



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 11 July 2007

CommDH(2007)12
Original version

Memorandum to the Estonian Government

Assessment of the progress made in implementing the 2004 recommendations of the Commissioner for Human rights of the Council of Europe

For the attention of the Committee of Ministers
and the Parliamentary Assembly

CONTENTS

I. INTRODUCTION.....	3
II. PROTECTION OF NATIONAL MINORITIES.....	3
1. CITIZENSHIP AND NATURALISATION	3
a. <i>General overview</i>	3
b. <i>Vulnerable groups</i>	4
c. <i>Children born after the independence</i>	4
2. ISSUES RELATED TO LANGUAGES	5
3. EDUCATION.....	5
III. PRISON SYSTEM	6
1. PRISON POPULATION	6
2. CONDITIONS OF DETENTION	7
3. HEALTH CARE IN PRISON	8
IV. CONDITION OF DETENTION IN ARREST HOUSES.....	8
V. ACCESS TO COURT AND PROTECTION OF THE DEFENSE.....	10
1. FREE LEGAL AID	10
2. SEARCH IN ADVOCATE'S OFFICE	10
VI. SITUATION OF PERSONS WITH DISABILITIES.....	11
1. AMENDMENTS TO INVOLUNTARY PLACEMENT LEGISLATION	11
2. SERVICES AND REHABILITATION PROGRAMMES FOR PERSONS WITH DISABILITIES.....	11
3. SCHOOL ATTENDANCE FOR CHILDREN WITH DISABILITIES	12
VII. TRAFFICKING IN HUMAN BEINGS	12
1. DETAILED RESEARCH AND ADOPTION OF A ACTION PLAN COMBATING TRAFFICKING	13
2. PROTECTION AND ASSISTANCE TO TRAFFICKING VICTIMS AND WITNESSES.....	13
VIII. DOMESTIC VIOLENCE.....	14
1. VIOLENCE AGAINST WOMEN	14
2. VIOLENCE AGAINST CHILDREN.....	15
IX. NON-DISCRIMINATION, SOCIAL AND ECONOMIC RIGHTS.....	15
1. STRENGTHENING THE LEGISLATIVE FRAMEWORK IN THE FIELD OF NON-DISCRIMINATION	15
2. RATIFICATION OF RELATED COUNCIL OF EUROPE'S INSTRUMENTS	15
X. SPREAD OF HIV/AIDS	15
1. PREVENTION OF HIV AMONG VULNERABLE GROUPS IN ESTONIA	16
2. ACCESS TO TREATMENT OF HIV-POSITIVE PEOPLE	16
SUMMARY OF RECOMMENDATIONS.....	17
A N N E X E	
COMMENTAIRES DU GOUVERNEMENT ESTONIEN	19

I. Introduction

1. The previous Commissioner for Human Rights, Mr. Alvaro Gil-Robles, undertook an assessment mission to Estonia from 28 - 30 October 2003 at the invitation of the Estonian Government. The report¹, presented to the Committee of Ministers and Parliamentary Assembly, highlighted problems concerning protection of minorities, prison and judicial system, educational reform, and the protection of vulnerable groups such as women or persons with disabilities.
2. The present memorandum aims to examine the follow-up action taken by the Estonian authorities on the recommendations set out by the Commissioner in the 2004 report. It is produced in order to ensure a constructive and continuous dialogue on human rights issues between the Commissioner and the Estonian government.
3. This memorandum is based on the findings of the staff of the Commissioner's Office who carried out a follow-up visit to Estonia from 27 to 30 November 2006. The Commissioner, Mr. Thomas Hammarberg, wishes to voice his most sincere gratitude to the Estonian authorities for facilitating this visit and the hospitality provided to the members of his Office throughout².
4. This memorandum also takes into account information forwarded by representatives of the non-governmental organisations (NGOs) encountered by the delegation during their visit. The Office of the Commissioner would like to sincerely thank all those encountered during the visit for their co-operative and open-minded approach including the Council of Europe information Office in Tallinn. The memorandum follows the order of the recommendations in the 2004 report.

II. Protection of national minorities

5. According to official statistics³, Estonia had a total of 1.345 million inhabitants in 2006. There are more than a hundred nationalities represented in Estonia. The largest groups are Estonians (68.6%), Russians (25.7%), Ukrainians (2.1%) and Belarusians (1.2%). Eighty-three point six percent of the population are Estonian citizens, 7.4% are citizens of other countries and 9% hold a special status of non-citizens⁴.

1. Citizenship and naturalisation

6. In his 2004 report, the previous Commissioner invited Estonian authorities to take further measures to make naturalisation of non-citizens more accessible by, *inter alia*, ensuring that language requirements do not create an insurmountable obstacle. He also recommended modifying the application procedures for citizenship for newborn children to ensure that all newborn children of non-citizen parents acquire a nationality after birth.

a. General overview

7. In recent years, important progress was made in relation to the naturalisation process. More than 140,000 individuals have become citizens through the naturalisation process since 1992, while 121,000 individuals remain non-citizens⁵.

¹ Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, 12 February 2004, CommDH(2004)5, on his visit to Estonia from 27 to 30 October 2003.

² The delegation of the Office of the Commissioner consisted of Mr. Alexandre Guessel and Mr. Julien Attuil-Kayser.

³ Statistics published on the Foreign Ministry website <http://www.vm.ee>

⁴ Estonia today, population by nationality, Fact sheet of the Ministry of Foreign Affairs, May 2006 <http://web-static.vm.ee/static/failid/460/Nationalities.pdf>

⁵ According to recent figures provided by the Estonian government, as of May 2007, 144,761 individuals have become citizens through the naturalisation process since 1992, while 116,567 individuals remain non-citizens.

8. The rate of annual naturalisation has significantly increased in recent years. Hence, 6,523 persons obtained Estonian citizenship in 2004 and 7,072 in 2005. High-level authorities believe that the number of non-citizens will drop below 100,000 in Estonia by 2010, if the current trend continues.

9. A specific action plan on integration has been adopted for 2004-2007. It sets the goal of granting citizenship to at least 5,000 people annually. A project implemented by the Non-Estonian's Integration Foundation⁶ in 2005-2007 supports non-citizens in acquiring Estonian citizenship by information campaigns and free language training for potential applicants.

10. Legal reforms have also been made to facilitate access to citizenship. The Law on Citizenship was amended and important provisions entered into force on 20 March 2004. The law now provides that the State reimburses the fee for Estonian language training for persons who have passed the naturalisation examination. The length of the overall naturalisation process has been shortened. Persons born before 1930 are now exempt from the written examination component, though the obligation to pass the oral language exam remains. One of the Commissioner's 2004 recommendations has therefore been partly implemented.

11. However, the number of non-citizens is still high and the risk of alienation is present. There is obviously a connection between citizenship and social inclusion, both perceived and real. Authorities indicated to the delegation that a number of non-citizens were not willing to seek Estonian citizenship, partly due to the fact that they enjoy a wide range of rights even as non-citizens. Whatever the background, increased importance should be given to awareness-raising measures targeting non-citizens about the possibilities of learning the Estonian language and the benefits associated with it.

b. Vulnerable groups

12. Through amendments of the Estonian Citizenship Act, a simplified naturalisation procedure for people with disabilities was established in April 2005. Persons with a severe or profound disability and persons with a moderate disability due to a visual, hearing or speech impairment could be exempt from examination upon decision of a Commission. This expert commission decides on each application individually. The commission initiated its work as of January 2006 and received 134 requests for exemptions in 2006. 68 persons were fully released from taking the examination because of their health condition. The Commission can also grant partial exemption from the written or oral examination depending on the health problem faced by the applicant.

13. Specific attention should also be given to the elderly population since 15% of the non-citizens are over-65. The delegation was informed that proposals were made that require persons over-65 only to attend language and citizenship classes and not to take examinations. The Commissioner hopes that this proposal will be supported and adopted as soon as possible. The age of official retirement could serve as the threshold.

c. Children born after the independence

14. In 2004, the Commissioner recommended that the registration of a new-born child of non-citizens would be automatically considered as an application for Estonian citizenship, unless the parents of the child declare in writing that they have applied for citizenship of another state. According to national authorities, the administrative procedures for children to acquire citizenship are simple. However, it still happens that parents of newborn children do not seek citizenship for their child, who therefore remains stateless. The Commissioner refers to Article 7:2 of the United Nations Convention on the Rights of the Child. This article should be interpreted to require the State to grant citizenship to children born on its territory who would otherwise be stateless. Estonia is a party to the UN Convention.

