Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Estonia

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This National Report has been prepared by Merle Haruoja, Marianne Meiorg and Kiira Nauts for Milieu Ltd in partnership with ICF GHK under Contract No JUST/2011/CHIL/PR/0147/A4 with the European Commission, DG Justice.

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The Estonian legislation guarantees all the general elements of child-friendly justice in criminal proceedings. The best interests of the child are protected by the Child Protection Act and a direct application of the Convention of the Rights of the Child. The right to be heard and to participate are recognised by law as well as by guidelines that guide practitioners. In regard to child offenders, the Estonian legislation provides for a flexible framework, allowing the police, prosecution and courts to decide not to apply criminal sanctions. A multidisciplinary approach is possible in all stages of the criminal proceedings but recourse to that is less prevalent.

Overview of children's involvement before, during and after judicial proceedings

In most respects, the regulation on child victims and witnesses is the same, albeit with some minor differences. Children can easily report a crime as it has been made very easy and accessible through different channels. Children in all roles are informed of their rights immediately upon the commencement of proceedings. However, the rights of the victim and defendant are considerably more elaborate and provide them with a far wider scope of participatory options than for witnesses. Both child victims and witnesses must be informed of each proceeding conducted using the language and manner understandable to them. The extent to which their parents are informed is somewhat unclear. In any case, interpretation/translation is guaranteed and criminal proceedings could be conducted in a language other than Estonian, if all parties agree to it.

There are several protection mechanisms available to the child victim and witness but there is no obligation to inform them of these possibilities. Protection of personal data and confidentiality of the child, however, is extensive. All those involved are under the obligation not to reveal information on the case during criminal proceedings.

Protection from secondary victimisation and ensuring a child-friendly environment is provided but only to a certain extent. Particular rules apply to victims of very serious crimes, such as the possibility of video recording, specially furbished rooms and the possibility to include a specialist. No parallel obligation exists in regard to victims of lesser crimes, witnesses and suspects/defendants. In fact, a child defendant is subject to exactly the same rules as adults in the same situation. Child victims have additional access to a variety of victim support services, including counselling and compensation from state.

Children in all three roles have, in principle, access to legal counsel and state legal aid. A child defendant has an automatic right to defence with costs covered by the state in full. Child victims and witnesses also have the right to legal counsel but it is not automatic. If they want to be represented by a lawyer, they would either have to cover the costs themselves or apply for state legal aid, the provision of which is at the discretion of the judge. It is very rare that a victim has his/her own lawyer both due to their own choice but also due to the prevalent view among prosecutors and judges that prosecutors are the ones who represent and protect the interests of the victim. Legal representation is even less frequent in cases of a child witness.

There are several alternatives to general criminal proceedings. Conciliation is an option available for the child victim and defendant. Other options are more connected to the defendant. When the investigator, prosecutor or judge considers criminal sanctions not appropriate, they can decide to terminate the criminal proceedings and send the case to the juvenile committee with a wide choice of non-criminal sanctions available. Settlement procedures and shortened procedures both end with an actual court judgment but might provide a viable option to save time.

What is unclear is the extent which children's opinion and wishes are taken into account in regard to decisions concerning them, in any role. It is unclear how extensive the role of the parent is in the relationship between the child and his/her legal counsel.

Abbreviations

CA	Competent Authority
CCrP	Code of Criminal Procedure
CoE	Council of Europe
CMP	Code of Misdemeanour Procedure
CPA	Child Protection Act
EC	European Commission
EU	European Union
FLA	Family Law Act
JSA	Juvenile Sanctions Act
PC	Penal Code
UNCRC	United Nations Convention on the Rights of the Child
VSA	Victim Support Act

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

In Estonia, the moment a child comes into contact with the judicial system, the child's best interests govern the authorities' actions, in accordance with the directly applicable UN Convention on the Rights of the Child[1]. Estonia has taken various steps towards child-friendly criminal justice, involving different strategies, policies and plans. The most recent step has been the establishment of the Ombudsman for Children (*Lasteombudsman*) in 2011, who has the mission to ensure the application of the rights of the child, i.e. by the judicial authorities, including children in conflict with the law[2].

Court system in Estonia

Estonia has a three-level court system[3]:

1. First instance consists of county courts (*maakohus*), which have four courts in total (different judges hear civil, criminal and misdemeanour matters, depending on their specialisation) and administrative courts (*halduskohus*), which have two courts in total that are specialised in administrative cases.
2. Second instance consists of circuit (also called district) courts (*ringkonnakohus*), which have two courts in total. The circuit courts hear both the appeals from county courts and from administrative courts but in practice there is a specialisation within circuit courts though the exact organisation of work is up to the presidents of each court. For example, in the Tallinn Circuit Court, specialisation is divided between criminal, civil and administrative chambers.
3. The Supreme Court (*Riigikohus*) is the highest court in the Estonian legal system and gives judgments on cassation appeals from the circuit courts. The Supreme Court also acts as a constitutional review court. The work of the Supreme Court is arranged through chambers of specialisation – criminal, civil and administrative chambers and constitutional review chamber.

The judgments from the county courts can be appealed to circuit courts and those judgements can be appealed to the Supreme Court. A matter can be heard in the Supreme Court only after all previous court instances have been passed. The filing of appeals and cassations in criminal law is governed by the Code of Criminal Procedure (CCrP)[4]. Cases involving children can be heard by any court since there are no specialised courts in Estonia.

A child can end up in court if he/she is 14 years old or over (see below under "The age of criminal responsibility"). The police, prosecutor or court may decide to not try the case of an offender between the ages of 14 and 18 in court and use alternative measures (see below under "Juvenile committees"). The court also has the possibility to try the case in court but not to apply criminal sanctions and to apply alternative sanctions instead (see below under "Age and maturity").

Juvenile committees

Children are also subject to Juvenile Committees (*alaealiste komsjon)*, which are outside the judicial system and enter the realm of the administrative system. The committees are

[1] *Eesti Vabariigi ühinemisest rahvusvaheliste lepingutega, mille depositaariks on ÜRO peasekretär* (Accession of the Republic of Estonia to international treaties, which depository is the UN Secretary General), decision of 26 September 1991 by the Supreme Council of the Republic of Estonia, RT 1991, 35, 428.

[2] See: http://lasteombudsman.ee/en/welcome.

[3] See Ministry of Justice's homepage: http://www.kohus.ee/6908 and the homepage of the Supreme Court (*Riigikohus*) http://www.riigikohus.ee/?lang=en.

[4] Kriminaalmenetluse seadustik, RT I 2003, 27, 166 … RT I, 15.05.2013, 3.

established based on the Juvenile Sanctions Act (JSA)[5]. They are formed on a county level or, in agreement with the county, on local governmental level or, in agreement with the local government, on a city district governmental level[6]. There are currently 67 special Juvenile Committees[7], all coordinated by the Estonian Youth Work Centre (*Eesti Noorsootöö Keskus*), which is within the field of competence of the Ministry of Education and Research[8].

Juvenile Committees are not discussed in further detail as they fall out of the scope of the present overview. They will be discussed in more detail in the administrative justice phase.

Specialist units for children

There are specialist units within the police force and prosecutor's office designated to deal with children as offenders as well as victims. There is no official specialisation among judges and the specialisation within the police force and prosecutor's office is reflected in the structure of both the institutions rather than in law[9]. Since 2010 all four prefectures (North, South, East and West) of the Police and Border Guard Board include child protection services who work with children who are victims of serious crimes, such as sexual abuse[10]. Cases where the suspect is a child or children are victims of less serious crimes are dealt with by investigators from respective divisions but specialised in crimes involving children[11]. Additionally, the police also have youth police, whose tasks include prevention of youth crime, which also includes working with young offenders. Since 2006, the Northern Prosecutor's Office includes the Department for Juvenile Crimes[12]. The other three districts have specialisation based on the division of tasks by the District Prosecutor, which is not publicly accessible[13]. All cases involving children must, as a rule, end up in these units.

Some of the local governments have also established specialised positions for child protection officials. For example, the city of Tartu has established the Child Protection Department, whose tasks include counselling on questions regarding raising the child, rehabilitation of children coming from schools for students with special needs, giving assessments on the living environment of the child[14]. For those local governments where there are no specialised child protection officials, the same tasks are conducted by social workers.

Training

Each year child specialists and other professionals who have a role in criminal proceedings (judges, educators, etc.) involving children receive training on different topics concerning children in criminal proceedings. However, none of the training courses are mandatory as such, i.e. the professional is encouraged to attend but can assess him-/herself whether the topic is necessary and whether there is time for the training.

All the professionals, including those who have or might have a role in criminal proceedings, are trained based on the plans set out in the Development Plan for Reducing Violence 2010-

[5] Alaealiste mõjutusvahendite seadus, RT I 1998, 17, 264 … RT I 2010, 41, 240.

[6] Juvenile Sanctions Act, § 11.

[7] http://www.entk.ee/sites/default/files/Copy%20of%20Alaealiste%20komisjonide%20kontaktid.2013.a.-1.xls.

[8] See Estonian Youth Work Centre's homepage: http://www.entk.ee/eng.

[9] For the prosecutor's office see: http://www.prokuratuur.ee/en/contacts/northern-district-prosecutors-officel; for the police see: http://www.politsei.ee/en/kontakt/kontaktid-struktuuri-jargi.dot.

[10] Ministry of Justice, Vägivalla vähendamise arengukava aastateks 2010–2014: 2010. aasta täitmise aruanne (Implementation report of 2010 on the Development Plan Reducing Violence 2010-2014).

[11] Collected through correspondence with stakeholder.

[12] Collected through correspondence with stakeholder.

[13] Collected through correspondence with stakeholder.

[14] *Tartu Linnavalitsuse sotsiaalabi osakonna põhimääruse kinnitamine* (Approval of the Statutes of the Social Assistance Department), Decree n. 362 adopted on 30 March 2010 by Tarty City Government, p 4-5.

2014 and its Implementation Plan[15] (see more below). For example, in 2012, training courses were offered to police officers, students at the Estonian Academy of Security Sciences, educators, family doctors, and prosecutors[16]. Training courses included topics such as questioning children in criminal proceedings (also abused children), personality disorders, cooperation in processing cases concerning children and analysis of video questioning. In 2011, police officers also received training on specific aspects of processing cases involving children and processing child abuse cases occurring over the internet[17]. An in-service training course lasting for three weeks was opened in 2012 at the Estonian Academy of Security Sciences, which is the first training course allowing a systematic approach to renew police officers' knowledge[18]. Prosecutors specialised in cases concerning children meet in roundtables that take place twice a year, where different topics and problems are discussed together. There are no systematic training courses for any other specialists (potentially) involved in criminal proceedings concerning children.

Neither the desk research nor interviews revealed any regular vetting for professionals working with and for children to ensure their suitability for the task.

The law, guidelines and policy papers

The legislation concerning children in criminal proceedings, either as an offender or victim is based on the Laulasmaa Declaration (*Laulasmaa deklaratsioon*), which was signed between the Ministry of Justice and the Ministry of the Interior in 2005. The declaration set priorities for criminal policy for the following years. One of the priorities set was the fight against crimes by and against children, with special attention on child victims of violence and sexual abuse. Following the Declaration, the parliament adopted "Criminal Policy Trends until 2018" (*Kriminaalpoliitika arengusuunad aastani 2018*). Prevention of juvenile delinquency, payment of enhanced attention to the prevention and response to criminal offences relating to domestic violence and human trafficking are the primary objectives set out in the document. The Development Plan for Reducing Violence 2010-2014 follows the set goals and provides for a more detailed plan to achieve the goals, several of which are connected to the procedural aspects of processing crimes by and against children[19].

The most recent policy has been compiled by the Ministry of Social Affairs – Development Plan of Children and Families for 2012-2020 (*Laste ja perede arengukava 2012-2020*). One of the strategic aims of the Plan is child protection in general, in particular an effective protection system including more effective early interference based on the particular needs of the child.

The legal system regulates child-related criminal procedures and principles with the following legislation:

- Constitution of the Republic of Estonia sets out the general framework for child protection (§ 27)[20];
- Child Protection Act (*CPA*)[21] sets out the main principles and guidelines but has no provisions as to its implementation and is therefore ineffective (it is based on the UNCRC) (currently being redrafted)[22];

[15] Respectively, Development Plan for Reducing Violence 2010-2014, adopted by the Government on 1 April 2010 with Decree n. 117, and Implementing Plan of the Development Plan for Reducing Violence for years 2010-2014.

[16] Ministry of Justice, *Vägivalla vähendamise arengukava aastateks 2010–2014: 2012. aasta täitmise aruanne* (Implementation report of 2012 on the Development Plan for Reducing Violence 2010-2014).

[17] Ministry of Justice, *Vägivalla vähendamise arengukava aastateks 2010–2014: 2011. aasta täitmise aruanne* (Implementation report of 2011 on the Development Plan for Reducing Violence 2010-2014).

