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**THE LEGAL COMPLIANCE OF IMPRISONMENT RULES  
DURING COMMUNICABLE DISEASES OUTBREAK**

Bachelor's thesis

Programme HAJB, specialisation European Union and International Law

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Tallinn 2022

I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading. The document length is 10352 words from the introduction to the end of conclusion.

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## **ABSTRACT**

This thesis paper aims to address evidence that the imprisonment rules require complementary legal basis to remain compliant with relevant legislative acts in Estonia from the communicable diseases viewpoint. As there is no large quantity of works in Estonia which would have prepared and covered given field of research yet, this thesis aims to bring new perspectives to the readers. Great emphasis is put on implementation of the legislative acts as well as the wording of the acts. Therefore the connection between communicable diseases outbreak and implementation of special conditions in detention facilities, especially in times of possible emergencies, is apparent. Accordingly, the main result of the research concerned that Estonian legislation is sufficient, however needs more comprehensive amendments in the country, in order to provide adequate measures for the management of diseases outbreaks in detention facilities.

Research is prepared by using a qualitative research method, meaning that information from published legislation, academic sources, and literature reviews are used. Regarding published legislation, special emphasis on this thesis paper has been put on the interpretation of the Imprisonment Act of Estonia. The essential objective of these sources is to give an overview of the current circumstances regarding imprisonment rules and laws in terms of the spread of transmittable diseases and in addition, bring innovative recommendations for legal amendments. This research question concerns how the human rights and fundamental freedoms of prisoners could be enhanced in the light of communicable diseases.

**Keywords:** Imprisonment, human rights, communicable diseases, special conditions, amendments.

## **Abbreviations**

CPT - The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

COVID-19 - Coronavirus Disease 2019

ECHR - European Convention on Human Rights (full name: European Convention for the Protection of Human Rights and Fundamental Freedoms)

ECtHR - European Court of Human Rights

WHO - World Health Organization

# INTRODUCTION

Humanity is inevitably in a situation where the communicable diseases are increasingly common and endanger human health while causing problematic challenges for humanity. The transmittable diseases have always been a problematic area, however gained anew intense attentiveness to it with the wide emerge of Coronavirus Disease 2019 (COVID-19). This research paper therefore covers the interpretation of relevant legislative sources with reference to communicable diseases prevention in prisons, whereas the primary and most up to date example being the aforementioned COVID-19 virus. On 30 January 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a global health emergency and on 11 March 2020, declared COVID-19 a global pandemic.<sup>1</sup> Since then, the wide spread of the coronavirus has had global impact, including Estonia, to enforce preventative measures to secure the health of each one of us. The existence of communicable diseases causes a majority of people to lose their lives or experience other complications accompanying it. Consequently, it is also significant that the safety of the inhabitants of closed institutions is ensured, including prisoners. Considering that transmittable diseases and in particular the coronavirus pandemic have harmed the humanity continually, this is likely to be a long-term concern in the world, although in some aspects insufficient attention has been paid.

The topic of this bachelor's thesis has been chosen primarily in view of the relevance and criticality of this field. Detention facilities deserve increased attention in compliance with human rights and fundamental freedoms, as prisons are closed systems in which the individual and the exercise of all his or her rights are, in principle, left in the hands of the state.<sup>2</sup> Especially, when people's caution and compliance with the law are the aspects that play the biggest role in a current situation. Given that the pandemic is exceedingly up to date subject and at the same time still rather recent, there has been a great deal of discrepancy. Primarily, question on how to implement and moderate certain legislative rules and at the same time be completely convinced that the safety regards to health of people is improving, regardless the circumstance of a person being located in closed institution or not, is relevant.

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<sup>1</sup> Cennimo, D. J. (2022) *Coronavirus Disease 2019 (COVID-19)*. Retrieved from <https://emedicine.medscape.com/article/2500114-overview#a1>

<sup>2</sup> Olesk, M. (2010). *Inim-ja põhiõigused vanglas. Euroopa vangistusõiguse põhimõtted. Vanglaametniku baasõppe õpik*. III osa. Tallinn: Tallinna Raamatutrükikoda, 15.

On the example of Estonia, country has the Imprisonment Act of Estonia as a primary legislative act in the country whereas the Communicable Diseases Prevention and Control Act has also gained a greater attention. The latter covers an overview of obligations of The Ministry of Justice and the Ministry of the Interior in detention facilities with regard to the communicable diseases.<sup>3</sup> Nevertheless, the key problem regards to the issue of communicable diseases outbreak is that in the Imprisonment Act there are no significant developments in the light of current situation. In addition, aforementioned detention facilities paragraph of the Communicable Diseases Prevention and Control Act has not been updated since the year 2010. There could be updated and improved amendments also covered in the Imprisonment Act for human rights in terms of healthcare related subjects in the time of infectious diseases outbreak in prisons. As an example, personal hygiene of prisoners and regular replenishment of supplies should be covered.

As follows, the author of this thesis aims to address evidence that the imprisonment rules require complementary legal basis to remain compliant with relevant legislative acts in Estonia from the communicable diseases viewpoint. Moreover, to propose amendment as a suggestion of how the amendment could possibly look like. By doing so, this is supported by relevant sources, such as published legislation, academic sources, and literature reviews. The spread of infectious diseases has proven to be extensive and there are no signs of its disappearance, yet on the other hand it is still rather unfinished in terms of legislation. A simplification is needed for the future standpoint, hence that makes it recently controversial in the field of law.

In this thesis, the author gives answer to the research question: how the human rights and fundamental freedoms of prisoners could be enhanced in the light of communicable diseases?

Given thesis consists of four chapters commencing with a general overview of the human rights and fundamental freedoms in prison, while putting special emphasis on the European Convention on Human Rights. As thesis researches given topic on the example of Estonia, an overview of the relation between European Convention on Human Rights and Estonia, as well as related case law is being highlighted. The second chapter introduces briefly the situation regarding the transmittable diseases preparedness and responses in prisons. Subsection of second chapter subsequently indicates communicable diseases overview in Estonian prisons over the years with particular attention to the preparedness and overview in the light of COVID-19 viewpoint. Third chapter of this research addresses and summarizes all the essential legislative acts and academic

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<sup>3</sup> Nakkushaiguste ennetamise ja tõrje seadus. RT I, 17.05.2020, 7. § 17.

sources as well as non-legally binding instruments, such as recommendations and other acts containing non-legally binding principles on imprisonment with reference to the measures of communicable diseases. Chapter is divided into two parts, in which the first classification is dedicated to international selected materials and second providing readers with all the essential national materials.

Finally, the fourth chapter provides this thesis paper with an answer to the research question, mainly how the human rights of the prisoners could be enhanced in the light of communicable diseases and the possible outbreak situations. The analysis of the arguments is justified and complemented with a proposed amendment for future possible situations regards to aforementioned conditions in prisons. Mainly, the author initiates a proposal to establish a subsection under § 55 General physical condition of prisoners, thereby suggesting to include a paragraph of special conditions in times of communicable disease outbreaks or possible emergencies. The suggested amendment thereby includes the enabling and existence of adequate amount of disinfection products as well as alterations in washing arrangements.



