

# ESTONIA

## Child-friendly justice

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## 1. The child's legal capacity

### 1.1 Minimum age at which a plaintiff can bring a case to court in their own right

#### 1.1.1 General procedural rules applicable to children in civil judicial proceedings regardless of their role

According to the [General Part of the Civil Code Act](#) all persons have passive legal capacity. However, the capacity to participate in civil judicial proceedings is recognised only for persons with full active legal capacity. Persons under 18 years of age have restricted active legal capacity. A court may extend the restricted active legal capacity of children 15 years of age and above if this is in the interests of the child and the child's level of development permits it<sup>1</sup>. In such cases the court will decide which are the transactions that the child will be permitted to perform without his/her legal representatives' consent. If their refusal to consent is clearly contrary to the child's best interests, the court may extend the child's restricted active legal capacity against the legal representatives' will. With good reason (e.g. marriage), a court may revoke the extension of the restricted active legal capacity of a child and grant him/her full active legal capacity<sup>2</sup>. A legal representative must apply for this extension on behalf of his/her child; a child can also apply for this extension himself/herself, by first applying for State legal aid and then asking the appointed lawyer to submit the application on his/her behalf.

Children under the age of 18 lack procedural capacity, which means that they cannot exercise civil procedural rights and perform civil procedural obligations in court without being represented by their legal representatives.

#### 1.1.2 The child as a plaintiff/complainant

[The Constitution of the Republic of Estonia](#) (CRE) establishes everyone's right to have recourse to courts when one's rights and freedoms are violated<sup>3</sup>.

In Estonia, the minimum age at which a plaintiff can bring a case to court in their own right is 15<sup>4</sup>. Children who are 15 years of age and above can participate in civil judicial proceedings alongside their legal representatives. In addition, they may apply for an expansion of their restricted active legal capacity, in which case they would be able to participate in the proceedings without their legal representatives but with another legal representative, e.g. a lawyer appointed by law or a representative from the city government<sup>5</sup>.

Parents normally act as a child's representative<sup>6</sup>. Parents who have joint custody have a joint right to represent their child<sup>7</sup>. If the child has no parents, an appointed legal representative will act as the child's representative. If a child does not have close relatives or his/her relatives are not capable of taking care of him/her, the municipality must act as the child's representative. In general, the action is filed on behalf of the child by his/her parents or other legal representative who will perform all procedural acts on his/her behalf<sup>8</sup>.

It can be inferred from the law that a child can nevertheless submit an application/appeal to court in his/her own right. If an action is filed by a person without active procedural capacity (e.g. a child) or an action is filed against such person without a legal representative, the legal representative is expected to join the proceedings immediately<sup>9</sup>. If this does not happen and the absence of the legal representative endangers one of the child's essential interests, the court will appoint a temporary representative until the legal representative is able to join<sup>10</sup>.

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<sup>1</sup> GPCCA § 9(1).

<sup>2</sup> GPCCA § 9(1-3); CCP § 114.

<sup>3</sup> CRE § 15.

<sup>4</sup> EU Summary of contextual overviews on children's involvement in civil and administrative judicial proceedings in EU28.

<sup>5</sup> GPCCA § 9(1); CCP § 219 and § 570.

<sup>6</sup> FLA § 120(1).

<sup>7</sup> FLA § 120(1).

<sup>8</sup> Regarding the scope of right of representation see CCP § 222(1).

<sup>9</sup> CCP § 219(1).

<sup>10</sup> CCP § 219(1).

If a child plaintiff/complainant attains the age of 18 during the civil judicial proceedings, the child gains full independence and continues the proceedings in his/her own right and the judge must explain to him/her his/her rights.

### **1.1.3 The child as a defendant**

The rules applicable to child plaintiffs with respect to their participation in civil judicial proceedings apply also in the case of child defendants. See above.

In Estonia it is the legal representatives who are responsible for the damages caused by their children. Children below 14 years of age are not liable for any civil wrongs they commit; therefore legal representatives will be liable for the damages caused. When the damage is inflicted by a child 14 years of age and above, his/her legal representatives will be held liable if they did not exercise the necessary degree of care<sup>11</sup>.

### **1.1.4 The child as a witness**

A child can participate in civil judicial proceedings as a witness. In general, the court can invite any person who has relevant information on the matter, including children, to testify at trial<sup>12</sup>. Nonetheless, different rules apply with regard to the examination of child witnesses who are below 14 years of age and child witnesses who are 14 years of age and above. The court may refuse to hear as a witness a child who is below 14 years of age<sup>13</sup>. If the court decides to hear him/her, the child will be heard, if the court considers it necessary, in the presence of a child protection worker, a social worker, a psychologist or his/her legal representative<sup>14</sup>. All these persons may also question the child with the court's permission. If necessary, the court may remove a child witness below 14 years of age from the courtroom after he/she has been heard<sup>15</sup>. A child can refuse to give a testimony if the testimony is against or in favour of close relatives (descendants and ascendants, siblings, adoptive parent etc.)<sup>16</sup>.

Children between the ages of 14 and 17, inclusive, are examined as witnesses following the same rules as for adults. However, in practice children are rarely heard as witnesses<sup>17</sup>.