[18] Ministry of Justice, *Vägivalla vähendamise arengukava aastateks 2010–2014: 2012. aasta täitmise aruanne* (Implementation report of 2012 on the Development Plan for Reducing Violence 2010-2014).

[19] Development Plan for Reducing Violence 2010-2014, adopted by the Government on 1 April 2010 with Decree n. 117.

[20] *Eesti Vabariigi Põhiseadus*, RT 1992, 26, 349 … RT I, 27.04.2011, 2.

- Code of Criminal Procedure (CCrP);
- Code of Misdemeanour Procedure (CMP);
- Juvenile Sanctions Act (JSA) (currently being modified)[23];
- Penal Code (PC);
- Victim Support Act (VSA)[24];
- Family Law Act (FLA)[25].

The legislation is complemented by several guidelines by different institutions. The Director of the Police and Border Guard Board has adopted the Guidelines on treating children who have committed a crime or need assistance[26]. The guidelines specify the general principles of treating a child, instructions on questioning the child, detaining and forcefully bringing in the child, specific aspects of processing cases involving a child, activities with a child in danger etc. The Director of the Board has also adopted guidelines on how to deal with domestic violence cases, which sets out detailed rules on handling domestic violence as well as rules on the special treatment of children who were not direct victims but were present during the incident[27].

The Prosecutor's Office adopted the Guidelines on the special treatment of children in criminal proceedings in 2007[28]. The guidelines include rules on the publication of information on proceedings involving children, detailed rules on questioning children, terminating criminal proceedings with the aim of handing over the case to the juvenile committees, the exceptional nature of arrest in case of children, etc.

In 2011, the Children's Ombudsman also adopted Guidelines on reporting of children in need of assistance and the Guidelines on data protection that specifically address the issue of data protection when assisting a child in need[29].

Finally, there may also be different guidelines at local level, such as the Guidelines on helping a child in danger and informing of an incident in Põlva county[30]. Such guidelines may also exist in other counties but there is no comprehensive overview currently available on this.

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[21] *Lastekaitse seadus*, RT 1992, 28, 370 … RT I, 21.03.2011, 50.

[22] *Lastekaitse seaduse eelnõu väljatöötamiskavatsus* (Intent to develop the child protection draft law), file no 12-1423.

[23] *Noorsootöö strateegia 2006–2013. Aruanne strateegia eesmärkide ja rakendusplaani täitmisest 2011. aastal* (Youth Work Strategy 2006-2013. Report on the execution of the aims of the strategy and the implementation plan in 2011), p 58.

[24] *Ohvriabi seadus*, RT I 2004, 2, 3 … RT I, 18.04.2013, 2.

[25] *Perekonnaseadus*, RT I 2009, 60, 395 … RT I, 27.06.2012, 4.

[26] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[27] Guidelines on reacting to incidents of violence in close relationships, organisation of information exchange connected to that and the procedure of transferring information to victim support (*Lähisuhtevägivalla juhtumitele reageerimise, sellega seotud infovahetuse korraldamise juhend ja ohvriabile info edastamise kord*), Decree n. 487 (17 November 2010) of the Director of the Police and Border Guard Board.

[28] Public Prosecutor's Office, *Alaealiste erikohtlemine kriminaalmenetluses* (Special treatment of children in criminal proceedings), Doc. n. RP-1-4/07/8, 29 June 2007.

[29] Children's Ombudsman, *Abivajavast lapsest teatamine ja andmekaitse. Juhend* (Reporting of child in need of assistance and data protection. Guidelines), 2011.

[30] Põlva county government and Valga county government, *Hädaohus oleva lapse abistamise ja juhtumist teavitamise juhend* (Guidelines on assisting a child under threat and reporting a case), 2011.

Age and maturity

The Child Protection Act defines a child as a person under 18 years of age. The same approach is followed in other relevant legislative acts listed above.

Any criminal activity by a child up to age 14 is dealt with by a Juvenile Committee, a quasi-judicial body (see above under "Juvenile committees"). The age of criminal responsibility in Estonia is established at the age of 14[31]. For children between the ages of 14 and 18, courts are competent to hear the case. Courts have three options: they can hear the case and apply criminal sanctions; they can hear the case but release the child from criminal sanctions, taking into account the maturity of the child, and instead, apply alternative sanctions; or they can terminate the criminal proceedings and hand over the case file to the Juvenile Committee. The latter can already be done by the police investigator and the prosecutor. If the court decides to hear the case but apply alternative sanctions, it can apply measures that are relatively similar to those the Juvenile Committees can apply, albeit more intrusive[32].

There is no minimum age set for children required to be heard to or exempted from being heard during criminal proceedings. General rules apply here, such as the defendant's or the victim's right to be heard and put forward his/her arguments[33]. However, the rules of questioning are different for children under the age of 10 and of 14, whether a victim, alleged perpetrator or a witness[34].

The law does not provide any guidance as to the assessment of the child's maturity. It is in the competence of the police investigator, prosecutor and judge. The Ministry of Social Affairs, however, has adopted guidelines on the assessment of a child and family[35]. Although it is targeted at social workers, legal professionals could in principle also use it during the justice proceedings. It stipulates the founding principles for any such assessment. For example, the assessment must be child-centred, based on knowledge of the child's development and on equal opportunities. It gives detailed rules on how to assess the child's emotional and behavioural development, as well as the child's sense of responsibility.

Protection from discrimination

The general prohibition of discrimination is provided in the Constitution (§ 12), stipulating that "[e]veryone is equal before the law" and "[n]o one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds". The Child Protection Act stipulates further that a "child has an equal right to receive assistance and care and to develop, regardless of his or her sex or ethnic origin, regardless of whether the child lives in a two-parent family or single-parent family, whether the child is adopted or in care, whether the child is born in wedlock or out of wedlock, or whether the child is healthy, ill or disabled"[36].

In criminal proceedings, children are further protected from gender discrimination, including direct and indirect discrimination, harassment and victimisation[37]. There is no protection from that wide range of discriminative actions on any ground other than gender.

However, the Guidelines on treating children who have committed a crime or need assistance provides police officers with specific rules in regard to children at the border, unaccompanied children, children who are asylum seekers, children in the process of receiving international protection or being deported.

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[31] Penal Code, § 33.

[32] Code of Criminal Procedure, § 308, Penal Code, § 87.

[33] Code of Criminal Procedure, §§ 34-35, 38.

[34] Code of Criminal Procedure, §§ 70 and 290.

[35] Ministry of Social Affairs, *Lapse ja perekonna hindamise juhend* (The guidelines on the evaluation of children and family), 2009.

[36] ibid § 10.

[37] *Soolise võrdõiguslikkuse seadus* (Gender Equality Act), RT I 2004, 27, 181 … RT I, 26.04.2013, 2.

Multidisciplinary approaches

In general, a multidisciplinary approach to a criminal proceeding involving a child is guaranteed, although recent changes in criminal procedure legislation have limited the guarantee. The general rule is stipulated in the Child Protection Act stating that an "expert opinion is required in all court cases involving a child, and the social services departments shall monitor compliance with this requirement"[38].

Juvenile Committees, which are strictly speaking not part of the criminal procedure have the best guarantee of a multidisciplinary approach. Firstly, the Committees are comprised of persons with diverse professional backgrounds of education, social welfare and health care, a police officer, staff member of either county, local government or city district government, and on county level also a probation officer. Secondly, application for the Committees to review a particular case can be submitted by a variety of persons: legal representatives of children, police officers, representatives of local governments, child protection officials, social workers, judges, prosecutors, and officials of environmental supervision agencies[39]. The application must be submitted along with the assessment of the child from the school or work place and from the social worker on the family, otherwise the Committee will request the assessment itself[40]. Thirdly, when deciding on the appropriate measure, the Committee is obliged to take into account the opinions of the child's legal representative, social worker, representative of the school and police officer[41]. Fourthly, the measure applied is supervised by an appropriate professional, e.g. social worker, child protection worker, school representative, youth worker etc[42].

The recent amendments in the Code of Criminal Procedure decreased the chances of multidisciplinary approaches in pre-trial and trial proceedings. Previously, the investigative officer and the court were obliged to include a child protection official, social worker, pedagogue or a psychologist when questioning a child. Now there is no such obligation where the investigator has received appropriate training[43]. However, the Guidelines on treating children who have committed a crime or need assistance do instruct the police officer to immediately inform a child protection worker or social worker of a child in danger or otherwise in need[44]. Cooperation works both ways – a child protection worker or social worker can also turn to the police for further information necessitated by the need to guarantee the child's safety. In domestic violence cases, in particular, the cooperation with organisations offering shelter is foreseen in the Guidelines on domestic violence.

There are no cooperation agreements between different institutions, although the Police and Border Guard Board does have such an agreement with the Social Insurance Board on victim support[45]. However, children are not usually handled by the state victim support officers but rather by child protection workers.

The law does not establish a common assessment framework. However, there are a couple of guidelines developed by the Ministry of Social Affairs. Firstly, the above-mentioned guidelines on the assessment of a child and family, which is targeted at social workers but can also be used by others[46]. Secondly, the Ministry has published a Handbook on case management[47]. The handbook introduces this social work method in order to promote an

[38] ibid § 35 (2).

[39] Juvenile Sanctions Act, § 14 (1).

[40] Juvenile Sanctions Act, § 14 (2).

[41] Juvenile Sanctions Act, § 7 (3).

[42] Juvenile Sanctions Act, § 8.

[43] Code of Criminal Procedure, §§ 70 (1) and 290.

[44] Pts 104-112. Also stipulated in the Guidelines on domestic violence, pts 57-61.

[45] Collected through correspondence with stakeholder.

[46] Ministry of Social Affairs, *Lapse ja perekonna hindamise juhend* (The guidelines on the evaluation of children and family), 2009.

[47] Ministry of Social Affairs, *Juhtumikorralduse käsiraamat* (Handbook on case management), 2006.

integrated approach to cases and to ensure cooperation among specialists from different areas. The handbook itself includes examples from Estonia of best practices of an integrated approach also in the area of child offenders.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

Many of the procedural rules applying to a child victim during criminal procedures are not child-specific or even victim-specific. The law has stipulated that the rules on witnesses, such as methods of questioning or measures of protection, apply also to victims[48]. Only a few procedural rules apply specifically to a child, whether a victim or a witnesses. In other cases the general rules applicable to adult apply.

It must also be stated that throughout the criminal proceedings his/her parent or other legal guardian represents a child victim[49]. The child has no active legal capacity[50]. This must be kept in mind when reading the following sections 2.1.1-2.1.8.

2.1.1 Reporting a crime

There are no specific provisions for children to report a crime. A child can report a crime by calling the police (110 for the police or 112 for the general emergency call centre) or going to the nearest police department. It is also possible send the report by e-mail or by post[51]. For example, the website of the police has a children's corner (http://www.politsei.ee/et/lastenurk/), which encourages children to write if they have questions or need help.

However, the victim's reporting of a crime is not the only possibility to start an investigation. The police can initiate an investigation on its own initiative whenever information comes to light which indicates that a criminal offence has taken place[52]. This can be information released in the press or during the performance of their duties[53]. For example, in the course of work by the unit of the 'web-police', where police officers provide advice via internet (Twitter, Facebook or email)[54].

Additionally, anyone can report a crime. Thus, a crime could arrive through helplines. E.g. there is a special European hotline number – 116 111, which provides advice to children, including on how crimes can be reported (both as a victim and witness), Indeed, the police have confirmed cooperation with the helpline whereby a crime has been reported to the helpline, which then forwards it to the police who start investigations[55]. Reference to the helpline is also in the children's corner section of the police's homepage. Normally a crime can be reported to other authorities as well, such as to a social worker or child protection worker, who can then report directly to the police[56]. The Child Protection Act requires anyone with the knowledge of a child in need to report it to social services, the police or other organisation providing such assistance[57]. In this regard, the Ombudsman for Children has

[48] Code of Criminal Procedure, § 37 (3).

[49] Public Prosecutor's Office, Guidelines on special treatment of children in criminal proceedings, 2007.

[50] *Tsiviilseadustiku üldosa seadus* (General Part of the Civil Code Act), RT I 2002, 35, 216 … RT I, 06.12.2010, 1, § 8.

[51] Code of Criminal Procedure, § 195. See: http://www.politsei.ee/en/nouanded/kannatanule/esita-avaldus.dot.

[52] Code of Criminal Procedure, § 194 (1).

[53] Code of Criminal Procedure, § 197.

[54] See on web police (*Veebikonstaablid*), http://www.politsei.ee/et/nouanded/veebikonstaabel/.

[55] Collected through correspondence with stakeholder. Basis for that is the Police and Border Guard Act (*Politsei ja piirivalve seadus*, RT I 2009, 26, 159 … RT I, 26.03.2013, 2), which requires the police to cooperate in order to prevent, avert and eliminate danger (§ 7).

