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COMMITTEE AGAINST TORTURE

Written replies by the Government of Estonia[*] to the list of issues (CAT/C/EST/Q/4) to be taken up in connection with the consideration of the fourth periodic report of ESTONIA (CAT/C/80/Add.1)

[27 September 2007]

[*] In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being edited sent to the United Nations translation services.

Article 1

Question 1

1. The Government is of the opinion that the Estonian Penal Code as a whole covers the punishment of the crime of torture and the report included definitions of offences which in aggregate cover the definition of "torture" in the meaning of the Convention, although it should be agreed with the Committee that the definition of torture specifically in § 122 of the Penal Code does not fully comply with the definition in Art 1 of the Convention. Similar opinion was expressed by the Chancellor of Justice who believes, however, that it is also possible currently to prosecute officials who have used mental violence against persons in certain custodial institutions.

2. According to the definition provided in the Convention, an act of torture is related to certain purposes (coercion to provide information, intimidation etc) or motives (discrimination) and is related to the participation of a public official, in minimum to the acquiescence of such an official. The definition of torture under § 122 of the Penal Code, however, is not related to a specific purpose or motive or the participation of a public authority and it constitutes part of the division of the Code that deals with acts of violence (incl. threatening, physical mistreatment).

3. The application of § 122 of the Penal Code is not ruled out in cases where consistent mistreatment has caused any kind of suffering, and the said provision is imperatively applied in cases where stress or mental suffering was caused through physical mistreatment that was consistent or involved great pain.

4. In cases outside the scope of application of § 122 a person is prosecuted under other sections. Therefore, statistics related to § 122 do not include all the cases of torture that fall under the definition of Art 1 of the Convention, because they fall within the scope of other criminal offences. In essence, all the different aspects of torture are covered and hence the difference in definitions is not an obstacle to prosecuting persons to the same extent as required by Article 1 of the Convention. Case law of the Estonian courts in respect of § 122 has not treated torture as extensively as the definition in the Convention. Estonian courts in their case law have not tried to extend the definition of § 122 and have instead classified the relevant criminal offences under other sections of the Penal Code. Based on Estonian case law it can be claimed with certainty that the Penal Code covers the definition provided by the Convention.

Article 2

Question 2

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

6. The above mentioned right is repeated and its application is elaborated in § 217(10) of the Code of Criminal Procedure. The right of notification can be refused if this would prejudice the criminal proceedings. The refusal is based on a permission of the prosecutor's office.

7. Upon the detention of a person, in accordance with § 218 of the Code of Criminal Procedure, a report on the detention of a suspect is drawn up. According to § 218(1) clause 6 of the Code of Criminal Procedure, the report must also include a description of the clothing and bodily injuries of the detained person at the moment of the detention. The report also contains any petitions and requests of the detained person. The prosecutor is also informed of the physical condition of the detained person, as a copy of the report on the detention of a suspect is also immediately sent to the prosecutor's office.

8. The bases for the admission of remand detainees are provided for by § 89 of the Imprisonment Act, which requires that upon detention a person is placed in a prison or a police arrest house on the basis of documents listed in the law.

9. Section 6 of the internal rules of arrest houses, established with the Minister of Internal Affairs regulation based on § 156(5) of the Imprisonment Act, sets out the procedure of admission of persons into police arrest houses. A person to be admitted to the arrest house is questioned about his or her condition of health and health screening is carried out. If necessary, the arrest house is required to call the ambulance. The ambulance doctor decides the necessity of the placement of a person in a hospital. Persons who suffer from an infectious or mental disease or any other disease that may be dangerous to the persons themselves or to other detainees or the staff of the arrest house, are not admitted to the arrest house. Such persons are referred for treatment to a hospital or to a permanent medical treatment facility of a prison. The issues related to the provision of medical services, medicines and medical devices on the basis of the Imprisonment Act are regulated in the Government of the Republic Regulation No. 330 of 19 December 2003.

10. According to § 14 of the Imprisonment Act, upon arrival in a prison a detainee is required to undergo a medical examination performed by a doctor. Detainees are ensured access to 24-hour emergency medical assistance and the doctor is required to monitor constantly the health of detainees and treat them within the possibilities available in the prison, and, if necessary, refer a person for treatment to the provider of the relevant specialist medical assistance. Detainees who need treatment that cannot be provided in prison are referred to the provider of the relevant specialist medical service by the prison doctor. The supervision of the detainee during the provision of the medical service is ensured by the prison. Health care in prisons is part of the national health care system.

Question 3

11. According to § 85(1) of the Imprisonment Act, detention and up to 3 months' imprisonment shall be served at an arrest house of the location of the court who adjudicated the matter or of the residence of a detained person. According to § 90(2) of the Act, custody pending trial shall be served in wards prescribed for custody pending trial in maximum-security prisons or in arrest

houses. Section § 156(1) of the Imprisonment Act stipulates that arrest houses are custodial institutions which are staff units of police prefectures, organising the imposition of custody pending trial and detention. Thus, the legislator has also imposed certain functions of prisons on the police, more specifically on arrest houses of police prefectures. Under custody pending trial (i.e. remand detention) are suspects and accused persons in respect of whom preventive custody has been applied in accordance with the provisions of § 127, 130 and 131 of the Code of Criminal Procedure.

12. The duration of stay of remand detainees in an arrest house depends on the number of investigative and procedural actions and the duration of the actions. As a rule, only those suspects are taken into custody who have committed a large number of offences and/or the ascertainment of whose offences requires a number of investigative actions. The transfer of detainees from one arrest house to another, as well as transfer from a prison to an arrest house is due to procedural needs and the objective of the ascertainment of truth. It should also be taken into account that Estonia is currently building new prisons and closing down old ones, and thus the transfer of detainees from one place to another is more probable.

Question 4

13. The rule applicable in criminal procedure that a person shall not be detained for more than 48 hours without the authorisation of the court derives from § 21 of the Estonian Constitution. This principle is absolute and no exceptions to it have been provided for in the Constitution. Police prefectures and prosecutor's offices observe that persons detained as suspects are brought before the court within 48 hours. Otherwise the detained person is released immediately. According to the information of the prosecutor's office, no criminal proceedings have been initiated concerning violations of the 48-hour rule.

14. The European Court of Human Rights in the case of *Harkmann v. Estonia* (No. 2192/03, 11 July 2006) found a violation of Art 5 § 3 of the European Convention on Human Rights. The Court found that, although the applicant's detention had been lawful, the person had been brought to court 15 days after the actual detention and thus Estonia had failed to ensure the person's right to be heard promptly after the detention. Thereby it was irrelevant that detaining the person had been lawful.