## **2. Access to adapted proceedings**

### **2.1. Specialised institutions and competent authorities**

#### **2.1.1 The Estonian Judicial System**

Please see respective e-Justice portal page on [judicial systems](#).

#### **2.1.2 Specialised institutions**

There are no specialised institutions dealing with child-related matters. However, social services (child protection services) always take part in cases of substantial restriction or deprivation of the right of custody over person in full<sup>18</sup> and they enable children to proceed in certain cases without their parents' representation/approval ('expansion of a child's restricted active legal capacity' cases<sup>19</sup>).

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<sup>11</sup> LOA § 1053.

<sup>12</sup> CCP § 251(1).

<sup>13</sup> CCP § 256(4).

<sup>14</sup> CCP § 261(1).

<sup>15</sup> CCP § 261(1-2).

<sup>16</sup> CCP § 257(1).

<sup>17</sup> [Study on children's involvement in judicial proceedings – contextual overview for civil justice. National report of Estonia.](#)

<sup>18</sup> FLA § 135

<sup>19</sup> CCP § 114.

Courts and social workers cooperate in cases involving children. An expert opinion is required in all court cases involving children<sup>20</sup>, and the social services departments are required to monitor compliance with this requirement.

The [Chancellor of Justice](#) acts as the [Ombudsman for Children](#). Complaints can be submitted against persons or institutions performing public tasks. The Ombudsman for Children also verifies whether the legal acts related to children's rights are in conformity with the Constitution and the law.

Not all proceedings related to children involved in proceedings against administrative authorities' decisions, or within the sectors covered by this report, are handled by administrative courts. Some aspects of the placement into care (in particular the decision to place the child into public care) are handled by civil courts.

#### **2.1.2.1 Asylum**

Decisions in the field of asylum are taken by the Police and Border Guard Board and reviewed by administrative courts.

#### **2.1.2.2 Migration**

Decisions in the field of migration are usually taken by the Police and Border Guard Board, although there are exceptions. For example, visas can also be annulled by the Defence Police and the Ministry of Foreign Affairs. The decisions are reviewed by administrative courts.

#### **2.1.2.3 Education**

Decisions in the field of education are usually taken on two levels – state and local authorities. The state is represented by the Ministry of Education and Research, and the county governor. The Ministry is responsible for developing and supervising the implementation of the national strategies for education and supervises local authorities in the administration of local schools. There are also a small number of schools that are administrated by the Ministry directly, e.g. state schools, although most of the schools are administered by local authorities. In both cases, the decisions are reviewed by administrative courts.

Measures taken under the Juvenile Sanctions Act, with regard to school non-attendance, are issued by juvenile committees that can either be administered by the state – specifically by the county governor, or by the local authorities. Decisions by both are appealable to the county governor and subsequent decisions are reviewed by administrative courts.

Court permission to send a child to school for students with behavioural problems is given by a county court.

#### **2.1.2.4 Health**

Decisions in the field of health care are taken by the Ministry of Social Affairs and institutions in their field of competence, such as the Health Care Board. Decisions are reviewed by administrative courts. When placement into psychiatric care is considered, the decision is made by a county court.

#### **2.1.2.5 Children below the minimum age for criminal responsibility**

Children below the minimum age for criminal responsibility (MACR) – 14 years old – who have committed offences are dealt with by juvenile committees. Once the age of the child is determined during pre-trial phase, the criminal or misdemeanour proceeding is terminated and the case is sent to the juvenile committee. Decisions by the committees are first reviewed by the county governor and subsequent appeals in administrative judicial proceedings by administrative courts.

#### **2.1.2.6 Placement into care**

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<sup>20</sup> [CCP § 552\(2\)](#).

Child into care/protection proceedings are initially dealt with by county or city administrative authorities. Initially by social workers or child protection officials depending on the particular local government, and subsequently by the administrative courts. Decisions of a social worker or child protection official are based on the Family Law Act and are inspired by the Child Protection Act and thus, covered by civil judicial proceedings. Decisions on issues connected to institutional care, such as which type of care is needed, and decisions on case management, are reviewed by an administrative court. The general principles of child protection are stipulated in the Child Protection Act, but this act includes no provisions on the execution of child protection. If a social worker or a child protection official requests the court to place a child into care, then he/she must provide justifications for such a request.

#### **2.1.2.7 Administrative sanctions**

Decisions on administrative sanctions are divided into two categories. First, sanctions relating to socially harmful acts that do not amount to a criminal offence, such as the consumption of alcoholic, narcotic or psychotropic substances are handled by a juvenile committee and thus, eventually, governed by general judicial administrative court procedure. Second, road traffic offences are misdemeanour offences and handled by the courts under the misdemeanour judicial procedures but only if the child defendants are above MACR. If the persons are below MACR, the cases will be sent to juvenile committees, where appeals are dealt with by the county governor and subsequently by the administrative courts.