# 1. HUMAN RIGHTS IN PRISONS

As a rule, the expectations of society are grand to the management and work of prisons. After all, the essential purpose of the prison service is to ensure the safety of the people by directing the detainee to a law-abiding path while being isolated from society to a large extent. Inevitably the idea of how even a prisoner is a so-called full-fledged person is often overlooked. Prison and imprisonment are frequently associated with contrasting imaginations and prejudices, the existence of which is not even acknowledged, meaning that people often carry negative feelings towards crime and criminals of the prison system. Usually, the word prison is most associated with violence.<sup>4</sup> In Estonia, as elsewhere, the conception that even a person with criminal history has human rights, is a mindset many regular people will not acknowledge nor tolerate.<sup>5</sup> Although, prisoners are still full-fledged part of society and wish to be treated accordingly. “The right attitude towards people in detention and the guarantee of their human dignity characterize the development of society, being one of the cornerstones of the criminal law of a democratic state governed by the rule of law and characterizing who we are.”<sup>6</sup>

As follows, equal treatment is one of the key elements of the broader concept of justice and is closely linked to human dignity. Justice is defined in the Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus), more precisely in its preamble, as one of the fundamental values of our statehood. The Constitution does not emphasize human dignity at such a level, although it mentions it in § 10 of the Constitution as one of the principles of the Constitution, which provides certainty that equal treatment has an indirect meaning of a fundamental value in the Constitution.<sup>7</sup> According to the Supreme Court of Estonia, human dignity is the basis of all the fundamental rights of a person as a fundamental principle of the Constitution.<sup>8</sup> Pursuant to the §

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<sup>4</sup> Pollock, J. M. (2004). *Prisons and prison life: Costs and Consequences*. Oxford, England: Oxford University Press, 108.

<sup>5</sup> Laffranque, J. (2017). *Euroopa Inimõiguste Kohus ja Eesti Õigus*. Tallinn: Kirjastus Juura, 98.

<sup>6</sup> Olesk (2010), *supra nota* 2, 15.

<sup>7</sup> Maruste, R. (2008) *Õigus võrdsele kohtlemisele õigusriigis, selle õiguse printsiibid ja kohaldamispraktika Euroopa Inimõiguste Kohtus*. *Juridica*. Volume 2008, Issue 2, 68. Retrieved from: [https://www.juridica.ee/article.php?uri=2008\\_2\\_iguse\\_v\\_rdsele\\_kohtlemisele\\_igusriigis\\_selle\\_iguse\\_printsiibid\\_ja\\_kohaldamispraktika\\_euroopa\\_i](https://www.juridica.ee/article.php?uri=2008_2_iguse_v_rdsele_kohtlemisele_igusriigis_selle_iguse_printsiibid_ja_kohaldamispraktika_euroopa_i)

<sup>8</sup> Toomingas, C. (2016) *Inimväärikust alandava kohtlemise kriteeriumid ning nende rakendamine kinnipidamistingimuste hindamisel*. *Euroopa Inimõiguste Kohtu ja Riigikohtu halduskolleegiumi seisukohad*. *Juridica*. Volume 2016, Issue 3, 166. Retrieved from: [https://www.juridica.ee/article\\_full.php?uri=2016\\_3\\_inimv\\_rikust\\_alandava\\_kohtlemise\\_kriteeriumid\\_ning\\_nende\\_rakendamine\\_kinnipidamistingimuste\\_h](https://www.juridica.ee/article_full.php?uri=2016_3_inimv_rikust_alandava_kohtlemise_kriteeriumid_ning_nende_rakendamine_kinnipidamistingimuste_h)

12 of the Constitution of the Republic of Estonia<sup>9</sup>, everyone is equal before the law, meaning that no one shall be discriminated against certain differentiators, meaning within the scope this thesis paper, against social status. Hence all unrestricted rights are extended to detainees. Subsequently, the liberty of a prisoner during imprisonment is subject to restrictions arising from the various pieces of legislation, primarily from Imprisonment Act (Vangistusseadus) of Estonia<sup>10</sup>, which helps to fulfill the purposes of imprisonment (in accordance with the provisions of § 6 of the Imprisonment Act), and given Act thereby specifies the extent of restriction of a prisoner's fundamental rights. The simple course of notions is that human and fundamental rights are directly related to each other, because although fundamental rights derive from the Constitution, they are based on human rights, and human rights, in turn, always include fundamental rights.<sup>11</sup>

## **1.1 The nature of human rights and their relation with fundamental freedoms**

Europe is the most regulated and highly protected region in the world in terms of (human) rights and freedoms.<sup>12</sup> What comes to the human rights in detention facilities, mainly in prisons, the most appropriate way to describe it is to present the rights in light of European Convention on Human Rights (ECHR) which has gained a great impact. Accordingly, the European Convention on Human Rights, or European Convention for the Protection of Human Rights and Fundamental Freedoms as a full name, establishes not only the world's most successful system of international law for the protection of human rights, but in addition is one of the most advanced forms of any kind of international legal process.<sup>13</sup> It was adopted in 1950 and drafted within the Council of Europe after the Second World War, with an intention to unify Europe by elaborating upon the obligations of Council membership. In addition, the Convention provided a symbolic statement of the principles which West European States stood and a remedy that might protect those states from communist subversion.<sup>14</sup> It entered into force on 3 September 1953, after its ratification by eight countries, including Denmark, the Federal Republic of Germany, Iceland, Ireland,

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<sup>9</sup> Eesti Vabariigi põhiseadus. RT I, 15.05.2015, 2, § 12.

<sup>10</sup> Vangistusseadus. RT I, 08.07.2021, § 15.

<sup>11</sup> Olesk (2010), *supra nota* 2, 21.

<sup>12</sup> Maruste, R. (2004) *Põhiõiguste harta Euroopa põhiseaduslikus lepingus*. Juridica. Volume 2004, Issue 10, 655. Retrieved from:

[https://juridica.ee/article.php?uri=2004\\_10\\_p\\_hi\\_iguste\\_harta\\_euroopa\\_p\\_hiseaduslikus\\_lepingus](https://juridica.ee/article.php?uri=2004_10_p_hi_iguste_harta_euroopa_p_hiseaduslikus_lepingus)

<sup>13</sup> Bradley, A. W. et al. (2008). *European Human Rights Law: Text and Materials*. (3rd ed.) Oxford, England: Oxford University Press, 3.

<sup>14</sup> Bates, E. P. et al. (2014). *Law of the European Convention on Human Rights*. (3rd ed.) Oxford, England: Oxford University Press, 3.

Luxembourg, Norway, Sweden and the United Kingdom. As of September 2007, it was ratified by all 47 member states of the Council of Europe.<sup>15</sup> However, according to this year's data, Russian Federation ceased to be a member of the Council of Europe on 16 March 2022, hence leaving 46 member states to the Council of Europe.<sup>16</sup> Overall, with this Convention, the aim of the Council of Europe was the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms. The reaffirmation of profound belief in fundamental freedoms, which are the foundation of justice and peace in the world and are best maintained by an effective political democracy and by a common understanding and observance of the Human Rights upon which they depend, is the essence of this Convention.<sup>17</sup> For decades, it was treated by the European Court of Justice as a special source of inspiration regarding European Union human rights standpoints.<sup>18</sup>

In addition to international agreements binding on states, the international system for the protection of human rights must also take into account non-legally binding instruments, such as declarations, recommendations, minimum standards and other acts containing non-legally binding principles.<sup>19</sup> Therefore, subsequent to the ECHR are the European Prison Rules, which are drawn up by the Committee of Minister of the Council of Europe on 11 January 2006, and have an essential role in the interpretation of the rights of prisoners. Therefore, mentioned rules are connected to the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights (ECtHR). Moreover, the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in particular the standards it has developed in its general reports, have been taken into consideration while establishing those rules. Regarding this, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>20</sup> has a relevant impact in terms of prisoners. In addition to that, the aforementioned United Nations Standard Minimum Rules for the Treatment of Prisoners, as amended in 2015

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<sup>15</sup> Bradley, A. W. et al. (2008), *supra nota* 13, 3.

<sup>16</sup> *Russia ceases to be a Party to the European Convention on Human Rights on 16 September 2022* (2022). Council of Europe. Retrieved from <https://www.coe.int/en/web/portal/-/russia-ceases-to-be-a-party-to-the-european-convention-of-human-rights-on-16-september-2022>

<sup>17</sup> Council of Europe, European Convention on Human Rights, 3 September 1953.

<sup>18</sup> Graig, P., De Burca, C. (2016). *EU law - text, cases and materials*. (7th ed.) Oxford, England: Oxford University Press, 414.

