

# **CHILDREN'S RIGHTS BEHIND BARS**

## **Human rights of children deprived of liberty: improving monitoring mechanisms**

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Estonian national report

August 2014

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## 1. Introduction

In Estonia there are approximately 500 children deprived of liberty, which is a big number, considering the small number of population (1,315,819 as in the beginning of 2014)<sup>1</sup>. According to the last census, the number of children of 0-18 years of age composes 15 per cent of the general population<sup>2</sup>.

Deprivation of liberty in Estonia can similarly to other European countries happen because of different reasons. There might be health problems (mental disability), troublesome behaviour of the child, which endangers the child's health and wellbeing (e.g. drinking alcohol and drug, smoking, not attending school, etc.), and unlawful behaviour and criminal offence committed by the child. The age of criminal responsibility in Estonia is 14 years. Each year, the police identify approximately 1,500 children who have committed criminal offence<sup>3</sup>. During last years the ratio of child offences per 10 000 has not changed significantly. The number of incarcerated children decreased, because of the implementation of alternative measures of criminal punishment, e.g. probation. At the end of 2012 there were 36 incarcerated children in prison. 16 of them had been convicted and 20 were on remand<sup>4</sup>. In August 2014 this number was 29. Most children in prison are 16-17 years old. Male prisoners are in Viru Prison, female offenders in Harku Women's Prison. The last juvenile prison in Viljandi was closed in 2008.

In addition to prison, some juveniles are incarcerated for short time in arrest houses (jails). In 2013 altogether 346 juveniles spent some time in arrest houses during the year. Of them 142 juveniles were on remand and 158 were arrested; 46 juveniles have been put into arrest houses for another reason.

An alternative to prison is reform schools or special schools. The number of residents of these schools decreased more than by half during the last years: from 143 residents in 2005 compared to 67 in 2012.<sup>5</sup>

There is an alternative measure to court proceeding for children who have committed offence –juvenile committees by local governments, dealing with children with troublesome behaviour. According to the Estonian Education Information System, in 2012, 2,029 children were referred to juvenile committees, which represents 1.5 per cent of all children in Estonia<sup>6</sup>. The juvenile committees try to find sanctions for those children who are not criminally liable, but have committed an unlawful act.

Despite the fact that efforts and positive trends to avoid deprivation of children of liberty have been made, there are still many children behind bars in Estonia and we still do not know much about the living conditions and what happens behind those bars, or how children's rights are guaranteed for children whose childhood run in closed institutions. We also do not know much about the monitoring mechanisms of children's living conditions behind bars. In this report we will introduce the institutions where children are deprived of liberty, and the development over the last years, during which the circumstances of places where children spend their time of deprivation were changed, and the efforts that the Estonian authorities have made to harmonise the Estonian situation with international laws, rules and standards.

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<sup>1</sup> see Estonian Statistics, 2014

<sup>2</sup> Statistics Estonia, 31.05.2012

<sup>3</sup> Salla, Surva, Ilves, Soo, Reinomägi, 2013, 78

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, 79

<sup>6</sup> Ibid, 80

## 1.1 List of abbreviations

<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CCP</b>	Code of Criminal Procedure
<b>CCPR</b>	Covenant on Civil and Political Rights
<b>CPT</b>	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC-P3</b>	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
<b>CRC-OP-SC</b>	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography
<b>CRC-OP-AC</b>	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
<b>ECHR</b>	European Court of Human Rights
<b>ICC NHRI</b>	International Coordinating Committee of National Human Rights Institutions
<b>JSA</b>	Juvenile Sanctions Act
<b>NPM</b>	National Preventive Mechanism

## 1.2 Partner & Researcher

University of Tartu, Institute of Social Studies

University of Tartu is Estonia's leading centre of research and training. UT belongs to the top 3% of world's best universities<sup>7</sup>.

UT is the oldest university in Estonia; it was founded in 1632 by the Swedish king Gustavus Adolphus. It was initially called Academia Dorpatensis.

As Estonia's national university, UT stresses the importance of international co-operation and partnerships with reputable research universities all over the world. The robust research potential of the university is evidenced by the fact that it is the only Baltic university that has been invited to join the Coimbra Group, a prestigious club of renowned research universities. UT includes nine faculties and four colleges. To support and develop the professional competence of its students and academic staff, the university has entered into bilateral co-operation agreements with 64 partner institutions in 23 countries.

The study was carried out by Judit Strömpl, Associate Professor in Social Policy, working at the Institute of Social Studies, and Anna Markina, who is a lecturer in Sociology of Law at Institute of Public Law. They both have a long-time teaching and researching experience. Judit's main fields of research are studies on social welfare and discrimination; children and young people at risk; vulnerable groups, sensitive topics (i.e. violence, exclusion); social work research; total institutions; qualitative research methods, especially ethnography and narrative inquiry. In recent years she has participated in the following international projects: "Child Participation in Civil and Criminal Justice" FRANET EU (2013-2015); EUMARGINS, On the Margins of the European Community. Young adult immigrants in seven European countries (2007-2011) FP7; Peer Violence in Public Space; a comparative study: Austria, Estonia, Finland and Wales (2007-2009) Daphne project and national projects: Domestic violence...; Violence and child abuse: the specialists' perspective (2006-2009) grant No.6672, supported by the Estonian Science Foundation, leader of the study.

Anna is a lecturer in sociology of law, Institute of Public Law. Her main fields of research are juvenile delinquency, trafficking in human beings, and social control. She is a member of the National Crime Prevention Network and National Round Table to prevent trafficking in human beings. She is also involved in an expert group responsible for drafting the new National Programme to Reduce Violence. In 2006-2013 Anna has been a member of Harku and Murru Prison Committee. Harku and Murru prison is the only prison in Estonia where women, including mothers with children, are incarcerated. Anna is the national co-ordinator for the International Self-Reported Delinquency Study, conducted in Estonia in 2006 and 2014.

<sup>7</sup> [Times Higher Education World University Rankings 2013-14](http://www.timeshighereducation.com/world-university-rankings/2013-14)

### 1.3 Methodology

In the national study we employed the methodology agreed on by the project consortium. All the necessary materials like the informed consent of children and adult participants and the interview guidelines were translated into Estonian.

In the beginning we planned a focus group interview with the authorities responsible for the monitoring of institutions where children are deprived of liberty (the Ombudsman for Children), and government institutions in whose jurisdiction those institutions are (the Ministry of Justice – managing and supervising work in prisons; the Ministry of Social Affairs – managing and supervising health care institutions; the Ministry of Education and Research – managing and supervising special schools for children with behavioural problems; the Police and Border Guard Board – managing and supervising detention houses). However, it was impossible to find time and place suitable for the experts; therefore experts preferred individual interviews.

In total, 10 face-to-face individual expert interviews were conducted during July-August 2014. Seven of them were key persons from the ministries and the Police and Border Guard Board. Additionally, heads of visited institutions were also interviewed in the course of the study. The list includes: the head of Viru Prison's youth department, the head of Kaagvere Special School; and specialists working with children at closed institutions: the social pedagogue of Kaagvere School, one contact person (case manager) and the psychologist working with adolescents at Viru Prison were interviewed. Altogether 10 personal interviews with adult authorities and specialists and one tape recorded interview and one informal conversation with two boys at Viru Prison were done. Nine of ten adult persons' and one of the children's interviews were tape recorded. In Viru Prison we could not carry out a formal tape recorded interview with young offenders, because the head of the youth department informed us that for interviewing 16 old prisoners parents' consent is needed. Since we wanted to talk to random young people, not the ones selected by the administration, it was not possible to arrange the paperwork in advance. Therefore we could not formally interview the boys; instead, we had an informal conversation without tape recording and the information was fixed after leaving the prison. However, three members of prison administration were also present during this conversation. As Viru Prison was visited (01.08.2014) by two of us, we could later compare our memories about the information that boys gave us during the free conversation.

Judit also visited Kaagvere Special School (twice at 19.06.2014 and 27.06.2014). The report also reflects on prior visits made to the institutions where children are held: In May 2013 Anna visited a detention house in Tallinn; In August 2013 Judit and Anna visited a closed rehabilitation centre for children situated in Tallinn. We also use this earlier gathered information in our national report.

While analysing data, first, we were focusing on the main two topics offered by international interview guide: monitoring practice at the institutions and the role of the interviewee; second, the topic of complaint by children. Talking with competent persons we also tried to get answers to questions how the recommendations made by CPT in 2012 are received by the institution (e.g. Viru Prison) and what kind of changes were done to meet the recommendation of the CPT report.

### 1.4 Limitations

Compilation of the report faced first of all time and financial resources limitations. Another problem arose during the study, namely: the participants (except the head of Children's Rights Department at the Chancellor of Justice Office, the Ombudsman for Children) were not very much aware of the monitoring and complaints mechanisms of institutions where children are deprived of their liberty. They were more interested in describing the living conditions inside institutions. As we had the documents with monitoring results made by international committees and their recommendations, we also thought that the description of changed circumstances will have value in itself.

During the interviews we asked experts to comment on reports and recommendations made by the international bodies. We also asked Estonian experts for additional recommendations. However, not all questions received exhaustive answers. For example, the information about the situation in mental hospitals and welfare institutions is limited by interview data and the published Chancellor of Justice monitoring reports.

## 2. The International framework

### 2.1 Ratified conventions

The first international law ratified by the independent Estonia's parliament was CRC (October 21, 1991). It took place two months after the Declaration of Independence of the Republic of Estonia on August 20, 1991. It demonstrates Estonia's wish to join international laws and the importance of children's rights.

Also CAT was ratified very soon after the restoration of independence on October 21, 1991. Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC) was signed on September 24, 2003 and ratified on August 3, 2004. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC) was signed on September 24, 2003 and ratified on February 12, 2014.

CRC-P3 is in process of signing by Estonia. Today a new Estonian Child Protection Act is in preparation phase. These acts are tied with each other, i.e. the new Child Protection Act has to be in harmony with CRC-P3.

CPT was signed on June 28, 1996 and ratified on November 6, 1996.

European Social Charter was signed on May 4, 1998 and ratified on September 11, 2000.

OPCAT was signed on September 21, 2004, ratified on December 18, 2006 and entered into force in respect of Estonia on January 17, 2007 (Chancellor of Justice 2012 Overview 2013).

CRC-P3 is in process of preparation for signing. The responsible person at the Ministry of Social Affairs for children's rights informed us that the delay is connected with the preparation of the new Child Protection Act, which is in its final stage.

### 2.2 Recommendations of international monitoring and inspections mechanisms and of treaty bodies

After Estonia's joining to the international conventions an intensive process of harmonisation of Estonian legislation with the international laws will start. Next we will give a short overview of this process through analysing most important to human rights of children deprived of liberty during the last ten years. The communication between Estonia and the international bodies could be followed due to several reports that were produced during the time.