[56] The Police Web have a special corner for a children on their webpage: http://www.politsei.ee/et/lastenurk/.

[57] Child Protection Act, § 59 (1). Also *Sotsiaalhoolekande seadus* (Social Welfare Act), RT I 1995, 21, 323 … RT I, 18.04.2013, 2, § 37.

issued Guidelines on informing a child in need which explains who, when and how to provide information when a child needs help (for any issue concerning a child).

2.1.2 Provision of information

A child victim has the right to be informed of his/her rights as a victim, which are listed in the Code of Criminal Procedure. In addition, the child must receive information on the Victim Support Act, including services and compensation available[58]. The information must be given either by the police officer or a prosecutor[59].

With regards to the manner in which information must be provided to a child, the law does not make any difference whether a child is a witness, victim or suspect. The law does not specify the manner but the guidelines for the police state that a child should always be informed about his or her rights in child-friendly way (taking into account the level of child's development)[60]. There are no child-friendly materials with relevant information.

Whether a child speaks to a general officer, youth police, prosecutor or a judge, the information about his/her rights and the actions the child can take must be explained to a child. Information can also be provided by the child's attorney. A child is provided with information about his/her rights at all stages of the investigation[61]. The child's contact in the police is usually the police officer from the child protection division (if the child was a victim of a serious crime) or the investigator who investigates the particular crime (usually specialised in crimes involving children). They are under obligation to inform him/her of all his/her rights[62]. In addition, the officer that records an incident must fill in a standard form, which also requires the police officer to inform the victim and get his/her signature for the proof of provision of information. In practice, the child will also be in close contact with a child protection worker or social worker who will assist the child in understanding the information given to him/her. At a later stage, when the police are questioning the victim, the rights are also listed in the form of the minutes of the interview[63]. Victims are routinely informed of the dates of the hearings and receive a copy of the court judgement. The Code of Criminal Procedure does not explicitly provide the victim with the right to be consistently informed of the stages of proceedings and the amount and content of the information they receive depends largely on their own initiative to contact the prosecutor[64]. However, the guidelines for the police state that the child is informed of a procedural act, i.e. of any act concerning the child.

Parents must be informed about the investigation as well, since the parent acts as the child's legal representative before the judicial authorities. If the parent is a suspect, he/she might not be immediately informed. Instead, the child is immediately referred to the child protection worker or social worker[65].

Information is always provided in a language that a child can understand. For example, if a child is Russian-speaking, then the information is provided in Russian. It is possible to conduct proceedings in a language that all those concerned agree with[66]. Alternatively, a translator/interpreter is guaranteed.

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[58] Code of Criminal Procedure, § 38 (4).

[59] Code of Criminal Procedure, §§ 38 and 224.

[60] Also confirmed by information collected through consultation with national stakeholder.

[61] Public Prosecutor's Office, Guidelines on the special treatment of children in criminal proceedings, 2007.

[62] Information collected through consultation with national stakeholder.

[63] Information collected through consultation with national stakeholder.

[64] Information collected through consultation with national stakeholder. See also A. Pere, *Kannatanute õigused kriminaalmenetluses* (Victims Rights in Criminal Proceedings), Master's thesis (University of Tartu, Faculty of Law, 2012), p 23.

[65] Information collected through consultation with national stakeholder.

[66] Code of Criminal Procedure, § 10(2).

2.1.3 Protection from harm and protection of private and family life

From out-of-court protection measures, the child can be protected from harm in two ways: he/she can be removed from home and one or both of the parents (if the danger eminates from there)[67] or he/she can be protected with any of the preventive measures provided for in the Code of Criminal Procedure, including a restraining order. Additionally there is an even more intrusive possibility for protection under the Witness Protection Act (WPA)[68].

First, the child can be separated from parents if he/she is endangered by abuse of the parent's right to custody or conduct of a third person and the parents do not wish or are unable to prevent danger[69]. In general, the court must sanction the separation, however, if "leaving a child in his or her family endangers the health or life of the child, a rural municipality government or city government may separate the child from the family before a court ruling is made"[70]. In that case, they must promptly submit an application to a court for the imposition of the measure.

Second, a child victim can be protected during the criminal proceedings by imposing preventive measures on the suspect or accused, such as prohibition to leave their residence, custody of up to 6 months or a temporary restraining order[71]. A restraining order could also be applied along with the court judgment convicting the accused person[72]. Neither the temporary nor post-conviction restraining order can be applied if this means that the suspect or convicted person cannot enter the home of which he/she is an owner. It means that if the place is owned by the suspect or convicted person and the child still lives there, the restraining order is not possible. The child would have to move away.

Third, when there is an actual danger of falling under unlawful influence or risking his/her health or property interests, a victim is entitled to the out-of-court measures provided by the Witness Protection Act. The measures include physical protection of the protected person and his/her property, secret relocation, creation of new identity etc[73]. However, it has been argued that in practice the measures of witness protection are costly and there is a need for regulation on separate victim protection measures which would include relocation, physical protection and other relevant instruments but would be subject to less strict procedural requirements[74].

In-court measures include protection while giving testimony (for that, see section 2.1.5 below). A child victim has the possibility to refuse to testify for personal reasons[75]. In addition, the judge can order the hearing to be partially or fully closed when a child is involved in the hearing in any way[76]. The parties to the proceeding can submit a request for a closed hearing if the judge does not decide that by him/herself. The court may permit an official of an investigative body, a court official, witness, qualified person, expert, interpreter/translator and a person close to the accused for the purposes of observing a court session held in camera.

Personal data of the child is protected with the Personal Data Protection Act (PDPA)[77]. It applies to any processors of personal data, either a public or private institution – which in this context are the persons included and involved in the case concerning a child. The Act provides for the protection of sensitive personal data, which also includes information on

[67] Child Protection Act, §§ 32, 64.

[68] *Tunnistajakaitse seadus*, RT I 2005, 39, 307 … RT I, 29.06.2012, 2.

[69] Family Law Act, §§ 134-135. See also § 25 of the Social Welfare Act.

[70] Family Law Act, § 135 (4).

[71] Code of Criminal Procedure, respectively § 128, § 130 and § 141^1.

[72] Code of Criminal Procedure, § 310^1.

[73] Witness Protection Act, § 18.

[74] Information collected through consultation with national stakeholder.

[75] Code of Criminal Procedure, § 71.

[76] Code of Criminal Procedure, § 12.

[77] *Isikuandmete kaitse seadus*, RT I 2007, 24, 127 … RT I, 30.12.2010, 2.

being a victim or a perpetrator of an offence prior to the respective public court hearing (§ 4 (2)).

A child's personal data can be shared with any local government, the police, prosecutor or the Children's Ombudsman if it is necessary to help and assist the child[78]. There is no need for the child's or his/her parent's permission. These institutions can process personal data only if this is done in order to fulfil their public functions. Child protection and prevention and aversion of danger to persons are such functions. The transfer of sensitive data concerning the child by the police to social workers or child protection workers is further regulated by the guidelines adopted for the police[79]. The forwarding of information to any other organisation or institution requires permission from the child or his/her parents.

A child, as any other person, has the right to obtain information and personal data concerning him/her from any data processor, that is, any of the institutions mentioned above[80]. This right is restricted if this may damage rights and freedoms of other persons, endanger the protection of the confidentiality of the filiation of a child, hinder the prevention of a criminal offence or apprehension of a criminal offender, or complicate the ascertainment of the truth in a criminal proceeding[81].

The child's personal data must be protected by the data processor[82]. Supervision of the activities of the data processor is conducted by the Data Protection Inspectorate. The child can turn to the Inspectorate if he/she believes the data protection rules have been violated[83]. The Inspectorate can order the violation to be terminated and also fine the violator up to 32,000 euros. The child can also claim damages from the violator through court[84].

Additionally, the Code of Criminal Procedure also includes rules of confidentiality. None of the rules are specific to a child victim. The general rule on pre-trial proceedings is that information concerning these proceedings can only be disclosed with the permission of the prosecutor and only if it does not violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data[85]. If the rule is violated, the discloser can be fined. In regard to trial proceedings, the law requires that any data revealed during a trial in camera is not disclosed[86]. Victims' and any other persons' name (other than the convicted person) is replaced with initials and use of their personal data is avoided or if this is not possible then only introduction and resolution of the judgment is published[87].

The child's lawyer is under obligation not to disclose any information he/she has received through his/her encounters with the child[88]. Judges and prosecutors are additionally bound by the Estonian Judges' Code of Ethics and the Estonian Prosecutors' Code of Ethics[89].

[78] Informing about a child in need of help and data protection, 2012 (*Abivajavast lapsest teatamine ja* Children's Ombudsman, *Abivajavast lapsest teatamine ja andmekaitse. Juhend* (Reporting of child in need of assistance and data protection. Guidelines), 2011, pp 14-15.

[79] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board; and Guidelines on reacting to incidents of violence in close relationships, organisation of information exchange connected to that and the procedure of transferring information to victim support (*Lähisuhtevägivalla juhtumitele reageerimise, sellega seotud infovahetuse korraldamise juhend ja ohvriabile info edastamise kord*), Decree n. 487 (17 November 2010) of the Director of the Police and Border Guard Board.

[80] Personal Data Protection Act, § 19.

[81] Personal Data Protection Act, § 20.

[82] Personal Data Protection Act, § 25.

[83] Personal Data Protection Act, § 22.

[84] Personal Data Protection Act, § 23.

[85] Code of Criminal Procedure, § 214.

[86] Code of Criminal Procedure, § 12 (4).

[87] Code of Criminal Procedure, § 408^1.

[88] Code of Criminal Procedure, § 72.

[89] Respectively Estonian court *en banc*, Estonian court *en banc*, Estonian Judges' Code of Ethics, and Prosecutors' Assembly, Estonian Prosecutors' Code of Ethics.

Specific guidelines also stipulate more detailed rules for police officers on what and how they can transfer information[90]. Additionally, the child is protected by professional confidentiality from having information on him/her revealed during his/her encouters with different professionals. Thus, religious ministers, lawyers and notaries, health care professionals and pharmacists and any other person who is under obligation to maintain a professional secret are under obligation to keep the professional secret concerning the child[91]. They are exempted from testifying in court but are not in any way prevented from notifying the appropriate authorities of a child in need or danger.

If the case is covered by the media, the prosecutor has the duty to remind the media to act according to the Code of Ethics of journalism[92]. This self-regulatory Code stipulates in point 3.6 that children must, in general, be interviewed in the presence of his/her parent or any adult responsible for him/her. Point 4.8 of the same Code states additionally that, as a general rule, child participants (victims, suspects and convicted offenders) should not be identified by the media. There are no sanctions against journalists not following the rules with the exception of a condemning ruling from the self-regulatory body.

2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

The law stipulates several rules aimed at ensuring swift proceedings at trial stage, although none of them are connected specifically with a child victim. For example, judges can handle only one criminal case at a time, except when a case that is added involves a child as a suspect[93], the case must be processed in one unit and as fast as possible. Any lawyer or prosecutor wilfully delaying the proceedings can be removed from the case[94]. If the case has been in the court's calendar for nine months and the court has not taken any meaningful step to speed up the proceedings, the parties can apply for a court measure to expedite the proceedings[95]. All of this is in line with policy documents (see above in chapter 1) setting faster proceedings as a goal[96].

The same policy documents also require faster pre-trial proceedings[97]. However, there are no legal measures on that. The Development Plan for Reducing Violence 2010-2014 does include annual monitoring of the length of the proceedings both at pre-trial and trial stage[98]. Furthermore, the guidelines for the police officers require all proceedings where a child is a suspect is to be concluded within three months (starting from first interrogation and ending with sending the case to the prosecutor)[99]. There is, however, no similar rule on proceedings where a child is a victim (or witness).

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[90] Procedure on reacting to the incidents of domestic violence, guidelines on the exchange of information in relation to that and forwarding information to victim support (*Lähisuhtevägivalla juhtumitele reageerimise, sellega seotud infovahetuse korraldamise juhendi ja ohvriabile info edastamise kord*), approved with the Decree n. 487 (17 November 2010) of the Director of the Police and Border Guard Board; and Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[91] Code of Criminal Procedure, §§ 41 and 72.

[92] Estonian Newspaper Association, The code of Ethics of the Estonian Press, p 3.6 is required to interview children only in the presence of an adult.

[93] Code of Criminal Procedure, § 286^1.

[94] Code of Criminal Procedure, § 267 (4^1).

[95] Code of Criminal Procedure, § 274^1.

[96] *Kriminaalpoliitika arengusuunad aastani 208*, 2010, pt 10, and Development Plan for Reducing Violence 2010-2014, adopted by the Government on 1 April 2010 with Decree n. 117, pt 6.3.

