



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Summary record of the 1157th meeting

Held at the Palais Wilson, Geneva, on Thursday, 23 May 2013, at 3 p.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

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In the absence of Mr. Grossman (Chairperson), Ms. Belmir (Vice-Chairperson) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fifth periodic report of Estonia (continued) (CAT/C/EST/5)

1. *At the invitation of the Chairperson, the delegation of Estonia took places at the Committee table.*
2. **Mr. Künnapu** (Estonia), responding to questions asked the previous day, said that the review of the Penal Code currently being conducted by the Ministry of Justice included bringing the definition of torture into line with the Convention. The proposed sanctions would be between 1 and 7 years' imprisonment, or in the case of torture committed against two or more persons or against a minor, between 2 and 12 years. The draft code would be submitted to Parliament by the end of 2013. Of the 70 cases of torture or ill-treatment brought in 2011 and the 105 in 2012, to date there had been 42 and 24 convictions respectively. In 2011, 60 complaints of torture or ill-treatment had been received concerning police and prison officials, and to date, five officers had been convicted. There had been no convictions to date as a result of the 77 complaints received in 2012 against police and prison officials, many of which were still pending.
3. Misdemeanours were offences for which the main punishment was a fine or detention for up to 30 days, as stipulated by the Code of Misdemeanour Procedure. Punishments for misdemeanours were usually applied by the competent administrative authorities, but could be appealed before the courts. Detention for misdemeanours was limited to a maximum of 48 hours and persons detained on suspicion of having committed a misdemeanour had the same rights as suspects in criminal proceedings. The Ministry of Justice had prepared a new draft of the Code of Misdemeanour Procedure, which would also be submitted to Parliament by the end of 2013.
4. Under the Code of Criminal Procedure, all suspects had the right to be questioned and presented for identification in the presence of a lawyer. Lawyers could participate in criminal proceedings from the moment their client became a suspect. Suspects could defend themselves if they so wished, except for certain categories of person or crime, including individuals who had been minors at the time of the offence, or who were unable to defend themselves owing to disability, or were suspected of an offence for which life imprisonment could be imposed. The participation of a lawyer during trial proceedings was mandatory in general. If necessary, lawyers were appointed by the Bar Association and their services provided as legal aid, free of charge.
5. New guidelines adopted in 2010 had guaranteed that pretrial procedure in criminal matters concerning minors would not last more than 1 month and that criminal proceedings in which pretrial detention had been imposed would be prioritized. Pretrial detention could not last more than 6 months; in practice, it lasted an average of 4 months. In 2012, pretrial detention had been extended beyond the limit of 6 months in 23 cases. In its decision of 21 June 2011, the Supreme Court had declared the regulation on post-trial detention as unconstitutional. The draft law repealing the corresponding article of the Penal Code was currently before Parliament. In criminal proceedings, suspects could be deprived of liberty for up to 48 hours and could notify at least one person of their choice of their detention, unless the notification prejudiced a criminal proceeding. No data were currently available on such refusals.

6. **Ms. Jögi** (Estonia) said that the European Convention on Human Rights was directly applicable in domestic courts and judgements delivered by the European Court of Human Rights were binding on Estonia. Such judgements constituted grounds for the domestic review of criminal, civil and administrative cases. When interpreting the European Convention, Estonian courts applied relevant case law from the European Court. While the International Sanctions Act provided for the domestic imposition of international sanctions in order to ensure compliance with international and European Union law, to date, no individuals had been punished by applying international sanctions.

7. **Mr. Sepp** (Estonia) said that the screening process for asylum applicants was conducted in accordance with the international protection procedure. Applicants were interviewed and given the opportunity to present information to substantiate their protection request. Foreigners with no legal basis for entry could apply for asylum immediately to the Police and Border Guard Board. They were guaranteed full access to the asylum procedure, unless they had arrived through a safe third country. The Police and Border Guard Board determined safe third countries on a case-by-case basis and did not use pre-prepared lists. In 2012, of the 26 asylum applications received at the border, 8 had been rejected. Integration programmes were available to newly arrived immigrants. Rejected asylum seekers had 10 days to appeal before an administrative court. Some 150 border guards had received training in 2011 and 2012.

8. **Mr. Kaasik** (Estonia) said that prison, police, tax, customs and other officials from law enforcement agencies received most of their training from the Estonian Academy of Security Sciences. The training programmes had been evaluated by the Estonian Higher Education Quality Assessment Council and given international accreditation for seven years, and were also assessed internally.