Human Rights Committee monitoring second (2002-2003) and third (2008-2010) periodic reports include documentary communication between the Committee and Estonian state. Following this communication we can see the progress that Estonia went through during the decade both in developing her legislation and harmonising the system of detention with principles of human rights. We will focus on next documents: CRC reports, CAT reports, CCPR reports, CPT reports.



There is also a possibility to fill in a complain to the European Court for Human Rights and this right to complain is used. For example, in 2003 in *Martin vs Estonia* case the ECHR has found that the applicant's (under age 18 at the moment of offence) defence rights were violated.<sup>8</sup>

## 2.2.1 Convention of the Rights of the Child (CRC) reports<sup>9</sup>

### *Problems with presentations of state reports in time*

Even though the UN Convention of the Rights of the Child was the first international law instrument signed and ratified by Estonia after the emancipation from the USSR in 1991, the first state report was submitted to UN after ten years in 2001. This however, is not surprising. The newly emancipated state has a lot of tasks, starting from liquidation of old soviet political and economic system and building up the whole system of independent western type national state with its legal, political, economic and social systems. The first State report should have been submitted on November 19, 1993, but it was submitted on June 7, 2001. The second cycle of reporting should have been presented on November 1, 2008, but was submitted in June 2014 and is not even showing on the UN website. The reason of the delay is the new Child Protection Act, which is currently in process of completion, and a new system of child protection, grasping all areas of children's life into one integrated system.

On its thirty-second session in consideration of reports submitted by states parties under article 44 of the convention, the Committee on the Rights of the Child made a lot of recommendations to Estonian state parties that by today have largely been realised.

### *Establishing a unit or body for protection of children's rights*

Concerning the monitoring structures "[t]he Committee recommends that the State party consider the establishment of a Unit, or a specialized body, within or outside the Legal Chancellor's Office, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ("The Paris Principles") (General Assembly resolution 48/134, annex) and the Committee's General Comment No. 2, to monitor and evaluate progress in the implementation of the Convention at the national and local levels. This body should be adequately resourced, accessible to children, empowered to receive, investigate and address effectively complaints of violations of children's rights in a child-sensitive manner",<sup>10</sup>.

Today, this recommendation has been achieved. The state report from 2014 to CRC states: "At the end of 2010 the state decided to allocate additional resources to the institution of the Chancellor of Justice, and on 19.03.2011 the institution of the Ombudsman for Children was established. The Ombudsman for Children in Estonia is the Chancellor of Justice. To carry out the duties of the Ombudsman for Children, the Children's Rights Department was established within the Office of the Chancellor of Justice, comprising 4 employees. The basis for the activity of the Ombudsman for Children is provided in subsection 1 (8) of the Chancellor of Justice Act, which states that the Chancellor of Justice performs the functions of protection of the rights of children and promotion thereof according to Article 4 of the Convention. The Ombudsman for Children is assisted by the Advisory Committee, the task of which is to support and advise the Ombudsman for Children in his activities. The Advisory Committee includes representatives of various youth organisations."<sup>11</sup>

„In addition to being the Ombudsman for Children, the Chancellor of Justice is also the national preventive mechanism for torture and degrading treatment since 2007. The existence of the preventive

<sup>8</sup> *Martin vs Estonia* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119973>

<sup>9</sup> Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention. Concluding Observations: Estonia 2003. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcy8%2f%2bFNoDEQWN%2bFnCJLLFa3tx1CpQXZaheVCWWbAzwiTDoU96OmrCstgni5hT5ycOPv%2bpzByzk24%2bp6A5%2fpfGmCiwovoyl>

<sup>10</sup> Ibid, para 12

<sup>11</sup> Third and Fourth Periodic Report of The Republic of Estonia on the Implementation of the Un Convention on the Rights of the Child [http://vm.ee/sites/default/files/elfinder/article\\_files/report\\_of\\_estonia.pdf](http://vm.ee/sites/default/files/elfinder/article_files/report_of_estonia.pdf)



mechanism is required by the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has entered into force in relation to Estonia. The task of the preventive mechanism of the states which have acceded to the Convention is to regularly visit places where people are deprived of their liberty and all other places (including private places) where the liberty of persons is limited, in order to prevent torture and other cruel, inhuman or degrading treatment. The authorities supervised by the Chancellor of Justice as the national preventive mechanism for degrading treatment are child care and educational institutions (for example, specialised schools for children with behavioural problems or special requirements concerning health), welfare and health care institutions (for example, care homes, substitute homes, psychiatric hospitals), units of the Defence Forces and custodial institutions (for example, prisons and houses of detention of police prefectures)<sup>12</sup>.

### *Developing of system of juvenile justice*

Concerning administration of juvenile justice and conditions of children deprived of their liberty CRC Committee made the following recommendations:

**„The Committee recommends that the State party:**

**(a) Ensure that a system of juvenile justice (including the Juvenile Sanctions Act, Means of Influencing Minors Act, the new Penal Code) fully integrates into its legislation and practice the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the Guidelines for Action on Children in the Criminal Justice System and the Committee's recommendations at its day of general discussion on the administration of juvenile justice, held in 1995;**

**(b) Ensure that children have access to legal aid and independent and effective complaints mechanisms;**

**(c) Train professionals in the area of social recovery and reintegration of children;**

**(d) Ensure that deprivation of liberty is only used as a measure of last resort, for the shortest possible time, is authorized by the court, and that persons under 18 are not detained with adults;**

**(e) Continue and strengthen efforts to improve conditions at Maardu Prison<sup>13</sup>.**

The recommendations are partly fulfilled, partly in process. For instance, there are no juveniles at Maardu Prison anymore; there is an attempt to use alternative measures to punish young offenders (e.g. probation) and imprisonment is used as a measure of last resort. The number of imprisoned people under 18 decreases every year (in 2005 the number of imprisoned children were 90, in 2012 – 36<sup>14</sup>).

In 2005, the Laulasmaa Declaration was adopted, which declared, inter alia, crimes committed by and against minors and related to human trafficking to be a joint priority of law enforcement authorities. In 2006 the Government of the Republic approved the development plans for combating human trafficking and juvenile crime. In 2010 the Riigikogu approved the development trends of criminal policy up to the year 2018. The said document pays even more attention than before to the prevention of juvenile crime.<sup>15</sup>

According to Recommendation No. 51b. **“The Committee recommends that Estonia ensure that children have access to legal aid and independent and effective complaints mechanisms”.**

<sup>12</sup> ibid

<sup>13</sup> Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention. Concluding Observations: Estonia 2003, para 51.

<sup>14</sup> Salla et al 2013, 71

<sup>15</sup> Third and Fourth Periodic Report of The Republic of Estonia on the Implementation of the Un Convention on the Rights of the Child [http://vm.ee/sites/default/files/elfinder/article\\_files/report\\_of\\_estonia.pdf](http://vm.ee/sites/default/files/elfinder/article_files/report_of_estonia.pdf)

There is Clause 45 (2) 1) of the Code of Criminal Procedure which „provides that the participation of a counsel throughout a criminal proceeding concerning a minor suspect or accused is mandatory, and according to subsection 19 (3) of the Code of Misdemeanour Procedure, the participation of a counsel in a court proceeding is mandatory if the person subject to proceedings is 14 to 18 years of age. These requirements must be adhered to without exceptions. A violation of the right of defence is deemed to be a fundamental violation of the criminal procedural law”<sup>16</sup>.

One of recommendations was to shorten the length of proceedings involving minors. In the last State report one can read: “An objective has been set according to which the pre-trial proceedings of criminal offences committed by minors must be completed within 4 months. The Ministry of Justice conducts analyses of time-limits of proceedings twice a year. The length of pre-trial proceedings in matters involving minors has decreased in recent years. An analysis of the second half of 2011 revealed that pre-trial criminal proceedings averaged 2.3 months for a minor suspect, and 84% of criminal matters involving minors were settled in pre-trial proceedings in less than 4 months. The average length of court proceedings in matters involving minors was 3.1 months in the second half of 2011”<sup>17</sup>.

Also the proceedings in juvenile committees were shortened: “As of 2010, the Estonian Youth Work Centre in cooperation with the Ministry of Education and Research monitors the length of proceedings in juvenile committees once a quarter. The analysis is based on information entered in the juvenile committees module of the Estonian Education Information Centre, proceeding from the date of receipt of a corresponding application and the date of the hearing of the juvenile committee. Pursuant to the Juvenile Sanctions Act, the committees have 30 days to hold a hearing, but the development trends of the criminal policy have set an objective to hold a hearing within 14 days. It is important to monitor the speed with which juvenile committees adjudicate matters because in the case of proceedings of offences committed by minors intervention must be as immediate as possible for the minor to understand the connection between the act committed and the implications that follow. The shorter the period of time preceding the imposition of a sanction, the greater the educational effect of the sanction imposed. In recent years the speed of proceedings has significantly increased all over Estonia. If in 2011 the average length of proceedings in one-stage matters was 33 days, then in 2012 the corresponding indicator was 22 days”<sup>18</sup>.

## 2.2.2 Committee against Torture (CAT) reports

There have been two periods of monitoring by the Committee against Torture during last ten years: one took place between 2005-2008 and the other between 2010-2013. During these periods several documents were presented both by the committee and the state party<sup>19</sup>, however, next we present the

<sup>16</sup> Ibid, 106-107

<sup>17</sup> Ibid, p.109

<sup>18</sup> Ibid, pp 109-110

<sup>19</sup> Consideration of Reports Submitted by States Parties Under Article 19 of the Convention. Fourth Periodic Reports Of States Parties Due In 2004, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f80%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f80%2fAdd.1&Lang=en);

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)  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26ZC6ffcmiKIUVWgHnAcJPF0uoHX9EEJGmRy%2bKGaC2JdtgVa32vpkmRsuijWPj2ij%2fAtCvQtcUMYVGyeUF9RrjgMg6U8rswNq8fkj1IE6ahow%3d%3d>

Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention. Conclusions and recommendations of the Committee against Torture  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26btjx9OsHi5ditnlqOo nnUtKIYPITXSeTOExqWbALdy%2b0oz9%2baDMMRmo2SDh%2fUXun1BR6hzb2gopgq0BF5V586>

List of issues prior to the submission of the fifth periodic report of ESTONIA (CAT/C/EST/5)  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26azjwvzdD3jHtiZo3Ie bDI5EswePOEuWLhELUNqY400A%2bnXEHNfihfyOa4AO0JumUgWjos%2fKPMc74ckCn7vkyh>

Fifth periodic report of States parties due in 2011, submitted in response to the list of issues (CAT/C/EST/Q/5) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)

recommendations made as a conclusion of the last period. The earlier period recommendations were partly already taken into account when developing the field, and those which have not yet been accepted by Estonian state party are repeated here. According to these recommendations it is possible to follow the situation in Estonia today.

