INITIAL, SECOND AND THIRD REPORT SUBMITTED BY ESTONIA UNDER ARTICLE 19 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

2001

PART I: INFORMATION OF A GENERAL NATURE

A. Introduction

1. 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 force with respect of Estonia on 20 November 1991. The English text of the Convention and its translation into Estonian have been published in the *Riigi Teataja* (RT II 1994, 14/15, 44). The Convention is widely available through the Internet.

2. This Report is presented in conformity with general guidelines adopted by the Committee Against Torture at its 85th meeting on 30 April and supplemented on 18 May 1998.

B. General legal framework

3. Fundamental rights, freedoms and obligations have been stipulated in Chapter II of the Constitution (RT 1992, 26, 349). The basic provision relating to the protection from torture and other cruel, inhuman or degrading treatment or punishment is to be found also in Chapter II Article 18 of the Constitution, which reads as follows: “No one shall be subjected to torture or to cruel or degrading treatment or punishment. No one shall be subjected to medical or scientific experiments against his or her free will”.

4. Article 15 of the Constitution guarantees that everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation or procedure to be declared unconstitutional. Article 12 of the Constitution establishes that everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or otrher opinion, property or socuial status, or on other grounds.

5. The foundation of the court system is stipulated in Chapter 13 of the Constitution. Article 146 stipulates that justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws.

6. In 1995 the penal law reform started on the initiative of the Ministry of Justice. One of the starting points of the penal law reform is the development of a flexible system of sanctions and introduction of effective alternatives to imprisonment. The Draft Penal Code is one of the most important draft laws in the package of draft legislation intended

for the implementation of the penal law reform (Draft Code of Criminal Procedure, Draft Code of Misdemeanour Procedure).

7. The Draft Code of Criminal Procedure, currently in proceedings of the Parliament, is one of the most important pieces of draft legislation that is drawn up within the penal law reform. By replacing the current Code of Criminal Procedure the new law will have to provide a basis for proceeding of the offences stipulated in the Penal Code.

8. Several important draft laws foreseen in the concept of the penal law reform have already been passed: including Probation Supervision Act (RT I 1998, 4, 62), State Compensation of Victims of Crime Act (RT I 1999, 4, 51) and Imprisonment Act (RT I 2000, 58, 376). The Penal Code is currently in proceedings of the Parliament and is expected to enter into force in 2002.

9. The Imprisonment Act stipulates the procedure and organisation of deprivation of liberty, arrest and administrative arrest and preliminary detention, as well as definition and conditions of prison service. The Imprisonment Act emphasises mainly the resocialisation process of prisoners. The aim of deprivation of liberty is to guide a person towards law-abiding behaviour and to protect the legal order. The operation of a prison is managed by the prison director. Prisons are government agencies under the area of government of the Ministry of Justice and their function is to effect deprivation of liberty, arrest and preliminary detention. Public control over prisons is exercised by the prison committee whose members are appointed by the Minister of Justice. Prison officials may not serve as members of the prison committee. The committee's task is to help the prison authorities to organise operation of the prison, including assisting the prison authorities with the placement, teaching and work of prisoners and with other issues related to effecting the sentences.

10. According to the Probation Supervision Act, supervision over the behaviour of persons under probation and their performance of obligations imposed by the court and their social adaptation is facilitated with the aim to refrain them from committing offences in the future.

11. Regional criminal probation departments have been created with county and city courts to implement the criminal probation system. Criminal probation officers have been recruited through competitive procedure.

12. The State Compensation of Victims of Crime Act regulates the procedure for the payment of compensation by the state to victims of violent crimes.

13. According to the Draft Code of Criminal Procedure a preliminary investigator, prosecutor and the court are required to treat a party in the proceedings without degrading his or her human dignity. No one may be subjected to torture or other cruel or inhuman forms of treatment (Article 9).

14. The Enforcement Procedure Code (RT I 1993, 49, 693) establishes the procedure for enforcing court judgements and decisions of officials applying administrative sanctions.

15. With the Government Decision of 23 May 1996 the sub-programme "Development of the system of modern penal institutions" of the national criminal prevention programme was approved (development concept until year 2000). According to the development plan the Prisons Board was reorganised into a department of the Ministry of Justice, a plan for the reconstruction of prisons was drawn up. There are also plans for the building and commissioning of Tartu Prison, as well as relocation of the central hospital from the Central Prison. Staff's training and further training plans have also been prepared.

C. Other treaty commitments

16. In 1993 the Riigikogu ratified the Convention for Human Rights and Fundamental Freedoms and its Additional Protocols, except Protocol No. 6, which was ratified in the Riigikogu on 18 March 1998 and the letter of ratification was deposited on 17 April 1998. On 3 May 1998 the sections of the Criminal Code establishing death penalty were repealed and the death penalty in Estonia was abolished. As an alternative, life imprisonment was introduced. The last death sentence through shooting imposed by the court as a punishment was carried out in Estonia on 11 September 1991. After that no death penalty has been carried out in Estonia.

17. In 1997 the Riigikogu ratified the following Council of Europe criminal conventions:
1) European Convention on Extradition and its first and second Additional Protocol;
2) European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol;
3) European Convention on Information on Foreign Law and its Additional Protocol;
4) European Convention on the Transfer of Proceedings in Criminal Matters;
5) European Convention on the Transfer of Sentences Persons and its Additional Protocol;
6) European Convention for the Suppression of Terrorism.

18. The Code of Criminal Procedure (RT I 1999, 4, 53) also contains provisions on international cooperation. According to the Code of Criminal Procedure requests of foreign countries for legal assistance in criminal matters are adjudicated on the basis of the international agreements of the Republic of Estonia (Article 397). Legal assistance to states with whom an international agreement has not been entered into is provided pursuant to the principles arising from the criminal conventions of the Council of Europe (on the basis of principle of reciprocity). In procedures that are not regulated by international treaties or the provisions on international cooperation contained in the Code of Criminal Procedure, other provisions of the Code of Criminal Procedure are followed.

D. Incorporation

19. According to the Article 3 of the Constitution of Estonia generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. If laws or other legislation of Estonia are in conflict with international treaties ratified by the *Riigikogu* (including international human rights conventions), the provisions of the international treaty shall apply (Article 123).

20. In accordance with the Foreign Relations Act (RT I 1993, 72/73, 1020) the Government of the Republic is responsible for the fulfilment of international treaties. If an Estonian legal act contradicts an international treaty, the Government either submits a bill to the *Riigikogu* for amendments to the act or the Government amends other legal acts within its competence to comply with the treaty.

21. Article 9 of the Code of Civil Procedure (RT I 1998, 43/45, 666) establishes that the courts must hand down decisions based on norms of international law ratified by the Republic of Estonia and Estonian law. If a treaty or a convention to which Estonia is a party provides rules of procedure, which differ from the rules established by laws regulating civil court procedure in the Republic of Estonia, the rules of procedure established by the treaty or convention shall be applied.