Question 5

15. With the Minister of Justice Regulation No. 176 of 27 June 2003 a special supervisory control committee was formed to investigate the case of alleged physical mistreatment by the members of the special armed squad in the Tartu Prison. The committee included an advisor of the Office of the Chancellor of Justice.

a) In the course of special supervisory control the video recording made during the search of E quarters of the prison was reviewed which includes the recording of inmate K.V. in respect of whom unjustified violence had allegedly been used.

b) The tactical team had to isolate inmates who had been mistakenly sent to the walking yard (it had not been prescribed in the action plan). For this, a member of the tactical team gave an order to inmates in the walking yard to lie down on their stomachs, to which some of the inmates failed to react.

c) Before entering the walking yard warning shots were fired to make it easier to subject the inmates.

d) Members of the tactical team entered the walking yard and directed the inmates to lie on their stomachs with hands behind the neck.

e) One of the inmates did not comply with the order and was pulled down and was handcuffed.

f) Next everything proceeded peacefully. The inmate was helped to stand up so that he would not hurt himself any more and was directed to the walking boxes together with other inmates.

g) During the whole operation detainees and prisoners from the windows of the remand quarters shouted to the inmates in the walking yard to stand up against the armed unit.

Conclusions of the committee:

a) Directing of the inmates to the walking boxes from the walking yard was carried out properly and without problems. The use of unjustified violence could not be seen from the video recording.

b) Inmate K.V. did not receive any bodily injuries.

c) Warning shots were made before entering the yard and were due to the reason that the inmates had failed to react to the order of the armed squad to lie down on their stomachs.

Conversations with inmates and prison representatives:

a) Members of the committee and the advisor of the Chancellor of Justice talked to two inmates, one of whom was the alleged victim in respect of whom handcuffs had been used as a special measure, and the other was the alleged witness who had complaints against the activities of the armed unit.

b) It was found that inmate K.V., in respect of whom special measures had been used, had no complaints against the activities of the armed unit and admitted that he had himself provoked the members of the armed unit by not complying with their orders.

c) Inmate J.T. initially refused to talk to the representatives of the Ministry of Justice. He expressed threats and behaved arrogantly. According to him, he did not like what he saw during the operation of the armed unit from his window. He was, however, unable to mention any specific activities.

d) Representatives of the prison did not observe the use of any unjustified force or violence in the activities of the armed unit.

Conclusions of the committee:

a) Based on the conversations with the inmates no violations or use of unjustified violence by the members of the armed unit was ascertained.

b) Inmate K.V. himself did not confirm the use of unjustified violence in respect of him.

c) Inmates were unable to mention any other inmates in respect of whom unjustified violence had allegedly been used.

d) The CPT's remark that the armed unit had used unjustified violence during the above operation is untrue and is due to the wish of some inmates to reflect the event inadequately.

16. The criminal proceedings in respect of the above events were closed on 30 May 2003 due to the absence of the elements of a criminal offence.

Question 6

17. The development plan to combat human trafficking for 2006-2009 mentioned in paragraph 137 of Estonia's fourth report has now been drawn up.[1] The first report on the implementation of the development plan has also been prepared (for the period 1 January until 31 December 2006)[2], in which it is noted that the first year of implementation of the plan was successful and went according to expectations.

18. In the framework of the development plan, lectures and two-day training seminars in Russian have been held on the topic of the prevention of human trafficking and assistance of victims, offered in cooperation of the Ministry of Social Affairs and non-profit association *Living for Tomorrow*. The target group for the training events and lectures in Narva and Jõhvi are victim support workers and social welfare workers, teachers, police officers, vocational counsellors, school psychologists. The training events and lectures have been financed by the Nordic Council of Ministers, the US Government and the Ministry of Social Affairs since 2002.

19. Information materials of the EQUAL project "Integration of Women Involved in Prostitution, Including Victims of Human Trafficking, into the Legal Labour Market" (raising of awareness, psychological, legal and social counselling of persons in the rehabilitation centre Atoll and helping them to enter the labour market) have also been published in Russian. In the framework of the project "Challenging the acceptance of the legalisation and decriminalisation of the sex industry, with focus on the demand" a handbook called "The background and reality of the demand for prostitution" was prepared and published also in Russian in 2006. The project is led by the National Institute for Health Development, which is an establishment under the Ministry of Social Affairs, and its partners are non-profit organisation Life Line (*Eluliin*), Sigmund, Estonian Open Society Institute and the Estonian Women's Studies and Resource Centre (ENUT). The handbook is meant for distribution among the Russian speaking population in the Baltic countries. The project is carried out by the Estonian Women's Studies and Resource Centre in cooperation with the organisation Coalition Against Trafficking in Women (CATW). The project covers Estonia, Latvia and Lithuania and is funded by the US Government.

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[1] Development Plan for Combating Trafficking in Human Beings 2006-2009. Available on the Internet (also in English) at http://www.just.ee/18886

[2] Report on the implementation of the Development Plan for Combating Trafficking in Human Beings, reporting period 1 Jan until 31 Dec 2006, available on the Internet (also in English) at http://www.just.ee/18886

Article 3

20. In connection with the aim of harmonisation of the directives of the Council of the European Union and the wish to bring the name of the Act in line with its content, the Refugees Act was replaced with the Provision of International Protection to Aliens Act on 1 July 2006.

Question 7

21. Determination of a safe country is done on an individual basis by the Citizenship and Migration Board and therefore there is no one permanent list of such countries, but previously Estonia has expelled persons to countries mentioned in § 185 of Estonia's fourth report.

Question 8

22. The decision to reject an application for asylum is made in writing and the alien is notified about it immediately. The decision on rejection will contain a precept for the alien to leave Estonia, except in cases where the alien has a legal basis to stay in Estonia. According to the Provision of International Protection to Aliens Act, a decision on rejecting an asylum application and expulsion of an alien can be challenged in an administrative court within ten days of the date of notifying of the decision.

Question 9

23. The new Act did not change the procedure of determination of the refugee status. We can also inform the Committee that since 2004 none of the 36 asylum applications have been granted.

Article 4

Question 10

24. According to the report Crime in Estonia 2006[3], in the period 2003-2006 a total of 239 cases were registered under § 122. The numbers were respectively 24 in 2003, 44 in 2004, 92 in 2005 and 79 in 2006. In the period of 1 January 2005 until 10 August 2007 there were 48 convictions under § 122. Currently there are 16 convicted persons serving a sentence in the prison system who have been sentenced under § 122 of the Penal Code.

Articles 5, 6, 7, 8, 9

Question 11

25. The principle of universal jurisdiction is established in § 8 of the Penal Code, according to which regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia. Inter alia, such agreements include the present Convention.

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[3] Kuritegevus Eestis 2006. Kriminaalpoliitika uuringud nr 4. [Crime in Estonia. Criminal Policy Studies No. 4] Ministry of Justice, Tallinn 2007. http://www.just.ee/30132 (08.08.2007).

26. In terms of procedure, the Code of Criminal Procedure provides that Estonia as the requested state is entitled to extradite a person on the basis of a request for extradition if criminal proceedings have been initiated and an arrest warrant has been issued with regard to the person in the requesting state or if the person has been sentenced to imprisonment by a judgment of conviction which has entered into force. Extradition of a person for the purposes of continuation of the criminal proceedings concerning him or her in a foreign state is permitted if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment according to both the penal law of the requesting state and the Penal Code of Estonia.