***Committee against Torture; Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session (6–31 May 2013)***<sup>20</sup>. The recommendations are not specifically focused on children's rights, but give an overview about the whole system where children are a part.

#### ***Definition of torture***

**"The Committee recommends that the State party amend its Penal Code to include a definition of torture in conformity with the Convention which covers all the elements contained in article 1 of the Convention".**

#### ***Penalties for acts of torture***

**"The Committee recommends that the State party amend its Penal Code to include penalties for acts of torture which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention and taking into consideration the Committee's General Comment No. 2".**

#### ***Fundamental legal safeguards for persons deprived of their liberty***

**"The State party should:**

- (a) Take effective measures to guarantee that all persons deprived of their liberty are afforded, by law and in practice, all the fundamental legal safeguards from the outset of their detention, namely, the right s to be informed of the reasons for their arrest and of the charges against them; to be informed of their rights; to have prompt access to an independent lawyer and, if necessary, to legal aid; to inform a person of their own choice; to receive a medical examination by an independent doctor , if possible, a doctor of their choice; to be brought before a judge without delay ; and to have the legality of their detention examined by a court, in accordance with international standards;**
- (b) Ensure that the State party monitors the provision of safeguards by all public officials to persons deprived of their liberty, including by documenting relevant information in detention registers, and ensuring regular monitoring of officials' compliance with these documentation requirements;**
- (c) Ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted;**
- (d) Provide data to the Committee on the number of cases in which public officials have been disciplined for such conduct and the nature of the discipline".**

#### ***Charges under the Code of Criminal Procedure***

**"The Committee reiterates its recommendation that the State party consider revising its Code of Criminal Procedure in order to regulate the powers of prosecution vis-à-vis the judiciary so that withdrawal of charges by the prosecution does not result in termination of criminal proceedings or acquittal but is decided by a court".**

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26aTavAVC2pZ4EqUqEY5NSq5fPnthS3fFK8KHUXXfgS%2bffisWXC4iM743Z2HuswM%2boY60AJk326W5Kbvzy4POmP>

Concluding observations on the fifth periodic report of Estonia, adopted by the Committee at its fiftieth session (6–31 May 2013)  
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26YX7Yd%2bo3sXcSGpXwlbYfez0M5DO7hti5PJA5hydzmFfuQlsJr70Mupdbfwfmiilk64Xt57bn4T1CIE4ojp3riAY>

<sup>20</sup> <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsue7mb0oJe4FSOZoWyNZ26YX7Yd%2bo3sXcSGpXwlbYfez0M5DO7hti5PJA5hydzmFfuQlsJr70Mupdbfwfmiilk64Xt57bn4T1CIE4ojp3riAY>

### *Training*

**“The State party should:**

- (a) Develop specific methodologies to evaluate the training and educational programmes provided on the absolute prohibition of torture and ill-treatment to law enforcement and medical personnel, judges and prosecutors, as well as persons working with migrants and asylum seekers;**
- (b) Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit, inter alia, the proper diagnosis of signs of torture”.**

### *Conditions of detention*

- “The State party should:**
- (a) Take immediate steps to improve the material conditions in all prisons and police arrest houses, including newly built and renovated ones, with a view to improving the infrastructure, hygiene and sanitary conditions, hot water, heating, ventilation, lighting and furniture, and repairing broken windows, in accordance with international standards;**
  - (b) Take steps to ensure minimum international standards of at least four square meters of living space for each detainee;**
  - (c) Ensure that the construction of planned additional prisons and the expansion and renovation of existing places of detention continue according to schedule;**
  - (d) Ensure the existence of impartial mechanisms to deal with the complaints of prisoners about their conditions of detention and provide effective follow-up to such complaints”.**

### *Categorization of prisoners according to their language proficiency*

**“The Committee recommends that the State party put an end to any discrimination against prisoners on the basis of their proficiency in the Estonian language and ensure that prisoners are not penalized with regard to administrative or disciplinary matters if they do not have a sufficient understanding of the language. Translation services should be provided for prisoners with an insufficient knowledge of the Estonian language”.**

### *Use of restraints*

**“The Committee recommends that the State party ensure strict adherence by all prison officers to the new, more specific regulations concerning the use of restraints in prisons in force since 2011, as well as adherence to the protocols and filling in of registers documenting the use of restraints, including the reasons for use, duration of use and particular method of restraint used. The State party should ensure that all complaints of violations concerning the use of restraints are promptly and independently investigated and the persons responsible are held to account”.**

### *Data collection*

**“The State party should establish an effective system for national data collection that compiles statistical data relevant to the monitoring of the implementation of the Convention at the national level, including disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, inter-prisoner violence, trafficking, violence, including domestic and sexual, against women, children and other vulnerable groups, as well as on means of redress, including compensation and rehabilitation, provided to the victims”.**

### 2.2.3 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reports<sup>21</sup>

CPT monitored Estonian institutions where children are deprived of liberty twice, in 2007 and in spring 2012.

The first visit to Estonia took place from May 9 to 18, 2007. In the report from 2011 some recommendations were repeated. The Committee reiterates its previous recommendation (CAT/C/CR/29/5, para. 6 (a)) that **“the State party should bring its definition of torture fully into conformity with article 1 of the Convention. By naming and defining the offence of torture in accordance with the Convention and distinct from other crimes, the Committee considers that States parties will directly advance the Convention’s overarching aim of preventing torture, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture and by improving the deterrent effect of the prohibition itself”**<sup>22</sup>.

The Ministry of Justice’s answer to the recommendations made by the CPT states that “the Ministry is preparing to propose an amendment to the Section 122 of the Penal Code which would be circulated for interministerial approval in summer 2011 and submitted to the Parliament in autumn 2011. The condition “physical” would be deleted. According to the amendment continuous abuse or abuse which causes great pain shall be punishable by a pecuniary punishment or up to 5 years’ imprisonment. Estonia still claims that under specific circumstances an act of torture in the sense of the Convention would be punishable under other sections of the Code, e.g. as abuse of authority, unlawful interrogation or unlawful treatment of prisoners or persons in detention or custody (sections 291, 312 or 324). According to the amendment, discrimination as purpose of an offence would be considered an aggravating circumstance. Also, there is an on-going analysis of the penal law in 2011–2012 the results of which may result in further amendments”<sup>23</sup>.

According to the Section 324 of the Estonian Penal Code unlawful treatment of prisoners or persons in detention or custody is a criminal offence and is punishable by a pecuniary punishment or up to one year of imprisonment. The unlawful treatment is defined as “an official of a custodial institution who, taking advantage of his or her official position, degrades the dignity of a prisoner or a person in detention or custody, or discriminates against such person or unlawfully restricts his or her rights.”<sup>24</sup>

Section 291 of the Penal Code regulates abuse of authority: “an official who unlawfully uses a weapon, special equipment or violence while performing his or her official duties shall be punished by a pecuniary punishment or by 1 to 5 years’ imprisonment”<sup>25</sup>.

<sup>21</sup> Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

<http://www.cpt.coe.int/documents/est/2011-15-inf-eng.htm>

Response of the Estonian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Estonia from 9 to 18 May 2007 <http://www.cpt.coe.int/documents/est/2011-16-inf-eng.pdf>

Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012 <http://www.cpt.coe.int/documents/est/2014-01-inf-eng.htm>

Consideration of Reports Submitted By States Parties Under Article 40 Of The Covenant. Third Periodic Report. Estonia [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fEST%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fEST%2f3&Lang=en)

<sup>22</sup> Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

<http://www.cpt.coe.int/documents/est/2011-15-inf-eng.htm>

<sup>23</sup> Response of the Estonian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Estonia from May 9 to 18, 2007 <http://www.cpt.coe.int/documents/est/2011-16-inf-eng.pdf>

<sup>24</sup> Estonian Penal Code

<sup>25</sup> ibid



In the new redaction of the Penal Code that will enter into force 01.01.2015, the Section 121 will be abandoned and the definition of torture will be presented in Section 290<sup>1</sup>. The torture will refer to physical as well as mental abuse by an official (or incitement by an official to the third party to act that way) with the purpose of obtaining testimony, punishment, coercion or discrimination. If the crime of torture is committed against a person under 18, it will be considered as aggravating circumstance.

### *Mentally ill persons*

**“The State party should ensure that measures depriving an individual of his or her liberty, including for mental health reasons, comply with article 9 of the Covenant. The Committee recalls the obligation of the State party under article 9, paragraph 4, to enable a person detained for mental health reasons to initiate proceedings in order to review the lawfulness of his/her detention”<sup>26</sup>.**

The authority from the Ministry of Social Affairs informed us in an interview that the parents' informed consent is needed when a child is placed into closed department of a hospital. However, he couldn't say anything about the child's consent.

### *Representation of minors*

The CPT welcomes the fact that whenever a minor is detained on suspicion of having committed a misdemeanour, the police are obliged to immediately notify the parent, guardian or curator and the social-services department of the detention. However, no such obligation exists in respect of minors who are suspected of having committed a criminal offence. The CPT recommends that steps be taken to ensure that this specific safeguard applies to all juveniles detained by the police; the CCP should be amended accordingly. Still no information could be found on CCP about this obligation.

### *Complaint mechanisms available to minors under these conventions*

In international monitoring reports special attention is paid to developing complaints mechanisms for children deprived of their liberty in case of violation of their rights and inhuman treatment. Both CAT and ECHR complaints mechanisms are available for minors. How it is guaranteed by the system will be discussed in the next subchapter (see The national framework).

## **2.2.5 OPCAT**

**“While noting that the Chancellor of Justice had been designated as the national protection mechanism pursuant to article 3 of OP-CAT, CAT remained concerned about the Chancellor's independence, mandate and resources, as well as the ability to investigate all complaints of violation of the provisions of the Convention against Torture”.**

Since 2007, the Chancellor of Justice also functions as the national preventive mechanism established under the Optional Protocol to the UN Convention for the Elimination of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>26</sup> Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from May 30 to June 6, 2012 <http://www.cpt.coe.int/documents/est/2014-01-inf-eng.htm>

### 3. The national framework

#### 3.1 Legal and regulatory framework for the detention of children

In Estonia the following legal acts regulate the detention of children: the Estonian Penal Code, the Code of Criminal Procedure, the Juvenile Sanctions Act and the Imprisonment Act. It is notable that in the new child Protection Act, for example, there is no word about protection of children's right in detention places. The argument is the elimination of the duplication of legal acts. There are references to CRC, PC, IA, JSA, etc. The whole legal framework of juvenile justice is now undergoing reorganization. The Juvenile Sanctions Act is in process of reworking and the responsibility for it is displaced from the Ministry of Education and Research to the Ministry of Social Affairs and shall form a part of the child protection system. The new act should enter into force from 2016. According to the development plan everything connected with children's life should belong to the child protection system<sup>27</sup>.