E. Remedies

22. Justice is administered solely by the courts. The courts are independent and administer justice in accordance with the Constitution and the laws (Article 146 of the Constitution). The Estonian court system is governed by Chapter 13 of the Constitution as well as the Courts Act (RT I 1998, 4, 62; 2000, 35, 219) and the Status of Judges Act (RT I 1996, 81, 1448).
Estonia has a three-tier court system:
1) country and city and administrative courts (courts of first instance);
2) circuit courts (courts of second instance, which review judgements of the first instance by way of appeal proceedings);
3) the Supreme Court (the highest court, which reviews court judgements by way of cassation proceedings and cases involving constitutional disputes).

The creation of specialised courts with specific jurisdiction is provided by law. The formation of emergency courts is prohibited.
Article 24 of the Constitution states that everyone has the right of appeal to a higher court against the judgment in his or her case oursuant to procedure provided by law.

23. The Legal Chancellor is an independent official responsible for monitoring that legal acts adopted by the state legislator and the executive and by local governments are in conformity with the Constitution and the laws (Article 139 of the Constitution). The Legal Chancellor analyses proposals made to him/her concerning the amendment of laws,

the passage of new laws, and the activities of state agencies, and, if necessary, presents a report to the *Riigikogu*.

24. The Legal Chancellor is appointed to office by the *Riigikogu*, on the proposal of the President of the Republic, for a term of seven years. The activities of the Legal Chancellor are provided in detail by the Legal Chancellor Act (RT I 1999, 29, 406).

25. If the Legal Chancellor finds that a legislative act passed by legislative or executive power or by a local government is in conflict with the Constitution or law, the Legal Chancellor will make a proposal to the respective body to bring it in conformity with the Constitution or law. If an act has not been brought to comply with the Constitution or law the Legal Chancellor will make a proposal to the Supreme Court to repeal the act (Article 142 of the Constitution).

26. The Legal Chancellor also fulfils the functions of an ombudsman. Everyone has the right of recourse to the Legal Chancellor to supervise the activities of state agencies, including the guarantee of the constitutional rights and freedoms of persons (Article 19 of the Legal Chancellor Act).

27. In addition, everyone has the right to submit memorandums or petitions to state agencies, local authorities and their officials. The procedure of responding is established by the Response to Petitions Act (RT I 1994, 51, 857; 1996, 49, 953; 2000, 49, 304). State agencies, local authorities and their officials are required to register memorandums and applications addressed to them and to answer them in writing not later than within one month from the date of receipt of an application or memorandum.

28. Public Information Act (RT I 2000, 92, 597) guarantees the publicity of information intended for general use and everyone's access to information by creating possibilities for public supervision of exercise of public functions.

PART II: INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

29. The basic provisions relating to the protection from torture and other cruel, inhuman or degrading treatment or punishment is to be found also in Chapter II of the Constitution.

30. Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted (Article 11). The basic rights and freedoms provided by Constitution shall not be restricted.

31. 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 (Article 130).

32. The rights, freedoms and duties of each and every person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia (Article 9). The guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments (Article 14 of the Constitution).

33. Estonia has acceded to the UN International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights and other international conventions prohibiting torture and degrading treatment.

34. The Criminal Code (RT 1992, 20, 287 and 288) sets out activities that entail criminal liability and stipulates punishments and other sanctions that can be applied in respect of persons who have committed offences.

35. The Criminal Code stipulates in the Chapter on offences against persons the acts of violence against person (Article 113) and torture (Article 114), and in the Chapter on offences against administration of justice the liability for forcing the person to testify (Article 171), as well as liability for violence against witness, victim, complainant or defendant in civil proceedings, expert, specialist, interpreter or translator, impartial observer in investigative activities, offender, or persons close to them, or for threatening the above persons. There is a separate section on torture of persons who are in custody in penal institutions or applying of illegal measures of control with respect to them (Article 176^4).

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

36. The Aliens Act (RT I 1999, 50, 548; 2001, 16, 68) regulates the arrival, presence, residence and work of foreigners in Estonia and the basis for legal liability of foreigners. The Obligation to Leave and Prohibition on Entry Act (RT I 1998, 98/99, 1575) regulates the basis and procedure of the obligation of foreigners to leave and prohibition to enter Estonia.

37. The Citizenship and Migration Board issues a precept to leave Estonia to foreigners who have no legal basis to stay in Estonia during the term specified in the precept. Before issuing the precept a foreigner has the right to an oral hearing with an official and to submit objections and applications. A representative of the foreigner has the right to participate at the hearing and issuing of the precept. The foreigner confirms with a signature the receipt of the precept that is issued in writing. Upon issuing of the precept the foreigner is explained his right to appeal and the consequences of the failure to comply with the precept. The content of the precept is explained to the foreigner in a language that he or she understands. When issuing a precept against a minor who is in Estonia without a parent, guardian or other representative, the person's departure from Estonia is organised by a guardianship institution in coordination with competent authorities of the admitting state.

38. A foreigner is expelled from Estonia if he or she does not comply with the precept with good reason. The decision of expulsion is made by an administrative judge on the request of the Citizenship and Migration Board pursuant to the procedure provided in the Code of Administrative Offences. The court judgement on expulsion can be appealed. When deciding expulsion the court takes into account the following circumstances (Article 14(2) of the Obligation to Leave and Prohibition on Entry Act):

1) the duration of the alien's legal stay in Estonia;
2) personal, economic and other ties which the alien has with Estonia and which merit protection;
3) the consequences of the expulsion of the alien for the family members of the alien;
4) circumstances which are the basis for expulsion;
5) the age and state of health of the alien;
6) the possibility of enforcing the expulsion;
7) other relevant considerations.

39. An alien may not be expelled to a state to which expulsion may result in his or her torture, inhuman or degrading punishment or treatment, or death or persecution for racial, religious, social or political reasons (Article 17(2)).

40. In 1998 the Citizenship and Migration Board issued precepts to leave the country to 35 persons who were illegally staying in Estonia.

41. Article 21 of the Refugees Act (RT I 1997, 19, 306; 1999, 18, 301) stipulates that the Republic of Estonia will not expel or return an applicant or refugee to a state where his or her life or freedom would be threatened on account of his or her race, nationality, religion, membership of a particular social group or political opinion.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

42. The chapter on offences against administration of justice in the Criminal Code establishes several offences that entail criminal liability.

43. Article 168 Illegal imposition of criminal liability or fabrication of evidence:
Imposition of criminal liability by a prosecutor or preliminary investigator, knowingly, on an innocent person, or fabrication of evidence, is punishable by three to eight years of imprisonment.

44. Article 170 Unlawful detention, arrest, custody or compelled attendance:
Knowingly unlawfully detaining, arresting, holding in custody or compelling attendance of a person is punishable by up to three years of imprisonment.

45. Article 171 Forcing a person to provide testimony:
(1) Forcing a person to provide testimony either through threat or other illegal activity by a person carrying out pre-trial investigation is punishable by up to three years of

imprisonment. (2) Same activity, if it involves violence or taunting of person under interrogation is punishable by three to eight years imprisonment.

