

Protection of Children against Sexual Abuse in the Circle of Trust: Legal Frameworks (Lanzarote Convention Monitoring Questionnaire)

Fields marked with * are mandatory.

Introduction

1. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter “the Lanzarote Convention” or “the Convention”), which entered into force in July 2010, requires criminalisation of all forms of child sexual abuse. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

2. The Committee of the Parties to the Convention (also known as the “Lanzarote Committee”), established to monitor whether Parties effectively implement the Convention (Article 1 § 2), decided that:

“1. The monitoring of the implementation of the Convention in the Parties shall be based on a procedure divided by rounds, each round concerning a theme decided by the Lanzarote Committee or any other approach deemed appropriate by the Lanzarote Committee within the scope of the Convention.

2. The Lanzarote Committee will determine the length of each monitoring round in the light of the themes selected and the provisions of the Convention to be monitored.

3. The monitoring round will be initiated by addressing a questionnaire on the implementation of the relevant provisions of the Convention with respect to the selected theme. The Parties shall respond to the questionnaire within the time-limit set by the Lanzarote Committee.”[1]

The notion of the circle of trust

3. In January 2018, the Lanzarote Committee concluded its first monitoring round “Protection of children against sexual abuse in the circle of trust”. The notion of “circle of trust” includes members of the extended family, persons having care-taking functions or exercising control over the child, and any other persons with whom the child has relations, including his/her peers.[2]

The previous and current monitoring rounds on the circle of trust

4. The two implementation reports adopted as a result of the first monitoring round evaluated the frameworks and strategies put in place by the 26 States Parties to the Lanzarote Convention which had ratified it by the time the monitoring round was launched[3]. Since then, the Convention has been ratified by 22 other Parties,[4] and numerous changes have taken place in the subject area due to the development of international standards and national reforms. Furthermore, a child’s circle of trust remains the environment

where the vast majority of sexual abuse occurs.[5] The Committee therefore decided to come back to the subject matter of the first monitoring round in 2023, to both take stock of the situation in the 22 Parties that had not been examined in the first round and to evaluate the follow-up given to the Committee's recommendations by the 26 Parties that had.

5. All of the current 48 Parties will be monitored at the same time to create a momentum around specific aspects of the monitoring theme. To ensure a more accurate reflection of the situation in the Parties and a speedier publication of intermediary results, the monitoring round will be divided into several parts and conducted on the basis of information submitted by the Parties and other stakeholders in response to questionnaires specific for each part.

Involvement of civil society and other relevant stakeholders in the monitoring round

6. In accordance with paragraph 4 of Rule 26 of the Lanzarote Committee's Rules of Procedure, the Secretariat shall seek the views of the representatives of civil society and any other bodies involved in preventing and combating sexual exploitation and sexual abuse of children on the implementation of the Convention by Parties, in particular by asking them to comment on the replies to this questionnaire or by any other means (e.g. by offering the observers and participants in the Lanzarote Committee to submit any relevant information they may have with regard to any Party to the Convention by replying directly to some or all of the questions of this questionnaire). These comments and replies will be transmitted by the Secretariat to the Party(ies) concerned and made public.

Type of questions and elements to be borne in mind when replying

7. Each of the questionnaires of this monitoring round will contain questions derived from the Committee's first monitoring round recommendations and findings, as well as a few new questions based on the Committee's adopted texts and international standards that have emerged in the meantime, including the case-law of the European Court of Human Rights, to gather information for capacity-building purposes. The first part of the monitoring round will assess the legal framework and related procedures with respect to sexual abuse of children in the circle of trust ("Legal frameworks").

8. This specific first questionnaire was adopted by the Lanzarote Committee on 2 June 2023. It is recalled that, in accordance with Rule 26 of the Lanzarote Committee's Rules of Procedure:

"...2. The Secretariat shall address such questionnaires to the Parties through the member in the Lanzarote Committee representing the Party to be monitored, who will act as "contact person".

3. Parties shall submit their replies in one of the official languages of the Council of Europe to the secretariat within the time limit set by the Lanzarote Committee. The replies shall be detailed, answer all questions and contain all relevant reference texts. The replies shall be made public.

5. The Secretariat may request additional information if it appears that the replies are not exhaustive or unclear. Where warranted, with the consent of the Party(ies) concerned and within the limits of budgetary appropriations, the Bureau of the Lanzarote Committee may decide to carry out a visit in the Party(ies) concerned to clarify the situation."

