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Information received from Estonia on follow-up to the concluding observations on its fourth periodic report*

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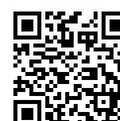

Follow-up to the concluding observations of the Human Rights Committee on the fourth periodic report of Estonia

1. The Human Rights Committee adopted its concluding observations on the fourth periodic report of Estonia at its 3596th meeting, held on 21 March 2019. In paragraph 40 of the concluding observations the Human Rights Committee requested the State party to provide, by 29 March 2021, information on the implementation of the recommendations made by the Committee in paragraphs 14 (hate speech and hate crimes), 24 (non-consensual psychiatric treatment) and 28 (refugees and asylum seekers). Hereby Estonia provides additional information on the implementation of the recommendations as requested by the Human Rights Committee.

Information on the implementation of the recommendations of paragraph 14 (hate speech and hate crimes)

2. The Penal Code Chapter 10 offences against civil and political rights include Division 1 offences against equality (§§ 151 through § 1531). The Penal Code does not explicitly provide for the motive of hatred as an aggravating circumstance, but does recognise “other base motive” as an aggravating circumstance, under which hate crimes can be classified. The assessment of the court as to whether the motive for a criminal offence is a base motive will depend on the circumstances surrounding the specific act and the particular nature of the crime. Law enforcement agencies are obliged to apply the law in accordance with international obligations, for which they have received training.

3. Since 2016, Estonia has prepared annual reviews of recorded hate crimes. Guidelines on recording hate crimes have been prepared for the police. Victim surveys in recent years have shown that 1–2% of respondents believe that the victim became a victim because of their nationality, race, colour, religion, disability or sexual orientation. Representatives of Estonia participate in international working groups on reporting and recording hate crimes (e.g. EU Agency for Fundamental Rights) on a regular basis.

4. In February 2021, the Ministry of Justice initiated a review of the Penal Code in respect of offences of equality and plans to prepare a draft law with relevant amendments to be submitted to the Government in due time. Civil society and other relevant stakeholders will be invited to participate in the comprehensive review process.

Information of the implementation of the recommendations of paragraph 24 (non-consensual psychiatric treatment)

5. In Estonia, a distinction between the protective conditions regarding the application of involuntary treatment in civil proceedings and coercive treatment in criminal proceedings is made. Although in Estonian legislation different terms are used in different types of proceedings, the concept of “involuntary treatment” used below includes any treatment against one’s will that is applied in respect of a person with a severe mental health condition, unless otherwise specified.

Involuntary treatment

6. According to Estonian Mental Health Act (MHA), involuntary treatment is applied or continued only if all of the following circumstances exist:

(i) The person has a severe mental health condition which restricts his or her ability to understand or control his or her behaviour;

(ii) Without in-patient treatment, the person “endangers the life, health or safety of him/herself or others” due to a mental health condition;

(iii) Other psychiatric care is not sufficient.

7. Thus, in the Estonian legal system, as concerns involuntary treatment of persons with a severe mental health condition, serious harm to the health of the individuals themselves and

to the health and safety of others are both relevant legal grounds to subject a person to involuntary placement, which includes involuntary treatment, provided that other preconditions are also met.

8. According to MHA, involuntary psychiatric treatment shall be applied only on the basis of a court ruling. According to the Code of Civil Procedure (CCivP) the court conducts proceedings in the placement of a mentally ill person in a psychiatric hospital without or against his or her will together with deprivation of liberty and application of in-patient treatment in respect of the person. The relevant procedure for involuntary placement and treatment is regulated in the CCivP.

9. The court appoints a representative to the person in proceedings for placement of a person in a closed institution. The existence of a representative appointed by the person himself or herself does not prevent the court from appointing a representative to the person if, in the opinion of the court, the representative appointed by the person himself or herself is unable to sufficiently protect the interests of the represented person.

10. The person and his/her close family members, the guardian, the trustee, the members of the rehabilitation team and the head of the closed institution shall be heard in person. According to the CCivP, an expert (e.g psychiatrist) opinion is also required.

11. According to the CcivP, the period of placement cannot be longer than one year (unless otherwise provided by law). The court must give reasons for the choice of the period to ensure the protection of the rights of the person.

12. The person to whom the measure was applied (and people who are connected), can file an appeal against the court ruling. According to the CCivP, a ruling made by a court of appeal concerning an appeal against a ruling is appealable to the Supreme Court. It is also possible to submit a claim for compensation for illegally caused damage when a court decision by which a person has been admitted to involuntary psychiatric treatment has been annulled.

13. It could also be noted that the CCivP lays down the court's possibility to suspend the placement of the person in a closed institution by a ruling for up to one year based on the application by the person himself or herself, the guardian thereof or the rural municipality or city government of the residence thereof or at the initiative of the court.

Psychiatric coercive treatment

14. According to the MHA, the objective of psychiatric coercive treatment is the treatment of mental health condition, decreasing the risk resulting from mental health condition and restoring the person's coping skills for independent coping in society. Coercive psychiatric treatment is applied under the Penal Code and in accordance with the procedure set out in the Code of Criminal Procedure (CCrP).

15. According to the Penal Code, the court shall order coercive psychiatric treatment:

(i) If a person has committed an unlawful act; and

(ii) At the time of commission of an unlawful act, the person lacks capacity or if he or she, after the making of the court judgment but before the service of the full sentence, becomes mentally ill or feeble-minded or suffers from any other severe mental health condition, or if it is established during preliminary investigation or the court hearing of the matter that the person suffers from one of the aforementioned conditions and therefore his or her mental state at the time of commission of the unlawful act cannot be ascertained; and,

(iii) He or she "poses danger to himself or herself and to society" due to his or her unlawful act and mental state; and,

(iv) He or she is in need of treatment.

