



OBSERVATIONS

BY THE LEGAL INFORMATION CENTRE FOR HUMAN RIGHTS

**IN RELATION OF THE FIFTH PERIODIC REPORT OF ESTONIA
(CAT/C/EST/5)**

SUBMITTED TO THE COMMITTEE AGAINST TORTURE

April 2013

These observations are to highlight several issues related to the implementation by Estonia of the UN Convention against Torture. They are drafted by the Legal Information Centre for Human Rights (Estonian human rights NGO). More information on: www.lichr.ee

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Investigation of mass-scale police violence in 2007

1. In Conclusions and recommendations of the Committee against Torture (CAT) on Estonia (CAT/C/EST/CO/4, 19 February 2008), CAT stated as follows:

23. While welcoming the establishment of a complaints hotline operated by a nongovernmental organization, the Committee remains concerned at allegations of brutality and excessive use of force by law enforcement personnel, especially with regard to the disturbances that occurred in Tallinn in April 2007, well documented by a detailed compilation of complaints (art. 16).

The State party should promptly, thoroughly and impartially investigate all acts of brutality and excessive use of force by law enforcement personnel and bring the perpetrators to justice. [...]

2. The Bronze Soldier, originally known as Monument to the Liberators of Tallinn, was unveiled on 22 September 1947, on the third anniversary of the Soviet Red Army entering Tallinn. The monument was installed in Tõnismägi, central Tallinn, above a small burial site of Soviet soldiers' remains reburied in April 1945. It represented a figure of a soldier in a WWII-era Red Army military uniform against a stone background. The Soviet liberation theme was changed when Estonia re-established independence in 1991. Since that time it was devoted "For those fallen in World War II". In 2005-2007 there were several acts of vandalism committed by Estonian radicals near the monument.
3. The night before 26 April 2007 the monument's defenders who were keeping watch were expelled from the square by police forces. A large tent was erected over the monument. The official explanation for it was to exhume, according to the Military Graves Protection Act, the remains of the Soviet soldiers buried in Tõnismägi. Early on the morning of 27 April 2007 by decision of the Estonian Government, the monument was removed from the square and some days later installed at the city military cemetery. The transfer of the monument was accompanied by protests. The police broke up the rally, which took place in the evening of 26 April, using special "riot control" equipment and staged mass arrests of people in the streets. In the

evening of 27 April when protesters returned to Tõnismägi the police immediately started mass arrests near Tõnismägi hill and within a large area around it. The police used batons, rubber bullets and plastic handcuffs. People were put face down on the ground.

4. The detainees were taken to “filtration points”. According to the people who came to Estonian human rights organizations, the treatment of detainees in the facilities was bad: people were kept sitting for hours on concrete floors in an uncomfortable position with their hands tied behind, and the guards beat people, even without reason. It is clear that most of the detainees had not been involved in any offence – according to Põhja district prosecutor’s office there were some 700 “passers-by” (Delfi, 26 June 2007). Early in the morning they were released without any charges but also without apology. In total, according to Põhja police prefecture (covering Tallinn and the adjacent Harju County) the lists of the detainees kept in the “filtration points” include more than 1,160 names. According to the same source one person perished in the period of the disorders (Dmitry Ganin, citizen of the Russian Federation) and 156 were injured, 29 of them were policemen. During the April events the police registered 148 facilities that suffered from vandalism, of which two thirds occurred during the first night of disorder («Molodjezh Estonii», 16 May 2007).

5. According to the Prosecutor’s Office of Estonia, 65 criminal cases, related to the April events, were opened by 18 May 2007. The State Prosecutor’s Office investigated 3 of them, related to cyber attacks, organisation of mass disorders, coercive actions aimed at violent disruption of the independence and sovereignty of the Republic of Estonia, and the murder. Other investigations held by Põhja and Viru district prosecutor’s offices, mostly dealt with group violation of public order, contempt of the representatives of authorities, organisation of mass disorders, insult to the memory of the perished, administrative infractions during mass disorders. More than 300 people were qualified as suspects in the course of the investigation. A total of 50 suspects were arrested, including four citizens of the Russian Federation and one citizen of Lithuania («Molodjezh Estonii», 25 May 2007). However, no more than a dozen criminal cases were opened by June 2007 on

the basis of applications against the police actions and none of them resulted in court trials.