9. In addition, Parties are kindly requested to:

- answer the questions with regard to central, regional and local levels to the extent possible. Federal States may, in respect of their sovereign entities, answer the questions in a summarised way;
- provide, whenever questions/answers refer to it, the relevant text (or a summary) of legislation or other regulations in English or French;

- answer the questions from a gender equality perspective, i.e. specifying, where relevant, whether and how measures for victims and/or offenders take into account gender-specific requirements.

10. The term “national legal framework” used in the questionnaire includes not only laws but also all forms of regulations (decrees, resolutions, administrative directions, instructions, and any other decisions creating legal consequences for more than one individual) and higher courts’ directive rulings.

11. The questions asked concern the legal frameworks pertaining to both online and offline forms of activity. Should your national legal framework distinguish between them, please provide details.

12. As indicated above, some of the questions are included for capacity-building purposes. Therefore, nothing in the wording of these questions should be taken as an indication of a preferred state of affairs or course of action.

13. The questionnaire uses a colour-coded system to help you differentiate questions based on the Lanzarote Committee’s 1st monitoring report’s “invite” recommendations (in blue) and “urge”/ “consider” recommendations (in red). The questions based on the European Court of Human Rights’ case law and the Committee’s adopted texts are coloured red. The questions included for capacity-building purposes are coloured blue.

14. Some of the questions are addressed only to specific Parties found to be not in compliance with a particular requirement of the Convention in the first monitoring round, or to those Parties and to the 22 Parties which had not been evaluated during the first monitoring round. All other questions are meant to be replied to by all Parties.

[1] Rule 24 of the Lanzarote Committee’s [Rules of Procedure](#)

[2] See [1st Implementation Report “Protection of Children against Sexual Abuse in the Circle of Trust: The Framework”](#), p. 12. Examples of the different categories of persons may be found in paragraphs 123-125 of the [Explanatory Report to the Lanzarote Convention](#)

[3] Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Italy, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Portugal, Romania, San Marino, Serbia, Spain, Türkiye and Ukraine

[4] Andorra, Armenia, Azerbaijan, Cyprus, Czech Republic, Estonia, Georgia, Germany, Hungary, Ireland, Latvia, Liechtenstein, Monaco, Norway, Poland, the Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, Tunisia, United Kingdom

[5] See the [Explanatory Report to the Lanzarote Convention](#), paras. 48 and 123-125

IDENTIFICATION OF THE RESPONDER

* Name of the Party responding or concerned by your response

Estonia

* Name of the contact person/coordinator

* Email address of the contact person/coordinator

KEY NOTIONS Question 1. Does your national legal framework:

a. [have a reference to “abuse of a recognised position of trust, authority or influence” as a separate sexual offence against children?](#)^[6] If yes, please provide a copy of the relevant provision(s).

[6] 1st Implementation Report Protection of Children against Sexual Abuse in the Circle of Trust: The Framework adopted by the Lanzarote Committee on 4 December 15, Recommendation 3.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.a Yes)

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Please note that confidence means trust in 143-2 (1), the translation does not use the best choice of words. But in Estonian language there is the word "usaldus" in § 143-2 (1), which means trust. Also, influence in Estonian language ("mõjuvõim"), covers both, influence and authority.

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Belgium and Luxembourg]** establish a separate offence of sexual abuse of children by someone in a recognised position of trust, authority or influence instead of considering the fact that the perpetrator holds that position just as an “aggravating circumstance”?^[7] If yes, please indicate the specific legal provision.

[7] *Ibid.*, Recommendation 2

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.b Yes)

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Please note that confidence means trust in 143-2 (1), the translation does not use the best choice of words. But in Estonian language there is the word "usaldus" in § 143-2 (1), which means trust. Also, influence in Estonian language ("mõjuvõim"), covers both, influence and authority.

Here you can upload any file(s) in support of your answer

c. [list specific categories of adults in contact with children automatically qualifying as holding this position?](#)^[8]

[8] *Ibid*, Recommendation 4. Examples: members of the extended family (including new partners), persons having caretaking functions (including trainers of any kind) or exercising control over the child professionally or on a voluntary basis (including persons who look after children in their leisure-time) and any other person trusted by the child (including other children).

Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.c Yes)

The categories of adults in the § 143-2 (1) of the Penal Code is described through the positions/statuses: all adults taking advantage of the dependency of the victim or abusing the influence/authority or confidence /trust.

