In autumn 2005 they will be followed by Tallinn, Harku and Viljandi Prison.

Prisons organise Estonian language courses for non-Estonian convicted offenders and, if necessary, also preparatory courses for the citizenship examination. Some prisoners also acquire higher education and they are allowed to take examinations outside the prison. In organising vocational education, schools cooperate with the company Estonian Prison Industries. Vocational training apprenticeship takes place in the workshops of the Estonian Prison Industries under the guidance of the company's masters. After the completion of the vocational training course prisoners can continue working in the Estonian Prison Industries.

According to the Imprisonment Act, all prisoners who are under 64 years old, who are not involved in studies and do not have adversary health complications are required to work. Working prisoners are divided in two: those employed for maintenance work inside the prison and those involved in production. In 2001 the state company Estonian Prison Industries was established in order to increase employment among prisoners, raise the competitiveness of the products and reduce costs for prisons.

Statistics on employed prisoners by annual breakdown:

	Number of employed prisoners
1 Jan 2002	771
1 Jan 2003	821
1 Jan 2004	883

	Percentage of employed persons among all prisoners
2002	23,3%
2003	27,1%

7. Medical services in Estonian prisons

All Estonian prisons have a medical department. In addition, patients from all Estonian prisons are also served by the health department of Tallinn Prison, which provides in-patient treatment.

In larger prisons medical assistance is available 24 hours a day. In all prisons, out-patient general medical care and dental treatment is provided to prisoners. Medical care is provided by general practitioners with higher education, and all departments also have nurses with necessary training. The services of some medical specialists are purchased from outside the prisons (e.g. psychiatrist, gynaecologist in female prison, dental care in Viljandi prison etc.). Every doctor must attend 60 academic hours of in-service training a year. In-service training is provided by the University of Tartu or at

training events chosen by the doctor. Training is also organised by the Ministry of Justice.

If medical departments of prisons and the health department at Tallinn Prison are unable to provide necessary medical care, a prisoner is sent to a civil hospital for treatment and examination. All detained persons who arrive in a prison undergo medical examination to assess their health and find out about possible diseases, incl. tuberculosis, hepatitis and HIV. If necessary, further treatment is prescribed. Prisoners most often turn to the doctor with diseases of respiratory and digestive organs, skin problems and various pains (headache, backache, etc), as well as cold, traumas and injuries. Prisoners cannot choose a doctor.

Statistics about all HIV positive patients in Estonian prisons is maintained by Tallinn Prison which forwards the collected data on a monthly basis to the Ministry of Justice and Merimetsa Hospital under West-Tallinn Central Hospital. On 1 September 2004 there were 552 HIV positive patients in Estonian prisons (among them 54 women and 20 juveniles). Six persons received anti-HIV treatment. The activities of support groups for HIV positive prisoners are organised by the non-profit association Convictus.

Statistics about tuberculosis patients is maintained by Tallinn Prison. Estonia has a national tuberculosis register which also receives tuberculosis statistics from prisons. The occurrence of tuberculosis has increased in the recent year. 33 new cases of first-time tuberculosis were detected, 14 of the persons contracted the disease in prison. On 1 October 2004 there were 40 persons with tuberculosis in Estonian prisons who needed hospital treatment.

For the prevention of tuberculosis, hepatitis, HIV/AIDS training events for prisoners as well as prison staff are organised. Also information leaflets about various communicable diseases and their prevention, safe sex, etc. are available for everyone.

8. Other cruel, inhuman or degrading treatment and punishment

a) School violence

In 2002, a survey on attitudes to school bullying and various aspects of this problem was carried out. The survey was conducted in seven different schools throughout Estonia, of which five were upper secondary schools and two basic schools. The method of the survey was a questionnaire and altogether 1764 basic school pupils were surveyed (average age 13.54 years). The results showed that pupils had most often experienced various forms of physical bullying at school (poking, pushing, throwing of items – on average 21.96% of the respondents). The second most frequent form of bullying was psychological bullying (taking and hiding of personal belongings – on average 15.05%). Pupils had also often experienced teasing, threatening, frightening – on average 14.55% of the respondents. A frequent phenomenon was also social isolation from the group of other children (exclusion and not allowing to participate in common activities – on average 9.35%). The least frequent was serious physical bullying among pupils (hitting, breaking of things, beating – on average 8.39%).

The number of children in shelters and rehabilitation centres in 1999-2003:

	1999	2000	2001	2002	2003
Number of children who had stayed in the institutions	1762	2441	2033	1783	1798
For reasons of violence, by number and percentage	124 7%	145 5.9%	134 6.6%	170 9.5%	204 11.3%
Of this, other violence	22 1.2%	24 1.0%	34 1.7%	39 2.2%	24 1,3%
Family violence[1]	95 5.4%	120 4.9%	100 4.9%	121 6.8%	180 10%
School violence[2]	7 0.4%	1 0.0%	0 0.0%	10 0.6%	-

[1] The data for family violence in 2003 reflect physical (6.4%), mental (3.4%) and sexual (0.2%) violence.
[2] The data for 2003 do not separately reflect school violence.

To fight school violence, the Ministry of Education and Research has drawn up a programme for reducing school violence.

The Estonian Union for Child Welfare started targeted activities with the prevention and information campaign on school violence and bullying in 2001 with a project "No to violence", which was aimed at helping to reduce bullying in Estonian schools, developing positive anti-violence attitudes in society and developing a safe and stable school environment in accordance with the needs of the child. In 2001-2003, the student conference "No to violence" was held.

To reduce school violence, the non-profit youth association Tugiõpilaste Oma Ring Eestis (T.O.R.E.) (Own Circle of Support Pupils in Estonia) was established. This is a movement of support pupils at schools. Prior to 2000, their activities took place within projects, the first of which was held in 1996. By today T.O.R.E. has published a handbook that was distributed to counties, there are training events for T.O.R.E. instructors and trainers and also supervisory sessions. Twelve new T.O.R.E. trainers in Estonia have been trained. In 89 schools training of support pupils has taken place and the movement develops constantly.

Under the leadership of the Health Development Institute, mapping of school violence related materials was carried out. Information days on school violence have been organised in counties in cooperation with the Estonian Youth Work Centre and the Union for Child Welfare. More and more social pedagogy teachers, social workers and psychologists have been hired at schools and they have also been given training for recognising cases of school violence and taking appropriate measures.

Providing assistance to children in need is primarily the responsibility of the local government. In local governments there are child welfare workers, social workers or social counsellors whose task it is to help children and families in need. If the situation endangers the child's life, health or development, the local government will separate the child from the family, doing it through the court or by agreement with the parents. Local governments also offer assistance and support seminars and shelter services. There are also counselling centres.

In 1995, Tartu Children's Support Centre was established, which is specially meant for work with children who have been victims of mistreatment and their family members. A similar centre was also opened in Tallinn. Thanks to their frequent presence in the media and numerous training events for specialists dealing with children the awareness of mistreatment of children, including school bullying and family violence, has risen significantly and those in need can receive actual assistance. The support centre continues its active work also now.

In 1997 a support project "Older Brother, Older Sister" for mistreated children and children in need of assistance was launched, in the framework of which a child in need of assistance will receive an appropriately trained adult as his or her older friend. Together they can do interesting things which help the child to raise his or her self-assessment, find courage and support and improve educational performance. The activities of the project have spread from Tartu to Tallinn, Pärnu and Viljandi. The project "Older Brother, Older Sister" continues to be an important means for supporting children.

b) Violence against women

Violence against women in Estonia exists mainly as a hidden phenomenon. Official statistics reflect cases of violence insufficiently. Police statistics reflect only part of violence against women. The level of violence against women and the number of victims that has been ascertained through sociological surveys therefore provides a somewhat clearer picture of the prevalence of violence against women and the seriousness of the cases of violence. According to women's own assessment (proportion of women who claim that they have been victims of violence in the past year) the picture was as follows. In a year, 41 000 women are injured due to violence and 7000 of them receive serious life-threatening injuries. It takes average 11 days for a victim to recover. Only every third victim turns to the doctor. Two thirds of the victims try to treat themselves. Every third injured victim tries to recover without interrupting everyday work or studies.

