



Õiguskantsler

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## Deaths in prisons

In the period from 1 September 2021 to 1 September 2022, thirteen people died in Estonian prisons. Eight people died due to health problems and five people committed suicide. No killings have occurred in prisons since 2011.

The staff of the internal control department of prisons investigated all deaths in prisons and drew up a memorandum concerning each incident. With regard to the situation of two people having died because of a health problem or a serious disease, the prisons asked the expert committee on the quality of healthcare services operating under the Ministry of Social Affairs to provide an assessment. Based on the committee's opinion, the internal control service initiated criminal proceedings to ascertain the facts in one of the cases. Prisons initiated criminal proceedings to investigate three further deaths related to health problems.

Five suicide incidents were effectively investigated by the staff of the internal control department of prisons. During the control, observations were made and recommendations given on how to prevent deaths. In one case, disciplinary proceedings were initiated in respect of a prison officer.

Similarly to the previous years (see the Chancellor's [opinion](#) of 24 May 2022), the recommendations given by the internal control department primarily concerned the speed of response to events, the sufficiency and quality of technical equipment and the skill of using it. Once again, problems with prison internal information exchange were pointed out. It was found that guards had not always complied with the duty of regular rounds. In several cases, it was concluded that the risk of suicide had been assessed incorrectly. A prisoner in a serious health condition had no possibility to call for assistance (being bedridden they could not use the cell terminal). In two instances, the arrival of the ambulance into the prison territory was delayed due to the prison's activities.

The internal control staff made proposals to revise the guidelines on prevention of suicides and, in conclusions of the investigation of each incident, emphasised that officers and medical practitioners both must comply with the guidelines. The Ministry of Justice informed the Chancellor that the relevant guidelines would be revised and currently study materials on mental health first aid intended for all prison service staff are being prepared.

Õiguskantsleri Kantselei

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All the observations and recommendations offered by the staff of the internal control department of prisons are necessary and relevant. The prison service has done good work in preparing guidelines and standards to prevent deaths.

The incidents of death analysed nevertheless indicate the shortage of prison officers and the need for existing staff to be trained regularly. There is a great need for mental health professionals in prisons. In addition to safe clothing, prisons must also have tear-proof bedding that can be given to a suicidal person if necessary.

The decision to release a terminally ill person from prison should not be delayed due to activities either by the prison or by other institutions administered by the Ministry of Justice (e.g. the Estonian Forensic Science Institute). The Ministry of Justice, in cooperation with prisons, must consider how a person who is terminally ill can be guaranteed a dignified and peaceful departure at the end of their life, even in prison conditions.

## **1. Suicides**

The materials examined revealed that prison officers and staff need training and/or exercises that would help them implement the guidelines in their everyday work. A death is always an extraordinary situation and prison officers and staff must be able to practice regularly how to react to and resolve such an incident.

Materials on deaths revealed that prisons still have shortage of officers. Officers have many duties and often one officer must do the work of several people, and officers have minimum contact with sentenced and remand prisoners. This concerns both guards and inspector-contact persons. Officers have no time to get to know people in their care or observe their behaviour and relationships. One analysis revealed, for example, that a prisoner who committed suicide had been bullied in the department for a longer period but the prison only found out about it when investigating the death. Several suicide incidents were also not discovered for a while because officers failed to pay sufficient attention (including due to shortage of time and information) to people's behaviour and the situation in the cell.

The incidents of deaths analysed once again indicate that prisons are in dire need of mental health specialists (see the Chancellor's [opinion](#) of 24 May 2022). It is important that a mental health specialist is involved in the health check carried out when a person arrives in prison. The analysis of several deaths revealed that suicide risk had been assessed only on the basis of a person's own statements. However, the assessment given on that basis was not correct.

Suicides could be better prevented if prisons provided a person with a mattress and bedding covered with tear-proof material if necessary (e.g. in the event of an acute suicide risk). This would help to prevent a person from using, for example, a pillow case as a means to hang themselves, as was the case with one of the deaths analysed. The use of tear-proof bedding as a suicide prevention measure has also been considered important by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (e.g. CPT's 2021 recommendations to [Spain](#), para. 37; 2020 recommendations to [Italy](#), para. 71).