46. Article 172 Violence against witness, victim, complainant or defendant in civil proceedings, expert, specialist, interpreter or translator, impartial observer of investigative activities, offender, or persons close to them, or threatening of the above persons:
(1) Threatening of a witness, victim, complainant or defendant in civil proceedings, expert, specialist, interpreter or translator, impartial observer of investigative activities with the aim of obstructing administration of justice or in revenge for the performance of their obligations by the above persons, or threatening an offender with the aim of concealing other accomplices to the crime or in revenge for disclosing them, as well as threatening of the persons close to these persons with the same aims, is punishable by a fine, detention or up to two years imprisonment. (2) Use of violence against the above persons with the same aims is punishable by a fine, detention or up to four years imprisonment.

47. Article 174 False accusation:
(1) Submitting, knowingly, of a false accusation concerning commission of an offence by another person is punishable by a fine or detention. (2) Same activity, if it involved fabrication of evidence is punishable by up to three years of imprisonment.

48. Article 175 False testimony, false opinion or false translation:
(1) In court or during pre-trial investigation, providing, knowingly, of false testimony by a witness or of a false opinion by an expert, or false translation by an interpreter or translator, if these persons had been informed of liability for such activity, is punishable by a fine or detention or up to one year imprisonment. (2) Same activity, if it involved fabrication of evidence is punishable by up to three years imprisonment.

49. Article 176^4 Torture of a person in a penal institution or use of illegal sanctions with respect to him:
Torture of a person under imprisonment or in custody or in preliminary detention, or inflicting the person physical suffering or imposition of other illegal sanctions with regard to him by a person who is a member of the administration of the penal institution or a person exercising supervision or guaranteeing safety in the institution is punishable by up to five years imprisonment with deprivation of the right of employment in a particular position or operation in a particular area of activity.

50. Article 180 Concealing a crime:
Concealing of a first degree crime if concealing had not been previously promised is punishable by a fine or detention or up to three years imprisonment.

51. Article 181 Failure to report a crime:
Failure to report a first degree crime that is undoubtedly known to have been committed or prepared, regardless of whether non-reporting had been previously promised or not, is punishable by a fine or detention or up to one year imprisonment.

52. The following offences related to an office may be mentioned.

53. Article 161 Abuse of position:
Intentional abuse of position by an official if it caused substantial damage to the legally protected rights and interests of a person, company, institution or organisation or the interests of the state, is punishable by a fine or up to three years imprisonment.

54. Article 161^1 Excessive use of power:
Illegal use of a weapon, use of violence or an act torturing or insulting a victim by a person acting in his or her official capacity is punishable by up to six years imprisonment.

55. The following offences against persons may be mentioned.

56. Article 124^1 Hostage taking:
(1) Taking or holding a person hostage under a threat to kill, cause bodily injury or continue to hold the person hostage, in order to force a state, international organisation, natural or legal person or a group of persons to perform or refrain from performing certain acts as a condition for the release of the hostage, is punishable by up to ten years' imprisonment. (2) Same acts, if they result in serious consequences or are committed against a child, are punishable by eight to fifteen years' imprisonment.

57. Article 124^2 Illegal hospitalisation in psychiatric hospital:
Hospitalisation, knowingly, of a healthy person in a psychiatric hospital is punishable by up to three years' imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

58. Article 124^3 Unlawful deprivation of liberty:
(1) Unlawful deprivation of the liberty of a person is punishable by a fine or detention or up to one-year imprisonment. (2) Same act, if it involves the use of violence that is dangerous to life or health, is punishable by a fine or up to five years' imprisonment.

59. Article 124^5 Performing illegal studies with humans:
Performing medical or scientific research on a person without the person's valid consent is punishable by a fine, detention or up to one-year imprisonment.

60. Article 125 Failure to provide assistance to person who is in life-threatening situation:
Intentional failure to provide assistance to a person who is in a life-threatening situation, if the person is incapable of taking measures for self-preservation due to his or her helpless situation and the offender has the duty and opportunity to provide assistance, is punishable by a fine or detention.

61. Article 126 Failure to provide medical care to sick person:
Failure of a person to provide medical care to a sick person without good reason, if the person works in medicine and has the duty and opportunity to provide medical care and his or her failure to act results in serious consequences, is punishable by up to two years'

imprisonment and deprivation of the right of employment in a particular position or operation in a particular area of activity.

62. Article 128 Threatening:
(1) A threat to kill or cause permanent or life-threatening bodily injury or destruct property or cause significant damage to property, if there is reason to fear the realisation of such threat, is punishable by a fine or detention. (2) Same act, if it involves a threat to use an explosive device or explosive substance or other means which are dangerous to the public, is punishable by up to three years' imprisonment.

63. Preparation of a crime and attempted crime are also punishable by a criminal sentence. Preparation of a crime means acquiring of an instrument or a tool to commit a crime or in any other way intentionally creating conditions for it. An attempted crime is an intentional act that is directly directed at the commission of a crime if the crime was not completed because of a reason beyond the control of the offender. Punishment for preparation of a crime and attempted crime is imposed on the basis of the relevant provisions of the Code that establish liability for respective crimes. When imposing a punishment the court will take into account the offender's person, severity and type of the crime, degree to which the criminal intentions were completed and the reasons interrupting the completion of the crime.

64. Participation in a crime means intentional common participation by two or more persons in the commission of a crime. Participants in a crime, besides the perpetrator, are the organiser, instigator and accomplice. Perpetrator is the person who directly committed the crime. Organiser is the person who organised or led the commission of the crime. Instigator is the person who incited to commit the crime. Accomplice is the person who assisted in the commission of the crime with advice, guidance, provision of an instrument or a tool, removal of an obstacle or in any other way by creating a favourable situation, as well as person who previously promised to conceal the offender, the instrument or tool of committing the crime, traces of the crime or the object obtained through the crime. When imposing a punishment the court will have to take into consideration the degree and character of each person's participation in the commission of the crime.

65. In accordance with Article 38 of the Criminal Code, the following conditions may constitute an aggravating circumstance in imposing a punishment: commission of a crime with use of exceptional cruelty or taunting of a victim, or commission of a crime by a group of persons or against a child, person of advanced age, person in helpless condition, insane person or person of unsound mind, or making use of other person's subordinate position or other dependence on the offender; incitement to a commission of crime or inducement to participation in a crime of a minor or a person with limited ability to understand or direct one's actions, or making use of a person who is not subject to criminal liability in the commission of a crime.

66. In 1998, 168 criminal cases were brought on the basis of Article 113 of the Criminal Code, 40 cases on the basis of Article 114. In 1998, no criminal cases were brought on the basis of Article 171; 20 cases were brought on the basis of Article 172 and 1 case on the

basis of Article 176[4]. In 1998, three persons were convicted on the basis of Article 172 in the first instance courts, no persons were convicted on the basis of Articles 171 and 176[4].