Here you can upload any file(s) in support of your answer

d. [define the notion of "circle of trust"?](#)^[9]

[9] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (1.d Yes)

We define the notion of "circle of trust" in the § 143-2 (1) of the Penal Code through the positions/statuses: all adults taking advantage of the dependency of the victim or abusing the influence/authority or confidence /trust.

Here you can upload any file(s) in support of your answer

VICTIMS' AGE Question 2. Does your national legal framework:

a. **[for 22 Parties + Italy, Portugal, San Marino, and Türkiye] provide that every child up to 18 years of age is protected against the criminal offence of sexual abuse by someone in a recognised position of trust, authority or influence?**^[10]Please refer to the specific legal provisions.

[10] *Ibid.*, Recommendation 6

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (2.a Yes)

The § 143-2 of the Penal Code clearly states that the the age limit in this provision is 18 years of age, meaning that in Estonia, every child up to 18 years of age is protected against the criminal offence of sexual abuse by someone in a recognised position of trust, authority or influence.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + North Macedonia and Ukraine]** indicate that the child's legal age for engaging in sexual activities is not relevant in the case of child sexual abuse by someone in a recognised position of trust, authority or influence?^[1] Please provide details.

[1] *Ibid.*, Recommendation 5

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (2.b Yes)

Child's legal age for engaging in voluntary sexual activities with an adult is 16 years of age (§ 145 of the Penal Code). § 143-2 of the Penal Code clearly states that the the age limit in this provision is 18 years of

age, meaning that the child's legal age for engaging in sexual activities is not relevant in the case of child sexual abuse by someone in a recognised position of trust, authority or influence.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

§ 145. Sexual intercourse or other act of sexual nature with child

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(1) Engaging in sexual intercourse or any other acts of sexual nature with a person under sixteen years of age by an adult person, unless the age difference between the adult person and the person between fourteen and sixteen years of age is not more than five years, is punishable by up to five years' imprisonment.

[RT I, 08.06.2022, 1 – entry into force 01.11.2022]

(11) An act specified in subsection 1 of this section, where committed against a person of less than fourteen years of age, is punishable by up to eight years' imprisonment.

[RT I, 08.06.2022, 1 – entry into force 01.11.2022]

(2) The act specified in subsections 1 and 11 of this section, where committed by a person who has previously committed a criminal offence provided for in this Subchapter, is punishable by two to eight years' imprisonment.

[RT I, 08.06.2022, 1 – entry into force 01.11.2022]

(3) An act provided for in subsection 1, 11 or 2 of this section, where committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 08.06.2022, 1 – entry into force 01.11.2022]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 3. Does your national legal framework criminalise sexual abuse of children:

a. **where the offender abuses a recognised position of influence?** [12] Please refer to the specific legal provisions.

[12] *Ibid*, Recommendation 1

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.a Yes)

Yes, § 143-2 (1) of the Penal Code clearly criminalises sexual abuse of children in a situation, where the offender abuses a recognised position of influence.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Belgium]** where the victim is below 18 and emancipated through marriage, and the perpetrator is the victim's spouse or marital partner?^[13] Please refer to the specific legal provisions.

[13] *Ibid.*, Recommendation 7

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.b Yes)

In Estonia, it is not possible to marry, when the person is younger than 18 years of age. Only adults, meaning persons who are 18 years of age or older, may get married. Please see the Family Law Act § 1 (2).

Family Law Act: <https://www.riigiteataja.ee/en/eli/504062023004/consolide>

§ 1. Prerequisites for contraction of marriage
(2) Only adults may get married.

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + the Republic of Moldova] where no coercion, force or threat is used by the perpetrator holding the position of trust, authority or influence?**^[14] Please refer to the specific legal provisions.

[14] *Ibid.*, Recommendation 8

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (3.c Yes)

Yes, § 143-2 (1) of the Penal Code clearly criminalises sexual abuse of children without coercion, force or threat being used by the perpetrator holding the position of trust, authority or influence.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Here you can upload any file(s) in support of your answer

SCOPE OF OFFENCE Question 4. Does your national legal framework:

a. [criminalise sexual abuse of children for acts other than sexual intercourse and equivalent actions?](#)^[15]

Please specify which other acts are covered and whether violation of a child's "sexual integrity" specifically is criminalised.