6. From 30 April 2007, the Legal Information Centre for Human Rights (LICHR) started collecting through a telephone “hot line”, reports from people, who considered themselves victims of police actions during the process of breaking up the meeting in Tõnismägi on 26 April 2007, and also in the process of putting down the disorders, triggered thereafter. Altogether, there were more than 50 appeals recorded, the majority of which were, with the help of the Centre, executed and delivered as official applications to the Chancellor of Justice (ombudsman) and/or Public Prosecutor’s Office. However, no criminal investigations were commenced on the basis of these appeals. Finally seven clients exhausted all domestic remedies and filed application with the European Court of Human Rights (ECtHR) with the assistance of Human Rights Advocacy Centre at Middlesex University (UK) and LICHR (the case *Korobov & others v Estonia*, 10195/08).

7. In the case *Korobov & others v Estonia* ECtHR found Estonia to have violated Article 3 of the European Convention on Human Rights (prohibition of ill-treatment). The case was brought by seven applicants, all residents of Estonia. Three of the applicants’ applications were declared inadmissible in 2010. Of the remaining four applicants, three were awarded 11,000 EUR each and one was awarded 14,000 EUR in non-pecuniary damages. The applicants alleged that they were unlawfully detained and subjected to ill-treatment, including beating with truncheons, at the hands of the police. They submitted that following the incidents, they applied to the Chancellor of Justice and the public prosecutor’s office, but that their complaints were dismissed without any investigation. The Court found the force used by law-enforcement officers was “excessive” and therefore violated Article 3 of the Convention in respect of one applicant. In respect of all four applicants whose applications were admissible, the Court found a further violation of Article 3 on account of the inadequacy of the investigation into these events, concluding that the authorities “made no attempt to obtain any additional evidence, be it by questioning the applications in person [...] or by interviewing the witnesses” (see also EHRAC, Press release of 28 March 2013).

- 8. Therefore there are good reasons to believe that Estonia failed to fulfil 2008 recommendation of the CAT and to organize prompt, thorough and impartial investigation of all acts of brutality and excessive use of force by law enforcement personnel and bring the perpetrators to justice.**

Use of additional security equipment in Estonian prisons

9. The following judgements demonstrate that misuse of physical force and additional security equipment by prison staff is regular in Estonian prisons:
- The Tartu District Court judgement of 2 March 2011 in criminal case no 1-11-3228
 - The Tartu County Court judgement of 30 September 2009 in criminal case no 1-09-15146
 - The Viru County Court judgement of 29 March 2012 in criminal case no 1-12-2723
 - The Harju County Court judgement of 6 September 2011 in criminal case no 1-10-7440
 - The Harju County Court judgement of 29 April 2011 in criminal case no 1-10-15829
10. Chairperson of the Supreme Court of Estonia Mr. Märt Rask speaking in front of the Riigikogu (parliament) on 7 June 2012 argued that regrettably the prisons and prison administrations do not justify their actions and do not secure prisoner's right to be heard. Justification is very important, because the fundamental rights of individuals are considerably restricted, and a person can feel physical pain. Use of additional security facilities (handcuffs, separate lockable chamber, restraint bed and chairs) cannot be always considered sufficiently justified with the reference in the file "aggressive, go on". Unfortunately, however, such abstract argumentation is quite common for cases that reached the Supreme Court, stated the Chairperson. He also referred to the recent judgment of the European Court of Human Rights on 29 May 2012 in *Julin v. Estonia*. In this case, tying the applicant to a restful bed was

interpreted by the Court as a violation of Article 3 of the European Convention of Human Rights (ECHR) (see minutes at www.riigikogu.ee).