⁶ The Non-Estonian's Integration Foundation is a Governmental institution established on 31 March 1998 with the objective of initiating, supporting and coordinating projects aimed at the integration in the Estonian society, www.meis.ee/eng

2. Issues related to languages

15. Non-citizens who have obtained at least primary education proficiency in the Estonian language are exempted from the language examination in the naturalisation process. Also, the language proficiency requirement was removed for electoral candidates.

16. However, the Advisory Committee of the Framework Convention on National Minorities ("the Advisory Committee") and the European Commission against Racism and Intolerance (ECRI) have remained concerned about some issues: the language proficiency requirements in employment⁷, the absence of recognition of the use of Russian as a minority language in some specific cases⁸ or the lack of control of language inspections⁹. The delegation was informed of several cases where the language inspector's sanctions seemed disproportionate.

17. On 1 March 2007 amendments were made to the Law on Languages giving the Language Inspectorate extended powers. These include the power to recommend the dismissal of employees with insufficient language proficiency, to make people holding language certificates re-sit an exam. The National Examination and Qualification Centre may then annul existing certificates of those who fail a re-sit of their language exam.

18. Without contesting the State's legitimate expectation that people offering services to the public should speak Estonian, the Commissioner recommends that steps be taken to ensure that the Law on Languages is implemented carefully in order to avoid causing fear among minorities that they may be discriminated in the labour market due to linguistic aspects. He also suggests that geographic and individual circumstances be taken into consideration. A common language for all the citizens could co-exist with the perpetuation of regional or minority languages.

3. Education

19. In 2004, the Commissioner recommended measures to ensure that the language requirements do not have detrimental effects for children with another mother tongue language than Estonian. Over the years, Estonia has developed several programmes and possibilities for non-Estonian speaking pupils to learn Estonian while respecting their rights to be taught in their mother tongue. For example, early or late immersion classes are offered throughout the country and Estonian and Russian speaking pupils are mixed in the same class in the Aseri Upper Secondary School. As a consequence, 4,850 non-Estonian native language pupils were in Estonian-language schools in 2004¹⁰.

20. In the school year of 2007/2008 the transition to Estonian as the main language of instruction in Russian-speaking upper-secondary schools (Grades 10-12) will be started. This is a challenging reform for the non-Estonian population as well as for schools themselves. According to the Basic Schools and Upper Secondary Schools Act, teaching in Estonian will be progressively introduced in the curriculum of Russian-speaking upper-secondary school starting in 2007/2008. The reform will be implemented gradually from 2007 until 2012. Every year, at least one new subject will be taught in Estonian. The aim is that by 2012, a minimum of 60% of the curriculum subjects are to be taught in Estonian. The subjects were defined by the Ministry of Education in order to facilitate the integration of non-Estonian speaking children. The five compulsory subjects are Estonian literature, civics, music, geography and Estonian history to which two optional subjects should be added. When choosing subjects to be taught in Estonian the school takes into account the school's development plan, the field of study of the school, the particular nature and needs of the students and the school resources, including the availability of qualified and Estonian-speaking teachers.

⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, Second opinion on Estonia, adopted 24 February 2006, ACFC/INF/OP/II(2005)001, § 163-168.

⁸ The request of Kallaste to recognize the Russian parallel name Krasnye Gory was denied by the Minister of Regional Affairs on the basis of the Place Names Act. "So far, the only officially recognized parallel names are of Swedish origin", CFR-CDF/EE/2005, 45.

⁹ ECRI third report on Estonia, adopted on 24 June 2005, CR (2006)1, §°17-18.

¹⁰ Ministry of Education and Research, <http://vana.hm.ee/uus/hm/client/index.php?135262301351142043>

21. The delegation was told that school teachers are willing to adapt to new requirements but sometimes find it difficult to teach subjects in Estonian as their own knowledge of the language is not sufficient. Therefore, the Ministry of Education recommends one subject each year for which it provides material and teacher training¹¹. The reform is only obligatory from the 10th grade onwards. Teaching below this grade can therefore continue in a minority language. This step-by-step approach appears to respect the time needed by children and teachers to adapt to the long-range goal of all inhabitants speaking Estonian.

22. The director of a Kohtla-Jarva Russian-speaking school explained to the delegation that there is a lack of qualified teaching staff for the implementation of the reform plan. This seems to be a national problem for both Russian-speaking and Estonian schools and was explained as due mainly to the fact that teacher's salaries are rather unattractive. The Ministry of Education, aware of this situation, is planning to progressively increase teacher's salaries.

23. The delegation was informed of problems in some textbooks. While the curriculum is the same regardless of the language classes are taught in, there have been difficulties in translations of textbooks from Estonian into Russian. Some books were badly translated which resulted in transforming the meaning of sentences or using inappropriate words. Schoolbooks are published by private editors. However, the Ministry of Education intends to establish greater control over these publications. This seems necessary.

III. PRISON SYSTEM

1. Prison population

24. Estonia has seven prisons located in Tallinn, Tartu, Murru, Pärnu¹², Viljandi, Ämari and Harku. All of them are under the responsibility of the Ministry of Justice. In December 2006, there were 4,349 persons detained in prisons¹³ with a total capacity of 4,495 places. These statistics do not represent the full picture of the detained population in Estonia since pre-trial detainees and persons convicted of short sentences are also detained in arrest houses (under the responsibility of the Ministry of Interior)¹⁴.

25. Estonia is currently undergoing an important programme of prison construction with the objective of demolishing the oldest establishments inherited from the previous regime, which are not in accordance with current European prison standards as defined by the European Committee for the Prevention of Torture (CPT). Tartu prison was the first modern detention establishment to be opened in 2002. It should be followed with the opening of a further two new facilities in the near future. A new prison in Viru is expected in 2008 with a capacity to accommodate 1,100 inmates. The construction of a new prison in Tallinn is planned for 2010.

26. Estonia has one of the highest ratios of prisoners per inhabitants in Europe¹⁵. An Action Plan aimed at reducing crime among youth - crime prevention and law-enforcement - for the 2007-2009 period was drawn up by the Ministry of Justice. Furthermore, Estonian legislation now provides for the use of an electronic surveillance system for the purpose of probationary release with the aim of decreasing the number of prisoners in detention. This provision entered into force in January 2007 and it is therefore difficult to assess its effectiveness at this stage. If technical and financial means are provided it will allow for more probation releases and less prisoners in jail.

¹¹ For 2007/2008, the recommended subject is Estonian language.

¹² Pärnu prison was closed down on 15 January 2007

¹³ 3.297 convicted and 1.052 in pre-trial detention.

¹⁴ See below.

¹⁵ 337.9 prisoners per 100,000 inhabitants according to Council of Europe annual penal statistics, survey 2004, PC-CP (2005)25.

2. Conditions of detention

27. The 2004 Commissioner's report noted the old and dilapidated state of Estonian prisons and advised the authorities to strengthen efforts to improve conditions in prisons. A judgment of the European Court of Human Rights confirmed that the prison conditions in the late 1990's of "overcrowding, inadequate lighting and ventilation, impoverished regime, poor hygiene conditions and state of repair of the cell facilities" could lead in certain situations to degrading treatment¹⁶. According to the Legal Chancellor's 2004 annual report, complaints received from prisoners concerned mostly transfers of detainees between facilities, conditions in detention facilities and health protection, work of detainees, use of personal accounts, disciplinary punishment and additional security measures with respect to detainees.

28. The delegation had the opportunity to visit Tallinn prison where they found several issues of concern. One of the inmates' complaints related to the absence of hot water. Several of the inmates alleged health problems related to the fact that they had no access to hot water. Remand prisoners get access to hot water only when they shower, once a week. This interval between showers is too long considering the absence of hot water in cells. The Ministry of Justice informed the delegation that hot water adduction in every cell was seen as too expensive especially since this prison will be demolished after the opening of the new Tallinn prison in 2010. Complaints also concerned the fact that prisoners have to pay for their own toiletries (shampoo, toothpaste, sanitary towels, soap etc) and are only provided with one toilet paper roll per month. The Commissioner considers that solutions should be found to improve these conditions without waiting for the opening of a new detention premises.

29. Some prisoners also criticized the way specific dietary requirements were allocated. Prisoners needing or wanting specific meals must have their request approved by medical or religious authorities. Several Muslims expressed their difficulties to receive a diet in accordance with their religious belief. The delegation also met with a vegetarian prisoner who would not get appropriate food since being vegetarian is not considered as part of a religion. Therefore his request for specific diet, which was not supported by the chaplain service, was rejected by the prison administration. These procedures are not satisfactory as they impose on prisoners the need to justify or demonstrate their beliefs to clerical authorities. The Commissioner calls upon the Estonian authorities to allow inmates a choice of alternative diets.