9. **Ms. Ots-Vaik** (Estonia) said that Istanbul Protocol principles had been incorporated into training programmes for health professionals at Tartu University and other medical colleges and brought to the attention of health-care providers during professional ethics courses.

10. **Mr. Seilenthal** (Estonia) said that the Government was currently considering how best to establish an accredited national human rights institution. The Chancellor of Justice functioned in accordance with the Paris Principles and currently performed the duties of such an institution. There were no plans to make declarations concerning articles 21 and 22 of the Convention.

11. **Mr. Saadi** (Estonia) said that the Gender Equality and Equal Treatment Commissioner was an impartial, independent authority who received complaints and provided opinions on possible cases of discrimination, as described in paragraph 139 of the periodic report.

12. **Mr. Kaasik** (Estonia) said that the current review of the Penal Code included plans to establish a separate crime of domestic violence. Women victims of violence received information on their rights, remedies and victim support services from law enforcement officials, national victim support officials, social workers, women's shelters and the media. The 2010–2014 Development Plan for Reducing Violence included measures to prevent domestic violence. The relevant ministries and other public and private bodies involved had allocated resources to that end. The police followed specific guidelines when responding to cases of domestic violence and some 500 officers had received relevant training since 2011. The number of reported cases of domestic violence had risen owing to awareness-raising campaigns and increased public trust in the police. Police research into the social profiling of offenders and victims was used to improve preventive activities and in police training. The authorities were currently considering extending the special social programme on domestic violence for prisoners and persons on parole to individuals outside the criminal

system who wished to participate. In 2012, a handbook on domestic violence had been produced for teachers to raise awareness in schools about violence and abuse. Information on domestic violence and human trafficking had also been incorporated into primary and secondary school textbooks.

13. **Ms. Ots-Vaik** (Estonia) said that, thanks to the ongoing debate on corporal punishment in Estonian society, public awareness was increasing. Under the Penal Code, physical abuse of any person, including children, was unlawful. The new Child Protection Act, which was currently being drafted and clearly prohibited all forms of corporal punishment of children, would be presented to Parliament at the end of 2013.

14. **Mr. Saadi** (Estonia) said that trafficking in human beings had been a specific crime since April 2012. There had been 32 cases of trafficking in human beings and related offences in 2012, and some 31 convictions. Legislative changes made it impossible to compare those data with previous years. Human trafficking was currently punished with up to 15 years' imprisonment and other trafficking offences with up to 10 years. Some 671 persons had received help in 2012 though the helpline for the prevention of human trafficking, which was run by an NGO and financed by the Ministry of Social Affairs. In 2011, there had been 56 victims of human trafficking and in 2012, some 22 victims. They received psychological, social, legal and rehabilitative services and shelter, regardless of their status in criminal proceedings.

15. **Ms. Ots-Vaik** (Estonia) said that, under the Mental Health Act, patients could be restrained only if they had a severe mental disorder which restricted their ability to understand or control their behaviour, if they endangered their own life, health or safety or those of others and if other psychiatric care was insufficient. Means of restraint were used only on the basis of decisions taken by physicians and were proportional to the immediate danger posed. Health-care professionals who became aware that a patient had been abused or tortured were required by law to inform the relevant authorities.

16. **Mr. Saadi** (Estonia) said that, under the Victim Support Act, the State paid compensation to all victims of violent crime committed in Estonia and to their dependants. Separate data on the number of victims of torture or mistreatment who had received compensation was not available. Victims of violent crime committed by State authorities enjoyed the same rights and compensation limits as all others. In 2012, the State had paid out a total of 227,000 euros to some 207 victims. Where appropriate, victims and their family members were entitled to compensation for the cost of psychological care.

17. The trials in the 2006 Murru prison case had resulted in the conviction of one officer for aiding murder, while two prison officers had been acquitted. Two inmates had been convicted for torture and murder, one prisoner for murder, one for aiding murder, one for abetting physical abuse and a further two prisoners had been acquitted. No compensation had been claimed.

18. **Ms. Jögi** (Estonia) said that the European Court of Human Rights found only two or three violations of the European Convention on Human Rights in any given year. The riots that had taken place in Tallinn in 2007 had been unprecedented. Only a handful of the complaints lodged with the court by seven applicants in the wake of those events had been upheld. It followed that no generalized conclusions could be drawn regarding the obligation of the Estonian authorities to investigate police conduct. The police had since developed procedures for the collection of evidence in such cases.

