CPT/Inf (2011) 16

Response

of the Estonian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Estonia

from 9 to 18 May 2007

The Estonian Government has requested the publication of this response. The report of the CPT on its May 2007 visit to Estonia is set out in document CPT/Inf (2011) 15.

Strasbourg, 19 April 2011

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Response of the Estonian authorities to the recommendations made in paragraphs 81 and 111 of the CPT's report on the visit to Estonia in May 2007

Dear Mr Palma,

We are most grateful for the in-depth final report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT), which is based on the third periodic visit to Estonia in May 2007. Hereby the Ministry of Justice provides a response to your recommendations nr 81 and 111 of the final report and an account of the actions taken to implement them.

Recommendation nr 81

- CPT recommends that an immediate end be put to the practice of forcible urine tests in all prisons in Estonia

First, the CPT report states that the practice of forcible taking of urine tests was carried out in accordance with the instructions of the central prison administration. This, however, is not completely correct. The Ministry of Justice Prison Department gave instructions to the prison to use this measure, which is foreseen in the legal acts. Namely, such practice has a basis in the Code of Criminal Procedure *(hereinafter CodeCP)* and it is carried out **strictly according to the relevant norms** and principles set forth in law. In addition, **the aim** of the measure is to fight drug abuse in a prison and to support the effective investigation of crimes. The CodeCP does not foresee that a person who refuses to give a test could be deemed to be guilty of drug abuse.

As the statistics show that in 2007, urine test were forcibly taken twice in Tallinn Prison and once in Murru Prison. In 2006, urine tests were forcibly taken once in Ämari Prison and once in Murru Prison. In Tartu, Viljandi and Harku Prison there have been no refusals to give urine samples during the criminal procedure; hence, there has been no need to take them by force.

The statistics of 2006- 2007 from the Criminal Registry on drug-related crimes in prisons is the following:

2006	**Nr. of cases**
Proceedings commenced	**145**
currently in procedure	64
Terminated	35
Currently in courts	46

2007	**Nr. of cases**
Proceedings commenced	**269**
currently in procedure	196
Terminated	56
Currently in courts	17

As it is seen, the proportion of forcible taking of urine samples is extremely rare. In 2007, prisoners refused to give urine samples only three times in the total of 269 procedures.

I - Legal basis for criminal law regulating the taking of urine samples

Under § 331 of the Penal Law, a prisoner or person in detention or custody who prepares, acquires or possesses narcotic drugs or psychotropic substances or **consumes** such drugs or substances without a prescription shall be punished by **up to 3 years' imprisonment**. However, every crime must be proven before a person can be found guilty. The Criminal Procedure Code foresees the taking of urine sample as a possibility to prove the consumption of drugs, and provides a basis in a case when a prisoner refuses to give a urine sample voluntarily. Below, we shall explain the relevant norms in the Code CP.[1]

CodeCP § 6 establishes that investigative bodies and Prosecutors' Offices **are required to conduct criminal proceedings** upon the **appearance of facts** referring to a criminal offence unless the circumstances provided for in § 199 of CodeCP which preclude criminal procedure or the grounds to terminate criminal proceedings for reasons of expediency pursuant to subsection 201 (2), § 202, 203, 203[1], 204 or 205 of CodeCP exist. Hence, if the prison officials have reason to conclude from the facts that a prisoner has used drugs, they are required by law to conduct criminal proceedings.

Under CodeCP subsection 31 (2), prisons and the Prisons Department of the Ministry of Justice have the right to perform urgent procedural acts. Subsection (3) of the same section gives the definition of urgent procedural acts, which are, accordingly, detention of a suspect, **inspection,** search, interrogation of a suspect and hearing of a witness or victim. Subsection (4) specifies that bodies carrying out urgent procedural acts are required to submit the materials of a criminal matter immediately to a competent body specified in subsection 31 (1) in accordance with investigative jurisdiction.

According to CodeCP clause 88 (1) 1), inspection means an examination aiming to identify whether there are evidentiary **traces of a criminal offence on the body**, clothes or footwear of the person and whether this gives **reason to declare him or her a suspect**. The urine test that is taken through inspection and is an urgent procedural task needs to be done by the prisons.

According to subsection 88 (2), if the objective of a physical examination is to detect the evidentiary traces of a criminal offence on the body of the person, a forensic pathologist, **a health care professional** or another specialist shall participate in the examination. Subsection (3) states that **samples and assessment material** may be taken from a person **upon physical examination**. Samples and assessment material must be taken in accordance with the provisions of § 100 of CodeCP.

In addition, there are procedural guarantees set in subsection 88 (4), which means that there needs to be **a report** on physical examination, which includes a description of the evidentiary traces of a criminal offence discovered on the body, clothes or footwear of the person; a description of the specific features or distinctive characteristics of the body of the person; the names of the objects which have been discovered in the course of the procedural act and can be used as physical evidence.

[1] Code of Criminal Procedure. – RT 2001, 61, 364… 2007, 23, 119. Full text in English available: http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60027K5&keel=en&pg=1&ptyyp=A&tyyp=X&query=11

CodeCP § 100 regulates the taking of comparative material for expert assessment. According to CodeCP subsection 100 (1), comparative material is taken in order to collect comparative trace evidence and **samples necessary for an expert assessment**. Subsection (2) of the same section lists the cases when an order or ruling on the taking of comparative material is necessary, as folllows: **1) a suspect or accused refuses to allow comparative material to be taken but the objective of the procedural act can be achieved by force**; **2) the taking of comparative material infringes the privacy of the body of the person**; 3) a legal person is required to submit documents as comparative material.

According to subsection 100 (3), an order or ruling on the taking of comparative material shall set out the following:1) the person from whom the comparative material is taken; 2) the type of the comparative material; 3) the reason for the performance of the procedural act. Subsection (4) stipulates that if the taking of comparative material infringes the privacy of the body of a person, a forensic pathologist, **health care professional** or any other specialist shall participate in the procedural act.

However, in § 64, the CodeCP provides the general conditions for the collection of evidence. Subsection (1) stipulates that **evidence shall be collected in a manner which is not prejudicial to the honor and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person's memory capacity or degrading his or her human dignity.**

Subsection (2) stipulates that if it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the **same sex as the person**. Subsection (3) stipulates that if technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be **notified thereof in advance and the objective of using the technical equipment shall be explained to them.**

However, it must be pointed out that according to subsection 45 (1), a counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings. This means that a prisoner **has a right to have his defense counsel participating** when urine sample is taken from the prisoner forcibly**.**

In the annual report from 2004, the Legal Chancellor of Estonia had to analyze the issue of taking urine samples by force as a part of criminal procedure. The Legal Chancellor found that in several complaints, the prisoners explained that they had been required to provide urine or blood samples to establish narcotic or alcohol intoxication, and in the case of refusal, a disciplinary punishment had been imposed on them. The case that was described shows the clear opinion of the Legal Chancellor on this issue: according to § 331 of the Penal Code, the use of a narcotic substance by a prisoner without a doctor's prescription is an offence.

Therefore, in case of suspicion that a prisoner is in a state of narcotic intoxication, proceedings must be initiated on the **basis of the rules of criminal procedure, which allow compulsory taking of samples and ordering an expert assessment to ascertain the use of a narcotic substance**. The same applies in the cases described in § 330 of the Penal Code, when a prisoner is suspected of having consumed alcohol.[2] Therefore, if a prisoner refuses to give urine sample, he or she will not be punished under disciplinary procedure, but instead, the test will be taken under the relevant norms of CodeCP.

II - Relevant principles of the European Prison law with regard to taking urine samples

Furthermore, the Grand Chamber of the European Court of Human Rights (hereinafter ECrHR) has set different principles as to how and under what conditions the state can interfere with the individual's rights, when there is a question of proving a criminal case. In the case *Jalloh v Germany* ECrHR stated that even where it is not motivated by reasons of medical necessity, *Articles 3 and 8 of the Convention* ***do not as such prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence****. Thus, the Convention institutions have found on several occasions that the taking of blood or saliva samples against a suspect's will in order to investigate an offence did not breach these Articles in the circumstances of the cases examined by them.*

However, any interference with a person's physical integrity carried out with the aim of obtaining evidence must be the subject of ***rigorous scrutiny****, with the following factors being of particular importance: the extent to which forcible medical intervention was necessary to obtain the evidence, the health risks for the suspect, the manner in which the procedure was carried out and the physical pain and mental suffering it caused, the degree of medical supervision available and the effects on the suspect's. In the light of all the circumstances of the individual case, the intervention must not attain the minimum level of severity that would bring it within the scope of Article 3.*[3]

III - Conclusion

There is social need to fight against drug-related crimes in prisons, because every crime in a prison context can cause tensions among prisoners and increase the risk of inter-prisoner violence. One of the major preventative measures to fight drug usage in a prison is to punish every act of drug usage. This means that when there are enough grounds to believe that a prisoner has used drugs, then criminal procedures are initiated in order to prove the crime. Drug usage symptoms can be similar to the effects of some medicaments, or even to high doses of caffeine. This is the reason why it is necessary to identify the type of the substance the person has used. Urine sample allows specifying the specific substance.