30. The Tallinn prison has disciplinary cells in a separate building from the accommodation block cells where prisoners may be put for up to 30 or 45 days¹⁷. Two inmates can be put in the same punishment cell. Prisoners are not allowed to bring any personal belongings with the exception of a minimum amount of toiletries. In its 2003 report, the CPT recommended that all persons placed in a disciplinary cell should be allowed access to more books and reading material than prison regulations and the Bible¹⁸. The visit of the delegation to Tallinn prison proved that the situation has not improved. Representatives of the Ministry of Justice explained to the delegation that the limitation of reading materials to prison regulations and the Bible was provided for in national law. The Commissioner considers that the stipulated maximum time in disciplinary cells is too long and the limitation to using personal belongings and having access to reading material too strict. He recommends Estonian authorities to review these conditions.

31. According to the Imprisonment Act, each prisoner has an internal personal bank account into which the prison administration ensures that wages and other funds paid to a prisoner are transferred. Article 44 (2) provides that "of the funds deposited on the personal account of a prisoner, 50 % shall be reserved for the victim's compensation, 20 % shall be deposited as a savings fund to be handed over to the prisoner on release and the rest of the funds shall be available for the use of the prisoner inside the

¹⁶ EctHR judgment, *Alver v. Estonia*, 8 November 2005

¹⁷ 30 days for remand prisoners and 45 days for sentenced prisoners.

¹⁸ Report to the Estonian Government on the visit to Estonia carried out by the CPT from 23 to 30 September 2003, CPT/Inf (2005) 6, § 81.

prison". The idea behind these accounts is positive. However, there are complaints that money sent from families to allow inmates to improve their living conditions (such as newspapers, toiletries or food) can only partly be utilised for that purpose. The Commissioner invites the Estonian authorities to adjust this mechanism to ensure that prisoners can immediately use money transferred from their relatives.

3. Health care in prison

32. In his 2004 report, the Commissioner recommended that adequate medical care be provided and that efforts be continued to reduce drug use and the risk of HIV infections in prisons. Several NGOs informed the delegation of their concerns that antiretroviral treatments might soon be interrupted in prisons due to a lack of funding. However, the authorities informed the delegation that the budget of the new action plan and strategy on HIV/AIDS was secured. The financial support that Estonia used to receive from the World Bank and other international aid for these programmes was replaced by an increased effort by national authorities.

33. The Ministry of the Justice is responsible for administering health and social services in prisons. All persons who are arrested or found guilty for the first time are invited to take a HIV test free of charge. The HIV-test is taken with the detainee's consent and is confidential. Prisons have also the duty to organise regular training sessions for both inmates and staff on the prevention of the spread of HIV.

34. According to the Estonian UNAIDS report, the absence of needle-exchange services in prisons remains problematic as the repeated use of these drug injection instruments is high. It has been estimated that about 30% of Estonian prisoners are injecting drugs.¹⁹ The risk of HIV/AIDS and hepatitis B and C transmissions is high. The delegation was also informed of the increase of tuberculosis transmission in prison in the recent years. The Commissioner is concerned about the risk for the spread of transmittable diseases among prisoners.

35. In 2005, the Ministry of Justice interrupted its drug substitution programme in prisons. Offenders are first detained in arrest houses before transfer, if necessary, to a prison. Since arrest houses, which are under the responsibility of the Ministry of Interior, do not provide methadone to drug addicts or persons under drug-substitution treatments, it was decided by the Ministry of Justice to interrupt the distribution of methadone treatment in the prisons. To replace this drug substitution programme, prison doctors are currently trained in detoxification methods. At the moment drug users in detention are therefore provided neither with substitution nor with detoxification programmes. This interruption not only affected drug users that arrived in prisons but also incarcerated prisoners who were already on the drug substitution programme. This situation is unacceptable; detained drug addicts must be offered appropriate and immediate assistance to solve their addictions problems. The Commissioner calls upon Estonian authorities to re-establish a medical programme for drug addicts in detention.

IV. CONDITION OF DETENTION IN ARREST HOUSES

36. In 2003, the Commissioner visited pre-trial detention facilities in Rakvere and stated that the material conditions were far from satisfactory in detention centres under the authority of the police. The delegation visited the arrest houses of Rakvere and Kohtla-Järve. The living conditions in the establishments visited remain very bad.

37. This view is shared by the Legal Chancellor and several NGOs. As a consequence of complaints received and visits made to several arrest houses, the Legal Chancellor repeatedly criticized the conditions of detention in arrest houses. In some cases, he considered these conditions as "humiliating treatment".

38. As the police authorities recognised during the follow-up visit, the conditions of detention in the Rakvere arrest house has not improved since 2003 but has even deteriorated. The delegation was informed that the building was declared unsuitable for detention and that no improvement work is

¹⁹ Eurosurveillance study 2006.

possible as the building is to be demolished. With a capacity for 40 “beds”, the arrest houses accommodated 43 inmates. The unacceptable conditions of detention witnessed by the Commissioner remain. There is still no space for indoor or outdoor activities; detainees have to stay in their cells 24 hours a day, only leaving their cells once a week to take a shower; inmates sleep on thin mattresses put on a wooden platform on the floor; and they have limited access to fresh air and daylight. The only noticeable improvement is the recruitment of a nurse who spends two hours per day in the arrest house.

39. The situation seen in the Kohtla-Järve arrest house confirmed that the concerns raised in the 2004 Commissioner’s report remain. The living conditions are harsher than in the Rakvere arrest house as cells are located in the basement of the police station. The arrest house has a capacity of approximately 40 inmates, but has in past years sometimes housed up to 70 detainees at any one time. Six inmates are kept in a cell of approximately 15 square meters without any daylight. The lack of ventilation creates problems of humidity and temperature regulation. As in Rakvere, detainees do not have access to any indoor or outdoor activity spaces and can only leave their cell once a week to shower. No physical or intellectual activity is offered to them. Therefore, during the whole period of their detention in Kohtla-Järve arrest house, inmates do not have access to natural light, fresh air or a view other than their cell or the corridor leading to the shower. Although the majority of the inmates are only detained in arrest houses for one or two weeks, the maximum sentence that could be served in an arrest house is three months. According to information collected by the delegation during the follow-up visit, similar or worse living conditions could be found in other Estonian arrest houses.

40. In both arrest houses, the authorities responsible recognised that no improvements were made over the last three years as the national authorities are planning to open new facilities in 2008 and 2009. Indeed, the Ministry of Interior has a plan to renovate or open new police detention facilities in accordance with European standards. As a first step, the Police announced in November 2005 an investment of half a million Kroons (EEK) to renovate the Arrest House in Narva.

41. The Ministry of Interior recognised that too many persons were detained in arrest houses instead of being held in facilities under the authority of the Ministry of Justice. Persons convicted for a short imprisonment period – less than three months - can be placed either in prison or in arrest house. The delegation was informed that usually inmates are brought to prison pre-trial sectors after having spent between 10 to 30 days in arrest houses. However, it was made clear by the Ministries of Justice and Interior that placement of a person depends largely on available space in prisons. The situation was particularly tense at the moment of the follow-up visit as one prison was closed for renovation. The Commissioner recalls the imperative necessity of detaining separately untried persons, who are presumed to be innocents, and sentenced prisoners. Efforts should be made to ensure that pre-trial detainees are not accommodated with condemned inmates.

42. In addition to the unfavourable living conditions, some problems lie with the applicable internal rules in arrest houses. It is obvious that, depending on the facilities, different activities can or cannot be offered to inmates. Nevertheless, minimum standards apply to all inmates who should have the same rights to access books, newspapers, television or radio wherever they are detained. The delegation witnessed that different rules apply in different arrest houses. In some arrest houses inmates were not allowed to receive newspapers or have a radio. As recognised by the European Prison rules, “restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed”²⁰. The restrictions in this case do not appear to be proportionate.

43. Finally, in the two arrest houses visited, the delegation met with young children – several being less than 15 years old. As provided by the United Nations Convention on the Rights of the Child, the detention of children should be a measure of “last resort and for the shortest appropriate period of time”. Article 37 c) of the UN Convention further insists that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into

²⁰ Council of Europe Committee of Ministers Recommendation Rec(2006)2 on the European Prison Rules, 11 January 2006, rule n° 3.

account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so". In the visited facilities, children did not have access to activities or recreational spaces. Activities were limited to a small number of board games provided to them by the police authorities. None of the children whom the delegation met had access to a schoolbook or had seen a teacher in spite of being detained for several weeks.