19. **Mr. Seilenthal** (Estonia) said that simplified naturalization procedures were in place for children under the age of 15 born of persons with undetermined citizenship, who enjoyed the same rights as Estonian citizens save the right to vote in parliamentary elections or join the civil service. The proportion of the population with that status had fallen from 32 per cent to 6.9 per cent since 1991.

20. The main thrust of the Government's first integration programme, which would remain in force until 2014, had been the acquisition of proficiency in the Estonian language. Some teachers and school directors had proved reluctant to accept the unitary education system, which had been gradually introduced since 1993.

21. The low proportion of Estonian citizens among the prison population could in part be explained by the fact that having a criminal conviction of more than one year precluded a person from applying for citizenship while the sentence was in force. More than 20 per cent of adults with undetermined citizenship had a criminal record. The State party had no plans to accede to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

22. The Legal Information Centre for Human Rights had not exercised the right to contest information made public by the Kaitsepolitsei (Estonian internal security service) regarding activities by NGOs aimed at subverting the decisions of Parliament. The State party investigated all crimes against humanity, war crimes and genocide without exception as to the perpetrator. There was no statute of limitations on such crimes. In the case of Mr. Gorshkov, however, sufficient evidence to justify prosecution had not been forthcoming. German foundations had paid compensation to victims of such crimes committed in Estonia.

23. **Mr. Kaasik** (Estonia) said that several police detention centres had been renovated and training for police officers had been extended to ensure strict adherence to procedural regulations. Further renovations would be carried out between 2013 and 2019. Discussions were taking place on providing the general police and border guards with Tasers.

24. **Mr. Sepp** (Estonia) said that the expulsion centre in Harju county could accommodate 80 persons. Handcuffs and other security measures were applied as necessary. Rations for inmates were monitored by medical staff. Personnel at the centre received training in ethics, cross-cultural conflict, disease prevention and subcultures in places of detention. Inmates were free to practise their religion subject to security considerations.

25. **Ms. Tšaikovski** (Estonia) said that solitary confinement was not used as a form of punishment in the State party's prisons. There were plans to renovate some prisons, but the lack of hot water in Tallinn prison remained a problem. Two cells in the psychiatric wing of Tartu prison had been modernized to accommodate prisoners with limited mobility. Health Board guidelines were now being applied with regard to restraint and coercion in the wing. Overall, conditions of detention in Tartu and Viru prisons were good, but less so in Tallinn and Harku prisons. Badges worn by inmates to indicate proficiency in Estonian were for their own good, as they facilitated effective communication between inmates and prison warders, who could call on the services of interpreters when necessary.

26. **Ms. Gaer** (Country Rapporteur) said that she would like to know whether a person called as a witness in a criminal investigation had the right to a lawyer. She asked whether statistics were available regarding how many defendants had been assigned court-appointed lawyers. She also asked whether prison staff who ill-treated inmates would still be liable to prosecution under the planned new Criminal Code, whether the term "abuse of authority" would be retained in the Code, and when it might enter into force. She would like to know under what circumstances a person who had been taken into custody could be denied the right to contact next of kin. Was that right legally safeguarded?

27. She would like to know whether statistics were available regarding persons who had been prosecuted for human trafficking. She asked how many rulings by the European Court of Human Rights had addressed articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and how the State party had responded to them.

28. It appeared that there was no significant difference between statelessness and undetermined citizenship, so there seemed to be no impediment to the State party acceding to the 1954 and 1961 conventions on statelessness. More detailed information regarding the fact that 20 per cent of persons with undetermined citizenship had a criminal record and regarding which teachers objected to the unitary education system would be welcome. Were the latter of Russian origin? Could the delegation comment on reports that prison inmates found the language proficiency badges issued to them humiliating?

29. **Mr. Wang Xuexian** (Country Rapporteur) said that provision for redress for victims of torture appeared not to take into account the seriousness of the offence. He asked whether, in the light of judgements by the European Court of Human Rights, the State party would consider reviewing its judicial procedures and the use of force. He asked what sort of offences had been committed by the 20 per cent of persons with undetermined citizenship who had a criminal record. He also asked whether plans to relocate the expulsion centre to Tartu were being considered, and what penalties were applied to aliens who delayed lodging applications for asylum after entering the country.

