

*Permanent Mission of Estonia
Geneva*

No. 10-6/322

The Permanent Mission of the Republic of Estonia to the United Nations and Other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in response to the latter's letter from 17 June 2013, has the honour to forward the reply of the Government of Estonia to the questionnaire on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention.

The Permanent Mission of Estonia avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 17 October 2013



Enclosure: 7 pages

Office of the High Commissioner for Human Rights
GENEVA

OHCHR REGISTRY

22 OCT. 2013

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Response of Estonia to the questionnaire on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful

1.

- a) **If your State is a party to the International Covenant on Civil and Political Rights, how is Article 9 (4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption**

The republic of Estonia acceded to the International Covenant on Civil and Political Rights in 1991, entering into force on January 21, 1992. Article 9(4) has been incorporated into domestic legislation as per following.

The constitution of the Republic of Estonia, adopted in 1992

§ 21. Everyone who has been deprived of his or her liberty must be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and be given an opportunity to notify those closest to him or her. A person suspected of a criminal offence must also be promptly given an opportunity to choose a counsel and to confer with him or her. A person suspected of a criminal offence must also be promptly given an opportunity to choose a counsel and to confer with him or her. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be circumscribed only in the cases and pursuant to a procedure provided by law to prevent a criminal offence or in the interests of ascertaining the truth in a criminal case.

No one may be held in custody for more than forty-eight hours without a specific authorisation of a court. The decision of the court must be promptly communicated to the person in custody in a language and manner which he or she understands.

The Code of Criminal Procedure, adopted in 2003

§ 9. Safeguarding of personal liberty and respect for human dignity

- (1) A suspect may be detained for up to forty-eight hours without an arrest warrant issued by a court.
- (2) A person taken into custody shall be immediately notified of the court's decision on taking into custody in a language and manner which he or she understands.
- (3) Investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment.

(4) In a criminal proceeding, it is permitted to interfere with the private and family life of a person only in the cases and pursuant to the procedure provided for in this Code in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment.

§ 217. Detention of suspect

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(9) If the basis for the detention of a suspect ceases to exist in pre-trial proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of a Prosecutor's Office.

Police and Border Guard Act, adopted in 2009

§ 7³³. Detention of person

(2) A person detained shall be immediately notified in a language he or she understands and in a clear manner of the reason for his or her detention and of his or her rights, and given the opportunity to notify a person close to him or her of his or her detention. If a person detained is in a state due to which he or she is not able to notify a person close to him or her of his or her detention, the police shall immediately notify a person close to him or her, if possible. If a person detained is a minor or another person with restricted active legal capacity, the police shall notify his or her legal representative of the detention of the person at the first opportunity, if possible. On the demand of the person detained, he or she shall be given an opportunity to notify a representative of the detention.

(3) The following rights of a person detained shall be explained to him or her:

- 1) the right to know the reason for the detention;
- 2) the right not be detained for more than 48 hours without the permission of the court;
- 3) the right to notify a person close to him or her and a representative of the detention;
- 4) the right to be heard;
- 5) the right to file a challenge with the Director General of the Police and Border Guard Board or an action with the administrative court;
- 6) the right to examine the detention report and to make statements, which shall be recorded, regarding the conditions, course and results of the measure and the report.

(6) A person may be detained until the basis for the application of the detention ceases to exist but not for longer than 48 hours. Upon detaining a person in a house of detention, the provisions of Chapters 4 and 7 of the Imprisonment Act shall be applied.