The survey shows that although the victims are mostly younger women up to 40 years old, their health is relatively worse than the health of non-victims. Three fourths have a permanent health damage. It is extremely dangerous that the majority of the injured victims do not immediately turn to the doctor but try to treat themselves. The main reasons why victims fail to turn to the doctor are, on the one hand, the feeling of shame and guilt for the fact that their spouse or partner treats them so cruelly. The victims have a fear that the doctor will accuse them of what happened and will tell them that they are not proper wives to their husbands. On the other hand, the victims are afraid that the doctor may inform the police and the husband may be punished or even imprisoned.

In March and April 2003, the Estonian Open Society Institute organised a survey "Violence and women's health" among doctors in Estonia. The results of the survey showed that Estonian doctors do not underestimate violence against women but consider it a serious problem. First of all it concerns physical violence (72% of the respondents) but also other forms of violence, such as mental and sexual violence (68% and 59% of the respondents, correspondingly). According to the assessment of

the doctors, women and children are the first victims of family violence. In the opinion of doctors, female members of the family suffer equally under mental as well as physical violence. More than half of the doctors have had contact in their daily work with women who suffer under regular violence at home. These are women who due to traumas received as a result of violence have had to seek medical assistance repeatedly.

According to the doctors, victims of both physical and sexual violence are first of all young women up to 30 years of age. With the increasing of the age of women the threat of both physical and sexual violence decreases gradually. The doctors' expert assessments tally with the results of the survey on violence against women carried out among the general population, which also showed that victims of violence are mostly women up to the age of 30.

As a result of violence, women receive serious injuries. According to gynaecologists, the most frequent traumas resulting from violence are damage to sexual organs and termination of pregnancy. The survey showed that even pregnancy does not protect women against violence. One in two gynaecologists say that a couple of times a year they have to deal with pregnant women who have been beaten. In the practice of every third gynaecologist there have been cases where the victim's pregnancy terminated as a result of beating. Among serious bodily injuries caused by violence against women, the doctors mentioned stab wounds and cuts and bone fractures. As a result of an attack, 45 women died in 2001 and 36 women in 2002.

In Tartu and Tallinn there are shelters for women and their children who have become victims of family violence. The first women's shelter was opened in Tartu on 25 November 2002. In the shelter, women find temporary dwelling, receive counselling, first aid and information about other institutions to whom they can turn with their concern, etc.

The number of persons who sought assistance from Tartu women's shelter:

Year	**Women**	**Children**
2002	1	0
2003	42	21
January-September 2004	35	22

Persons having stayed in the shelters, by gender and reason of contacting the shelter, 2001-2003:

	Number of persons		
	2001	**2002**	**2003**
Total	2901	3715	3243
men	1879	2619	2037
women	1022	1096	1206
Incl.			
Violence*	37	92	33
men	22	58	18

women	15	34	15
Family violence	146	162	326
men	41	52	95
women	105	110	231

* bodily injuries, rapes, other sexual offences, killing, robberies, concealed and unconcealed thefts

c) Trafficking in human beings

There is no separate legislation on trafficking in human beings in Estonia, such activity is covered by several provisions in the Penal Code, primarily § 133 on enslaving, § 134, § 136 and others.

Enslaving means placing of a human being, through violence or deceit, in a situation where he or she is forced to work or perform other duties against his or her will for the benefit of another person, or keeping a person in such situation. Enslaving is punishable by 1 to 5 years' imprisonment. The same act, if committed against two or more persons, or against a person of less than 18 years of age, is punishable by 3 to 12 years' imprisonment. (§ 133)

Taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state, is punishable by a pecuniary punishment or up to 5 years' imprisonment. The same act, if committed against two or more persons, or against a person of less than 18 years of age, is punishable by 2 to 10 years' imprisonment. (§ 134)

Unlawful deprivation of the liberty of another person is punishable by a pecuniary punishment or up to 5 years' imprisonment. The same act, if committed against a person of less than 18 years of age, is punishable by 1 to 5 years' imprisonment. (§ 136)

Pimping, or providing premises for the purposes of illegal consumption of narcotic drugs or psychotropic substances, for organising illegal gambling, or for prostitution, is punishable by a pecuniary punishment or up to 5 years' imprisonment. In addition, the court may impose a fine to the extent of assets as a supplementary punishment. (§ 268)

In 2004 Estonia ratified the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, to the UN Convention against Transnational Organised Crime. In 2004 Estonia also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The main form of trafficking in women in Estonia is pimping.

Since 1 November 2003, a special working group to fight pimping operates under the division of crimes against person of the criminal department of Tallinn North Police Prefecture. The Central Criminal Police conducts the proceedings of criminal cases where pimping involves taking of prostitutes to other countries.

In the first half of 2004, the Central Criminal Police initiated or sent to court four criminal cases, the investigation of which was started under the offence of pimping (§ 268 of the Penal Code). In the first nine months of 2004 altogether the proceedings of 43 criminal cases were initiated under § 268 of the Penal Code.

A national action plan for the fight against human trafficking, in particular trafficking in women and children, is being drawn up. Under the leadership of the Ministry of Internal Affairs and the Estonian representation of the International Organisation for Migration round table discussions on the topic of human trafficking have been held.

In the framework of the pilot project "Research, information and legislation – trafficking in women in the Baltic countries", organised by the International Organisation for Migration in 2000-2001, a survey on the awareness of the population was carried out, social aspects of trafficking in women and of prostitution and legislation concerning human trafficking were analysed. The results of the analyses were published in the book "Trafficking in women and prostitution in the Baltic countries".

On the basis of the results of the survey, an information campaign was prepared that consisted of social advertising (outside advertising, short clips on TV and radio, inside advertising, advertising in the printed press) and information materials (brochures, folders, posters etc with advice and information). In the course of the campaign consultations were given to persons who wanted to go to work abroad, to victims of human trafficking, close ones of missing persons, and also training events were organised and the problem was covered in the mass media.

In 2004, the International Organisation for Migration carries out a project "Research and Information on Trafficking in Women and Children", aimed at mapping the situation of human trafficking in Estonia. The project will be completed by mid-December 2004.

Estonia also participates actively in the work against human trafficking in the Nordic and Baltic region. A Nordic-Baltic Task Force against human trafficking has been formed between the Nordic and Baltic countries. The main aim of the Task Force is to coordinate and monitor the activities against human trafficking in the region and to keep the topic on a high political agenda in the participating countries.

d) Fight against terrorism

Part of the prevention of torture and other cruel, inhuman or degrading treatment is the fight against terrorism. After the regaining of independence no acts of terrorism have been committed in Estonia but in the prevention of terrorism nationally the main focus is, on the one hand, on the analysis of possible threats, and, on the other hand, on the suppression and prevention through the detection of crimes facilitating terrorism.

Estonia condemns all possible forms of terrorism and considers political violence and international terrorism an important threat to international security and peace.

According to the fundamental principles of security policy approved by the Riigikogu in 2004, the fight against terrorism is one of the most fundamental aspects of Estonian security policy. In the fight against terrorism, Estonia applies domestic as well as international measures.

The coordinating and technical functions of the fight against terrorism are the responsibility of the Ministry of Internal Affairs. The area of government of the Ministry of Internal Affairs includes the central body for the fight against terrorism – the Security Police Board and also the majority of boards dealing with the prevention, suppression and elimination of consequences of terrorism, i.e. the Police Board, the Border Guard Administration, the Citizenship and Migration Board and the Rescue Board.

In the fight against terrorism Estonia is engaged in active international cooperation in the framework of NATO and the European Union and other international organisations as well as bilateral cooperation. Estonia has ratified and complies with all 12 major UN anti-terrorist conventions and supports the efforts of the UN in this field, including in the drawing up of a comprehensive terrorism convention.

Estonia fulfils the package of measures for fighting new threats that was approved at the NATO Prague summit and also supported the strengthened package of anti-terrorist measures approved at the Istanbul summit, which raised NATO's readiness and capacity to deal with security threats, including terrorism. Estonia also supports the efforts of regional organisations in the fight against terrorism and participates in the development and implementation of relevant activities of the OSCE and the Council of Europe.

III Measures taken to implement the recommendations of the Committee

1. The definition of torture in the legislation of the Republic of Estonia

The following is a correspondence analysis of the Estonian Penal Code that entered into effect on 1 September 2002 as compared to the definition of torture in Article 1 of the Convention.

The Estonian authorities are of the opinion that the Penal Code as a whole covers the punishment of torture. At the same time we would like to emphasise that the definition in Article 1 of the Convention constitutes a definition of torture only in the framework of the present Convention. Therefore, the Republic of Estonia does not consider it necessary to change the definition of torture given in § 122 of the Penal Code and to establish a separate definition of torture that would be identical with Article 1 of the Convention.