[97] *Kriminaalpoliitika arengusuunad aastani 2018* (Guidelines for Development of Criminal Policy until 2018), 2010, pt 25, and Development Plan for Reducing Violence 2010-2014, adopted by the Government on 1 April 2010 with Decree n. 117, pt 6.3.

[98] See the website of the Ministry of Justice for the monitoring reports: http://www.just.ee/kriminaalmenetlus.

[99] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board, pt 46.

Interviews with child victims are usually carried out in special interview rooms, which are furnished especially for children and have all the required video equipment[100]. All four prefectures now have such rooms as well as specially trained officers from the child protection division. These rooms are usually used to interview children who are victims of very serious crimes, such as sexual abuse. Other child victims are not necessarily interviewed in these rooms but, instead, in the offices of the police investigators. These children are dealt with by investigators from respective divisions who are specialised in crimes involving children and appropriately trained[101]. However, there are no specially equipped rooms in courts or in the Prosecutor's Offices. Thus, if a child must testify in court, he/she must do that in the open court room.

The law does not foresee any specific rules in regard to preparation of the child when attending proceedings. The prosecutor is responsible for the quality of the evidence, including the testimonies[102]. It is, therefore, primarily the prosecutor's responsibility to prepare the child victim for testimony in court but not in pre-trial proceedings. Indeed the Guidelines on special treatment of children in criminal proceedings recommend that the prosecutor prepares a child below 14 years of age with the assistance of a psychologist[103]. Considering that a child victim is routinely referred to the child protection worker or social worker, the preparation is usually done by them (see "Multidisciplinary approaches" under chapter 1). The police officers are also instructed to explain to the child his/her rights and the aim of every procedure in a manner understandable to a child[104]. Before a court hearing, the prosecutor explains to the child how the court proceeding is carried out, how the courtroom looks and what the rules are or takes the child to see the court room[105].

Inclusion of a child protection official, social worker, teacher or psychologist when questioning a child is allowed but not required[106]. Essentially these officials would be present at the questioning to support the child[107]. The law does not exclude anyone from being present when the child is interviewed but it is at the discretion of the police officer in the pre-trial stage to decide who to allow in the interview room. Indeed, parents are usually not allowed to participate in the interview but may be allowed to observe from an observation room[108]. In the pre-trial stage, there is no requirement for such inclusion if the police officer has received the necessary training to interview a child (see more below in 2.1.5).

In trial stage, there are no restrictions as to who can accompany the child unless the hearing is held in camera. In that case, the judge must explicitly decide to allow a social worker to stay with the child[109].

In order to minimise secondary victimisation, the interview of a child who is a victim of serious crime, such as sexual abuse, is usually recorded using audio-visual equipment. The recording is used in trial instead of summoning the child to the trial personally (see more details on that below in 2.1.5).

A victim is entitled to receive the following services[110].

[100] Information collected through consultation with national stakeholder.

[101] Collected through correspondence with stakeholder.

[102] S. Kask, *Lapstunnistaja erikohtlemine kriminaalmenetluses* (Special treatment of a child victim in criminal proceedings). *Magistritöö, Sotsiaaltöö instituut, Tallinna Ülikool*, 2011, p 32.

[103] Public Prosecutor's Office, Guidelines on the special treatment of children in criminal proceedings, 2007.

[104] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board, pt 6.

[105] Code of Criminal Procedure, § 287 (5).

[106] Code of Criminal Procedure, §§ 70, 290.

[107] Information collected through consultation with national stakeholder.

[108] Information collected through consultation with national stakeholder.

[109] Code of Criminal Procedure, § 12 (3).

[110] Victim Support Act, § 3.

- counselling, including receiving information on available assistance (e.g. psychological and other specialist assistance) and compensation from the State (for the costs of psychological counselling, and damages caused by crime) and assistance in applying for them;
- compensation from the State (for the costs of psychological counselling and damages caused by crime);
- assistance in dealing with any state and local institutions and other institutions providing necessary support to victims (e.g. NGOs providing shelter);
- guaranteeing safe accommodation, food, and access to necessary health care, providing necessary material assistance, psychological assistance, interpretation/translation for the provision of victim support services and other services necessary for physical and psychosocial rehabilitation.

In practice, the services provided to victims can include a variety of actions, including support during proceedings before and during trial and any other assistance after the trial[111]. All services are free of charge. All services (with the exception of the service in category 1) require a criminal investigation to be initiated in order for a victim to be entitled to them.

Different services are available depending on the specific category of victims:

- victims of non-violent crimes are entitled to all services except state compensation for damages caused by it and compensation for psychological assistance is limited;
- victims of violent crimes are additionally entitled to state compensation (incl. compensation of health care and funeral costs) and compensation for psychological assistance is more extensive although not unlimited;
- victims of human trafficking and sexually abused children have an additional right to receive the services in category 4.

The Victim Support Act regulates the provision of victim support services as coordinated by the Social Insurance Board. This means that the primary providers of the services are victim support officers at state level. However, the social workers are similarly required to provide a person with the necessary information and to assist in solving specific social problems to help the person cope. Thus the social worker can provide the necessary counselling and also help the victim to fill in the necessary documentation for different forms of compensation. This is important as child victims are referred to social workers rather than to victim support officers.

Conciliation services can only be conducted by the victim support officer[112]. The prosecutor may send the case involving a child victim to conciliation proceedings with the objective of achieving conciliation between the suspect/accused and the victim and remedying the damage caused by the criminal offence. Conciliation is not permitted when the offence has been committed by an adult against a child but also in cases of torture, human trafficking, abduction, offences against sexual self-determination, extortion or aggravated breach of public order, or when it has resulted in a person's death[113]. The only child-specific rule on conciliation concerns consent whereby the prosecutor needs consent from the child as well as his/her guardian[114]. There are no other rules on the child's role in the conciliation. The process is intentionally informal and involves only a few pre-set rules on procedure.

[111] Information collected through consultation with national stakeholder.

[112] Victim Support Act, §§ 6^3-6^4 and *Lepitusmenetluse läbiviimise kord* (Procedure for conducting conciliation proceedings), Decree n. 188 of the Government RT I 2007, 46, 327.

[113] Code of Criminal Procedure, § 203^1.

[114] Code of Criminal Procedure, § 203^2.

2.1.5 Protecting the child during interviews and when giving testimony

A child has the right to refuse to testify against a person close to him/her, such as a parent, grandparent, sibling etc[115]. The investigator is required to explain to the child his/her rights, including the right to refuse to testify[116]. When an interrogation is made on location (where the investigation is carried out) or just after the act (only in misdemeanour cases), the interrogator must provide the child with information on his/her rights[117]. This is done orally but the minutes of the interrogation also include the list of the rights.

There is no minimum age for children to be heard during criminal proceedings. However, the rules on questioning children differ depending on the age of the child or the crime he/she has suffered[118]. Firstly, if the questioning police officer has not received appropriate training, he/she must involve either a child protection worker, social worker, pedagogue or a psychologist when questioning the child[119]. This requirement applies if the child is younger than 10 years of age and repeated interrogation may have an effect on the child's psyche or he/she is younger than 14 years of age and the interrogation concerns domestic violence or sexual mistreatment[120]. The court may involve the above-mentioned experts in the questioning of any child below the age of 14 and may allow him/her to pose questions to the child[121].

Secondly, to prevent repeated victimisation, the interrogation of the child may be video recorded[122]. It is compulsory if the prosecutor wants to use the testimony in court and repeated questioning in court would be out of question due to his/her age or mental state. If the suspect or his/her defence lawyer wants to ask questions from the victim or witness after reviewing the video they must apply for it in the form of application to the prosecutor[123]. The court may allow the use of the video during proceedings if the defence had a chance to pose questions and the child is younger than 10 years of age and repeated interrogation may have an effect on the child's psyche or the child is younger than 14 years of age and the interrogation is on domestic violence or sexual mistreatment[124]. If the court still finds it necessary to pose additional questions, it may do so on its own initiative or based on written questions from either party to the proceedings[125].

Thirdly, cross-examination cannot be used during court proceedings when a child below 14 years is questioned[126]. A judge asks the child to tell the court everything he/she knows about the criminal matter[127]. After the child has given testimony, he/she is questioned by the prosecutor and defence, while the accused may pose his/her questions through the defence[128]. In a case where a child is involved, the proceeding is carried out in the most child-friendly manner possible, e.g. prosecutors and judges often use a visor to prevent possible eye-contact between parties[129]. The court will leave out questions that are not allowed or relevant and may allow direct questions[130]. Taking into account the mental or

[115] Code of Criminal Procedure, § 71.
[116] Code of Criminal Procedure, § 38.
[117] Code of Misdemeanour Procedure, § 70.
[118] Code of Criminal Procedure, §§ 70, 290.
[119] Code of Criminal Procedure, § 70 (1).
[120] Code of Criminal Procedure, § 70 (2).
[121] Code of Criminal Procedure, § 290 (2).
[122] Code of Criminal Procedure, § 70 (3).
[123] Code of Criminal Procedure, § 70 (4).
[124] Code of Criminal Procedure, § 290^1 (1).
[125] Code of Criminal Procedure, § 290^1 (2).
[126] Code of Criminal Procedure, § 290 (1).
[127] Code of Criminal Procedure, § 290 (3).
[128] Code of Criminal Procedure, § 290 (4).
[129] Information collected through consultation with national stakeholder.
[130] Code of Criminal Procedure, § 290 (5).

physical state or age of the child, the court may terminate the questioning by the parties and question him/her on their own initiative or based on written questions from either party to the proceedings[131]. Finally, after the presence of the child is no longer necessary, the court removes him/her from the court session[132].

In-court measures of protection that are applicable to all victims while testifying also include telehearings and the use of a partition in court between the child and the perpetrator[133]. A tele-hearing is a hearing conducted by phone or some other technical solution and broadcasted to the courtroom. It requires the consent of the accused and may therefore not be a particularly effective form of protection. Therefore tele-hearings are more often used as a measure of convenience than of protection[134].

There are no limits to the number of support persons attending the trial, although active assistance of the child requires the judge's approval (see more above under 2.1.4). However, the child has the right to the assistance of an interpreter/translator throughout the criminal proceedings and the provision of such assistance is not dependent on a request from the child[135]. Neither the desk research nor the interviews revealed an existence of any printed material designated to assist the child.

2.1.6 Right to be heard and to participate in criminal proceedings

There is no minimum age limit set for a child to be heard. The investigator, prosecutor and judge can hear a child of any age, However, the Guidelines on the special treatment of children in criminal proceedings suggests that, whenever possible, a child below 10 years of age would not be questioned in court because the atmosphere in the court room would not allow the child to give objective statements.

The same rules apply to children as to adults with regard to their participation in criminal proceedings. The law provides for the victim's right to be heard and to participate but also an obligation to participate. The specific participatory rights are the right to[136]:

- contest a refusal to commence or a termination of criminal proceedings;
- file civil action through an investigative body or the Prosecutor's Office;
- give or refuse to give testimony;
- submit evidence;
- submit requests and complaints;
- examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, where such statements are recorded in the minutes;
- examine the materials of the criminal file, take excerpts or ask for copies to be made (albeit for a fee);
- participate in the court hearing;
- give consent to the application of settlement proceedings or refuse to give such consent;
- present an opinion concerning the charges and punishment and the damage set out in the charges and the civil action;

[131] Code of Criminal Procedure, § 290 (6).
[132] Code of Criminal Procedure, § 290 (7).
[133] Code of Criminal Procedure, respectively §§ 69 and 287 (5).
[134] Information collected through consultation with national stakeholder.
[135] Code of Criminal Procedure, § 10 (2).
[136] Code of Criminal Procedure, § 38.

- give consent to the application of a temporary restraining order and request the application of a restraining order (there is no stipulate obligation to provide information on any other protection measure).

The law is largely silent as to the child-specific right to be heard or to participate in his/her own right or through a legal representative specifically in criminal proceedings. For example, the law does not require a child victim to be appointed with a legal counsel for the duration of the criminal proceedings. According to the rules of active legal capacity, the child is represented by his/her parent or guardian. Therefore, everything that the victim must be informed about must also reach the parent. The Guidelines on the special treatment of children in criminal proceedings do however offer specific rules requiring the parent to be informed of the child's whereabouts, e.g. when the child is taken to the police department for questioning[137]. The law provides for only one child-specific rule whereby the summons to court are delivered to a child who is at least 14 years old[138]. The invitation to a child younger than 14 is delivered to his/her parent or other legal representative. Similarly, there is only one specific limitation to the child's right to participation, which is that he/she could be removed from a court session if it is deemed necessary for the protection of his/her interests[139]. In all other proceedings, the general rules of legal representation of a child apply when it comes to participation and the right to be heard.

Guidelines for police officers require them to take into account the child's age, gender and any other individual characteristic of the child[140]. The police must explain to the child his/her rights and role in the proceedings in an understandable manner, giving due consideration to possible post-traumatic reactions and making sure that he/she has understood everything.