67. Table 1. Number of convicts

	1996	1997	1998	1999
Article 113 of the Criminal Code Intentional causing of a minor bodily injury and intentional striking, battery or other acts of violence which cause physical pain	114	115	84	37
Article 114 of the Criminal Code Acts prescribed in Article 113, if they are committed in a torturous manner	15	15	41	8

Source: Ministry of Justice

68. According to the data of nine months of 1999, criminal cases were brought as follows: Article 171 – one case; Article 172 – seven cases; no cases were brought based on Article 176[4].

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
(b) When the alleged offender is a national of that State;
(c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

69. The spatial validity of Estonian criminal law is determined with the principle of territoriality. The area under the jurisdiction of the Republic of Estonia covers besides mainland also the territorial sea and air space. In accordance with Article 4 of the Criminal Code criminal liability extends to all persons who have committed an offence in the territory of the Republic of Estonia or on board of a ship or aircraft registered in the Republic of Estonia, regardless of the location of such ship or aircraft at the moment of commission of an offence.

70. Article 5 of the Criminal Code also establishes the validity of the Code with regard to acts committed outside the territory of the Republic of Estonia. An Estonian citizen, foreign citizen or a stateless person may be held criminally liable for an act committed outside the territory of the Republic of Estonia if on the basis of an international treaty an

application has been made to bring criminal charges against the person and at the place of commission of the act such an act is also punishable in accordance with criminal law or if at the place of commission of the act criminal law of no country is valid; if the act had been committed against an Estonian citizen, legal person registered in the Republic of Estonia or against the Republic of Estonia and if such an act is criminally punishable on the basis of the present Code and of the criminal law of the place of commission of the act or if at the place of commission of the act criminal law of no country is valid.

71. The Criminal Code is also applicable with regard to acts committed outside the area of its validity if such an act is an offence according to Estonian law, if such an act is criminally punishable at the place of commission of the act or if criminal law of no country is valid at the place of commission of the act and if the person committing the act was an Estonian citizen at the time of its commission or became an Estonian citizen after the commission of the act, or if the perpetrator was a foreign citizen or stateless person at the time of commission of the act, if the person has been detained in the Republic of Estonia and is not subject to extradition. Regardless of the law of the place of commission of the act the Criminal Code is applicable to acts which on the basis of an international treaty concluded by Estonia are punishable also when the act is committed outside the borders of the Republic of Estonia.

72. Estonia is a party to several conventions of the International Civil Aviation Organisation (ICAO), according to which persons can be extradited to other countries on certain conditions (Convention on Offences and Certain Other Acts Committed on Board of Aircraft, Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and others).

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

73. Estonia has acceded to the European Convention on Mutual Assistance in Criminal Matters, according to which parties to the Convention undertake to provide each other extensive mutual assistance in criminal matters. Estonia is also a party to the European Convention on the Transfer of Proceedings in Criminal Matters.

74. The bases for the deprivation of liberty of persons have been established in the Constitution. A person may be deprived of liberty only in the cases and pursuant to procedure established by law:
1) to execute a conviction or detention ordered by a court;
2) in the case of non-compliance with a court order or to ensure the fulfilment of a duty provided by law;
3) to prevent a criminal or administrative offence, to bring a person who is reasonably suspected of such an offence before a competent state authority, or to prevent his or her escape;
4) to place a minor under disciplinary supervision or to bring him or her before a competent state authority to determine whether to impose such supervision;
5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such person is dangerous to himself or herself or to others;
6) to prevent illegal settlement in Estonia and to expel a person from Estonia or to extradite a person to a foreign state (Article 20).

75. The Code of Criminal Procedure establishes different classes of preventive measures (Article 66) and their application if there is sufficient reason to believe that an accused or accused at trial who is at large absconds investigation or court proceedings, impedes the establishment of the truth in a criminal matter or continues to commit criminal offences. In such cases one of the following preventive measures may be applied with regard to him or her:
1) signed undertaking not to leave place of residence;
2) personal surety;
3) taking into custody;
4) security (bail).

76. A minor may be placed under the supervision of his or her parents, guardians, curators, or the administration of an educational, childcare or medical institution. With regard to a member of the armed forces, supervision by the command staff of a military unit may also be applied as a preventive measure.

77. A preventive measure will be applied only with regard to a person against whom charges have been brought. In exceptional cases, a preventive measure may be applied to a person who is suspected of the commission of a criminal offence prior to the bringing of charges. In such case, charges will be brought not later than within ten working days as of the application of the preventive measure. A person who is taken into custody prior to the bringing of charges has the right to file complaints against the acts of a preliminary investigator, prosecutor, county or city court judge, to give statements and submit

applications. The term of holding in custody is determined by law (Code of Criminal Procedure, Article 74) and it may normally not be longer than six months and in exceptional cases one year.

78. The Code of Criminal Procedure regulates separately the taking into custody and holding in custody in the case of extradition (Article 402). After a court has received an application for the extradition of a person to a foreign state, a judge will, on the basis of a reasoned order of a preliminary investigator or on the proposal of a prosecutor in the Public Prosecutor's Office, decide the grant of a permission for the taking of the person to be extradited into custody. A refusal to take a person into custody will be reasoned. In cases of urgency, a city or county court judge may grant a permission for the taking of a person into custody before the receipt of an application for the extradition of the person to a foreign state, if it is requested by a competent authority of the foreign state and if the authority confirms that an order for taking the person into custody exists or that a judgment of conviction has entered into force with regard to the person and an application for extradition will be sent immediately. A person may be released from custody if a foreign state fails to submit an application for extradition and the required documents within eighteen days after the detention of the person. A person will be released from custody if an application for extradition has not been received within forty days.

79. In 1991, Estonia acceded to the Vienna Convention on Consular Relations (RT II 1993, 23, 53), according to which consular representatives of foreign states can freely communicate with citizens of their state. The relevant authorities will inform immediately the consular representation on the latter's request if in the consular area a citizen of that state has been detained or sent to prison or has been detained pending trial or has been taken in custody in any other way. Any notices sent by the detained person will be immediately forwarded to the consular establishment. Upon detention the person will be informed of the right to contact consular representation. Consular officials of a foreign state have the right to visit citizens of their state who are in prison, in custody or in a penal institution, as well as the right to talk to them and have correspondence with them and arrange their representation in court. A consular official has the right to visit any citizen of their state in their consular area who is in prison, in custody of in a penal institution upon court decision.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

80. Extradition procedures are described in more detail under Article 8. Decision to extradite an Estonian citizen to another state is made by the Government of the Republic, decision to extradite a foreign citizen and a stateless person is made by the Minister of Justice. Both the decision of the Government and of the Minister of Justice to extradite a person can be appealed pursuant to the procedure established in the Code of Administrative Court Procedure (RT I 1999, 31, 425).