16. Besides of inpatient coercive psychiatric treatment, this type of therapy may also be administered in the form of out-patient treatment if the person does not pose danger to himself or herself and the society upon subjection to coercive psychiatric treatment and it is likely that the person adheres to the treatment regime. According to the CCrP, taking into

consideration the opinion of a psychiatrist or a medical committee having examined the person subject to coercive treatment, coercive in-patient treatment may be replaced by out-patient treatment or coercive out-patient treatment by in-patient treatment, if such a request is submitted by a person close to the person being treated, a legal representative, health care provider or counsel of such a person.

17. The procedure for administration of coercive psychiatric treatment is regulated also in the CCrP. A person shall participate in procedural acts and exercise the rights of the suspect or the accused provided for in the CCrP, if his/her mental state allows it. According to the CCrP, the participation of counsel is mandatory for the entire course of criminal proceedings if due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability. Thus, in proceedings for administration of coercive psychiatric treatment in criminal proceedings, a person has all the rights laid down for suspects and the accused and participation of a counsel is guaranteed.

18. The court shall terminate the administration of coercive psychiatric treatment, if a person recovers as a result of coercive psychiatric treatment administered to him or her or, according to the opinion of a psychiatrist or medical committee having examined the person subjected to coercive treatment, there is no need for further administration of coercive treatment. According to the CCrP, taking into consideration the opinion of the psychiatrist or medical committee having examined the person subjected to treatment, a court may terminate the administration of coercive treatment if such a request is submitted by a person close to the person being treated, his or her legal representative or counsel.

19. A person has the right to file an appeal against the order on administration or alteration of coercive psychiatric treatment first to the court of appeal and thereafter to the Supreme Court. In addition, there are 24-hour special care service for adults placed in a care institution by court order for a period of up to one year as of the making of the court ruling. If the circumstances have not ceased to exist at the end of such term, the court may extend the term of the adult's care in a social welfare institution without his or her consent (hereinafter care without consent) at the request of the rural municipality or city government of the adult's residence or his or her legal representative for up to one year at a time.

20. An adult is placed in a social welfare institution to receive the care without consent upon the existence of all the following circumstances:

(1) The adult has a severe mental health condition which restricts his or her ability to understand or control his or her behaviour;

(2) The adult is dangerous to himself or herself or others, if he or she is not placed in a social welfare institution to receive the 24-hour special care service;

(3) The application of earlier measures has not been sufficient or the use of other measures is not possible.

21. If an adult is incapable of exercising his or her will, it is deemed that he or she has not granted his or her consent for the receipt of the service.

22. The service provider shall ensure the availability of nursing care per 20 adults receiving the care without consent at least 40 hours a week.

23. The service provider must ensure the availability of family physician and psychiatrist. The mentioned medical staff visits the care institution on site. If it is necessary to visit other medical specialists, the special care service provider must organize a secure visit.

24. Supervisors, who work on these care institutions, are required to complete a special training plan. In addition, additional trainings, are organized e.g. trainings in 2021:

(1) Guidance on difficult-to-understand behaviours;

(2) Dealing with aggressive behaviour;

(3) Counselling skills training for working with people with alcohol dependence.

Information of the implementation of the recommendations of paragraph 28 (refugees and asylum seekers)

25. The principle of non-refoulement is fully respected. The right of asylum seekers to make and lodge an application for the international protection and the access to the fair and fast proceedings are guaranteed. Applications can be lodged at the border crossing points and in all service points of the Police and Border Guard Board across Estonia. Cooperation with the UNHCR is fruitful and ongoing, for example including on the topics of the quality of procedures and decision-making.

26. Estonia is fully implementing the EU asylum acquis, including the obligation to provide free legal aid and representation during the appeals stage. All applicants for international protection, irrespective of the place or the circumstances of applying, are provided with free of charge counselling on the legal rights and obligations during the administrative stage of the asylum procedure and free of charge legal aid and representation for making an appeal and during the court proceedings.

27. Applicants in the need for the international protection shall not be punished for the illegal border crossing.

28. Stemming from the Article 6 of the Code of Criminal Procedure (which is treated as constitutional law based on Article 104 item 14 of the Constitution), the competent authority is bound to initiate and conduct criminal proceedings if elements of offence are evident. As with all offences, proceedings are also initiated in the case of illegal border crossing. Pursuant to Article 199 of the same Code it is only possible to refrain from the initiation of the criminal proceedings when listed circumstances that preclude criminal proceedings will appear. Application for the international protection is not automatically deemed as precluding criminal proceedings. The commencing of criminal proceedings is not a penalty. The purpose of the proceedings is to investigate all relevant circumstances including those enacted in Article 31 of the Convention. When it is evident that there were no grounds to initiate the criminal proceedings due to the fact of international protection, the criminal proceedings will be terminated.

29. On 24 October 2017, the *Riigikogu* concluded the first reading of the draft law 472 SE. No further developments have occurred. According to the *Riigikogu* Rules of Procedure and Internal Rules Act § 96 upon the expiry of the mandate of the *Riigikogu*, all bills and draft resolutions on which the proceedings were not completed during the mandate of that *Riigikogu* are dropped from the proceedings. Consequently, the proceedings of the 472 SE have ended in 2017.

30. Estonian Police and Border Guard Board (PBGB) is continuously and regularly training all their officials, whose line of work is connected with migrants and asylum seekers. With the support of the 2019–2021 AMIF project and based on the EASO training standards and curriculum, 8 PBGB training modules involving e-learning and face-to-face sessions are being created and used covering also applicable international standards. During named project period, at least 250 officials are being trained based on multiple new training modules. New modules also include handbook-type conclusive materials, which can be used by the trainee individually as a reference material after the training.