[15] Ibid., Recommendation 9

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (4.a Yes)

The § 143-2 of the Penal Code clearly states that Estonia has criminalised not only engagement in sexual intercourse, but also commission of another act of sexual nature. The wording "commission of another act of sexual nature" is very wide and covers any act that violates child's sexual integrity.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

§ 143-2. Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in §§ 141 or 141-1 of this Code,

is punishable by two to eight years' imprisonment.

[RT I, 20.12.2019, 1 – entry into force 30.12.2019]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Subchapter,

is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 – entry into force 23.12.2013]

(31) In the case of any criminal offence provided for in this section, if committed by a person who has previously been punished for a crime provided for in this Subchapter, the sentence imposed shall not be suspended in full.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83-2 of this Code.

[RT I, 31.12.2016, 2 – entry into force 10.01.2017]

Here you can upload any file(s) in support of your answer

b. **[for 22 Parties + Bulgaria] ensure equal sanctions for sexual abuse committed within a heterosexual and homosexual sexual activity?**^[16] Please refer to the specific legal provisions.

[16] *Ibid.*, Recommendation 11

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (4.b Yes)

Penal Code of Estonia does not make any kind of distinction between sexual abuse committed within a heterosexual activity or homosexual activity. It has no legal importance or relevance.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Here you can upload any file(s) in support of your answer

c. **[for 22 Parties + Albania and the Republic of Moldova]** make any distinct reference to “homosexual activities” in the description of criminal offences involving sexual abuse and sexual exploitation of children?^[17] Please refer to the specific legal provisions.

[17] *Ibid.*, Recommendation 12

- Yes
 No

If appropriate, please provide more information (4.c No)

Penal Code of Estonia does not make any kind of distinct reference to "homosexual activities" in the description of criminal offences involving sexual abuse and sexual exploitation of children. It has no legal importance or relevance.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Here you can upload any file(s) in support of your answer

EX OFFICIO PROSECUTION Question 5. Does your national legal framework:

a. contain a requirement to investigate and prosecute sexual abuse and exploitation of children by someone in a recognised position of trust, authority or influence without a complaint from the victim or his/her legal representative? ^[18] Please refer to the specific legal provisions.

[18] *Ibid.*, Recommendation 57

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.a Yes)

Yes, the principle of legality applies in our criminal proceedings, which means that the law enforcement and the prosecutor's office must, within the limits of their competence, commence and carry out criminal proceedings when the circumstances of a crime appear, regardless of the opinion of any person (including

the victim) or state authority. In Estonia, anybody can report a crime. Furthermore, anybody can report a crime orally (also by phone), in writing, also online and anonymously.

Code of Criminal Procedure: <https://www.riigiteataja.ee/en/eli/505092023002/consolide>

§ 6. Principle of mandatory criminal proceedings

Unless the circumstances provided by § 199 of this Code that preclude criminal proceedings are present, or unless there are no grounds for terminating such proceedings under subsection 2 of § 201, under §§ 202, 203, 203-1, 204, 205, 205-1, 205-2 or under subsection 3 of § 435 of this Code, where the facts of a criminal offence come to light, the relevant investigative authority and the Prosecutor's Office are required to conduct criminal proceedings in the case.

§ 193. Commencement of criminal proceedings

(1) An investigative authority or the Prosecutor's Office commences criminal proceedings by the first investigative or other procedural operation if an indication and the grounds for commencing such proceedings are present and if the circumstances provided for by subsection 1 of § 199 of this Code do not apply.

(2) If criminal proceedings are commenced by an investigative authority, the authority notifies the Prosecutor's Office without delay of having commenced such proceedings.

(3) If criminal proceedings are commenced by the Prosecutor's Office, the Prosecutor's Office transmits the materials of the criminal case according to investigative jurisdiction.

§ 194. Indication and grounds for criminal proceedings

(1) 'Indication for criminal proceedings' means a crime report or other information indicating that a crime has been committed.

(2) 'Grounds for criminal proceedings' means establishing the presence of the elements of a criminal offence in the indication for criminal proceedings.

§ 195. Crime report

(1) A crime report is presented to an investigative authority or the Prosecutor's Office orally or in writing.

(2) A report in which a crime is incriminated to a person is a criminal complaint.

(3) A report is filed concerning an oral crime report that is made first-hand on the scene and a copy of the report is handed to the person who made the crime report. A crime report that is communicated by telephone is taken down in writing or audio recorded.