81. According to Article 4 of the Code of Administrative Court Procedure everyone who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure of a government agency, institution or official has the right to file an action with an administrative court. The complaint has to be filed with an administrative court within thirty days as of the date when the person became aware of the decision to extradite him or her to a foreign state. Decision of an administrative court can be challenged by appeal or cassation to the Supreme Court.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another. State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

82. In Estonia extradition to other countries of persons suspected of offences is regulated by the following acts:

1) Article 36 of the Constitution which states that extradition of an Estonian citizen to a foreign country is decided by the Government of the Republic;
2) European Convention on Extradition (RT II 1997, 8/9, 38);
3) Chapter 35 of the Code of Criminal Procedure which establishes international cooperation in criminal proceedings.

83. Estonia signed the European Convention on Extradition in 1993 and it entered into force in 1997 (RT II 1997, 8/9, 38). In accordance with the Convention on Extradition, persons are extradited in the case of offences that are punishable by more than one year imprisonment both in the requesting and requested state.

84. Requests for legal assistance in criminal matters are settled on the basis of international agreements of the Republic of Estonia. Estonia has concluded legal assistance agreements with Latvia, Lithuania, Ukraine, Poland and Russia. Legal assistance to states with whom there is no international agreement is provided on the basis of principles arising from the Council of Europe criminal conventions and part of the Code of Criminal Procedure on international cooperation. The provisions of the Code are applied unless otherwise provided in an international agreement entered into by Estonia. Legal institutions which submit requests for legal assistance to foreign countries and settle requests for legal assistance from foreign countries within their area of competence are the courts of the Republic of Estonia, Public Prosecutor's Office, the Ministry of Justice and the Ministry of Internal Affairs.

85. The Minister of Justice forwards a request for extradition submitted by a foreign country immediately to the Public Prosecutor's Office. If the request for extradition arrives directly to the Public Prosecutor's Office, a prosecutor in the Public Prosecutor's Office will immediately also inform the Ministry of Justice about it. A prosecutor in the Public Prosecutor's Office is obliged to review the request and verify whether all necessary documents have been annexed to it. If the request for extradition meets all the requirements a prosecutor in the Public Prosecutor's Office will immediately forward it to the court. Proceeding of the request for extradition of a person to a foreign country is within the jurisdiction of Tallinn City Court. In resolving the request of extradition of a person to a foreign country the court will make one of the following rulings:

1) to support extradition of a person to a foreign country;
2) not to support extradition of a person to a foreign country if extradition is legally unjustified.

86. After the court has received the request for extradition a judge will decide on the basis of a reasoned order of a preliminary investigator or prosecutor of the Public Prosecutor's Office granting of a permission to take the person to be extradited into custody. Refusal to permit taking of person into custody will be reasoned.
In cases of urgency a city or county court judge may grant a permission for taking a person into custody before the receipt of a request for extradition to a foreign country if a competent authority of a foreign state requests it and if the authority confirms that there is an order for taking the person into custody or there is a judgement of conviction by the court and request for extradition will be sent immediately.

87. A person may be released from custody if the foreign state fails to submit a request for extradition and the required documents within eighteen days after the detention of the person. A person will be released from custody if a request for extradition has not been received within forty days.

88. The final decision to extradite an Estonian citizen is made by the Government of the Republic with its order. Refusal to extradite will automatically entail an obligation to initiate criminal proceedings against the person.

89. Table 2. Overview of requests in 1998

COUNTRY	Criminal Matters	Civil and Family law Matters	TOTAL
To Russia	1	376	377
From Russia	3	370	373
To Finland	2	196	198
From Finland	2	199	201
To Latvia		45	45
From Latvia	1	50	51
To Lithuania		33	33
From Lithuania	8	23	31
To Ukraine		88	88
From Ukraine		97	97
To Germany	3	24	27
From Germany	3	20	2
To Poland	3	7	10
From Poland		8	8
To France	1	2	3
From France		5	5
To Holland	1	4	5
From Holland	1	2	3
To Denmark	2	5	7
From Denmark		5	5
To Austria	1	1	2
From Austria	2	5	7
To Norway		4	4
From Norway		3	3
To Sweden	2	7	9
From Sweden	3		3
To USA		4	4
From USA		3	3
To Switzerland	1		1
To UK	2		2
To Italy	1		1
To Cyprus	1		1
Grand Total	**44**	**1671**	**1715**

Source: Ministry of Justice

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

90. According to the Code of Criminal Procedure, the procedure for communication with pre-trial investigation authorities, prosecutor's offices and courts of foreign states is determined by Estonian law and international agreements. Communication with a foreign state with which Estonia has not entered into an agreement takes place solely through the Ministry of Foreign Affairs of Estonia. Applications by pre-trial investigation authorities, prosecutor's offices and courts of foreign states for performance of procedural acts, if such acts are subject to enforcement, will be prepared and formalised in accordance with Estonian law, unless otherwise provided for in international agreements.

91. Estonia is a party to the European Convention on Mutual Assistance in Criminal Matters and its additional protocol. On the basis of these acts and agreements of mutual legal assistance Estonia will provide assistance to foreign states in the stage of preliminary investigation and judicial proceeding of criminal matters. Mutual assistance is in the form of performance of particular procedural acts, procurement of evidence, seizing of property, forwarding of writs of summons, etc. on the basis of requests.

92. Evidence collected in a foreign state is accepted as evidence in criminal proceedings in Estonia unless the evidence was collected by activity which is contrary to the principles of criminal procedure in Estonia.

93. According to Estonian legislation, seizure and transfer of property may be carried out on the request of a foreign state if the property to be transferred may be needed in the requesting state as physical evidence or has been acquired as a result of a criminal offence and, at the moment of taking a person whose extradition is requested into custody, is in the possession of the person, or is found later. Property may be transferred in connection with extradition as well as other mutual legal assistance.

94. In connection with the Convention on Mutual Assistance in Criminal Matters the Republic of Estonia has declared that it will satisfy requests for ascertainment of location and seizure of property provided that the act which is the basis for the request is punishable pursuant to criminal procedure both in Estonia and in the place of commission of the act and the satisfaction of the application is in compliance with the legislation of the Republic of Estonia.

95. Seizure of property is carried out in accordance with the relevant provisions of the Code of Criminal Procedure. A seizure will be conducted on the basis of an order of a preliminary investigator if the exact location of an object which is relevant to a criminal

matter is known (Article 139 of the Code of Criminal Procedure). Pursuant to Article 146 of the Code of Criminal Procedure, property will be seized on the basis of an order of a preliminary investigator and only with the consent of a prosecutor, either during the search or seizure, or at another time. Also in the case if a request for seizure of property was received for example through Interpol, the actual seizure can be carried out only on the basis of a consent of a prosecutor in accordance with the procedure provided in the Code of Criminal Procedure. A permission for the transfer of property to a foreign state is granted by a county or city court judge on the basis of a reasoned ruling submitted to him or her. Upon granting a permission, a judge will decide whether the transfer of property is permitted by the state and is practicable. If a county or city court judge refuses to grant a permission for the transfer of property, he or she will make a reasoned ruling. The rights of third persons to transferred property will be retained. In the case of existence of such rights, property will be returned to the party who received the application immediately after the court without a charge.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

96. Prison officials can be persons who have completed preparatory training for prison officials and have also completed the obligation to serve in the defence forces. Preparatory training of prison officials is composed of professional theoretical and practical training. The places of preparatory training of an applicant for a position of prison official are a prison where the applicant will undergo practical training and the Estonian Public Defence Academy.