Article 10

Question 12

27. The relevant provisions of the Convention have been included in Estonian legislation, and in the course of legal training of police officers the theoretical and practical issues of the implementation of the provisions are covered. For example, the vocational training curriculum of the speciality of police constable in the Public Service Academy, approved by the Minister of Internal Affairs directive No. 410 of 21 June 2006, covers the topic of detention, escort and transfer of persons in accordance with the provisions of the relevant legislation, including this Convention.

28. No training has been provided to law enforcement bodies directly on the provisions of the Convention, but staff of the Office of the Chancellor of Justice have delivered presentations to officials in custodial institutions about fundamental rights and inadmissibility of torture and other cruel, inhuman or degrading treatment or punishment. Such presentations and lectures will continue even to a larger extent in 2008.

29. Training of medical personnel in Estonia takes place in two applied higher educational institutions and at the University of Tartu. Medical nurses are trained at the Tallinn Health College and Tartu Health College. Doctors are trained at the University of Tartu medical faculty. Currently there are 61 doctors and 62 medical nurses working in five prisons in Estonia. No special training on the Istanbul Protocol for medical personnel has been carried out. However, future doctors are given information about the symptoms of torture and physical violence at the forensic medicine course, and about mental violence and relating health problems at the psychiatry courses during their study.

30. Medical personnel employed at custodial institutions/prisons receive their specialist medical training at the above-mentioned educational institutions. In addition, every doctor must attend periodical in-service training during his or her employment in order to be qualified and informed about new treatment methods.

31. There have been a number of training events on domestic violence, sexual violence and human trafficking. These have been aimed at prosecutors, who have attended both international and domestic training courses in the recent years, as well as at victim support workers, teachers, youth workers, police officers and school psychologists. The training courses were carried out by the Ministry of Social Affairs and various non-profit associations and took place in Tallinn, Pärnu, Tartu, Jõhvi, Kuressaare. As an example, we could mention three training seminars on human trafficking and prostitution for police officers in Jõhvi, Tartu and Pärnu, organised in cooperation of

the International Organisation for Migration and the Estonian Women's Studies and Resource Centre in spring 2006. The International Organisation for Migration also organised two training seminars for border guard and police officials in 2007. The pilot project on the assistance to victims of human trafficking in Nordic and Baltic countries is also currently underway (2005-2008), in the framework of which social workers and psychologists in shelters have been trained. Trainers have been specialists from other Baltic and Nordic countries. There have also been study visits of staff from shelters in Estonia to shelters in Nordic countries (Sweden and Norway) to learn from their experience.

32. In connection with the Daphne II project "Notes", a public seminar and a press conference were held in January 2006 on the topic "No to violence in close relationships". Attending the seminar were staff from women's shelters in Tartu and Ida-Viru counties, county government officials from Jõgeva and Ida-Viru counties, officials of the Tallinn city government and the Ministry of Social Affairs and police officers and journalists.

33. A comprehensive training seminar on the topic of "Professional cooperation in dealing with cases of family violence" was held in the framework of the project for the development of the information collection system for violence in close relationships in the West police prefecture in 2004. Attending the seminar were 250 people dealing with the relevant issues, including police officers.

34. In 2005-2006 guidelines for health workers "How to help a family where cases of violence occur – guidelines for health workers" were issued. This took place within the project "Good practice in screening of victims of violence in intimate partnerships in maternity and child health services". The project was financed from the European Commission Daphne II programme and co-financed by the Finnish M inistry of Social Affairs and Health.

35. Estonia has also participated in the Daphne II project "Sexual violence: dissemination of material for education and training on health symptoms". Training seminars for social workers, teachers, psychologists, police officers and students were also held within this project.

36. In 2007, the Association of Women's Shelters in Estonia in cooperation with other experts will carry out a large-scale training project on violence in close relationships for medical personnel, involving ten training sessions in different locations in Estonia. In September a two-day training seminar, commissioned by the Ministry of Social Affairs, on violence in close relationships is carried out for thirty medical workers in Tallinn and Harju County. The training is organised by the non-profit association Women's Shelter in cooperation with the prosecutor Raul Heido, police representative Joosep Kaarik and forensic medicine professor Marika Väli.

37. With a view to the future, in the framework of Estonia's first "Development plan for the prevention and combating of violence in close relationships for 2008-2011" continued training of various specialists is planned. The development plan includes the need to add the topic of violence in close relationships in the curricula for the training of police, judicial, medical and social welfare workers.

38. In 2006 the police issued a handbook "Police guidelines on dealing with cases of violence in close relationships", which covers the nature of violence in close relationships, types of violent behaviour (mental, physical and sexual), communication with parties of violence in close relationships and police activities in settling and preventing such cases.

39. The cooperation agreement between the Social Insurance Board and the Police Board signed on 26 October 2004 regulates cooperation between the police and the victim support and foresees swift information exchange between the partners in order to provide high-quality victim support service to victims of mistreatment, physical, mental or sexual violence. According to the agreement, the police are required to inform victim support workers about a victim who is in need of support service (with the consent of the victim).

40. There are regular joint training events for the police and victim support workers on issues of victim recognition, their assistance, prevention and settling of cases of violence, and cooperation with various partners in the network. There are also separate training seminars for police officers on violence in intimate relationships and sexual violence that end with a knowledge test upon the completion of the course and the participants are issued a relevant certificate. The training programmes include practical case studies and group work.

41. At least once a year staff in police arrest houses are required to attend regular in-service training, which includes an overview of the opinions of the CPT, Council of Europe Commissioner for Human Rights and the Chancellor of Justice. The training programmes also cover constitutional rights of detained persons, legislation regulating the staff and working arrangements in police arrest houses.

Article 11

Question 13

42. No special measures were introduced with the entry into force of the Code of Criminal Procedure. The measures that existed previously are also in effect now.

43. Among the general rules, we can refer to the principles that existed already earlier in the Imprisonment Act: § 12 – principle of segregation (in prisons the following shall be segregated: men and women; minors and adults; imprisoned persons and persons in custody; persons who due to their previous professional activities are in risk of revenge); § 39 – working conditions in prison (prisoners' working conditions shall comply with the requirements established by labour protection law, except the specifications arising from this Act. Prison administration is required to ensure that prisoners are guaranteed working conditions which are safe to life and health); § 43 – remuneration of work of prisoners (prisoners who work shall receive remuneration. Prisoners who are required to participate in the maintenance of a prison shall also be remunerated). In practice, random checks of possible injuries of persons are also carried out.

Article 12

Question 14

44. The Ministry of Justice also carries out supervision over prisons through supervisory control (in addition to supervision of regular activities). Supervisory control means inspection of a prison with the aim to detect, remedy and prevent mistakes in the substantive activities and organisation of work of prisons. In the course of supervisory control, the legality and feasibility of the operation of the prison as well as proper implementation and registration of all the procedures is verified.