In Estonia there is no special juvenile court. The criminal cases are processed in the general court system. Estonia has a three-level court system. County courts and administrative courts adjudicate matters in the first instance. Appeals against decisions of courts of first instance shall be heard by courts of second instance. Courts of appeal are courts of second instance (sometimes also called circuit courts or district courts). The courts of appeal are situated in the two biggest cities of Estonia (Tartu in South and Tallinn in North). The Supreme Court, situated in Tartu, is the court of the highest instance.

Depending on the seriousness of the case and the peculiarity of the child offender (age, psycho-social characteristics, family background, etc.) the court can direct the minor's case to a juvenile committee. Juvenile Committees are formed by county governors and work by local city or rural municipalities. The activity of Juvenile Committees is regulated by the Juvenile Sanctions Act (entry into force 01.09.1998). The aim of this act is to keep minors out of criminal proceedings as long as possible, and the whole system is built up as an alternative measure to detention as a response to unlawful activity of children. The membership of juvenile committees comprise persons with practical experience in the areas of education, social welfare and health care, a police officer, a probation officer and a staff employee of the county government who is the secretary of the juvenile committee.<sup>28</sup>

On the one hand, JSA provides non judicial proceedings to children who have guilt capacity (between 14 and 18 years old), but on the other hand, it is applicable to children younger than 14. (2) This Act applies to a minor:

- 1) who, at less than 14 years of age, commits an unlawful act corresponding to the necessary elements of a criminal offence prescribed by the Penal Code;
- 2) who, at less than 14 years of age, commits an unlawful act corresponding to the necessary elements of a misdemeanour prescribed by the Penal Code or another Act;
- 3) who, between 14 and 18 years of age, commits a criminal offence prescribed by the Penal Code, although a prosecutor or court finds that the person can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code and criminal proceedings with respect to him or her have been terminated;
- 4) who, between 14 and 18 years of age, commits a misdemeanour prescribed by the Penal Code or another Act, although a body conducting extra-judicial proceedings finds that the person can be influenced without the imposition of a punishment or a court finds that the person can be influenced

<sup>27</sup> Third and Fourth Periodic Report of The Republic of Estonia on the Implementation of the Un Convention on the Rights of the Child  
[http://vm.ee/sites/default/files/elfinder/article\\_files/report\\_of\\_estonia.pdf](http://vm.ee/sites/default/files/elfinder/article_files/report_of_estonia.pdf)

<sup>28</sup> JSA § 12. (2)



without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code and misdemeanour proceedings with respect to him or her have been terminated.

(3) This Act also applies to minors who:

- 1) are subject to the duty to attend school but have not been enrolled in any school or have been absent from more than 20 per cent of the lessons during a quarter of the academic year without good reason; [RT I 2010, 41, 240 - entry into force 01.09.2010]
- 2) consume alcoholic beverages, narcotic or psychotropic substances.

(4) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act. [RT I 2003, 26, 156 - entry into force 21.03.2003]<sup>29</sup>.

As we can see JSA subjects are a large and heterogenous group of children. Among sanctions there are both preventive and punitive measures:

„(1) One or several of the following sanctions may be imposed on a minor:

- 1) warning;
  - 2) sanctions concerning organisation of study;
  - 3) referral to a psychologist, addiction specialist, social worker or other specialist for consultation;
  - 4) conciliation;
  - 5) an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a substitute home;
- [RT I 2006, 55, 405 - entry into force 01.01.2007]
- 6) community service;
  - 7) surety;
  - 8) participation in youth or social programmes or rehabilitation service or medical treatment;
  - 9) sending to school for pupils who need special treatment due to behavioural problems<sup>30</sup>.

**The most serious juvenile sanction is the placement of a child into a special school. Juvenile committee or prosecution may suggest use of this sanction. However, the decision is always made by the judge. Section 407 of CCP contains measures to appeal such decision:** “The juvenile committee or the legal representative of a minor may file an appeal against a ruling specified in subsection 406 (3) of this Code pursuant to the procedure provided for in Chapter 15 of this Code”. On 11.12.2012 the Constitutional Review Chamber of the Supreme Court declared § 407 of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this precludes the right of a minor to file an appeal against a ruling whereby the court authorises placement of the minor in a school for students who need special treatment. However, the CCP has not been changed yet in this regard.

According to this law Estonian court can direct a child who is less than 14 years old to isolation. This is a contradiction that has not been solved yet. JSA on the one hand protects children from criminalisation, but at the same time makes it possible for the court to deprive a child of liberty, which is in contradiction with the Estonian Penal Code which says that “a person is capable of guilt if at the time of the commission of the act he or she is mentally capable and at least 14 years of age.”<sup>31</sup>

JSA also includes the right of complaints by children: “(1) If a pupil or his or her legal representative believes that his or her rights provided for in an Act or legislation established on the basis thereof have been violated or his or her freedoms restricted, the pupil or his or her legal representative has the right to file a challenge with the Minister of Education and Research or a county governor. (2) The decision

<sup>29</sup> JSA, § 1. Scope of application of Act

<sup>30</sup> Ibid, § 3. Sanctions

<sup>31</sup> PC § 33. Guilt capacity

on the challenge shall be sent to the director of the school by post. [RT I 2002, 90, 521 - entry into force 01.01.2003]<sup>32</sup>.

**The Imprisonment Act** repeats some alternative sanctions provided to children up to 18, but not all of them and without reference to the JSA, but to the Penal Code, where only criminal offences are discussed: "(1) For a criminal offence, the court may impose imprisonment for a term of thirty days to twenty years, or life imprisonment. (2) Imprisonment for a term of more than ten years or life imprisonment shall not be imposed on a person who at the time of commission of the criminal offence is less than 18 years of age"<sup>33</sup>.

In same act, § 12 tells about the requirement of segregation of 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. However, there is also a mention of "an exception, the prison service may segregate prisoners on a basis not specified in subsection (1) of this section. [RT I 2009, 39, 261 - entry into force 24.07.2009]<sup>34</sup>.

Additionally there are some specifications for young prisoners: "(4) It is prohibited to use firearms against women and minors, except in the case where a woman or minor escapes, uses firearms to initiate resistance against a prison service officer or attacks a prison service officer or other people. [RT I 2009, 39, 261 - entry into force 24.07.2009]<sup>35</sup>.

Paragraphs 83 and 84 of IA regulate the specifications of young prisoners connected with work (in accordance to labour protection law) and education. According to Estonian law of basic and secondary education, young people up to 18 years of age are required to attend basic education. "Young prisoners shall be granted an opportunity to acquire vocational education according to their wish and aptitude"<sup>36</sup>. (4) A person in custody who is a minor and who has been in custody pending trial for at least one month shall be allowed to continue to acquire basic education or general secondary education on the basis of a corresponding national curriculum"<sup>37</sup>.

There is also a specification connected with disciplinary penalties imposed on persons in custody: "(2) A person in custody who is younger than 18 years of age may be committed to a punishment cell for up to 15 twenty-four hour periods"<sup>38</sup>.

The Imprisonment Act of Estonia differentiates between detained persons, arrested persons (persons in custody) and imprisoned persons. A detained person is a person who is serving detention or administrative detention in jail (arrest house). An arrested person (on remand) is a person who is arrested as a preventive measure, and who is serving custody pending trial in a ward prescribed for custody pending trial in a high-security prison or in jail (arrest house). An imprisoned person is a convicted offender who is serving a sentence of imprisonment in a prison.

### *Supervision and inspection of prisons*

Functioning of prison is supervised by the Ministry of Justice: "... (4) The Ministry of Justice shall exercise supervisory control over prisons [RT I, 16.04.2014, 1 - entry into force 26.04.2014]<sup>39</sup>.

<sup>32</sup> JSA, § 6<sup>3</sup>. Filing of challenges

<sup>33</sup> IA, § 45. Imprisonment

<sup>34</sup> Ibid, § 12 [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

<sup>35</sup> Ibid, § 71. Use of special equipment and service weapons in prisons

<sup>36</sup> IA, § 84. Specifications for provision of education to young prisoners [RT I 2008, 17, 118 - entry into force 01.06.2008]

<sup>37</sup> IA, § 93. Serving of custody pending trial

<sup>38</sup> IA, § 100. Disciplinary penalties imposed on persons in custody

<sup>39</sup> IA, chapter 6, § 105. Prison

“(5) For the purpose of exercising supervisory control, inter alia a supervisory inspection may be arranged which means the inspection of a prison for the purpose of detecting and correcting and thereafter preventing mistakes in the work and work organisation of the prison. Officials and employees in the prison service and other experts may be involved in the supervisory inspection. [RT I, 16.04.2014, 1 - entry into force 26.04.2014] (6) The procedure for supervisory inspections shall be established by a regulation of the Minister of Justice [RT I, 16.04.2014, 1 - entry into force 26.04.2014]”<sup>40</sup>.

“(1) The Minister of Education and Research and the Minister of Social Affairs shall exercise supervision over the performance of duties in the areas of education, social welfare and health care in prisons. [RT I 2006, 63, 466 - entry into force 01.02.2007] (2) [Repealed - RT I 2009, 49, 331 - entry into force 01.01.2010] (3) State supervision over compliance with the health protection requirements and the requirements provided for health care providers in prisons prescribed by the Public Health Act and legislation established on the basis thereof shall be exercised by the Health Board. [RT I 2009, 49, 331 - entry into force 01.01.2010]”<sup>41</sup>.

### *Prison committee*

Prisons are also monitored by prison committees, which are regulated by IA. “(1) The public exercises supervision over prisons through prison committees operating at the given prisons. Prison officers shall not be included in the membership of prison committees. (2) The function of a prison committee is to assist the prison in the organisation of prison work, including assistance in resolving issues related to the lodging, study, work and alimentation of prisoners, provision of medical services to prisoners, supervision of prisoners and other issues related to the execution of penalties.[RT I, 05.07.2013, 2 - entry into force 15.07.2013] (3) The specific duties, membership and operating procedure of prison committees, and the procedure for the remuneration of the members of prison committees shall be provided by the statutes of prison committees which shall be approved by the Minister of Justice. (4) A prison committee has the right to pass resolutions, receive proposals and protests for the performance of the functions provided for in subsections (1) and (2) of this section. (5) A prison committee shall submit a report concerning its work during the preceding year to the Ministry of Justice by 1 February each year. The report shall be submitted through the chairman of a prison committee. (6) The members of prison committees shall not disclose any sensitive personal data concerning prisoners which become known to them in the performance of their duties. (7) The members of prison committees shall be appointed by the Minister of Justice”<sup>42</sup>.

