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Inspection visits to open prisons

Advisers to the Chancellor of Justice carried out an unannounced inspection visit to the open prison of Tartu Prison on 6 February 2023, the open prison of Tallinn Prison on 10 February 2023, and the open prison of Viru Prison on 7 March 2023.

I would like to thank the prisons for their readiness to cooperate, smooth dealings and competent explanations provided by prison staff both during and after the inspection visit.

The Chancellor's advisers talked with prisoners and staff in open prisons and carried out a tour of the prison premises. A selection of documents was also examined. The Chancellor last inspected open prisons in [2020](#).

Prisoners placed in an open prison have to some extent already convinced the prison of their ability to behave in a law-abiding manner in the prison environment. The main purpose of an open prison is to get prisoners used to law-abiding behaviour also outside the prison prior to their release – either by going to work or studying, and by maintaining and strengthening social ties with society and family. If, after release, a person has a place to live and work and has healthy human relationships, there is considerably more hope that they will lead a law-abiding life in the future.

Prisons have taken into account several of the Chancellor's previous recommendations. In Tartu open prison, prisoners arriving from the outside (e.g. from work, school) are strip searched in the event of a justified suspicion or based on a random selection. Female prisoners in Tartu open prison have been assigned a specific period for stay in the outdoor area with training equipment (at other times the area is at the disposal of men). Tallinn open prison has set up a separate room for appointments with a medical practitioner and for simpler medical procedures.

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Living conditions in open prisons left a good overall impression. Open and relaxed interaction between staff and prisoners in Tartu open prison was noticeable. This is commendable and supports the aim of re-socialisation. Unfortunately, some problems still exist in open prisons which have remained unresolved for a long time. Nor do all the detention conditions in prison support the aim of re-socialisation of people in open prisons.

Prisoners' opportunities for use of information and communication technology or mobile phones have not been improved even though the Chancellor recommended this in the reports of inspection visits both in [2016](#) and [2020](#). The exclusion of prisoners from the digital world does not contribute to their law-abiding behaviour or ability to cope in society. Nor does it help to save the working time of the prison service. The Supreme Court has also drawn attention to this problem.

Unfortunately, Viru open prison has changed its search practice and, contrary to the Chancellor's recommendation made in [2020](#), now always subjects prisoners coming from the outside to a full strip search.

Tartu and Viru open prison use urine tests to detect the use of narcotic substances. Instead, different solutions should be sought (e.g. using saliva tests similarly to Tallinn open prison).

There are no window covers (e.g. roller blinds) in the prisoners' rooms. Window covers would help to protect people's privacy and create an environment in the open prison which is as close as possible to the normal life. Security is ensured differently; ensuring security is not the purpose of the absence of window covers.

Viru open prison could consider installing observation windows in room doors. Through observation windows it would be easier to monitor what is happening in the room and it would also help to avoid noise caused by the opening of room doors during the guard's nightly rounds.

Tallinn and Viru open prisons have found a solution how next of kin can bring the necessary clothes and footwear for prisoners placed in the open prison unit. This practice also deserves to be followed in Tartu open prison.

Also in prison, medical practitioners should ensure the relationship of trust between a doctor and patient and respect the principles of privacy and confidentiality while providing healthcare services (including during an appointment with a medical practitioner). A prisoner's health data, diagnoses or information about what medicine a person is taking may not be disclosed to other people. If necessary, the medical department provides guidance to guards on what should be observed in the case of one or another prisoner.

Viru Prison should look for possibilities how to ensure that allowing prisoners to work outside the prison is not delayed.

Tallinn Prison should change the practice of resolving applications for a prison leave for prisoners in the open prison. The prohibition of a prison leave cannot be justified merely by the fact that the person does not work outside the prison. As a rule, a prisoner should be given as much time for meeting their next of kin during a prison leave as is given during a long-term visit in the closed prison (i.e. 24 hours).

During the three years, Tallinn open prison has not provided age-appropriate items (e.g. a swing) in the outdoor area for children staying in the open prison together with their mother (see the [summary of the 2020 inspection visit](#)). In the outdoor area in Viru open prison, there was no resting place and some sports facilities are located so that, due to the reduction of the outdoor area, it is difficult to use them.

A tense atmosphere was found in the department for female prisoners in Tallinn open prison. This was also so during the Chancellor's inspection visit in [2020](#). After the visit, the Chancellor's advisers asked that the female department be closely monitored and that the prison should find appropriate measures to prevent the development of power relationships among female prisoners.