The collection of evidence is done strictly according to the norms of the CodeCP. As it was explained before, under the CodeCP it is allowed to take urine samples even when the person does not consent to it. The procedure of taking urine samples is commonly known in medicine - it is done by using catheter. However, like any procedure or intervention in medicine, it must be carried out correctly and with necessary care, and this is the reason for the requirement that a doctor must be present in the process. According to medical specialists, there are no severe health risks that can result from this commonly used procedure. In addition, taking urine sample forcibly is a measure of the last resort as a person can consent to the taking of the sample.

[2] Annual report of the Chancellor of Justice 2004. Available online: http://www.oiguskantsler.ee/.files/36.pdf see page 89 in the report

[3] *Jalloh V Germany*, Grand Chamber judgement 11 July 2006, §§ 70- 76

Since urine samples are taken under close medical and legal supervision, it can not be concluded that the measure as such is be inhuman or degrading. However, if there would be any such complaints, then they would be handled and analyzed based on the specific circumstances of the case. Also, the Legal Chancellor's position was that this measure is provided in the CodeCP and the ECrHR has ruled that the measure, if conducted properly, is not against the European Convention of Human Rights. In addition, all the requirements set in the criminal law (including the right to have a lawyer present) are followed. **The Ministry of Justice finds that the fight against crimes in prisons outweighs the potential uncomfortable physical or moral state of a person that can result from the forceful taking of urine samples in criminal procedure which is carried out in accordance with legal norms.**

Recommendation nr 111

- *CPT recommends that the allocation of tuberculosis patients in Viljandi Hospital would be examined as a matter of priority to avoid infecting patients by patients.*

According to the information obtained from the Viljandi Hospital Foundation, the department for tuberculosis patients is situated in the renovated building (activities started in May 2006). Three separate areas for patients with multiresistant tuberculosis are located in the treatment department. All areas are separated by air-locks. The patients with multiresistant tuberculosis are treated in the third area. The third area has single wards with air-locks.

Patients who have multiresistant tuberculosis are always separated from other patients until the contagious phase passes. The second area poses no contamination threat but still needs quite intensive improvement. The majority of the wards in the second area are single. The first area is for the patients who are in the final treatment phase (the recovery phase). In this area it is not important whether the disease appears as multiresistant form or not. Patients with untreatable multiresistant tuberculosis are placed in the area where patients don’t have physical contact with the other patients at all.

Yours sincerely,

Rein Lang
Minister

Copy:
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Mr Sulev Kannike, Ambassador Extraordinary and Plenipotentiary,
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Dear Sir,

We are most grateful for the observations and comments made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) during their third periodic visit to Estonia in May 2007. Hereby we will provide the response to the final report and account of the measures taken by the Ministry of Internal Affairs, the Ministry of Justice and the Ministry of Social Affairs.

I Police establishments

Ill-treatment

Recommendations

- *all police officers in particular members of special intervention groups to be reminded that all forms of ill-treatment of persons deprived of their liberty (including verbal abuse) are not acceptable in whatever circumstances and will be punished accordingly. Police officers should also be reminded that the force used when performing their duties should be no more than is strictly necessary and that once persons have been brought under control, there can be no justification for striking them (paragraph l4);*
- *police officers to be trained in preventing and minimizing violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, they need to be able to apply professional techniques which minimize any risk of harm to the persons whom they are seeking to apprehend (paragraph l4).*

In-service training provided for police officers directs attention to the importance of professional behaviour and the avoidance of being controlled by emotions. In discharging their duties, police officers use force only in extreme case of need and strictly in harmony with legal acts as well as in conformity with the objective to be achieved, in order to keep the risk of injury to arrestees as small as possible.

Recommendations

- *only exceptional circumstances can justify measures to conceal the identity of law enforcement officials carrying out their duties. Where such measures are applied, appropriate safeguards must be in place in order to ensure that the officials concerned are accountable for their actions (e-g. by means of a clearly visible number on the uniform) (paragraph 15).*

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Measures have been adopted to ensure that officers taking part in such events can be identified as officers. The amendment of Regulation No. 160 of the Government of the Republic of 13 July 2006, Description of Police Uniforms), allows the nametag on a police officer's uniform to be replaced in special situations with an ID tag. Use of the ID tag ensures that police officers can be identified as officers and helps better conceal their identity from persons who violate the legal order.

Requests for information

- *updated information on the outcome of the investigation to the alleged cases of police ill-treatment in connection with the April 2007 events and account of any criminal/disciplinary sanctions imposed (paragraph 16).*

Eight criminal cases were launched against officers in connection with the April events. Of these, six were under § 291 of the Penal Code (abuse of authority), one under Penal Code § 201 (2) 3) (embezzlement by an official) and one under Penal Code § 121 (physical abuse). At present, the investigations into all eight cases have terminated. Six cases were terminated due to lack of evidence and two cases were terminated due to lack of necessary and objective elements of a criminal offence. No disciplinary investigations were launched in connection with the April civil unrest.

Fundamental safeguards against ill-treatment

Recommendations

- *appropriate action to be taken to ensure that the right of notification of custody is rendered fully effective in practice with respect to all categories of persons deprived of their liberty by the police, as from the very outset of their deprivation of liberty (paragraph 19).*

Article 21 of the Constitution of the Republic of Estonia stipulates that everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. A person suspected of a criminal offence shall also be promptly given the opportunity to choose and confer with counsel. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be restricted only in the cases and pursuant to procedure provided by law to combat a criminal offence or in the interests of ascertaining the truth in a criminal procedure.

- *the relevant legislation to be amended so that the circumstances in which the right of a detained person to notify those closest to him may be delayed are spelt out in a more precise manner (paragarph 21).*

Subsection 217 (10) of the Code of Criminal Procedure provides the right of a person detained as a suspect to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. In an exceptional case, if the notification may prejudice a criminal proceeding, the opportunity to notify may be refused with the permission of the Prosecutor's Office.

- *steps to be taken to ensure that whenever a minor is detained on suspicion of having committed a criminal offence, the police are obliged to immediately notify the parent, guardian or curator and the social-services department of the detention; the Code of Criminal Procedure should be amended accordingly (paragraph 22).*

Subsection 45 (2) of the Code of Criminal Procedure stipulates that the participation of a counsel throughout a criminal proceeding is mandatory if, at the time of commission of the criminal offence, the person being defended is a minor. Subsection 46 (4) of the Code of Misdemeanor Procedure stipulates that if the person detained is a minor, a parent or the guardian or curator of the minor and the social services department shall be immediately notified of the detention.

- *the Estonian authorities to recall to all police officers the legal obligation to grant access to a lawyer from very outset of a person's deprivation of liberty (paragraph 23);*
- *steps to be taken to render obligatory the presence of a lawyer or a trusted person during any questioning of a minor by the police (paragraph 26).*

In Estonia, a person has the right to defend oneself, be defended by a counsel of their choice, and receive free of charge legal aid if required by the interests of justice and if the person does not have sufficient funds to pay for legal aid. Subsection 45 (2) of the Code of Criminal Procedure stipulates the cases in which participation of counsel is obligatory. The Code of Criminal Procedure stipulates additional conditions with regard to treatment of minors. Participation of counsel is obligatory in all investigative activities in which a minor suspect or defendant takes part. The presence of specialists in the field, and, if necessary, of the social or child protection officials from local governments, is ensured at investigative activities.

Estonian legislation on criminal and misdemeanor procedure does not contain the concept of trustee. If the trustee as intended by the report is not the minor's parent or guardian who is obliged to protect the interests of the child pursuant to Subsection §50 (2), §92 (2) and §97 (1) of the Family Act, then either the qualification requirements established for the counsel or the qualification requirements established for a child protection employee, social workers or psychologist, as a specialist, are to be taken as the basis in the trustee's regard.

The procedural acts carried out with regard to a minor in misdemeanor procedure do not stipulate the obligatory presence of a counsel. Nor does any legal act stipulate that the parent or guardian of a minor, as his or her legal representative, and/or, as a specialist, a child protection worker, social worker or psychologist, should be present at the signing of reports of procedural acts carried out with regard to a minor capable of guilt. However, the Code of Misdemeanor Procedure permits the assistance of counsel to be used starting from detention or the carrying out of some other procedural act. The participation of a counsel in judicial proceedings is obligatory if the person participating in the proceedings is from 14 to 18 years of age or is not capable of defending him or herself due to a mental disorder. In addition to the provisions of the legal act, Estonian authorities have developed internal guidelines for conducting proceedings related to adults and minors; these are adhered to by the institutions conducting the proceedings and explained in the framework of in-service training and study days.

- *specific legal provisions to be adopted governing the right of access to a doctor for persons detained by the police (including to one of their own choice), from the very outset of their deprivation of liberty (it being understood that an examination by a docotor of the detained person's own choice may be carried out at his/her own expence) (paragraph 27).*

Everyone has the right to health protection. The types, extent and conditions and procedure for receiving assistance are established by legislation. Persons held in custody by the police have the right to medical assistance, and this is duly provided to them. In the case of conducting medical investigations or administering treatment to patients which it is not possible to do in houses of detention, the imprisoned person is sent to a provider of the relevant specialist medical care at a health care institution or to the Prison hospital where it is possible to provide high calibre medical care. Here it should be stressed that the houses of detention are above all intended for short-term confinement; at such facilities, primary health care examinations and first aid are provided.