Date	Prison	Objective
15.03-23.04.2004	Everything	Verify the remuneration of all prison officials since 1 July 2003
April 2004	Maardu	Verify the legality and feasibility of the activities of prison officials and structural units of the Maardu Prison in connection with the death of detainee Valeri Lesnugin in the prison on 22 April 2004.
7.06-11.06.2004	Murru	Verify the procedures for the issuing of permits for short-term leave for detainees in the Murru Prison
3.04-8.04.2005	Pärnu, Tartu	Verify the performance of business trips in the area of government of the Ministry of Justice
2.05-20.05.2005	Ämari	Verify compliance with the Estonian language proficiency requirements of prison officials and the prison's activities to this effect
28.09-13.10.2006	Murru	Verify the exercise of supervision over detainees in the Murru Prison
18.06-21.06.2007	Tallinn	Verify compliance with the prescriptions made in the final report of the regular supervisory control

45. In the course of supervisory control visits, mostly precepts for better compliance with the working duties have been issued. No complaints have been received from prisons nor any investigations initiated on the basis of § 122. Nevertheless, there have been cases of physical mistreatment in prisons and 52 proceedings have been initiated since 2005.

46. Under § 121 of the Penal Code on physical abuse 22 criminal proceedings were initiated in 2005, among them 2 in the Murru Prison, 4 in the Tallinn Prison, 6 in the Tartu Prison, 3 in the Pärnu Prison, 1 in the Viljandi Prison, 6 in the Ämari Prison.

47. Under § 121 of the Penal Code on physical abuse 16 criminal proceedings were initiated in 2006, among them 8 in the Murru Prison, 3 in the Tallinn Prison, 5 in the Tartu Prison.

48. Since the beginning of 2007, 14 criminal proceedings have been initiated under § 121 of the Penal Code: 8 in the Murru Prison, 2 in the Ämari Prison, 3 in the Tallinn Prison. All the criminal proceedings initiated under § 121 of the Penal Code have been related to bodily injuries resulting from conflicts between inmates.

49. It is not possible to distinguish proceedings initiated against officials in the criminal procedure register.

50. No complaints have been received or proceedings initiated under § 122 of the Penal Code in prisons.

51. According to the report Crime in Estonia 2006[4], in the period 2003-2006 a total of 239 cases were registered under § 122. The numbers were respectively 24 in 2003, 44 in 2004, 92 in 2005 and 79 in 2006. In 2006, 23 criminal cases were sent to the court, involving 23 persons and 35 criminal acts; the data for 2005 are incomplete and cannot be published. In 2006, the proceedings were terminated in 23 cases in respect of 29 persons and 51 criminal acts due to the lack of public interest to prosecute, the small extent of guilt or remedial steps taken by the perpetrator; the data for 2005 are incomplete and cannot be published. In 2006, the proceedings were terminated due to the absence of the elements of a criminal offence or impossibility to ascertain the person in 12 cases and in respect of 20 criminal acts. The data for 2005 are incomplete and cannot be published.

b) In the Ministry of Internal Affairs the number of disciplinary proceedings has been as follows:

2005	0	0	0
2006	1	0	3
2007	0	0	0

52. Three criminal cases that were initiated in 2006 in connection with the alleged police violence were closed due to the absence of the elements of a criminal offence.

[4] Kuritegevus Eestis 2006. Kriminaalpoliitika uuringud nr 4. [Crime in Estonia. Criminal Policy Studies No. 4] Ministry of Justice, Tallinn 2007. http://www.just.ee/30132 (08.08.2007).

c) The expert committee on the quality of health care under the Health Care Board has settled the complaints related to psychiatric assistance as follows (incl. involuntary treatment or the use of restraint measures):

	Year	Number of cases	Whether there was involuntary treatment or application of restraint measures	Justifiability and facts of the complaint
1	2002	4	No	All no
2	2003	4	1	All no
3	2004	4	2	One complaint concerning involuntary treatment was partly incompletely documented in the opinion of the committee
4	2005	1	No	No
5	2006	-		
6	2007	1	1	Partly justified (in the opinion of the committee the documentation was partly contradictory)

53. In 2005-2006 the Health Care Board inspected involuntary treatment in all Estonian hospitals where psychiatric services can be provided and at least restraint measures can be applied. A proposal was made that the Estonian Association of Psychiatrists should harmonise the practice between hospitals and draw up uniform criteria on the evaluation of the risk of patients so that hospitals would have modern and uniform methodological guidelines and recognised criteria. A precept was also issued to three hospitals to elaborate working duties of the security staff. By today the precepts have been complied with. The Health Care Board has not received any complaints concerning suspicions of inhuman treatment or torture from any health care institutions, including institutions providing psychiatric assistance.

d) In 2006 the Ministry of Social Affairs carried out an audit in the Illuka Reception Centre for Asylum Seekers to verify the performance of contractual obligations by the institution.

54. In the course of the audit shortcomings were detected concerning the records management procedures and processing of contracts and records management to monitor performance of contractual obligations. Documents required by the contracts to verify compliance of the works with the contractual conditions were lacking. A plan of measures was drawn up to eliminate the shortcomings and the Illuka Reception Centre complied with the plan by deadline.

55. The Chancellor of Justice has constantly drawn attention to the reduction and prevention of cases of torture in custodial institutions. Based on the information collected during inspection visits, as well as complaints submitted by individuals, the Chancellor of Justice has made proposals to the relevant institutions for eliminating violations or recommendations for changing administrative practice. Proposals and recommendations have been made, for example, to prisons, psychiatric hospitals, social welfare homes, special schools and other similar institutions where persons are detained against their will. Institutions that have been inspected practically always comply with the proposals and recommendations made by the Chancellor of Justice.

Question 15

56. Although the Estonian Penal Code does not contain a separate criminal offence called "human trafficking", the Code includes 16 sections related to human trafficking and prohibit any such activity, for example enslavement, taking a person to a country where personal liberties are restricted, aiding of prostitution, illegally inducing a person to donate organs, making and dissemination of child pornography etc (see below). The most frequent criminal offence related to human trafficking in 2006 was unlawful deprivation of liberty (44) and provision of opportunity to engage in unlawful activities and pimping (38). In 2006, 239 persons were suspected of having committed offences related to human trafficking, more than three quarters (77%) of the suspects were male. 102 persons were related to providing opportunities to engage in unlawful activities and pimping, and 86 persons to cases of unlawful deprivation of liberty. In the case of other types of criminal offences the number of suspects was smaller.

57. Based on the data in the Register of Criminal Proceedings, approximately 160 criminal offences were registered in Estonia which may be linked to human trafficking.

58. Types of crime involving cases of human trafficking under the Penal Code[5]

§ 133. Enslaving	1	1	7
§ 134. Abduction	0		
§ 136. Unlawful deprivation of liberty	44	20	31
§ 138. Illegal conduct of human research	0		
§ 139. Illegal removal of organs or tissue	0		68

[5] Since 16 July 2006 pimping is covered not in § 268 but instead in § 268'. § 143' (Compelling a person to satisfy sexual desire) was also added.

