

**Answers of the Government of Estonia to the recommendations of the Committee
against Torture from 22 November 2007**

Recommendation nr 10

The State party should provide the Committee with detailed information on such "administrative detention" and insure that the fundamental legal safeguards also apply in such cases.

Answer: The concept of „administrative detention” as referred to in the report, is anachronistic. Prior to the adoption of the Penal Code (adopted - 06.06.01 and entered into force - 01.09.02), the law distinguished between crimes (as provided by the Criminal Code) and administrative offences (as provided by the Code of Administrative Offences). As from the Penal Code's entry into force, the law distinguishes crimes and misdemeanours. Detentional punishment for administrative offences has been called „administrative detention”. Similar punishment for a misdemeanour is called „detention”. The change of relevant terms has been provided by the § 30 of the Penal Code Implementation Act (2002):

- „(1) The terms used in Acts passed prior to entry into force of the Penal Code shall be interpreted as the corresponding terms within the meaning of the Penal Code as follows:
- 1) “haldusõigusrikkumine” [administrative offence] shall mean “väärtegu” [misdemeanour] in the appropriate case form;
 - 2) “haldusarest” [administrative detention] shall mean “arest” [detention] in the appropriate case form[...].”

However, the Government would like to briefly explain that the administrative detention was imposed by the court of law and not by the administrative officials. All the fundamental legal safeguards also applied to the administrative detention.

Recommendation nr 16

The State party should promptly, thoroughly and impartially investigate all deaths in detention and all violence amongst prisoners, including any cases involving possible negligence on the part of law enforcement personnel, and bring the responsible to justice, in order to fulfil its obligations under article 12 of the Convention.

Answer: All criminal acts occurred in prisons are subject to thorough investigation. Also the criminal case from 2006 has been brought to the court and currently testimonials from the witnesses are being heard.

In order to guarantee full and effective investigation of cases of death in the prison, the Ministry of Justice and the Ministry of Internal Affairs work closely with Chancellor of Justice. The latter is informed of any incident that has resulted in loss of life so that Chancellor of Justice can then analyze whether it is necessary to start a full investigation or whether there is a need to acquire more evidence.

Chancellor of Justice has for example carried out investigations concerning incidents that happened in Narva detention house on 08.02.2006 and 02.02.07; incident that happened 17.10.07 in Võru detention house and also in cases that took place in 2006 in Murru and Tartu prisons. In none of these cases has the Chancellor of Justice made a conclusion that the investigation by the police authorities had been insufficient or partial.

Furthermore, since 01.02.2007 the Health Care Agency acquired a competence to overview the medical service in detention houses and prisons. The Chancellor of Justice has developed a practice that the information concerning incidents is sent also to the Health Care Agency. There is a medical expert committee that evaluates the quality of the medical treatment provided to the prisoners. The Health Care Agency has determined on one case that there were violations in transporting a prisoner who was sick.

Recommendation Nr. 20

The State party should reinforce its legislation and adopt other effective measures, in order to adequately prevent, combat and punish human trafficking, especially that of women and children, and should promptly investigate, prosecute and punish all perpetrators of such crimes.

The State party should provide the Committee with statistical data on the incidence of trafficking as well as the objectives and results of the implemented measures, including investigations, prosecutions and convictions.

The State party should also adopt specific training and sensitization programmes for law enforcement personnel on human trafficking.

Answer: In 2005 Ministerial declaration it was agreed that the fight against crime related to the trafficking is a common priority of the Prosecutor's Office and the police forces. In 2006 the Government approved the Development Plan for Combating Trafficking in Persons. There are specialised prosecutors in all prosecutors' offices who specifically attend to criminal proceedings relating to organised crime. There is regular exchange of information between the Ministers and national network against trafficking in persons. The Development plan for Combating trafficking in Human Beings has been in place for the last two years and it is planned to last until the end of 2009. Implementation of the Development Plan is coordinated by the Ministry of Justice. The main objectives of the Development Plan are continuous mapping of the problems related to human trafficking, prevention of human trafficking by informing the public of the nature of human trafficking and decrease of demand, development of the skills of the specialists engaging in the problem of human trafficking and promoting cooperation between them, effective

border control and control of the employment mediation system, effective reaction to criminal offences related to human trafficking, and providing assistance and rehabilitation to victims of human trafficking.