- *immediate steps to be taken to ensure that all persons admitted to a police arrest house are given a through medical screening without delay and that, throughout their stay, they are allowed ready access to health-care staff (including, if they so request, a doctor of their own choice) (paragraph 28);*
- *steps to be taken to ensure that the confidentiality of medical data is respected in all police arrest houses (paragraph 28).*

The house of detention is intended for short-term confinement and it is not possible, nor is it reasonable on considerations of expedience, to implement health care service in houses of detention in a capacity comparable to that of general hospitals or the Prison hospital. At houses of detention the health care employee carries out medical examinations of imprisoned persons and interviews the imprisoned person regarding his or her state of health. The medical examination and conversation regarding the state of health of the imprisoned person shall be carried out in a separate room in which no other persons are present at the same time.

Prisoners who suffer from contagious disease, mental illness or other disorders, which may pose a danger to him or her, the health of other prisoners or officials at the house of detention, shall not be accepted at the house of detention. The health care worker shall refer a prisoner requiring medical care to hospital or Prison hospital. If necessary, emergency medical care is summoned for the prisoner. Health files are kept in a manner that ensures the integrity, availability and confidentiality of personal data. A working group was formed by the Ministry of the Interior in April 2008 whose function is to find the optimal solution and to make proposals for better organization of health care in houses of detention.

- *without further dealy, all persons detained by the police – for whatever reason – to be fully informed of their fundamental rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obligied to remain with the police). This should be ensured by provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of written from setting out the detained person's rights in a straightforward manner. This from should be available in an appropriate range of languages (parapgraph 29).*

Article 21 of the Constitution of the Republic of Estonia stipulates that everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. The decision of the court shall be promptly communicated to the person in custody in a language and manner which he or she understands.

In harmony with the Constitution, the rights of individuals are also ensured in lower legal acts Section 8 of the Code of Criminal Procedure obliges investigative bodies, Prosecutors' Offices and courts, in the performance of a procedural act in the cases provided by law, explain the objective of the act and the rights and obligations of the participants in the proceeding to the participants; to provide the suspect and the accused with a real opportunity to defend themselves; ensure the assistance of a counsel to the suspect and the accused in the cases provided for in subsection 45 (2) of the Code or if such assistance is requested by the suspect or the accused; in cases of urgency, provide an arrested suspect or accused with other legal assistance at his or her request; deposit the unsupervised property of an arrested suspect or accused with the person or local government specified by him or her; and ensure that the minor children of an arrested person be supervised and the persons close to him or her who need assistance be cared for.

Section 9 of the same Code governs safeguarding of personal liberty and respect for human dignity – a suspect may be detained for up to forty-eight hours without an arrest warrant. Prisoners accepted into a house of detention shall be briefed against signature regarding the internal procedural rules of the house of detention in a language which they understand and shall be given written information regarding rights and obligations.

Comments

- *the entries relating to the notification of one's custody, in the „Protocol of Detention", should be filled in systematically (paragraph 20);*
- *the entries relating to access to a lawyer, in the „Protocol of Detention", should be filled in systematically (paragraph 24).*

Nationwide trainings are organized for police officers on a regular basis, one of the topics dealt with at the training includes collection, storage and proper formalization of evidence, including the proper filling out of criminal procedural forms. Formalization of evidence by direct supervisors and prosecutors in charge of criminal investigations is also checked.

- *from the standpoint of the prevention of ill-treatment, but also in view of the extremely poor conditions prevailing in certain police arrest houses, it is far preferable for futher questioning of persons committed to a remand prisons to be underatken by police officers in prisons rather than on police premises. The return of prisoners to police premises should only be sought and authorised very exceptionally, for specific reasons and for the shortest possible time (paragraph 30).*

The Ministry of the Interior is aware of the problem and has taken steps to improve the poor conditions in the house of detention as well as for further confinement of arrested persons in prisons. Upon the launch of the Viru Prison in 2008 the number of persons confined in houses of detention will begin to decrease. As a result of the amendment to the Prison Act that entered in force on 1 May 2008, it will be possible to house persons subject to arrest in other houses of detention if space is lacking. In addition, the Estonian Attorney-General was alerted in February 2008 to the strained situation existing in houses of detention and was requested to take this into account in seeking the arrest of suspects as a preventive measure as well as to consider the justification of further confinement in the case of persons already in custody.

- *even in exceptional circumstances, such as those of the Aprill 2007 events, it is incumbent on the authorities to make every effort to quarantee that persons detained by the police enjoy the fundamental safeguards set out in paragraph 18 as from the very outset of their deprivation of liberty (paragraph 31).*

The emergency response readiness of various agencies was ascertained on the basis of analysis of the events of April 2007. Persons in police custody receive all fundamental security measures starting from the moment they are deprived of liberty. In the case of the aforementioned events, filter, detention and procedural groups will be formed in order to ensure the fundamental rights and liberties of individuals. The function of these groups is to ensure the rapid and proper carrying out of procedural acts.

Request of information

- *detailed information on the practical arrangements made to ensure the effectiveness of the legal aid system (e.q. to ensure that ex officio lawyers are contacted and meet their clients as from the initial stage police custody) (paragraph 25).*

Clauses 8 (1) 3) and 4) of the Code of Criminal Procedure set forth that participants in proceedings have the right to counsel, stipulating that the investigative body is obliged to ensure the assistance of a counsel to the suspect if the participation of the counsel is obligatory or if such assistance is requested by the suspect or the accused. In cases of urgency, the investigative body must provide an arrested suspect or accused with other legal assistance at his or her request. Pursuant to Section 33 of the Code of Criminal Procedure, the rights (including right to a counsel) and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if necessary to ensure the participation of a counsel. The purpose of the provisions is to ensure that the suspect's right to counsel is facilitated in every way.

The least privileged may seek state legal aid, which means that the state shall pay initially for legal service for a natural or legal person. This does not necessarily mean completely free of charge service. Indeed the obligation to pay partially for the legal aid, or to pay back the legal assistance costs in part or in full after the end of judicial proceedings, can be imposed on the person.

A natural person who due to financial situation is not able to pay for expert legal service at the time that the legal aid is needed or is able to do so only partially or in installments, or whose financial situation does not allow to pay for legal service, may receive legal aid as the appointed counsel in criminal proceedings and for defending oneself in extrajudicial proceedings on misdemeanors as well as in court.

According to the State Legal Aid Act, state legal aid is provided by the Estonian Bar Association, which must ensure the availability of legal aid.

In criminal proceedings, a suspect or accused who is a natural person who has not chosen a criminal defense counsel by agreement and in whose criminal matter the participation of a criminal defense counsel is required by law or who applies for the participation of a criminal defense counsel may receive state legal aid regardless of his or her financial situation. In court proceedings regarding a misdemeanor matter, a natural person subject to proceedings who has not chosen a defense counsel by agreement and in whose misdemeanor matter the participation of a defense counsel is required by law may receive state legal aid regardless of his or her financial situation. State legal aid may be received in criminal and misdemeanor proceedings by legal persons as well, on conditions stipulated by the Act. Thus participation of counsel is ensured in pre-trial proceedings even if the financial situation of the suspect does not enable him or her to enter into an agreement with counsel. The investigative body shall appoint counsel when the suspect or the accused have not chosen counsel, but desire the participation of counsel, or if participation of counsel is obligatory. Violation of the right to legal protection is generally considered a material violation of the law of criminal procedure.

Conditions of detention

Recommendations

- *the Estonian authorities plan referred to in paragraph 40 to be pursed as a matter of priority, and a definitive end to be put as soon as possible to the practice of holding remand and sentenced prisoners in police arrest houses (paragraph 40);*
- *for as long as police arrest houses continue to be used for any detention other than police custody, arrangements to be made ensure that all detained persons are offered at least one hour of outdoor exercise per day (including during weekends and public holidays) (paragraph 40);*
- *immediate steps to be taken ensure that in all police arrest houses:*
    - *cells enjoy access to natural light and are fitted with adequate artifcial lighting and ventilation;*
    - *detained persons are able to comply with the needs of nature in decent conditions (by having partitioned in-cell toilets or ready access to sanitary facilities outside their cell) (paragraph 40).*

Lighting, food handling and washing possibilities are being gradually improved in houses of detention. Detained persons have access to daily newspapers and have the right to use, at their own expense, a telephone at installed pay phones. The state electronic legal acts database and court ruling register can be used at houses of detention if the technical conditions for this exist. In addition to other furniture, cells of detained persons include a WC. In general, detained persons are not hosed in cells without a WC in the cell. Pursuant to clause 31 (4) of the internal procedure rules of the house of detention, detained persons have the right to be in the fresh air for one hour per day while under guard. Police prefectures are engaged in finding opportunities to ensure detained persons the right to walk as specified in legal acts. The Jõhvi house of detention has a walking area and the Põhja Police Prefecture house of detention has a renovated walking area.