11. Additionally, in case *Julin v. Estonia* (16563/08, 40841/08, 8192/10, 18656/10) the European Court of Human Rights found violation by Estonia of Article 6 (1) of the ECHR (access to a court in connection with the complaint concerning the strip search).
12. **In addition to complaints related to ill-founded use of force and additional security equipment, the Legal Information Centre for Human Rights (LICHR) has repeatedly received other complains related to poor conditions in punishment cells, malfunction of ventilation (even in new prisons) and the issue of smoking.**
13. Importantly, the conditions in punishment cells have repeatedly been qualified by inmates as “inhuman”. For instance, in the written complains sent to LICHR the inmates of Viru Prison alleged that it is very cold in a punishment cell, there is no hot water, there is no access to fresh air as the ventilation system fails and that toilet facilities have no doors.
14. Since May 2010, in accordance with the internal regulations of prisons, smoking time was limited to the residents’ time for a walk: one hour a day. The rest of the time prisoners are forbidden to smoke, as well as to keep cigarettes. Violating this rule will result in being punished by imprisonment in a punishment cell. In practice this rule has resulted in severe suffering of people with deep addiction to nicotine.

Language issue in prisons

15. According to the 2011 national census Estonian is the first language for 68% while Russian for 30% of all population (www.stat.ee). Estonian is the only official language of the country. According to official information people of minority origin are overrepresented in Estonian prison population (www.vangla.ee).
16. Article 12 of the Language Act states as follows:

(1) If an application, request or other document submitted to a state agency or local government authority is in a foreign language, the agency has the right to require the person who submits the document to submit the translation of the document into Estonian, except in the case provided for in Article 9 of this Act. The person who submits the request or other document shall be notified of the requirement for translation immediately.

[...]

(3) A state agency or local government authority shall respond in Estonian to the document in a foreign language, except in the case provided for in Article 9 of this Act. Should the person who receives the document express a wish to get the answer in a foreign language, the response may be translated into a foreign language at the expense of the person who receives the document. On the agreement between the person who receives the document and the state agency or local government authority the response to the document in a foreign language may be given in a foreign language understood by both parties.

(4) In oral communication with servants or employees of state agencies and local government authorities as well as in a foreign representation of Estonia and with a notary, bailiff or sworn translator or in their offices, a foreign language may be used by agreement of the parties. If no agreement is reached, communication shall take place through an interpreter and the costs shall be borne by the person who is not proficient in Estonian, unless otherwise provided by law. This subsection shall not apply in the case provided for in Article 9 of this Act.

17. According to Article 9 of the Language Act,

(1) In local governments where at least half of the permanent residents belong to a national minority, everyone has the right to approach state agencies operating in the territory of the corresponding local government and the corresponding local government authorities and receive from the agencies and the officials and employees thereof the responses in the language of the national minority beside responses in Estonian.

(2) A permanent resident of a local government for the purposes of this Act is a person who is an Estonian citizen, a citizen of the European Union who has a permanent right of residence and family members thereof, or an alien residing in Estonia on the basis of

a long-term residence permit whose permanent residence, the address details of which have been entered in the Estonian population register (hereinafter population register), is located in the corresponding rural municipality or city.

(3) The proportion of permanent residents who belong to a national minority within a local government is determined based on the data contained in the population register as of 1 January of the corresponding year.