In 2007 the legislation on offence of enslaving (Section 133 Penal Code, cf. section 134) was amended in accordance with the EU Framework Decision of 19 July 2002. The constituent elements of enslavement were supplemented. Now taking advantage of helpless situation of the victim or a dependent relationship with the accused is also deemed to be enslavement. Before the amendment the definition included only violence or deceit as possible ways of enslavement. The helplessness (capacity to resist or understand) of a person is assessed based primarily on the person's age and mental state. Also a helpless situation may be connected with the dependence of the victim on the offender (e.g. a parent or a legal representative and a child; a doctor and a patient). Here taking advantage of helpless situation may mean an offender using his or her power, threatening to use his or her power or creating intentionally such fear in the dependant without violence and in this case it really should be a situation where a person has no actual alternative to obeying. By amendments in March 2007, also the possibility of bringing charges against legal persons for enslavement is prescribed. Corporate liability for the offence has been introduced. In 2007 special attention was given to labour trafficking, in 2008 to trafficking in cyberspace.

However recent analysis made by the Ministry of Justice has showed that having several different trafficking related articles in the Penal Code might not be as effective as to have one general trafficking article. Recently discussions have begun on whether it is necessary to introduce a new article „trafficking in human beings” into the Penal Code or is it possible to continue with already existing articles by changing their content.

The law provides protection, as well as legal and medical compensation rights, to victims of all crimes, including trafficking. Where necessary, there is provision of support to trafficking victims returning home (by providing transport, accommodation, etc.). In 2007, one assisted return from the UK took place. Since February 2007 Alien's Act provides for a 30-60 days reflection period and for a temporary residence permit from 6 months up to year for a victim of trafficking. Temporary residence permits requires cooperation by the victim of trafficking. With such a permit, the victim of trafficking is allowed to work in Estonia. There is a law for protection of witnesses.

Each year 10 public lectures on the topic shall be held, totalling in 40 lectures during the entire period of the Development Plan. A media campaign is organised in order to decrease the demand for human trafficking. An effective measure is also the hotline for providing information on human trafficking. Estonia starts financing the project "Anti-trafficking hotline for women" which was formerly financed by foreign countries. For ensuring better consular protection, persons travelling abroad are provided with an opportunity to leave their contact details with the Ministry of Foreign Affairs. The Labour Market Board provides information on labour law to job seekers. Specialists engaged in the prevention of and fight against human trafficking and assisting trafficking victims receive training organised by the Ministry of Social Affairs.

Table: Criminal Offences registered by the police in 2006, 2007, 2008 (first 9 months).

Type of Criminal Offence	Penal Code	2006	2007	2008*	Total
Enslaving	§ 133	1	2	2	5
Abduction	§ 134	0	0	0	0
Unlawful deprivation of liberty	§ 136	44	55	43	142
Illegal conduct of human research	§ 138	0	0	0	0
Illegal removal of organs or tissue	§ 139	0	0	0	0
Inducing persons to donate organs or tissue	§ 140	0	0	0	0
Compelling person to engage in sexual intercourse	§ 143	7	5	4	16
Compelling person to satisfy sexual desire	§ 143 ¹	-	5	13	18
Child stealing	§ 172	0	6	3	9
Sale or purchase of children	§ 173	0	0	0	0
Disposing minors to engage in prostitution	§ 175	0	1	5	6
Aiding prostitution involving minors	§ 176	2	4	4	10
Using minors in manufacture of pornographic works	§ 177	10	4	4	18
Manufacture of works involving child pornography or making child pornography available	§ 178	29	22	38	89
Illegal transportation of aliens across state border or temporary border line of Republic of Estonia	§ 259	5	7	1	13
Mediation of prostitution	§ 268	38	-	-	38
Aiding prostitution	§ 268 ¹	-	24	20	44
Total		136	135	137	408

*2008 first 9 months (1 January – 30 September 2008)

The information is provided on the basis of information from the register of criminal procedure.

Table: Convicted offenders 2006, 2007 and 2008.