### *Pre-trial detention*

There are positive developments in the proceedings of criminal matters involving children. According to statistics, the average duration of pre-trial proceeding has decreased two times over six years – from more than five months to 2,5 months<sup>43</sup>. In the document “Directions of the Criminal Policy until 2018” it is stated that prosecutors and police should guarantee that juveniles pre-trial proceeding should not extend one month. There is a guideline of special treatment of juveniles in pre-trial proceeding developed by general prosecutor, where pre-trial detention of a juvenile is an exclusion from the rule. However, despite the fact that pre-trial detention is an exclusion, the regulation of detention is not specifically regulated<sup>44</sup>.

Access to an independent doctor or a lawyer is guaranteed by the Imprisonment Act § 53: Treatment of prisoners.

The Constitution of the Republic of Estonia states “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

<sup>40</sup> ibid

<sup>41</sup> Ibid, § 107. Professional supervision

<sup>42</sup> IA, § 108. Prison committee

<sup>43</sup> Andri Ahven 2013. Alaealiste kriminaalasjade menetlemise kiirus 2012.aasta II poolastal. In Kriminaalpoliitika analüüs, nr 1/2013.

<sup>44</sup> Ibid

deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her”<sup>45</sup>.

### *Complaints mechanisms in prison*

The **Imprisonment Act** of Estonia states that: “(2) Not later than on the day following the prisoner's arrival in a prison, he or she shall meet a prison service officer who shall explain to the prisoner his or her rights and obligations as a prisoner. A prisoner shall be given written information concerning the Acts which regulate the execution of his or her imprisonment, the internal rules of the prison and the submission of complaints” [RT I 2009, 39, 261 - entry into force 24.07.2009]<sup>46</sup>.

While there was no special legal provision to guarantee the rights of a child or somehow differentiate children from adults, some steps in this direction have been made. Starting from 01.07.2014 the new redaction of the section 45 of CCP came into force. According to this, the representation of lawyer is obligatory in cases when a person committed an offence at the age under 18.

## **4. Mapping of detention facilities for children**

There are six types of institutions in Estonia where children could be deprived of liberty: 1) special schools for children with behavioural problems; 2) special shelters for children with alcohol or drug addiction; 3) closed departments of mental hospitals; 4) welfare institutions for mentally disabled children, 5) prison for adolescent offenders; and 6) detention houses/ chambers. In case there are unaccompanied children asylum seekers, they would be placed into a substitute home, which is not a closed institution.

### **4.1 Special Schools**

During the last 5 years the number of these schools has decreased from three to one. There were two schools for boys (one for Estonians – Puiatu Special School and one for Russian speaking boys – Tapa Special School<sup>47</sup> and Kaagvere Special School for girls<sup>48</sup>). In 2009, after the Chancellor of Justice's visit to Puiatu this school was closed and Estonian boys were sent to Tapa. The school was closed because of illicit physical and mental conditions, which the commission found. The Chancellor of Justice's regular visits to Tapa Special School also found numbers of infringements. For example, during OPCAT monitoring on 8.11.2013, there were violations against children's personal safety, leading staff's inability to guarantee safety ahead of violence of pupils in school; inability to keep pupils inside the school (there were numbers of leave-breaking from territory of school by pupils); right to human dignity (frisking inside school territory without special need and allowance); limited time to communicate with parents and close people without a third person's presence (only parents' could call the child and only 7 minutes of telephone communication was allowed; prohibition to communicate via Internet), poor and inadequate material living circumstances of pupils, to mention the more important of problems.<sup>49</sup> At the end of 2013 and the beginning of 2014 residents' rebellions at Tapa school directed attentions to severe problems at Tapa school and the Ministry of Education and Research started an investigation, during which even more serious infringements were found. In the result, the headmaster of school was fired and a decision about the unification with Kaagvere School was made.

<sup>45</sup> Constitution of Estonia, § 21

<sup>46</sup> IA, § 14. Reception of prisoners into prisons

<sup>47</sup> Tapa Special School homepage. Available: <http://www.erikool.ee/>

<sup>48</sup> Kaagvere Special School homepage. Available: <http://kaagvere.edu.ee/>

Today the headmaster of Kaagvere Special School is in fact working at two sites, the distance between which is about 200 km. Both schools are working in limited circumstances; both buildings need renovation. In Tapa the construction of the new building has already started, in Kaagvere it is still only a plan. This situation extends already more than five years.

## 4.2 Closed institutions for children with substance addictions

Another type of institution where children are under 24 hours of supervision is shelter for alcohol and drug addict children. One such institution is in Tallinn, the other in Jõhvi Ida-Virumaa. In Tallinn – Nõmme Children's Shelter<sup>50</sup> and in Jõhvi Youth Rehabilitation Centre Corrigo<sup>51</sup>. Nõmme shelter is financed by Tallinn city government and Corrigo is financed by the National Institute of Health Development, in fact by Estonian state. Both the authorities from the Ministry of Social Affairs and the Ministry of Education and Research, and the head of the children's department of the Ombudsman Office were quite critical toward these institutions because of the absence of regulation. There are questions as to who are the children at these institutions; what are the procedures of sending children there; what are the rehabilitation measures children receive there, etc. Some of our interviewees were sceptical toward these institutions (Information from 3 interviews).

Between March 27 and 28, 2014 the Chancellor of Justice monitored Corrigo. The commission found problems in living conditions, which should be developed to be more adequate to children's needs. There should be more developing leisure activities. Today Estonia lacks the state concept of rehabilitation of children with addiction problems and lawful regulations to provide rehabilitation services. There is no regulation of questions as to what kind of services a child directed to rehabilitation service has the right to receive (health services, rehabilitation services, education). There is a lack of obligatory claims for rehabilitation service providers (location, rooms, staff, number of children participating in programme, etc.). There is also a lack of regulation on the limitation of children's basic rights to liberty while providing service if it is indispensable for service effectiveness. In addition there is no regulation on how to deal with the cases of involuntary direction to the service. Despite these limitations and problems, an expert of child psychiatry found that the provided service could be helpful for children with diagnosed addiction problem.<sup>52</sup>

More problematic is the other analogous institution - Nõmme Children's Shelter in Tallinn. Nõmme Children's Shelter is financed by Tallinn city and children are sent there by decision of the Juvenile Commission of Tallinn. Despite the fact that this centre is officially declared a rehabilitation service for children with addiction problem, there are not only children with diagnosed addiction problems, but also with behavioural problems whom police and school cannot deal with. (Lee, 2014; information from interviews). There are some problems with the juridical basis of this institution, because according to the Estonian Constitution only court decision can deprive a person, including children, of liberty. For example, when the juvenile commission made a decision to send the child to special school, the court allowance for that should be added, but in case of Nõmme Shelter such a court allowance is not needed. In fact young people both in special school and Nõmme Shelter have similar services: they are under 24 hour supervision, are forced to attend school within the institution and are subordinate to institutional regime. There are no standards on how to keep the children behind locked doors, how long, what kind of specialists should work there, etc. Everything is done according to the best knowledge and best wishes of the people working there. Children inside seem to need care and rehabilitation, but it is not clear, who in fact these children are, on what reason they have been sent

<sup>49</sup> OPCAT kontrollkäik: Tapa Erikoal. Available: <http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-tapa-erikoal-0>

<sup>50</sup> Nõmme Children's Shelter homepage. Available: <http://lasteturva.ee/nomme-tee-keskus/> )

<sup>51</sup> Jõhvi Youth Rehabilitation Centre homepage. Available: [http://www.corrigo.ee/tervishoiu\\_teenused/noorukite\\_rehabilitatsioonikeskus](http://www.corrigo.ee/tervishoiu_teenused/noorukite_rehabilitatsioonikeskus)

<sup>52</sup> [http://oiguskantsler.ee/sites/default/files/field\\_document2/soovitus\\_ou\\_corrigo\\_johvi\\_noorukite\\_ravi-\\_ja\\_rehabilitatsioonikeskus\\_kontrollkaik.pdf](http://oiguskantsler.ee/sites/default/files/field_document2/soovitus_ou_corrigo_johvi_noorukite_ravi-_ja_rehabilitatsioonikeskus_kontrollkaik.pdf)



into the institution. These institutions are controlled by the children's department of the ombudsman office, however, this is very difficult, because in fact there are no standards and regulations as to what to control. Therefore when the Chancellor of Justice's advisors carry out the monitoring, they approach from the international acts and regulations (information based on interview with head of the ombudsman's office children's department).

### 4.3 Welfare institutions for mentally ill children

Children could also be in health care organisations – psychiatric clinics and special custody institutions. There is one such institution Imastu Kool-kodu, which offers special custodial service to adolescents deprived of their liberty by court order<sup>53</sup>. 15.05.2014 the Chancellor of Justice's advisors carried out their monitoring in Imastu School-home. There were 6 children with mental disabilities who are under 24 h. supervision and they are provided educational services. During the mentioned monitoring some problems were found. There are no safe possibilities to spend time in the fresh air and the residents are not offered sufficient outdoor exercises. Also collective punishment is still used: because of the disregard of house rules by one resident, the others too were prohibited to have outdoor exercises.<sup>54</sup>

### 4.4 Prison

There are four prisons in Estonia: Tallinn prison, Tartu prison, Viru prison and Harku and Murru prison. As in August 11 2014, 2 juveniles were in Tallinn prison (remand prisoners, no information on gender), 1 juvenile in Harku and Murru prison (female, imprisoned), and 26 juveniles in Viru prison (male, inmates and remand). There were no juveniles in Tartu prison. All male adolescents between 14 and 18 are today placed in Viru Prison Youths Department. Female adolescent prisoners (1 or 2) are placed in women's prison in Harku prison. If a juvenile is waiting for a court hearing in Tartu or Tallinn, he or she may be transferred to prison in that city.

Tartu and Viru prisons are high security prisons that accommodate the inmates in the cells by 1 or 2 persons. When it comes to juveniles, they can spend 4 hours a day outside their cells. There is no issue of overcrowding in the Youth department of Viru Prison. The Youths Department at Viru Prison has the capacity to accommodate up to 250 persons. All underage prisoners who have been convicted or who are being held in custody and all young prisoners who have been convicted are held here. Although there are people up to the age of 21, minors are separated from young adults.