<sup>19</sup> Olesk (2010), *supra nota* 2, 43.

<sup>20</sup> Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1987.

(the Nelson Mandela Rules), which seek to outline the generally accepted relevant principles and practice in the treatment of prisoners and prison management<sup>21</sup>, and the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) are being barred in mind.<sup>22</sup> The aim of the rules is to thoroughly necessitate taking into account the requirements of safety, security and discipline, while also ensuring prison conditions which do not infringe human dignity and offer meaningful occupational activities and treatment programmes to inmates. Hence, as a finalization, aim to prepare prisoners for their reintegration into society. An essential part of establishing the rules was the consideration that Council of Europe member states continue to update and observe common principles regarding their prison policy whereas, ultimately, have a situation where an observance of such common principles will enhance international co-operation in this field.<sup>23</sup> These rules cover the key legal standards and principles in reference to prison management, staff and treatment of detainees and are considered a global connection and guide to the 46 Council of Europe member states in their legislation, policies and practices in this field.<sup>24</sup>

### 1.1.1 Relation to Estonia

Human rights have been a challenging issue in Estonia, meaning that general opinions regarding the human rights have been controversial. This results from moral values, traditions and culture as well as historical background and specific groups in society.<sup>25</sup> Prior to 1991, Estonia was a republic of the Soviet Union, hence its prison system was shaped by Soviet legal norms and its developments by changes in these legal norms.<sup>26</sup> The overall conception is that thereby the prison system was very harsh and inhuman. After Estonia regained its independence in 1991, country was eager to confirm its historical belonging to Europe, with the meaning that all efforts were made to join again international community. This included the Council of Europe on 14 May 1993. It is safe to say that by taking requisite measures, Estonia as a country confirmed the

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<sup>21</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 2015, 1.

<sup>22</sup> Council of Europe: Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules, 1 July 2020. Retrieved from: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016809ee581](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809ee581)

<sup>23</sup> *Ibid.*

<sup>24</sup> *Revised European Prison Rules: new guidance to prison services on humane treatment of inmates* (2020). Council of Europe. Retrieved from <https://www.coe.int/en/web/human-rights-rule-of-law/-/revised-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates>

<sup>25</sup> Laffranque (2017), *supra nota* 5, 97.

<sup>26</sup> van Smit, D. Z., Snacken, S. (Eds.) (2001). *Imprisonment Today and Tomorrow. International Perspectives on Prisoners' Rights and Prison Conditions*. The Hague, Netherlands: Kluwer Law International, 238.

wish and will to be part of respectable legal order and considered the protection of human rights to be part of democratic governance heritage.<sup>27</sup>

Estonia ratified the ECHR on 13 March 1996, it became binding for Estonia as of 16 April 1996 and since then, formally the Convention is seen as a ratified international treaty and is an integral part of Estonian legal order. This being positioned above other legal acts in the hierarchy of legal sources in Estonia, except the Constitution of the Republic of Estonia, makes the Convention and the Court's case law an essential standard.<sup>28</sup> More specifically said, the Constitution has been written in the spirit of the Council of Europe from the aspect of European law and correspondingly, it was a much closer and more tangible organization to Estonia than the European Union in the early 1990s. At the time of the Constitutional Assembly, the European Union did not yet officially exist. Generally speaking, the Supreme Court of Estonia has referred quite a lot in its decisions to the case law of the Council of Europe on the human rights and fundamental freedoms of the ECHR and the ECtHR.<sup>29</sup> Thus it has played a major role in making Estonian domestic decisions. It is more beneficial for Estonia to take into account the decisions of the Court in order to reduce the satisfaction of complaints. Therefore, if the Estonian courts provide sufficient protection, the number of complaints will decrease considerably.<sup>30</sup>

In relation to the ECHR and to the service of prisons, prior to communicable diseases, there has been some significant case law in Estonia which should be emphasized in this thesis paper. More specifically, in respect of Article 3 of the Convention, violations have been found due to poor, degrading, and inhuman prison conditions. Subsequently, so far one of the most large-scale impacts of the Convention, the Court's case law and of the European Committee for the Prevention of Torture reports to Estonia has been the improvement of the conditions in Estonian prisons. Moreover, the contribution to the evolution of the system of state responsibility and compensation caused by the poor prison conditions have had an considerable impact.<sup>31</sup> The first decision in this regard was the judgment of 8 November 2005 *Alver v. Estonia*, where the overcrowded cell, inadequate lighting and ventilation, poor hygiene conditions with poor

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<sup>27</sup> Motoc, I., Ziemele, I. (Eds.) (2016). *The Impact of the ECHR on Democratic Change in Central and Eastern Europe. Judicial Perspectives*. Cambridge: Cambridge University Press, 153.

<sup>28</sup> *Ibid.*, 153-154.

<sup>29</sup> Laffranque, J. (2021) *Põhiseadus läbi inimõigustealase Euroopa kohtupraktika prisma*. Juridica. Volume 2021, Issue 1, 4. Retrieved from [https://www.juridica.ee/article.php?uri=2021\\_1\\_p\\_hiseadus\\_l\\_bi\\_inim\\_igustealase\\_euroopa\\_kohtupraktika\\_prisma](https://www.juridica.ee/article.php?uri=2021_1_p_hiseadus_l_bi_inim_igustealase_euroopa_kohtupraktika_prisma)

<sup>30</sup> Annus, T. (2006). *Riigiõigus*. Tallinn: Kirjastus Juura, 41.

<sup>31</sup> Motoc, Ziemele (2016), *supra nota* 27, 161.

condition of the cells, combined with the applicant's state of health and the period during which he was kept in such conditions, were considered by the court to be sufficient to degrade human dignity. In another case *Kochetov v. Estonia*, the ECtHR however found that the poor living conditions in the detention center had cumulatively caused the applicant suffering beyond the inevitable level of suffering in the detention.<sup>32</sup> After the judgment of *Alver v. Estonia*, new prisons were built, whereas after the *Kochetov v. Estonia* judgment, conditions in arrest houses were significantly improved.<sup>33</sup> Another case was *Tunis v. Estonia*, where the applicant suffered from back and neck pain and in addition to that, he had difficulties to do the exercises prescribed by a doctor in an overcrowded cell. He only had limited out-of-cell activity of an hour of daily exercise outdoors. As he had spent more than 2 years 10 months in such conditions, excluding short periods in other cells and prison hospital, the Court found a violation of Article 3 of the Convention.<sup>34</sup> Directly after the ECtHR judgment regarding this case, concerning the size of the cell allocated to detainees, and having previously been inspired by the ECtHR's rulings on other countries, the Minister of Justice's Regulation no. 72 of the Internal Prison Rules (*Vangla sisekorraeeskiri*), provided new amendments in terms of more floor space per prisoner in the room and cell.<sup>35</sup> These amendments provided at least 2.5 square meters of floor space per prisoner in a room and 3 square meters in a cell.<sup>36</sup> Nevertheless, in its decision of 20 June 2014, the Constitutional Review Chamber of the Supreme Court found that the 2.5 square meters of floor space intended for a prisoner is not unconstitutional in itself or in combination with other relevant provisions. However, the Chamber of the Supreme Court emphasized that the conditions of the applicant's detention in this case could have led to a violation of his human dignity.<sup>37</sup>

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<sup>32</sup> Toomingas, C. (2016) *Inimväärkust alandava kohtlemise kriteeriumid ning nende rakendamise kinnipidamistingimuste hindamisel*. *Euroopa Inimõiguste Kohtu ja Riigikohtu halduskolleegiumi seisukohad*. *Juridica*. Volume 2016, Issue 3, 170. Retrieved from: [https://www.juridica.ee/article\\_full.php?uri=2016\\_3\\_inimv\\_rikust\\_alandava\\_kohtlemise\\_kriteeriumid\\_ning\\_nende\\_rakendamise\\_kinnipidamistingimuste\\_h](https://www.juridica.ee/article_full.php?uri=2016_3_inimv_rikust_alandava_kohtlemise_kriteeriumid_ning_nende_rakendamise_kinnipidamistingimuste_h)

<sup>33</sup> Laffranque (2017), *supra nota* 5, 49.