§ 140. Inducing person to donate organs or tissue	0		12
§ 143. Compelling person to engage in sexual intercourse	7	1	29
§ 172. Child stealing	0		2
§ 173. Sale or purchase of children	0		
§ 175. Disposing minors to engage in prostitution	0		1
§ 176. Aiding prostitution involving minors	2	2	13 (19)
§ 177. Use of minors in manufacture of pornographic works	10	7	3
§ 178. Manufacture of works involving child pornography or making child pornography available	29	22	11
§ 259. Illegal transportation of aliens across state border or temporary border line of Republic of Estonia	5	3	3
§ 268'. Provision of opportunity to engage in unlawful activities, or pimping[6]	38	28	52
Total	135	84	280 (299)

59. Under § 268 of the Penal Code (the provision of opportunities to engage in unlawful activity, or pimping) 47 cases have been settled by the courts since 2003. In 35 cases a pecuniary punishment and in 62 cases a sentence of imprisonment (either conditional or real) was imposed.

60. Under § 172 of the Penal Code (aiding prostitution involving minors) a pecuniary punishment has been imposed on 3 persons and a sentence of imprisonment (either conditional or real) on 16 persons.

[6] Since 16 July 2006 pimping is covered not in § 268 but instead in § 268'. § 143' (Compelling a person to satisfy sexual desire) was also added.

61. For the protection of witnesses the criminal procedure in Estonia provides for the opportunity to declare a witness anonymous and the Witness Protection Act includes wide-ranging measures, inter alia hiding of a person's identity from the criminal. In the framework of international cooperation, Estonia, Latvia and Lithuania have entered into a victim and witness protection agreement.

Article 13

Question 16

62. Below, there is information about the activities of the Chancellor of Justice (i.e. Legal Chancellor) and an analysis of the compliance of the institution of the Chancellor of Justice to the Paris Principles set out in the UN General Assembly resolution No. 48/134.

63. According to the 1992 Constitution, the Chancellor of Justice is appointed by the Riigikogu on the proposal of the President of the Republic for a term of seven years. In his activities the Chancellor of Justice is an independent official who reviews the legislation of general application of the state's legislative and executive powers and of local governments to verify its conformity with the Constitution and the laws. The Chancellor of Justice in Estonia combines the function of the general body of petition and the guardian of constitutionality.

64. Once a year during the third week of the parliament's autumn session the Chancellor of Justice submits to the Riigikogu a report with an overview of his activities. The report contains an overview of the conformity of the legislation of the state's legislative and executive powers and of local governments with the Constitution and of the Chancellor's activities in the protection of fundamental rights and freedoms. The annual report of the Chancellor of Justice is published on the Chancellor's webpage www.oiguskantsler.ee both in Estonian and English.

a) Competence of the Chancellor of Justice in constitutional review

65. According to the Constitution, the Chancellor of Justice is an official who reviews the legislation of general application of the state's legislative and executive powers and of local governments to verify its conformity with the Constitution and the laws. If the Chancellor of Justice finds that a piece of legislation is in conflict with the Constitution or a law, he may propose to the body that passed the legislation (e.g. a Minister, or a local government council) to bring the legislation into conformity with the Constitution or the law, allowing a deadline of at least twenty days for this. If the legislation is not brought into conformity, the Chancellor has the right to make a request to the Supreme Court Constitutional Review Chamber, to declare the legislation invalid. The Chancellor of Justice can also make reports to the Riigikogu to draw the attention of legislators to various problems in legislation.

b) Competence of the Chancellor of Justice as an ombudsman

66. The second important function entrusted to the Chancellor of Justice with the Chancellor of Justice Act passed on 1 June 1999 is the function of the ombudsman to verify that state agencies comply with the fundamental rights and freedoms of persons and the principles of good governance. With the amendment to the Act that entered into force on 1 January 2004 the Riigikogu extended the

Chancellor's ombudsman functions even further – now the Chancellor of Justice also carries out supervision of local governments, legal persons in public law and persons in private law who exercise public functions. Since 18 February 2007 the Chancellor of Justice is the national prevention body under Article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

67. Thanks to the Chancellor's competence as an ombudsman, everyone who claims that his or her rights have been violated or he or she has been treated contrary to the principles of good governance may file an application to the Chancellor of Justice asking him to verify whether a state agency or local government body, a legal person in public law, or a natural person or legal person in private law who is exercising public functions complies with the principles of guaranteeing fundamental rights and freedoms and good governance. The task of the Chancellor of Justice as an ombudsman is to protect people against arbitrary treatment by the state authorities.

68. Year by year the number of own-initiative analyses conducted by the Chancellor of Justice has increased. The Chancellor often verifies on his own initiative the protection of the rights and freedoms of persons who themselves cannot sufficiently defend their rights or whose liberty is restricted.

69. The Chancellor of Justice's ombudsman proceedings end with the statement of the Chancellor in which he expresses his opinion on whether the activities of the body subjected to supervision were legal and compatible with the principles of good governance. The Chancellor of Justice can criticise, make recommendations and express his opinion in other ways, as well as make a proposal to eliminate the violation, change the administrative practice or interpretation of a norm, or to amend the norm itself. The last option is used if, in the course of the proceedings, it appears that the injustice arising from the case is not so much a problem of the application of the law but rather of the law itself. The Chancellor of Justice notifies the applicant and the relevant body in writing of his opinion. Although the recommendations of the Chancellor are not legally binding, the proposals made in the Chancellor's memorandum are almost always complied with.

c) Other competencies of the Chancellor of Justice

70. In addition to the supervision of the constitutionality of legislative acts and the function of the ombudsman, the Chancellor of Justice also exercises other tasks entrusted to him by law, among them submitting his opinion to the Supreme Court in constitutional review court proceedings, as provided for by the Constitutional Review Court Procedure Act, or initiating disciplinary proceedings with regard to judges, as provided for by the Courts Act.

71. Since 2004 the Chancellor of Justice also has a competence to settle discrimination disputes between private individuals. The Chancellor can settle such disputes only in the form of conciliation proceedings.

72. In 2006, the Chancellor of Justice received 1858 applications, and 467 persons came to the reception of the Chancellor or his advisers in the Office of the Chancellor of Justice or during visits to the counties. Based on the problems identified on the basis of applications and receptions, the Chancellor initiated 1594 proceedings of cases. Eight inspection visits were also carried out.

73. There were 258 ombudsman proceedings, i.e. proceedings aimed at the verification of the legality of activities of the state, local government, other legal persons in public law, or private persons, bodies or agencies performing public functions. In 65 instances, the Chancellor of Justice expressed criticism and made recommendations to institutions, bodies or individuals with the aim to eliminate violations or improve administrative practice. In 17 cases the violation was eliminated in the course of the proceedings.

74. In 1043 instances, or 65.4% of the cases, the Chancellor of Justice did not accept an application for proceedings for various reasons, and provided an explanation to the applicant. The main reasons for rejecting an application were the lack of competence of the Chancellor, the failure of the applicant to use other effective legal remedies, or there was a pre-trial procedure of court procedure pending in the case, or the application was clearly unfounded. As a rule, the Chancellor does not initiate proceedings if the applicant can use other remedies to achieve a more effective result.