1. The use of information and communication technology

Just like [seven years ago](#), access to information and communication technology in open prisons is still very limited. Job searches by prisoners are to a large extent limited to contacts among the prison's cooperation partners, which are intermediated by the prison. Many prisoners are unable to draw up the documents necessary for job-seeking (CV, motivation letter) and do not know how to deal with matters correctly and effectively in line with the modern traditions.

Potential employers wish to receive documents electronically but prisoners have no possibility to send them in this format. An extremely limited access to information and communication technology strongly restricts the opportunities of prisoners in the open prison to study outside the prison. Inspector-contact persons prepare and plan the whole movement of prisoners outside the prison (e.g. going to work, to a shop, for a home visit) and also serve as intermediaries for information needed by prisoners to organise their life after release. This takes a lot of time from the staff. Prisoners would be able to seek this information themselves if they had more extensive access to the internet.

This situation fails to take into account the level of digitalisation in modern society. Therefore, it is almost impossible to achieve one of the main objectives of today's imprisonment: to help people reintegrate to society. Nor does the exclusion of open prison prisoners from the digital world help to save the working time of the prison service.

The changes planned in the [Draft Act](#) on amending the Imprisonment Act, the Penal Code, the Probation Supervision Act and the Weapons Act, drawn up in the Ministry of Justice in 2022, also concerned the use of information and communication technology (including mobile phones) in the open prison. The Draft Act ([747 SE](#)) passed the first reading in the Riigikogu but dropped out of the proceedings due to termination of the work of the XIV composition of the Riigikogu.

In its judgment of 15 March 2023 No [3-18-477](#) (para. 93), the Supreme Court noted that the issue of the prisoners' right to access the internet needs a systematic and comprehensive solution. In 2023, the Ministry of Justice indeed prepared a [Draft Act](#) to update the Imprisonment Act.

The Ministry of Justice should continue efforts to bring the planned amendments once again before the Riigikogu.

2. Search

Tartu and Tallinn open prisons strip search prisoners coming from the outside (e.g. from work, an educational institution, a shop, etc) in the event of a justified suspicion or randomly. The same practice was followed in Viru open prison in [2020](#).

Unfortunately, Viru open prison has changed its practice and subjects all the prisoners coming from the outside to a complete strip search. Several prisoners described that during this process they had to take all their clothes off at once.

Viru Prison should change the procedure for a strip search in the open prison department. A person's dignity must always be respected during a search. The Chancellor has repeatedly told the prisons (e.g. in 2016 [Tartu Prison](#), para. 6.2) that if a prison has a justified need to strip search a person, the clothes should be removed gradually, so that part of the body is always covered. The same has also been consistently emphasised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, e.g. most recently in the 2022 recommendations to [Greece](#), para. 42).

3. Testing

Tartu and Viru open prison use urine tests to detect the use of narcotic substances. The urine sample is given in the toilet and the procedure is monitored by a guard. This is a strong intrusion of privacy of the people subjected to the test, nor is it particularly pleasant for the staff member overseeing the procedure. Testing is much better organised in Tallinn open prison where saliva tests are used to detect consumption of narcotic substances.

Tartu and Viru Prison should look for different solutions instead of urine tests to detect the use of narcotic substances.

4. Privacy

There are no window covers in the rooms of prisoners in the open prisons. Under [§ 64¹ clause 20](#) of the internal prison rules, prisoners are prohibited from using textile products, including curtains, in furnishing their rooms. Also under [§ 7\(1\)](#) of the internal prison rules, furnishings of the rooms do not include window covers. However, if this is compatible with the objectives of enforcement of imprisonment, under [§ 7\(2\)](#) of the internal prison rules, the prison director may allow using curtains in furnishings of the open prison or of a room in the open prison department.

A number of items prohibited under [§ 64¹](#) of the internal prison rules are allowed even now in the open prisons. It is hardly likely that window covers would endanger prison security more than, for example, cutlery in the kitchens of open prisons. Window covers (e.g. roller blinds) would better protect prisoners' privacy in rooms and would help to create an environment as close to normal life as possible in the open prison. In particular during the dark period, the inside of illuminated rooms is clearly visible from the outside. The buildings of Tartu and Viru open prisons are located so that third persons can easily look into the rooms of the open prisons (e.g. from the parking lot). The light from an uncovered window can also disturb the prisoners' sleep.

Female prisoners in Tallinn open prison noted that the windows of the communal room in their accommodation section, as well as windows of several rooms, face the accommodation section of male prisoners. Women said that they felt uncomfortably in their room within the sight of men and often had to wait for a good moment for getting dressed.

Prisons should consider placing covers in the windows of the rooms of prisoners in the open prison.