For optimal distribution of the burden of houses of detention, prisoners housed in overpopulated houses of detention will be relocated to open spots in the houses of detention of other police prefectures. The opening of Viru Prison in April 2008 has also reduced the overpopulation of houses of detention. On 1 May 2008, an amendment to the Imprisonment Act, according to which persons in custody can be relocated to a house of detention of another prefecture. Activity is underway in the city of Tallinn to establish a medical sobriety house, which will reduce the burden on houses of detention of persons placed for sobering.

- *the three very small (approximately 1.5 m²) „waiting cells“ at Narva Police Department to be either enlarged or withdrawn from service (paragraph 42).*

In April 2008, the Jõhvi house of detention was opened. In connection with this, the purpose of use of the Narva house of detention is now as a temporary place of confinement, where persons in custody are convoyed to the Jõhvi house of detention at the first opportunity.

Comments

- *the cell measuring 2,4 m² at Kohtla-Järve Arrest House should only be used for temorary holding purposes (i.e. for longer than few hours) and should never be used as overnight accommodation (paragraph 35).*

In April 2008, the Jõhvi house of detention was opened. Kohtla-Järve house of detention is closed.

- *the authorities have the duty of taking the necessary steps to ensure that all persons detained by the police are provided with a means of rest and have ready access to sanitary facilities; further, the persons concernced should be given food at appropriate times (paragraph 41).*

The events of April 2007 were a special case. Persons arrested by the police in the case of extraordinary situations receive all fundamental security measures starting from the moment they are deprived of liberty, including means for resting, toilet facilities and proper meals. The events have been thoroughly analyzed. Among other things, the methods for work in the field of detention were specified.

In the case of the aforementioned events, a logistical group will be formed in order to ensure the fundamental rights and liberties of individuals. The function of this group is to ensure the existence of alternative facilities conforming to the requirements for detention, as well as to ensure meals and supply of drinking water. Filter and detention groups will also be formed; their function is to ensure the effectuation of the aforementioned rights.

II Harku Repatriation Centre of the Citizenship and Migration Board

Recommendations

- *steps to be taken to provide a better range of activities for foreign nationals held for prolonged periods at the Harku Repatriation Centre. The longer the period for which persons are detained, the more developed should be the activities which are offered to them (paragraph 47).*

The Ministry of the Interior agrees that the long-term stay of persons to be expelled is not sufficiently activity-filled, and thus we have begun to look for possible solutions for better furnishing the time spent there by persons to be expelled.

- *steps to be taken at the Harku Repatriation Centere to ensure that:*
  - *the vacant nurse's post is fillied without further delay;*
  - *all newly-admitted immigration detainees receive a medical screening without delay by the doctor or the nurse (reporting to the doctor) (paragraph 48).*

The Citizenship and Migration Board has entered into an agreement with nurses on the basis of which the nurse is employed at Harku expulsion centre from 1 April 2008 and is on duty on the spot every working day from 9am to 1pm. All of the detained persons undergo medical examinations administered by the nurse.

- *current practices concerning the presence of police officers during medical consultations and the handcuffing of immigration detainees during their transfer to and from hospitals to be reviewed, in the light of the remarks made in paragraph 49 (paragraph 49).*

A convoying team is present at the medical consultation for a person to be expelled only as an extreme measure, if they have the consent of a physician for this and there is a real danger that the detainee will escape or the security of the medical worker is not ensured in the absence of the convoying team. Use of handcuffs in convoying is based on assessment of individual risk, where the tendency of person to be expelled for escape and violence is assessed.

Comments

- *the Estonian authorities are invited to introduce an absolute time limit for the detention of foreign nationals under aliens legislation (paragraph 43).*

Pursuant to valid regulations, persons to be expelled may, with the permission of an administrative judge, be placed in an expulsion centre until expulsion, but not longer than two months, which in some situations can be subject to extention. The onus is on the Citizenship and Migration Board each time to prove that the expulsion of the individual is possible and that the maximum efforts have been taken by the Board to obtain the documents necessary for return.

Upon adopting the draft European Parliament and Council directive on common requirements and procedure on the return of third-country nationals staying illegally in member states, Estonia will establish the maximum term for detention of aliens for expulsion.

- *the Estonian authorities are invited to consider the possibility of offering at least one free telephone call per month to those immigration detainees without the financial means to pay for it themselves (paragraph 51).*

Under the Obligation to Leave and Prohibition on Entry Act and the Harku expulsion centre's internal rules, there is no obligation to provide free telephone cards for persons to be expelled, but the pay phones installed in the expulsion centre allow collect calls and incoming calls. The Ministry of the Interior is reviewing the budgetary means for providing persons to be expelled with free telephone cards and the possibility of making free calls.

III Prisons

Preliminary remarks

Recommendations

- *the legal standard concerning living space per prisoner to be raised as soon as possible, so as to guarantee at least 4m2 per prisoner in multiple-occupancy cells, and official capacities and occupancy levels of cells in Estonian prisons to be raised accordingly (paragraph 53).*

According to the Internal Rules of Prison § 6 section 6 each prisoner shall have no less than 2.5 m^2 of floor per person in a room or cell. In practice today 2.5 m^2 is guaranteed to every prisoner. In fact the space per prisoner in reality is more, because the prisoners have the right to be outside the cells considerable amount of their free time. However, in all the prisons there is 3.4 m^2 for male prisoners and 3.5 m^2 for female prisoners.

Taking into consideration the prison reform that has not yet finished and that the 2.5 m^2 norm ensures the rights of the prisoners, then the Ministry of Justice does not consider it to be necessary to raise this standard. However, it must be noted that as of 1^{sh} of June 2008 the total number of inmates has decreased to 3602 (persons detained pending trial and convicted prisoners).

As a comparison, during the time, when CPT delegation visited Estonia in May 2007 the number was 4067; the number of inmates in 2006 was 4410; in 2005 was 4565 and in 2004 was 4576 prisoners. Currently there are five prisons. However, as it is stated in the action plan of the Ministry of Justice, then from 2010 there will be four regional prisons: Tallinn prison (will have a new building in 2012), Tartu Prison, Viru Prison and Murru Prison (for 600 inmates). By the year 2012 Murru Prison can be closed down and the prison reform will be ended.

Comments

- *the Estonian authorities are encouraged to pursue their efforts to combat prison overcrowding and, in doing so, to be guided, inter alia, by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, as well as Recommendation Rec(2003)22 on conditional release (parole) (paragraph 54).*

The government makes efforts to decrease the number of prisoners. The sanctions set in the Penal Code are under a review with the aim to introduce more alternative punishment. As well, the system of conditional release has been changed in 2007. The result was that in 2007 the number of inmates conditionally released was 48%, but in 2006 the same number was only 27%.

Requests for information

- *the results of the study commissioned by the Ministry of Justice on the factors influencing the size of the prison population (paragraph 54).*

During 2007 the prison population decreased 20%. The main factors influencing the decrease were:1) the increase of prisoners, who were conditionally released; 2) introduction of the system of electronic surveillance; 3) the decrease of convictions in offences against property (involving objects or proprietary rights of small value).

Ill-treatment

Recommendations

- *the Estonian authorities to pursue vigorously their efforts to combat the phenomenon of inter-prisoner violence, in the light of the remarks made in paragraphs 59 and 60. Steps should be taken as a matter of priority to fill the vacant posts for prison officers at Murru Prison. Further, particular attention should be paid to the problem of inter-prisoner violence in the context of initial and in-service training programs for prison officers in Estonia (paragraph 61).*

The complex of methods for fighting inter-prisoner violence in Murru Prison has been presented to the CPT with the letter by the Ministry of Justice on the 12th of September 2007, number 4-2-13/8788. However, in addition to the points brought out in that letter, we would like to add that there are different rehabilitation programs to prevent inter- prisoner violence: 1) Aggression Replacement Training, which objective is to learn how to use positive social skills instead of aggressive behavior; 2) Social Skills Training, which teaches the participants to cope with conflict situations and control their anger; 3) Anger Management Training, which concentrates on informing the detainees about the usefulness of anger management and increases their interest in self-development.

With regards to the training of prison officials, it needs to be noted that there is a special discussion group for developing and upgrading the curriculum of the study for the Corrections College in the Public Service Academy. Within the curriculum there is a special module for social and behavioral sciences. Correctional Psychology, Tactics of Prison Work, Professional Ethics and Social Work in Prison are part of the learning program and in these subjects and from different angles the topic of inter-prison violence is being analyzed.

Special attention is also paid to training programs for in-service prison officers. For example a tuition program Motivational Interviewing was carried out in 2007. More than 100 officers and probation supervision officers were involved. The aim of this program was to enhance the social skills and the communication skills of the prison officers, for instance seeking to understand the person's frame of reference, particularly via reflective listening.