75. In 2006, the Chancellor of Justice made one proposal to the Riigikogu (one and two proposals respectively in 2004 and 2005) and two presentations (four and seven presentations respectively in 2004 and 2005). Standing committees of the Riigikogu approached the Chancellor of Justice in 16 cases in 2006 in order to hear the Chancellor's opinion about bills of legislation. Most requests for opinion came from the constitutional committee and the legal affairs committee. In addition, the Chancellor of Justice submitted an opinion to the Riigikogu constitutional committee on the issue of the right to vote of persons detained in custodial institutions.

76. The number of complaints submitted to the Chancellor of Justice as reported in § 198 and § 234 of Estonia's fourth report was as follows:

Year/institution	Prisons	Police	Prosecutor's office
2004	331	59	7
2005	305	62	15
2006	292	48	-

e) Office of the Chancellor of Justice

77. The Office of the Chancellor of Justice is an agency serving the Chancellor of Justice as a constitutional institution. The head of the Office is the Chancellor of Justice. The expenses of the Office are covered from the state budget. In terms of structure, the Office comprises the Chancellor of Justice, two Deputy Chancellor of Justice-Advisers, the Director of the Office, and four departments. In 2007, the budget of the Chancellor of Justice was 23.2 million kroons.

f) Compliance of the Chancellor of Justice to the Paris Principles related to the status of national institutions for the promotion and protection of human rights.

78. Based on the above, it should be concluded that the Chancellor of Justice complies in all respects to the requirements of the Paris principles for national institutions for the promotion and protection of human rights. The Chancellor of Justice is a completely independent constitutional institution to which sufficient and sustainable funding is ensured. The Chancellor of Justice

regularly submits reports on his activities and the reports are published both electronically and on paper. Everyone has the right of recourse to the Chancellor of Justice. The activities of the Chancellor of Justice may result in proposals to change the legislation or practice, and such proposals are mostly complied with by the supervised institutions.

Article 14

Question 17

79. The Victim Support Act provides for two separate regulations – compensation and possibilities for victim support service.

80. In 2005 victim support workers were contacted in 3005 cases. In 841 cases the cause was domestic violence, in 278 cases the victim support was contacted by children who had suffered from violence and in 386 cases by elderly people. In seven cases victim support workers helped the police to deliver death notices.

81. In 2006 victim support workers were contacted in 3333 cases. In 964 cases the cause was domestic violence, in 283 cases the victim support was contacted by children who had suffered from violence and 315 cases involved physical violence (cases not related to domestic violence).

82. The experience of the provision of victim support has shown that initial psychological counselling provided by victim support workers is not sufficient in many cases and the majority of the victims need long-term professional counselling which is not accessible for many due to its high price. Therefore, with the amendments into the Victim Support Act on 1 January 2007, the possibility of compensation of the cost of psychological counselling was established for victims of all kinds of crime and their family members whose coping ability has decreased due to the offence perpetrated in respect of the victim.

83. Compensation to victims of crime is paid in the case of a serious bodily injury, a health problem lasting for at least six months, or the death of the victim as a result of a crime. Based on the Victim Support Act, 70% of the actual property damage, but not more than 50 000 kroons, was compensated until the beginning of 2007. At the beginning of 2007 an amendment into the Act entered into force, raising the compensation from 70% to 80% of the damage caused through a crime of violence and the maximum compensation was raised to 150 000 kroons. Any amounts which the applicant for compensation receives or is entitled to receive as compensation for damage resulting from a crime of violence from a source other than the person liable for the damage caused by the crime (e.g. health insurance benefits, one-off allowances from the state, support payments on the basis of other laws) shall be deducted from the damage serving as the basis for determining the amount of compensation.

84. In 2005, 1 027 200 kroons of compensation was paid to victims of crime and 252 persons received the compensation. In 2006, the total amount of compensation was 1 180 600 kroons and 285 persons received the compensation.

85. The non-profit association “Ohvriabi” (Victim Assistance) has criticised the Victim Assistance Act to the effect that the public is not sufficiently informed of the right to mental support, compensation or counselling. According to them, this is evident from the small amount of the payments made in comparison with the number of serious crimes against persons, i.e. the number of victims who are entitled to support is significantly higher than the number of applications.

Article 15

Question 18

86. Article 130 of the Constitution lays down and absolute prohibition of torture, to which no exceptions can be made even in a state of war or emergency. According to § 9(3) of the Code of Criminal Procedure, participants in a proceeding shall not be subjected to torture or other cruel or inhuman treatment and shall be treated without defamation or degradation of their dignity.

87. The Code of Criminal Procedure contains general principles and rules according to which statements obtained through torture cannot be used as evidence. The Code provides, for example, for the principle of the presumption of innocence: no one shall be presumed guilty of a criminal offence before a judgment of conviction has entered into force with regard to him or her. In a criminal proceeding no one is required to prove their innocence. A suspicion of guilt regarding a suspect or accused which has not been eliminated in a criminal proceeding shall be interpreted to the benefit of the suspect or accused. (§ 7, cf § 22 of the Constitution)

88. In accordance with the principle of oral proceedings, it is stipulated that a decision of a court may be based only on evidence which has been orally presented and directly examined in the court hearing and recorded in the minutes. A decision of a court of appeal may be based on evidence which has been orally presented and directly examined in a court hearing by the court of appeal and recorded in the minutes or evidence which has been directly examined in a county court and presented in appeal proceedings (§ 15).

89. Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person’s memory capacity or degrading his or her human dignity. If it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person. If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them. Investigative bodies and Prosecutors’ Offices may involve impartial specialists in the collection of evidence and the specialists may be heard as witnesses (§ 64). In criminal proceedings in Estonia evidence collected in a foreign state pursuant to the legislation of such state may be used unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of Estonian criminal procedure (§ 65).

90. Abuse of authority, unlawful interrogation, unlawful application of measures securing conduct of judicial proceedings, unlawful search and eviction, coercion to provide false statements or false expert opinion or false translation or interpretation, committing of violence in respect of a suspect, accused, defendant, acquitted or convicted person, witness, expert, translator or interpreter and victim, unlawful treatment of a detainee, person in custody or under arrest etc are criminal offences, and thus an order to commit any such acts is unlawful and shall not be complied with. An unlawful order to commit an offence cannot be invoked as a justification for the commission of the offence.