18. None of Estonian prisons is situated in local governments with special minority language regime. **In practice that put additional limits on opportunities of inmates of minority origin (i.e. most of Estonian inmates) to file oral and written complaints and to take part in administrative procedures.** Regretfully, linguistic rules may be used by prison staff officials as a blanket justification to avoid scrutiny dealing with complaints of inmates of minority origin (while many if not most of officials speak fluent or good Russian – see below). Inmates are also fully dependent on good will of prison staff officials who may decide (or may *not* decide) to accept applications in Russian (see also annex 1).
19. In Estonia a new system of proficiency in Estonian was introduced in July 2008. It is based on the Council of Europe’s Common European Framework of Reference: Learning, Teaching, Assessment, with its initial division of language proficiency into three broad levels: Basic User: A1 and A2; Independent User: B1 and B2; Proficient User: C1 and C2. In 2012 the Legal Information Centre for Human Rights started to receive complaints that all inmates were made to carry name badges with letters “A”, “B” or “C” depending on the level of proficiency in the official language. All fluent speakers of Estonian as well as native speakers of Estonian received badges with letter “C” (see also annex 2).
20. According to the information provided by the Ministry of Justice, letter “C” is placed on the name badges of 41% inmates (including 39% native speakers of Estonian); 12% of inmates speak Estonian at level B1-B2 and 24% at level A1-A2; additionally 23% of inmates who do not speak Estonian have are also been labelled with “A” (DzD.ee, 25 June 2012). In other words the overwhelming majority of ethnic non-Estonians were labelled with “A” or “B”. They are now clearly distinctive from ethnic Estonians while only several percents of inmates of minority origin have received

name badges with letter "C". According to the same source 70% of prison staff officials who are native speakers of Estonian can speak at least some Russian; 50% - English. From other sources it is also known that a considerable percentage of prison staff officials are native speakers of Russian.

21. **Many inmates of Estonian prisons believe that the practice of language proficiency labelling is discriminatory, offensive and derogatory.** This practice is not neutral in terms of ethnic origin as it has been proven by statistics provided above.

Annex 1.

Translation from Estonian (excerpts)

[Viru Prison]

A* J*
Viru Prison

Your 03.07.2012
Our 10.07.2012 no. 6-13/26009-1

Reply to request for explanation

On 3 July 2012 you submitted to Viru Prison a request for explanation and you wanted to receive a copy of a legal act which was a basis for Viru Prison staff officials' refusal to accept statements and applications in Russian starting from 2 July 2012.

We are to clarify that the preamble of the Constitution of the Republic of Estonia (hereinafter CRE) stipulates an obligation of the State to ensure preservation of Estonian ethnic nation, language and culture and this obligation is realised in a norm that is emanated from the principle of a nation-state in Article 6 CRE: Estonian is the State language of Estonia. [...] According to Article 12 (1) of the Language Act, if an application or other document submitted to a state agency or local government authority is in a foreign language, the agency has the right to require the person who submits the document to submit the translation of the document into Estonian and the person who submits the request or other document shall be notified of the requirement for translation immediately. The same principle is stipulated in the Response to Memoranda and Requests for Explanations Act. Article 5 (6)5 of this Act provides that a response may not be given if the memorandum or request for explanation is not presented in Estonian and, pursuant to Article 12 of the Language Act, the addressee has no obligation to respond; according to subsection 11 upon declining to respond, [the addressee] shall immediately request that the person who submitted the memorandum or request for explanation provide a translation of the memorandum or request for explanation into Estonian. According to the principle stipulated in Article 21 (1) of the Administrative Procedure Act, if a participant in proceedings or his or her representative does not know the language of the proceedings, an

interpreter or translator shall be involved in the proceedings at the request of the participant in the proceedings. According to section 2 of the same Article a participant in proceedings who applies for the involvement of an interpreter or translator shall bear the costs of involvement of the interpreter or translator, unless otherwise provided by an Act or regulation or unless an administrative authority resolves otherwise. [...]

(signature)

Enar Pehk

Chief of Department of Minimum Security Prison and Working Inmates

Annex 2.