In addition, on the 1st of December 2007 Ämari Prison was organizationally emerged to Murru Prison by which the problem of staff shortage was solved. As well, the Murru Prison will have 600 inmates and some sections can be closed down, so that Murru Prison will have mainly low security risk prisoners.

Requests for information

- *the outcome of the criminal proceedings concerning two incidents (each of which had resulted in the killing of a prisoner by fellow inmates) at Murru Prison in 2006 (paragraph 58).*

According to the latest data in one case the offender was convicted of murder and given a 10 year sentence, but the second case is still pending.

- *the outcome of the criminal investigation initiated between January and May 2007 into 13 cases of possible inter- prisoner violence at Murru Prison (paragraph 60).*

There are 10 cases of alleged inter- prisoner violence between January and May 2007 which the criminal proceedings have been launched and the statistics is as follows:

Criminal case nr 07922200206, § 142 (satisfaction of sexual desire by violence) of the Penal Code – still pending
Criminal case nr 07922200181, § 121 (physical abuse) –pending
Criminal case nr 07922200168, § 121, 142 – pending
Criminal case nr 07922200162, § 121 – case closed, no conviction
Criminal case nr 07922200123, § 121 – case closed, no conviction
Criminal case nr 07922200121, § 121 – pending
Criminal case nr 07922200093, § 121 – case closed, no conviction
Criminal case nr 07922200072, § 121 – pending
Criminal case nr 07922200056, § 121 – pending (in court proceeding)
Criminal case nr 07922200018, § 121 – pending (in court proceeding)

Conditions of detention of the general prison population

Recommendations

- *immediate steps to be taken to improve material conditions of detention in cell-type living sections of Murru Prison, in the light of the remarks made in paragraph 62. Further, action should be taken throughout the prison to improve sanitary and hygiene conditions (paragraph 63).*

The overall conditions of the 9th living Section in Murru Prison will significantly improve due to the fact that from 1st of April 2008 the many of the inmates have been transferred to the new Viru Prison. The 9th living Section will be closed down. So when before Viru Prison there were 1385 places for inmates in the Prison of Murru, then by the summer 2008 there will be 600 places. As a consequence Murru Prison can abandon the usage of certain cells and/ or Sections.

- *steps to be taken to ensure that all prisoners at Murru and Tallinn Prisons have access to an appropriate range of out-of-cell activities, such as work, education, sports and recreational activities (paragraph 70).*

The range of rehabilitation measures has been developed constantly and the transfer of prisoners from Murru Prison to the new Viru Prison creates opportunities to focus even more on the personalized rehabilitation. Murru Prison will concentrate on sex offenders, drunk drivers and low-risk prisoners. However, it must be noted that the emphasis will not be on sports and recreational activities, but more on the special rehabilitation programs, work and education. In order maximize the results of different programs, the system of Special Treatment Units are developed.

With regards to Tallinn Prison it must be noted that the Imprisonment Act § 90 section states that remand prisoners are kept in their cells at all times, except while working or studying. Taking into account the material resources (limited territorial area and condition of facilities) of the Tallinn Prison, then today it is not possible to ensure all pre-trial inmates out-of-cell activities. Tallinn Prison provides currently work for 110 prisoners. As the inmates are occupied with daily maintenance work and other tasks of technical supportive nature, it is most important that they are able to attend work on regular bases according to their shift calendar. As well, the remand inmates are often and at unpredictable times taken to attend procedures related to their court case and therefore cannot be occupied in these particular tasks. However, Tallinn Prison foresees larger scale and variety of employment possibilities for all inmates in new facilities from 2012.

- *steps to be taken at Murru Prison to equip the outdoor exercise yards of Sections 8 and 9 with means of rest and protection against inclement weather (paragraph 70).*

By the end of the summer 2008 the exercise yards of Section 9 will be equipped with the means of rest and protection against inclement weather, if they will not be taken out of usage due to the changes in the prison buildings.

Comments

- efforts should continue to be made to reduce the cell occupancy levels in Tallinn Prison (paragraph 64).

With the decrease of the number of inmates combined with the prison system reforms (opening of new buildings and closing older buildings), efforts are made to reduce occupancy.

Requests for information

- *a detailed plan of the different stages of construction of the new prison in Tallinn and a timetable for their full implementation (paragraph 64).*

The detailed initial plan of the different stages of the construction of the new prison in Tallinn is the following:

1. Engineering design phase: 01. Jan 2008.- 20. Feb 2009
1.1 Procurement and Contract: 01. Jan 2008.- 23. May 2008
1.2 Engineering: 26. May 2008.- 20. Feb 2009
1.2.1 Sketch design: 26. May 2008.- 19. Sep 2008
1.2.1 Preliminary design: 22. Sep 2008.- 20. Feb 2009

2. Construction phase: 12. Jan 2009.- 30. Dec 2011
2.1 Procurement and Contract: 12. Jan 2009.- 17. Jul 2009
2.2 Engineering: 20. Jul 2009.- 5. Nov 2010
2.2.1 Basic design: 20. Jul 2009.- 22. Jan 2010
2.2.2 Working design: 9. Nov 2009.- 5. Nov 2010
2.3 Construction works: 4. Jan 2010.- 30. Dec 2011

3. Accepting the buildings: 02. Jan 2012- 24. Feb 2012

- *updated information on the implementation of the program of activities for the life-sentenced prisoners at Murru Prison (paragraph 67).*

The life- sentenced prisoners are as a principle treated equally with other prisoners. However, the activities for the life-sentenced and long-term sentenced prisoners at Murru Prison have started with the focus on working in the self-improvement and support groups. In addition to that, prisoners have handcraft workshop and they have quality movies watching-analyzing sessions, they have access to the prison chaplains. In addition, they can increase their computer usage skills. In Tallinn Prison a rehabilitation project for life sentenced prisoners is piloted. The purpose of the project is to systematize the concrete needs of the target group in the area of social skills development. The other purpose is to develop social thinking of prisoners and improve their social responsibility.

Conditions of the detention of young prisoners at Viljandi Prison

Comments

- *the Estonian authorities are encouraged to pursue their plan to close down Viljandi Prison as quickly as possible (paragraph 73).*

Viljandi Prison has been closed since the 1st of May 2008.

- *steps should be taken at Viljandi Prison (for as long as the establishment remains in use) to ensure that young prisoners are held in decent conditions (in particular, as regards hygiene, lighting and, when necessary, heating) (paragraph 73).*

Viljandi Prison has been closed on the 1st of May 2008. Until the closure attention was paid to the material conditions (hygiene, lightning, heating).

- *the CPT trusts that the Estonian authorities will take the necessary steps to ensure that all the requirements set out in paragraph 74 are fully taken into account in the new section for juvenile prisoners at Viru Prison (paragraph 74).*

All juvenile remand and sentenced prisoners (age 14-17) and young sentenced prisoners (age 18-20) are placed to special units in Viru Prison. There are 45 officers (male and female guards, contact-persons, social workers, psychologists, social pedagogue, extracurricular activity organizer, chaplain, head specialist and the deputy director of imprisonment of youngsters) who are specialized to work with young prisoners. Ministry of Educations and Science is organizing basic and vocational education.

Health care

Recommendations

- *the health-care staff resources at Murru Prison to be reviewed, in the light of the remarks made in paragraph 75. Steps should be taken as a matter of priority to fill the vacant post of a psychiatrist. Further, the establishment should benefit from at least one additional full-time general practitioner, and the nursing staff complement should be substantially reinforced (paragraph 75).*

The campaign supported by the Ministry of Justice to find medical staff to Murru Prison has been and is actively continuing. As a result there is a full time nurse and a senior nurse hired.

- *steps to be taken at Tartu Prison and, if appropriate, in other prisons in Estonia, to ensure that the record drawn up after a medical examination of a prisoner (weather newly-arrived or not) contains:*
  (i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her;
  (ii) a full account of objective medical findings based on a thorough examination;
  (iii) the doctor's conclusions in the light of (i) and (ii); these conclusions should be made available to the prisoner and his/her lawyer.

The Imprisonment Act § 9^1 states that the prisoners medical file is managed according to the Decree No 76 given by the Minister of Social Affairs on May 6, 2002. The medical files that are made in the prison of the Tallinn Prison includes an anamnesis. Medical staff enquires the prisoner about health condition, traumas etc. In case any information about past abuses comes up, the information is included in the file. Also the prisoner himself/herself evaluates his/her health status by filling up a questionnaire. The defense attorney is provided with extract from the prisoners medical file in case of relevant written approval of the prisoner.

- *an immediate end to be put to the practice of forcible urine tests in all prison in Estonia.*

The response to this recommendation was given to the CPT with the letter by the Ministry of Justice on the 12th of September 2007, number 4-2-13/8788.

Comments

- *steps should be taken at Murru Prison (Section 9) to ensure that the distribution of prescribed medication is always carried out by qualified health-care staff (paragraph 76).*

Since March 2008 prescribed medication is carried out by health-care staff.