Definition of torture in the Convention	Corresponding provision in the Penal Code
any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person,	Violence in the meaning of the Estonian Penal Code, in addition to causing damage to health (§ 113-119, 121, 122) and bodily mistreatment that causes pain (§ 121 and 122), also includes a threat to kill, cause health damage or cause significant damage to or destroy property (§ 120). (see http://www.legaltext.ee/text/en/X30068K5.htm)
when such pain or suffering is inflicted by a public official or other person acting in an official capacity;	Other mental violence which is not covered by the notion of threat is covered by other special offences (see below) which prescribe liability for illegal activities carried out by a public official. In defining torture, the Convention also uses the words "severe physical or mental pain or suffering", hence criminal liability must be established only for severe mental violence.
for such purposes as obtaining from him or a third person information or a confession,	§ 312. Unlawful interrogation It is punishable for a preliminary investigator or prosecutor to use violence in order to compel a person to give testimony.
for punishing him for an act he or a third person has committed or is suspected of having committed,	§ 322. Coercion into giving false testimony, rendering false expert opinion or provision of false translation or interpretation Use of violence is punishable, regardless of the subject, i.e. also including a public official.
or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind	§ 324. Unlawful treatment of prisoners or persons in detention or custody Also includes use of violence, when committed by an official of a custodial institution. The definition of the offence also foresees punishment for degrading the dignity of a person, discrimination and unlawful restriction of the persons rights in any manner. § 291. Abuse of authority Unlawful use of violence by an official is punishable under this provision if the conditions of the previous provisions are not fulfilled. § 289. Misuse of official position Misuse of a position by an official with the aim to cause damage to another person or to his or her interests; unlike the abuse of authority, this offence can also be committed outside the performance of one's official duties.
is inflicted at their instigation or with their consent or acquiescence.	§ 22. Accomplice (2): Liable as an abettor is a person who intentionally induces another person to commit an intentional unlawful act (3): Liable as an aider is a person who intentionally provides physical, material or moral assistance to an intentional unlawful act of another person

According to the register of criminal proceedings (contains data beginning from 1 July 2001), as at December 2004 191 cases were registered under § 291 (abuse of authority) of the Penal Code, of which 79 are currently pending and 5 have been sent to the court. In 2004, 75 criminal cases were initiated under this provision. Under § 324 (unlawful treatment of prisoners or persons in detention or custody) there are data in the register about 5 criminal cases, two of them are still pending but have not yet been sent to court. The remaining criminal proceedings are closed.

2. Training of personnel

The prohibition of torture, cruel and degrading treatment or punishment is established by Article 18 of the Estonian Constitution. Section 9(3) of the Code of Criminal Procedure provides that the participants in a proceeding should be treated without defamation or degradation of their dignity. The second sentence of the same provision contains the prohibition of torture, cruel and inhuman treatment. The enforcement of the prohibition is ensured with the provisions of the Penal Code. The prohibition of torture is repeated in § 64(1) on the collection of evidence. Therefore, the relevant information is also part of the basic training of the officials of law enforcement institutions.

In the area of government of the Ministry of Internal Affairs, training events have been carried out to deal with the topics of family violence, victim support, human trafficking, sexual offences. In the course of such training, officials have also been taught to recognise victims and to assist them. The training is offered to all police officials who have immediate contact with the population. The treatment of victims is also taught under different subjects in the basic training of the police.

In the Ministry of Social Affairs and under its area of government, training events have been held on the topic of how to recognise victims of violence. In 2005, it is planned to organise training for social workers, teachers and other members of the network to teach them to recognise mistreated children.

In the training of prison officials, the current legislation and generally recognised norms of ethics are used as guiding principles in teaching the treatment of prisoners. Learning of this field takes place in the framework of many different subjects, as subjects are practically oriented. A very large part of the learning of treatment of prisoners consists of the experience acquired during traineeships where the instructors have a large responsibility because their attitudes can easily transfer to students. In the process of teaching prison officials, also basic principles of psychology, professional communication psychology, psychology of extreme situations, constitutional law (including also international conventions, domestic and international protection of rights of persons) are covered. Various subjects provide a brief overview of how to recognise victims of torture.

All persons who become public officials for the first time give a written oath of office and confirm it with their signature. The text of the oath of office is as follows: “I swear to be faithful to the constitutional order of Estonia and to perform in a conscientious and accurate manner the functions which the office entrusted to me requires. I am aware that the law prescribes liability for a breach of duties or the public service code of ethics.” As the Estonian Constitution prohibits torture, cruel and inhuman treatment or punishment, every public official swears to avoid it when assuming office.

3. Monitoring of persons held in detention and their close ones in penal institutions

A detained person may meet under supervision with his or her family members and other persons depending on the possibilities of the jail and in accordance with the law – once a week, for a duration of up to two hours. Meetings with a minister of religion are uninterrupted but take place within the normal short-term visits. Meetings with the counsel are unlimited and uninterrupted. Meetings with a minister of religion and with a defence counsel may not be interrupted or listened to. During a meeting the parties will communicate in the language mentioned in the request for the meeting. If the official or employee of the jail does not understand that language, assistance of an interpreter will be used. The use of any other language during the meeting is a sufficient reason to interrupt the meeting.

The officials and employees of the jail, when beginning to perform their professional functions and during the performance of the functions, are required to observe the detained person in the cell. A detained person may not obstruct observing of the cell.

A prison official is allowed to search the person who came to visit a detained person and the visitor's belongings. The search is carried out by a prison official of the same sex as the visitor. Short-term visits of detained persons with their close ones take place in the presence of a prison official. Meetings with a defence counsel and a minister of religion can be observed but not listened to. A prison official has the right to interrupt a short-term visit immediately if it may endanger the security or internal rules of the prison. It is not allowed to interrupt visits with a defence counsel.

In psychiatric hospitals there are as a rule no separate rooms for visits and therefore meetings with the close ones take place in common rooms or in wards. It is tried to ensure that patients can have privacy during their visits but if necessary the hospital staff can have access to the meeting.

4. Renovation and building work in penal institutions

To ensure re-socialisation of prisoners, Estonia has started a transition from Soviet time prison colonies to cell-based prisons. For the same purpose, the principle of regionalism is implemented, i.e. prisoners will serve their sentence as close to home as possible, so that also during the period of imprisonment they will be able to maintain positive social contacts and communication with their family. The first step in this direction was the opening of a cell-based prison in Tartu in 2002, which services southern Estonia. In 2007 a similar Viru Prison will be completed in Jõhvi, which will be servicing northeastern Estonia.

Major investments to prisons in the period 1 January 2001 until 1 October 2004:

Object	Description of the object	Year of taking into use
Tartu Prison	A modern cell-based prison was built and taken into use. The prison has a capacity of up to 1000 prisoners. Consists of: 1) main building with useful floor area of 5628.6 m^2 2) sports facility 822.0 m^2 3) building for religious services 208.0 m^2 4) administrative service building 466.0 m^2 5) living quarters of convicted offenders (350 places) 4485 m^2 6) living quarters of persons under preliminary investigation (650 places) 8285 m^2 7) workshops 1585 m^2	2002
Murru Prison	1) Division of living quarters No. 3 into two departments. Makes it possible in camp-type living quarters to divide inmates into smaller groups. Area of the building 718.5 m^2 2) Reconstruction of the heating lines of the prison, as a result of which the heating of the prison improved and heat loss was reduced.	2003
Maardu Prison	Fixing of the ventilation in the prisoners' living quarters. Floor area of the rooms ~700 m^2	2004
Ämari Prison	1) Reconstruction of the roof of the prisoners common living quarters No. 1. The roof of the building 450 m^2 2) Reconstruction of the canteen and installation of new equipment. The canteen has a capacity of preparing meals for 650 prisoners.	2003 2001
Tallinn Prison	Reconstruction of central heating in the administrative building. Area of the building 857 m^2	2001
Viljandi Prison	1) Building of the reserve power supply of the prison power system. In the case of power failure the system can be switched to autonomous power supply. 2) Building of living quarters for drug addicts in the existing building.	2001 2001
Pärnu Prison	Building of the department for persons under preliminary investigation on the basis of the existing building. Area of the building 306 m^2	2003

The Police Board has made a comprehensive survey of the conditions in all the police jails and the development plan for eliminating the shortcomings is being drawn up. In making the survey, all the areas covered in the final report of the CPT visit in 2003 were taken into consideration and the report made after the visit of the Council of Europe Human Rights Commissioner Mr Alvaro Gil-Robles in 2003 were also considered. The development plan as a whole covers the measures for eliminating problems mentioned in the final CPT report of 2003 and the development of jails in general. The police plan to renovate gradually all police buildings and bring the jails in conformity with the CPT requirements. A more exact action plan is being drafted.