There is no separate facility for underage female convicts. Female convicts serve their term in **Harku Female Prison**. Inside prison the girls have separate rooms from adults, as a rule, in different building together with young mothers, who are in prison with their baby-children. The number of juvenile girls is often 1-2 and the decision where and how to accommodate a juvenile inmate is usually made in the best interest of the child. If keeping the girl separately means complete isolation of the child, she will be placed together with adult women. During OPCAT monitoring by the Chancellor of Justice in 25.11.2013 there were one adolescent female prisoner and two babies with their prisoner mothers in Harku Unit.

When the new prison will be built, Tallinn prison and Harku and Murru prison will be closed. According to the officials, there are also plans to build an open prison department and a separate department for juveniles in Harku Prison. However, the number of female juveniles is usually low (1-2 inmates) and the ultimate goal should be to follow the best interest of the child and to avoid their isolation.

Based on the site visits, the CCP draws attention to the condition of outdoor exercise. It recommended that all outdoor exercise yards at Viru Prison be equipped with a means of rest and shelter. The

<sup>53</sup> Imastu Kool-kodu, <http://www.hoolekandeteenused.ee/imastu/>

<sup>54</sup> [http://oiguskantsler.ee/sites/default/files/field\\_document2/ettepanek\\_as\\_hoolekandeteenused\\_imastu\\_kool-kodu\\_kontrollkaik.pdf](http://oiguskantsler.ee/sites/default/files/field_document2/ettepanek_as_hoolekandeteenused_imastu_kool-kodu_kontrollkaik.pdf)

Committee also invited the Estonian authorities to rethink the design of outdoor exercise facilities; in particular they should be sufficiently large to allow prisoners to exert themselves physically and, as far as possible, be located at ground level.

The juvenile detainees on remand could be kept in Viru prison (whenever it is possible) or in arrest houses. In either case they are kept locked in their cells for 23 hours a day and are guaranteed to have 1 hour of "fresh air". In Viru Prison the fresh air means being outside cells in outdoor box on the top of the building. The box is made of concrete and the inmate can only see the sky, no landscape. There is a bench in the walking box and nothing else.

Similar situation was observed in Tallinn arrest house. The courtyard was bordered by high concrete wall and a person can see only the sky. There was a bench. No sporting equipment was available.

During the visit to Viru Prison we learned that some steps are made to reduce the isolation of juvenile detainees. Because, according to law, the detainees should be supervised/locked for 23 hours, the staff decided to somehow organise their time. Probation officer/social worker organises discussion groups or other group activities, so the young persons can be outside their cells.

The site visit to Viru Prison revealed that exercise yards were equipped with a bench. However, we have not observed any other changes. The Viru Prison has outside sporting facilities (basketball courts and football fields). However, at the time of our visit (from 11 am to 3pm) these fields were not in use by any of the inmates. The head of the juvenile department explained that juvenile prisoners have sporting time on the grounds once a week.

### *Medical care*

According to the Imprisonment Act, the prison medical services are part of the general national health-care service (art. 49). The medical services in prison are organized by the prison doctor. The prison doctor has to monitor the state of health of inmates and provide necessary treatment. If necessary, the prison doctor will send the inmate to a medical institution for treatment. There is a hospital in the central prison providing medical services to inmates. To monitor the state of health of the inmates, the prisons have permanent medical centres. The prison medical service is also required to check the food catering for the prisoners. Possibilities for doing sport must be guaranteed in a prison. The inmates are guaranteed the possibility of having a walk outside for at least one hour a day (arts. 52, 53).

### *Staff/ Formation*

There are 45 officers in Viru Prison's Youth Department (male and female guards, contact-persons, social workers, psychologists, a social pedagogue, an extracurricular activity organizer, a chaplain, a head specialist and the deputy director of imprisonment of youngsters) who are specialized to work with young prisoners. The Ministry of Education and Research is organizing basic and vocational education for young prisoners.

A systematic and ongoing in-service and pre-service training programmes on human rights, especially children's rights, for all professional groups working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers and health personnel) is in process of developing.

## **4.5 Detention houses / chambers**

There are 15 arrest houses/chambers in Estonia situated in regional centres. Two main categories of people are kept in detention houses: (1) detained persons (persons serving detention for misdemeanor in a detention house); and (2) persons held in custody or persons on remand (persons, who have been taken into custody as a preventive measure and who are serving provisional custody in a detention house). The persons in detention houses/chambers are locked in their cells for 23 hours



a day and are allowed to breathe fresh air for one hour outside their cells. Detained persons have the right to be visited for up to 3 hours once a week, while those held in custody can have short-term (up to 3 hours) visits once a month. There are no separate detention houses for the minors. Minors are accommodated in separate cells. If there are more than one minor in the detention house, the minors will be placed together in one chamber. If the minor is alone, he will be held in solitary confinement. **The treatment of juveniles and adults in the detention houses is absolutely the same.** No special privileges or rights are guaranteed for the minors.

## 4.6 National monitoring mechanisms, OPCAT and NPM

### *Legal basis and mandate*

On 18 February 2007, **the Chancellor of Justice (the Ombudsman for Children)** was designated National Preventive Mechanism (NPM) by the Estonian authorities, following the entry into force of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) a month earlier.

The Chancellor of Justice, in his NPM capacity, conducts regular visits to all places of detention (prisons, police stations, social care homes, institutions for children, psychiatric or military establishments, etc.) and publishes summaries of his visits' findings and an annual "overview" of the work of the NPM in Estonian and in English. Visits can be performed with the assistance of specific experts.<sup>55</sup>

Estonia is relatively small and so is the Chancellor of Justice's office. The Chancellor of Justice has considered it to be more practical if the members of the team are specialized in concrete fields and are taking care of all the aspects related to it. That means in practice dealing with complaints, monitoring, carrying out constitutional review, etc. At the first glance it may seem like the workload no-one can effectively bear, but in reality this method has proven to be quite efficient. That makes people real specialists in their fields, having through knowledge of theory and practice as well as being able to pinpoint the existing or future problems. Also the Chancellor of Justice admits that in theory, it may seem contradictory that the Chancellor of Justice acts simultaneously on the one hand as an ombudsman (reactive work) and on the other hand as NPM (proactive work). But it is the Chancellor of Justice's strong belief that in practice, such a conflict does not arise, especially in the point of view of supervised authorities or persons deprived of their liberties. On inspection visits, the Chancellor of Justice NPM mandate is always explained to respective authorities and to detained persons. Information gained from the ombudsman work is considered as an input when planning inspection visits and to help determine systematic problems, which in essence, is the general task for NPM-s.

While noting that the Chancellor of Justice had been designated as the national protection mechanism pursuant to article 3 of OP-CAT, CAT remained concerned about the Chancellor's independence, mandate and resources, as well as the ability to investigate all complaints of violation of the provisions of the Convention against Torture.

Supervision over treatment in psychiatric hospitals and, in the case of communicable diseases, over involuntary treatment is exercised by **the Health Board**. According to the statutes of the Health Board, the Board exercises supervision over compliance with the requirements for health service providers; activities of family doctors, providers of emergency medical care, specialised medical units and independent providers of nursing care; the Board also reviews and resolves applications and requests of patients and other persons. In practice, the detention of persons is not supervised regularly, but complaints and applications are reviewed in accordance with the statutes.

<sup>55</sup> See Chancellor of Justice homepage, <http://oiguskantsler.ee/en/prevention-of-ill-treatment-1>

As an Ombudsman for Children, the Chancellor of Justice is responsible for the compliance of this institution with the Paris Principles related to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134) as well as disaggregated data on the number of complaints submitted to the Chancellor as reported in paragraphs 198 and 234 of the report.

The Chancellor's ombudsman functions even further – now the Chancellor of Justice also carries out the supervision of local governments, legal persons in public law and persons in private law who exercise public functions. 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 contrarily 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. 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.

The institution of the Chancellor of Justice in Estonia is not part of the legislative, executive or judicial powers; it is not a political or a law enforcement body. The institution of the Chancellor of Justice is established by the Constitution of the Republic of Estonia and therefore the independence of the Chancellor of Justice is guaranteed by the Constitution and by the Chancellor of Justice Act, which stipulates the appointment and release from office procedure, restrictions for his/her activities, requirements for his/her staff and budget. Therefore, the Chancellor of Justice can be considered as completely appropriate and independent mechanism to deal with the possible violations of the Convention. There is no other such institution established in addition to the Chancellor of Justice and there are no plans to create additional institutions. The government has taken note of the recommendations by various international and non-governmental bodies to accredit the Chancellor of Justice with the ICCNHRI; both the government representatives and the Office of the Chancellor of Justice have been in contact with the said Committee with a view to specify the exact procedure and requirements for accreditation.

There are also some NGOs that have opportunity to visit special schools or health care institutions, but they have no legal basis and mandate to get in without preliminary permission by the head of the institution. To visit a prison is especially difficult to anybody except the members of Prison Committee and Chancellor of Justice. The Prison Committees always have representatives of NGOs among their members, providing possibility for different NGOs working with children to visit prisons on regular basis. Among such NGOs for example is Estonian Union of Child Welfare. The head of Children's Department of Ombudsman's Office was rather pessimistic about possibility to giving separate mandate to a non-profit organization for monitoring prisons.

#### 4.7 The national complaint mechanism

Detainees have an easy access to the complaints mechanisms and they can obtain compensation of their rights. Every legal act or procedure of the prison can be a subject to complaint procedure, either through the challenge procedure (in Estonian: *vaidemenetlus*) and/or administrative court procedure (in Estonian: *halduskohtumenetlus*). In addition the prisoners can claim moral and non-moral damage under the State Responsibility Act (in Estonian: *riigivastutusmenetlus*). In addition, the prisoners can as well complain to the Chancellor of Justice, who bears the Ombudsman function. The Chancellor of Justice as the Ombudsman has the obligation to accept and investigate complaints from all people. Also detained persons have the right to submit a complaint if the personnel of the detention facilities have used violence against them. In prison children are informed about complaint mechanisms by inspectors-contact persons. In special schools and other closed institutions for children the information about complaining mechanism is not strictly regulated. Child ombudsman office members inform

children about complaint mechanisms during their visits. During the interviews we learned that also some staff members (e.g. teachers in special school) can give information about this.