30. **Mr. Mariño Menéndez** said that he would like to know whether, in line with the 1951 Convention relating to the Status of Refugees, persons denied refugee status were entitled to subsidiary protection and legal residence. He asked whether any procedures were in place to establish the age of unaccompanied minors entering the country in an irregular fashion. He also asked how long irregular migrants had to submit asylum applications before being subject to penalties for late application. Was it true that private firms had been commissioned to process asylum applications? With regard to persons of undetermined citizenship, he asked whether the Government had any agreement with the Russian Federation on how to deal with persons of Russian origin.

31. **Ms. Sveaass** asked whether there had been cases of refugees arriving in the State party and requesting a medical examination to verify their claims of having been victims of torture. If so, how had the authorities dealt with such cases? She asked whether the Chancellor of Justice had sufficient resources to carry out its various functions.

32. She would like to know whether legal safeguards in cases of involuntary treatment in psychiatric institutions had been tightened. She asked whether there was any noticeable trend towards more or less use of restraints in such institutions, and whether statistics indicated any upward or downward trend in the proportion of people committed involuntarily and in the use of forced medication. She also asked whether Roma children were sent to psychiatric hospitals and, if so, what steps were being taken to curb that practice.

33. **Mr. Bruni** requested an update on the time scale for completing the review of the Criminal Code and for confirmation that it would include a definition of torture in line with the Convention. A concern was that the penalties envisaged for torture of 1 to 7 years' imprisonment were not severe enough for its grave nature and were inconsistent with those imposed for other offences. He enquired about the evaluation of training programmes, which was particularly important in torture prevention training, as an effective means to reduce complaints. He sought clarification on whether Estonia was still considering making declarations on articles 21 and 22 of the Convention.

34. **The Chairperson**, speaking as a member of the Committee, expressed concern about the independence of the judiciary and the fact that it was not founded on a rule of law State where human rights prevailed. Specifically, the court did not have the right to continue proceedings at its own discretion if the prosecution dropped charges, which effectively denied justice. Was the appeals system truly effective? She sought clarification on whether handcuffs were used in expulsion centres. If so, how were detainees able to carry out everyday functions such as washing, sleeping and praying?

35. **Mr. Sarapuu** (Estonia) said that all States joining the European Union had to respect the rule of law and there had been no opposition to its institutional choices upon accession. Historically, Estonia had been a member of the Soviet Union, where the Public Prosecutor was part of a repressive system. After independence, Estonia had chosen a radically different, adversarial type of criminal system, where the defence and prosecution were on an equal footing, which ensured an independent judiciary. The Public Prosecutor made decisions in consultation with victims.

36. **Mr. Sepp** (Estonia) said that the use of handcuffs was sometimes necessary in expulsion centres if persons became aggressive and might be at risk of causing harm to themselves or others. In general, however, persons were able to practise their religious or other activities freely.

37. **Mr. Sarapuu** (Estonia) said that access to a lawyer in criminal proceedings was mandatory and guaranteed by the State. The Government spent around four million euros on legal aid, of which around 88 per cent went on legal aid in criminal proceedings and the rest on civil and administrative cases. Lawyers were provided by the Bar Association, which was independent from the State.

38. The new definition of torture in the revised Criminal Code would be in conformity with the Convention. The review of the Criminal Code was taking longer than anticipated, as the process was wide-ranging and delicate, requiring consultation with experts in different fields. It was scheduled for public consultation at the end of June 2013 and would be submitted to parliament by December 2013 at the latest. That timescale would also apply to the bill on domestic violence. The concept of marital rape did not exist in Estonian law; all rape was illegal, even if perpetrated by a husband against his wife.

39. In principle, the right of persons taken into custody to contact their next of kin was legally safeguarded. It could be delayed in special circumstances, but not indefinitely.

40. **Mr. Seilenthal** (Estonia) said that the reluctance of some older teachers, linked to the fact that schools were not quite ready, had hampered the implementation of the unitary education system, although newly-trained teachers were becoming adapted. Many Russian parents were, in fact, enrolling their children in Estonian-speaking schools.

41. The main reason why persons with undetermined citizenship were overrepresented in the prison population was that having a criminal conviction of more than one year precluded a person from applying for citizenship while the sentence was in force and many were repeat offenders. Most sentences of more than one year were for violent crimes. It would be counterproductive to rescind that rule, as it would remove a primary motivation for rehabilitation. With regard to how stateless persons were defined, a Committee member had referred to an international convention to which Estonia was not a party. The Estonian Government had been actively encouraging people to make a decision on whether or not to apply for Estonian citizenship. Approximately 7 per cent had not yet made a choice and 8 per cent had opted for citizenship of another country, mostly the Russian Federation, while maintaining permanent residency status in Estonia.