<sup>34</sup> Motoc, Ziemele (2016), *supra nota* 27, 162.

<sup>35</sup> Laffranque, J. (2021) *Põhiseadus läbi inimõigustealase Euroopa kohtupraktika prisma*. *Juridica*. Volume 2021, Issue 1, 13. Retrieved from [https://www.juridica.ee/article.php?uri=2021\\_1\\_p\\_hiseadus\\_l\\_bi\\_inim\\_igustealase\\_euroopa\\_kohtupraktika\\_prisma](https://www.juridica.ee/article.php?uri=2021_1_p_hiseadus_l_bi_inim_igustealase_euroopa_kohtupraktika_prisma)

<sup>36</sup> Motoc, Ziemele (2016), *supra nota* 27, 162.

<sup>37</sup> Laffranque (2021), *supra nota* 35, 13.

## 2. COMMUNICABLE DISEASES PREPAREDNESS AND RESPONSES IN PRISONS

Human rights are moral rights, meaning that absolutely everyone must have certain human rights, including those who are detained in Estonian prisons.<sup>38</sup> Human rights become especially relevant and distinguishable in situations where differences between people arise, whether the differences apply to social status, or on other grounds referred in legislative acts. One of those situations is definitely communicable diseases outbreak. In arisen emergency crises like a perilous disease, reality becomes clear, meaning that every measure to protect human rights related issues must be taken into account, must be improved and be protected from, whoever that person is. The Nelson Mandela rules describe very well the expected concept of health care in prisons. Subsequently, the provision of health care for prisoners is a State responsibility and thus prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge, without discrimination on the grounds of their legal status. In addition, health-care services should be organized in close relationship to the general public health administration. It should ensure continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases.<sup>39</sup> In other words, the fact to keep in mind is that prisoners deserve the means to prevent, protect and stop sickening due to the infectious diseases to the same extent as everyone else.

The concept of “isolation” has always played a marginal role in prison systems and the definitions resulting. According to the interpretation of the year 2003 by Council of the Baltic Sea States (CBSS) Commissioner's Secretariat, the concept of isolation implies that contact and communication may be restricted for instance due to security reasons (anticipating a possible violation of prison rules) or as a form of punishment (following violation of prison rules). Other terms of isolation are referred as restrictions, solitary confinement and exclusion from association.<sup>40</sup> However, given concept has firmly gained a more relevant meaning in the past three years, taking into account the course of the spread of the latest transmissible virus. While back in 2003 the concept of isolation was primarily to prevent a possible violation of prison

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<sup>38</sup> Annus (2006), *supra nota* 30, 221.

<sup>39</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 2015, Rule 24.

<sup>40</sup> Degn, H., Sâheim, E. (2003). *Pre-trial Detention- in the Baltic Sea Region*. Oslo: Justis- og politidepartementet, Ministry of Justice and the Police; Copenhagen: Council of the Baltic Sea States, The Commissioner, 12.

rules, in present time the concept has a significant impact on the protection of health and human rights of prisoners. Nevertheless, certain convictions and standards have stayed the same, meaning that aforementioned source emphasized the relevance of keeping in mind the possible conflict between solitary confinement and international human rights law. Accordingly, isolation may be a violation of prohibition of torture, inhuman, cruel or degrading treatment. More specifically, if those course of events are for a prolonged period, or coupled with sensory deprivation or applied to certain categories of detainees (such as those with physical or mental medical conditions).<sup>41</sup>

## **2. 1 Communicable diseases overview in Estonian prisons**

With over 11 million people incarcerated globally each year, the prevention and control of transmittable diseases, especially COVID-19, in custodial settings as prisons is a critical component of the public health response. Given settings are characterised by overcrowding, poor ventilation, inadequate access to sanitation, and substandard access to, and quality of, healthcare relative to the community, while making custodial settings high-risk environments for COVID-19 transmission, and subsequent community spread.<sup>42</sup> At the beginning of pandemic, the European Organisation of Prison and Correctional Services (EuroPris), funded by the European Union, published a document of the Regulations taken by the Estonian Prison Service as regards the COVID-19, while it was relatively new conception. This included the primary fields affected from the spread of the virus. Especially essential amendment in rules was that all prisons must have (in the prison entry and prisoner admission facilities, also in the quarantine unit) adequate amount of disinfection products and medical personal protective equipment, including respirators, protective gloves, protective eyewear and no-touch thermometers.<sup>43</sup> According to the data from October 2021, cumulative COVID cases since the start of the pandemic showed that where infection rates were high in the general population, they also tended to be high in prisons. This is true, for example in Estonia, where more than one in ten people had tested positive already.<sup>44</sup>

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<sup>41</sup> *Ibid.*

<sup>42</sup> Borschmann, R. et al. (2021). A rapid review of early guidance to prevent and control COVID-19 in custodial settings. *Health Justice*, 9 (1), 2. Berlin, Germany: Springer Publishing. Retrieved from: <https://link.springer.com/content/pdf/10.1186/s40352-021-00150-w.pdf>

<sup>43</sup> Report on Regulations taken by the Estonian Prison Service as regards the COVID-19 2020.

<sup>44</sup> Gagnon, M. et al. (2021) *COVID: How Europe's prisons have fared in the pandemic*. Retrieved from <https://www.dw.com/en/covid-how-europes-prisons-have-fared-in-the-pandemic/a-60006262>



A major problem occurring in almost every European country, even before the infectious disease outbreak, was overcrowded prisons. In some countries, there are more than two times as many inmates than in the time when detention facilities were built.<sup>45</sup> According to the guidelines established by the CPT, the living space per prisoner in prison establishments should be minimum 6 m<sup>2</sup> of living space for a single-occupancy cell + sanitary facility and 4 m<sup>2</sup> of living space per prisoner in a multiple-occupancy cell + fully-partitioned sanitary facility.<sup>46</sup> The Minister of Justice's Act for the Internal Prison Rules (Vangla sisekorraeeskiri) § 6 s. 6 states that the prisoner shall have a floor area of at least 2.5 m<sup>2</sup> in the room and at least 3 m<sup>2</sup> in the cell.<sup>47</sup> To continue, according to the Report to the Estonian Government on the visit to Estonia carried out by the CPT, it was brought out that the Committee encourages the Estonian authorities to further develop alternatives to imprisonment, in the light of relevant recommendations of the Committee of Ministers of the Council of Europe. Moreover, urges them to raise the legal minimum standard of living space per prisoner in multiple-occupancy cells to 4 m<sup>2</sup> (not counting the area taken up by in-cell sanitary facilities) without any further delay.<sup>48</sup> Consequently, in the light of restrict requirements for the prevention of pandemic, these encouraging recommendations have gained even more extensive meaning. However, coming back to the core of overcrowding of prisons, especially during the pandemic, Estonia is not crucially affected by this matter, as the prison population in total has decreased over the year, taking as an example year 2010 with a population of 3555 inmates compared to 2020 with the total of 2450 inmates.<sup>49</sup>

The previously mentioned CPT report also noted that the use of solitary confinement as a punishment appeared to be widespread in all three Estonian prisons and the practice appeared to be particularly excessive at Viru Prison. Prisoners were placed in disciplinary solitary confinement continuously for more than 14 days, thereby exceeding the maximum permissible time. At aforementioned Viru Prison, multiple periods in solitary confinement were imposed on prisoners consecutively, which in a number of cases resulted in very long periods of solitary

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<sup>45</sup> Hammarberg, T. (2007). *Human Rights in Europe: Mission Unaccomplished. Viewpoints by the Council of Europe Commissioner for Human Rights*. Strasbourg, France: Council of Europe Publishing, 101.