In 2001, renovations were carried out in the following jails:

- in Hiiumaa police prefecture rooms for meetings with defence counsel were built;
- in Rakvere police prefecture refurbishment of the cells was carried out;
- in Põlva police prefecture ventilation was renovated;
- in Pärnu police prefecture refurbishment of the jail and sobering-up cells was carried out;

- in Viljandi police prefecture ventilation was renovated and refurbishment of the cells was carried out.

In 2002, renovations in the following jails were carried out:
- in Järva police prefecture the power and ventilation system of the jail was renovated and general building works were done;
- in West police prefecture, Haapsalu jail was renovated partly, refurbishment was carried out and general building works were done.

In 2003, renovations in the following jails were carried out:
- in Harju police prefecture, in Saue jail the power system was renovated,

To improve the conditions of detention and to receive relevant guidelines, the Republic of Estonia has cooperated with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT). The CPT has visited Estonian penal institutions on three occasions – in 1997, 1999 and 2003. The reports of 1997 and 1999 and Estonia's responses to them have already been published. Definitely also the 2003 report and Estonia's response to it will be published. The Estonian authorities have always taken CPT's proposals and recommendations very seriously and have tried to improve the conditions of detention in Estonian penal institutions according to them.

5. Protection against mistreatment and torture

The Constitution prohibits torture and other cruel or degrading treatment. Article 130 of the Constitution stipulates that during a state of emergency or a state of war, the rights and freedoms of a person may be restricted, and duties may be placed upon him or her in the interests of national security and public order, under conditions and pursuant to procedure prescribed by law. However, constitutional rights and freedoms, such as the right to life, right of recourse to the court in the case of violation of one's rights and freedoms, right to the protection of the state and law, and other rights listed in the Constitution, may not be restricted. Article 130 is also not applicable in the case of Article 18 which states that no one shall be subjected to torture or to cruel or degrading treatment. Based on this, torture is not allowed under any conditions and this right applies to all persons staying on the territory of the Republic of Estonia.

According to the Constitution, everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. A person suspected of a criminal offence shall also be promptly given the opportunity to choose and confer with counsel.

Unlike the previously effective Code of Criminal Procedure, the new Code of Criminal Procedure provides for a clear rule that in order to arrest a person he or she must be brought before a preliminary investigation judge, and there is no longer a possibility to waive the right to appear in court (Code of Criminal Procedure §

131(2)). The court's decision on the arrest will be communicated to the arrested person immediately in a language and manner which he or she understands.

A preliminary investigation judge or court shall immediately give notification of the arrest of a person to a person close to the arrested person and his or her place of employment or study. However, notification of an arrest may be delayed in order to prevent a criminal offence or ascertain the truth in a criminal proceeding. If a foreign citizen is arrested, a copy of the arrest warrant or court judgment shall be sent to the Ministry of Foreign Affairs. A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting the proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of the Prosecutor's Office.

In a criminal proceeding, a suspect and the accused may choose a counsel personally or through another person. At the request of a person, the counsel must be ensured as of the person's detention or subjecting him or her to a procedural act. To ensure defence, the making of a procedural act must be delayed if necessary; to avoid delays, § 43 provides for time limits for appointing of a defence counsel by the state if the counsel chosen by the person cannot participate in the procedural act.

With regard to the Committee's recommendation requiring that defence should be guaranteed to a witness who is heard as not yet being a suspect, we find that such a regulation would be unnecessary. Namely, § 33 of the Code of Criminal Procedure does not link the establishment of a procedural status of a person as a suspect to a separate ruling for declaring a person as a suspect. In addition, the Supreme Court in its judgement No. 3-1-1-45-96 of 1997 has already explained that questioning a person as a witness prior to his or her detention as a suspect, if the interrogation does not deal with the facts of the commission of the offences of which the person will be later accused, is not unlawful. This confirms the generally recognised view that the person's statements given as a witness prior to declaring the person to be a suspect are later not admissible as incriminating evidence.

Estonia is currently lacking legislation on witness protection. The parliament *(Riigikogu)* is debating the Witness Protection Bill which will establish legal bases for the protection against exerting unlawful influence on persons who may be aware of the facts relating to the subject of proof in criminal proceedings, or family members of such persons or other persons close to them. The Bill will also provide for the establishment of the restrictions of constitutional rights of Estonian citizens and other persons, which are necessary for effective witness protection. For the development of the witness protection system, in 2003 in the framework of the Phare National Programme for Estonia – Third Part, the project "Support to the creation of a Witness Protection System" was launched. The Code of Criminal Procedure provides for a possibility to protect witnesses by making a witness anonymous or questioning a witness by telephone or videoconference.

Witness protection is carried out by the Central Criminal Police who also carries out international cooperation relating to witness protection with relevant witness protection units of other countries according to international agreements that have been concluded. Other state and local government bodies and legal persons in public

law are required to provide assistance in witness protection. Supervision over the activities relating to witness protection is exercised by the Public Prosecutor's Office. Witness protection can be applied only with the consent of the person concerned.

Depending on the seriousness or particular circumstances of the criminal offence, a preliminary investigation judge may declare a witness as anonymous in order to ensure the witness's safety. The court may declare a hearing as partly or fully closed also if the publicity of the hearing may endanger the safety of the court, participant in the proceedings or witness.

According to the Government of the Republic Act, the Ministry of Justice is competent to organise the activities of prisons and exercise supervision over them.

Supervision over jails is exercised by the Police Board's police control department under the area of government of the Ministry of Internal Affairs. The main task of the department is to carry out supervision over the lawfulness of the activities of police officials and other employees of the Board and its subordinate bodies and to conduct disciplinary proceedings.

Supervision over treatment in psychiatric hospitals and, in the case of communicable diseases, over involuntary treatment is exercised by the Health Board. According to the statutes of the Health Board, the Board exercises supervision over compliance with the requirements for health service providers; activities of family doctors, providers of emergency medical care, specialised medical units and independent providers of nursing care; the Board also reviews and resolves applications and requests of patients and other persons. In practice, the detention of persons is nor supervised regularly, but complaints and applications are reviewed in accordance with the statutes.

Supervision over Illuka Reception Centre for Asylum Seekers is exercised by the Ministry of Social Affairs.

A member of the Defence Forces has the right to submit complaints concerning his or her treatment or disciplinary punishments imposed on him or her to the immediate superior of the commander who imposed a disciplinary punishment. If the member of the Defence Forces has not received a response or a satisfactory response to his or her complaint, they have the right to submit a new complaint to the immediate superior of the commander who received the complaint earlier or to the Inspector General of the Defence Forces.

6. Code of conduct of police officials

The rights and duties of police officials and their behaviour with the detained persons is regulated by relevant legislation (the Police Act, the Code of Criminal Procedure, the Imprisonment Act, etc). The code of ethics for public officials established in the appendix to the Public Service Act is also applicable to the police. As general guidelines, also "The ABC of the Police", including 10 rules for police officers, is applicable. The police code of ethics is currently being drawn up and the Estonian

authorities participate in the working group for drawing up the European police code of ethics.

7. Persons staying illegally in the country and asylum seekers

The bases and procedure for the expulsion of foreigners staying in Estonia illegally are provided for in the Obligation to Leave and Prohibition on Entry Act. If expulsion cannot be completed within 48 hours, the person subject to expulsion is placed, with the decision of the administrative judge, in the expulsion centre until the expulsion, but not for longer than two months. If during this period the expulsion cannot be executed, the administrative court will extend the term of expulsion of the person by two months at a time until the execution of the expulsion or until the foreigner's release from the expulsion centre.

In the period from 1 March 2003 until 15 October 2004, the average time of stay in the expulsion centre was 3.4 months. The longest period spent in the expulsion centre is among persons of Russian nationality, as the decision either to readmit or not readmit them to Russia is made by the Embassy of the Russian Federation. Unfortunately, the making of the decision can be delayed.