Article 16

Question 19

91. In the arrest houses of the North Police Prefecture and the East Police Prefecture, as well as in all the other police arrest houses, all persons who are detained overnight are given clean mattresses and bedclothes and personal hygiene articles. In the North Police Prefecture the lighting of the cells was completely renovated this year. Automatic ventilation is ensured. In the cells of the Narva arrest house under the East Police Prefecture, new lighting was installed in 2005. In 2006 a modern ventilation system was built. Ventilation system in the Rakvere arrest house under the East Police Prefecture is outdated but still functional. Lighting in the cells is sufficient and regulated with a rheostat. Ventilation system in the Kohtla-Järve arrest house under the East Police Prefecture is depreciated but its functionality is still guaranteed. Situation in Kohtla-Järve will be solved in the nearest months when the new Jõhvi arrest house is completed after which the Kohtla-Järve arrest house will be closed down. In the North Police Prefecture, the exercise yard has been renovated and its more intensive use will be possible after the problems of staff shortage are solved. In the arrest houses of the East Police Prefecture it is currently not possible to guarantee exercise opportunities. The situation will be solved with the completion of the Jõhvi arrest house after which there will be proper exercise facilities. The completion of the Jõhvi arrest house with the capacity of 150 persons will also create preconditions for changing the working arrangements of the arrest houses under the East Police Prefecture, and long-term detainees will no longer be kept in the Rakvere and Narva arrest houses. There are plans to renovate the Jõgeva arrest house in 2008.

Question 20

92. As can be concluded from the above explanations, it is currently not possible to guarantee the required exercise facilities in some arrest houses, but with the completion of the Jõhvi arrest house in 2008 the problem will be solved.

93. According to Estonian law remand detainees who are minors and who have been in custody for at least one month should be ensured the opportunity to continue acquiring basic or general secondary education on the basis of the national curriculum. Remand detainees are also allowed short-term visits for personal, legal or business purposes which the detainee cannot exercise through third persons. However, the conducting of such visits is subject to certain restrictions, e.g. the prison official who is present can interrupt the visit if it may endanger the conducting of criminal proceedings.

94. Remand detainees have the right of unlimited visits with the defence counsel, representative who is a lawyer, minister of religion and consular representative of their country or with a notary for the performance of notarial acts, and such visits take place without interference. Remand detainees have the right to written correspondence and the use of a telephone (except mobile phone) if the technical conditions for this exist. The content of messages transferred by a remand detainee via correspondence or telephone can only be checked with the authorisation of the court on the bases and pursuant to procedure stipulated in the Surveillance Act. It is prohibited to check the letters and phone calls of the detainee to the defence counsel, Chancellor of Justice, prosecutor's office, court and the Ministry of Justice. Remand detainees are allowed to receive parcels. The list of permitted items in a parcel is established in the internal rules of the prison or arrest house. The content of the parcel is checked before it is handed over to the detainee by a prison official in the presence of the addressee of the parcel.

95. In addition to ordinary visits, for essential and urgent personal, legal or business purposes which require the personal presence of the detainee the prison director can allow escorting the detainee out of the prison under supervision for up to one day, if a consent for this is given by the investigative authority, prosecutor's office, or court if the matter is under judicial proceedings.

Question 21

96. The state is required to ensure the existence of general premises, study classes and workshops necessary for the acquisition of general education and vocational education and for carrying out work-related training, as well as opportunities of professional traineeship in the specialities taught in prisons. However, the state has had problems with fulfilling these obligations and therefore, in new prisons such as the Tartu Prison or the Viru Prison to be completed in the near future, up-to-date facilities for the provision of education have been built. In addition, it should be noted that in the Murru Prison in 2007 the number of inmates who are engaged in work or study grew drastically. Currently, 69% of the inmates either work or study. Special regulation was also passed concerning the study of the Estonian language, according to which those engaged in such study receive remuneration. The aim of the regulation is to motivate inmates to engage in some activity and prepare them for the time of release. In order to improve the studying conditions of inmates, the general ventilation was renovated and the maintenance repairs of the workshop for electricians were carried out in the vocational school in the Tallinn Prison in 2006. Electrical wiring was also partly changed and the lighting system was fixed. According to statistics, the number of inmates engaged in vocational training in the study year 2006/2007 is as follows:

Ämari Prison – 100 inmates
Murru Prison – 140 inmates
Harku Prison – 10 inmates
Tallinn Prison – 24 inmates
Viljandi Prison – 44 inmates
Tartu Prison – 106 inmates

97. 470 inmates are engaged in study in general education school, 52.5% of them are attending studies provided in Estonian and 47.5% in Russian.

98. Unless otherwise provided by law, inmates are required to work. The following are not required to work:

a) detainees over 63 years of age;

b) detainees acquiring general education or vocational secondary education or attending work-related training;

c) detainees who are incapable to work for health reasons;

d) detainees raising a child up to three years old.

99. In the Tartu Prison there are 80 places of work for inmates. 34 of them work in the territory of the prison and 20 outside the prison.

100. In the Harku Prison 80 inmates are engaged in work under the company Estonian Prison Industries, and 18 more inmates do maintenance work in the prison. The company Estonian Prison Industries creates or reduces workplaces according to the number of inmates. In the Tallinn Prison there are 119 auxiliary work positions to be covered by inmates. Currently 99 of the positions are covered. In the new Viru Prison to be opened in April 2008, 170 work places for inmates are planned.

101. Additional security measures can be taken, inter alia, if the detainee damages his or her health or is suicidal or prone to escape. According to current practice, additional security measures are applied for the duration of 2-4 months.

Question 22

102. A total of 9 criminal cases were sent to courts concerning police violence in 2003-2006. See also reply No. 14 and 5.

Question 23

103. As of 2 September 2007 (Source: Ministry of the Interior, Population Register*)*

a) total number of registered population of Estonia: 1 361 734

b) the number of Estonian citizens: 1 140 905

c) the number of residents with undetermined citizenship: 113 945
the number of residents with the citizenship of another state: 106 884

104. Since spring 2006, the Integration Foundation offers persons with undetermined citizenship free of charge courses to prepare for the examination on the Constitution and the Citizenship Act to apply for the Estonian citizenship. The courses offer practical preparation for the examination and also deal more widely with the issues related to the examination. Besides that, a project is currently underway for the reimbursement of language learning costs. Since January 2004 the Estonian government also joined in the provision of support to language learners. In addition to the 50% support for citizenship applicants financed by the European Union, further 50% of the language learning costs are covered from the state budget. In 2006, when the project Interest ends the support scheme, the state will continue to reimburse 100% of the costs to citizenship applicants. Language learning costs are reimbursed by the national Examination and Qualification Centre, i.e. it is possible to apply for the reimbursement of up to 100% of the costs used for language learning (but not more than 6000 kroons).
http://www.ekk.edu.ee/kodakondsus/index.html

Question 24

Total number of detainees		Stateless	Foreign citizens
1.1.2005	3469	1292	164
1.1.2006	3386	1112	202
1.1.2007	3265	1080	177
7.8.2007	2672	826	157

105. At the beginning of 2007, 61.5% of detainees were citizens of the Republic of Estonia, 33% were stateless persons and 5.5% foreign citizens. According to the latest information, the proportion of stateless persons has dropped to 31%. The group of stateless persons consists mainly of persons

who settled in Estonia at the time of the former Soviet Union and are staying in Estonia on the basis of a residence permit.