2.1.7 Right to legal counsel, legal assistance and representation

The child victim has the right to a legal counsel[141]. In practice, the lawyer would be chosen by the parent if the lawyer is not through state legal aid[142]. The parent also signs the agreement for legal services but the Power of Attorney is signed both by the parent and the child. The victim has a right to a lawyer throughout the criminal proceedings, starting from the reporting of the crime or first interrogation (if it was not the victim who reported the crime) up to the execution of the judgment. This also includes the decision to terminate the criminal case and send it to the Juvenile Committee.

The assistance of the legal counsel is not free of charge but the victim can apply for state legal aid or, if the judge finds that the legal counsel is essential for the protection of the victim's interests, he/she may decide to grant state legal aid to the person on their own initiative[143]. In cases where the legal counsel's assistance is granted through state legal aid, the child cannot choose the counsel on his/her own. The lawyer will be appointed through an automatic system managed by the Bar's Association. If the victim already has an agreement with a lawyer for the provision of legal assistance, the court will appoint that lawyer as the provider of legal assistance.

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[137] *Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend* (Guidelines on treating children that have committed a crime or children who need support), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board; and Public Prosecutor's Office, Guidelines on the special treatment of children in criminal proceedings, 2007.

[138] Code of Criminal Procedure, § 165 (2).

[139] Code of Criminal Procedure, § 11 (4).

[140] *Lähisuhtevägivalla juhtumitele reageerimise, sellega seotud infovahetuse korraldamise juhendi ja ohvriabile info edastamise kord* (Procedure on reacting to incidents of domestic violence, guidelines on the exchange of information in relation to that and forwarding information to victim support), approved with the Decree n. 487 (17 November 2010) of the Director of the Police and Border Guard Board, and *Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend* (Guidelines on treating children that have committed a crime or children who need support), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[141] Code of Criminal Procedure, § 41.

[142] Information collected through consultation with national stakeholder.

[143] Code of Criminal Procedure, § 41 (3).

State legal aid is provided based on the State Legal Aid Act (SLAA)[144]. The Act allows the appointment of a lawyer to a resident or citizen of Estonia or any other EU Member State if he/she is unable to pay for competent legal services due to their financial situation at the time. Or if he/she is able to pay for legal services only partially or in instalments or if his/her financial situation does not allow for meeting basic subsistence needs after paying for legal services (§ 6). The victim must submit a written application and notice on his financial state to the court conducting the case or to the county court under whose jurisdiction the case falls during the preliminary proceedings phase. However, the application must be either in Estonian or in English; an application in any other language is not reviewed.

State legal aid can be provided for:

- civil, criminal and administrative proceedings;
- pre-trial, execution and administrative proceedings;
- preparing legal documentation and other legal counselling or representation.

The court has great discretion when deciding on the granting of state legal aid. First, the court will decide whether to grant state legal aid. Second, the court decides whether and to what extent the victim is required to pay the state back the costs of legal assistance. Thus, even if the victim is granted state legal aid, he/she may be under obligation to pay it back in part or even in full. The decision is dependent upon the financial situation of an applicant, nature of the case, the category of state legal aid applied for and the estimated time of providing state legal aid. The refusal to grant state legal aid is formalised in a court ruling. Appeals may be filed against that ruling[145].

This way of getting a lawyer is seldom used as in the majority of cases, the victims consider their interests sufficiently represented by the state (prosecutor) and applications for state legal aid are routinely denied when there are insufficient grounds (e.g. the case is not particularly complicated or the victim could afford a representative him or herself)[146].

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2.1.8 Remedies or compensation exist for violation of rights and failure to act

None of the rules on remedies or compensation for violation of rights and failure to act include child-specific aspects. The general rules on criminal procedure and active legal capacity of a child apply. No specific support for a child victim is foreseen, with the exception of the victim support officer, child protection worker or social worker. They can always provide support but they are not legal experts.

A child victim cannot submit complaints and appeals personally. It can be done either through a legal counsel or by the parent. The counsel has a mandate to take all necessary steps to claim remedies and compensation. The child's legal representative or guardian has the mandate due to the limited active legal capacity of the child.

The child victim has the right to contest the refusal to commence or the decision to terminate criminal proceedings[148]. At first, an appeal is filed to the Prosecutor's Office. In cases where the latter dismisses the appeal, the victim can turn to the Public Prosecutor's Office[149]. If the appeal is dismissed by an order of the Public Prosecutor's Office, the person who submitted

[144] *Riigi õigusabi seadus* (State Legal Aid Act), RT I 2004, 56, 403 … RT I, 18.04.2013, 2.

[145] See the Estonian Bar Society: https://www.advokatuur.ee/eng/state-legal-aid.

[146] Information collected through consultation with national stakeholder.

[147] Information collected through consultation with national stakeholder.

[148] Code of Criminal Procedure, §§ 38, 207.

[149] Code of Criminal Procedure, §§ 207-208.

the appeal or request may contest the order in a circuit court through an advocate within one month of the receipt of a copy of the order. The decision of the circuit court is final. The appeals filed in the first two instances are free of formal requirements but subject to termination dates of 10 days from the delivery of the order on the decision not to prosecute.

The victim (in this particular case – the child) has the right to submit any requests or complaints, including the right to complain about the actions of the police officer, prosecutor or court. Complaints about the attitudes or conduct by any of these persons can be submitted to their respective supervisors[150]. Complaints about the violation of procedural rules by the police or prosecutor's office can be submitted to the prosecutor's office and complaints about the prosecutor can be submitted to the Public Prosecutor's Office[151]. Decisions on the complaints can be appealed in the county court, which gives a final ruling. Appeals on the violation of procedural rules by the county court can be submitted to a court of higher instance[152].

The victim, in this case the child victim's parent, can appeal the court judgment[153]. He/she must express his/her wish to submit the appeal within seven days, the appeal itself must be submitted within 14 days of the proclamation of the appealable judgment. Cassation on the judgment by the circuit court can be submitted within 30 days, provided that the wish to submit the cassation was expressed within seven days of the proclamation of the judgment by the circuit court[154]. Cassation can be submitted by the child only through his/her lawyer who is a member of the Estonian Bar Association.

Either upon the request from the child or on its own initiative, the court will remove the legal counsel as a provider of state legal aid if he/she has demonstrated incompetence or negligence[155]. Additionally, the child could turn to the Court of Honour of the Bar Association to initiate proceedings of the Court of Honour against the lawyer[156]. Damages from the actions of the lawyer can be claimed through a civil claim[157].

In principle, the child could also claim damages for the actions of the investigator, prosecutor and court. The conditions and procedure are set out in the State Liability Act[158].

The victim has two alternative ways to receive compensation for a crime. First, he/she can apply for compensation from the State to the extent stipulated in the Victim Support Act (VSA). Second, he/she can apply for compensation of damages from the perpetrator directly in the course of court proceedings.

The child can apply for compensation from the State directly, though the usual rules of the child's active legal representation apply. Different categories of victims are entitled to compensation of different amounts:

- victims of non-violent crimes are entitled to compensation for psychological assistance to the total of one minimum monthy wage (from 1 January 2012, it amounts to 290 euros);
- victims of violent crimes (incl. victims of human trafficking and sexually abused children) are entitled to state compensation of damages caused by the inability to work, by the person's death, of health care, of mechanisms replacing different bodily functions (such as proethestics, contact lenses) and of funeral costs. Moral damages are not covered. The amount of this compensation is only 80% of all of the above costs.

[150] Police and Border Guard Act, § 83, and *Prokuratuuriseadus* (Prosecutor's Office Act), RT I 1998, 41, 625 … RT I, 21.12.2012, 1, § 9.

[151] §§ 228ff of the Code of Criminal Procedure.

[152] §§ 383 of the Code of Criminal Procedure.

[153] Code of Criminal Procedure, §§ 318ff.

[154] Code of Criminal Procedure, §§ 344ff.

[155] State Legal Aid Act, § 20 (3^1).

[156] *Advokatuuriseadus* (Bar Association Act), RT I 2001, 36, 201 … RT I, 21.12.2012, 1, § 16.

[157] *Võlaõigusseadus* (Law of Obligations Act), RT I 2001, 81, 487 … RT I, 11.06.2013, 3, § 100ff.

[158] *Riigivastutuse seadus* (State Liability Act), RT I 2001, 47, 260 … RT I, 13.09.2011, 9.

Compensation paid to the victim by the State is later recovered by the State from the perpetrator[159].

Additionally, the victim can file a civil action for compensation from the offender either personally or though a representative. The compensation can also include moral damages. The usual rules on the child's active legal representation apply. The action can be filed in the course of the criminal proceedings through the investigative body or the prosecutor, as well as during the court or conciliation proceedings[160].

When submitted during the pre-trial stage, it is submitted to the prosecutor who sends it to the court along with the statement of charges[161]. If the prosecutor dismisses the request, the decision is drawn up as a regulation[162]. This does not preclude the victim from filing the civil action directly to the criminal court. The decision on the civil claim is made by the court along with the criminal case.

If the victim had not filed the action during the pre-trial stage, it must be submitted to the prosecutor within 10 days of the date of submission of the criminal file to the participants for examination[163]. If the victim failed to file the civil action by that deadline, the person may claim compensation in a civil court under the civil procedural rules[164]. The prosecutor may extend the deadline if the case is particularly voluminous or complicated. The civil claims should, in general, follow the requirements set out in the Code of Civil Procedure[165].

2.2 The child as a witness

As already mentioned in section 2.1, many of the procedural rules applying to a child during criminal procedures are not child-specific. There are only a few procedural rules that apply specifically to a child, either as a victim or witness. In other cases, the general rules applicable to adults apply. It must also be emphasised that the child witness has limited active legal capacity, similar to the child victim. Therefore, it is the parent or other legal guardian who represents the child witness and acts on his/her behalf.

2.2.1 Reporting a crime

There are no specific provisions for children to report a crime as a witness. The child witness can report a crime in the same ways as a child victim. See Section 2.1.1.

2.2.2 Provision of information

See Section 2.1.2 on the content of information and on the manner in which the child witness must be informed. The only difference is that the obligation to inform the witness, who is a child, of his/her rights and obligations is stipulated in § 68 of the Code of Criminal Procedure.

2.2.3 Protection from harm and protection of private and family life

See section 2.1.3 on measures designed to protect a witness, child or otherwise, including the rules on data protection. In addition to these measures equally applicable to victims and witnesses, the latter can also be protected by applying anonymity[166]. The court can order a witness to be declared anonymous if this is warranted by the gravity of a criminal offence or the exceptional circumstances of the situation. The child will then be given a fictitious name.

[159] Victim Support Act, § 31.

[160] Code of Criminal Procedure, respectively § 38 (1.2) and § 240.

[161] Code of Criminal Procedure, § 226 (7).

[162] Code of Criminal Procedure, § 225 (3).

[163] Code of Criminal Procedure, § 225 (1).

[164] Code of Criminal Procedure, §§ 225 (1^1) and 274 (4).

[165] *Tsiviilkohtumenetluse seadustik* (Code of Civil Procedure), RT I 2005, 26, 197... RT I, 05.04.2013, §§ 338 and 363.

[166] Code of Criminal Procedure, § 67.

In court, he/she will testify over the telephone using voice distortion equipment, if necessary, based on the tele-hearing procedure (see section 2.1.5).

2.2.4 Minimising the burden of proceedings and ensuring a child-friendly environment

See section 2.1.4 on measures adopted to ensure that proceedings are without undue delay, that the environment where the child is conducting the proceedings is child-friendly and how the child is prepared and supported.

The only significant difference between the child victim and the child witness is the support provided to the child to cope with the proceedings and the aftermath of the crime. Unlike the child victim, the witness is not entitled to the compensation of costs related to coping as provided by the Victim Support Act. Although the act is wide in its scope – it covers those who have suffered injury of any kind due to negligence, mistreatment or physical, mental or sexual abuse – the only service under VSA that is equally available to such a wide range of persons is counselling. A child witness can easily fall under the scope of the Act but he/she would only be able to receive counselling. Any other assistance, such as psychological, emotional and practical support, would have to be applied for through the general health care system and services provided by local government or non-governmental organisations.

2.2.5 Protecting the child during interviews and when giving testimony

See section 2.1.5. All the rules applicable to a child victim are, in fact, rules on a child witness.

2.2.6 Right to be heard and to participate in criminal proceedings

See section 2.1.6 on the child's right to be heard and to participate. However, a child witness's right to participate is considerably more restricted. A witness, child or adult, does not have the participatory rights parallel to those of the victim as listed in § 38 of the Code of Criminal Procedure. First, the witness can provide a statement and testify on any aspect concerning the crime. Second, the witness can submit any documents in support of his/her testimony. Third, the witness can also make certain requests and complaints, such as the request to be questioned through telehearing or complaints about the conduct of or violation of procedural rules by a police officer or prosecutor.