In the period 1 June 2001 until 15 October 2004, 62 persons were expelled from Estonia through the expulsion centre.

The following table provides an overview of all the persons expelled in 2002-2004 (until October 2004), by nationality*:

	2002	2003	2004
Algeria		1	
Armenia	11	9	
Azerbaijan	19	8	
Australia	1		
Georgia	11	4	5
Haiti			1
Croatia		1	
Israel		1	
India		2	1
Indonesia		1	
Italy		2	
Japan			1
Canada		1	
Kazakhstan		2	1
Cyprus		1	
Republic of South Africa			1
Latvia	20	11	7
Moldova	10	4	4
Niger			1
Norway			1

France		2	1
Sweden		1	1
Romania			8
Germany		1	
Finland		3	
Great Britain	15	4	1
Czech Republic			1
Turkey			1
Ukraine	35	21	9
USA		1	2
Uzbekistan		1	
Belarus	6	4	
Russia	108	39	5
Total	221	125	52

* The table reflects persons expelled by the police, border guard and the Citizenship and Migration Board.

Until expulsion or revocation of the expulsion decision the foreigner is placed in the expulsion centre if expulsion cannot be completed within 48 hours.

The expulsion centre is a clearly designated territory with a guarded perimeter. In the expulsion centre foreigners stay in 2-person rooms with wooden furniture. The rooms meet the technical, health and hygiene requirements established for dwellings. Female and male persons to be expelled are housed in separate rooms. Regular meals are provided in the common room where the persons subject to expulsion can also spend their free time. In preparing the menu, the nutritional requirements of people are taken into account. There is a common toilet and shower to be shared by maximum 16 persons. In the absence of personal hygiene articles, these will be provided by the expulsion centre. Hairdresser's service is provided once a month. The persons subject to expulsion wear their personal clothes, but in their absence the clothes are provided by the expulsion centre free of charge. There is a possibility to use the washing machine and dryer. Persons subject to expulsion are guaranteed emergency medical care and there is a permanent medical treatment facility in the centre for monitoring of the health of persons staying in the centre. Persons subject to expulsion are allowed to meet with the consular officials of their country of nationality, with a defence counsel and a minister of religion, and with the permission and under the supervision of the head of the expulsion centre also with other persons. Persons staying in the expulsion centre have the right to correspondence and in their free time to unlimited use of the card phone. In the specified amount, persons staying in the centre can buy foodstuffs, personal hygiene articles and other permitted items through the mediation of the expulsion centre. It is also allowed to receive parcels but the parcels may not contain foodstuffs or medicines. If the persons subject to expulsion violate the obligations provided for in law or the internal rules of the expulsion centre, fail to take proper care of the personal hygiene and thereby endanger their own or other persons' health, damage their own health or property of the expulsion centre, have a tendency to commit suicide or escape, or are violent, safety measures can be applied with regard to them.

The safety measures include:

- restriction of the freedom of movement and communication of the person;
- prohibition to use personal belongings;
- placement in a separate locked room;
- use of means of restraint; in accordance with the law, tying of a person, handcuffs or restraint-jacket can be used as means of restraint; the use of means of restraint may not last longer than 12 hours at a time.

The bases of the stay of refugees in Estonia are regulated by the Refugees Act. Foreigners who have a well-founded fear of being persecuted in their country of nationality or country of permanent residence for reasons of race, religion, nationality, membership of a particular social group or political opinion have the right to apply for asylum.

Foreigners can also apply for asylum on the grounds that their return or deportation may cause the consequences specified in Article 3 of the European Convention on the Human Rights or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty in their country of nationality or country of permanent residence. On the basis of a refugee's request, asylum may also be granted to the refugee's spouse or a minor child if he or she is staying outside Estonia and corresponds to the definition of the refugee provided in the Convention and the Protocol.

In the period 1997-2004, 94 applications for asylum were submitted to the Republic of Estonia and four of the persons were granted asylum. Subsidiary protection was granted to nine foreigners who were not refugees in the meaning of the Convention but in whose case there was well-founded reason to believe that their return or deportation may cause the consequences specified in Article 3 of the European Convention on Human Rights or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty in their country of nationality or country of permanent residence. In addition, 12 residence permits were granted on ground of family relations which the asylum applicants had developed during the time of processing of their applications in Estonia.

8. Distribution of convicted offenders by citizenship

	Total number of prisoners	**Stateless**	**Citizens of other countries**
1 Jan 2002	3270	1505	155
1 Jan 2003	3059	1322	170
1 Jan 2004	3221	1232	196
21 Oct 2004	3415	1224	177

According to the information available to the Estonian authorities, no overall survey of the causes of the presence of a large number of stateless persons and citizens of the Russian Federation among convicted offenders has been made. However, general crime statistics show that:

- in 2001 Estonians made up approximately 41% of persons serving a custodial sentence, Russians about 52% and the proportion of other nationalities was 7%;
- in 2001-2003 Estonian citizens made up 68-69%, Russian citizens 4-5% and stateless persons 25-26% of all the convicted offenders;
- at the beginning of 2004, 55.7% of prisoners were Estonian citizens, 38.2% stateless persons and 6.1% citizens of other countries.

The above statistics show that the claim that Russian citizens and stateless persons make up the majority of the convicted offenders and prisoners is not true. However, it cannot be denied that the proportion of non-citizens and stateless persons is high, and the Committee's recommendation to this effect would be an interesting topic of research. As concerns criminological research, it has to be noted that this field of research has been neglected for a long time in Estonia. However, the need for such studies has been recognised, which is also expressed in the cooperation agreement between the Ministry of Justice and the University of Tartu Law Institute, according to which the Government would finance through the Ministry of Justice the criminology related research activities of the Institute for three years with a sum of 1.35 million kroons. The main objective of the long-term financing agreement is the promotion of criminology research and creating preconditions for knowledge based criminal policy.

9. Ratification of the 1961 Convention on the Reduction of Statelessness

The Committee recommended Estonia to consider the ratification of the 1961 Convention on the Reduction of Statelessness. The relevant government agencies have made a preliminary analysis of the possibility of acceding to the Convention. As the accession would require making of certain amendments in the current legislation, for the time being Estonia does not intend to accede to this Convention.

10. The procedure for collecting information relating to the Convention

Estonian ministries regularly collect information about their areas of government, incl. information relating to the Convention. When necessary, the relevant information and statistics can be collected from the ministries.

11. Declarations concerning Articles 21 and 22 of the Convention

In reply to the Committee's recommendations to make declarations concerning Articles 21 and 22 of the Convention, the Estonian authorities would like to state that currently Estonia does not plan to make the declarations. It cannot be ruled out, however, that in the future making of declarations on Articles 21 and 22 of the Convention will be considered.

12. The Chancellor of Justice

There is no official in Estonia called with the internationally known title 'ombudsman'. However, these tasks have been entrusted to the Chancellor of Justice who also performs the function of the ombudsman given to him by the Chancellor of Justice Act. The Chancellor of Justice is of assistance to people in the case of violation of their rights and freedoms, and he initiates proceedings in the cases where the applicant personally or through his or her representative points to a state agency that has violated the applicant's fundamental rights. Particular attention is given to the concerns of those people who cannot themselves sufficiently stand for their rights or whose freedom is restricted. These are children, persons staying in nursing homes or psychiatric hospitals, prisoners, conscripts. Therefore, the Chancellor of Justice and his advisers have a special plan for visits to children's homes, nursing homes, psychiatric hospitals, prisons, military units in order to verify on the spot the situation of guaranteeing persons' fundamental rights and freedoms, to talk to persons in these institutions and, if necessary, to initiate verification proceedings.

Overview of the applications submitted to the Chancellor of Justice against various institutions, by years:

	Prisons	Police	Prosecutor's Office
2002	76	74	15
2003	243	70	10

The activities of the Chancellor of Justice in guaranteeing the rights of children are to a large extent based on self-initiative. The Ministry of Social Affairs is drawing up a conception for child protection, which will contain a proposal to amend the Chancellor of Justice Act so that the Chancellor would get a clearer mandate to act in the name of guaranteeing the rights of children. In addition to reviewing applications, the Chancellor of Justice also organised inspections to schools for children with special needs in Estonia on his own initiative in 2003 in order to verify how the rights of children in these schools are guaranteed.