#### **2.1.2.8 Measures in place to provide specific protection and assistance to more vulnerable children such as very young children, migrant children refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in the care of the state including in residential institutions**

The law provides an exemption from hearing children with special needs (disabilities). If a child because of his/her disability is unable to understand the meaning of the hearing, the judge does not have to hear them<sup>21</sup>. The Estonian government ratified the Convention on the Rights of Persons with Disabilities in 2012 and is in the middle of process of harmonising legislation with the Convention.

### **2.2 Legal and policy measures in place to avoid undue delay in the handling of cases involving children**

#### **2.2.1 General procedural rules applicable to children involved in civil judicial proceedings regardless of their role**

The law requires the court to adjudicate within a reasonable time<sup>22</sup>. The child, via his/her legal representative, or in his/her right if above 15 years of age and has the capacity to do so, may apply for an appropriate measure where the case has been in court for nine months or more and the court has not yet made a necessary proceeding based on reasonable justification<sup>23</sup>. Also, if the hearing is postponed for longer than three months without the consent of the parties, the parties can appeal the decision<sup>24</sup>.

There is no mechanism to monitor the implementation of the urgency principle in respect to proceedings involving children.

#### **2.2.2 The child as a plaintiff/defendant**

There are specific rules concerning provisional measures, which can be ordered by the court in order to protect the child from harm and secure the action<sup>25</sup>. Application for these provisional measures must be submitted by the child's legal representative.

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<sup>21</sup> CCP § 256(4).

<sup>22</sup> CCP § 2; CACP § 2

<sup>23</sup> CACP § 100

<sup>24</sup> CACP § 128 (5)

<sup>25</sup> CCP § 377ff.

### **2.2.3 The child in any other role**

Family matters on petition are generally adjudicated in a speedier manner than regular actions. Upon hearing a family matter on petition, the court may order, upon request or on its own initiative, measures for securing the action as a measure of provisional legal protection. Before provisional legal protection pertaining to a child is imposed, the court must obtain the opinion of the rural municipality or city government of the child's residence, unless the resulting delay would clearly damage the interests of the child. If a measure was applied without obtaining the opinion of the rural municipality or city government, such opinion must be obtained at the earliest opportunity. In matrimonial, maintenance or other family matters, the court may provisionally regulate the following issues for the course of the proceedings:

- parents' access rights to their child;
- communication of a parent with a child;
- the surrendering of a child to the other parent;
- compliance with child support obligations;
- use of objects of the spouses' shared household;
- the surrendering and use of objects intended for personal use by a spouse or child;
- other matters related to marriage and family which need to be settled expeditiously<sup>26</sup>.

## **2.3 Child-specific support mechanisms and procedures and ways of ensuring the voice of the child is heard**

### **2.3.1 Civil justice**

#### **2.3.1.1 The child as a plaintiff/defendant**

Child parties, regardless of their age, who are not under oath may be heard by the court on a fact directly related to their action or which was the object of their direct experience if the court deems it reasonable under the circumstances<sup>27</sup>.

Furthermore, in civil actions it is each party's right to submit explanations to the court concerning all questions which arise during the hearing, a right which applies equally to children and adults.

During the hearing of a child, the practice is that the court will take into consideration the child's age and development when communicating with him/her<sup>28</sup>. The court may assess the child's capacity to testify and involve other professionals or a legal representative in the questioning of the child. There is possibility to conduct the court session in the form of a procedural conference. Usually, this is done through videoconferencing.

Although the language of the court is Estonian, children whose mother tongue is not Estonian can use their mother tongue during the court proceedings with the help of an interpreter<sup>29</sup>.

#### **2.3.1.2 The child as a witness**

If a party requests the hearing of a child witness and the court approves the request, the child will be heard. The court cannot hear a child on its own initiative. A child witness below 14 years of age who is heard in the presence of a child protection worker, social worker, psychologist, parent or legal representative may, with the permission of the court, also be questioned by them.

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<sup>26</sup> CCP § 378(3).

<sup>27</sup> CCP § 271(2).

<sup>28</sup> CPA § 21(2.2).

<sup>29</sup> CCP § 34.

The court may involve a child protection official, social worker or psychologist also in the hearing of a child of 14 years of age and above. If necessary, a court may remove a witness of less than 14 years of age from the courtroom after he or she has been heard<sup>30</sup>.

A witness can also be interviewed over the phone or in the form of videoconferencing. The telephone may be used when only interviewing a witness and the witness (in proceedings on petition) or both the witness and the parties (in proceedings on action) agree to that.

### **2.3.1.3 The child in any other role**

The court can present evidence, including asking a child to testify, on its own initiative in cases related to the interests of a child and in proceedings on petition (e.g. matrimonial and filiation matters).

In family matters on petition that pertain to a child, the court hears a child of at least 10 years of age in person unless otherwise provided by law. It is a judge's discretion to also hear children younger than 10 years of age. Children of at least 10 years of age to whom the matter pertains must be heard in an environment that they are familiar with (e.g. at home, at the school or kindergarten etc). Judges usually interview children at their own office, the courtroom (for older children), a cafeteria or at school. Judges must hear children in person and where needed they can always involve a social worker, psychologist or teacher. In addition, they are required to explain to the child who they are, what is the cause of the interview and other important relevant information. The court has to pay due regard to the mental development of the child when interviewing him/her<sup>31</sup>. It is at the court's discretion to decide whether certain information or images may endanger the well-being of the child; the court may base its decision on an opinion of a psychiatrist or psychologist.