## 2. End of life

According to studies, the average age of prisoners has increased and prisons have increasingly more older people. This is so in Estonia as well as other countries.<sup>1</sup> People who end up in prison are often physiologically older than their actual age and than can be presumed on the basis of their health condition.<sup>2</sup> It has been found that an imprisoned person is physically ten years older than a person of the same age who has not served a prison sentence.<sup>3</sup> The analysis of deaths shows that the prison population also includes people suffering from a serious disease and those who are dying. There is reason to believe that the number of these people in prisons may increase over time.

### 2.1. Release from prison

Under [§ 425 subsection \(1\)](#) of the Code of Criminal Procedure, the court may release a terminally ill sentenced person from serving the sentence if they have become terminally and seriously ill. This will be decided by the court based on a proposal by the head of prison and the decision of the medical committee.

In one of the cases analysed, the staff of the prison internal control department reached the opinion that the prison had delayed with submission of a proposal for release on parole (i.e. compassionate release) to the court. The person died before the court reached to make the relevant decision. In another case, the prison internal control department pointed out that the court had ordered a forensic expert assessment to be carried out in respect of a prisoner but the Estonian Forensic Science Institute had failed to come to perform the task in approximately one month after the court decision. The person died before the forensic expert assessment was carried out. The third case involved a terminally ill person remanded in custody whose application for release was mistakenly resolved by the prison in accordance with the rules on release on parole of convicted offenders. The internal control department pointed out that [§ 274](#) of the Code of Criminal Procedure applies to release of a terminally and seriously ill person in custody.

The decision to release from prison a person suffering from a serious disease and at the end of their life should not be delayed due to activities either by the prison or by other institutions administered by the Ministry of Justice (e.g. the Estonian Forensic Science Institute). In the case of dying persons, prisons could consider the possibility of granting them permission for prison leave ([§ 32](#) Imprisonment Act), so that people could die at home among their loved ones.

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<sup>1</sup> See e.g. the [2022 overview](#) by the prison service; C. McParland, B. M. Johnston, [Palliative and end of life care in prisons: a mixed-methods rapid review of the literature from 2014-2018](#), BMJ Open, 2019; M. Richter *et al.* [End of life in prison: challenges for prisons, staff and prisoners](#). – P. Ugwudike *et al.* (eds.), Routledge companion to rehabilitative work in criminal justice, 2019, pp 812–821; Hospice UK, [Dying behind bars – How can we better support people in prison at the end of life?](#), 2020.

<sup>2</sup> See e.g. M. Greene *et al.* [Older adults in jail: high rates and early onset of geriatric conditions](#), Health and Justice, 2018. C. McParland, B. Johnston. [Caring, sharing, preparing and declaring: how do hospices support prisons to provide palliative and end of life care? A qualitative descriptive study using telephone interviews](#). – Palliat Med. 2021, pp 563–573.

<sup>3</sup> See e.g. L. Johns *et al.* [A systematic literature review exploring the psychosocial aspects of palliative care provision for incarcerated persons: a human rights perspective](#). – International Journal of Prisoner Health, 2021.

## 2.2. Medical treatment and care

Under Rule 2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the [Mandela Rules](#)), most vulnerable categories of prisoners must be protected and their individual needs taken account of. Based on age and the condition of health, older people, those who are terminally ill and people at the end of their life should also be considered a vulnerable group.

The European Court of Human Rights has said (e.g. recently in the judgment of 6 July 2023 in the case of [Kosko v. Ukraine](#), para. 9) that medical treatment within prison facilities must be comparable to the quality of treatment ensured for the entirety of the population. The same has been emphasised by the [World Health Organisation](#). Otherwise, this may constitute violation of Article 3 of the [Convention on Human Rights and Fundamental Freedoms](#). In 2017, the United Nations saw the right to end-of-life palliative care and a dignified death as a fundamental right. Palliative care service has also been mentioned in the Government of the Republic regulation on “[The list of services of the Health Insurance Fund](#)”.

A seriously ill person staying in prison at the end of their life must be ensured that their departure from life is as pain-free as possible, supported both spiritually and mentally, and dignified and peaceful. Already in 2001 the CPT reached the opinion that palliative care must be ensured to an ill person staying in prison (see e.g. CPT’s 2001 recommendations to [Latvia](#), paras 168–169).