To get a comprehensive picture of the situation at special schools and to obtain information about the guaranteeing of the rights of children in these institutions, the Chancellor of Justice visited all the three special schools in Estonia: Tapa Special School, Puiatu Special School, and Kaagvere Special School. Placement of children in a special school is the strictest form of juvenile sanctions which can be applied on the basis of the Juvenile Sanctions Act. A special school is a closed institution where constant educational supervision of children is provided. Therefore the scrutiny of the guarantee of children's fundamental rights and freedoms is of particular importance because pupils' possibilities to ensure themselves the protection of their rights are limited in such institutions.

In one of the three special schools (in Tapa) the isolation room is not used at all, in the other two (in Kaagvere and Puiatu) placement in the isolation room has been more or less in contradiction with the Juvenile Sanctions Act.

The Chancellor of Justice also recommended to the schools to pay more attention to the confidentiality of messages of pupils, as there have been problems with this.

According to the Juvenile Sanctions Act, there is a right to examine, at the presence of the pupil, the parcels sent to him or her, but not the outgoing parcels, and it is also prohibited to check the content of the pupils' correspondence or messages forwarded through other communication channels.

Probably the placement of pupils in special schools for unreasonable periods, which ignore the system of the academic year, is one of the reasons why many pupils in special schools interrupt their studies. This also makes it difficult for pupils to transfer to another school.

No effective follow-up activities are provided for young people released from special schools – there are no support persons; often the pupil's only possibility is to go back to the school where the problems initially started; often the staff of the special schools themselves (and not representatives of juvenile committees or local government social workers) help to find a suitable educational institution for the children.

A difficult problem is related to the placement in special schools of young people who have an experience of preliminary investigation or imprisonment and whose age difference is also too large (10-17). From the educational point of view this is not pedagogical and it is also contradictory from the point of view of crime prevention and re-socialisation. The problem appeared after the closing of Sindi Special School which was for young males aged 14-18. One third of young men have been placed in a special school repeatedly.

In 2003, criminal proceedings were initiated with regard to six pupils in special schools in connection with terrorising and using violence towards fellow pupils.

As there is no differentiation of the institutional sanction, it is impossible at school to ensure the safety of those pupils who have become victims of a misdemeanour or have been witnesses to it.

Currently, the Chancellor of Justice is verifying whether his recommendations were complied with in special schools.

Verification visits to Narva and Kohtla-Järve jails
On 8 January 2003 the adviser of the Chancellor of Justice in Ida-Virumaa visited the jail of Narva Police Prefecture in Narva.

During the verification visit no overpopulation of the jail was noted. According to police officials, the cells have normal ventilation. In each cell it is possible to wash oneself and use the toilet.

It appeared that the jail complied with the principles according to which arrested persons have to be kept separately. The written register of detainees showed that men and women, adults and minors were kept in separate cells.

In one of the cells there was no window and in other cells there was almost no natural light. In all the cells there was artificial light round the clock. As a shortcoming it was also found that it was impossible to use the right to be in fresh air. According to the

chief superintendent, there is no technical or material possibility for this (the number of staff in the jail is not sufficient).

On 19 February 2003, an adviser of the Chancellor of Justice visited the jail of Ida-Viru county police prefecture in Kohtla-Järve.

The jail is heavily overpopulated. Due to the overpopulation of the cells, it is difficult for persons kept there to take care of their hygiene needs. The principles of keeping arrested persons separately from imprisoned persons are not observed. The written register of detainees showed that there were imprisoned persons and arrested persons in the same cell. Men and women and adults and minors were placed in different cells. Smokers and non-smokers are kept together in the same cells.

In all cells, there is poor ventilation, there are no windows and there is also no natural light. There is artificial light in the cells round the clock. Such conditions are not in conformity with the requirements of executing preliminary detention, arrest or administrative arrest.

In the opinion of the Chancellor of Justice, such a situation in Ida-Virumaa jails causes degrading treatment of detained persons which in prohibited according to Article 18 of the Constitution.

The Chancellor of Justice and representatives of international organisations who have visited Estonia have drawn the attention of the Minister of Internal Affairs to the need to guarantee quickly the protection of fundamental rights of persons in police jails and comply with the requirements for the conditions of detention. The Minister of Internal Affairs has admitted that problems exist but he has referred to the lack of money – there have been continuous requests for allocation of money from the state budget but no funds have been given – and to the fact that the building of the planned prison in Jõhvi (which will also include a preliminary investigation department) makes it unreasonable to start extensive renovations of jails.

Verification visit to Tartu Prison

On 6 February, in connection with the visit of the representatives of the office of the Finnish ombudsman to Estonia, a joint visit of the officials of the Office of the Chancellor of Justice and representatives of the Finnish ombudsman's office to Tartu Prison was held. The Ministry of Justice Deputy Secretary General for Prisons also participated in the visit.

Tartu Prison is a penal institution in the area of government of the Ministry of Justice. In the prison there are both imprisoned people convicted by the court as well as persons held in custody in connection with pending criminal proceedings.

During the verification visit it appeared that the management of Tartu Prison has not noted any significant violations by the prison staff. Probably the reason is that it is a recently opened prison whose staff is composed of persons who have not worked in the prison system earlier. There have been a few instances when an inmate attacked a prison official and some persons have also come under the attention of prison officials in connection with narcotic substances.

Representatives of the Chancellor of Justice also organised a reception of inmates in the prison. Some inmates spoke on behalf of the whole group, for example on behalf of their section, which is a sign that the criminal hierarchy typical of camp-type prisons has been partly broken in Tartu Prison. A written application from one inmate was received. Altogether 11 imprisoned persons and one person in custody came to the reception. Inmates had no complaints about violence by the prison staff.

Verification visit to Maardu Prison
On 28 April 2003 the Office of the Chancellor of Justice made a planned verification visit to Maardu Prison. Maardu prison houses juveniles and young persons held in custody and, accordingly, the aim of the visit was to verify how the fundamental rights and freedoms are respected, primarily considering their young age.

Maardu Prison is an institution under the area of government of the Ministry of Justice for the serving of preliminary detention and execution of punishments where there are mainly juveniles and young persons held in custody in connection with pending criminal proceedings.

Due to the limited conditions, only general education is provided in Maardu Prison as it is currently impossible to provide vocational training that would comply with the necessary requirements.

During the verification visit, officials of the Office of the Chancellor of Justice organised a reception of inmates. Altogether 24 inmates and one prison official came to the reception. No complaints of violence by the prison staff were raised.

Verification visit to Murru Prison
On 27 October 2003 a planned visit of the Office of the Chancellor of Justice to Murru Prison was held. The aim was to ascertain how fundamental rights and freedoms of inmates are guaranteed in the biggest camp type prison in Estonia.

Murru Prison is an institution in the area of government of the Ministry Of Justice intended for executing the imprisonment of adult male persons.

The Chancellor of Justice has received significantly fewer complaints from Murru Prison than from large preliminary investigation prisons such as Tallinn Prison and Tartu Prison. In 2003 the Chancellor of Justice received only about twenty complaints from Murru Prison.

The representatives of the Chancellor's Office had to note that the prison buildings are not in conformity with modern requirements. Some rooms – punishment cells and locked cells – are in a poor state of repair and overpopulated. The prison canteen also did not meet modern requirements.

Altogether 31 persons came to the reception. 23 of them were received on 27 October 2003 and the remaining persons during the follow-up visit on 3 December 2003. There were no complaints by inmates concerning violence by the prison staff.

On 9 July 2004, officials of the Office of the Chancellor of Justice visited Viljandi Prison which is an institution for young male prisoners. Representatives of the Chancellor of Justice did not find any violations during their visit to Viljandi Prison.

On 20 and 21 September the Chancellor of Justice together with the officials of his Office visited East Police Prefecture's jails in Narva, Kohtla-Järve and Rakvere. With regard to the findings of violations the Chancellor made relevant proposals to the Minister of Internal Affairs and the Minister of Justice.

On 28 October and 3 November 2004, officials of the Office of the Chancellor of Justice made a verification visit to Ämari Prison.