2.2.7 Right to legal counsel, legal assistance and representation

Similarly to a child victim, a witness has a right to a legal counsel[167]. The legal counsel can be present at the interrogation in the pre-trial proceedings and may intervene if witness's rights are being violated. The legal counsel's assistance is not guaranteed to be provided free of charge but the witness can apply for state legal aid (for rules on state legal aid see section 2.1.7).

2.2.8 Remedies or compensation for violation of rights and failure to act

See section 2.1.8 on remedies for violation of rights and failure to act by a police officer, prosecutor or court and also the legal counsel. The witness, however, does not have the right to claim damages from the perpetrator of the crime. Only the victim has such a right.

2.3 The child as a suspect/ defendant

The legal capacity of the child suspect/accused/convict is ambiguous. In principle, the child does not have active legal capacity and his/her interests must be protected by the legal guardian (see sections 2.1. and 2.2). However, when the child is a suspect/defendant in criminal proceedings, he/she should have independent capacity to some extent. The law and different guidelines are silent on the matter. In practice, the defence lawyer acts on behalf of

[167] Code of Criminal Procedure, § 67[1].

a child and not through the legal guardian[168]. The requirement for a parent to sign a procedural document is explicitly provided for only in cases of a conciliation agreement.

2.3.1 Age of criminal responsibility

The age of criminal responsibility in Estonia is 14[169]. Any criminal activity by a child under 14 years old is dealt with by a Juvenile Committee, a quasi-judicial body (see above in the overview section 1). The Juvenile Committees can only review cases of children up to 18 years of age. For children between the ages of 14 and 18, courts are competent to hear the case. However, if the prosecutor, court or, in case of a misdemeanour, also an extra-judicial body (either a civil servant from an executive authority, e.g. a police officer, or from a local authority) finds that alternative measures are better suited, then the criminal proceedings are terminated or not even started[170]. The Guidelines on the special treatment of children in criminal proceedings stipulates that a child up to 17 years old should, in general, be subject to a Juvenile Committee but if the child has committed a first degree crime (e.g. killing or murder), he/she would be sent to a Juvenile Committee only under exceptional circumstances.

Arrest as a preventive measure in pre-trial proceedings and imprisonment as a punishment can be ordered against children. Another type of deprivation of liberty is the child's placement in a school for students who need special treatment due to behavioural problems. The sanction can be applied to children over 12 years of age and only under special circumstance to children aged 10 and above[171].

2.3.2 Provision of information

A child suspect must be informed of his/her rights and obligations immediately (see section 2.3.3 below for the rights)[172]. An appropriate note is made in the minutes of the proceeding. The police officers in particular are required to explain to the child the nature of all procedures[173].

The Guidelines on the special treatment of children in criminal proceedings require the investigator or prosecutor to ensure that all proceedings conducted with the child are done with due consideration to his/her age and best interests[174]. Parents must be informed about the investigation as well, since the parent is the child's legal representative. The Guidelines on children specifically require legal guardians to be informed of every restriction on the child's freedom of movement[175].

Information is always provided in a language that a child can understand. For example, if a child is Russian-speaking, the information is provided in Russian. Proceedings can be conducted in a language that all those concerned agree with[176]. Alternatively, a translator/interpreter is guaranteed.

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[168] Information collected through consultation with national stakeholder.

[169] Penal Code, § 33.

[170] Code of Criminal Procedure, §§ 201, 274, 308, Juvenile Sanctions Act, § 1, Code of Misdemeanour Procedure, § 30.

[171] Juvenile Sanctions Act, § 6.

[172] Code of Criminal Procedure, § 33.

[173] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[174] Also Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[175] Also Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[176] Code of Criminal Procedure, § 10 (2).

2.3.3 Immediate actions following first contact with the police or other relevant authority

As stated above in 2.3.2, the child is informed of his/her rights immediately, including his/her right to refuse to make a statement if this could incriminate him/her and that a statement may be used against them[177]. A child has an automatic right to a legal defence. Interrogation would then be postponed to ensure that right[178].

Although the law is largely silent on the matter, the Guidelines on children stipulate several rules requiring information to be given to legal guardians or an adult family member[179]. Thus the police must inform them of all proceedings made with the child on the location of the crime. In fact, it is stated in the form filled in on the proceeding. Guardians are also informed if it is necessary to bring the child to the police department to conduct necessary proceedings. Moreover, they must be informed of every restriction to the child's freedom of movement, such as detention on suspicion of a criminal offence, compelled attendance, and preventive arrest[180]. The child has a chance to inform at least one close person, e.g. a family member, of the detainment through an investigator[181]. The Guidelines require such notification to be made immediately.

The testimony by the child is signed by the child himself/herself.

A child should be informed in a language he/she understands. Criminal proceedings can be conducted in a language that every party to the proceeding understands[182]. The investigating agency must provide a child with an interpreter if needed. Interrogation would then be postponed to ensure that right[183].

There are no child-specific time limits to detention. The general rules apply. Thus, detention of a suspect and compelled attendance (delivery of the person if the person has not come on his/her own will) cannot exceed 48 hours[184]. Detention as a preventive measure cannot exceed six months, unless the case is complicated, time-consuming or in need of international cooperation, in which case the period can be prolonged[185]. The Guidelines on children, however, state that the detainment of a child should, in general, not exceed two months[186].

2.3.4 Conditions for pre-trial detention/ custody

The Code of Criminal Procedure does not provide for any child-specific modifications for the general rules on the procedure of applying detention or on the conditions of detention. The modifications are suggested by respective guidelines for the police and prosecutors[187].

The guidelines require any detainment to be done only as a last resort. Thus a child should be detained as a suspect only if the necessary proceedings cannot be conducted at the

[177] Code of Criminal Procedure, §§ 34 and 71.

[178] Code of Criminal Procedure, § 34.

[179] Also Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[180] Also stipulated in the Child Protection Act, § 36.

[181] Code of Criminal Procedure, § 217.

[182] Code of Criminal Procedure, § 10.

[183] Code of Criminal Procedure, § 34.

[184] Code of Criminal Procedure, respectively §§ 217 and 139.

[185] Code of Criminal Procedure, § 130.

[186] Also Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[187] Also Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board; and Public Prosecutor's Office, Guidelines on the special treatment of children in criminal proceedings, 2007.

location. Similarly, any detention as a preventive measure should be used only in exceptional circumstances. The guidelines and the Child Protection Act also instruct that a teacher or psychologist and a physician must be asked for an opinion on the matter[188].

When a child is detained as a suspect[189], the investigator informs him/her of his/her rights and obligations and prepares a report on detention. The investigator interrogates him/her immediately after the legal defence has arrived. If the prosecutor is convinced of the need to keep the child in custody, he/she will submit an application for an arrest warrant and, within 48 hours of the child's detention as a suspect, bring him/her before a preliminary investigation judge. Otherwise the child is released immediately.

A child is detained as a measure of compelled attendance if he/she has failed to appear based on the summons or has refused to come voluntarily at the order of the investigator or prosecutor, there is a reason to believe that he/she would abscond from the proceedings, or the child would abscond from the execution of a court judgment[190]. Detainment is based on the order of the prosecutor or court ruling, depending on where he/she is compelled to appear. The order is executed by the police.

Detention as a preventive measure is based on a court order and it may but does not necessarily immediately follow the initial detention as a suspect[191]. The prosecutor submits an application for an arrest warrant and the court rules on it. The suspect/accused child is taken to the judge along with his/her legal defence. The judge talks to the child to verify the underlying reasons for the detention. The judge makes a ruling on whether the detention is justified, in which case the judge notifies persons close to the child and his/her educational institution, or not. The child can appeal the ruling on detainment within 10 days. The child can request for replacement of the detention with bail or electronic surveillance.

The Child Protection Act requires a child to be treated in a manner appropriate for a child, without harm to his or her dignity when detained[192]. Children must be held separately from adults (when in detention). Additionally, the guidelines on children require children of a different gender to be held separately with the exception of siblings if they are provided with sufficient privacy for resting and hygienic procedures[193]. They must have free access to their guardians and other persons close to them. The child must not be deprived of living and developmental conditions appropriate to the age of the child[194]. The child must also be guaranteed nutritious food and requisite medical and other assistance. These rules are also reflected in the Guidelines on children. Finally, the Imprisonment Act stipulates that a child who has spent more than a month in pre-trial detention must be able to continue his/her general education[195].

2.3.5 Protection of private and family life

See section 2.1.3 on the protection of personal data and from the media. The same rules that apply to child victims and witnesses, also apply to child suspects and convicts. It must be emphasised, in particular, that the child's name must be kept out of public documents at all times, including when publishing the date and location of the court session, the date when the judgment is pronounced, and when the judgment or ruling has entered into force. The child's name is replaced by initials and a personal identification code or date of birth is replaced by characters (usually 'x'). There is only one exception: if the convicting judgment is

[188] § 35.

[189] Code of Criminal Procedure, § 217.

[190] Code of Criminal Procedure, § 139.

[191] Code of Criminal Procedure, §§ 130-137[1].

[192] § 37.

[193] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board.

[194] Child Protection Act, § 36 (2).

[195] *Vangistusseadus* (Imprisonment Act), RT I 2000, 58, 376 … RT I, 05.07.2013, 2, Child Protection Act, § 93 (4).

already a third conviction, in which case the published judgment will reflect the identity of the convicted child[196], the names and other personal data of other persons are replaced with initials or characters. A decision will never disclose the residence of any person.

The judge can order the hearing to be partially or fully closed when a child is involved in the hearing in any way[197]. The parties to the proceeding can submit a request for a closed hearing if the judge does not decide that by him/herself. The court may also remove the child from the court room if this is necessary in the interests of the child[198].

2.3.6 Alternatives to judicial proceedings

Alternatives to judicial proceedings are mentioned above, where Juvenile Committees are further explained (see the overview section 1). Similar measures could also be applied by the court directly. In both cases, criminal proceedings are terminated.

Additional alternatives include the conciliation procedure (in Estonian: *lepitusmenetlus*) and simplified proceedings, including alternative proceedings (in Estonian: *lühimenetlus*) and settlement proceeding (in Estonian: *kokkuleppemenetlus*) but not summary proceedings and expedited procedures, which are not allowed when the accused person is a child.

Alternative proceedings (in Estonian: *lühimenetlus*) essentially mean shortened proceedings whereby the judgment is made based on the criminal file and no witnesses or experts are called[199]. The proceedings can be applied for by the accused and the prosecutor up until the commencement of trial proceedings. It can be used for any crime except where the potential sanction is life imprisonment or if there is more than one accused person and at least one of them does not agree to it. The proceedings still take place in a court session that all participants of the proceedings can attend, including the victim. The proceedings end with an ordinary judgment but if it is convicting then the judge will automatically decrease the sanction by one-third.

A settlement procedure (in Estonian: *kokkuleppemenetlus*) can take place only when the accused person and his/her defence lawyer, prosecutor and the victim agree to it[200]. The settlement procedure means negotiations between the prosecutor and the accused person on the application crime qualification, sanction and its length. The procedure can be applied for by the accused person or the prosecutor. The Code of Criminal Procedure lists crimes that cannot be settled even if participants agree to it; these being the most serious crimes. It also cannot be applied where there is more than one accused person and at least one of them does not agree to it. When a settlement is reached, the proceedings continue as general criminal proceedings. There are no specific safeguards for a child victim or suspect, the general safeguards apply: the prosecutor must explain to him/her his/her rights within the procedure as well as its consequences, settlement must be signed both by the accused person and his/her defence lawyer, and the court will actively verify the settlement by questioning the accused person and both his/her defence and prosecutor. The proceedings end with an ordinary judgment.

The conciliation procedure (in Estonian: *lepitusmenetlus*) is outside the framework of the criminal procedure (similar to procedure in Juvenile Committees)[201]. Conciliation takes place between the perpetrator and the victim and upon its successful conclusion, the criminal proceedings are terminated; there is no judgment and no entry in criminal records. The conciliator is a victim support officer[202]. Conciliation is not permitted in cases of torture,

[196] Code of Criminal Procedure, § 408^1.

[197] Code of Criminal Procedure, § 12.

[198] Code of Criminal Procedure, § 11.

[199] Code of Criminal Procedure, §§ 233 ff.

[200] Code of Criminal Procedure, § 239.

[201] Code of Criminal Procedure, §§ 203^1-203^2.

[202] VSA, § 6^4, and *Lepitusmenetluse läbiviimise kord* (Procedure for conducting conciliation proceedings), Decree n. 188 of the Government RT I 2007, 46, 327.

human trafficking, abduction, offences against sexual self-determination, extortion, aggravated breach of public order, in crimes against humanity and international security, against the State, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice, also when it has resulted in a person's death. The court examines the conciliation agreement and, if necessary, questions all the parties concerned. As an extra precaution, the guardian of the child, whether a suspect or victim, must also agree to the conciliation.