The analysis of deaths shows that prisons have not considered how and with whose help it would be possible to organise such treatment (i.e. palliative care and hospice care as its part) in prison conditions. For example, in the United Kingdom, guidelines for prisons have been prepared on how to treat such patients.<sup>4</sup>

A person who is ill and dying is in an extremely vulnerable condition both physically and emotionally. Their next of kin may also need support. Already now prisons have specialists – doctors, nurses, social workers, pastoral counsellors – who, when acting as a team and based on careful analysis, could assist an ill person and their next of kin in a necessary manner.

The materials transmitted reveal that prison medical departments do not provide the care service. Inpatient nursing care service (four beds) is offered only in Tartu Prison. For this reason, the main carer of a person dying in prison is another prisoner who cares for them for remuneration and, as a rule, stays in the same cell with the ill person round the clock.

Involvement of prisoners in the end-of-life treatment of a terminally ill person is not ruled out. Studies and the experience of other countries show that assistance of fellow prisoners in arranging the room and belongings of an ill person, serving food, and first and foremost in offering company to them (e.g. through conversation, joint activities) has a positive impact on the ill person and may extend their life. Such activity also has a great impact contributing to reintegration of the person providing care.<sup>5</sup>

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<sup>4</sup> See e.g. Ambitions for Palliative and End of Life Care Partnership, [Dying Well in Custody Charter: A national framework for local action](#), 2018; NHS National End of Life Care Programme, [The route to success in end of life care: achieving quality in prisons and for prisoners](#), 2011.

<sup>5</sup> See e.g. P. Krakowiak, R. Deka, A. Janowic. [Solidarity and compassion – prisoners as hospice volunteers in Poland](#), *Ann Palliat Med*, 2018, pp 109–117; L. Johns *et al.* [A systematic literature review exploring the psychosocial aspects](#)

However, it is questionable whether it is correct to involve prisoners without professional qualifications or relevant training in all procedures of care for a person who is ill and dying (as is currently done in Estonian prisons). A kindly but incompetent carer with their activity may endanger the health of the dying person, cause them pain and degrade their dignity. Additionally, a carer without the necessary preparation may fail to recognise, for example, what an ill person incapable of contact may need or in which situation to call for assistance. Caring for a person who is ill and dying is often related to the risk of overload, in particular in case of providing assistance to a person who is unable to move and is heavier than the carer. Someone without the necessary preparation might not use adequate working methods and may thereby also damage their own health.

Carers employed, for example, by a general care service provider or a healthcare provider must meet specific preparation requirements (see [§ 22\(4\)](#) of the Social Welfare Act, [§ 8\(2<sup>1</sup>\)](#) of the Minister of Social Affairs regulation on “The requirements for guaranteeing the quality of healthcare services”).

### **2.3. Support and communication**

From the analysis of cases, it may be concluded that the stay of an ill person who is dying in an ordinary prison department and their death may traumatise their cell mates, prisoners in the same department as well as staff. It is commendable that in one case psychological assistance was offered to the cell mate of a deceased person and that they could obtain it again if necessary. Psychological assistance must be available for everyone wishing it who was affected by the death.

Attention should also be paid to contact by the dying person with their next of kin. For example, consideration should be given to how next of kin can regularly visit the sick person in prison (see also CPT’s 2001 recommendations to [Latvia](#), para. 169) and how next of kin can be received in prison.

In one of the cases analysed, the prisoner’s death certificate and their belongings were handed over to the next of kin in the prison parking lot. This cannot be considered an appropriate or dignified way of treating the next of kin of the deceased. Prisons have suitable facilities where next of kin can be received, and prison staff (e.g. chaplain, social worker, psychologist, inspector-contact person of the deceased) who can speak with next of kin and, if necessary, answer their questions (e.g. how their loved one felt on the last day, what they said and how they departed).<sup>6</sup>

I ask your feedback on observations and recommendations by 30 November 2023 at the latest.

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[of palliative care provision for incarcerated persons: a human rights perspective](#), International Journal of Prisoner Health, 2021; M. Merkle. [Volunteering in hospice and palliative care in France and in Poland](#), Observatory for Sociopolitical Developments in Europe, 2018.

<sup>6</sup> See e.g. M. Richter *et al.* [End of life in prison: challenges for prisons, staff and prisoners](#). – P. Ugwudike *et al.* (eds.), Routledge companion to rehabilitative work in criminal justice, 2019, pp 812–821.

Yours sincerely,

*/ signed digitally/*

Ülle Madise

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