In family matters on petition the court must always ask for the opinion of the rural municipality or city government. To this end, the social services of the municipalities may also need to interview the child.

### **2.3.2 Administrative justice**

As there are no specific statutory/policy provisions in the Code of Administrative Court Procedure regarding the child's right, general rules and policies apply. Participants to judicial proceedings have the right to be informed. However, the Code of Administrative Court Procedure does not make a distinction according to their roles.

#### **2.3.2.1 Testimony**

Rules on giving testimony as parties to proceedings in administrative judicial proceedings are regulated by the [Code of Civil Procedure](#)<sup>32</sup>. A child who is a party to the proceeding can be heard without subjecting him/her to an oath. There is no obligation on the part of the court to have children testifying. The court may choose to question the child concerning a circumstance that is directly related to his/her action or direct experience.

There are several measures that can be taken to facilitate a child's right to be heard – all of them subject to the court's discretionary decision. If necessary, the court may interview the child outside the courthouse or remove one of the parties of the proceeding from the courtroom. Further measures to facilitate the hearing of the child are to include a child protection official, social worker and psychologist who could also, with the court's permission, pose questions to the child. In a case of a child under 14 years of age, the court can also include a parent/guardian. There are no other statutory or policy measures obliging the court to consult the child on the manner in which they wish to be heard.

An interpreter may be involved to facilitate the child's right to be heard only upon the child's own request: via his/her legal representative; or the child is at least 15 years old and granted procedural capacity; or upon an initiative from the court.

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<sup>30</sup> CCP § 261(1-2).

<sup>31</sup> CCP § 552<sup>1</sup>(2).

<sup>32</sup> CCP § 56

### **2.3.2.2 Limitations to the right to be heard**

The child's right to be heard can be further limited through discretionary decisions by the court. The court may decide to replace an interview in court with the written minutes of an interview given in a pre-trial proceeding<sup>33</sup>. In addition, the court may, instead of summoning the witness to the court, oblige him/her to answer questions in writing. This is based on the assessment of whether or not appearing in court in person would be unreasonably burdening for the witness and the written testimony would be sufficient considering the content of the testimony and the person of the witness.

### **2.3.2.3 Right to representation**

A party of an administrative judicial proceeding, child or adult, may participate in the proceeding either in person or through a legal counsel. A party has the right to be represented by a legal counsel at any time during the proceeding. The legal counsel or legal representative may perform any procedural act in the name of the child. If needed, e.g. if the child has no parents or the parent endangers one of the child's essential interests, a guardian ad litem will be appointed by the civil court under civil judicial procedure. The administrative court may order a stay of the proceeding until a guardian is appointed. The Supreme Court drew the courts' attention to the fact that in cases of serious and continuous conflicts between parents, the courts can, on their own initiative and instead of the parents, render judgements on a child's situation, including determining the whereabouts of the child.

In general, in an administrative proceeding, the child's legal representative can perform any procedural act in the name of the child. Hence, the child's legal representative may file an appeal without the child's consent. The appeal will be valid unless it is considered contrary to the interests of the child<sup>34</sup>.

### **2.3.2.4 Support services**

The court may use in the course of an administrative proceeding explanations provided in writing or orally and statements recorded in writing or by recording equipment. There is a possibility to conduct a court session by videoconference. In exceptional circumstances, where all parties agree, the person could also be questioned by telephone. Finally, if necessary, the judge may also decide to hear the child in his/her home instead of summoning him/her to the court.

## **3. Multidisciplinary aspects**

### **3.1 Coordination of their activities by relevant organisations**

Child protection is organised by the Government of the Republic, child protection council, Ministry of Social Affairs, Social Insurance Board, county governors and local governments based on the functions provided for in Child Protection Act<sup>35</sup>.

In order to ensure the child's rights and well-being, state and local government agencies and the officials thereof, legal persons in public and private law have to cooperate with each other upon the planning, financing and application of all measures targeted to children by involving the children, parents, persons raising children, interest groups and the public therein<sup>36</sup>.

Where, pursuant to law, participation of a rural municipality or city government is necessary, the court informs such authority of the proceeding. In proceedings pertaining to minors or guardianship, the court obtains the position of a rural municipality or city government and sends the rural municipality or city government transcripts of the rulings whereby the proceedings are terminated<sup>37</sup>. For the purpose of

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<sup>33</sup> CCP § 251(2)

<sup>34</sup> CACP § 26(3)

<sup>35</sup> CPA § 11.

<sup>36</sup> CPA § 8(2).

<sup>37</sup> CCP § 552(2).



organizing child protection, rural municipalities and city governments employ either children protection employees or delegate the relevant services to a social worker.