Complaints of prisoners to the Chancellor of Justice

Prisoners often use their legal right to submit complaints to the Chancellor of Justice about the conditions in penal institutions. In 2000-2003, 10-14% of the complaints of prisoners were about the conditions in penal institutions and the activities of prison officials. Prisoners have mostly complained, for example, about the issue of the provision of medical care in penal institutions; there have also been complaints that prisoners were not allowed to keep personal belongings, such as radio and television, with them. There have also been complaints concerning the procedure of replying to their complaints to the prison administration. In several cases the Chancellor of Justice found violations of law. In connection with the issues raised in the complaints of prisoners the Chancellor of Justice has made proposals to the Ministry of Justice on how to improve the situation, and in most cases the Ministry of Justice agreed with the Chancellor's proposals. In some cases the Ministry of Justice agreed with the proposals in principle but said that there were not enough financial possibilities to implement the proposals. By November 2004 the Chancellor of Justice had received 243 complaints from prisoners and persons held in custody.

13. Health Protection Inspectorate

The Health Protection Inspectorate regularly verifies the conditions and food in prison canteens. By the end of 2003, the Health Protection Inspectorate and its local agencies had hygiene supervision over 10 422 food handling undertakings (4577 catering establishments and 5845 retail sale establishments).

Prisons belong in the 2nd risk category of food handling undertakings. The food prepared in this category of establishments is meant for ordinary consumers, no high-risk ready-to-eat foodstuffs are prepared there although the selection of foods or the number of consumers is large.

In 2001-2004 the Health Protection Inspectorate has regularly visited prison canteens and has noted that in general the canteens met the requirements. The majority of prison canteens have received the approval of the Health Protection Inspectorate for operation.

	Tallinn	Tartu	Murru	Ämari	Harku	Viljandi	Pärnu
2001	1	X		1	1	Renovation of canteen	1
2002	1	X	1	1	1		2
2003	3	1	2	1	2	2	0
2004	0	1	2	0	0	2	0
Approval	Until 20.12.04	No term	Not approved	No term	No term	No term	No term

Only the canteen in Murru Prison does not meet the requirements. According to the Health Protection Inspectorate, the situation of the kitchen and ancillary rooms is poor, the rooms are damp and cold, the equipment for handling of food and raw material for food is obsolete and needs to be replaced, and the temperature in storage, refrigerators and freezers partly does not comply with the requirements. To improve the situation, in 2005 a kitchen bloc (incl. power, water and sewer lines) in Murru Prison will be designed and in 2006 a new kitchen bloc together with the necessary power, water and sewer lines will be built based on the designs.

14. Impartiality and objectivity of settling of complaints

Arrested persons may submit complaints about mistreatment. The contact person will inform the prisoner about the procedure of submitting complaints. In cases involving violence, the prisoner will first make an application to the prison. Prison officials will ascertain whether elements of a criminal offence could be potentially ascertained in the course of investigation. If such a possibility exists, criminal proceedings will be initiated and preliminary and urgent procedural acts will be carried out and then the matter will be forwarded to the police for investigation, because, in accordance with the Code of Criminal Procedure that entered into effect on 1 July 2004, prisons only have the right to carry out initial investigation measures. Pre-trial investigation of all offences committed in prisons will be completed by the competent investigation body provided for in § 31(1) of the Code of Criminal Procedure (i.e. the police).

County and city courts whose competence also includes review of criminal cases on the merits, should guarantee more effective judicial review in the case of proceedings of complaints where the alleged violation was committed in the course of a criminal procedural act. Based on § 213(3) of the Code of Criminal Procedure, the prosecutor who finds (incl. in the course of review of a complaint) elements of a disciplinary offence in the conduct of an official of an investigative body in a pre-trial proceeding has the right and duty to make a proposal to the investigator's superior for initiating of disciplinary proceedings. The latter in turn has the duty to notify the prosecutor's office as the leader of pre-trial investigation about the solution no later than within one month. This is related to the principle that the prosecutor's office is also required to ensure the legality of pre-trial proceedings. Section 229(3) of the Code of Criminal Procedure requires that an appellant should be notified of the procedure and terms of how to file an appeal with the county or city court. Removal of a prejudiced investigator from the proceedings takes place either through disciplinary proceedings, on the basis of a prosecutor's order or through removal proceedings under § 59(1) of the Code of Criminal Procedure.

15. Complaints against the use of violence by government officials

Detained persons have the right to submit a complaint if the personnel of the detention facilities have used violence against them.

Ministry of Justice is currently drafting a Governmental decree on statistics in criminal cases which will enable access to more detailed statistics (gender, age, nationality).

Overview of the complaints concerning police violence, received from jails in the period 1 June 2001 until 15 October 2004:

Year	Number of disciplinary cases	Number of cases where disciplinary charges were brought	Number of criminal cases
2001	8	2	3
2002	13	0	0
2003	18	2	0
2004	14	1	0

Non-application of disciplinary charges was due to the fact that the information contained in the application was not proved.

Since 1 January 2003, in 33 cases disciplinary investigations were initiated in connection with complaints of the use of violence during the detention of persons. No criminal proceedings in connection with police violence in jails have been initiated.

1. Ida-Viru Police Prefecture – init. 14.07.2003 order no. 479p, minor injuries caused to person in custody, the guilt of police officials was not ascertained.
2. Lääne-Viru Police Prefecture - init. 01.12.2003 order no. 228p, suicide in the jail, the guilt of police officials was not ascertained.
3. Narva Police Prefecture - init. 26.09.2003 order no. 473p, suicide in the jail, the guilt of police officials was not ascertained.
4. Pärnu Police Prefecture - init. 18.11.2003 order no. 682p, manslaughter in the jail – a detainee was killed by cell mates, proceedings initiated by the Police Board. Three police officials were reprimanded for inadequate performance of their duties, one police official was not punished.
5. Pärnu Police Prefecture - init. 18.11.2003 order no. 692p, alleged beating, the guilt of the police official was not ascertained.
6. Tallinn Police Prefecture (15) - init. 07.01.2003 order no 38p, a person brought to the jail for sobering up died, the guilt of police officials was not ascertained.
7. Tallinn Police Prefecture - init. 24.01.2003 order no 197p, a detainee was allegedly pushed against the wall, the guilt of police officials was not ascertained.

8. Tallinn Police Prefecture - init. 20.02.2003 order no. 464p, a detainee was allegedly hit against the wall with his head, the guilt of police officials was not ascertained.
9. Tallinn Police Prefecture - init. 25.03.2003 order nr 978p, a detainee was allegedly beaten, the guilt of police officials was not ascertained.
10. Tallinn Police Prefecture - init. 28.04.2003 order no. 1289p, a person brought for sobering up in the jail died, the guilt of police officials was not ascertained.
11. Tallinn Police Prefecture - init. 05.05.2003 order no. 1397p, alleged unlawful use of force, the guilt of police officials was not ascertained.
12. Tallinn Police Prefecture - init. 03.06.2003 order no. 1740p, fight outside the service time, one police official was reprimanded for indecent behaviour, 30% of the wages for three months were withheld for three police officials, one official was not punished.
13. Tallinn Police Prefecture - init. 10.06.2003 order no. 1814p, allegedly the applicant's son was beaten, the guilt of police officials was not ascertained.
14. Tallinn Police Prefecture - init. 04.07.2003 order no. 2069p, suicide in the jail, the guilt of police officials was not ascertained.
15. Tallinn Police Prefecture - init. 22.07.2003 order no. 2213p, the applicant claimed he was beaten and 1000 kroons of money was taken from him, the guilt of police officials was not ascertained.
16. Tallinn Police Prefecture - init. 31.07.2003 order no. 2324p, a detainee in the jail injured himself, the guilt of police officials was not ascertained.
17. Tallinn Police Prefecture – init. 19.08.2003 order no. 2497p, the applicant claimed to have been beaten and caused bodily injuries, the guilt of police officials was not ascertained.
18. Tallinn Police Prefecture - init.15.10.2003 order no. 3042p, detainee died in the jail, the guilt of police officials was not ascertained.
19. Tallinn Police Prefecture - init. 14.11.2003 order no. 3300p, a person was allegedly beaten by the police, the guilt was not ascertained.
20. Tallinn Police Prefecture - init. 21.11.2003 order no. 3345p, applicant claimed to have been beaten by the police, the guilt was not ascertained.
21. Tartu Police Prefecture - init. 06.03.2003 order no. 112p, alleged beating, the guilt of police officials was not ascertained.
22. Viljandi Police Prefecture (2) - init. 29.04.2003 order no. 43, alleged beating, the guilt of police officials was not ascertained.
23. Viljandi Police Prefecture - init. 15.12.2003 order no. 40p, alleged beating, the guilt of police officials was not ascertained.
24. In 2004 – East Police Prefecture (4) - init. 16.01.2004 order no. 40 p, six persons in custody caused themselves injuries, the guilt of police officials was not ascertained.
25. East Police Prefecture - init. 28.01.2004 order no. 79p, suicide in the detention cell, two police officers were found to have performed their duties inadequately, punished with reprimand.
26. East Police Prefecture - init. 06.04.2004 order no. 522p, two detainees caused themselves bodily injuries, the guilt of police officials was not ascertained.
27. East Police Prefecture - init. 26.04.2004 order no. 551p; suicide in the detention cell, the guilt of police officials was not ascertained.
28. South Police Prefecture – init. 30.04.2004 order no. 571p, alleged use of violence against a person during transport to the jail, the guilt of police officials was not ascertained.