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) If the person who presented a crime report is an individual victim, a written acknowledgement of receipt of the crime report is sent to them within 20 days following such receipt; such an acknowledgement may also be included in a notice of refusal to commence criminal proceedings or in a summons to a procedural operation.

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(5) Where this is needed, linguistic assistance is provided to a victim who presents a crime report. If the victim applies for this, an acknowledgement of receipt of the crime report is provided to them in a language that they understand.

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

§ 197. Other information indicating that a crime has been committed

(1) Indication for criminal proceedings may consist in information that the Prosecutor's Office or an investigative authority identifies in a publication and that indicates that a crime has taken place.

(2) Indication for criminal proceedings may consist in information indicating that a crime has taken place, which an investigative authority or the Prosecutor's Office has ascertained in the performance of their duties.

Here you can upload any file(s) in support of your answer

b. **contain a requirement to continue the proceedings even if the victim has withdrawn his/her complaint /statements?**^[19] Please refer to the specific legal provision(s).

[19] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (5.b Yes)

Yes, the principle of legality applies in our criminal proceedings, which means that the law enforcement and the prosecutor's office must, within the limits of their competence, commence and carry out criminal proceedings when the circumstances of a crime appear, regardless of the opinion of any person (including the victim) or state authority. Which also means that the criminal investigation/criminal proceedings continue regardless of the wish/complaint/statements of the victim.

Code of Criminal Procedure: <https://www.riigiteataja.ee/en/eli/505092023002/consolide>

§ 6. Principle of mandatory criminal proceedings

Unless the circumstances provided by § 199 of this Code that preclude criminal proceedings are present, or unless there are no grounds for terminating such proceedings under subsection 2 of § 201, under §§ 202, 203, 203-1, 204, 205, 205-1, 2052 or under subsection 3 of § 435 of this Code, where the facts of a criminal offence come to light, the relevant investigative authority and the Prosecutor's Office are required to conduct criminal proceedings in the case.

Here you can upload any file(s) in support of your answer

c. **[for Portugal] in case of a sexual act committed by an adult in respect of a child aged 14-16 years old which does not result in the child's death or suicide, require the child victim to lodge a complaint as a prerequisite for investigation and prosecution?**^[20]

[20] *Ibid.*, Recommendation 56

- Yes
 No

Here you can upload any file(s) in support of your answer

MEASURES IN RESPECT OF CHILDREN WHO SEXUALLY OFFEND AND CHILDREN DISPLAYING RISKY AND HARMFUL SEXUAL BEHAVIOUR Question 6. Does your national legal framework:

a. provide for non-criminal measures in respect of the children below the age of criminal responsibility who commit acts of sexual abuse towards other children?^[21]Please provide details.

[21] Inspired by *X and Others v. Bulgaria* (no. 22457/16), 2 February 2021 and *A.P. v. the Republic of Moldova* (no. 41086/12), 26 October 2021

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.a Yes)

In situations where children under 14-years of age (age of criminal responsibility in Estonia) commit acts of sexual abuse towards other children, it is considered as part of the social system, not legal/criminal law system. The social system sees these children as children in need of assistance. Mostly they get help in the Barnahus system (Child Protection Act, § 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner).

Child Protection Act:

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

(4) The video recording of hearing a child specified in clause 2 of subsection 3 of this section shall be preserved by the Social Insurance Board for up to six months following the date of the video recording. The conditions of and procedure for preserving the recording shall be provided for in the regulation established under subsection 5 of this section.

(5) The specific conditions of and procedure for the performance of functions specified in subsection 3 of this section shall be established by a regulation of the minister in charge of the policy sector.

[RT I, 28.04.2022, 1 – entry into force 08.05.2022]

Here you can upload any file(s) in support of your answer

b. [differentiate between adults and children above the age of criminal responsibility in the application of sanctions for offences involving sexual abuse of children?](#)^[22] Please refer to the specific legal provision(s)

and specify the age of criminal responsibility in your legislation.

[22] Question included for capacity-building purposes

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (6.b Yes)

Relevant provisions of the Penal Code: § 56. Basis for punishment; § 76-1. Release on parole of offender who was minor at time of commission of criminal offence; § 87. Sanctions applicable to minors and young adults.

Most relevant provision at the Code of criminal Procedure: § 201. Termination of criminal proceedings when the perpetrator is a minor.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Code of Criminal Procedure: <https://www.riigiteataja.ee/en/eli/505092023002/consolide>

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHT TO PROTECTION AND PARENTAL RIGHTS

Question 7. Does your national legal framework:

a. [provide for the possibility for child protection professionals to conduct exploratory interviews of a child without informing in advance the parents/legal guardians in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?](#)^[23] Please provide details.