## 4. Training of professionals

### 4.1 Training requirements for professionals who are in contact with the child during the proceedings

The training of judges is organised by the Judicial Training Council that operates under the Supreme Court<sup>38</sup> in accordance with the Estonian Court Act. The Judicial Training Council acts on the basis of the Judicial Training Strategy 2015 – 2020<sup>39</sup>. Judges have discretion in choosing courses; only a few are mandatory. All materials concerning training are available online. In 2014–2015, two training courses for judges focused on children<sup>40</sup>. One of the trainings focused on hearing of a minor witness in court procedures and ascertaining child's interests. The other training focused on the new [Child Protection Act](#) and giving priority to the child's best interests. There was also an external conference that focused on handling children's evidence.

The Estonian Bar Association organises training courses for lawyers in accordance with the Bar Association Act<sup>41</sup>. In 2014-2015, two training courses for lawyers focused on children and their rights. Four courses focusing on children's rights are planned for 2016<sup>42</sup>.

Professionals working as social workers are required to have training in how to work with persons (and children) in need of assistance.

As a result of The Estonian Union for Child Welfare's two-year project 'Child's voice!' an optional module on children's rights was incorporated in the curriculum of the University of Tartu<sup>43</sup>.

### 4.2 Vetting of professionals

CPA enacts restrictions for persons working as child protection officials and persons working with children. A person who has been punished or to whom coercive treatment has been imposed for certain offences against the person, family and minors, public health and property may not act as a child protection official or as a person working with children, unless the information concerning punishment has been deleted from the criminal records database according to the [Criminal Records Database Act](#)<sup>44</sup>. The Social Insurance Board exercises state supervision over compliance with this requirement<sup>45</sup>.

According to the implementing provisions of the CPA, child protection officials and persons working with children who have commenced employment before the entry into force of CPA have to comply with the aforementioned requirement no later than by 1 January 2017<sup>46</sup>.

### 4.3. Cooperation with other MS on training

The Supreme Court does close training connected cooperation with the European Judicial Training Network (EJTN)<sup>47</sup> and with members of European Union (e.g. Germany).

Estonian Bar Association is a member of European Bar Association and communicates with other Member States about training through it.

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<sup>38</sup> For further information see the website of the Supreme Court '[Training of Judges](#)'.

<sup>39</sup> Judicial Training Strategy 2015 – 2020, available at the [website](#) of the Estonian Supreme Court.

<sup>40</sup> Information collected through consultation with the head of the Judicial Training Department.

<sup>41</sup> [Bar Association Act](#) (Advokatuuriseadus) § 3.

<sup>42</sup> Information collected through consultation with the Training Specialist of the Estonian Bar Association.

<sup>43</sup> For further information see the [website](#) of the Estonian Union for Child Welfare's project "A Child's Voice".

<sup>44</sup> CPA § 20.

<sup>45</sup> CPA § 38(2.1).

<sup>46</sup> CPA § 41(2).

<sup>47</sup> Information collected through consultation with the head of the Judicial Training Department.

## **5. Best interests of the child**

### **5.1 Measures in place to ensure that the child's best interests are a primary or paramount consideration**

Many legal acts refer to the child's interests. Section 21 of the CPA that is based on and is in conformity with the [2013 commentary of the Committee on the Rights of the Children](#), enacts the obligation to set the best interests of a child a primary consideration. According to the CPA, upon the adoption of or deciding not to adopt decisions affecting a child and choosing between different options upon planning a decision (hereinafter deciding together), the best interests of the child have to be ascertained and they shall be based on as the primary consideration upon the making of decisions.

Necessary measures to ascertain the best interests of the child are outlined in [Child Protection Act § 21](#).

To ensure that the child's best interests are protected in family matters, judges are required to involve a social worker and appoint a legal counsel for the child<sup>48</sup>. A social worker is expected to ascertain the child's best interests through interviews and home visits and then to present his/her professional opinion to the court.

## **6. Monitoring and enforcement of decisions in proceedings involving children**

### **6.1 The child as a plaintiff / defendant**

As children do not have active procedural capacity, they are not personally informed of the judgement and its enforcement by the court. The person representing the child at court receives the court judgement after it has been issued. Once the judgement becomes enforceable, the child's legal representative can submit an application for enforcement to the bailiff<sup>49</sup>. Communication of the information regarding the enforcement proceedings to the child is presumed to be the responsibility of the legal representative.

In Estonia decisions can be directly or immediately enforceable. At the request of the party (child or adult), the court may determine the manner of and procedure for complying with the judgement, setting out the term or due date, and indicating the fact that the judgement is subject to immediate execution<sup>50</sup>.

According to Estonian civil law, enforcement proceedings cannot take place against the property of the child but only against the property of the child's legal representative. However, special provisions apply concerning the liability for damages caused by a child. A distinction is made between children under 14 years of age and children of 14 years of age and above. Parents are fully responsible for the damage caused by children below 14, i.e. the court judgement is enforced against them. They are also responsible for the acts of the child between 14 and 17 years of age, inclusive.

There are also some differences when it comes to enforcing claims for child support. In enforcement proceedings in cases of financial claims, claims for payment on property are made and the property is seized and sold<sup>51</sup>. The right of security on seized assets created on the basis of a claim for child support is of higher ranking than the other rights of security on seized assets regardless of the time of seizure. The rights of security on seized assets created on the basis of a claim for child support are of the same ranking<sup>52</sup>.