44. In the Rakvere arrest house, all the minors were detained together. In the Kohtla-Järve detention centre, some young children were detained with adult inmates. The Kohtla-Järve police officers explained to the delegation that children were put with adults to avoid bullying and violence among minors. The local police authorities also acknowledge that they regularly face difficulties when they detain women. In absence of specific or available cells, women are sometimes kept in the room normally used by inmates for meetings with their lawyers.

45. The deplorable living conditions, the absence of activities and the limited access to media or entertainment amount to inhuman and degrading treatment. Therefore, the Commissioner considers it a matter of urgency that suitable solutions be found for inmates detained in these arrest houses. The planned opening of new detention centres cannot be seen as an excuse to legitimise intolerable conditions. The Commissioner further recommends that minors be detained in an appropriate environment where they can have access to education and other activities essential for the child's development and well-being; as a rule they should not be detained with adult inmates.

V. ACCESS TO COURT AND PROTECTION OF THE DEFENSE

1. Free legal aid

46. In 2004, the Commissioner recommended measures to ensure access to free legal aid. On 1 March 2005, the new State Legal Aid Act entered into force in Estonia. The purpose of the law is to ensure the availability of competent legal services to all persons in Estonia. Citizens of foreign states are guaranteed equal procedural rights as Estonian citizens with regard to free legal aid. In addition to court procedure, the law widens the possibility of receiving free legal aid also for pre-trial procedure, procedures carried out by administrative authorities and execution proceedings. It also covers the preparation of legal documents and other legal counselling to a person, or representing a person in another manner. Additionally, Article 37 of the Act provides for the possibility of receiving state legal aid for filing an application to the European Court of Human Rights if the alleged violation has been committed by the Estonian State. Legal aid is directly financed by the State budget and organized by the Bar association of Estonia.

47. The Commissioner welcomes the adoption of the legal aid mechanism. However, several difficulties were raised as to the implementation of the law. The Bar Association, in charge of organising legal aid, considers the State's allocation for the administrative management of the legal aid insufficient. Additionally, the representative of the Bar Association indicated that the compensation paid to advocates providing free legal assistance is particularly low especially in major Estonian cities. He said that the State's hourly rate is ten times lower than the market rate, at least in Tallinn. Recognising that legal aid could remain inferior to the market, he still considers it currently too low to attract experienced lawyers. The Commissioner hopes that these implementation issues will be resolved through a constructive dialogue between the Estonian authorities and the Bar Association.

2. Search in advocate's office

48. In his 2004 report, the Commissioner recommended that the criminal procedure code not jeopardize the right of defendants by allowing the search of their advocates' offices. In spite of this recommendation and several proposals of the Bar Association to modify the text, Article 91 (2) of the new Code of Criminal Procedure that entered into force 1 July 2004 provides that "*a search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling. The search of a notary's office or advocate's law office shall be conducted at the request of a Prosecutor's Office and on the*

basis of an order of a preliminary investigation judge or on the basis of a court ruling.” The Commissioner therefore reiterates the recommendation that the possibility of searching an advocate’s office be closely regulated so as to protect the right to defence and the necessary confidentiality attached to the lawyer-client relationship.

VI. SITUATION OF PERSONS WITH DISABILITIES

1. Amendments to involuntary placement legislation

49. In 2004, the Commissioner recommended the amendment of *“the legislation with respect to the involuntary placement and treatment of persons with mental disabilities in psychiatric or therapeutic establishments by ensuring the involvement of a judge at an early stage”*. On 1 January 2006, amendments to the Mental Health Act entered into force. The most significant change concerns involuntary treatment lasting longer than 48 hours which can now only be exercised based on a court ruling. The involuntary treatment cases are heard in civil courts under article 54 of the Civil Procedure Code – placement into closed institutions. The court rules for placement mainly as an interim measure, providing legal protection and with an initial duration of three months, extendible up to a maximum of six months. An application for placement, as a permanent measure, may be filed with a court only by a local government. However, an application to apply an interim measure to place a person into a psychiatric hospital may be filed by a chief doctor or the deputy chief doctor of the psychiatric hospital.

50. While welcoming the entry into force of these provisions, civil society representatives informed the delegation of difficulties which remain in their implementation. It appears that judges, due to time constraints, sometimes take a written ruling of placement without meeting the persons concerned. Such meetings generally occur after the ruling. NGOs also mentioned that the right to appeal against a placement appears, in practice, to be ineffective as the vast majority of appeals are rejected. The Commissioner suggests a constructive dialogue with the civil society regarding the implementation of this new law.

2. Services and rehabilitation programmes for persons with disabilities

51. The 2004 report invited Estonian authorities to *“strengthen the efforts aimed at providing services and rehabilitation programmes for persons with disabilities with a view to promoting their independent living”*. In January 2005 amendments to Social Welfare Act regarding the management of rehabilitation services entered into force. Rehabilitation targets individuals with substantial physical or social disorders whose ability for independent living is reduced.

52. Rehabilitation assessment is conducted by a rehabilitation team, composed at least of five different specialists representing the following professions: doctor, nurse, social worker, pedagogue, psychiatrist, occupational therapist, physical therapist, and speech therapist. The composition of the team depends on the person being assessed. They assess a person’s ability for independent living and personal assistance and then draw up an individual rehabilitation plan. A personal rehabilitation plan is valid from six months to up to three years. In recent years, considerable emphasis has been placed on making rehabilitation services available to an ever-increasing number of clients.

53. Rehabilitation services are financed from the state budget through the budget of the Social Insurance Board. According to the Ministry of Social Affairs, the amount allocated to these services has increased over the recent years it went from 3.8 million EEK in 2002 to 50 million EEK in 2006, reaching over 90 million EEK in 2007. For each target group²¹ a concrete amount is allocated every year for rehabilitation services.

54. There are approximately 60 institutions which provide rehabilitation services in Estonia. The majority of them are situated in hospitals and nursing homes. A well functioning rehabilitation system includes screening, assessing, planning, implementing and evaluating processes.

²¹ Disabled children, juvenile offenders, people with psychical special needs and disabled adults

55. Establishing a new mechanism is often complicated; both civil society and Governmental authorities recognised that the existing architecture and administration of organising the rehabilitation services is too complex and not sufficiently patient-friendly. Access to certain rehabilitation services, especially for long-term inhabitants of closed institutions, is still problematic. In 2006, some rehabilitation service providers reported a total lack of funds to enable them to provide their rehabilitation services from April. Furthermore, civil society has indicated that the disability benefit has not been increased since 2001 and is extremely low considering the inflation rate in Estonia. The Commissioner welcomes the progress made by Estonia in relation to rehabilitation services; he however hopes that budgetary and administrative difficulties will be solved as soon as possible.

3. School attendance for children with disabilities

56. In 2004 the Commissioner recommended measures to provide increased opportunities for children with disabilities to attend regular schools. The Constitution guarantees the right to education for everyone, and this right is supported by the Education Act. General legislation on basic and secondary education also regulates special education. Children with special needs, including children with intellectual disabilities, have the right to study in a mainstream school in the area where they live. Otherwise, the children have the right to attend the nearest school meeting their educational requirements.

57. In practice, this right is often not realised for children with disabilities. Many mainstream schools do not enrol children with disabilities on the grounds that they cannot provide the needed support services. Existing regulations do not define exactly what mainstream schools must do to adapt their conditions to meet the needs of children with disabilities.

58. In Estonia, access to early intervention services is very limited, and intellectual disability is usually not diagnosed before the age of seven. This prevents children from receiving the required early-childhood support, which may facilitate their successful integration into mainstream schools. Parents or guardians of a child with disabilities must give their agreement for their child to be placed in a special school or class. Due to a lack of equipped schools and despite the wish of most parents, they cannot in many cases attend a mainstream school near to their home and have to be placed in specialised institutions far from their family. The Ministry of Education, acknowledging this situation, emphasised that new schools are now all equipped to welcome children with disabilities. The Commissioner encourages the Estonian authorities to further their efforts to facilitate the integration of children with disabilities in mainstream schools as much as possible.

VII. TRAFFICKING IN HUMAN BEINGS

59. In his 2004 report, the Commissioner invited the Estonian authorities to “*conduct detailed research and analysis of the extent and nature of trafficking in human beings; adopt a comprehensive plan of action against trafficking in human beings; provide adequate protection and assistance to victims and witnesses*”.

60. Trafficking in human beings has become a serious issue for Estonian society. According to a 2005 International Organization for Migration report, during the 2001–2005 period 104 victims of trafficking were identified and registered by the organisation. Estimates of 500 victims of trafficking per year were mentioned to the delegation.

1. Detailed research and adoption of an action plan combating trafficking

61. According to the Estonian authorities²², trafficking in human beings is mostly related to prostitution and no statistical survey data exists on this aspect. Based on expert assessments, it can be claimed that most of the prostitution is centred in Tallinn, although it is also found in smaller cities in Estonia.