5. Clothing and footwear

During the inspection visit, several prisoners said that upon their arrival from the closed prison to the open prison they did not have enough personal clothes and footwear appropriate for different weather conditions. Open prisons have a stock of (partially used) clothes and footwear but these are not always suitable for everyone (e.g. because of the size). Nor do the prisoners have the possibility to immediately take up employment outside the prison, so as to buy the necessary items for remuneration received. Nor can prisoners immediately bring items from home and they are not entitled to receive parcels. The staff of the open prisons admitted the problem. The Ministry of Justice has considered it necessary to entitle prisoners to receive items in a parcel (see the [Draft Act](#) on amending the Imprisonment Act, the Penal Code, the Probation Supervision Act, and the Weapons Act).

Under [§ 46\(2\)](#) of the Imprisonment Act, if a prisoner in an open prison does not have personal clothing, they may wear prison clothes. Prisoners would feel conspicuous while wearing the prison uniform outside the prison (e.g. at work, in an educational institution, during the home visit). This would not support their return to law-abiding behaviour. However, the lack of necessary personal clothes and footwear should not prevent a prisoner from going to work or participating in any other reintegration activity outside the prison.

In Tallinn and Viru open prisons, with the permission of the prison service, next of kin can bring clothes and footwear to prisoners in the open prison in case of a justified need. Similar arrangement could be introduced in Tartu open prison.

6. Healthcare

Tallinn open prison has set up a separate room for reception of a medical practitioner and simpler treatment procedures. Despite this, during the inspection visit a female prisoner could be seen having an appointment with a medical practitioner in the accommodation section in the presence of a guard and fellow inmates. The woman's health concerns could be overheard by the guard as well as everyone else currently present in the communal room.

Arranging a medical practitioner's appointment in such a manner is not compatible with the principle of respect for privacy and confidentiality of a prisoner as patient. The Chancellor has repeatedly drawn the attention of prisons to this (see e.g. opinion No [7-4/151058/1602270](#)). Also in prison, medical practitioners should ensure the relationship of trust between a doctor and patient and respect the principle of privacy and confidentiality while providing healthcare services. The medical practitioner could have arranged the reception both in the specially fitted room in Tallinn prison as well as undisturbed in the prisoner's own room.

The principle of confidentiality must also be complied with in prison while distributing medication to prisoners. The CPT has consistently criticised the situation where medication is distributed to prisoners by guards and not medical practitioners. The CPT had already criticised Estonia for the practice of distributing medication in the report sent [in 2014](#) (para. 82) and most recently [in 2019](#) (para. 60).

A prisoner's health data, diagnoses or information about what medicine a person is taking may not be disclosed to other people. If necessary, the medical department provides guidance to guards on what should be observed in the case of one or another prisoner.

7. Work

Prisoners and staff explained that, after placement in the open prison, a prisoner is engaged in maintenance work in Viru open prison (e.g. cleaning, distributing food) until a new prisoner is placed in the open prison who takes over the particular line of work. Several prisoners in Viru open prison were unaware when they can take up employment outside the prison because it was unknown when new prisoners would arrive in the open prison. Several prisoners noted that, while being engaged in maintenance work, they had also been offered work outside the prison but because of the condition imposed by the open prison they had been unable to take up work outside the prison. The imposition of such conditions by the open prison does not contribute to better integration of prisoners to society even though this is one of the objectives of an open prison.

Tartu and Tallinn open prison explained that there had been only a few situations where prisoners had not been allowed to work outside the prison because no new prisoners had been placed in the open prison. It was explained that even when such situations occurred they lasted for a very short time.

In Viru open prison, about 60 per cent of the places were filled at the time of the inspection visit. The occupancy level in Tallinn and Tartu open prisons was about 90 per cent. Thus, it is plausible that no new prisoners might regularly arrive in the open prison and, therefore, some prisoners have to wait until they can take up employment outside the prison (because there are not enough prisoners involved in maintenance work in the open prison).

Viru Prison should analyse the reasons for the low occupancy of the open prison department and seek possibilities to ensure that allowing prisoners to take up employment outside the prison is not delayed. For example, consideration could be given to the possibility of temporarily involving prisoners from the closed prison section in maintenance work in the open prison. An attempt could also be made to allow prisoners in the open prison to serve their own food instead of a food distributor.

8. Prison leave

8.1. The condition for granting permission for prison leave

Prisoners in Tartu and Viru open prisons are allowed on a prison leave ([§ 32](#) Imprisonment Act) if the prison is sufficiently convinced that the prisoner behaves in a law-abiding manner both in and outside the prison. Meeting the family and next of kin during a prison leave is not made

dependent on whether the prisoner is engaged in work outside the prison or in maintenance work in the open prison.