In enforcement proceedings, income is not seized if it does not exceed the amount of minimum wages prescribed for one month or a corresponding proportion of income for a week or day<sup>53</sup>. In child support claims, however, if making a claim for payment on other assets of a debtor has not led to or presumably does not lead to complete satisfaction of a claim for child support, up to 50% of the aforementioned income may be seized. If the amount seized out of the income of the debtor for the fulfilment of a claim for support of child is less than a half of the aforementioned income, up to one-third of the income of the debtor may be seized.

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<sup>48</sup> [Study on children's involvement in judicial proceedings – contextual overview for civil justice. National report of Estonia.](#)

<sup>49</sup> [CEP § 2\(1.1\) and § 3\(1\).](#)

<sup>50</sup> [CCP § 445\(1\).](#)

<sup>51</sup> [CEP § 52\(1\).](#)

<sup>52</sup> [CEP § 65\(4\).](#)

<sup>53</sup> [CEP § 132\(1\).](#)

## 6.2 The child in any other role

As mentioned above, children in principle are not personally informed of the judgement and its enforcement by the court.

Special procedures apply in case a parent does not voluntarily comply with a ruling regulating access to child or an agreement. If a parent informs the court that the other parent violates a court ruling regulating access to the child or an agreement, the court summons the parents to appear before the court in order to settle the conflict pertaining to the child by way of agreement<sup>54</sup>. The court tries to reach an agreement between the parents concerning access to the child. If an agreement on regulating access is not reached in court or subsequently in family counselling, the court makes a ruling whereby it declares the failure of the conciliation procedure and determines the coercive measures which are to be applied, the extent to which the ruling or agreement on access must be amended, the changes which need to be made in the parents' rights to the child.

When enforcing decisions to return a child to a parent or to communicate with a child, a local authority representative, expert in communicating with children (and exceptionally the parent against whom the decision is enforced) will be present when a bailiff takes action<sup>55</sup>. If the debtor impedes enforcement of the judgement, the bailiff can impose a fine upon him/her. Non-compliance with a court judgement cannot be excused by reasons related to the child, e.g. in case the child is sick or has a disability. However, the bailiff always takes into account the parent's health situation<sup>56</sup>.

Additionally, if necessary, the bailiff may ask the court for the temporary placement of the child in a children's welfare institution. A bailiff may use force in respect of a child or a person obligated to return the child or allow communication with the child only on the basis of a court decision.

Furthermore, a child's legal representative may ensure his/her well-being by seeking a restraining order or a similar measure<sup>57</sup>.

## 7. Access to remedies

### 7.1 Civil justice

#### 7.1.1 The child as a plaintiff/defendant

In Estonia children involved in civil judicial proceedings are represented by their legal representatives who are presumed to act in their best interests. Therefore, in principle the child's legal representatives can make submissions and bring appeals to the court on behalf of their children without the child's consent. However, it can be inferred from the law that a child can also submit an application/appeal to court in his/her own right. Generally, his/her legal representative is expected to join immediately<sup>58</sup>. Exceptions exist regarding children aged 15 and above (with full or partly extended active legal capacity) who are allowed to participate in proceedings together with their legal representative or who have applied independently for an extension of their restricted active legal capacity and have been granted such an expansion by the court<sup>59</sup>. In the first instance, the child participating in the proceedings would be informed of all the submissions and would be consulted. In the latter instance, decisions concerning the proceedings are made by the child himself/herself.

A child of at least 14 years of age with sufficient capacity to exercise discretion and has the right, in a family matter on petition pertaining to his or her person, to file an appeal against a ruling without the assistance of his or her legal representative. The same also applies to other matters where a child must be heard before adjudication of the matter<sup>60</sup>.

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<sup>54</sup> CCP § 563(1).

<sup>55</sup> CEP § 179(1).

<sup>56</sup> [Study on children's involvement in judicial proceedings – contextual overview for civil justice. National report of Estonia.](#)

<sup>57</sup> CCP § 544(1).

<sup>58</sup> CCP § 219(1).

<sup>59</sup> GPCCA § 9(1).

<sup>60</sup> CCP § 553.

The court can remove the legal counsel as a provider of the state legal aid if he/she has been incompetent or negligent<sup>61</sup>. The child, through his/her legal representative, may turn to the Court of Honour of the Bar Association to initiate proceedings against the lawyer<sup>62</sup>. The child may also claim damages for the actions of the child care authorities and the court. The conditions and procedure are set out in the State Liability Act<sup>63</sup>.

### **7.1.2 The child in any other role**

In family matters on petition, a child of 14 years of age and above with sufficient understanding of the proceedings has the right to appeal against court rulings without being represented by his/her legal representative<sup>64</sup>.

Child care authorities can bring appeals against civil court judgements in family matters on petition if they are interested third parties. When they enter the proceedings with an independent claim, they have all the ordinary rights of a claimant. When child care authorities enter the proceedings by joining one of the parties (i.e. without an independent claim), they have a right to appeal as long as it does not conflict with the appeal of the party they had initially joined<sup>65</sup>.