For example in 2008 40% of all the cases of the Tartu Administrative court were brought by prisoners and in Tallinn Administrative court the relevant number was 15%. This illustrates that prisoners have an easy access to justice and they are using it. In addition, the prisoners can get advice on where and when to complain. The advice is given by prison workers, who deal with everyday matters of prisoners (inspector- contact person; in Estonian: *kontaktisik*). However, it is difficult to assess how child-friendly the complaint mechanisms are, because we have information from contact persons of detention places who are responsible for dealing first with complaints. On the other hand, there are practically no complaints received by the ombudsman office. This could give rise to different interpretations. One could be because the complaint investigations are well done on the local level and problems are solved on local level (inside the institution). For example, during an interview, the contact person in Viru Prison explained that young prisoners can complain to the director and vice-director/ head of youth department of same prison. The procedure is the following: the prisoner submits a written complaint and gives it to the contact person who starts to deal with problem. According to the interviewee, complaining gives the staff a good opportunity to improve the conditions of the imprisoned and solve their problems. But it could also mean that if the problem is connected with contact person, the opportunity to present the complaint to an independent institution, i.e. ombudsman could be limited. Of course a child can present a complaint directly to the head of the department, the head of prison, prison committee or directly to ombudsman, but he or she could have difficulties to express his or her problems in writing.

According to the head of the children's department in the Chancellor of Justice's (ombudsman) office, there were no complaints from prison or special schools during last years about ill-treatment or torture presented by juveniles. The ombudsman office receives 8-10 complaint letters yearly, but very rarely from prison. There was only one anonymous complaint last year, which was impossible to investigate, because the complainer was not willing to disclose his/her name.

Earlier there have been some complaints from Kaagvere Special School where the pupils complained that the headmaster takes her dog to school with her and the girls were afraid of dog. They also complained that pot-plants were prohibited in girls' bedroom, because they could pelt the staff's cars with them. These problems were solved easily.

When listening to the prison's staff, most problems inside prison and also partly in special schools are connected with violence between inmates and not between staff and inmates. However, there could be incidents when the inmate offends against staff member. Concerning this problem, in November 2011, the Directors of Estonian prisons decided to establish a working group for the investigation of violence-related incidents. The working group consists of a representative of each prison and three officials from the Ministry of Justice. The working group has formulated four topics to be analysed: reasons for violence, experience and attitude so far, prevention and reaction; treatment of suspects.

The working group developed the following measures:

- 1) To transfer the officer in regard to whom there is a pending proceeding of the abuse of an inmate to a position where he or she has no contact with inmates;
- 2) To improve the internal communication of the prison after a violence-related incident;
- 3) To ensure psychological help and counselling to officers.
- 4) Also to ensure that children have an access to legal aid and independent and effective complaints mechanisms.

Ensure the existence of impartial mechanisms to deal with the complaints of prisoners about their conditions of detention and provide effective follow-up to such complaints. The delegation also heard complaints that certain staple food items, such as fresh fruit, were being made available in the context of the motivation programme as a reward for good behaviour rather than being included in the menus.

The minors can direct their complaints to the head of the detention centre, who will try to solve the problem or reply to the complaints in some other ways. All detention houses are supervised by the head office of the Police and Border Guard Board. According to the interview with the police officer

who co-ordinates and supervises work of the detention houses, they use site visits to control the situation in the detention houses over the country. Sometimes these are planned visits, sometimes the visits are unexpected by the local governors.

### *Good practices, obstacles and recommendations*

It is difficult to assess both the existing monitoring mechanisms of detention places for children and complaint mechanisms available for children deprived of liberty. Formally everything seems correct, and we can take the Ombudsman's visits to places of detention, the reports and recommendations that are included to those reports as good practice. However it is not enough: The visits take place once in three years and last for 2-3 days. Because monitoring visits are so rare, even a careful monitoring is not sufficient to ensure that the situation is under control. We think that closed institutions in Estonia are not transparent for the society. There should be more information for society about what is happening inside the prisons, special schools, other closed institutions for children. It is very difficult or nearly impossible to protect children's right without knowledge of the situation in closed institutions. What is happening behind closed doors should be transparent for the society; metaphorically the closed doors should be transparent from outside. Children should know that they are in the focus of interest of society, and that they are not left there behind closed doors alone. This means that there should be independent non-governmental organisations with mandate of monitoring, which could be helpful to Children's Ombudsman.

To optimize the effectiveness of complaint mechanisms there should be different ways of complaining mechanism that are more child-friendly. At the moment there is no difference in complain mechanisms for children and adults. Only written complaints are acceptable, however some children in detention have limited writing ability (especially in health care institutions), there should be developed opportunities for oral complaints or using other sign systems (e.g. gesture language, drawings, etc.) mechanisms. All this requires more face to face contacts between children in detention and people from outside closed institutions.

## **5. From theory to practice: analysis**

### **5.1 Site visits**

#### *Kaagvere Special School*

Kaagvere was visited twice. First visit took place on the class-day 20.06.2014. This time I (J.S.) looked around the building and made a preliminary agreement on the interviews and a second visit. I also had a conversation with the headmaster, who introduced some new principles of working with girls. These principles are: individual and child-centred approach working with pupils. There are social pedagogues who work with pupils. One social pedagogue has four pupils. This enables them to do individual case-work. When the child enters the school first of all her needs are assessed by specialists from four areas of needs: health, education, psychological needs and social skills. Social pedagogue – case worker together with other interested parties develops a rehabilitation plan. The interested parties are both inside and outside the school. Inside school the teaching staff, school psychologist and nurse are involved in developing this rehabilitation plan and its realisation. Outside parties are first of all the parents and the family of the child, the local school the child attended and the local government child protection worker. The process of rehabilitation is led by the social pedagogue. This means that during the time of being in school the girl will not only be worked with, but also there is a preparation of the environment where the girl will return after school. This is a very difficult task, because two thirds of families (especially mothers) are not interested in their daughters' fate. In these cases other alternative support persons are found (e.g. child protection workers, substitute care specialists, school social pedagogues, etc.). School makes efforts to provide girls with good school education, vocational training, and knowledge of the Estonian language. There are varieties of recreational activities. Main problem of this institution is limited living space.

The old building where the school used to work since 1960s is closed because of fall-down and the girls now live in a relatively small building near the old main building.



The responsible person from the Ministry of Education and Research was quite critical about the situation that took place in Tapa Special School (for boys), where a well-prepared show was put on whenever the school was being inspected. The ministry, however, does not inspect these schools regularly. Even the ombudsman monitoring (the last monitoring was on 8.11.2013) did not find out about those errors that went on over the last years, starting from serious errors of children's rights and finishing with physical abuse. At Tapa some of the staff played prison and behaved as if their task was to punish the children. They do not understand that this is a rehabilitation institution the aim of which is to help and not punish children. The biggest problem is unqualified personnel.

The ombudsman's last visit in Kaagvere Special School took place in 2010. The Health Board monitoring annually checks the living circumstances, food, etc. Also the trade inspection's control is regular at school. These control concerns documentation. Health Board inspects daily routine, timetable, living conditions, the menu etc. After the visit, on some days, the inspectors send their feedback with the inspection results and suggestions.

The school is in contact with the Ministry of Education and Research, but the officials do not visit the school frequently. However, the responsible authorities from the ministry are well aware of the situation.

The Chancellor of Justice's last OPCAT monitoring on 04.11.2010 and a follow-up inspection on 23.05.2011 took place in Kaagvere Special School<sup>56</sup>. The biggest problem was the difference in the number of pupils at school in November (19 pupils) and in May (37 pupils). This is evident that school is unable to give safe and normal living conditions for such a big number of residents. This was the reason why in November both the pupils and staff assessed the situation at school positively, while in May they reported about strains. The main problem during the monitoring in November 2010<sup>57</sup> was insufficient room for separating aggressive pupils. Meanwhile this problem has been solved: today there is a sufficient separation room with natural light and large space. The other problem was the inequality between those girls who had a personal mobile phone and those who did not. Today this problem has also been solved: everyone can call their parents twice a week and close trusties for 20 minutes without the presence of third persons. Also communication with close people via Internet for 45 minutes three times weekly is allowed.

There is still an unregulated procedure when girls enter the school. According to Estonian law only the police and special security firms have the right to conduct personal searches. However, entering school girls (as also boys in Tapa) can take with them prohibited stuff (e.g. cigarettes, alcohol, drug, etc.). Therefore, there is a long-time practice to carry out searching of personal things of pupils by security workers when entering to school. The Chancellor of Justice suggested to the director of the school to ask the police to perform this procedure until the Ministry of Education and Research have developed changes in law that will allow the school personnel to carry out such kind of searches.

After OPCAT monitoring when the report was published, the ombudsman's advisors came back to school and gave personal feedback to pupils and staff members. This seems to be a good practice and after this monitoring the girls presented some complaint letters that were mentioned before. It would be nice if more people visited the school, this would give the children information that they are not excluded from the society, that they are in the centre of interest. It would be good to have a clear system of control by the society, for example by the Estonian Union for Child Welfare. The only problem is that this kind of OPCAT monitoring happen only once in three years. It would be necessary to have living personal contact between the ombudsman office advisors and children in closed institutions.

<sup>56</sup> [http://oiguskantsler.ee/sites/default/files/field\\_document2/kaagvere\\_erikooli\\_kontrollkaigu\\_kokkuvote\\_2011.pdf](http://oiguskantsler.ee/sites/default/files/field_document2/kaagvere_erikooli_kontrollkaigu_kokkuvote_2011.pdf)

<sup>57</sup> [http://oiguskantsler.ee/sites/default/files/field\\_document2/kontrollkaigu\\_kokkuvote\\_kaagvere\\_erikool.pdf](http://oiguskantsler.ee/sites/default/files/field_document2/kontrollkaigu_kokkuvote_kaagvere_erikool.pdf)

Children at school have in principle many opportunities to complain. First, the child ombudsman office persons inform children about this opportunity. Also the teacher of civics studies (in Estonian: *kodanikuõpetus*) informs children about human rights: this means children should know about their rights. However, they are sometimes not aware that they are not satisfied. They write to the media or the police (information from interview with social pedagogue).

During the interview with a girl (14) at KSS, who has been in school for almost one year, she expressed very critical attitude toward school: society do not know anything about the regime at the school; staff attack girls, they do not care about girls, abuse them. "This school is not for our protection. Here is nothing good for us. I know girls who became even worse after being here. ... here you cannot trust anybody, when you write a complaint and give it to the social pedagogue, she takes it, crinkles it and throws into rubbish bin." "We are taunted, not respected, if needed the staff attack us. (in Estonian: *Meid mõnitatakse, meid ei austata, kui vaja töötaja tuleb kallale.*)". People who she could trust were only her friends outside the school, but she has no contacts with them, because of limited time for using telephone and internet. There are too many limitations (e.g. three times internet using is not enough and girls can only use g-mail, Internet-explorer and Facebook; they have no access to news portals. She was very sceptical. Her hope was to ask journalists to come in and make a video from the life inside the school. About the Ombudsman for Children, the Chancellor of Justice she had not heard at all.

Two other girls who were invited to participate in interview did not want to do it. Their explanation of non-participation was the limit of time. We can conclude that girls do not trust strangers even in case they offer them an opportunity to complain.