<sup>46</sup> Report of 2015 to the Living space per prisoner in prison establishments: CPT standards by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

<sup>47</sup> Vangla sisekorraeeskiri. RT I, 11.02.2022, 6, § 6 s. 6.

<sup>48</sup> Report of 2019 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 27 September to 5 October 2017.

<sup>49</sup> World Prison Brief (2020). World Prison Brief Data: Estonia. [Online]. Retrieved from <https://www.prisonstudies.org/country/estonia>, 11 March 2022.

confinement, as an example in one prisoner's case amount of 225 days. Although, there were no major concerns in prisons regarding physical conditions.<sup>50</sup> In the year writing this thesis paper, Council of Europe anti-torture Committee have announced periodic visits to eight countries in 2022, including Estonia. The relevance of these visits is to assess how detained persons are being treated.<sup>51</sup>

Next in line are the health and medical treatment. "Health has been defined by the World Health Organization (WHO) as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity."<sup>52</sup> Hence, health care is one of the most essential determinants of the general conditions of imprisonment. According to the Estonian Imprisonment Act § 50 s. 2, personal hygiene of prisoners provides that Prisoners shall be given the opportunity to have a sauna, bath or shower at least once a week and upon reception into prison.<sup>53</sup> As it will be revealed later, these conditions in terms of transmittable diseases spreading are not the most ideal solution for the prevention of diseases. On the subject of health care, findings of the CPT are especially relevant, due to the reason that CPT has always paid close attention to health matters, reflecting the significant role that medical practitioners have played in the investigations.<sup>54</sup> As an interim overview, no matter what, prisoners should have the possibility of medical treatment when needed, because to deprive someone of his liberty inevitably entails a moral duty of care.<sup>55</sup>

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<sup>50</sup> *2020 Country Reports on Human Rights Practices: Estonia* (2020). U.S. Embassy in Estonia. Retrieved from <https://ee.usembassy.gov/2021-03-31/>

<sup>51</sup> *Council of Europe anti-torture Committee announces periodic visits to eight countries in 2022* (2021). Council of Europe. Retrieved from <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-announces-periodic-visits-to-eight-countries-in-2022>

<sup>52</sup> van Smit, D. Z., Snacken, S. (2009). *Principles of European Prison Law and Policy: Penology and Human Rights*. Oxford, England: Oxford University Press, 147.

<sup>53</sup> Vangistusseadus. RT I, 08.07.2021, 15. § 50 s. 2.

<sup>54</sup> van Smit, Snacken (2009), *supra nota* 52, 147.

<sup>55</sup> Hammarberg (2007), *supra nota* 45, 103.

## 3. SOURCES ON IMPRISONMENT WITH REFERENCE TO THE MEASURES OF COMMUNICABLE DISEASES

### 3.1 International classification

The Council of Europe has published a guide on the case-law of the European Convention on Human Rights, with emphasis to prisoners' rights, which is being updated frequently. According to given guide, regardless of the circumstance whether an applicant became infected at the time being in detention, the State has a responsibility and an obligation to ensure treatment for prisoners in its charge. Hence the lack of essential, adequate medical assistance for serious health problems, from which the applicant had not suffered prior to detention, may constitute to a breach of Article 3. Absent or inadequate medical treatment, notably when the disease has been contracted at the time of detention, is a subject of concern for the Court. It is thereby bound to assess the quality of medical services with which the applicant was provided in a particular case and to determine whether a person was deprived of adequate medical assistance. If so, there is a subsequent question whether this extended to the breach of inhuman and degrading treatment contrary to Article 3 of the ECHR.<sup>56</sup> It is important to acknowledge that the improved advances in social tolerance and medical understanding have reformed the way in which the community views and responds to certain illnesses, and against this picture, the contribution of the Council of Europe is real. This contribution has thereby stressed an attempt to guarantee that a humane sufficient link between the ground for loss of liberty and the conditions in which patient is held and the treatment is offered exists.<sup>57</sup>

Again, the European Convention on Human Rights protecting the right to be free from arbitrary detention based on discriminatory grounds, and the right to be free from inhuman or degrading treatment or punishment based on discriminatory grounds during detention is really essential.<sup>58</sup> According to the case law of ECHR, as the latest example with reference to coronavirus disease, case *Feilazoo v. Malta*, the Court examined a matter of automatic placement of new arrivals in

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<sup>56</sup> European Court of Human Rights guide on the case-law of the European Convention on Human Rights and Prisoners' rights of 2021, 34.

<sup>57</sup> Murdoch, J. (2006). *The treatment of prisoners: European standards*. Strasbourg, France: Council of Europe Publishing, 304.

<sup>58</sup> *Handbook on European non-discrimination law*. (2018). Luxembourg: Publications Office of the European Union, 152.

COVID-19 quarantine. The applicant had been held seventy-five days in isolation without any access to natural light or air, and that during the first forty days he had had no opportunity to exercise, before being moved to other living quarters where new arrivals were kept in COVID-19 quarantine. The Court stressed that there was no indication nor medical reason that the applicant was in need of Covid-19 quarantine – particularly after an isolation period – which moreover lasted for nearly seven weeks. Thus, the Court found and judgment was that the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any relevant consideration to this effect, could not be considered as a measure complying with basic sanitary requirements in times of disease outbreak while imposing threat to health.<sup>59</sup> Other examples concern the cases before coronavirus outbreak, but nevertheless are of equal importance within the meaning of this thesis paper. Accordingly, in a judgment of 2007, case *Istrath and Others v. Moldova*, the European Court of Human Rights found that a prisoner was not provided with timely medical assistance and hence the failure to provide immediate medical assistance to the applicant in an emergency situation contributed to a violation of Article 3.<sup>60</sup> Already back then, an emergency situation had its own significance in case law, however the extent of it was considered was less reflected or recognized, because it did not affect the whole humanity so severely at the same time. Year later in the case *Kotsaftis v. Greece*, a prisoner was suffering from cirrhosis of the liver caused by chronic hepatitis B. Thereby the Court found a violation of Article 3 due to the reason that contrary to the findings of the expert reports drawn up, the applicant had been kept in detention for nine months and excluded from a special diet or treatment with appropriate drugs, and had not undergone tests in a specialist medical centre. An operation scheduled for a particular date had not been performed until one year later. The Court also deprecated the fact that the applicant suffering from a seriously infectious disease, had been detained in an overcrowded cell along with ten other prisoners.<sup>61</sup>

The European Convention on Human Rights also has an Article 15, a derogation clause, which states that in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”<sup>62</sup> Thus, the ECHR by declaring

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<sup>59</sup> *Feilazoo v. Malta*, no. 6865/19, § 3, § 5 (1), § 34, ECHR 2021.

<sup>60</sup> Lines, R. (2008). The right to health of prisoners in international human rights law. *International Journal of Prisoner Health*, 4 (1), 23. Bingley, United Kingdom: Emerald Group Publishing Limited.

<sup>61</sup> European Court of Human Rights guide on the case-law, *supra nota* 56, 33.