## **7.2 Administrative justice**

### **7.2.1 Right to appeal**

The general right to appeal against a court's decision is stated first, and foremost, in the Constitution of the Republic of Estonia. This right is a general one and applies to both, children and adults respectively. It does not differentiate between administrative, civil or criminal courts. Article 24 of the Constitution states that "No one may be transferred, against his or her free will, from the jurisdiction of a court specified by law to the jurisdiction of another court. Everyone is entitled to attend any hearing held by a court in his or her case. [...] In accordance with the procedure provided by law, everyone is entitled to appeal a judgement rendered in his or her case to a higher court. What affects a child's right to appeal against a court's decision stems from the child's procedural capacity (see section A 1).

### **7.2.2 Statutory/policy provisions allowing the child's legal representative to make submissions instead of the child without his/her consent and/or appeal without the child's consent**

The law does not specifically state that the legal representative must consult with the child before making a submission since a representative should be acting while having the child's best interests in mind. A parent or a guardian has a general duty to ask for, and take into account, the child's opinion. If there is a conflict between the interests of the child and his/her legal representative, the court will determine what the interests of the child.

### **7.2.3 Statutory/policy provisions to provide support to the child in order to access such mechanisms**

The law includes no child-specific rules in regard to the provision of support in order to access appeal mechanisms. General rules apply. The procedure and deadlines are explained in the judgement.

### **7.2.4 Legal obligation on judicial authorities to secure the right of a child involved in judicial proceedings to claim compensation for damages caused by violation of rights**

The general principle of administrative court procedure apply. This also includes informing the child of his/her rights and obligations and how the child can claim compensation for damages if his/her rights are violated. The child applicant has the right to claim compensation within three years of finding out about the

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<sup>61</sup> State Legal Aid Act § 20(3<sup>1</sup>).

<sup>62</sup> Bar Association Act § 16.

<sup>63</sup> State Liability Act

<sup>64</sup> CCP § 553.

<sup>65</sup> CCP § 214(2).

act that caused the damages. Violation of rights by the child's legal representative is dealt with through the removal of the legal representative from the proceeding or barring him/her from making declarations.

#### **7.2.6 Actions the court or the child can take if there is a conflict of interests with his/her parents' interests**

The court can extend the active legal capacity of a child, or not approve procedural acts that are not performed in the interests of a child. If there is a conflict of interests, the court will determine the interests of the child and make a decision on the legality of a particular procedural act during the court proceeding<sup>66</sup>. However, this rule is stipulated only in regard to a child who is 12 years and older. There is no similar rule for younger children. In addition, the law stipulates that if the legal representative wants to stop an action, and this would be clearly against the interests of the child, the court will reject this and appoint a guardian ad litem for the trial.

#### **7.2.7 Statutory/policy provisions allowing a child care authority to appeal against certain court decisions involving children**

Any party or third party to the proceeding can appeal the decision, even if the person was not included in the proceeding but his/her rights and freedom were affected by the decision<sup>67</sup>.

#### **7.2.8 Exercise of their rights by children in their own right or through a representative.**

In Estonia, the active legal capacity is related to age and a person gains full legal capacity at the age of 18 years. As a result, a child cannot appeal to a court against an administrative decision in his/her own right, but only through the legal representatives. Although, there are some exceptions. If by the court's assessment a child of at least 15 years of age understands the meaning of his/her procedural actions and does not endanger his/her own interests, or the interests of close relatives, he/she may be granted full procedural capacity.

#### **7.2.9 Existence of different provisions for different age groups and specific rules for very young children.**

The court has a discretionary power to consider hearing a child participant in the proceeding. For example the court may hear a child participant of the proceeding – in any role, if he/she is at least 12 years old.

There are no special rules for very young children.

#### **7.2.10 Laws/policies ensuring best interests of the child and their dignity.**

Best interests of the child are identified in the Child Protection Act<sup>68</sup>.

### **8. Family life**

#### **8.1 Procedure for adoption, including international adoption.**

A person wishing to adopt files a petition for adoption to a county government. The county government then performs the acts relating to the preparation of adoption under circumstances which enable to presume with a sufficient degree of confidence that the conditions required for adoption are complied with at the time of filing the petition to court. The county government explains the rights and the legal consequences of adoption and verifies the suitability of the living conditions for raising a child. If the county government

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<sup>66</sup> [CACP § 26\(4\)](#)

<sup>67</sup> [CACP § 180](#)

<sup>68</sup> [CPA § 21](#)

finds it necessary, the person wishing to adopt has to complete an appropriate training programme prior to adoption<sup>69</sup>.

In the course of the preparation of adoption, the county government is required to bring the child into contact with the adoptive parent, and explain to the child (together with the legal representative of the child) circumstances relating to adoption.

If the county government presumes that the conditions required for adoption are complied with, the person wishing to adopt files a petition for adoption to the court. A petition for adoption is filed with the court of the residence of the adoptive child.<sup>70</sup> The court decides on an adoption only on the basis of the application of a person wishing to adopt.<sup>71</sup>

Adoption is amongst matters adjudicated as proceedings on petition.<sup>72</sup> In matters on petition, the principle of investigation applies, which means that the courts have a greater role in the proceeding. The court itself ascertains the facts and takes the necessary evidence unless otherwise prescribed by law.