Mental Health Act, adopted in 1997

§ 11. Involuntary emergency psychiatric care

- (1) A person is admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative, or the treatment of a person is continued regardless of his or her wishes (hereinafter involuntary psychiatric treatment) only if all of the following circumstances exist:
- 1) the person has a severe mental disorder which restricts his or her ability to understand or control his or her behaviour;
 - 2) without in-patient treatment, the person endangers the life, health or safety of himself or herself or others due to a mental disorder;
 - 3) other psychiatric care is not sufficient.
- (2) Involuntary psychiatric treatment shall be applied only on the basis of a court ruling. Involuntary psychiatric treatment may also be applied without a court ruling if it is inevitable for the protection of the person or the public and if a court ruling cannot be received as quickly as necessary.
- (3) A decision to apply involuntary treatment without the court's permission shall be made by a psychiatrist of the psychiatric department of a hospital upon the arrival of a person in the psychiatric department or if after carrying out a medical examination of a person who is under treatment in the hospital on a voluntary basis the need to admit the person for involuntary treatment becomes evident. Such decisions shall be documented pursuant to the procedure established by the Minister of Social Affairs. The date of documenting a decision is deemed to be the commencement of involuntary in-patient treatment except in the case specified in subsection (4¹) of this section.
- (4) On the basis of the decision specified in subsection (3) of this section, involuntary treatment may be applied within forty-eight hours after the commencement of involuntary in-patient treatment.
- (4¹) If the decision specified in subsection (3) of this section has been made with regard to a person assigned to out-patient coercive treatment and the coercive treatment of the person is continued as inpatient coercive treatment according to the provisions of subsection 402¹ (4) of the Code of Criminal Procedure, the date of documenting the decision is deemed to be the commencement of continuing inpatient coercive treatment.
- (5) In order to apply involuntary treatment with regard to a person placed in a social welfare institution on the basis of the Social Welfare Act, the decision to apply involuntary treatment specified in subsection (3) of this section for up to forty-eight hours after the commencement of involuntary in-patient treatment shall be made by a psychiatrist of the psychiatric department of a hospital upon the arrival of a person in the psychiatric department immediately after carrying out a medical examination of the person. The decision shall be documented pursuant to the procedure established in the legislation under subsection (3) of this section.
- (6) Persons who are in treatment in the circumstances provided for in subsection (2)-(5) of this section shall not discontinue assessment or treatment or leave the psychiatric department of the hospital.
- (7) In case of involuntary treatment, the least restrictive methods shall be applied ensuring the safety of the person brought in for treatment and the safety of others. The medical staff shall respect the patient's rights and legal interests.

§ 12. Procedure for hospitalization of persons in need of involuntary emergency psychiatric care

- (1) If there is a reason to believe that the circumstances provided for in subsection 11 (1) of this Act exist, a person is taken to the psychiatric department of a hospital by emergency medical staff, police, a person close to him or her, or another person if it is inevitable for the protection of the person or the public and a court ruling cannot be received as quickly as necessary.
- (2) If there is a reason to believe that the circumstances provided for in subsection 11 (1) of this Act exist, the police shall assist, on the basis of a written request of a physician, the health care provided in detaining, carrying out medical examinations on and transferring a person to the psychiatric department of a hospital.
- (4) A physician shall immediately inform a person of the decision specified in subsections 11 (3) and (5) of this Act and inform a person close to him or her, or his or her legal representative within twelve hours of documenting the decision.
- (5) Upon placing a person in voluntary treatment without a court ruling, a person close to or a legal representative of the person or a physician or lawyer of their choice or another representative have the right to meet with the person placed in involuntary treatment. The duration of such meeting shall be decided by the attending physician based on the state of health of the person placed in treatment.

§ 13. Review of involuntary treatment

- (1) An application for the implementation of preliminary legal protection for involuntary treatment and for placing a person in the psychiatric department of a hospital as well as an application for extending the term of preliminary legal protection shall be filed by the rural municipality or city government of the person's residence, the person's guardian or the chief doctor of a hospital to the court of the site of a hospital. In case of absence of the chief doctor, the application shall be filed by the doctor on call of the hospital.
- (1¹) The application on involuntary treatment on a person for a term longer than the implementation of preliminary legal protection, the extension and termination thereof shall be decided by the court pursuant to the procedure prescribed for the proceedings of placing a person in a closed institution on the basis of an application filed by the rural municipality or city government of the residence of the person or the person's guardian, unless specified otherwise in this Act.
- (1²) Upon the receipt of an application specified in subsection (1) of this section, the court shall promptly examine from the medical institution providing psychiatric coercive treatment whether the person has been assigned to out-patient coercive treatment.
- (2) Involuntary treatment of a person in a psychiatric department of a hospital may continue for more than forty-eight hours only with the authorisation of a court.
- (3) The chief doctor of a hospital shall ensure that a psychiatrist other than the one having made the decision specified in subsection 11 (3) or (5) of this Act carry out a medical examination of a person admitted for involuntary treatment within twenty-four hours after commencement of in-patient treatment.
- (4) In order to apply the involuntary treatment specified in subsection (1¹) of this section and to place a person in the psychiatric department of a hospital, the chief doctor of a hospital shall submit an application to the rural municipality or city government for turning to court, if necessary. In case of absence of the chief doctor, the application shall be submitted by the doctor on call of the hospital.

