



# **Child-friendly justice system.**

## **Parallel civil and administrative proceedings in Estonia**

Leanika Tamm, civil judge  
Viru County Court, Estonia

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## Cooperation of court and administrative power



**Estonian Code of Civil Procedure (CCP) § 552 states cooperation in family matters between court and city or rural governments (social department, social workers, child welfare specialist) in matters of petition.**

### **Family Matters of petition (CCP § 550):**

Appointing legal guardian for a minor;

determination of a parent's rights (deprivation of parental rights; right of custody; access to a child)

Adoption;

extension of the legal capacity of child ;

consent for performance of a transaction on behalf of a child;

return of a child on the basis of the International Child Abduction Convention;

Link to Estonian CCP in English: <https://www.riigiteataja.ee/en/eli/505022015002/consolide>

# Dynamics of the civil proceeding in petition matters



## **Main dynamic features:**

### **Judge has investigative power and variety of evidence**

judge can collect evidence, also hear people involved in childcare (for example - teachers, social workers, family doctors, grandparents, relatives) without the presence of the parties, and this type of hearing can be performed over the phone or via Skype.

**Legal council (state-aided) for the child in most civil cases** – council is always appointed by Estonian Bar Association, and must be an advocate.

**Involvement of administrative body from the beginning of procedure** - it is obligatory to involve social department workers from the local government from the very start of the civil proceedings and co-operate with social workers - the parallel proceedings – court can appoint counseling for the child/parent which is performed by local government, social workers control living conditions of the child, progress on the adoption of preliminary measures set by the court, reporting periodically to the judge on the case

# Dynamics of the civil proceeding in petition matters



## Main dynamic features:

**Reconciliation of parties in all matters involving disputes over parental rights** - judge has an obligation to reconcile the parties during all proceeding in custodial or visitation rights disputes. It is similar to mediation, the difference is that judge can appoint parties to the mediation only if parties agree to mediate, but the reconciliation proceeding is performed by the judge as a part of proceedings without previous consent of the parties.

**Preliminary measures, set by the judge during the proceedings-** judge can establish different temporary measures - from visitation rights to separating child from the family for the proceedings, appoint temporary legal guardian to the child if necessary (common practice is to appoint local government as a temporary guardian, if child is separated from the family)

## Voice of the child



**CCP § 219 allows judge to appoint a state-aided legal council to the child right from the beginning of procedures;**

**CCP §219 also obligates** judge to appoint legal council to the child on cases of:  
applying measures to ensure the well-being of a child (separation of the child from his or her family; deprivation of the right of custody)  
possible conflict of interest between the child and legal representatives (parents, custodian);  
placement under guardianship;  
removing child from a parent or foster family;

This means that the child has been given a legal representative in all matters, which shall affect directly child's everyday life and future. The legal council acts only in the best interest of the child and is impartial to the parties involved. Such legal representation has proven to have a positive influence on successful reconciliation process.



## Procedural rights of a child

**CCP § 552<sup>1</sup> states procedural rights of a child**

**Right to be heard from age 10** - it is obligatory to the judge to hear the 10- year or older Child. If the child is not heard, judge has to reason in written ruling why the child was not heard.

**Judge might also hear younger child** - it is a possibility for a judge also to examine younger child in the everyday environment for the child (daycare, pre-school, home etc)

**Right to be informed of the object and possible outcome of the proceeding, unless this can harm the child** - judge has to explain to the child the proceedings and possible outcome in the beginning of the hearing, usually it is simple explanation, which a child can understand. Usually it is simple explanation, which a child can understand, its contents mostly depend of the age and development of a child.

**Right to present his or her position in the matter** - child has a right to give an opinion on matters which will have affect on childs' everyday and future. Although, the childs' Opinion is not binding as the judge must always follow the best interest of the child.

## Procedural rights of a child



### CCP § 553 Rights of a child from age 14

**Right to be informed of the courts ruling** (without reasoning part) - court sends the conclusion of judgement without reasoning contents directly to the child with the explanation of appealing the judgement and advises child to use his or her legal council aid for filing the appeal.

**Right to file independent appeal on ruling** - the legal council appointed to the child from the start of proceedings must always appeal, if child wants to appeal the ruling.

# Evidence



## **Matters of petition (no claim) CCP § 447**

**Judge can use simplified procedures of hearing participants** (written explanation, phone hearing, electronically written evidence) hearings do not need to be protocolled, but in this case the time and contents of hearing shall be indicated in the ruling.

**Judge can hear people from the everyday environment of a child** - kindergarten teacher, social worker, teacher, librarian, family nurse etc.

**Judge is not bound by the petitions submitted by the participants, unless it is stated otherwise in the law** - judge can adjust the petitions to the real situation – most common situation is a petition on termination of joint custody, where judge can instead give a ruling on visitation rights, as this was the real unsolved issue between the parties.

**Judge can collect evidence by himself, also ask assistance from administrative workers, and from the legal council of a child** – parallel co-operation with local government and the legal council in the interest of a child (independent from the parties).

# Special training for judges and legal council of the child



Judicial Training Council by Supreme Court of Estonia  
Judicial Training Departement

Lectures, seminars, written materials

„Interviewing children. Handbook for judges” A.Liivamägi, K.Kask Tartu 2012

Legal council training- council is attorney-at-law, member of Estonian BAR Association,  
the training is provided by Estonian BAR Association

Thank you!