The court hears the petitioner in person. The court also orders the county governor of the residence of a child to gather information necessary for the adjudication of the adoption of the child and to submit such information to the court. The county governor submits information on the health, financial situation and housing of the petitioner, and provides an opinion on whether the petitioner is capable of raising the child, caring for the child and maintaining the child.<sup>73</sup> A child is adopted as of entry into force of the court ruling on adoption.<sup>74</sup>

If the residence of the adoptive parent or the child is not in Estonia, a court shall not decide on adoption without the consent of the committee for international adoptions formed at the Ministry of Social Affairs of the Republic of Estonia. In cases of international adoption, the Ministry of Social Affairs of the Republic of Estonia gathers information necessary for the adjudication of the adoption of the child and submits the information to the court.<sup>75</sup> Adoption from Estonia to a foreign state may occur primarily if it is not possible to care for the child to the necessary extent in the Republic of Estonia<sup>76</sup>.

## **8.2 Measures in place to ensure that the child's best interests are taken as the paramount consideration**

Adoption is permitted only if it is necessary in the interests of the child and there is a reason to believe that a parent-child relationship will be created between the adoptive parent and the child. Upon the selection of an adoptive parent, his or her personal characteristics, relationship with the child being adopted, his or her financial situation and ability to perform the obligations arising from the adoption and, if possible, the presumed will of the parents of the child shall be taken into account. If possible, the need for consistency of raising of the child and his or her national, religious, cultural and linguistic origin shall be taken into account upon making a decision.<sup>77</sup>

A child who is at least 10 years of age may be adopted only with his or her consent. A child has to grant his or her consent to the court in person.<sup>78</sup> The wishes of a child younger than 10 years of age shall also be considered if the mental development level of the child so permits. A child grants his or her consent to an adoptive parent whose person is known to the child.<sup>79</sup> A child who is at least 10 years of age may withdraw

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<sup>69</sup> FLA § 158

<sup>70</sup> CCP § 113(2)

<sup>71</sup> CCP § 564(1) and FLA § 159(1)

<sup>72</sup> CCP § 550(1.3).

<sup>73</sup> CCP § 567(2).

<sup>74</sup> FLA § 159(3).

<sup>75</sup> CCP § 567(3).

<sup>76</sup> FLA § 165(6).

<sup>77</sup> FLA § 147(1).

<sup>78</sup> FLA § 155(1).

<sup>79</sup> FLA § 151.

his or her consent by submitting an application to a court until a decision of adoption is made. The consent of the legal representative is not required for withdrawal.<sup>80</sup>

### **8.3 Measures in place to respect the child's right to be heard in adoption cases**

The court can present evidence, including asking a child to testify, on its own initiative in proceedings on petition.<sup>81</sup> Thus, the court can be very active in cases of adoption and hear anyone, including a child, on the matter regardless of whether any of the parties have requested his/her examination or not.

In family matters on petition that pertain to a child, the court hears a child of at least 10 years of age in person unless otherwise provided by law. It is the judge's discretion to also hear children younger than 10 years of age. Children of at least 10 years of age to whom the matter pertains to must be heard in an environment that they are familiar with. Judges must hear children in person and, where needed, they can always involve a social worker, psychologist or teacher. In addition, they are required to explain to the child who they are, what is the cause of the interview and other important relevant information. The court has to pay due regard to the mental development of the child when interviewing him/her.<sup>82</sup>

Although the language of the court is Estonian, children whose mother tongue is not Estonian can use their mother tongue during the court proceedings with the help of an interpreter.<sup>83</sup>

### **8.4 Competent authorities for adoption**

The competent authority for national adoption is the county government of the residence of the person wishing to adopt. Educational and social department of a county government deals with the preparation of adoption, usually they have a child protection official that handles adoptions.

The competent authority for international adoption is the Ministry of Social Affairs of the Republic of Estonia. Ministry of Social Affairs has a Social Welfare Department that, *inter alia*, deals with adoption.

### **8.5 Possibility for an adopted child to have access to information held by the competent authorities on his or her origins**

A minor adopted child has the right to obtain information from the county government concerning the fact of adoption only with the consent of the adoptive parent. An adopted child who has become an adult has the right to obtain information from the county government about the fact of adoption without the adoptive parent's consent.<sup>84</sup> Information they have access to concern his or her biological parents, grandparents, brothers and sisters if the abovementioned persons have granted consent for disclosure of the corresponding information. If consent for disclosure of information is not granted, a county government provides information concerning the abovementioned persons to the extent and in a manner which does not enable identification of the biological parents, grandparents, brothers or sisters of the adopted child.<sup>85</sup>

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<sup>80</sup> FLA § 155(3).

<sup>81</sup> [CCP](#) § 230(3).

<sup>82</sup> [CCP](#) § 552<sup>1</sup>(2).

<sup>83</sup> [CCP](#) § 34.

<sup>84</sup> FLA § 164(6).

<sup>85</sup> FLA § 164(7).