29. West Police Prefecture – init. 28.01.2004 order no. 98, alleged inhuman treatment in the jail, the guilt of police officials was not ascertained.
30. North Police Prefecture – init. 02.01.2004 order no. 430p, a person was allegedly beaten in the police station, the guilt of police officials was not ascertained.
31. North Police Prefecture – init. 23.01.2004 order no. 576p, a person was found dead in the detention cell, no final decision made yet.
32. North Police Prefecture – init. 29.03.2004 order no. 818p, alleged beating during detention, the guilt of police officials was not ascertained.
33. North Police Prefecture – init. 07.07.2004 order no. 1260p, allegedly no medical assistance was provided in the jail, no final decision made yet.

Overview of complaints concerning staff violence in Estonian prisons in the period 1 January 2003 until 15 October 2004:

Year	Number of criminal cases	Criminal punishments
2001	3	0
2002	7	0
2003	9	0
2004 (1st half of the year)	1	0

	Initiated	Alleged violation	Decision
1	04.09.2001	06.01.01 Officials in Maardu Prison beat a prisoner.	Terminated 2.11.01 (no elements of a criminal offence)
2	26.10.2001	Prisoner alleged that on 17.10.01 an official of Tallinn Prison hit him against the leg and caused pain when he returned from sauna.	Terminated 8.11.01 (no elements of a criminal offence)
3	23.11.2001	18.11.01 Staff in Ämari Prison beat a prisoner.	Terminated 15.1.02 (no elements of a criminal offence)
4	01.01.2002	25.10.01 Officials in Ämari Prison beat a prisoner with a flashlight against his back.	Terminated 4.3.02 (no elements of a criminal offence)
5	10.01.2002	01.12.01 An official in Pärnu Prison used physical violence against a prisoner, pulling him by the arm and hitting his leg between the door.	Terminated 3.2.03 (no elements of a criminal offence)
6	22.03.2002	07.03.02 Members of the armed prison unit beat two prisoners with feet and rifle butts.	Terminated 23.9.02 (no elements of a criminal offence)
7	20.06.2002	17.06.02 Official in Tallinn Prison hit a detainee in the punishment cell with a plate against his head.	Terminated 20.12.02 (no elements of a criminal offence)
8	24.10.2002	09.10.02 Official in Ämari Prison hit a prisoner and broke his finger.	Terminated 12.12.02 (no elements of a criminal offence)
9	29.11.2002	In October-November 2002 an official in Pärnu Prison forced a prisoner to degrading acts and unlawfully restricted his rights.	Terminated 29.01.03 (no criminal act)

10	17.12.2002	05.12.02 Official in Murru Prison brought two prisoners to the cell of the third person where they beat the latter in the presence of the official and demanded 50 000 kroons from him.	
11	31.03.2003	19.01.03 An official in Murru Prison allegedly used violence against a prisoner.	Terminated 30.7.03 (no elements of a criminal offence)
12	08.05.2003	Two prison officials allegedly beat a prisoner.	Terminated 30.5.03 (no elements of a criminal offence)
13	19.06.2003	In October-November 2002 an official in Tallinn Prison allegedly discriminated a prisoner.	Terminated 18.12.03 (no criminal act)
14	21.08.2003	Officials in Tallinn Prison used physical violence against an arrested person, causing bodily injuries.	Terminated 22.02.04 (no elements of a criminal offence)
15	02.10.2003	01.10.2003 Official in Tartu Prison used physical force against an arrested person.	Terminated 2.12.03 (no elements of a criminal offence)
16	30.10.2003	27.10.03 During extraordinary guard service officials caused bodily injuries to an arrested person.	Terminated 28.4.04 (the guilt of the accused was not ascertained and it is not possible to collect additional evidence)
17	17.12.2003	11.9.03 During transfer a prisoner put up physical resistance, and trying to overcome it officials of Tallinn Prison caused him bodily injuries (fracture of the left forearm)	Terminated (no elements of a criminal offence)
18	16.04.2004	An official in Tartu Prison bet a prisoner.	

Of all challenges (administrative complaints) approximately 60% are challenges against disciplinary punishments imposed by prison and 40% are challenges in connection with short-term prison leave under supervision, application of safety measures or non-nomination of a prisoner for release on parole.

If a prisoner finds that his or her rights have been violated with an administrative act or in the course of administrative procedure, they can file a challenge. The rules of submitting a challenge are provided for in the Administrative Procedure Act (Chapter 5). When a prisoner submits a challenge it is registered in a separate file and the prisoner will give a signature confirming the handing over of the challenge to the prison official. Thus, it is guaranteed that the challenge is not lost but it will be reviewed in accordance with the procedure set out in the Administrative Procedure Act and it will find a solution. As according to the Administrative Procedure Act a challenge is submitted through the prison, and not sent directly to the Ministry of Justice, the first reviewer of the challenge is the prison whose administrative act or measure was challenged by the prisoner. If in the course of review of the challenge the prison finds that the prisoner's rights were indeed violated, it will solve it itself and declare the administrative act invalid. However, if the prison finds that it had acted lawfully, it will add to the challenge all the relevant documents and forward all the material to the Ministry of Justice. The ministry of Justice is required to review the challenge and make a decision within 30 days of its receipt. In the course of review of the challenge, all the relevant documents will be examined and, if necessary additional statements will be taken, video recordings viewed, etc.

If the challenge is denied, the prisoner has the right to turn to an administrative court for the protection of his of her rights. If the prisoner does not wish or need to submit a challenge through the prison, he can also send a memorandum or an application in a closed envelope to the Ministry of Justice, the Chancellor of Justice, the Office of the President, prosecutor, investigator or court. Letters addressed to these institutions will be forwarded at the expense of the prison.

16. Cases against Estonia in the European Court of Human Rights

In 2003, 179 applications were sent to the European Court of Human Rights concerning alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Republic of Estonia. In 2001 and 2002, the number of complaints was 128 and 116 respectively. Of the individual applications against the Republic of Estonia, the European Court of Human Rights has declared as admissible 10 applications throughout the years. On the basis of the applications, seven cases have been reviewed so far.

1. *Slavgorodski v. Estonia* (12.09.2000 judgement, application No. 37043/97, ResDH (2001)101): the Court discharged the case from the list with a formal decision in connection with the conclusion of a friendly settlement between V. Slavgorodski and the Republic of Estonia.
2. *Tammer v. Estonia* (06.02.2001 judgement, Reports 2001-I): the Court found that the Republic of Estonia had not violated Article 10 of the Convention (freedom of expression).
3. *Veeber v. Estonia (No. 1)* (07.11.2002 judgement, published http://www.echr.coe.int): the Court found that the Republic of Estonia had violated Article 6 paragraph 1 of the Convention (right to access to court – was not effectively available).
4. *Veeber v. Estonia (nr 2)* (21.01.2003 judgement, Reports 2003-I): the Court found that the Republic of Estonia had violated Article 7 paragraph 1 of the Convention (punishment on the basis of law – retroactive application of criminal law).
5. *Mõtsnik v. Estonia* (29.04.2003 judgement, published http://www.echr.coe.int): the Court was of the opinion that the Republic of Estonia had not violated Article 6 paragraph 1 of the Convention (right to fair hearing – hearing within reasonable time).
6. *Treial v. Estonia* (02.12.2003 judgement, published http://www.echr.coe.int): the Court was of the opinion that the Republic of Estonia had violated Article 6 paragraph 1 of the Convention (right to fair hearing – hearing within reasonable time).
7. *Puhk v. Estonia* (10.02.2004 judgement, published http://www.echr.coe.int): the Court was of the opinion that the Republic of Estonia had violated Article 7 paragraph 1 of the Convention (punishment on the basis of law – retroactive application of criminal law).