97. Prison officials are subject to certification once every three years. During certification the compliance of an official's professional skills, abilities and personal characteristics with the official rank and his or her professional achievement are assessed.

98. In the Public Defence Academy, future police, customs and correctional officials study constitutional law, criminal law, international law, police techniques and tactics. The primary curriculum for the training of prison officials contains subjects like prison work, legislation, psychology, correctional social work and health care.

99. In the Joint Training Establishments of the Defence Forces, members of the armed forces study international law, international military law and national defence.

100. There are also courses for criminal probation officials in the field of legislation. They study constitution, criminal law, criminal procedural law, minimum rules for treatment of prisoners in Europe, the Imprisonment Act.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

101. Carrying out of interrogation is scientifically based, there are training materials about procedural tactics and separate materials about interrogation tactics. These materials are reviewed as legislation is amended. Information obtained at an interrogation has to be recorded in the minutes of an interrogation.

102. Interrogation as a procedural activity is within the competence of a preliminary investigator. An investigator is obliged to interrogate the accused immediately after the charges have been preferred to him or her. The Code of Criminal Procedure establishes separate requirements for the interrogation of an accused or a witness who is a minor. A teacher or psychologist, if necessary also a parent or other legal representatives, will participate in the hearing of a witness who is a minor of less than fifteen years of age. Witnesses who are minors of less than fifteen years of age will not be warned against the liability for the refusal to give testimony and for giving knowingly false testimony; however, the obligation to give truthful testimony will be explained to such witnesses. There is also a separate interrogation room for interviewing minors, so that they could feel more at ease. A teacher or psychologist will participate in the interrogation of an accused who is a minor of less than fifteen years. The teacher or psychologist who participates in an interrogation has the right to pose questions to the accused through a preliminary investigator, to examine the minutes of the interrogation, and to submit comments concerning the minutes. The teacher or psychologist will also sign the minutes of the interrogation.

103. Pursuant to Article 1(1) of the Prosecutor's Office Act (RT I 1998, 41/42, 625), supervision over the legality of pre-trial procedure and interrogation is within the competence of the prosecutor's office. Pursuant to Article 120(2) of the Code of Criminal Procedure, a prosecutor will, within the limits of his or her competence:

1) require explanations from a preliminary investigator concerning the receipt, registration and settlement of petitions and notices submitted concerning a criminal offence, and concerning the process of pre-trial investigation and the termination of criminal proceedings;
2) require criminal files, documents, materials and other information concerning committed criminal offences or criminal offences being planned, the process of pre-trial investigation and the persons who committed a criminal offence;

3) monitor the compliance with the requirements of law in police institutions concerning the receipt, registration and settlement of submitted petitions and notices concerning criminal offences;
4) annul or alter unlawful or unjustified orders of preliminary investigators;
5) give written instructions to preliminary investigators concerning the investigation of criminal offences, the performance of procedural acts, the choice, alteration or annulment of preventive measures, the legal assessment of criminal offences, the search of the persons who have committed a criminal offence, the commencement or termination of surveillance, and concerning the ascertainment of the possibility to apply simplified proceedings;
6) notify the persons who have the right to impose disciplinary punishments of the elements of a disciplinary offence which have become evident in the activities of a preliminary investigator or competent police officer;
7) sanction searches and other activities of a preliminary investigator in the cases prescribed by law;
8) extend the term for the settlement and investigation of a petition or a notice concerning a criminal offence in the cases prescribed by law;
9) return a criminal matter to a preliminary investigator with instructions for the conduct of further investigation or for the elimination of deficiencies;
10) remove a preliminary investigator from any criminal matter by his or her reasoned order for the conduct of more thorough and objective investigation, and to refer such criminal matter to another preliminary investigator, taking into account the competence of preliminary investigators provided for in this Code. Investigative jurisdiction determined by a prosecutor may be altered only by a higher ranking prosecutor;
11) remove preliminary investigators who have violated the law upon the investigation of a criminal matter from further proceedings in the criminal matter by his or her reasoned order;
12) commence criminal proceedings or terminate criminal proceedings, approve the summaries of charges, and in the cases prescribed by the law, approve an order of a preliminary investigator, refer criminal matters to court;
13) perform the tasks provided for in this Code upon the application of simplified proceedings.

104. Written instructions of a prosecutor given to a preliminary investigator pursuant to the procedure provided for in the Code of Criminal Procedure are binding on the preliminary investigator. An appeal against received instructions filed with a higher ranking prosecutor does not as a rule suspend the compliance with such instructions.

105. The Ministry of Justice includes as a structural unit the department of prisons whose main task is to organise the work of prisons, places of preliminary confinement, and expulsion centres, as well as supervision, carrying out of pre-trial investigation and surveillance activities. Supervision over the situation of prisons is constant. The Ministry of Justice receives about 20 letters from prisoners every day.

106. Pursuant to Article 29(4) of the Imprisonment Act, the prison administration is prohibited to inspect prisoner's letters and phone calls to the lawyer, prosecutor, court, Legal Chancellor and the Ministry of Justice.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

107. The functions of criminal procedure are to detect criminal offences speedily and fully, ascertain offenders and ensure correct application of law, so that everyone who has committed a criminal offence is justly punished and no innocent person is charged with a criminal offence or is convicted.

108. After the elements of a criminal offence have become evident, a preliminary investigator or prosecutor is obliged to, within the limits of his or her competence, commence criminal proceedings and take the measures prescribed by law to establish that a criminal act has taken place, and to identify the person who committed the criminal offence. Criminal proceedings are commenced by a preliminary investigator or prosecutor with the first investigative activity or other procedural act upon the existence of reason and grounds for criminal proceedings. If criminal proceedings are commenced by a prosecutor, materials of the criminal matter will be forwarded pursuant to investigative jurisdiction. A petition or a notice in a criminal matter which does not fall within the jurisdiction of a preliminary investigator, prosecutor or court will be immediately referred to a preliminary investigator, prosecutor or court within the jurisdiction of which the criminal matter falls (Article 93 of the Code of Criminal Procedure).

109. Pursuant to Article 90 of the Code of Criminal Procedure, the reasons and grounds for commencement of criminal proceedings are:

1) appearance for voluntary confession;
2) petitions by persons;
3) notices by enterprises, agencies, officials, and non-profit organisations and working collectives;
4) information published in the press;
5) detection of the elements of a criminal offence by a preliminary investigator, court or judge.

110. A preliminary investigator makes decisions concerning performance of investigative activity during pre-trial proceedings independently. Courts, prosecutors and preliminary investigators are required to explain the rights of persons participating in a criminal matter to the persons, and to ensure that the persons have the possibility to exercise the rights (Article 45, Code of Criminal Procedure).