- *the Estonian authorities are encouraged to developed a comprehensive policy (including the treatment of drug addiction) to combat the problem of drug abuse at Murru Prison and, if appropriate, in other prisons in Estonia (paragraph 80).*

In 2004 the Government of Estonia approved the „National Drug Addiction Prevention Strategy until 2012", an Action Plan for years 2004-2008 was drawn up. In the National Strategy a separate chapter covers drug addiction prevention, treatment and rehabilitation in prisons. As well, the development plan of the Ministry of Justice until the year of 2011 includes special attention to drug problems in prisons. It indicates the activities in this area and one of these activities is to assure detoxification and OST in prisons. OST is planned to pilot in 2008 (Ministry of Justice) parallel with continuing detoxification. Among other things, one purpose is to develop special drug treatment program and to open special rehabilitation units for drug addicted prisoners. This led to wider specialization and by the end of this year the all unit will be specialized to drug treatment (174 places), also prisoners from Murru Prison. In the Viru prison there will be two drug free units (44 places for male plus separate unit for juveniles). Tartu Prison will specialize in taking care of prisoners who are drug addicts.

Other issues

Recommendations

- *the maximum period of placement in a punishment cell in respect of adult sentenced prisoners to be substantially reduced and consideration to be given to reducing the maximum period in respect of adult remand prisoners (paragraph 83).*

The punishment cell as a disciplinary punishment is the *ultima ratio* disciplinary punishment, which is used when the lighter punishments such as reprimand or limitations of certain additional rights have not been effective. The maximum periods for disciplinary punishments in a punishment cell are proportionate. However, the system of disciplinary punishments went through an extensive review in legislation, which gave more rights to the prisoner. According to the Imprisonment Act § 65^1 section 3 as a rule the prisoners, when placed in a confinement cell, do not have the right to move in the territory of the prison, apart from the right of be allowed to be in the open air for at least one hour daily. However, from 1st of February 2007 the prison does not necessarily have to limit all the rights, when the person is placed in the cell. Imprisonment Act § 65^1 section 4 states that a prison may partially or fully restrict the application of §§ 22 (privileges of prisoner), 30-32 (newspapers and periodicals, radio and television, prison leave), 34-38 (education and working in prison), 41 (work outside of prison), 43 (remuneration of work), 46 (personal clothing of prisoners) and 48 (shopping) with regard to prisoners lodged in a confinement cell.

- *the maximum period of placement in a punishment cell in respect of minors to be substantially reduced. Further, whenever juveniles are subjected to such a sanction, they should be guaranteed appropriate human contact (paragraph 84).*

Imprisonment Act S § 65[1] section 4 that was described above is applicable also to the punishments of minors. The prison has now the possibility to individually assess every case, when a minor is placed in the punishment cell and then decide which rights should be or should not be limited in order the punishment to carry its function and at the same time, to ensure the physical and mental development of a person.

- *prisoners facing disciplinary charges to have the right to be heard in prison by the Governor before a decision is taken on the matter. Further, prisoners should always receive a copy of the decision. If necessary, the relevant legal provisions should be amended in relation to these matters (paragraph 85).*

Prisoner has the right to be heard by the prison; however, this does not mean that the prisoner has the right to be heard in person by the Prison Governor. In every prison there are special officers, who work on disciplinary procedures and who investigate the matter and question the prisoners and the prison officials. In every stage of the disciplinary procedure, the prisoner has the right to be heard, he or she can give his written or/ and oral statements that needs to be taken into account, when the officials is proposing the sentence. The prison governor views the materials and if he/she agrees, he/she signs them. However, if he/she does not agree, then he/she can send the material back to further investigation. In a prison organization with over 1100 prisoners the governor would not be able to receive the inmates in person, but has to delegate these tasks to expert staff members.

- *all prisoners placed in a punishment cell to be allowed access to general reading matter (paragraph 86).*

As a general rule the Internal Rules of the Prisons § 60 section 1 states that in a confinement cell a prisoner may have a holy script, legislation required for protection of his or her rights (notably the Constitution of the Republic of Estonia, the Imprisonment Act, the Internal Rules of Prison and the Rules of Procedure of Prisons, a reasonable quantity of textbooks, paper for writing, writing equipment, stamps, envelopes, court judgments and rulings made with regard to the prisoner, summaries of charges, replies sent to his or her letters, a telephone card, a soap, a comb, toothpaste, a towel, a roll of toilet paper and sanitary towels in the case of a female prisoner). However, in certain cases the prison can broaden the rights of a prisoner while in disciplinary cell under the Imprisonment Act § 65[1] section 4 as stated above. This means that he or she could have more reading materials, if it would be necessary and in accordance with the aim of the punishment.

- *the necessary steps to be taken to render the prison committees fully operational throughout the entire prison system (paragraph 88).*

The new members for the Prison Committees for Tallinn Prison, Murru Prison Harku Prison and Tartu Prison were named with the decree nr 184 of the Minister of Justice on the 24th of September 2007.

- *a special register on resort to means of physical restraint to be introduced at Tartu Prison and, if appropriate, in other prisons in Estonia, in the light of remarks made in paragraph 90 (paragraph 90).*

All prisons are making reports for every resort to means of physical restraints. However, special register on resort to means of physical restraint is introduced at Tartu Prison (also in Tallinn). The information recorded are the date and time of the beginning and end, the reasons for resorting to the measure and wether or not the inmate had been injured during the process. More specific data, including the name of the officer who ordered or approved the physical restraints, is but down on a report and copy of that report, which is later on stored in the personal file of the inmate. Establishing such register for other prisons has been taken into consideration.

Requests for information

- *confirmation that, in the new unit for juvenile prisoners at Viru Prison, short-term visits will be allowed, as a rule, under open conditions (paragraph 82).*

Due to prison safety requirements short term visits in Viru Prison generally are not carried out throught under open conditions.

- *detailed information on the procedure in force regarding the use of the bed equipped with fixation points in cell No. 1001 in Tartu Prison and, in particular, on the circumstances in which this bed is used, the arrangements for involvement of a doctor and the manner in which the monitoring of immobilized inmates is organized; and information on the training of staff required to use this equipment (paragraph 91).*

According to the Imprisonment Act § 70 section 1 it is permitted to tie up, handcuff or shackle a prisoner or use a restraint-jacket as the means of restraint. However, section 2 specifies that the means of restraint shall not be applied for longer than twelve hours. As a rule, all means of restraint are only used, when other methods to calm down an aggressive prisoner have failed and the prisoner can be danger to himself or to other people.

Tartu Prison cell No. 1001 has a special bed, which allows fixing aggressive prisoners. The decision is made in written by the prison governor. Prison guards supervise prisoners after every 15-20 minutes and reports to the superior prison officials are made at least every hour. When necessary then the nurse views the situations also. The superior officer then decides, whether it is necessary to continue applying the measures or not. Thenafter the nurse will instantly review the prisoners.

Tartu Prison arranges trainings, which include directions about how to use special methods, the benefits and the possible risks. Officials whose administrative territory include chamber 1001 will be go through trainings every year.

IV Psychiatric/ social welfare establishments

Preliminary remarks

There are efforts for further amendments to the Civil Procedure Code Act and the Mental Health Act. There has been an agreement with Chancellor of Justice concerning the implementation and working out the new Mental Health Act.

Ill-treatment

Recommendations

- the management of the Viljandi Hospital Foundation recall to the staff that the verbal abuse of patients is not acceptable.

There are regular training for the district nurses concerning avoidance of conflicts while communicating with aggressive patients and stress-generating situations. Patient's complaints are treated according to the "Complaints treatment regulation" regulated by the hospital Board.

Living conditions

Recommendations

- patients at the Viljandi Hospital Foundation to be allowed to wear their own clothes during the day or to be provided with appropriate non-uniform garments (paragraph 99);
- steps to be taken at the Viljandi Hospital Foundation to ensure that all patients whose state of health so permits are offered at least one hour of outdoor exercise per day. If necessary, they should be provided with suitable outdoor clothing (paragraph 100).

In acute and compulsory treatment departments patients are free to use their own clothes, if their own clothes are not in anti-sanitary condition. Traditions also have their role – common and known hospital clothing are pyjamas, so there will always be patients who like to were pyjamas during their hospital treatment

In acute, compulsory treatment and chronic diseases departments it is ensured that patients can be outside at least 1 hour a day. This requirement is also fixed at the department's "Order of the day" and in department's inside regulations.

Comments

- the Estonian authorities are invited to ensure that patients/residents at the Viljandi Hospital Foundation and the Võisiku Care Home are given lockable space in which to store their personal belongings (paragraph 104).

Every patient has personal nightstand for his/her personal belongings in the ward. In general psychiatry and compulsory treatment departments patients also have closets.Patient's personal nightstands and closets are not lockable. Patients can hold their valuables and documents in lockable (personal) drawer at the senior nurse's cabinet.

Requests for confirmation

- confirmation that the ventilation system in the forensic department at the Viljandi Hospital Foundation has been repaired (paragraph 97);
- the programme of activities offered to patients in the tuberculosis department at the Viljandi Hospital Foundation (paragraph 101).

The reconstruction works of ventilation system ended in December 2007. There is Internet connection at the wards. Activation therapy is held 2 times at week in the department. Patients at the final phase of their treatment (who are not contagious anymore) are enfolded in everyday-programs at our Activities house.