Several prisoners in Tallinn open prison told the Chancellor's advisers that the prison does not allow prisoners engaged in maintenance work to go on a prison leave to visit home or next of kin. Visits to the shop and other trips (e.g. visiting a church) were not prohibited by the prison. Prisoners described that they worked outside the prison but lost work, for example, because of the closure of the company. No new work was offered to the prisoners by the prison's cooperation partners and, due to restrictions on the use of information and communication technology in the open prison, finding work independently was extremely difficult. While searching for a new job, prisoners did maintenance work in the open prison.

Information sent by Tallinn Prison revealed that, at least in one instance, a prisoner was not allowed on a prison leave for the above reason. The information did not indicate the prisoner having any disciplinary punishments, violations in connection with the previous leaves, or any other reasons that would have reduced the prisoner's credibility in the eyes of the prison.

The prison enjoys a broad margin of appreciation in allowing a prisoner on a prison leave but the prison may not commit errors of discretion in this respect (§ 4(2) Administrative Procedure Act). The refusal to grant a permission cannot be justified merely by the fact that the person does not work outside the prison. This kind of a justification does not reveal how the loss of a job, for example due to the closure of the company, led the prison to the conclusion that the prisoner might no longer behave in a law-abiding manner outside the prison. The prohibition of a home visit for this reason also indicates that the prison has failed to take into account the importance of maintaining family ties. This, however, is one of the most compelling reasons for allowing a prison leave (§ 23 Imprisonment Act).

Tallinn Prison should change the practice of resolving applications for a prison leave for prisoners in the open prison.

8.2. The duration of prison leave

Prisoners in Tallinn open prison said that the duration of a prison leave is decided by the prison based on who of their next of kin the prisoner is going to meet. This was also confirmed by Tallinn Prison in explanations given after the inspection visit. Prisoners said that during a prison leave they often had less time (e.g. 7–8 hours) to meet their family and next of kin than in the case of meeting the same people during a long-term visit in prison.

Tartu and Viru open prisons treat a prison leave to meet family and next of kin as a replacement for a long-term visit (§ 25 (3) and § 32 Imprisonment Act). This also means that the prisoner can stay with their loved ones at least the same amount of time as during a long-term visit in the closed prison (i.e. one 24-hour period, § 25(2) Imprisonment Act). However, exceptions do occur, for example, in the case of the first home visit or if the prisoner has previously violated the conditions of a prison leave and the prison must be convinced that the prisoner is once again able to comply with the rules while on a prison leave. If during the so-called test leave the prisoner complied with the rules, then during the subsequent leaves they are allowed to spend at least one 24-hour period with their next of kin.

During the inspection visit, the staff in Tartu and Viru open prisons explained that the duration of a prison leave does not depend on whom the prisoner meets if they have applied for a meeting with family and next of kin mentioned in [§ 25\(1\)](#) of the Imprisonment Act. It is presumed that the prisoner is close to their family members. The prisoner does not have to prove separately with whom of these people they are close or closer – whether, for example, with the mother or brother.

The preservation of a home and a good relationship with people close to the prisoner also create better preconditions for the prisoner to start leading a law-abiding life after release from prison. These considerations were also taken into account when drafting the provisions of the Imprisonment Act. For example, the explanatory memorandum to the Draft Act ([1244 SE](#)) on amending the Imprisonment Act and the Health Services Organisation Act notes that prison leave compensates for the withdrawal of the right of long-term visits for prisoners in the open prison. The explanatory memorandum states that it is in the interests of both a prisoner in the open prison and their family to meet outside the prison.

Thus, by prohibiting long-term visits in the prison, the legislator wanted to enable prisoners in an open prison to have essentially the same type of meetings but outside the prison. The explanatory memorandum to the Draft Act ([964 SE](#)) on amending the Imprisonment Act and the Code of Criminal Procedure states that a prison leave is intended as a departure from prison for several days so as to enable a prisoner to visit their family.

When granting prison leave for prisoners in the open prison, Tallinn Prison should take into account the wish of the Riigikogu and treat prison leave as replacement for a long-term visit in prison. As a rule, a prisoner should be given the same amount of time for meeting their next of kin during a prison leave as is given during a long-term visit in the closed prison (i.e. 24 hours).

I expect feedback from the prisons and the Ministry of Justice by 4 September 2023.

Yours sincerely,

/ signed digitally/

Ülle Madise