<sup>62</sup> European Convention on Human Rights, *supra nota* 17, Article 15.

that, allows derogation from the Convention's obligations under the declaration of a state of emergency. By 'public emergency threatening the life of the nation' it is to be understood as a quite exceptional situation which imperils the normal operation of public policy established in accordance with the lawfully established will of the citizens.<sup>63</sup> Here the human rights with fundamental freedoms clearly emerge, meaning that derogations and exceptions can be applied, only if they do not violate the rights. Thereby, rights and freedoms may be restricted, although the exceptions must be clearly substantiated and based on the law, while also maintaining respect for given concern. Respectively, the application of the derogation is legitimate and relevant during the communicable diseases outbreaks and emergency situations arising from it, if requisite. Once a country has decided to apply the Article 15 derogation clause, attention must be paid and care taken to ensure proportionality and necessity of the proposed measures. The human right for which the application of the derogation clause is justified, in the fight against for instance the latest Covid-19 pandemic, is Article 5 (1) (e).<sup>64</sup> It represents an idea reflecting to the thesis paper that everyone has the right to liberty and security of person. Further, no one shall be deprived of his liberty save in the lawful detention of persons for the prevention of the spreading of infectious diseases.<sup>65</sup>

Diseases tend to be especially rife in prisons and the controlling of these poses a particular challenge for healthcare professionals. Before the emergence of coronavirus disease, tuberculosis, hepatitis and HIV/AIDS had been widely recognised in Europe, although HIV/AIDS and hepatitis are not as easily communicable. Nevertheless, as a result, European prison health policy has been geared to deal with these diseases in particular and European Prison Rules have stipulated this issue widely and punctually. For instance, concerning the transmittable diseases prevention implementation in European Prison Rules, it stipulates that medical professionals should pay particular attention to the isolation of prisoners suspected of infectious conditions for the period of infection and hence providing the proper treatment.<sup>66</sup> In terms of ECtHR, the Court has also stressed that the spread of transmissible diseases with special reference to tuberculosis, hepatitis and HIV/AIDS, should be a public health concern, especially

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<sup>63</sup> Mowbray, A. (2012). *EU Cases, Materials, and Commentary on the European Convention on Human Rights*. (3rd ed.) Oxford, England: Oxford University Press, 846.

<sup>64</sup> Margna, P. (2021) *Euroopa inimõiguste ja põhivabaduste kaitse konventsiooni artikli 15 kohaldamine COVID-19 pandeemia puhul*. *Juridica*. Volume 2021, Issue 4, 255. Retrieved from: [https://www.juridica.ee/article.php?uri=2021\\_4\\_euroopa\\_inim\\_iguste\\_ja\\_nbsp\\_p\\_hivabaduste\\_kaitse\\_konventsiooni\\_artikli\\_nbsp\\_15\\_kohaldamine\\_co](https://www.juridica.ee/article.php?uri=2021_4_euroopa_inim_iguste_ja_nbsp_p_hivabaduste_kaitse_konventsiooni_artikli_nbsp_15_kohaldamine_co)

<sup>65</sup> European Convention on Human Rights, *supra nota* 17, Article 5 (1) e.

<sup>66</sup> van Smit,Snacken (2009). *supra nota* 52, 173.

in the prison environment. Correspondingly, the Court considered it desirable that, with their consent, detainees can have access, within a reasonable time after their admission to prison, to free screening tests for hepatitis and HIV/AIDS. In a judgment of 2012, *Jeladze v. Georgia*, the Court held that a three-year delay before submitting the applicant to screening for hepatitis C amounted to negligence on the part of the State. Its common responsibilities to take effective measures for the prevention of the transmission of hepatitis C or other transmissible diseases in prison was not fulfilled.<sup>67</sup>

Concerning the subject of this thesis paper, relevant principles of the European Prison Rules should be accentuated as of here. First and foremost given rules highlight that prison conditions which violate the human rights of prisoners are not justified by insufficient resources.<sup>68</sup> Accordingly, while examining a prisoner, the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to isolating prisoners suspected of infectious or contagious conditions for the period of infection and thereby providing these prisoners with proper treatment depending on the situation.<sup>69</sup> In addition to that, in terms of hygiene it is stated that all parts of every prison shall be properly maintained and kept clean at all times<sup>70</sup> and in addition, the EPR Explanatory Memorandum clarifies that institutional hygiene and personal hygiene are interlinked. It means that prison management must enable prisoners to take care of the personal cleanliness, provide them with the possible means to do so and prison takes overall responsibility for the hygiene conditions in cells.<sup>71</sup> The adequate facilities shall be provided so that every prisoner may have a bath or shower, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene and the prison authorities shall provide them with the means for cleaning and tidying, including toiletries, general cleaning implements and materials.<sup>72</sup> In general, the national law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.<sup>73</sup> It must be also said that the Council of Europe has laid down very comprehensive rules for the health care. To commence with, emphasis has been put on the relevance of prisoners having access to the health services available in the country without

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<sup>67</sup> European Court of Human Rights guide on the case-law, *supra nota* 56, 34.

<sup>68</sup> Council of Europe: Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules, *supra nota* 22, Rule 4.

<sup>69</sup> *Ibid.*, Rule 42.3. f.

<sup>70</sup> *Ibid.*, Rule 19.1.

<sup>71</sup> Olesk (2010), *supra nota* 2, 104.

<sup>72</sup> Council of Europe: Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules, *supra nota* 22, see Rules 19.4, 19.6.

<sup>73</sup> *Ibid.*, Rule 18.4.

discrimination on the grounds of their legal situation and thereby that all necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.<sup>74</sup> Nevertheless, the demand for better medical treatment stays. “All member states of the Council of Europe, being aware of the importance of medical problems within penal institutions, have accordingly endeavoured- and, with so much still to be accomplished in this field, are still endeavouring- to adapt their prison medical services to cope with this demand.”<sup>75</sup>

As a matter of fact, in the light of recent COVID-19 pandemic and communicable diseases in a broad sense, whereas this also being the topicality of given thesis paper, the Committee of Ministers of the Council of Europe has adopted a Recommendation which updates the mentioned 2006 European Prison Rules.<sup>76</sup> These recommendations include for instance the use of special high security or safety measures such as the separation of prisoners from other inmates, solitary confinement, instruments of restraint, the need to ensure adequate levels in prison staff, inspection and independent monitoring. More precisely, the recommendation concerns solitary confinement, meaning being locked up for more than 22 hours a day without meaningful human contact.<sup>77</sup> Hence, according to both the Mandela Rules and the European Prison Rules, solitary confinement can be only used as a last resort in exceptional cases, for as short time period as possible, and should be prohibited for prisoners with mental disabilities, if it would worsen their health related situation.<sup>78</sup> However, as the scope of coronavirus is relatively new phenomenon among humanity due to its especially high infectious effect, it is understandable that loose ends inevitably exist at the expense of legislative acts. As coronavirus has proven to be such an unbridled virus, there is a clear indication to the fact that humanity is expected to face other COVID-like communicable diseases in the future as well and given matter needs some additional amendments in legislative acts.

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<sup>74</sup> *Ibid.*, see Rules 40.3, 40.5.

<sup>75</sup> Reynaud, A. (1994). *Human rights in prisons*. Strasbourg, France: Council of Europe, 88.

<sup>76</sup> *Revised European Prison Rules: new guidance to prison services on humane treatment of inmates* (2020). Council of Europe. Retrieved from <https://www.coe.int/en/web/human-rights-rule-of-law/-/revised-european-prison-rules-new-guidance-to-prison-services-on-humane-treatment-of-inmates>, 11 March 2022.

<sup>77</sup> *Ibid.*

<sup>78</sup> Glaase, L. (2021) *Üksikvangistus õigusteaduses ja teistes teadustes*. Juridica. Volume 2021, Issue 1, 71. Retrieved from: [https://www.juridica.ee/article.php?uri=2021\\_1\\_ksikvangistus\\_igusteaduses\\_ja\\_teistes\\_teadustes](https://www.juridica.ee/article.php?uri=2021_1_ksikvangistus_igusteaduses_ja_teistes_teadustes)

### 3.2 National classification

The § 3 of the Constitution of the Republic of Estonia enacts that state power shall be exercised solely on the basis of the Constitution and laws that are in conformity therewith. Generally recognised principles and rules of international law are as a fact an inseparable part of the Estonian legal system.<sup>79</sup> Thereby, the Government of the Republic has no competence to implement principles that are in contradiction with the rights. As follows, the right to the protection of health is also a right arising from the Constitution, more precisely § 28 of the Constitution of the Republic of Estonia.<sup>80</sup> The main aim is to prevent human illness, and the measures taken to ensure a healthy and safe environment must be reflected in legislation. Particular attention must be paid to the effectiveness of public oversight to ensure that the already established requirements are complied with.<sup>81</sup> Hence, the Estonian domestic law has mandated authorities to be responsible and enforce regulations to meet persons, in this case highlighted as prisoners, best interests.