June program in Activities house

02.06, at 10.00 Handwork
03.06, at 14.00 Board games
04.06, at 14.00 Afternoon with dancing
05.06, at 14.00 Singing
06.06, at 14.00 Conversation with the reverend
09.06, at 10.00 Handwork
10.06, at 10.30 Church hour
11.06, at 14.00 Poetry club
12.06, at 14.00 Singing
13.06, at 14.00 Handwork
16.06, at 10.00 Handwork
17.06, at 14.00 Board games
18.06, at 14.00 Jointly celebration of June's patient birthdays

19.06, at 14.00 Book club
20.06, at 14.00 Midsummer Day's party
25.06, at 14.00 Poetry club
26.06, at 14.00 Book club
27.06, at 14.00 Conversation with reverend
29.06, at 14.00 Singing
30.06, at 14.00 Handwork

Activities house is a place where patients have the possibility to use computer, read newspapers, magazines, books and to take part of different kind of activities. In addition to the activities program given above, patients also learn different things for example cooking (we have special kitchen where patients can practice with instructor), wood work etc.

Treatment

Recommendations

- the Estonian authorities to pursue their efforts to provide psychiatric patients at the Viljandi Hospital Foundation (especially in the chronic and forensic departments) with more comprehensive and individualized care, in the light of the remarks made in paragraph 105 (paragraph 108).

Since the November 2007 Viljandi Hospital Foundation has psychiatric rehabilitation department including appropriately equipped rooms for activity therapy and psychotherapy. The amount of activity instructors has been increased – 1,5 appointments (activity leader of 1,0 duty, musical therapist of 0,5 duty, art therapist of 0,5 duty), recruited is psychologist of 1,0 duty and social worker of 0,5 duty.

- steps to be taken at the Viljandi Hospital Foundation (as well as in any other psychiatric establishments in Estonia) to ensure that all competent patients are placed in a position to give their informed consent to treatment (paragraph 109).

In Viljandi Hospital Foundation it is guaranteed that the treatment of capable patients is conducted only with the agreement of the patient.

- the Estonian authorities to examine, as a matter of priority, the question of the allocation of patients within the tuberculosis department at the Viljandi Hospital Foundation, with a view to preventing the infection of patients by other patients (paragraph 111).

In Viljandi Hospital Foundation the department for tuberculosis patients is situated in the renovated building (activities started in May 2006). Three separate areas for patients with multiresistant tuberculosis are located in the treatment department. All areas are separated by air-locks. The patients with multiresistant tuberculosis are treated in the third area. The third area has single wards with air-locks. Patients who have multiresistant tuberculosis are always separated from other patients until they pass the contagious phase. The second area is for tuberculosis patients who have past the contamination phase but still need quite intensive treatment. The majority of the wards in the second area are single. The first area is for the patients who are in the final treatment phase (the recovery phase). In this area it is not important how disease started – by multiresistant form or not. Patients with untreatable multiresistant tuberculosis are always in an area which is for patients who don't have physical contact with other patients at all.

Comments

- steps should be taken to ensure that at the Viljandi Foundation Hospital, tuberculosis patients take the DOTS treatment in the presence of nurses (paragraph 110).

It is granted that patients take the DOTS treatment in the presence of nurses. Nurse personally gives medication to the patient and patient takes medication only in the presence of nurse

Staff

Recommendations

- the number of nursing staff to be substantially increased in the acute, chronic and forensic departments at the Viljandi Hospital Foundation (paragraph 115);

The number of nurses in the acute, compulsory treatment and chronic diseases departments is generally corresponding to the operative standards. Nurses tasks of patient's physical obstruction are not delegated to the hospital attendants. Nurses and hospital attendants work assignments are fixed in their job descriptions and they have to follow the "Implementation instruction of the restraint measures" stated by the Board.

- steps to be taken to ensure that basic training is provided to all orderlies at the Viljandi Hospital Foundation (paragraph 116).

There have been several trainings held and the overview of these is given in the answer to the following point.

Requests for information

- detailed information on the in-service training offered to orderlies at the Viljandi Hospital Foundation since January 2007 (content; duration; number of participants; etc.) (paragraph 116).

There have been following trainings held:

1) 09.03, 19.03, 28.03, 01.10, 10.10.2007 – training "Mental diseases, specialties of communication with people with special mental demands and managing of problematic behaviour" (30 participants);
2) 04.04.2007 – "Communication in intense situation" (2 participants);
3) 08.05.2007 – "Mental self-defence" (15 participants);
4) 14-15.11.2007 – "Work-related communication" (4 participants);
5) 05-07.11.2007 "Managing with stress" 3 participants.

Means and restraint and seclusion

Recommendations

- steps to be taken at the Viljandi Hospital Foundation and, if appropriate, in other psychiatric hospitals in Estonia, to ensure that means of restraint are only applied by trained health-care staff (supported, if necessary, by orderlies) and that the supervision of patients under restraint is brought into line with the requirements set out in paragraph 118 (paragraph 119).

The use of restriction measures in Viljandi Hospital Foundation is regulated by the "Implementation instruction of the restraint measures" (stated by the Board decision No. 133, 02.10.2007) where all the activities mentioned are precisely described and which is in compliance with Psychiatric Aid Law.

- a specific register for recording the use of means of restraint and seclusion to be established at the Viljandi Hospital Foundation and the Võisiku Care Home, taking into account the criteria set out in paragraph 118 (paragraph 122).

The use of restriction measures in Viljandi Hospital Foundation is regulated by the "Implementation instruction of the restraint measures" (stated by the Board decision No. 133, 02.10.2007) where all the activities mentioned are precisely described and which is in compliance with Psychiatric Aid Law. The restriction measures are always ordered by a doctor, the physical and mental state of the patient subject to restraint is continuously and directly monitored and assistance to the patient provided.. The use of restriction measures including the times at which the measure began and ended, the circumstances of the case, the reasons for resorting the measure, the means and/or medication used, the name of the doctor who ordered and approved it are fixed in the patient's personal file. Composing of the specific registers is regulated by the authorities.

Safeguards

Recommendations

- involuntary patients to be formally granted unlimited and unrestricted access to their legal representatives/lawyers; Section 12, paragraph 5, of the Mental Health Act should be amended accordingly (paragraph 129);

At the Viljandi Hospital Foundation involuntary patient's access to their legal representatives/lawyers is granted.

- steps to be taken at the Viljandi Hospital Foundation and, if appropriate, in other psychiatric hospitals in Estonia, to ensure that involuntary placement orders previously issued by courts for a period of more than one year are automatically reviewed at regular intervals (at least once a year) by a court (paragraph 131);

- the right for forensic patients to request, at reasonable intervals, a judicial review of their placement to be formally guaranteed (paragraph 137);

Viljandi Hospital Foundation agrees with given opinion.

- an introductory leaflet/brochure to be elaborated and issued to each newly-admitted patient/resident (as well as to his/her legal representative and close relatives), accompanied if necessary by appropriate verbal explanations, at the Viljandi Hospital Foundation and the Võisiku Care Home (paragraph 140);

At the Viljandi Hospital Foundation patients receive a brochure of patient's rights (composed by Estonian Patient Advocacy Association) on admission. On admission patients also sign the form of compliance, which includes different information about the establishment's routine and of which one copy is given to the patient. Patient's also have access to the department's order of the day, department's internal rules, complaints proceeding regulation, the menu of the week, the plan of the activities in establishment's Activities house and the contacts of the patient advocacy service. Information mentioned is placed on the notice-board. Additional verbal explanations are also given to the patient. Viljandi Hospital Foundation also considers possibilities to make an introductory brochure.

- at the Viljandi Hospital Foundation and the Võisiku Care Home, patients/residents to be informed in the leaflet/brochure issued upon admission of their right to lodge complaints as well as of the modalities for doing so (paragraph 141);

At the Viljandi Hospital Foundation patient's complaints are proceeded according to the "Complaints proceeding regulation" stated by the hospital Board. "Complaints proceeding regulation" is accessible for all the patients and if necessary, additional verbal explanations are given.

Comments

- it would be highly desirable that an expert who is independent of the institution in which the person concerned has been placed be involved in every involuntary placement procedure of a civil nature in a psychiatric hospital (i.e. initial placement and any renewal of a placement order) (paragraph 128);

Viljandi Hospital Foundation agrees with given opinion.

- the comment made in paragraph 128 applies equally to the involuntary placement procedure in a social welfare institution (paragraph 132);

The court notifies patient from the placement order in written form, and patient's legal representative, guardian or/and relative by phone (hospital or social welfare institution has an obligation to give all necessary contacts to the court). Patient signs the order and hospital sends a copy of signed order back to the court.

- at the Viljandi Hospital Foundation, the patient's consent to placement should be recorded in writing in the patient's file (paragraph 134);

At the Viljandi Hospital Foundation, the patient's/guardian's consent to placement is recorded in writing in the patient's file and the shortcoming mentioned is eliminated.