42. **Mr. Künnapu** (Estonia) said that, under the adversarial criminal system, the prosecution and defence were on an equal footing and the judge's ruling must be based on evidence presented during the trial. Should the prosecution drop charges, the court had to dismiss the case. He reiterated that all suspects enjoyed the right to access to a State-appointed lawyer and legal aid, including those held in custody. Since amendments to the Code of Criminal Procedure in 2011, witnesses could appoint their own legal representatives if they so wished. As to the right to contact next of kin, the law was not specific and the decision was made on a case-by-case basis, depending on circumstances. If organized crime was involved and there was a threat that other possible suspects might be alerted or evidence destroyed, the right might be delayed. A final text of the definition on

torture was not ready, but the future article would include elements of the existing provision on torture, currently included under crimes against the person, and the abuse of authority. It would be included in the chapter on offences committed by public officials.

43. **Ms. Tšaikovski** (Estonia) said that the Government had decided that by March 2013 all prison officers had to be proficient in Estonian and State-funded language courses were provided to that end. Unfortunately, 34 per cent of prison officers had failed to reach the required level by the deadline and had been dismissed. However, they would be reinstated once they had raised their language proficiency to the required level. It was important for prison officers to speak the official State language, as all legislation and regulations and professional training were in Estonian and prisoners' rights would be endangered if officers did not understand and properly apply regulations.

44. New regulations on restraint methods had been introduced in 2011 in line with the Optional Protocol and a specific regulation on implementing restraint methods and monitoring prisoners during their use would come into force in 2013. Prison officers would receive relevant training as part of their wider training programme.

45. **Mr. Sarapuu** (Estonia) said that the Committee's recommendation on providing better redress for torture victims would be taken into account. Many complaints made to the European Court of Human Rights had been found inadmissible. Nonetheless, Estonia had implemented a change in police procedures and regulations and had improved police officer training.

46. **Ms. Jögi** (Estonia) said that the judgements of the European Court of Human Rights were directly applicable in domestic legislation and therefore binding. Moreover, Estonia had addressed the actions of the law enforcement officers in question even before the judgements had been handed down.

47. **Mr. Sarapuu** (Estonia) said that the expulsion centre would not be relocated within the grounds of Tallinn prison, but on the same State-owned land, which would hold three separate places of detention, including the expulsion centre.

48. **Mr. Kaasik** (Estonia) said that no penalties were applied to aliens who delayed lodging applications for asylum; they were merely expelled. Persons denied refugee status were entitled to subsidiary protection in Estonia, which was a condition of membership of the European Union. No private companies had been commissioned to process asylum applications in Estonia. Unaccompanied minors underwent a medical examination to determine their age and were expelled if it was found that they were over 18.

49. **Mr. Sarapuu** (Estonia), referring to the ombudsman-type institution known as the Chancellor of Justice, said that it made more sense in a small country such as Estonia to strengthen an existing institution than to create a new, possibly weaker one, which might lead to an overlapping of responsibilities and coordination problems.

50. **Ms. Ots-Vaik** (Estonia) said that amendments to the Mental Health Act had come into effect in September 2012 and it was too early to determine whether there was an upward or downward trend in the use of restraint and forced medication in psychiatric institutions. However, all use of restraints was recorded and supervised and forced medication could only be administered by medical personnel.

51. **Mr. Seilenthal** (Estonia) said that Roma children were not systematically sent to psychiatric hospitals, but they were overrepresented in special education schools, some of which had a highly restrictive regime. The problem was that the Roma population was nomadic and the special education schools often provided Roma children with their first and only educational experience.

52. With regard to declarations on articles 21 and 22 of the Convention, Estonia had been reluctant to take on extra administrative burdens and was concentrating its efforts on implementing existing obligations.

53. **Mr. Sarapuu** (Estonia) said that any inconsistencies in penalties imposed for different offences would be addressed in the review of the Criminal Code.

54. **Ms. Gaer** (Country Rapporteur) requested further information on reports of inadequate conditions and cases of vandalism by prisoners in new prisons, which suggested a lack of control in those institutions.

55. **Mr. Sarapuu** (Estonia) said that the above issue could be discussed with a member of the delegation immediately after the meeting. He thanked the Committee and said that Estonia looked forward to receiving its recommendations, which would be carefully read. He was confident that, during consideration of its next periodic report, many of the issues raised would have become history.

The meeting rose at 6 p.m.