2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

See sections 2.1.4 and 2.2.4 on measures taken to minimise the burden of proceedings and ensure a child-friendly environment. In principle, even a child who is a suspect/accused/convict could be covered by the Victim Support Act at a certain stage. This Act is wide in its scope – it covers those who have suffered injury of any kind due to negligence, mistreatment or physical, mental or sexual abuse – and it does not necessarily exclude a child suspect/accused/convict. However, the only service under VSA that would be applicable to such a child is counselling.

Additional measures exist to minimise the burden of proceedings for a child. Firstly, it is possible to separate his/her case from the case where he/she was accused alongside an adult[203]. This allows his/her age and special circumstances to be taken into consideration and the length of proceedings to be shortened. Secondly, the child is always assigned a probation officer who must compile a pre-trial report[204]. The aim of the report is to provide the prosecutor and court with additional information on the child, his/her personal characteristics, social situation and opinion on the choice of measures that would be appropriate for the child[205].

2.3.8 Protecting the child during interviews and when giving testimony

Child suspects are interrogated according to general rules applicable to adults[206]. This also includes the possibility to cross-examine the child suspect. There is no differentiation based on age. Different guidelines on pre-trial proceedings do prescribe that the child's age and interests must be taken into account[207]. The guidelines for the police officers even urge them to take into account the special rules under § 70 of the Code of Criminal Procedure that are applicable to victims and witnesses (see sections 2.1.5 and 2.2.5). There are no similar guidelines for trial proceedings. The presence of the defence lawyer is mandatory[208].

Information is always provided in a language that a child can understand. For example, if a child is Russian-speaking, the information is provided in Russian. Proceedings can be conducted in a language that all those concerned agree with[209]. Alternatively, a translator/interpreter is guaranteed.

The law does not explicitly prohibit a support person from being present while the child is questioned. In pre-trial proceedings it is entirely at the discretion of the interrogator who probably takes his/her decision based on the interests of the criminal case. At trial stage, there are also no restrictions on who can accompany the child, unless the hearing is held in

[203] Code of Criminal Procedure, § 216 (5).

[204] Code of Criminal Procedure, §§ 213 (4) and 264.

[205] Public Prosecutor's Office, Guidelines on the special treatment of children in criminal proceedings, 2007. See also *kriminaalhooldusseadus* (Probation Supervision Act), § 24.

[206] Code of Criminal Procedure, §§ 75 and 293.

[207] Guidelines on treating children that have committed a crime or children who need support (*Alaealiste õigusrikkujate ja kuriteoohvriks langenud laste kohtlemise juhend*), Decree n. 265 (15 June 2010) of the Director of the Police and Border Guard Board; and Public Prosecutor's Office, Guidelines on special treatment of children in criminal proceedings, 2007.

[208] Code of Criminal Procedure, § 45 (2.1).

[209] Code of Criminal Procedure, § 10(2).

camera. In that case, the judge must explicitly decide to allow a social worker to stay with the child[210]. Otherwise, anyone can be present in the courtroom.

2.3.9 Right to be heard and to participate in criminal proceedings

The same rules apply to children as to adults with regard to their participation in criminal proceeding. A child, as a suspect or defendant has several participatory rights. She/he has a right to[211]:

- give and refuse testimony;
- have a legal counsel and confer with him/her without the presence of other persons;
- participate in criminal proceedings, including being interrogated and participating in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel, participating in the hearing of an application for an arrest warrant in court;
- provide evidence (have the right to present in court all evidence which is relevant to the case and has been obtained legally);
- submit requests, complaints and appeals;
- examine minutes of procedural acts and submit statements or complaints about the minutes and the procedural acts;
- give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings;
- examine the criminal file through his/her defence once he/she has already been charged.

A suspect, child or adult, may always refuse to speak. He or she will not be held responsible for that action[212]. Suspects also do not take responsibility if their testimony before a court interview is different from the testimony during the court sitting.

See section 2.1.6 for more details, though it must be emphasised that the participatory rights somewhat differ and the child suspect/accused has an automatic right to a defence lawyer. In regard to support provided to the child and modification of proceedings, see also the above-mentioned section and section 2.3.8.

2.3.10 Right to legal counsel, legal assistance and representation

A child has a right to legal representation, which he/she can either choose himself/herself or through another person[213]. See section 2.1.7 on the child's right to choose the counsel himself/herself. The legal counsel could also be provided by the State, in which case it is free of charge. The child must merely indicate that he/she has no defence lawyer of his/her own and a lawyer is sent for by the police officer.

A lawyer can participate in every step of the criminal proceedings, including appeals and preliminary proceeding in the Supreme Court[214]. Usually, lawyers are specialised in criminal law and have knowledge of child-friendly investigation rules. However, special preparation (what is a child-friendly investigation etc.) is not required, it is a lawyer's own responsibility. Only members of the Estonian Bar Association can officially act as defence lawyers in Estonia[215]. Lawyers from other EU Member States who are not members of the Estonian Bar

[210] Code of Criminal Procedure, § 12 (3).
[211] Code of Criminal Procedure, § 34.
[212] Information collected through consultation with national stakeholder.
[213] Code of Criminal Procedure, § 43 (1).
[214] Code of Criminal Procedure, § 45.
[215] Code of Criminal Procedure, § 42, and Estonian Bar Association Act.

Association can act in Estonia within special limited areas of competence. Communication between a suspect/defendant and lawyer is confidential[216].

2.3.11 Remedies or compensation for violation of rights and failure to act

See section 2.1.8 for remedies for violation of rights and failure to act by the police, prosecution or court. Also see that section on the right to appeal the court judgement. In regard to a convict, the Code of Ethics for the members of the Bar Association requires them to file an appeal when the client wishes so and there is a legal basis for that[217]. There is no room for their own assessment on the fruitfulness of such an appeal. Cassation on the judgment by the circuit court can be submitted within 30 days, provided that the wish to submit the cassation was expressed within 7 days of the proclamation of the judgment by the circuit court[218]. Cassation cannot be submitted by the convicted child but only by his/her defence lawyer.

A lawyer can be removed from the defence due to failure to act based on[219]: incompetence and negligence (based on the State Legal Aid Act – see section 2.1.8) or s/he had agreed to defend the child but was unable to participate in the court hearing within three months of the preliminary hearing. The child himself/herself can request the removal but the court can also commence the proceedings on its own initiative. For possible proceedings in the Court of Honour of the Bar Association and to claim damages see section 2.1.8.

See section 2.1.8 on compensation from the State based on the State's responsibility for the wrongful acts of the police, prosecution or court.

[216] Code of Criminal Procedure, § 34.

[217] Prosecutors' Assembly, Estonian Prosecutors' Code of Ethics.

[218] Code of Criminal Procedure, §§ 344 ff.

[219] Code of Criminal Procedure, § 55.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

There are no child-specific rules on the proclamation of the court judgments and subsequent appeal procedures. The general rules apply[220]. Thus the judge pronounces the judgment and enquires whether the child understood the judgment or needs further explanation. If necessary, the accused child (not the child victim) would be provided with an interpreter/translator for the pronouncement. Along with the pronouncement of the judgment, the judge will announce the date when the judgment is accessible in court for examination and explain the term and procedure for appeal, including the need to notify the county court within 7 days if there is an intention to appeal. The same procedure on the pronouncement and additional explanations apply to the circuit court in regard to a cassation procedure to the Supreme Court[221]. No other complaint mechanisms are explained.

The convicted child will be notified of any changes in the enforcement of the decision. The law does not, however, foresee that the child victim or his/her lawyer, guardian or legal representative would be notified of non-execution or of any remedies against non-execution of the judgment.

There are no rules or guidelines on how the child's lawyer, guardian or legal representative should communicate the decision or judgment to the child.

3.1.2 Sentencing

The Penal Code (PC) does not provide for child-specific criminal sanctions. All sanctions are equally applicable to adults and children. The PC and the Code of Criminal Procedure do, however, foresee the following non-criminal alternative sanctions for children between 14 and 18 years of age[222]:

1) admonition;
2) subjection to supervision of conduct;
3) placement in a youth home;
4) placement in a school for pupils who need special treatment due to behavioural problems.

If criminal proceedings are terminated on the grounds that a child is under 14 years old, and therefore incapable of guilt due to age, the case, with all case documents, is transferred to the Juvenile Committee. If the investigator or prosecutor finds that a child's behaviour is affected or changed without use of regular juvenile sanctions, the criminal proceedings are stopped and transferred to the Juvenile Committee. Juvenile Committees have a wider range of non-criminal sanctions to choose from (see below).

All the sanctions listed in the Penal Code can be applied to a child, albeit with the certain following concessions (§§ 44-48[1]):

- pecuniary punishment – a child less than 18 years of age can be sanctioned with a pecuniary punishment of 30-250 daily rates (one daily rate equals an average daily income of the convicted person). If he/she has no independent income, such punishment cannot be imposed;
- Imprisonment – a child less than 18 years of age cannot be sanctioned with imprisonment for a term of more than ten years or life imprisonment.

[220] Code of Criminal Procedure, § 315.
[221] Code of Criminal Procedure, § 343.
[222] Code of Criminal Procedure, § 308, Penal Code, § 87.

Before the Juvenile Committee, the following sanctions which can be applied to the child depend on the situation the child is in[223]. There are usually four situations in which the Juvenile Committee is competent[224]:

1. if a child up to 14 years of age commits a criminal act or a misdemeanour since capacity of guilt under the Penal Code (PC) is from 14 years of age[225];
2. if a child between 14 and 18 years of age commits a criminal act but the prosecutor, court or, in case of a misdemeanour, also an extra-judicial body (either a civil servant from an executive authority, e.g. a police officer, or from a local authority) finds that he/she can better be influenced with alternative measures (criminal or misdemeanour proceedings are terminated). The court can itself apply measures under the Juvenile Sanctions Act but can also send the case to the committee;
3. if a child does not fulfil the obligation to attend school; or
4. if a child consumes alcoholic beverages, narcotic or psychotropic substances.

For each situation, the following sanctions can be applied to children:

- a warning – for situations 1-4;
- sanctions concerning organisation of study – for situation 3 – refers to sending the child to long day groups or to a separate class for students with behavioural problems[226];
- referral to a psychologist, addiction specialist, social worker or other specialist for consultation – for situations 1-4;
- conciliation – for situations 1-4;
- an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home – for situations 1-4;
- community service – for situations 1-4 – only with the child's consent and 10-50 hours (children below the age of 13, only up to 10 hours) while they are not engaged in work or studies[227];
- a surety – for situations 1-4;
- participation in youth or social programmes or rehabilitation service – for situations 1-4;
- participation in medical treatment programmes – for situation 4;
- referral to schools for students with special needs – for situations 1-2 – only based on the decision by the court upon the respective application from the Juvenile Committee[228]. It must be the last resort; that is no other sanction has worked thus far, and it is in the interests of his/her disciplinary supervision. The sanction can be applied to children over 12 years of age and only under special circumstance to children of 10 years and above. The sanction can be applied for up to two years.

When deciding on the appropriate measure, the Committee takes into account the opinions of the child's legal representative, social worker, representative of the school and police officer[229]. The following aspects are to be taken into account: personality of the offender, the gravity of the committed offence and the efficiency of earlier sanctions imposed on the offender.

[223] Juvenile Sanctions Act, § 3.

[224] Code of Criminal Procedure, §§ 201, 274, 308, Juvenile Sanctions Act, § 1, Väärteomenetluse seadustik (Code of Misdemeanour Procedure), RT I 2002, 50, 313 … RT I, 22.03.2013, 9, § 30.

[225] *Karistusseadustik*, RT I 2001, 61, 364 … RT I, 17.04.2013, 2.

[226] Juvenile Sanctions Act, § 4.

[227] Juvenile Sanctions Act, § 5.

[228] Code of Criminal Procedure, §§ 404-407, Juvenile Sanctions Act, § 6.

[229] Juvenile Sanctions Act, § 7.

3.1.3 Deprivation of liberty

There are no provisions expressing general principles on the deprivation of liberty of children. The Guidelines on the special treatment of children in criminal proceedings do however explicitly state that imprisonment as a sanction for a child should be an exception and when no alternative is available. The guidelines state that the aim of the sanction on a child is to prevent new crimes from being committed and to help him/her to socially rehabilitate. The aim of the sanction for a childis is not so much punishment as it is education.

A child under 18 years of age cannot be sanctioned with more than ten years' imprisonment and life imprisonment is prohibited[230]. The court may decide to replace imprisonment or arrest. Imprisonment of up to six months can be substituted with electronic surveillance. One day of imprisonment is equal to one day of electronic surveillance. Imprisonment is replaced only if the convicted offender approves that decision[231]. The court may also replace arrest, imprisonment or conditional sentence with community service. One day of arrest equals two days of community work[232]. The court may replace six months to two years imprisonment with addiction treatment if a person is convicted of a crime because of drug addiction and needs treatment[233]. Substitutions are dependent on the agreement of the convicted offender.