[23] 1st Implementation Report Protection of Children against Sexual Abuse in the Circle of Trust: The Framework , Recommendation 26

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.a Yes)

Yes. There is no specific legal provision to regulate this, but it is possible to conduct exploratory interviews with the child without informing in advance the parents/legal guardians. Exploratory interviews with the child in case of suspected sexual abuse are carried out by specialised child protection workers in children's houses (Barnahus) operated by a state agency Social Insurance Board. According to Child Protection Act § 291(1), child protection workers of local municipalities must immediately notify the Social Insurance Board of any child that has been sexually abused or in case of such suspicion. The Social Insurance Board shall hear the child, if necessary, to ascertain the abuse. Hearings are video recorded. The hearing procedure is regulated by a Minister's regulation, according to which the specialist at children's house shall hear the child in case of suspected sexual abuse if there is no grounds for commencing criminal proceedings or if the child with harmful sexual behaviour is not subject to criminal proceedings due to his/her age.

If the suspicion of sexual abuse is specific enough to give grounds for criminal proceedings, child protection specialists shall not interview the child at all, but the case is immediately notified to the police and the child is interviewed by the police (in the premises of the children's house, if possible).

Child Protection Act § 29-1: <https://www.riigiteataja.ee/en/eli/510042023004/consolide#para29b1>

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

(4) The video recording of hearing a child specified in clause 2 of subsection 3 of this section shall be preserved by the Social Insurance Board for up to six months following the date of the video recording. The conditions of and procedure for preserving the recording shall be provided for in the regulation established under subsection 5 of this section.

(5) The specific conditions of and procedure for the performance of functions specified in subsection 3 of this section shall be established by a regulation of the minister in charge of the policy sector.

Regulation of the Minister of Social Affairs No 51, 23.06.2022 (in Estonian), § 3 "Hearing of the child":
<https://www.riigiteataja.ee/akt/128062022029>

Here you can upload any file(s) in support of your answer

b. provide for the possibility for child protection professionals to conduct exploratory interviews of a child without acquiring the parents/legal guardians' prior consent in cases in which there is a reasonable suspicion of sexual abuse by someone in a recognised position of trust, authority or influence and there is a reason to believe that parents/legal guardians may prevent a child from disclosing sexual abuse?^[24] Please provide details.

[24] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.b Yes)

Yes, please see answer 7a.

Here you can upload any file(s) in support of your answer

c. allow for the removal of the suspected perpetrator from the family environment in case of reasonable suspicion of sexual abuse of a child living in the same environment together with the suspect?^[25] Please provide details.

[25] This question results from the Committee's reasoning that before resorting to the removal of the victim, the removal of the perpetrator should be preferred (page 28 of the 1st implementation report).

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.c Yes)

Yes. There are different possibilities: prohibition of stay (§ 140-2 of the Code of Criminal Procedure (CCP)), temporary restraining order with or without electronic monitoring (§ 141-1 of the CCP), deprivation of liberty through committal in custody (§ 130 and following of the CCP).

§ 140-2. Prohibition of stay

To provide for the performance of a procedural operation, a prohibition of stay may be imposed in respect of a particular place or person following the rules provided by § 44 of the Law Enforcement Act.

§ 141-1. Temporary restraining order

(1) The suspect or accused in proceedings concerning a criminal offence against the person or a criminal offence against a minor may, in order to protect the privacy or other personal rights of a victim and on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or of the court, be prohibited from attending any places determined by the court, from approaching any persons determined by

the court or from communicating with such persons.

(1-1) The court may, together with a temporary restraining order and with the consent of the suspect or accused, impose electronic monitoring as provided for by § 751 of the Penal Code.

(1-2) In a situation of urgency, the restraining order provided for by subsection 1 of this section may be imposed by order of the Prosecutor's Office and regardless of the victim's consent. In such a situation, the Prosecutor's Office notifies the imposition of the restraining order to the court within two working days and the court, having regard to the victim's consent, decides on the permissibility of the order following the rules provided by subsections 13–6 of this section.

(1-3) The order which is mentioned in subsection 1 of this section and by which a temporary restraining order is imposed and the order which is mentioned in subsection 12 and by which a restraining order is declared permissible may be made as a note on the corresponding application, motion or order of the Prosecutor's Office.