62. On 26 January 2006, the Government adopted a National Development Plan against Trafficking in Human Beings for 2006-2009. It sets out strategic objectives and determines the main measures and activities for combating trafficking in human beings. The foreseen budget of the plan is of 2.6 millions EEK²³. The Development Plan has six strategic objectives:

1. Continuous mapping of the problems related to human trafficking in order to get a comprehensive and trustworthy overview of the actual extent and forms of trafficking.
2. Prevention of trafficking in human beings by informing the public of its nature and dangers.
3. Development of the skills of the specialists engaging in the issue, and promoting cooperation between them.
4. Curbing trafficking by means of more effective border controls and control over employment mediation.
5. Effective reaction to criminal offences.
6. Providing assistance and rehabilitation to victims²⁴.

63. Estonia does not have a special legal act against trafficking in human beings; this activity is covered as a criminal offence by several provisions in the Criminal Code. Estonia ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in March 2004. According to the authorities met by the delegation, Estonia is currently considering the possibility of signing the Council of Europe Convention on Action against Trafficking in Human Beings and analysing the necessary changes in the national law and practice. The Commissioner invites the Estonian authorities to ratify the Council of Europe Convention on action against trafficking in human beings.

2. Protection and assistance to trafficking victims and witnesses

64. The Victim Support Act was recently amended to offer psychological, legal and social assistance to victims of violence, including moral and physical violence. It also provides for the possibility of compensation in cases where severe damage or even death has been caused²⁵.

65. According to the law prohibiting enslavement and abduction, the maximum penalty for trafficking is 12 years' imprisonment. In February 2006, in the first anti-trafficking case under the enslavement statute four traffickers were convicted, with sentences which ranged from two years' probation to four years' imprisonment. The courts convicted the five remaining persons involved in the case under the auspices of other statutes. Law enforcement investigated ten probable trafficking-related cases in 2006.

66. In October 2004 a hotline was set up in Estonia offering free legal consultation and information on safe travel and employment opportunities. The project, funded by the Ministry of Social Affairs, is managed by an NGO. With regard to victim support, Estonia launched a 2006-2008 pilot project with Nordic-Baltic partners on safe return and reintegration of women victims of sexual exploitation. The project aims to improve the support and rehabilitation of victims of trafficking in Nordic and Baltic countries. In this framework, a Nordic-Baltic Regional Network was set up, which incorporates public agencies and NGOs from all Nordic and Baltic countries. The Network will develop a regional programme to provide for the legal, social economic, medical and psychological care and safety and

²² United Nations Committee for the Elimination of Discrimination against Women, Fourth periodic report of States parties, Estonia, 6 October 2005, CEDAW/C/EST/4.

²³ Development Plan for Combating Trafficking in Human Beings 2006–2009

²⁴ www.just.ee/orb.aw/class=file/action=preview/id=22615/Development+Plan

²⁵ ENAR Shadow report 2005, Racism in Estonia

protection of the victims of trafficking in the countries of destination. The network will also facilitate the safe return and integration of victims back into society. According to Estonian authorities, the network also gives the possibility to key actors in this field to meet regularly with international counterparts so as to facilitate the exchange of information, data and experiences. The Commissioner encourages the Estonian authorities to continue their efforts in identifying and rescuing victims, apprehending and prosecuting traffickers, collecting data, and combating trafficking in human beings as well as protecting victims.

VIII. DOMESTIC VIOLENCE

1. Violence against women

67. In 2004, the Commissioner recommended that the Estonian authorities “*ensure greater protection and assistance to victims of domestic violence, through strengthening the legislation, training programmes for judiciary and law-enforcement officials and awareness raising campaigns*”.

68. Awareness about violence against women has increased rapidly over the last five years. Several campaigns and articles from specialists have fuelled media discussions and raised public awareness. However, violence against women, including spousal abuse remains a concern. In 2005, 3,000 cases of domestic violence were reported to the police; 700 of these cases led to court proceedings for domestic violence.

69. The Estonian Criminal Code does not distinguish between domestic and other types of violence. Domestic violence falls into the category of ordinary violence, *i.e.* crimes against the person. Since July 2006, the Code of Criminal Procedure provides the court with the possibility of temporarily forbidding the suspect or the accused to be in the vicinity of, approach or to communicate with the persons designated by the court. Such a temporary restraining order can be applied only with the consent of the victim. After the perpetrator has been sentenced, the court may, under the Law of Obligations Act and if requested by the victim, impose a restraining order of three years maximum term on the offender. The Criminal Code establishes a pecuniary punishment or imprisonment for up to a year for breach of a restraining order.

70. In 2006 Estonia set up its first National Action Plan on domestic violence for years 2008-2011. The aim of the action plan is to divide responsibilities between different institutions, work with the civil society, improve the effectiveness of response from justice system and develop solid approach towards prevention and combating domestic violence. One additional goal of the national action plan is to improve data collection in order to provide comparable statistics. The Ministry of Social Affairs is co-ordinating the development of the action plan.

71. According to figures provided by the authorities, 3005 persons requested help from victim support centres in 2005. One-third were victims of domestic violence, 15% elderly crime victims, 10% child abuse victims. 60% did so at their own initiative and 20% were sent by the police, the remainder were directed by other institutions to victim support centres. The first shelter for victims of domestic violence was established in Tartu in 2002, and a further one established in Tallinn in 2005.

72. The delegation visited a small shelter for victims of domestic violence in Kohtla-Järve which opened on 8 March 2006. The shelter is run by a local NGO and currently financed by the Estonian National Lottery. The dedicated head of the shelter indicated that they have good relations and co-operation with police authorities and support from the Municipality. However, she insisted that further public awareness measures as well as special training of judges and law enforcement authorities are urgently needed. The persistence of traditional stereotypes, taboos and acceptance of domestic violence remain rooted in the Estonian society and culture. The Commissioner encourages the Estonian authorities to continue their fight against domestic violence. He also encourages the Estonian authorities to further develop training and public awareness programmes, as well as extensive funding and support for the maintenance and establishment of more shelters for victims.

2. Violence against children

73. The Estonian National action plan on violence not only deals with domestic violence but also concerns violence against children. In 2005, 781 cases of violence against children and 123 cases of school violence were reported. As stated by European Committee of Social Rights, Estonia is not in conformity with Article 17.1 of the Revised European Social Charter on the ground that corporal punishment of children is not prohibited within the family.²⁶ In Estonia, the law does not explicitly prohibit corporal punishment in the family home, schools or in the context of alternative care. The Commissioner therefore encourages the Estonian authorities to explicitly prohibit any kind of violence against children, including corporal punishment, and to develop a specific strategy to promote positive parenting. Such a prohibition would send a clear signal to children, parents and the public opinion.

IX. NON-DISCRIMINATION, SOCIAL AND ECONOMIC RIGHTS

74. In his 2004 report, the Commissioner recommended to the authorities that they “*strengthen the legislative framework in the field of non-discrimination, and equality between men and women; ratify Protocol 12 to the European Convention on Human Rights, and the Additional Protocol to the European Social Charter relating to the collective complaints procedure*”.

1. Strengthening the legislative framework in the field of non-discrimination

75. The Gender Equality Act entered into force in May 2004. The purpose of the Act is to ensure equal treatment for men and women and to promote gender equality in all areas of social life. The act provides for the prohibition on discrimination based on sex in private and public sectors and also the right to claim compensation for damage. The act defines the concepts of direct and indirect discrimination, gender equality, equal treatment and sexual harassment and establishes the shared burden of proof. It allows certain positive measures to promote the situation of persons of a particular gender whom are in a less advantageous position compared to the other in a relevant field.

76. The delegation met with the Gender Equality Commissioner, created under the Gender Equality Act. The Gender Equality Commissioner is competent to handle complaints on gender discrimination as well as to provide opinions and analyses of laws on the status of men and women in society, and to make proposals to national and local public authorities. The Gender Equality Commissioner was appointed at the beginning of October 2005 and has already received several complaints, but the institution needs to be developed in order to guarantee effectiveness of the work. In addition to this independent institution, the establishment of an advisory body for the government - the Gender Equality Council - is foreseen. Finally, Estonian authorities are currently working on amendments of the Gender Equality Act in order to entirely transpose the European Union directives concerning gender equality.

2. Ratification of related Council of Europe's instruments

77. The Commissioner welcomes the important efforts being made in relation to the fight against discrimination and gender inequality. Since the 2004 report, the Estonian authorities have been working on adapting their national legislation to required standards in order to ratify the Protocol 12 to the European Convention on Human Rights. The accession to the European Social Charter Additional Protocol remains under consideration.