Translation from Estonian (excerpts)

[Ministry of Justice]

Board of the Riigikogu

Ap.kk@riigikogu.ee

Your 30.04.2012 no. 2-3/12-66

Our 14.05.2012 no. 10-4/4426

Reply to questions of the Member of Riigikogu

Dear Chair of the Riigikogu,

You have forwarded written questions which were submitted by the Member of the Riigikogu Yana Toom and which concerned prisoners.

[...]

1. What was the reason to label prisoners on the grounds of their language proficiency? How does this practice facilitate prison's everyday activities?

From 2011 prisoners' name badges include information about proficiency in the State language. The level of State language is added to the prisoner's name badge after it was controlled by a person who is working in a prison and who is responsible for State language related issues. It may be controlled by other means as well. The level of state language proficiency is marked with letters "A", "B" or "C" according to a level of State language proficiency of a prisoner. No other explanations are added. Ethnic origin or mother tongue of a prisoner is not indicated on name badges. Language proficiency is not sensitive personal data, which shall not be accessible to all prison public officials. This is also not an ability or information which shall not be communicated to other prisoners on the basis of legal acts.

State language proficiency is indicated on a prisoner's name badge regardless his or her ethnic origin, sex, mother tongue, origin, religious beliefs, etc. Upon indication of a language proficiency level prisoners are not treated differently due to their ethnic origin or mother tongue. State language proficiency is indicated on name badges in case of ethnic Estonians or Estonian citizens who are native Estonian-speakers as well as in case of prisoners who do not speak Estonian as a mother tongue. Therefore there is no discrimination of prisoners under the same circumstances which is banned by Article 12 of the Constitution.

Upon assessment of Estonian language proficiency of prisoners we make use of the provisions of the Language Act regarding proficiency in Estonian language, its assessment and control which is based on the Common European Framework of Reference for Languages compiled by the Council of Europe. Annex 1 of the Language Act also provides for description of each level of language proficiency. Therefore indication of a level of prisoner's proficiency in Estonian is not arbitrary but it is based on general rules regarding language levels. To avoid differentiation of some prisoners, the letter "A" is also added to name badges of those prisoners who speak no Estonian. The letter "C" is used for native-speakers of Estonian as well as for other prisoners who are proficient in this language.

We clarify that while Estonian is a State language and a language of administration, Estonian is mostly used by a prison official in his or her communication with a prisoner. Usually prisoners receive orders in Estonian and all public officials speak Estonian. Also the Chancellor of Justice expressed the view that prison officials cannot be always obliged to speak to prisoners the language of prisoners' choice if prisoners do speak the State language well enough. At the same time oral communication with prisoners exclusively in the State language would be impossible if a prisoner has no or limited understanding of the State language. Considering traditions of good administration and the necessity to ensure enforceability of orders or other clarifications, it is needed to speak languages other than the State language.

In a prison it will be related to security risks and it is dangerous from the prison's point of view if a prisoner do not obey public official's orders only due to lack of understanding. It is crucial in order to guarantee prison discipline and more generally prison security that a prisoner understands orders by a public official. A prisoner who does not obey orders may be enforced to obey by use of additional measures. This is definitely an unpleasant solution from a prisoner's point of view. Disobedience to orders is also punished in disciplinary procedure. Therefore it is important to ensure that a prisoner does understand a public official's order and an order shall be enforceable.

2. Has prisons' initiative regarding name badges been previously approved by the Ministry of Justice?

Yes, the work regime described above has been previously approved by the Ministry of Justice.

3. [Is this practice humiliating?]

[...]

As regards the question about prisoners' humiliation, we are sure that it cannot be regarded as humiliation if prisoners' proficiency in the State language is indicated on their name badges only with the letter "A", "B" or "C".

Human dignity is a term with fixed meaning and its protection does not cover all possible feelings of annoyance that can be experienced by a prisoner...

[...]

4. Are these activities in line with Estonian legislation?

As a response to the forth question we reply that indication of the State language on name badges does not violate legal acts.

[...]

Respectfully,

(electronic signature)

Kristen Michal
Minister

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