(2) A temporary restraining order is imposed on the suspect or accused with the consent of the victim.

(3) To make a temporary restraining order, the pre-trial investigation judge acquaints themselves with the criminal file and questions the suspect or accused and, where this is needed, the victim in order to ascertain whether the application for a temporary restraining order is justified. The prosecutor and, should the suspect or accused make the corresponding application or motion, their defence counsel are also summoned before the court or the pre-trial investigation judge and their opinions are heard.

(3-1) The pre-trial investigation judge or the court may organise the participation, in the disposition of the application or motion for imposing a restraining order, of the persons mentioned in subsection 3 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.

(4) A temporary restraining order states:

- 1) the reasons for the order;
- 2) the conditions of the order.

(5) The victim, the Prosecutor's Office, the suspect, the accused or their defence counsel may, following the rules provided by Chapter 15 of this Code, file an interim appeal against the imposition of a temporary restraining order or against a refusal to impose such an order.

(6) A copy of the temporary restraining order is provided to the suspect or accused and to the victim, and another one is sent to the Police and Border Guard Board. The pre-trial investigation judge or the court also notifies the imposition of the temporary restraining order, without delay, to any other persons who are affected by the order.

§ 130. Committal in custody and grounds for such committal

Here you can upload any file(s) in support of your answer

d. consider the removal of the child victim from the family environment as a last resort procedure? Is that procedure clearly defined, and does it set out conditions for and duration of the removal?^[26] Please provide details.

[26] *Ibid.*, Recommendation 27

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.d Yes)

Removal of the child from the family environment as a child protection measure is always the last resort procedure, only if it is absolutely necessary to save the child from a health or life threatening situation. There is no specific regulation regarding removal of the child from the family environment in case of child abuse investigation and criminal proceedings.

According to the Child Protection Act §-s 32 – 33, a child who is in a situation which endangers his or her life or health must be assisted immediately and if necessary, placed in safety until the danger passes. The local government or the Social Insurance Board may separate a child from family and, if necessary, determine the procedure of communication of the parent and child before a court ruling on restriction of legal custody if leaving the child in the family or the communication between the parent and child endangers the life or health of the child, meaning that the child has been endangered due to the activity or inactivity of the person exercising legal custody of the child or the person exercising legal custody of the child refuses the temporary placement of a child with a service provider for the provision of a suitable service. The decision of temporary separation is valid for 72 hours, so if necessary, a court ruling must be sought within this time to restrict the parent's legal custody.

Child Protection Act §-s 30, 32 and 33: <https://www.riigiteataja.ee/en/eli/510042023004/consolide#para30>

§ 30. Child in danger

A child in danger means a child who is in a situation which endangers his or her life or health and a child who endangers his or her life or health or that of the others through his or her behaviour.

§ 32. Placement of child in danger in safety

(1) A child in danger shall be assisted immediately and the situation having endangered the life or health of the child shall be eliminated. If necessary, a child in danger may be placed in safety until such a time as the danger passes, without request of the consent of the person exercising legal custody of the child.

§ 33. Temporary separation of child in danger from family

(1) The local government or the Social Insurance Board may separate a child from family and, if necessary, determine the procedure of communication of the parent and child before the ruling on restriction of legal custody if leaving the child in the family or the communication between the parent and child endangers the life or health of the child. The local government or the Social Insurance Board shall make a decision on temporary separation of a child in danger from family in the following cases:

- 1) the child has been endangered due to the activity or inactivity of the person exercising legal custody of the child;
- 2) the person exercising legal custody of the child refuses the temporary placement of a child with a service provider for the provision of a suitable service.

(2) With the decision specified in subsection 1 of this section, a child in danger shall be separated from family and his or her place of stay shall be determined and, if necessary, the procedure of communication of the parent and child shall be determined for up to 72 hours starting from separation of the child from family.

(3) The local government or the Social Insurance Board shall evaluate the situation of the child and his or her need for assistance and, taking into account of the term provided for in subsection 2 of this section, turn to court in order to restrict legal custody and, if necessary, the right of access on the bases provided for in the Family Law Act.

Here you can upload any file(s) in support of your answer

e. ensure that the different agencies involved in the coordination and collaboration concerning child sexual abuse are allowed to share personal information as appropriate?^[27] Please provide details.