X. Spread of HIV/AIDS

78. In 2004, the Commissioner insisted on continuing efforts to stop the spread of HIV/AIDS and at providing appropriate care for those infected with the virus. By 19 May 2006, Estonia had reported a total of 5,312 cases of HIV positive persons. The number of new cases registered has been on the decrease since 2001. However, some 500 new persons were infected in 2006. By 2004, it was also

²⁶ Conclusions by European Committee of Social Rights, March 2005.

reported that 70 of these cases had developed AIDS, of which 36 had died. Estonia has the second highest estimated HIV prevalence in Europe of 1.3% of the adult population²⁷. 73% of Estonian persons infected are male.

79. From 2002 to 2005 Estonian HIV-prevention work was carried out in accordance with the National Programme for HIV/AIDS prevention for 2002–2006. However, due to the persistence of the epidemic, a new strategy was needed that would better co-ordinate other governmental organizations, private sector and civil society. In 2005 a new national HIV and AIDS Strategy was developed for the years 2006-2015 together with an Action Plan for the 2006-2009 period.

80. The strategy was adopted by Government order in December 2005. With the order, the Government also created a high-level multi-sectorial Governmental HIV and AIDS Committee as an advisory body led by the Ministry of Social Affairs. Each implementing Ministry is developing its own annual Action Plan with a tangible/precise budget²⁸.

81. The Government has increased the funding of HIV prevention and treatment considerably in recent years. While in 2005 the total State allocations were of €2.1 million (in addition to the Global Fund aid of €1.4 million), in 2006 the total State budget for HIV prevention and treatment doubled to €4.5 million (in addition to the available Global Fund aid of €2.3 million).²⁹

1. Prevention of HIV among vulnerable groups in Estonia

82. The HIV-prevention in Estonia is carried out according to the national HIV and AIDS strategy and its Action Plan. The Action Plan identifies targeted activities for vulnerable groups such as injecting drug users, persons involved in prostitution, vulnerable youth and detainees.

83. HIV in Estonia is spreading mainly in the risk group of injecting drug users and their sexual partners. There are 26 needle exchange points and 497 methadone substitution centres for injecting drug users. Most infections are reported from drug users in Kohtla-Järve, Narva and Tallinn among Russian-speaking Estonians³⁰. Therefore an important part of HIV-prevention work in Estonia is targeting the Russian-speaking population. Several support groups operate throughout the country, including for HIV-positive detainees in prisons, with nearly 500 members. Condoms, lubricants, information materials and counselling are provided to detainees. As to the spread of HIV places of detention, see section III.3 above.

2. Access to treatment of HIV-positive people

84. In Estonia all HIV-positive people get free of charge monitoring of their health condition and free antiretroviral treatment irrespective of whether or not they have health insurance. Emergency care is free of charge for all patients and AIDS patients qualify as people with disability which provides them with State free health insurance. Main treatment obstacles are lower motivation and adherence of injecting drug users – therefore, case management is planned for the patients. Support groups for HIV-positive people operate and services are provided in both Estonian and Russian languages.

85. The Commissioner hopes that Estonia will continue and develop its programmes to decrease the spread of HIV by, *inter alia*, increasing methadone and other drug substitution programmes, developing needle exchange points and disseminating prevention guidelines.

²⁷ Health Protection Inspectorate Estonia, 2006

²⁸ The Ministries involved in the strategy implementation are the Ministry of Social Affairs (HIV-prevention, treatment and care), Ministry of Education (HIV-prevention in schools and among youth, health education), Ministry of Justice (HIV in prisons), Ministry of Interior (occupational safety - police and rescue board), Ministry of Defence (infection among army recruits) and Ministry of Population (targeting Russian-speaking youth through its Non-Estonians' Integration Foundation).

²⁹ Ministry of Social Affairs webpage <http://www.sm.ee/eng/pages/index.html>

³⁰ Epidemiological fact sheets on HIV/AIDS and sexually transmitted infections, Estonia, 2006 update, WHO UNAIDS & UNICEF

Summary of Recommendations

86. The Commissioner, in accordance with Article 3, paragraphs b, c and e and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends the Estonian authorities to:

1. accept and act upon the proposal that aged people should not have to go through an exam in order to qualify for citizenship;
2. change the application procedures for citizenship to ensure that all new-born children of non-citizen parents acquire citizenship from birth;
3. remedy the lack of trained school teachers for both Russian and Estonian-language schools;
4. improve the condition of detention in the Tallinn prison including by offering more frequent access to hot water;
5. ensure that all prisoners in disciplinary cells have access to more reading material than the Bible and prison regulations;
6. adjust the system of managing prisoners finances to ensure that they can use money transferred from their relatives without delay;
7. consider previous recommendations on the adoption of exceptional measures to prevent the spread of contagious infections in prisons and ensure appropriate treatment and protection of prisoners affected by transmittable diseases;
8. re-establish a medical programme of substitution and treatment for drug addicts in detention;
9. improve the condition of detention in arrest houses by, *inter alia*, providing cells appropriately ventilated with direct natural light and offering activities to inmates;
10. allow the detention of minors only as a very last resort and for the shortest period of time and offer them a suitable environment where they can have adequate access to education and activities;
11. take measures to avoid that minors be detained with adult inmates other than in special cases in which this would be in the best interests of the child;
12. seek the advice of the Bar Association for the resolution of the implementation difficulties of the free legal aid mechanism;
13. regulate strictly the possibility of searching an advocate's office so as to protect the right to defence and the necessary confidentiality attached to the lawyer-client relationship;
14. evaluate the implementation of the new legislation on involuntary placement of persons with mental disabilities in order to ensure that the intention of protecting individual rights is made a reality;
15. continue the efforts to stop domestic violence including by promoting training and public awareness programmes, and supporting the establishment of more shelters specially dedicated to victims;
16. prohibit explicitly any kind of violence against children, including corporal punishment;

17. continue efforts to identify and rescue victims, apprehend and prosecute traffickers, collect data, and combat trafficking in human beings as well as to protect victims. and to ratify the Council of Europe Convention on Action against Trafficking in Human Beings;
18. further strengthen legislation and practices related to discrimination as well as to ratify the Protocol 12 to the European Convention on Human Rights and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints;
19. continue to develop programmes to decrease the spread of HIV including by increasing methadone and other drug substitution programmes, developing needle exchange points and disseminating prevention guidelines.

A N N E X E

Commentaires du gouvernement estonien *[en anglais uniquement]*

The Estonian Government welcomes the constructive dialogue on human rights issues with Mr Thomas Hammarberg, the Council of Europe Commissioner for Human Rights. The Government finds it important and useful that the dialogue is a continuous one as the new memorandum constitutes follow-up to the report of 2004. The Government would hereby like to thank Mr Thomas Hammarberg for his draft memorandum and for the possibility to present its comments in respect of the draft. The Government is of the opinion that the draft memorandum in general reflects the actual situation in Estonia. At the same time the Government would like to make some remarks and provide some additional information that, hopefully, would be of assistance to the Commissioner when finalizing the memorandum. The Government would also like to thank the staff of the Office of the Commissioner for their constructive approach when conducting their visit to Estonia. The Government finds the co-operation with the Commissioner a challenging and important exercise with the general aim to improve the human rights situation in the country.

II. PROTECTION OF NATIONAL MINORITIES

1. Issues related to languages

Comment on paragraph 16, referring to the views of ECRI and the Advisory Committee of the FCNM who *remain concerned about some issues: the absence of recognition of the use of Russian as a minority language in some specific cases with a further reference to the request of Kallaste to have recognized the Russian parallel name of Krasnye Gory which was denied by the Minister of Regional Affairs on the basis of the Place Names Act. „So far, the only officially recognized parallel names are of Swedish origin”.*

The Minister of Regional Affairs denied the request on the basis of § 11 of the Place Names Act, according to which a named entity, which is not an administrative unit, a street or a square may have two official names, of which one is the principal name and the other is an alternative name. As Kallaste is an administrative unit (a town), the use of an alternative name is not allowed and therefore the denial of the Minister of Regional Affairs was legitimate. An alternative name may be given only to such named entities which are in conformity with the requirements of law and which are not administrative units. Consequently the permission to use alternative names has been granted in western Estonia in the area where the villages of the coastal Swedish population which are not administrative units are situated. The permission to use alternative names is not connected to the fact whether the alternative name is of Swedish, Russian or other origin.

The Minister of Regional Affairs has made proposals to give Russian alternative names to many villages in the historic areas of the Russian minorities similarly to the Swedish alternative names given to the villages of the Coastal Swedes, but no interest has been shown in these proposals.