A convicted child serves his/her imprisonment in ordinary prisons. The Imprisonment Act includes only few provisions on an underage child (below 18). The underlying principle is that adults and children are held separately (in a youth department)[234]. Specific provisions also include rules on continuing education and working in prison. The Imprisonment Act, however, has additional rules on a group of "young detainees", that is detainees up to 21 years of age. The specialised provisions include placement in a youth department, meetings, prison leave, and disciplinary sanctions.

The child will see out his/her imprisonment based on the period sanctioned unless he/she is subject to early release[235]. If the child turns 18 years old while carrying out the sentence, it has no effect on the sentence since the child is under imprisonment. However, once the child turns 21, he/she will be relocated to the adult-department[236]. Prisoners between 18 and 21 years of age can be relocated to the adult department only in exceptional circumstances deriving from his/her character.

An alternative measure of deprivation of liberty is the child's placement in a school for students with behavioural problems. The sanction can be applied by a court for up to two years. Along with the recommendation to place the child in that school, the Juvenile Committee can also decide to order a social worker to provide him/her with a rehabilitation service after release from the school[237].

The Imprisonment Act foresees for social welfare services for a prisoner who is being released. The provisions provide nothing child-specific. However, in practice a child below 21 years of age will be assigned a support person whether he/she has served the full time or is released early[238]. In case of early release, the support person is a probation officer[239]. Otherwise the support person is either a family member or a person through the service

[230] Penal Code, § 45 (2).
[231] Penal Code, § 69^1 (1).
[232] Penal Code, § 69 (1).
[233] Penal Code, § 69^2 (1).
[234] Imprisonment Act, § 12 (1.2).
[235] Penal Code, § 73ff.
[236] Imprisonment Act, § 82.
[237] Social Welfare Act, § 11^2 (1.3).
[238] Collected through correspondence with stakeholder.
[239] Imprisonment Act, § 61.

provided based on the cooperation agreement between the Ministry of Justice and the Estonian Council of Churches[240].

Rehabilitation services stipulated in the Imprisonment Act foresee assistance in the organisation of the prisoner's economic and personal life, as well as in documentation. The prisoner will be eligible for social welfare from the local government of his/her place of residence after release. The local government is sent prior notification of the prisoner's release.

3.1.4 Criminal records

The sentence of the child offender is recorded in the punishment register. The criminal record is not cleared once the child reaches 18 years of age. There are different terms for the deletion of information from the registry depending on the sanction[241]. For example, in the case of a non-criminal alternative sanction, the term for deletion is two years upon completion of the sanction. Imprisonment of up to three years will be deleted five years after its completion.

In general, the Punishment Register Act allows anyone to ask for a transcript of the registry[242]. Rules on the data concerning children in the registry are different. The Act lists the following persons and institutions who can obtain data from the registry on a child (§ 19):

- a legal representative of a child concerning the child represented;
- a court for the purposes of hearing a matter subject to proceedings;
- an investigative body relating to a criminal matter subject to proceedings;
- an extra-judicial body for the adjudication of a misdemeanour matter which is being processed;
- a governmental authority for the purposes of performance of the functions provided by an Act or legislation passed on the basis of an Act;
- the Office of the President of the Republic for the performance of functions provided by law;
- the registration departments of courts for the purposes of making lawful register entries;
- an employer for the purposes of verification of the conformity of a person with the requirements provided by law upon hiring the person;
- a foreign agency on the basis of the legislation of the European Union or an international agreement;
- a notary for the purpose of verification of the data concerning a person applying for a notarial act;
- a probation officer for the performance of the functions prescribed to him or her by law.

The punishment in the registry is archived after two years have passed from inserting the punishment in the registry[243]. Archived information can be accessed only by specified institutions and persons.

[240] Collected through correspondence with stakeholder.

[241] *Karistusregistri seadus* (Punishment Register Act), RT I, 21.03.2011, 3 … RT I, 27.06.2013, 2.

[242] Punishment Register Act, § 18.

[243] Punishment Register Act, §§ 17 and 20.

4 Strengths and potential gaps

The criminal procedural rules, in particular with regard to children, have improved significantly in recent years. The same applies to the practice of the specialists working with children. For example, the length of criminal proceedings where children are involved is usually shorter than for adult cases. Significant efforts have been made to shorten them even further, such as legal remedies against lingering proceedings and monitoring of the length of proceedings. Police officers and prosecutors are more aware of children's rights and they are aware enough to treat children in a child-friendly manner thanks to training and specialisation. Guidelines have been adopted to complement the relatively few child-specific rules in legislative acts. However, the development has not been consistent in that the procedural rules have strengths but also weaknesses and gaps. The recent amendments in the Code of Criminal Procedure reduces multidisciplinary approaches in pre-trial and trial proceedings by removing the obligation of the investigative officer and the court to include a child protection official, social worker, pedagogue or a psychologist when questioning a child.

Regarding strengths, the strong rules on data protection must be mentioned, including the protection of a child's (victim, perpetrator and witness) identity before, during and after criminal proceedings, with the exception of children subject to a third conviction (see above). Reporting of a crime has been made very easy for all, including children. Reporting can be done through different means and not necessarily to the police. Cooperation between specialists from different areas in this aspect is particularly commendable.

There are also several gaps that can be identified. First, regarding the information given both to the child and to the guardian, there is no obligation to inform the child of protection measures available throughout the criminal proceedings, for example. There is no information given to the child witness on different support measures available to him/her, let alone to the child suspect/defendant. Although the police website does have a child-friendly site, it does not provide information on all aspects of the criminal procedure. At the same time, there are no child-friendly materials that the investigators could give to the child for further information.

Second, even though prosecutors and police officers are trained to ensure that the procedure is as child-friendly as possible, there is still a lack of child-friendly hearing possibilities in the court. There are no special interview rooms in the courthouse itself[244]. In police departments, the specially furbished interviewing rooms are meant for children who are victims of very serious crimes and not for other victims or perpetrators. They are questioned either in the offices of the police officers or in interview rooms meant for adults. Neither the police officers nor the judges are under obligation to involve specialists when interviewing. This is not a problem when it comes to police officers who have received training but may be a problem in court where it is entirely at the discretion of the judge to allow a support person to sit close to the victim or witness.

Third, regulation on criminal records could be identified as a gap. The child's criminal record is not erased when he/she reaches the age of 18.

Finally, there is no vetting system for any of the specialists involved with the child during criminal proceedings. This is a gap considering that only the specialised police officers and victim support officials receive regular training. All the rest of the specialists, including judges and lawyers, are not subject to regular training. None of the specialists are under obligation to seek training.

Additionally, there are several aspects in legislation that are ambiguous and in need of some improvement, even when taking into account the guidelines that have been adopted to specific legislation. For example, the extent to which the child can participate in criminal proceedings in his/her own right. On the face of it, it is clear: a child has no full active legal

[244] Information collected through consultation with national stakeholder.

capacity and the parent is his/her legal representative but it is unclear how far this goes in criminal proceedings, especially where the child is the suspect/defendant.

Also somewhat unclear is the amount of information given to the legal guardians on what is happening to their children throughout the criminal proceedings. There are clear rules about informing them when the child's freedom of movement is restricted but, in regard to information on other aspects, it seems to be at the discretion of the investigator and prosecutor.

Conclusions

All in all, children's rights in criminal proceedings are relatively well protected, since investigators, prosecutors and other affected parties must act in the best interests of the child. There have been many good developments during recent years, which have made criminal proceedings more child-friendly. However, there is still room for improvement. The situation is most child-friendly when it comes to child victims and witnesses. They are mostly questioned by specially trained police officers and prosecutors in specially furbished rooms. Questioning of children is not always carried out in a child-friendly environment and specialists might not be included as it is mandatory only for child victims of serious crimes. Child suspects, even when interviewed by specially trained persons, are not required to be treated any differently from adult suspects when it comes to questioning. Common problems concern informing children and their parents. Children in all roles are informed of their rights immediately upon the commencement of proceedings. However, the rights of the victim and defendant are considerably more elaborate and provide them with a far wider scope of participatory options than for witnesses. Children in all three roles have, in principle, access to legal counsel and state legal aid. A child defendant has an automatic right to defence with costs covered by the state in full, while for child victims and witnesses it is not automatic. With regard to child offenders, conditions for pre-trial detention and detention are modified to accommodate children. Children are kept separate from adults, they must be given the possibility to continue their education and post-release rehabilitation is foreseen.

It is positive that, most of the time, the specialised police officers are involved in an investigation concerning children. However, that depends in which area of the country the offence is committed since the specialisation is better developed in urban areas. Specialisation of prosecutors is also beneficial and ensures better preparedness to deal with children. There should be similar specialisation among judges in all court houses.

There is, however, still some room for improvement in the work of the Juvenile Committee. The Ministry of Education and Research is currently aware of this as they are preparing an amendment to the Juvenile Sanctions Act.

Annex – Legislation reviewed during the writing of this report

- Imprisonment Act, RT I 2000, 58, 376 … RT I, 5 July 2013
- Punishment Register Act, RT I, 21.03.2011, 3 … RT I, 27 June 2013, 2
- Law of Obligations Act, RT I 2001, 81, 487 … RT I, 11 June 2013, 3
- Code of Criminal Procedure, RT I 2003, 27, 166 … RT I, 15 Mai 2013, 3
- Gender Equality Act, RT I 2004, 27, 181 … RT I, 26 April 2013, 2
- State Legal Aid Act, RT I 2004, 56, 403 … RT I, 18 April 2013, 2
- Victim Support Act, RT I 2004, 2, 3 … RT I, 18 April 2013, 2
- Penal Code, RT I 2001, 61, 364 … RT I, 17 April 2013, 2
- Code of Civil Procedure, RT I 2005, 26, 197... RT I, 5 April 2013
- Police and Border Guard Act, RT I 2009, 26, 159 … RT I, 26 March 2013, 2
- Code of Misdemeanour Procedure, RT I 2002, 50, 313 … RT I, 22 March 2013, 9
- Child Protection Act, RT 1992, 28, 370 … RT I, 21 March 2011, 50
- Bar Association Act, RT I 2001, 36, 201 … RT I, 21 December 2012, 1
- Prosecutor's Office Act, RT I 1998, 41, 625 … RT I, 21 December 2012, 1
- Witness Protection Act, RT I 2005, 39, 307 … RT I, 29 June 2012, 2
- Family Law Act, RT I 2009, 60, 395 … RT I, 27 June 2012, 4
- State Liability Act, RT I 2001, 47, 260 … RT I, 13 September 2011, 9
- Constitution of the Republic of Estonia, RT 1992, 26, 349 … RT I, 27 April 2011, 2
- Guidelines on assisting a child under threat and reporting a case Põlva county government and Valga county government, 2011
- Reporting of child in need of assistance and data protection Children's Ombudsman, 2011
- Personal Data Protection Act, RT I 2007, 24, 127 … RT I, 30 December 2010, 2
- General Part of the Civil Code Act, RT I 2002, 35, 216 … RT I, 6 December 2010, 1
- Guidelines on reacting to incidents of violence in close relationships, organisation of information exchange connected to that and the procedure of transferring information to victim support, Decree no 487 (17 November 2010) of the Director of the Police and Border Guard Board
- Guidelines on treating minors that have committed a crime or children who need support, Decree no 265 (15 June 2010) of the Director of the Police and Border Guard Board
- Development Plan for Reducing Violence 2010-2014, adopted by the Government on 1 April 2010 with decree no 117
- Approval of the Statutes of the Social Assistance Department, decree no 362 adopted on 30 March 2010 by Tarty City Government
- Guidelines for Development of Criminal Policy until 2018, 2010, pt 10
- Juvenile Sanctions Act, RT I 1998, 17, 264 … RT I 2010, 41, 240
- Implementation report of 2010 on the Development Plan Reducing Violence 2010-2014 Ministry of Justice
- The guidelines on the evaluation of children and family) Ministry of Social Affairs, 2009
- Special treatment of minors in criminal proceedings Public Prosecutor's Office, Doc no RP-1-4/07/8, 29 June 2007

- Procedure for conducting conciliation proceedings, Decree no 188 of the Government RT I 2007, 46, 327
- Handbook on case management Ministry of Social Affairs, 2006
- Social Welfare Act,, RT I 1995, 21, 323
- United Nations Convention on the Rights of the Child https://www.riigiteataja.ee/akt/24016 adopted on 26 September 1991
- Estonian Newspaper Association, The code of Ethics of the Estonian Press
- Respectively Estonian court *en banc*, Estonian Judges' Code of Ethics, and Prosecutors' Assembly, Estonian Prosecutors' Code of Ethics