Deriving from the Imprisonment Act of Estonia, regarding the situation of communicable, or in other words infections, diseases impact for prisoners living arrangements, given Act stipulates that on the order of a prison service officer, prisoners shall be required to participate in the prevention of a list of situations, including an epidemic, or the elimination of the effects thereof and in case of other emergencies. In such case, the prison shall ensure the security and safety of the prisoners.<sup>82</sup> Aforementioned refers to the working conditions in prison and hence is a very vague and brief indication to the overview of epidemic related communicable diseases and the possible emergency situation emerging from this. Subsequently, the second indication from the Act related to the behaviour during a crisis, is responding to emergencies in prisons and the fact that resolving of all events which directly endanger the general security of a prison or the application of imprisonment shall be directed by the prison or the Ministry of Justice.<sup>83</sup> In this regard, another domestic law was developed in the beginning of a COVID-19 pandemic in the year 2020, the Bill on Amendments to the Assistant Police Officer Act and Other Acts (measures

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<sup>79</sup> Eesti Vabariigi põhiseadus. RT I, 15.05.2015, 2. § 3.

<sup>80</sup> Eesti Vabariigi põhiseadus. RT I, 15.05.2015, 2. § 28.

<sup>81</sup> Madise, Ü., et al. (2012). *Eesti Vabariigi Põhiseadus. Kommenteeritud väljaanne*. (3rd ed.) Tallinn, Kirjastus Juura, 365.

<sup>82</sup> Vangistusseadus. RT I, 08.07.2021, 15. § 39 s. 4.

<sup>83</sup> *Ibid.*, § 72.



related to the spread of the SARS-CoV-2 virus that causes the COVID-19 disease).<sup>84</sup> The latter covers an amendment with reference to the rule that prison service has the right to establish a prohibition on a person staying in prison. While this being justified amendment to the Imprisonment Act of Estonia, there are nevertheless no other significant developments in regards to communicable diseases outbreak or possible emergency situation and especially inmates health and treatment aspects. In addition to aforementioned Bill on Amendments Act, while writing this thesis paper, the Government of Estonia developed and enforced the Measures and Restrictions Necessary for Preventing Spread of COVID-19 Act, which delineates that under § 28 s. 2, s. 5 and s. 6 of the Communicable Diseases Prevention and Control Act and considering § 28 s. 8 thereof, the Government of the Republic may take measures for preventing communicable diseases when the application of measures and restrictions for the prevention of an epidemic spread of communicable diseases has a significant effect on society or economy. The preconditions are that it is an extremely dangerous communicable disease or a dangerous novel communicable disease; the Health Board has given the Government of the Republic information and a recommendation on a measure (obligation or restriction) on the basis of epidemiological, laboratory and clinical information; the measure is absolutely necessary for preventing the spread of the virus or in other words the requirement must be proportional and rational; the measure is temporary or in other words limited in time and it brings about a significant social or economic effect.<sup>85</sup> Yet, this does not fall within the scope of the matter of this thesis paper, meaning communicable diseases spread and prevention within the scope of detention facilities.

However, coming back to the Imprisonment Act, § 53 outlines the treatment of prisoners. Moreover, the Imprisonment Act of Estonia has a complimentary executive publication from 2014, which defines the paragraphs from the Act more thoroughly. Accordingly, it specifies the § 53 with an addition that prison medical services also include the detection and control of communicable diseases and particularly dangerous is an infectious disease that is highly contagious, spreads rapidly and extensively, or which course is severe or life-threatening.<sup>86</sup> Therefore, the indication to communicable disease exists, yet it is not directly and punctually covered in the given Act. The intermediate conclusion is that in the Imprisonment Act of Estonia, currently there is no direct indication to the communicable diseases nor a paragraph

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<sup>84</sup> Abipolitseiniku seaduse ja teiste seaduste muutmise seadus (COVID-19 haigust põhjustava viiruse SARS-Cov-2 levikuga seotud meetmed). RT I, 06.05.2020, 1. § 72 s. 1.

<sup>85</sup> COVID-19 haiguse leviku tõkestamiseks vajalikud meetmed ja piirangud. RT III, 15.03.2022, 6, § 25.

<sup>86</sup> Madise, L., Pikamäe, P., Sootak, J. (2014). *Vangistusseadus. Kommenteeritud väljaanne*. Tallinn: Kirjastus Juura, 141.

covering this. Exclusively an executive publication regarding the Imprisonment Act is not sufficient. Although, Estonia has Communicable Diseases Prevention and Control Act (Nakkushaiguste ennetamise ja tõrje seadus). Right in the beginning of the Act, the control of communicable diseases has been defined. Suitably, it means the application of health protection measures which enable the early detection, consequent testing and treatment of persons suffering from communicable diseases. Also of persons suspected of being infected in order to ascertain the causes and mode of their infection, prevent the spread of the communicable disease and prevent healthy persons from being infected.<sup>87</sup> Another essential part this Act covers, with strong indication to given research, are the obligations of state upon surveillance and control of communicable diseases, meaning in penal institutions. Primarily it covers that the Ministry of Justice and the Ministry of the Interior of Estonia shall organise in penal institutions, police detention houses and detention cells respectively the provision of conditions of detention which are as safe from infection as possible for detained persons, persons in custody and prisoners. Moreover, shall organize the provision of mandatory medical examinations, for epidemiological reasons, of prisoners who, due to the particular nature of their activities, may transmit communicable diseases through contact with food, water or other vectors and fomites. In addition, in order to prevent the spread of tuberculosis, the provision of mandatory radiographic examinations of lungs of detained persons, persons in custody and prisoners. The Ministry of Justice and the Ministry of the Interior shall ensure conditions which are as safe from infection as possible during the transport of detained persons, persons in custody and prisoners and the Ministry of Justice shall authorise health protection officials to exercise supervision over the application of measures to control communicable diseases in penal institutions.<sup>88</sup> Therefore, the § 17 of the Communicable Diseases Prevention and Control Act is essential in terms of relevant legislation related to communicable diseases control in prisons. However, aforementioned precautionary measures are from the year 2010 and thus may need possible specifications.

In terms of rapid outbreak leading to emergency situation, the Emergency Act (Hädaolukorra seadus) of Estonia covers that The Government of the Republic may declare an emergency situation for resolving an emergency caused by spread of a communicable disease if it is not possible to resolve the emergency without implementing the command organisation or measures

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<sup>87</sup> Nakkushaiguste ennetamise ja tõrje seadus. RT I, 17.05.2020, 7, § 2 s. 1 ss. 6.

<sup>88</sup> *Ibid.*, See § 17 s. 3, 17 s. 4, 17 s. 5.

provided for in this Chapter and a communicable disease is construed within the meaning of the Communicable Diseases Prevention and Control Act.<sup>89</sup>

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<sup>89</sup> Hädaolukorra seadus. RT I, 17.11.2021, 9. § 19 s. 1, s. 3.

## 4. RECOMMENDATIONS FOR LEGAL AMENDMENTS

The ECtHR has considered to be detrimental conditions for detention, for instance, complete social isolation, the impossibility of mental activity (e.g. reading newspapers and magazines), ignoring special needs, failure to provide medical care resulting in serious injury or death, unreasonable use of force, lack of washing conditions, lack of fresh air and walking conditions, overcrowding in the cell, placement in a small and dark cell for three months without the possibility of walking and poor sanitation combined.<sup>90</sup> Thus, the more confirmation is given that published legislation must be in compliance with full-fledged conditions and also their law-abiding observance. Moreover, European Prison Rules highly recommend that member states (therefore including Estonia) ensure that the recommendation covered and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison staff and individual prisoners.<sup>91</sup> Yet, trying to identify improvements in the legislation with reference to the infectious diseases with possible outbreaks or emergencies in legislation, lack of amendments comes to the fore. At the same time serious situations have already emerged. It is essential to update and implement the law depending on the situation and for the consolidation of our society.