Question 25

a) Kernu Social Welfare Home has drawn up an action plan to curb violence between patients. The plan also includes training of staff dealing with clients, the reduction of the number of clients and expanding of various opportunities to engage in activities for clients. By today, 15 staff members have attended training, and follow-up training is also provided. The number of clients in the closed department (24-hour care with reinforced supervision) was also reduced from seventeen to seven, which alleviates tensions caused by overpopulation.

b) Community based treatment is not practiced in Estonia. There is out-patient treatment and hospital treatment. Drafting of the new Mental Health Act will be started in 2008. In connection with this the whole concept of psychiatric treatment will be reviewed, and there will also be discussions about the introduction of community based treatment.

c) Restraint measures are applied in respect of persons with mental disorders in the case of provision of involuntary emergency psychiatric treatment in a hospital or social welfare institution when there is a direct risk of self-injury or violence against other persons, and other measures proved to be insufficient for eliminating the danger. Isolation and fixation are used as restraint measures in hospitals. In social welfare institutions only isolation is allowed. Isolation means the placement of a person in an isolation room and keeping them there under the surveillance of a health care worker or staff of the social welfare institution. Isolation of a person in a social welfare home is allowed until the arrival of the ambulance or the police for up to 24 hours. Fixation means the use of mechanical devices (straps, special clothes) in an isolation ward under the surveillance of the health care worker to restrict the freedom of action of the person. Restraint measures are applied upon the decision of a doctor which includes the justification noted in the treatment or care documents, and their use is immediately stopped when the danger has passed.

Question 26

106. Chapter 9 of the Penal Code regulates offences against persons (murder, causing of health damage, physical mistreatment, torture, rape, etc), regardless of the sex of the victim or his or her relation to the perpetrator. An exception are some offences related to sexual self-determination concerning children. Since June 2004 physical mistreatment is no longer an offence that could be prosecuted only on the basis of charges brought by the victim.

107. Rape, according to the Penal Code, includes rape either inside or outside of marriage. According to the Penal Code, rape is a type of crime related to sexual self-determination.

108. The police registers more and more cases of violence in close relationships or domestic violence. The majority of the victims of violence in close relationships or domestic violence are women. A significant proportion of the cases also involve children who either witnessed the act of domestic violence or, in the worst case, were victims themselves.

109. Based on the police statistics:

a) in nine out of ten cases of violence in close relationships the victim was a woman;

b) one third of the victims suffer under violence for 3 -5 years before they come to the police;

c) only 12% of the cases notified to the police are first -time cases, 82% are repeated incidents;

d) more than half of the cases of violence in close relationships take place in families with children;

e) one third of the children in violent families are victims themselves;

f) 80% of children in violent families witness the acts of domestic violence.

110. Since July 2006 victims of violence in close relationships can request the court to impose a restraining order on the violent partner. The person infringing the order, except in the case of a temporary restraining order, can be punished with up to one years' imprisonment. For protection of private life or other personality rights of the victim, a person suspected or accused of a crime against the person or against a minor may be prohibited to stay in places determined by the court, to approach the persons determined by the court or communicate with such persons 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 temporary restraining order is applied to a suspect or accused with the consent of the victim. Since the beginning of 2006 the court, on the basis of the Law of Obligations Act and the Code of Criminal Procedure, at the request of the victim for the protection of his or her private life or other personality rights may apply the restraining order in respect of a person convicted of an offence against person for a duration of up to three years.

111. According to the State Legal Aid Act, legal aid to victims of violence in close relationships is ensured on the same bases as to other persons in need of aid. State legal aid means the provision of legal services to a natural or legal person at the expense of the state in connection with proceedings in an Estonian court or administrative authority or in the protection of their interests in any other manner. In addition to court procedures, legal aid also covers other forms of legal counselling (§ 4 of the State Legal Aid Act). The procedure for obtaining legal aid is related to the financial situation of the person. The court may also initiate the provision of legal aid on its own initiative.

112. Non-profit organizations have organized various training courses on violence in close relationships for different target groups (incl. the police, judges, medical workers, prosecutors, teachers, etc). A large number of Estonian police officers have received training on violence in close relationships. The largest project is the project on the establishment of an information collection system on violence in close relationships that was launched by the West Police Prefecture in 2004. The system was used by police officers dealing with the cases. In 2006 the system was extended to cover the whole of Estonia. In the framework of the project a comprehensive training seminar on the topic of "Professional cooperation in dealing with cases of family violence" was held in November 2004. Attending the seminar were 250 people dealing with the relevant issues, including police

officers. In the framework of the project a family violence information brochure was drawn up for the police that explains cases of family violence and describes the role of persons related to the case. Several smaller training seminars for the police on violence in close relationships have also been organised.

113. The capacity of the police and the legal system to react to cases of violence in close relationships has significantly improved in the recent years. First and foremost this has been due to training and also to the above mentioned project initiated by the West Police Prefecture. However, small coverage of the relevant issues in society as well as interpretation and implementation of the laws continues to be a problem. In addition, the approach of the police and the courts to cases of violence in close relationships is still sometimes too narrow and fails to take into account the specific nature of this type of violence.

114. One of the most available services is the state victim support service that was launched in 2005. Before that, victim support was provided on a voluntary basis by the non-profit association *Ohvriabi* (Victim Support). All victims of violence in close relationships can also contact social workers in all the counties to obtain support, even if the crime is not registered in the police. Victim support is a public service which is aimed at maintaining or improving the coping ability of persons who have been victims of negligence, mistreatment, physical, mental or sexual violence. Victim support service involves counselling of the victim and assisting the victim in communicating with the state and local government bodies and legal persons. One of the priorities of the victim support service at the moment are victims of violence in close relationships.

115. According to the Victim Support Act, victims of violence in close relationships, similarly to victims of other offences, have the right to compensation.

116. A contribution to promoting public debate about violence in close relationships in Estonian society was also made by the book "Voices of the silent" that was published in Estonian and Russian and contains interviews with victims, officials and specialists, and articles by prominent scientists. Social campaigns called "Don't hit the child!" and "When love hurts" were also launched and presentations have been delivered and articles published by a number of specialists in their field. In the television and the press there is also a social campaign to combat violence in close relationships.

Question 27

117. In connection with the events in April a total of eight criminal proceedings were initiated to investigate possible incidents of police violence. Seven of the cases were initiated under § 291 of the Penal Code and one case under § 121. By now, criminal proceedings have been terminated in three cases pursuant to § 200 of the Penal Code (impossibility to ascertain the person who committed the offence). In the remaining five cases pre-trial proceedings are pending, and no persons have yet been interrogated as suspects.

Question 28

118. In accordance with the Weapons Act, the amendments to which entered into force in spring 2007, cut-and-thrust weapons prohibited for civilian purposes now also include brass knuckles,

knuckle knives, bayonets, chain maces, and also other objects specifically intended to cause bodily injuries, as well as electric shock weapons. Collection of these weapons is prohibited and the use of some of these weapons for civilian purposes is also prohibited.

Question 29

119. In March this year provisions on the acts of terrorism, terrorist organisation, preparation and incitement to acts of terrorism and financing and support of acts of terrorism (§ 237-237^3) entered into force. There is yet not case law concerning these provisions. There is also no information on any pending proceedings in relation to these provisions.