Type of criminal offence	Convicted offenders**			
	2006	2007	2008***	Total
Enslaving	0	3	0	3
Unlawful deprivation of liberty	33	0	43	76
Illegal conduct of human research	7	0	0	7
Compelling person to engage in sexual intercourse	2	4	6	12
Child stealing	2	3	4	9
Disposing minors to engage in prostitution	0	2	0	2
Aiding prostitution involving minors	1	13	0	14
Using minors in manufacture of pornographic works	4	1	2	7
Manufacture of works involving child pornography or making child	10	4	4	18

pornography available				
Illegal transportation of aliens across state border or temporary border line of Republic of Estonia	4	2	0	6
Provision of opportunity to engage in unlawful activities, or pimping *	21	41	14	76
Aiding prostitution *	-	4	3	7
Total	84	77	76	236

The information is provided on the basis of information from the register of court decisions.

* Since 16 July 2006, mediation of prostitution is reflected not in § 268 but § 268'. § 143' (compelling a person to satisfy sexual desire) was also added.

** The Table contains numbers of criminal cases and convicted persons in connection with sections on human trafficking in the Penal Code. Thus, the same criminal case and person may be reflected several times under different sections of the Penal Code in the Table.

*** First half of 2008 (1 January – 31 July 2008)

On 2008 following activities concerning young people have taken place: deepening of the international cooperation between specialists working with trafficked children; proposals to amend school curriculums on trafficking issues have been made; working group on drafting criteria on identification of victims has started its work; hotline for children has been made nation wide.

Recommendation Nr 22

The State party should adopt all adequate legal and practical measures to simplify and facilitate the naturalization and integration of stateless persons and non-citizens.

The State party should also adopt the necessary measures to guarantee that stateless persons and non-citizens are informed of their rights in a language they understand and have access to the legal fundamental safeguards from the moment they are deprived of their liberty without any discrimination.

The Committee reiterates its previous recommendation of paragraph 6 (h) and (i) (CAT/C/CR/29/5) that the State party should also address the causes and consequences of the disproportionate presence of stateless persons in the prison population and adopt the necessary measures to prevent this phenomenon.

The State party should further consider ratifying the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Answer: Estonia has adopted a new State Integration Program for the years 2008 – 2013, which was drafted through broad debate between state, civil society, members of national minorities and academics. It is now being implemented.

Most importantly Estonia has focused on children with undetermined citizenship. Several measures have been taken to further facilitate the integration and naturalization of children with undetermined citizenship. We have taken an individual approach to children and their parents with undetermined citizenship. New approach focuses on schools, curricula and providing specific information to parents. It has the purpose of more effective implementation of current legislation.

Since October 2008 the officials of the Citizenship and Migration Board have been introducing the basis of acquiring of Estonian citizenship in different Russian - language schools. There is also an initiative within the government to change the curriculum in the way that a young person would have fulfilled all the necessary substantial criteria to apply for citizenship after he/she graduates. This means that he/she is able to speak Estonian and has passed the constitution and citizenship exam and therefore he/she only needs to submit the application.

Individual approach taken by the officials of the Citizenship and Migration Board also involves calling to parents with undetermined citizenship who have a child. When parents register their child's birth the official informs them about the possibility of acquiring Estonian citizenship. The official also asks the permission of the parents to provide them more information over telephone. This campaign has received a lot of good feedback and the percentage of applications concerning children less than 15 years of age has risen in relation to overall application rate.

As to the second sub-recommendation of the Committee, Estonian Government would like to provide the following. In 2006 the Chancellor of Justice pointed out to the Ministry of Justice that they have to take account of the language proficiency of the applicant when answering to a non-Estonian application from detention house. After the letter of the Chancellor of Justice the Ministry of Justice has changed its regulations and practices in answering to applications that are not written in Estonian.

As regards the disproportionate presence of persons with undetermined citizenship in the prison population then according to the Ministry of Justice the proportions of persons with undetermined citizenship within the accused and those who have found guilty within last two years are much more similar to the proportions in the population as whole than are these proportions in prisons.

As to the possible ratification of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, Estonia has analyzed the possibility of ratification of the said conventions but finds it unnecessary at this time as Estonian legislation is compatible with the conventions and to a certain extent gives even a wider protection to the stateless persons than the conventions require. Estonia is focusing on more effective implementation of its legislation on nationality and state integration program.