Nevertheless the reason that communicable disease outbreaks or times of emergencies should maintain as an exceptional measure, it is still essential to include the necessary measures into regular legislation in order to manage the occasions conveniently, when necessary. Existing legislative acts do not necessarily provide clear efficiency with regard to disease outbreaks or emergency situations revealing from it, as the legal procedure is under a time limit. The Imprisonment Act serves, in the opinion of an author, more specific and long-term prospects for the future organizational arrangements for imprisonment. After all, a simplification is needed for the future standpoint, to avoid controversial understandings while interpreting the law. As stated previously, author of this thesis paper agrees that the paragraph 17 of the Communicable Diseases Prevention and Control Act, covering communicable disease outbreaks in detention facilities is decent, however not sufficient to impose effective remedies on rights imposed to

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<sup>90</sup> Toomingas, C. (2016) *Inimväärrikust alandava kohtlemise kriteeriumid ning nende rakendamise kinnipidamistingimuste hindamisel*. Euroopa Inimõiguste Kohtu ja Riigikohtu halduskolleegiumi seisukohad. Juridica. Volume 2016, Issue 3, 170. Retrieved from: [https://www.juridica.ee/article\\_full.php?uri=2016\\_3\\_inimv\\_rikust\\_alandava\\_kohtlemise\\_kriteeriumid\\_ning\\_nende\\_rakendamise\\_kinnipidamistingimuste\\_h](https://www.juridica.ee/article_full.php?uri=2016_3_inimv_rikust_alandava_kohtlemise_kriteeriumid_ning_nende_rakendamise_kinnipidamistingimuste_h)

<sup>91</sup> Council of Europe: Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules, *supra nota* 22.

inmates in detention facilities. As there is reason to believe that the present COVID-19 disease will not be the last virus to endanger people's health and lives, the primary legislation for prisoners must be developed and adopted to efficiently manage subsequent communicable illness outbreaks and provide appropriate pandemic management regulations. The wide range of researches, statistics, and legal precedent from the pandemic will be evaluated for upcoming years so that countries can develop successful measures and be more prepared for future emergencies. The legislation must be capable of providing appropriate infectious disease management regulations. Hence, author of this paper has taken an approach of providing amendment to the legislation pursuant to prisoners circumstances in times of emergency pandemic outbreaks. This amendment constitute prisoners rights in terms of healthcare in prisons during the pandemic, meaning personal hygiene of prisoners and regular replenishment of supplies.

The aim is to propose an amendment to the Estonian Imprisonment Act in lieu of the Communicable Diseases Prevention and Control Act. The reason for that lies in matter that Imprisonment Act is the most essential legislative Act in Estonia regards to prisons and provides the procedure for and organisation of execution of imprisonment, detention and custody pending trial, and the definition and conditions of prison service and service as a prison officer. On the other hand, the Act related to the communicable diseases is created to satisfy the general public and paragraph in relation with communicable diseases in detention facilities was enforced in 2010. Since then, this paragraph has not been updated in accordance with the relevant sources from the European Commission in full presumable and prophylactic capacity.

Therefore, given amendment is proposed for diseases that spread as a droplet infection due to the reason that such transmittable diseases are the most topical and extensive right now and possibly in the future. With this amendment, the primary question of the research is answered, by proposing suggestions on how the human rights and fundamental freedoms of prisoners could be enhanced in the light of communicable diseases. However, the subsequent amendment is merely a suggestion of how the amendment could look like. Given suggestion developed by the author of this thesis paper is simply an example and not meant to be implemented directly.

Accordingly the most pertinent position for the amendment could be a a separate paragraph under Estonian Imprisonment Act, named as an example § 55<sup>1</sup>. *Special conditions in times of communicable disease outbreaks or possible emergencies.*

The paragraph would proceed as follows:

*In times of communicable diseases outbreak or possible emergencies, the prison shall ensure the security and safety of the prisoners by applying pertinent preventive measures.*

- 1. Prisons should be provided with adequate amount of disinfection products and medical personal protective equipment, including respirators, protective gloves, protective eyewear and no-touch thermometers for the safety of prisoners as well as prison employees. In addition, toiletries, general cleaning implements*
- 2. Prisoners shall have washing facilities daily if possible, but generally at least twice a week in the interest of general hygiene.*

Concerning the providence of disinfection products and medical personal protective equipment, the aforementioned recommendations are being referred to in measures by Europris and Estonian Prison Service, although not in the Imprisonment Act nor Communicable Diseases Prevention and Control Act yet. The latter covers that the Ministry of Justice shall authorise health protection officials to exercise supervision over the application of measures to control communicable diseases in penal institutions, however this in terms of communicable disease possible outbreak is incomplete. The use of disinfection products and medical personal protective equipment must be mentioned, because this has become so mundane and inevitable that it must be specified in the legislative act. This raises concerns, due to the reason that it has been more than a year since these measures were written down in the Report on Regulations taken by the Estonian Prison Service as regards the COVID-19 of 2020. As previously brought out, according to the Estonian Imprisonment Act § 50 (2), personal hygiene of prisoners provides that Prisoners shall be given the opportunity to have a sauna, bath or shower at least once a week and upon reception into prison. Now analyzing it in a more comprehensive way, this clearly lacks efficiency. As a contrast, the European Prison Rules cover that prisoners shall have washing facilities daily if possible, but generally at least twice a week in the interest of general hygiene. In times of rapid spread of life threatening diseases, there is a significant difference between providing the prisoners possibility to wash once a week, or on the other hand, wash daily if possible or at least twice a week. Therefore, aforementioned amendment example covers the European Prison Rules updated rule implementation. Consequently given two points for amendments are the core developments that could be represented in the Imprisonment Act.

## CONCLUSION

The aim of this research paper was to evaluate and address evidence that imprisonment rules require complementary legal basis to remain compliant with relevant legislative acts in Estonia from the communicable diseases viewpoint. Thereby the hypothesis of the paper was that currently the Imprisonment Act lacks of essential alterations to provide the best possible implementation of human rights and fundamental freedoms for prisoners in the light of transmittable diseases and the possible outbreaks. The proposition of an amendment was in regards to the aforementioned Estonian Imprisonment Act, due to the reason that the Imprisonment Act of Estonia is the most relevant legislative act in the Republic of Estonia with regard to the rights of the prisoners. Thus it provides all the relevant procedures for imprisonment and the definition, conditions and services of prison as well as a prison officer. Subsequently, given thesis presents a suggestion for an amendment that is proposed for diseases that spread as a droplet infection due to the topicality of such infectious diseases in current circumstances. Therefore, author of the thesis paper proposes how the amendment could possibly look like, meaning that suggestion is not meant to be implemented directly.

The main results of the thesis paper cover the fact that Estonia has very thorough Communicable Diseases Prevention and Control Act and in a general overview, it is perfectly sufficient to assist the people of the country. However, with regards to the imprisonment rules, given act is vague and insufficient. Accordingly, in this thesis the author has proposed solutions to identified problems facing the special conditions in times of communicable disease outbreaks or possible emergencies. The author suggested changes to the legislation in order to serve more precisely the purposes of the best interest of prisoners human rights and fundamental freedoms. The author proposed changes to the legislation insofar as the Imprisonment Act of Estonia should be amended so that the human rights of the prisoners in times of possible communicable diseases outbreak or even emergency situations are consistent with the Council of Europe and European Convention on Human Rights principles. This will prevent or reduce the failure to follow principles that allow prisoners to be treated the same way as everybody else and allows to keep the overall right attitude towards people in detention and subsequently guarantee that respecting their human dignity characterizes the development of society.

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