- it should be the duty of the judge to always obtain a direct personal impression of the mental state of the person concerned before taking a decision on the deprivation of legal capacity and appointment of a guardian (paragraph 135);

Viljandi Hospital Foundation agrees with given opinion.

- steps should be taken to ensure that in the context of court proceedings to renew the term of a guardian, the person under guardianship is always heard in person by the judge (paragraph 136);

Viljandi Hospital Foundation agrees with given opinion.

- the Estonian authorities are invited to provide for an automatic judicial review, at regular intervals, of placements ordered under Section 86 of the Penal Code. This review procedure should also offer guarantees of objective medical expertise (paragraph 138).

Viljandi Hospital Foundation agrees with given opinion. However, reviews are carried out here at the required intervals, as mentioned in paragraph 138.

- comments on the point raised in paragraph 139 concerning forensic patients whose hospitalization is no longer justified in psychiatric terms (paragraph 139).

The problem described in paragraph 139 is due to the development of Estonian social welfare system and also due to the Viljandi Hospital Foundation greater activity (since the 2007 full duty social worker is recruited to the forensic psychiatric department) solved by now.

Recommendations concerning Võisiku Care Home

Living conditions

Comments

- The Estonian authorities are invited to ensure that patients/residents at the Viljandi Hospital Foundation and the Võisiku Care Home are given lockable space in which to store their personal belongings (paragraph 104).

All clients receiving 24-hour care with intensified monitoring have lockable cupboards. Some of the clients under 24-hour care have lockable cupboards and the provision of facilities will continue in 2008/2009.

Requests for information

- detailed information on the progress made in implementing the renovation plans of the —24-hour care with reinforced supervision" and the —24-hour care" units at the Võisiku Care Home (paragraph 102).

In August 2007, Võisiku Care Home opened a unit of 24-hour care with intensified monitoring and the clients moved to the newly furbished rooms in September 2007.
During the summer of 2008, it is planned to renovate the toilets and washing facilities (showers) in two units of 24-hour care service and undertake a comprehensive renovation of one 24-hour care unit.

Treatment

Recommendations

- steps to be taken at the Võisiku Care Home to ensure that all residents receive more individualised care and benefit from adequate psychosocial and occupational therapeutic activities, according to their mental capacity and physical mobility (paragraph 112).

In 2006, the Health Care Board inspected the health care services provided at Võisiku Care Home. The inspection resolution refers to the problem that a care home is not a health care institution and it does not have an appropriate activity licence, neither can it pursue one. This means that health care services cannot be provided, although these are needed, as a rule. Regulation No. 8 of the Minister of Social Affairs of 9 January 2008 mentions the availability of psychiatric nurses as a staffing requirement.

The problem highlighted in paragraph 112 of the CPT report is ambiguous. If a treatment plan is regarded as a plan of medications or pills and drugs, all clients of Võisiku Care Home have treatment plans. The treatment plan shows treatment prescribed to a client by the psychiatrist, the family physician as well as a specialist doctor, and according to that the daily medication intake is administered. Thus, all clients at Võisiku Care Home are granted individual treatment.
If a treatment plan is regarded as a schedule of activities or the description of a client's daily routines, work, etc, then today all the clients at Võisiku Care Home have a care plan - a nursing care plan (with a description of the client's needs). On the basis of the care plan, an individual weekly plan is drawn up for each client taking account of the patient's health condition, age and capabilities. Reports on the implementation of weekly plans, keeping count of occupational activities and reviews of individual participation in occupational workshops ensure that all clients are engaged in activity.
By Social Welfare Law Võisiku Care Home is welfare institution, this mean institution established for persons of unsound mind or with severe mental disabilities for living, care and rehabilitation.

- medical files at the Võisiku Care Home to be kept in a complete and precise manner (paragraph 113).

The clients of Võisiku Care Home are serviced by the regional psychiatrist and two family physicians, whose lists include the clients of the establishment. The outpatient medical records at Võisiku Care Home are property of the family physicians and according to the agreement between the psychiatrist and the family physicians, the psychiatrist makes entries in the records. The staff of Võisiku Care Home does not fill in outpatient medical records. The family physicians retain the medical data mainly in their principal place of business. There are duplicate records in the care home to make work easier. Hence, the Võisiku Care Home may forward the CPT's recommendation to the family physicians.

Staff

Recommendations

- immediate steps to be taken at the Võisiku Care Home to: 1) substantially increase the number of nursing staff; 2) increase the psychiatrist's weekly working hours; 3) reintroduce the regular presence (at least once a week) of a general practitioner (paragraph 117).

According to the current work arrangement, Võisiku Care Home employs enough medical nurses to ensure the provision of medical services for the clients. 118 care workers and medical nurses are employed at Võisiku Care Home.

The clients of the care home are serviced by a psychiatrist from SA Põltsamaa Tervis (Põltsamaa Health Foundation), who has a contract concerning service volumes with the Health Insurance Fund. As the care home is located on the territory of that psychiatrist, the care home is also serviced.
The family physicians do not have office hours at Võisiku Care Home because there is no obvious need for that. We have concluded a cooperation agreement with the family physicians; telephone counselling and outpatient reception are provided when necessary. In January 2008, a meeting between the care home and the family physicians decided in common that there was no need for regular visits to the care home. The described state of affairs is beneficial for the clients as well, since a visit is paid to the doctor like in ordinary life and a sense of reality is created in a care home.

Means of physical restraint and seclusion

Recommendations

- a specific register for recording the use of means of restraint and seclusion to be established at the Viljandi Hospital Foundation and the Võisiku Care Home, taking into account the criteria set out in paragraph 118 (paragraph 122).

Since the beginning of 2008, Võisiku Care Home runs a specific register of case descriptions and the use of means of seclusion.

- the deficiencies mentioned in paragraph 121 to be remedied without delay (paragraph 121).

In addition to the applicable legislation, Võisiku Care Home has started to develop an in-house procedure for the application of seclusion. Until the approval of the procedure, we follow the principles and recommendations of the CPT report.

Requests for information

-confirmation that the seclusion rooms in the —24-hour care“ and —24-hour care with reinforced supervision“ units at the Võisiku Care Home have been taken out of service (paragraph 120).

The promise made in the CPT report to withdraw from use unsuitable seclusion rooms has been fulfilled. All in all there are three seclusion rooms at Võisiku Care Home: in the unit of 24-hour care with intensified monitoring, in the unit of 24-hour care with intensified support and in the medical department.

Safeguards

Recommendations

-the legal status of patients/residents at the Viljandi Hospital Foundation and the Võisiku Care Home and, if appropriate, in other psychiatric/social welfare establishments, to be reviewed, in the light of the remarks made in paragraph 133 (paragraph 133).

Võisiku Care Home does not have legitimate power or opportunities to directly report to a judicial authority of people who are incapable of giving their consent to placement in a care home or who would need a legal representative due to restricted active legal capacity. Estonian legislation allows the care home to notify of such a client the guardianship authority or local government, who then obtains the documentation required for the judicial proceedings and submits them to the court. Võisiku Care Home has done that before. At the same time amendments should be made to the legislation so that a legal person (e.g. a lawyer's office) could be appointed as guardian for an individual, with an obligation to protect the interests and rights of the client.
The legal status of residents the Võisiku Care Home and in other social welfare establishments are reviewed lean by laws.

- an introductory leaflet/brochure to be elaborated and issued to each newly-admitted patient/resident (as well as to his/her legal representative and close relatives), accompanied if necessary by appropriate verbal explanations, at the Viljandi Hospital Foundation and the Võisiku Care Home (paragraph 140).

By August 2007, Võisiku Care Home prepared a leaflet providing an overview of the establishment which is available both to clients and their guardians. The care home has its own website (www.voisikuhk.ee) which is also available to all clients and their close ones. Each unit has a notice board displaying the internal rules which are introduced separately to each client upon admission and are introduced, as appropriate, at client meetings and personal conversations on a regular basis.
In respect of the brochure and its contents recommended in the CPT report, negotiations with AS Hoolekandeteenused (Welfare Services Foundation) are being held.

-at the Viljandi Hospital Foundation and the Võisiku Care Home, patients/residents to be informed in the leaflet/brochure issued upon admission of their right to lodge complaints as well as of the modalities for doing so (paragraph 141).

Võisiku Care Home has a public telephone, Internet access, and a letter-box for the clients to lodge their complaints. The clients have been informed both orally (by unit staff, social worker) and in writing (notice board, brochures, the press) of the opportunity to make complaints internally as well as to external bodies. In respect of the brochure and its contents recommended in the CPT report, cooperation with AS Hoolekandeteenused (Welfare Services Foundation) has been launched.

-steps to be taken at Võisiku Care Home, as well as in all other establishments of this kind, to ensure that visits are carried out, on a regular basis, by a body which is independent of the health/social welfare authorities (paragraph 142).

Independent bodies may visit the care home according to need and request. The care home cannot require anyone to make regular inspections.

Yours sincerely,

Rein Lang
Minister

Copy:
1. Mr. Indrek Teder, Chancellor of Justice of the Republic of Estonia
2. Mr Sulev Kannike, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Estonia to the Council of Europe, Strasbourg