111. The following will be proven in pre-trial investigation and court hearing of a criminal matter: the criminal act; the commission of the criminal offence by the suspect, accused or accused at trial, and his or her guilt; the circumstances which influence the degree and nature of the liability of the accused or accused at trial; the nature and extent of damage caused by the criminal offence (Article 46, Code of Criminal Procedure).

112. A preliminary investigator is required to observe the requirements of law in an accurate manner, and to direct the investigation with the aim of detecting the truth. Upon preliminary investigation, a preliminary investigator will decide on the direction of the investigation and performance of investigative activities independently, except in the cases where the obtaining of a consent from a prosecutor or a permission from a court is prescribed in this Code; a preliminary investigator bears full responsibility for the legality and timeliness of the above activities. A preliminary investigator is required to observe the requirements of law and direct the investigation with the aim of detecting the truth. A preliminary investigator will make extensive use of the assistance of the public in the detection of criminal offences, the surveillance of persons who have committed a criminal offence, the ascertainment and elimination of the circumstances which promoted the commission of a criminal offence, and the collection of information which characterises the personality of an accused. A preliminary investigator may not refuse to question a witness, to order expert assessment or to perform other investigative activities at the request of a victim or other participants in the proceeding if the fact the ascertainment of which is requested may be important in the criminal matter. Upon denial of such request in part or in full, a preliminary investigator is required to prepare an order which sets out the grounds for refusal and to communicate such order to the person who made the request; the person has the right to submit a complaint against the refusal of the preliminary investigator to the prosecutor who exercises supervision over pre-trial investigation.

113. A pre-trial investigation is completed by the preparation of a summary of charges, and referral of the criminal matter to court through a prosecutor.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

114. As was indicated under the previous Article, one possible reason and ground for commencement of a criminal matter may be petitions by persons which may be either oral or in writing. A preliminary investigator, prosecutor or judge will enter an oral petition in the minutes, which will be signed by the petitioner and the person who receives the petition. Upon the receipt of a petition, the petitioner is warned of the liability of the

petitioner in the case of submission of a knowingly false complaint, and signature of the petitioner confirming this is obtained.

115. The court, prosecutors and preliminary investigators are required to take all measures prescribed by law for comprehensive, thorough and objective investigation of the facts of a criminal matter, and to ascertain the facts which convict or vindicate a suspect, accused or accused at trial and the mitigating or aggravating circumstances. The court, prosecutors and preliminary investigators have no right to lay the burden of proof on a suspect, accused or accused at trial (Articles 19(1) and 19(2) of the Code of Criminal Procedure).

116. Impartial and independent preliminary investigation in a criminal proceeding is guaranteed by a possibility of removal of a participant in proceedings. A judge, lay judge, prosecutor, preliminary investigator, clerk of the court session, expert, specialist, interpreter or translator may not participate in the proceeding in a criminal matter and will be removed if he or she is directly or indirectly personally interested in the criminal matter, or if other circumstances give reason to doubt his or her impartiality (Article 20(1) of the Code of Criminal Procedure). A prosecutor exercises his or her authority in criminal proceedings independently and is governed only by law.

117. Court hearings are public. This is guaranteed by Article 24 of the Constitution. In the cases and pursuant to the procedure established by law a court may declare that a session or a part of it be held *in camera*. Hearings of criminal matters in all courts are public. A court may declare that a session or a part of it be held *in camera* in order to maintain a state or business secret; to protect morals or the private or family life of a person; to maintain the confidentiality of adoption; in the interests of a minor; in the interests of the security of the participants in the criminal proceeding, and of witnesses. At a court session held *in camera* the participants in the criminal proceeding will be present at the hearing of the matter. Court judgment is made public unless the interests of a minor, a spouse or a victim require otherwise.

118. In order to ensure the security of a victim or witness or persons close to him or her, anonymity of such persons may be applied in criminal proceedings. Anonymity is formalised by a reasoned order of a preliminary investigator at the request of a witness or a victim, or on the initiative of the preliminary investigator. A sealed envelope containing information on the victim or witness is kept separately from a criminal file. The preliminary investigator will produce such envelope to the court or the prosecutor at the first demand of the court that is hearing the matter or of a prosecutor. The data may be examined only by the preliminary investigator, the prosecutor and the court who, after examining the data, will seal the envelope and sign it (Article 79^1 of the Code of Criminal Procedure).

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

119. According to Article 25 of the Constitution everyone has the right to compensation for moral and material damage caused by the unlawful action of any person.

120. The protection of private life is regulated by the General Principles of the Civil Code Act (RT I 1994, 53, 889; 1996, 42, 811) which stipulates that everyone has the right to demand termination of a violation of the inviolability of his/her private life and to demand compensation for moral and proprietary damage caused thereby (Article 24). Also a person whose interests are damaged by use of his/her name or publicly used pseudonym may demand compensation of damage (Article 25).

121. According to the Act for the Compensation of Damage Caused to the Person by the State through Unfounded Deprivation of Liberty, the damage is compensated to the person:
1) who was under arrest with the permission of the court and in whose matter the ruling to initiate criminal proceedings has been annulled, the proceedings have been terminated in the stage of preliminary investigation or investigation or at an organising meeting of the court, or with respect to whom an acquitting decision has been made;
2) who had been detained as suspected of committing a crime and was released in connection with dropping of charges;
3) who was serving a sentence of imprisonment and in whose case the decision to convict has been annulled and proceedings of criminal matter terminated or an acquitting decision has been made;
4) who served a sentence of imprisonment longer than the term of sentence originally imposed on him/her;
5) who had been placed in a psychiatric hospital without ground by the court in connection with committing of an act with characteristics of an offence and in whose case the court ruling has been annulled;
6) who served an administrative arrest and the decision of arrest has been annulled;
7) who had been deprived of liberty without ground or without disciplinary, administrative or criminal proceedings, with the decision of an official authorised to warrant deprivation of liberty, if such a proceeding was compulsory (Article 1).

122. The Ministry of Social Affairs has submitted to the Government a national criminal prevention sub-programme "Creating a system for assisting victims of crime". Victims of

crime include people who have become victims of negligent or bad treatment, physical, mental or sexual violence, i.e. people who have been caused suffering or damage by another person, group of persons or organisation, regardless of whether the person causing the damage has been revealed or whether criminal proceedings have been brought against that person. The aim of the sub-programme is to create an organised system of victims of crime.

123. In Estonia, there are currently assistance services to help victims of crime, there is "*Ohvriabi*" Society for Supporting Victims of Crime, and there are shelters. Through the Social Rehabilitation Centre and the Society for Supporting Victims of Crime counselling of victims, their representation in court, providing financial support, and crisis assistance are organised. Through conciliation services conciliation of victims is provided.

124. The aim of the State Compensation of Victims of Crime Act is to regulate alleviating of the financial situation of victims of severe violent crimes by way of payment of compensation by the state. State aid is given to the victims also within social welfare and social insurance framework, but these systems do not cover all victims in need of assistance and also not the whole amount of damage arising as a result of the crime is covered. The system of payment of compensation described in the law is an important supplement to the assistance provided to victims of crime as one target group within social law. Compensation is paid only to those victims of crime who do not receive compensation from other sources for the damage caused through crime. According to the law, the amount of compensation by the state is 50%, i.e. half of the amount of damage which is the basis for calculating the compensation. In calculating the damage, the law proceeds from the individual situation of every victim or his/her dependants, i.e. mainly the victim's income before the violent act of crime was committed. The State Compensation of Victims of Crime Act entered into force on 1 January 2001.