An opinion of the psychiatrist specified in subsection (3) of this section concerning the placing of a person in the psychiatric department of a hospital for involuntary treatment and justification of the treatment shall be annexed to the application.

- (5) In order to extend or discontinue the involuntary treatment specified in subsection (1¹) of this section, the rural municipality or city government shall file an application to the court which shall include an opinion of the psychiatrist specified in subsection (3) of this section concerning whether the extension or discontinuation of involuntary treatment is justified. The court may also extend the involuntary treatment based on an application of the guardian of a person. The court may also discontinue the involuntary treatment based on an application of the person or his or her guardian or on its own initiative.
- (6) If a person needs to be transported from a hospital for hearing to a court on the basis of a court ruling, it shall be done by the police, if necessary.
- (7) The court having made the ruling shall notify the police thereof, who shall immediately take measures, if necessary, for protection of property of the person under involuntary treatment.
- (8) Persons in involuntary treatment shall not be subjected to clinical trials, testing of new medicinal products or treatment methods.
- (9) The Health Board shall exercise supervision over involuntary treatment.

b) If your State is not a party to the International Covenant on Civil and Political Rights, is the right of anyone deprived of his or her liberty by arrest or detention to bring proceeding before court, in order that the court may decide without delay on the lawfulness of his or her detention incorporated into your country 's domestic legislation?

YES
 NO

2. Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalisation, immigration detention, or any other reason?

YES
NO

This mechanism applies to all forms of deprivation of liberty.

3. Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?

YES
NO

All individuals can bring proceedings before a court.

According to Article 8(2) of the Law of Criminal Procedure (hereinafter – LCP), investigative bodies shall provide the suspect and the accused with a real opportunity to defend themselves.

According to Article 217(7) of LCP, an official of an investigative body shall explain the rights and obligations (including the right to submit applications and claims) of a person detained as a suspect and shall interrogate the suspect immediately pursuant to the procedure provided for in the law.

According to Article 131(2) and (3) of LCP, on the order of a Prosecutor's Office, an investigative body shall convey a suspect with regard to whom an application for an arrest warrant has been prepared (within 48 hours from the moment of taking into custody) to a preliminary investigation judge for the hearing of the application. In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be taken into custody with a view to ascertaining whether the application for an arrest warrant is justified. The prosecutor and, at the request of the person to be taken into custody, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard.

4. Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?

YES

NO

This mechanism provides for particular remedies such as release and compensation for unlawful detention.

In case of unlawful detention a person has a right to turn to a court with a damage compensation demand. This area is regulated by the State Liability Act, the aim of which is to provide the bases of and procedure for the protection and restoration of rights violated upon the exercise of powers of public authority and performance of other public duties and compensation for damage caused.

5. Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your county's domestic law?

YES

NO

The procedure can be initiated by the detained person, his or her legal guardian; in criminal proceeding also by his or her lawyer.

According to Article 43(1) of LCP, in a criminal proceeding, a suspect, accused and convicted offender may choose a counsel personally or through another person. According to Article 43(2) of LCP, a counsel shall be appointed by the Estonian Bar Association at the request of an investigative body, Prosecutor's Office or court if a counsel chosen by a person cannot assume the duties of defence within 12 hours as of the detention of the person as a suspect or, in other cases, within 24 hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

- 6. What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.**

The right for a detainee to bring proceedings before court is laid down in the Constitution. No one may be held in custody for more than 48 hours without a specific authorisation of a court. By that time limit the authorities must provide the detainee a possibility to be heard before a court.

According to Article 131(2) and (3) of LCP, on the order of a Prosecutor's Office, an investigative body shall convey a suspect with regard to whom an application for an arrest warrant has been prepared (within 48 hours from the moment of taking into custody) to a preliminary investigation judge for the hearing of the application.

- 7. Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what is the maximum time in the number**

No time limit is foreseen. Detention without the court order may last for no longer than 48 hours.

According to Article 17(3) of the State Liability Act, an application or action shall be filed within three years as of the date on which the injured party became aware or should have become aware of the damage and of the person who caused it, but not later than within 10 years as of the causing of damage or the event which caused the damage regardless of whether the injured party became aware of the damage and of the person who caused it.

- 8. Are there any major decisions of your country's Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?**

YES
X NO