### **Viru Prison**

The juvenile detainees on remand could be kept in Viru prison (whenever it is possible) or in arrest houses. In either case they are kept locked in their cells for 23 hours a day and are guaranteed to have 1 hour of "fresh air". In Viru Prison fresh air means being outside cells in an outdoor box on the top of the building. The box is made of concrete and the inmate can see only the sky, no landscape. There is a bench in the walking box and nothing else.

Similar situation was observed in Tallinn arrest house. The courtyard was bordered by a high concrete wall and a person can see only the sky. There was a bench. No sporting equipment was available.

During the visit to Viru Prison we learned that some steps are being taken to reduce the isolation of juvenile detainees. Because, according to law, the detainees should be supervised/locked for 23 hours, the staff decided to somehow organise their time. Probation officer/social worker organises discussion groups or some other group activities, so the young persons can be outside their cells.

The site visit to Viru Prison revealed that exercise yards were equipped with a bench. However, we have not observed any other changes. The Viru Prison has outside sporting facilities (basketball courts and football fields). However, at the time of our visit (from 11 am to 3pm) these fields were not in use by any of the inmates. The head of the juvenile department explained that juvenile prisoners have sporting time on the grounds once a week.

Before the site visit to Viru Prison an interview with the head of Youth department was carried out, during which a detailed information about the life in prison was received. But because the head is in office since April 2014, she could not tell much about changes concerning CPT visit in 2012 and recommendations that were done by CPT.

Adolescent prisoners live separately in personal cells where personal belongings are allowed. There is a personal toilet and sink in every cell.

During our visit to Viru Prison (August 1, 2014) the ventilation system was working satisfactorily and the head of the department informed us during the interview that some windows in the corridor could be opened. However, all windows were closed while we were there. The daily outdoor exercises (still one hour) still take place on the roof area, where there is now one bench, but no shelter from the sun and rain. There are nice and large yards on the ground where adolescent prisoners can do sport and

even make some food themselves, but it is allowed only once in a week and it is a kind of motivational measure, not offered to all adolescent prisoners. All these good opportunities are connected with a motivation system developed by the staff to encourage prisoners' good behaviour. When a prisoner behaves well he can have an open cell door for 4 hours a day, and one hour for sports exercises on the ground, visiting library, exercise hobbies, have vocational training

The focus of working with adolescents is to motivate them to change their behaviour. Contact persons work individually with young prisoners, using case management methods. They conduct a risk assessment of the child, make a development plan, work with the local authorities of where the prisoner is from and with his family or substitute institution.

The head emphasised that for her it is important that closing cells as a tool of disciplining boys should be not long. Schooling is very important for juveniles; they test reading and writing abilities of prisoners. Also playing and sport is important for children. Contact persons work with the families of prisoners and there is a plan to utilise multidimensional family therapy in the near future.

There are different specialists who work directly with prisoners: a social pedagogue, a social worker, probation officers and contact persons - case managers, a psychologist. The local secondary school teachers teach at the prison school. All juveniles are obligated to attend school. There is also vocational training in cooking, room service, soldering, and carpentry. There are different possibilities for hobbies, handcraft, computer games, library and programmes in the prison. However, prisoners are aggressive and crash the equipment, steal materials, and soon there is nothing to do any more. Some of prisoners crash also the equipment of their own cell. This was the head and staff members' explanation why there is almost no equipment in prison.

There is a good cooperation between the staff members and frequent discussions with specialists and guardians.

Young people are separately in personal cells, but some of them share cells if it is needed by child (e.g. in case when a boy demonstrates suicidal behaviour). During summer time shower is allowed every day.

Health care is provided by family doctors system and there is a nurse in every department.

According to the head of the juvenile department children at prison are those juveniles who have weak family and support background; therefore probation is not realisable for us.

Compared with other European states we have very long sentences (max 8 years). In Norway prison, for example, sentences can sometimes last only 5-8 days. The head assessed the new developments directed by the Ministry of Justice very positive. She has found a new motivation system for prisoners.

The conversation with prisoners lasted about 20 minute and two boys were willing to inform us about their life in prison. Both were 16, one of them was in prison already for the third time, for the other it was the first time. We met them in the corridor of adolescents' unit of the third department of Viru Prison. The other boy came later from his cell. The cells of these two boys were open, other cells were closed. One of the boys was sitting in the corridor and watching TV when we entered the department. We were accompanied by the head of the youth department the methodologist and head of the minors' unit. This was the unit of the convicted. In another block there were the cells of detainees. Arrested boys had a group conversation with their contact person social pedagogue. These boys were more nervous and indignant.



## 5.2 Complaint mechanisms available to children who are detained

From the conversations with children, interviews with authorities in ministries and the ombudsman office, specialists at prison and special school we could learn that children are informed about their right to complain, but they have difficulties to improve the opportunities for complaining. One contact person at Viru Prison described complaining as writing about the problem to the head of the youth department or director, which is solved immediately.

Prisoners can write complaints to either the warden of the prison, to the Ministry of Justice, the Ombudsman, or directly to the court. Additionally, each prison has a **prison committee**. The prison committee is created as a civil society initiative. It serves to make prisons more transparent for the society. According to the Ministry of Justice prison committee "helps the prison administration to organize the prison work, among other things to assist the prison administration in resolving matters related to the placement, learning, working, catering, medical service and surveillance of the imprisoned persons, as well as other matters in connection with the serving of the sentence. The work of a prison committee takes place in the form of meetings that are chaired by the chairman of committee. The output of the committee resolutions is a decision, recommendation or protest of a prison committee<sup>58</sup>. Prisoners have the possibility to direct their complaints directly to the prison committee and the complaint will remain confidential for the administration of the prison. Although no statistics on complaints to the committees are available, we know from personal experience (Anna Markina served as a member of such committee for 8 years) that prisoners often use this opportunity. In theory, prison committee plays the role of an additional monitoring/complaint mechanism. However, during our visits to the Youth department of Viru prison, we asked the staff as well as the inmates themselves whether they are aware of such possibility. The answer was negative. Neither the prisoners nor staff (e.g. psychologist) were aware of the availability of such monitoring/complaint instrument.

As we learned from the expert interviews, children seldom file complaints to the Ombudsman. The head of Children's Rights Department of the Ombudsman office confirmed that they do not receive complaints from prison that could be investigated. He remembered one anonymous letter which could not be investigated because the complainer was not willing to disclose his/her name.

It is also important to note that the complaint mechanisms for children who serve their term in prison or are on remand in prison or in an arrest house, do not differ from the possibilities available for the adults. While adults have more skills of writing complaints and share such experiences with each other, and help each other to write the complaints, children do not have such peer support. Therefore complaints filed by children are rather rare.

The interviewed girl at Kaagvere School, for example, didn't know who the child ombudsman was or how to contact him. She told us about media and journalists whom girls trust and to whom they are willing to write to and ask for help. However, both the school social pedagogue and the head of children's department of the ombudsman office asserted that children are informed about this opportunity to complain and after the monitoring visit in 2010, there were some complaints received from the girls. On the other hand, it might be also that it is difficult for children to verbalise their problems. Again, during the interview the girl expressed her discontent with the staff attitudes toward girls, but she could not give any example as to what the staff do or tell them, or how negative attitudes are expressed. She just repeated: "They don't respect us, they humiliate us, they lie to girls." In these words a strong feeling is expressed in connection with human rights, but it is not enough to write a complaint to the ombudsman. Therefore when children write complaints, they resort to something concrete, like food.

When comparing this with the information from the social pedagogue of the same school, who answered the question "How girls get know about human rights?" by saying that it happens in the

<sup>58</sup> <http://www.vangla.ee/43642>

class of civics studies. It could happen that human rights is something abstract for children and far from their own everyday life practice. In everyday practice human rights are connected with consumption and material conditions.

## 6. Conclusions

Current status and perceptions of the possibilities for monitoring and complaint mechanisms to guarantee the respect of children's rights behind bars.

Estonia was eager to join international acts and standards, but it is not easy to change the system. The notion of human rights is understood in Estonia in general as a consumption right, as some privileges that should correspond to obligations and be deserved by a person. This can be seen in the motivation system in Viru Prison. Juveniles have to **deserve** the right for fresh air, physical exercises, reading books, eating fruits, enjoying hobbies, playing football, cooking. In fact, all these things are inevitable circumstances for the development of a child's personality. All these activities serve their rehabilitation and law-abiding socialization. Children behave badly just because they have no opportunity to practice all these things. It is no surprise that a 14-17 years old boy crashes equipment if he is put in a cell for 23 hours a day. From this point of view the isolation of children from adults is still understood too formally in Estonia and means first of all just physical isolation and not different treatment in principle. Juveniles are in a separate building, they cannot meet adult prisoners, but in fact, they are treated as adults.

There are some contradictions between the liability of a child up to 14 years of age and the formal need of parents' consent when the child makes a decision (e.g. to do cleaning work in prison or participate in an interview). This kind of *child protection* seems to be double-dealing. On the one hand, the state has the power to decide how long a child should breathe fresh air and in what circumstances, and the parents have no opportunity to change this decision, but on the other hand, the parents have to decide things that they, in fact, are unable to assess.

However, we can see also assess positive developments. We can see more professionalism in closed institutions and a more child-centred, individual approach and rehabilitation concept in dealing with children. 24 hours of supervision could be seen as putting the child into a cell, but also as an intensive communication with professionals. We can see that the development in Estonia today is moving from first (formal closing up of children) to the last (professional treatment of child).

We can also see that children are informed about human rights, however, this is quite an abstract notion for them, which they cannot tie with their everyday life. A good practice for changing such a situation was demonstrated by the advisors of the Chancellor of Justice who gave personal feedback after monitoring, communicating face-to-face with children and personal.

**The Chancellor of Justice both as NPM and the Ombudsman for Children seems to be functioning very well.** This is expressed both in OPCAT monitoring reports and in cooperation with the ministries and other connected authorities. We also have to add the willingness to participate in this research project and the help we received from the department of children.

The complaint mechanisms for children, however, need further development. The development should be child friendlier and approach from the best interest of the child, which we think is the opportunity for development. Today children living in prison cells have no opportunity to communicate with other young people, they are isolated from their natural environment (ground, plants, fresh air), from natural physical exercising (walking, running, jumping, dancing, etc.) and are in fact deprived of opportunity to develop as social beings. But they are not aware of this and that is why they complain about the food. Both the monitoring mechanisms and the complaint mechanisms have to be developed further, taking these issues into account. It is notable that children, when feeling injustice, express their problem by being dissatisfied with food. We think that when we say that the child has the right to complain, we

have to explain them, what it means according to the CRC, or in other words, develop their awareness of them being human beings and social beings.

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