125. The State Liability Act (RT I 2001, 47, 260) establishes the protection and restoration of rights that have been violated in the course of implementation of powers by public authority and in the exercise of other public functions, and provides the basis and procedure for the compensation of damage caused (state liability). A person whose rights have been violated through unlawful activity of a public authority in a public-legal relationship, may demand that both material and non-material damage caused to him or her be compensated. A natural person may demand monetary compensation of non-material damage in the case of culpable degradation of his or her dignity, damaging of health, deprivation of liberty, infringement of inviolability of home or private life or confidentiality of information, and defamation of honour and good name. An application for the compensation of damage may be filed with the administrative agency that caused the damage or a complaint may be filed with an administrative court. The State Liability Act will enter into force on 1 January 2002.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

126. Article 19(3) of the Code of Criminal Procedure establishes that it is prohibited to attempt to obtain testimony from a suspect, accused, accused at trial or other persons participating in a criminal matter by violence, threats or other illegal means. Upon commission of such activity a preliminary investigator, prosecutor or judge will be held criminally liable in accordance with Articles 171 and 172 of the Criminal Code. The text of these sections has been given under Article 4 of this Report.

127. The court, prosecutor and preliminary investigator, guided by their conscience, will evaluate the aggregate of evidence from all perspectives, thoroughly and objectively pursuant to law. Forcing a person to provide statements is an offence and evidence obtained through such activity is illegal and cannot thus be used as evidence in criminal procedure. The court, prosecutor and preliminary investigator are required to guarantee that participants in the proceedings are able to use their rights.

128. In 1998, twenty criminal cases were brought on the basis of Article 172, three persons were convicted in the court of first instance. During nine months of 1999, the number of criminal cases was as follows: Article 171 – one case; Article 172 – 7 criminal cases; and there were no criminal cases on the basis of Article 176^4.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

129. Regarding the acts which constitute cruel, inhuman or degrading treatment or punishment, see comments with regard to Article 4.

130. The Mental Health Act (RT 1997, 16, 260) regulates the procedure and conditions for provision of psychiatric care and the relationships with health care institutions which arise from the provision of psychiatric care, provides the duties of the state and local

governments in the organisation of psychiatric care, and provides the rights of persons in receiving psychiatric care. The Ministry of Social Affairs has financed the Estonian Psychiatric Patients Advocacy Association from the state budget in order to guarantee the protection of psychiatric patients in psychiatric hospitals and care homes.

131. The chief doctor of a hospital will ensure that two psychiatrists carry out a medical examination of a person admitted for involuntary treatment within forty-eight hours after commencement of inpatient treatment. If both psychiatrists declare the admission for treatment or continuation of treatment of the person pursuant to Article 11(1) of the Mental Health Act to be justified, the person will be kept in involuntary treatment for up to fourteen days. Involuntary treatment of a person in the psychiatric department of a hospital may continue for more than fourteen days only with the authorisation of a court which is issued by an administrative court on the basis of a written application of the chief doctor of the hospital. An administrative court judge will review an application for authorisation of involuntary treatment and promptly decide whether to grant or deny authorisation, without a court hearing. On the first occasion, an administrative court judge may grant authorisation for involuntary treatment of a person for up to thirty days as of the date of receipt of the application by the court. On subsequent occasions, an administrative court judge may extend the authorisation for involuntary treatment of a person for up to ninety days as of the day following the end of the previous period. If an administrative court judge refuses to grant or extend authorisation for involuntary treatment of a person or revokes an authorisation, the person may immediately leave the hospital or continue treatment voluntarily.

132. If during involuntary treatment its necessity ceases to exist, the involuntary treatment will be discontinued on the basis of a decision of two psychiatrists. If treatment was provided pursuant to a court authorisation, the chief doctor of the hospital will inform the court of discontinuation of involuntary treatment in writing. Persons in involuntary treatment may not be subjected to clinical trials, testing of new medicinal products or treatment methods. County medical officers exercise supervision over involuntary treatment.

133. Tallinn garrison is a penal institution under the area of government of the Ministry of Defence. The Disciplinary Measures in Armed Forces Act (RT I 1997, 95, 1575) establishes deprivation of liberty as a disciplinary punishment both in the form of disciplinary detention and disciplinary arrest. Disciplinary detention takes place in a detention chamber and its use is allowed if a serviceman is unable to control his or her behaviour or may endanger his or her own or other people's life, health or property. The length of detention is forty-eight hours.

134. Disciplinary arrest is imposed on servicemen who have committed a disciplinary offence or have repeatedly or seriously violated the discipline in the defence forces. The length of arrest is three to ten days. A person under arrest has the right to receive daily food, medical care, to send and receive letters, to participate in religious service, to read regulations of defence forces, to issue publications in the same way as other servicemen. An administrative court is informed of an imposition of arrest. If a court finds that it is

unlawful the person will immediately be released from arrest and will be paid compensation. The rights of persons in custody and restrictions applied to them have been established with the Disciplinary Measures in Armed Forces Act and legislation based on it.

Annex 1

List of agreements on the readmission of persons

Agreement	Date of signature	Date of entry into force
Agreement between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Republic of Lithuania on the readmission of persons residing illegally	22.09.95	03.10.96
Agreement between the Government of the Republic of Estonia and the Government of the Kingdom of Sweden on Readmission of Persons.	25.03.97	02.05.97
Agreement between the Government of the Republic of Estonia and the Government of the Republic of France on Readmission of Persons	15.12.98	15.04.99
Agreement between the Republic of Estonia and the Kingdom of Spain on the readmission of persons.	28.06.99	07.02.00
Agreement between the Government of the Republic of Estonia and the Government of the Italian Republic on Readmission of Persons.	22.05.97	03.03.99
Agreement between the Governmnet of the Republic of Estonia and the Government of the Kingdom of Norway on Readmission of Persons.	14.01.97	11.05.97
Agreement between the Government of the Republic of Estonia and the Government of Iceland on the Readmission of Persons.	29.04.97	01.05.97
Agreement between the Government of the Republic of Estonia and the Government of the Republic of Slovenia on Readmission of Persons.	16.05.97	07.11.97
Abkommen zwischen dem Schweizerischen Bundesrat und der Regierung der Republic Estland über die Rückübernahme von Personen mit unbefugtem Aufenthalt (Rückübernahmeabkommen)	29.01.98	01.03.98
Agreement between the Government of the Republic of Estonia and the Government of the Republic of Croatia on the Readmission of Persons	22.05.00	28.04.01
Agreement between the government of the Republic of Estonia and the Government of the Federal Republic of Germany on Readmission of Persons	16.12.98	01.03.99