According to paragraph 16 the delegation was informed of several cases where the language inspector's sanctions seemed disproportionate.

The Government would like to present additional information on the functions of the Language Inspectorate, including on its practise in cases of infringement of the requirements of the Language Act.

The Language Inspectorate has established 3255 inspection reports in carrying out supervision of compliance with the Language Act and in 2775 cases a violation of the Language Act was found. In 2540 cases the language inspectors did not exercise their right pursuant to law to apply fines. In these cases written orders were issued ordering the violators to terminate the violation. Sanctions were applied only in 235 cases (8,3% of all cases). Fines were applied in the total sum of 143 430 Estonian *kroons*, therefore the average fine was 610 kroons – 20 times smaller than the sum permitted by law.

A fine is never applied to a person who is not able to pass the language proficiency control the first time but pursuant to the provision of the Language Act that person is given enough time to improve his language proficiency and to take a language exam.

Larger fines are applied to employers in very few cases (e.g. to firms providing taxi service, where the Estonian language proficiency of employees has not been paid attention to for several years, and also to school principals).

According to paragraph 17 on 1 March 2007 amendments were made to the Law on Language giving the Language Inspectorate extended powers. These include the power to recommend the dismissal of employees with insufficient language proficiency, to make people holding language certificates re-sit an exam and to annul existing certificates of those who fail a re-sit of their language exam.

The Government does not agree with the above assessment as the Language Inspectorate was not given extended powers by the amendments to the Language Act. The objective of the amendment concerning the functions of the Language Inspectorate was to include in the Language Act the procedures of supervision, which were hitherto regulated by a Government decree,. No fundamental amendments were made concerning the principles of supervision. Another important addition to the Act was that persons who, according to the precept issued by the language inspector, pass a required proficiency examination are entitled to have the sum of up to 6000 Estonian *kroons* spent on language training reimbursed by the state. Also, an amendment allows the use of foreign languages next to the Estonian language in public information.

The Language Inspectorate has had the right to recommend the dismissal of employees with insufficient language proficiency since it was founded. The recommendation is of advisory nature and the employer decides whether to dismiss the employee or not. The language inspectors also had the right already to submit persons to re-examinations. Indeed, a person who has a language certificate, but whose actual language proficiency does not meet the requirements of law will be requested to sit for a re-examination.

The amendment does not grant the Language Inspectorate the right to annul existing language certificates. Only the National Examination and Qualification Centre - the authority in charge of arranging the Estonian language proficiency examinations - possesses the right to annul language certificates.

We agree with the recommendation of the Commissioner for Human Rights that geographical as well as individual circumstances must be taken into consideration when implementing the Language Act. The Language Inspectorate has always taken these principles into account in carrying out its work.

2. Education

In paragraph 23 it is stated that *the Ministry of Education intends to establish greater control over these publications*. We would like to add to this statement that every academic year the minister approves the list of fundamental study materials by a directive, different subject boards under the National Examination and Qualification Centre examine the lists and make their assessments on the manuscripts of new study materials.

III. PRISON SYSTEM

1. Prison population paragraph 24

Additional information to paragraph 24 concerning the prisons. Pärnu Prison was closed down on 15 January 2007, Viljandi Prison will be closed down in 2008 and Ämari Prison will be joined with Murru Prison in 2007.

Additional information and comments concerning prison population paragraphs 24-26.

As of 18 June 2007 the total number of persons detained in arrest houses and prisons has decreased to 3759 (including both persons detained pending trial and prisoners). The number demonstrates also how the total number of detained persons has in part been influenced by the regulation of the probationary release (including electronic surveillance system). The delegation of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe has carried out four visits to Estonia, the last time in spring 2007. CPT has made detailed recommendations but no general conclusion has been drawn that prisons currently in use in Estonia do not meet the standards of CPT.

2. Condition of detention

The European Court of Human Rights in its judgment of 8 November 2005, *Alver v Estonia*, described the material conditions in the Central Prison which was closed down in 2002. The medical department of the prison was in use until 2005. The material conditions in prisons currently in use are not comparable with the Central Prison, thus the *Alver v Estonia* case cannot be used as describing the conditions in prisons in Estonia.

Paragraph 28. According to § 50 of the Imprisonment Act a prisoner shall be given the opportunity to have a shower at least once a week. Above that all cells in Tallinn Prison have water supply and the prisoners are guaranteed the possibility to take care of their personal hygiene. Indeed, there is only cold water taps in the cells but the inmates can heat water in electric kettles. Pursuant to the § 48 (1) of the Imprisonment Act the prisoners are allowed to buy various toiletries from the prison shop according to their needs. Those prisoners who have no means to buy toiletries by themselves are provided once in three months with the following toiletries by the prison: a soap, 12 rolls of toilet paper, 5 razor blades and toothpaste. Toothbrushes are provided twice a year.

Paragraph 29. The prisoners may have vegetarian food. The prisons have special menus for that purpose. Vegetarian food is provided in cases where it is medically justified. The initiative and application to have a special diet must come from the prisoner's side.

Paragraph 30. Prisoners are allowed to bring different personal belongings into their confinement cell. According to § 60(1) of the "Internal rules of the prison", approved by the regulation No 72 of the Minister of Justice, a prisoner may have a holy script in a confinement cell, the legislation required for protection of his or her rights (notably the Constitution of the Republic of Estonia, the Imprisonment Act, the Internal Rules of Prisons 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, soap, a comb, toothpaste, a towel, a roll of toilet paper and sanitary towels in the case of a female prisoner. Thus, the prisoners are allowed to keep a Bible and textbooks in a confinement cell.

Section 4 of the new § 65¹ of the Imprisonment Act which entered into force on 1 February 2007 enables to individualize the commission to the confinement cell, according to the new provision it is allowed not to limit all the rights of a prisoner lodged in a confinement cell in every case.

Paragraph 31. According to the amended § 44 (3) of the Imprisonment Act a savings fund to be handed over to a prisoner on release shall be deposited to the level of the three minimum monthly wages established by the Government of the Republic. However, the prisoner's possibilities to use his/her internal personal account were widened. Even if the savings fund has not reached the level of three minimum monthly wages and of existing financial claims against the prisoner, the prisoner still has the right to use 30 percent of funds in the personal account according to his or her own discretion (for instance, to subscribe to magazines, buy goods from prison's shop, etc).

3. Health care in prison

Paragraphs 32-35. In 2004 the Government of Estonia approved the „National Drug Addiction Prevention Strategy until 2012.” To implement the strategy, 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. Setting up an effective control system and ensuring internal rehabilitation possibilities in prisons have been set as an objective. Moreover, in the year 2012, drug-free departments must exist in prisons and integrated measures must be taken to motivate prisoners to live a drug-free life. At present drug-free departments exist in Viljandi Prison, Harku Prison and Tartu Prison.

In addition to the National drug addiction prevention strategy the Government of Estonia approved the “National HIV and AIDS Strategy for the years 2006-2015” and the “Action Plan for years 2006-2009 of the National HIV and AIDS Strategy” by Government order of 7 December 2005 (amended with the Government order of 17 May 2007) a separate chapter of which covers HIV and AIDS prevention among detained persons.

The following programmes are offered in prisons: 1) services to decrease the damage of injecting drug users and to reduce demand; including advisory services and drug-free departments; 2) guaranteeing of the availability of condoms and disinfectants; 3) training sessions on the

prevention of the spread of HIV for detainees and prison staff; disseminating of information materials; 4) guaranteeing the availability of health care services and psychological and social consulting services, including antiretroviral treatment, to the HIV-positive detainees. In addition to the possibility to take a free HIV-test, all new detainees with term of sentence longer than 7 months are offered a possibility to get vaccinated against hepatitis B virus.

As of 1 November 2006 there were 16 detainees infected with tuberculosis among the whole number of detained persons, 12 of them were infected before arriving to the prison. The material conditions for the detainees infected with tuberculosis have essentially improved and the number of persons in prisons infected with tuberculosis has decreased year by year: in 1996 there were 68, in 2004 49 and in 2005 27 detainees infected with tuberculosis.

In November 2006 there were 1709 detainees infected with hepatitis in Estonia, 743 of them were infected with hepatitis B virus and 966 with hepatitis C virus. In 2005 the immunization of detainees belonging to risk group for virus hepatitis B was started. All detainees with term of sentence longer than 7 months will be vaccinated for virus hepatitis B.

In November 2006 there were 628 HIV positive detainees in Estonia. Since 2006 7 new cases of HIV infections have been detected within the prisons, 5 of them have resulted from injections. In 2005 19% of all new HIV positive cases at national level were diagnosed on the admittance to the prison.

Detoxification and methadone treatment are not commenced in the prison but in cases when drug-substitution treatment has been commenced outside the prison, it will be continued also in the prison. In the prison symptomatic treatment is provided to the prisoners, for instance, in the case of headache painkillers are given, in the case of insomnia sleeping draughts are provided, in the case of agitation disturbances tranquillisers are provided.

IV. CONDITION OF DETENTION IN ARREST HOUSES

It is important to mention that from January 2009 all the sentences of imprisonment shall be served in the prisons, not in the arrest houses anymore.

In paragraph 43 it is pointed out that during the visit the delegation met with young children detained in the arrest houses who lacked access to schoolbooks and had no contact with a teacher. During the visit there was one minor in respect of whom the court had applied the sentence of a short imprisonment in an arrest house. The place and the conditions of imprisonment are determined by the court. According to the Penal Code the court can order that the imprisonment be served in parts in order to neutralize the negative consequences of the imprisonment, including the interruption of acquiring education. The court had the possibility to apply the sentence to be served in parts but in this case the court did not for some reason use this possibility.

V. ACCESS TO COURT AND PROTECTION OF THE DEFENSE

1. Free legal aid

Paragraph 47. It is true that the rate of compensation for free legal assistance is actually somewhat lower than the market rate, but as the provision of free legal assistance is the prerogative of the Bar Association and the compensation for free legal assistance is guaranteed by the State in all circumstances, it is not justified to use the rates comparable to the market rates. It is not justified either to claim that the low rate of compensation does not guarantee the quality of the services provided. For the majority of advocates providing free legal assistance is their main field of activity. Free legal assistance is provided by advocates who are interested in these services and therefore providing free legal assistance compensated by the State cannot in general be uneconomic. Taking into account the rise of the cost of living in Estonia from 1 January 2007 the rates of compensation for free legal assistance were raised.

2. Search in an advocate's office

Paragraph 48. Currently the necessity to specify Section 91 of the Code of Criminal Procedure is under discussion. At the same time, in the case of search of an advocate's office a multistage pre-control is applied. The request for the search of an advocate's office is made by the Prosecutor's Office who is supervising the preliminary investigation and who assures its legality and effectiveness. When deciding whether to grant permission for search the court shall evaluate the circumstances of the criminal case and the reasons provided by the Prosecutor's Office in its request. The court is independent when making its decision, the court may grant a permission for search or the court may refuse it. So it is still unclear whether it is necessary to introduce additional grounds of material law.

VI. SITUATION OF PERSONS WITH DISABILITIES

1. Amendments to Involuntary placement legislation

In paragraph 50 the civil society representatives informed the delegation of difficulties in the implementation of the provisions of the Code of Civil Procedure concerning involuntary placement into closed institutions.

The new Code of Civil Procedure which entered into force on 1 January 2006 regulates the question of placing persons in closed institutions in more detail than the previous law.

According to the new law, a person may be placed in a closed institution with the permission of a court. In the cases and pursuant to the procedure provided by law, a person may be placed in a closed institution without a court ruling if this is strictly necessary for the protection of the person himself or herself or the public, and a court ruling cannot be obtained promptly enough. In such case, a petition for obtaining a court ruling shall be submitted not later than during the following working day. Involuntary psychiatric treatment of a person in the psychiatric department of a hospital may continue for more than 48 hours only with the authorisation of a court, which is the absolute time limit.

The new law also states that before a person is placed in a closed institution, the person must be heard in person by the court and the court shall explain the course of the proceeding to him or her. The court shall also hear the opinion of other persons provided by law. If a delay could result in danger, the court may apply provisional legal protection even before hearing the person himself or herself and appointing a representative to him or her. In the case specified above such acts must be performed retroactively at the earliest opportunity. A person need not be heard if this would clearly cause significant damage to his or her health or if the person is clearly not able to express his or her will.

The court may place a person in a closed institution only based on an expert opinion prepared by an expert who has personally examined or questioned the person. Only a psychiatrist may be used as an expert.

It must be admitted that at first the new legislation caused disorder in the Estonian judicial system as the system was reformed entirely. The introducing of the new procedures caused incomprehensibility as the judges were now obliged to personally question the patients in the psychiatric institutions and within very short time-limits (48 hours) etc, but by now the situation has improved. The judges are organising special training courses in connection with the proceedings of placement in closed institutions. A previous training course was organised in cooperation with The German Foundation of Cooperation in International Law (Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit), in the course of which a German judge active in the same field came to share his experience with the Estonian judges.

There has also been cooperation with the Estonian non-profit organisations, e.g. the Estonian Patient Advocacy Association. This association has been involved in several roundtables under the auspices of the Ministry of Social Affairs (12 January 2007) as well as the Ministry of Justice (13 March 2007). The Chancellor of Justice is also closely connected with the matter.

As concerns the inconsistent judicial practise, the Supreme Court has made several judgments explaining how the rights of patients must be protected in the proceedings of placement in closed institutions. In its practise the Supreme Court has constantly emphasised that a person must always be heard by the court in person. Therefore the court must always identify whether a person's mental health will allow the person to take part of the court hearing and to defend his or her rights. In case an expert identifies that a person is not capable of taking part of the court hearing, he must first have examined the person personally. The practice of the Supreme Court also emphasises that in the proceedings of appointing a guardian for an adult or of placement of person in closed institution, the persons in whose case the proceedings are conducted are considered to be with active legal capacity of civil proceedings. They have the right pursuant to law to file an appeal against court ruling and also the right to request the termination of guardianship and the placement in the closed institution.

2. Services and rehabilitation programmes for persons with disabilities

In paragraph 55 it is noted that the problem of lack of funding was remedied by the end of the year when additional 16 million Estonian *kroons* was allocated for these purposes from the state budget. Moreover, it is hoped that the problem of low level of disability benefit will be solved with the adoption of a new act on social benefits for persons with disabilities. The draft of the new law is currently under preparation.

Paragraph 60. In the report it is written that estimates of 500 victims of trafficking per year were mentioned to the delegation. The number of 500 victims as appears in the draft was some time ago announced by IOM but this number is not confirmed by the authorities and it was not confirmed either by the specialist who met with the delegation.

This is true that the number of victims of human trafficking in Estonia has been estimated differently. The estimated numbers remain between 100 and 200. As of now, there is no systematic overview of the scope and nature of the problem of human trafficking in Estonia. Continuous mapping of the situation is also one of the strategic objectives of the Development Plan against Trafficking in Human Beings for 2006-2009 (www.just.ee/22613).

VII. DOMESTIC VIOLENCE

1. Violence against children

In paragraph 73 there is reference to the data of 2005, it is suggested that the source of the data will be added to the draft. Additionally we would like to explain that in Estonia the mental and physical ill-treatment of children was declared illegal already in 1992 when the Child Protection Act was adopted. In 2007 the Ministry of Social Affairs has initiated the amendment to Section 31 of the Child Protection Act in order to add to the law a total prohibition of corporal punishment of children. At the present moment the draft law is following the ordinary procedure of consultation between different government agencies. After the adoption of the amendment by the parliament all sorts of corporal punishment shall be prohibited by law.

In paragraph 73 it is added that all kinds of physical punishment is covered by Sections 121 and 122 of the Penal Code.

Causing damage to the health of another person, or beating, battery or other physical abuse which causes pain, is punishable by a pecuniary punishment or up to 3 years' imprisonment (§ 121 Physical abuse of the Penal Code). Physical ill-treatment causing pain constitutes also the element of crime of physical abuse. Physical ill-treatment means impacting the human body in a way that is not accepted in normal human relationship (socially inadequate) but which in its nature is not as such as to cause bodily injury. Beating and battering are examples of such behaviour, as well as twisting arms, pulling the hair, picking with a needle etc.

Continuous physical abuse or abuse which causes great pain is punishable by a pecuniary punishment or up to 5 years' imprisonment (§122 Torture of the Penal Code).

Section 11 of the Penal Code defines the place of commission of an act. An act is deemed to be committed at the place where the person acted (this can be at home; at school or at a care home). In the case of inactivity (failure to act) the place of commission is the place where the person was legally required to act.

According to Section 6 of the Criminal Procedure Code criminal proceedings in these kinds of criminal offences is mandatory. Upon the appearance of facts referring to a criminal offence investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings unless the circumstances provided for in § 199 of this Code preclude criminal procedure or there are the grounds to terminate criminal proceedings for reasons of expediency (Section 6 Principle of mandatory criminal proceedings).

X. SPREAD OF HIV/AIDS

1. Prevention of HIV among vulnerable groups in Estonia

In paragraph 83 it is clarified that in 2006 497 persons received methadone treatment in Estonia and there were only 7 methadone substitution centres for drug users.