[27] *Ibid.*, Recommendation 25

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (7.e Yes)

The Social Insurance Board provides specific measures for assisting sexually abused children, e.g. provides a child-friendly environment for carrying out child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child; hears the child, if necessary, to ascertain the abuse; assesses the need for assistance resulting from the abuse of the child, if necessary by involving a relevant specialist. The Social Insurance Board operates four children's houses across Estonia based on the Barnahus model and coordinates the work of different agencies in the case of abuse. Currently there are no specific provisions regarding sharing of personal information in child sexual abuse cases, collaboration is based on general rules and regulations regarding child protection work and criminal proceedings. However, more detailed regulations are currently being prepared and will be submitted for discussion in Parliament in 2024.

Child Protection Act § 29-1: <https://www.riigiteataja.ee/en/eli/510042023004/consolide#para29b1>

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 8. Does your national legal framework clearly distinguish:

- cases of suspension of parental rights as a provisional measure to protect the child before a court decision on the conviction of the concerned parent is taken, and
- cases of withdrawal of parental rights once the court has convicted the said parent?^[28] Please provide details.

[28] *Ibid.*, Recommendation 32

- Yes
 No

Please provide information in support of your answer, if possible by referring to specific legal provisions and their exact wording (8 Yes)

Family Law Act: <https://www.riigiteataja.ee/en/eli/504062023004/consolide>

Estonian legal framework doesn't distinguish suspension of parental rights in case of a conviction per se. Our Family Law Act subchapter 4 regulates restriction of parent's legal custody. If a parent is under trial and then convicted for a crime and/or sentenced to prison, then this automatically doesn't mean that parental rights are suspended or revoked. Only court can make that decision and it is based on the circumstances of the case. The fact that a parent commits a crime punishable by imprisonment is not grounds for depriving the parent of custody, but of course in case of sexual exploitation or abuse the court has strong grounds to do so in order to safeguard the child.

Legal framework in parental rights is regulated as follows:

In case of a conviction where the convicted parent goes to prison, the court may according to Family Law Act § 140(1) suspend the parental rights. Family Law Act § 140(1) is the basis for suspending the right of custody if the parent cannot exercise the right of custody for a long period of time due to his absence or other external obstacle, including the imprisonment of the parent. The fact that the parent commits a crime for which (s)he is punished with imprisonment is primarily grounds for suspending the parent's right of custody and restoring it again after release from prison. At the same time, the parent's criminal lifestyle, in combination with other circumstances, may in some cases threaten the child's well-being in a way that gives grounds to deprive the parent of the right of custody on the basis of §-s 134-135 or to apply other remedies. In case of sexual exploitation or abuse Family Law Act §-s 134-135 are applicable in practice.

Family Law Act § 134 regulates cases of endangering of well-being of child. If the physical, mental or emotional well-being or the property of a child is endangered by abuse of the parent's legal custody, neglecting the child, inability of the parents to perform their obligations or conduct of a third person and the parents do not wish or are unable to prevent danger, a court shall apply necessary measures, including the measures listed in subsection 3 of this section and §§ 135 and 136 of this Act, for the prevention of danger. Family Law Act § 135 regulates separation of a child from family and deprivation of legal custody in full - a court may separate a child from the parents only if damage to the interests of the child cannot be prevented by other supporting measures applied in the relationship between the parents and the child. Also, in cases where it is not possible to wait for the court to decide, § 135(4) gives permission to separate a child from the family before the court ruling is made. This is further regulated by Child Protection Act § 33, providing that the local government or the Social Insurance Board may separate a child from family and, if necessary, determine the procedure of communication of the parent and child before a court ruling on restriction of legal custody if leaving the child in the family or the communication between the parent and child endangers the life or health of the child. Such decision is valid for 72 hours.

Here you can upload any file(s) in support of your answer

CHILD VICTIMS' RIGHTS TO PROTECTION AND PARENTAL RIGHTS

Question 9. Does your national legal framework provide for:

a. [automatic suspension of parental, visitation, and child hosting rights of parents against whom criminal proceedings for sexual abuse of own child are pending?](#)^[29] Please provide details.

[29] Question included for capacity-building purposes, i.e. to map whether there are Parties that have a particular legal framework in such cases.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.a Yes)

As explained under question 8, there is no automatic suspension of parental, visiting or any other rights. The Family Law Act sets a legal framework on how to suspend or limit/deprive parental rights in case the parent endangers the well-being of the child. The child protection services have a right to temporarily remove the child from the family environment and restrict the parent's right to communicate with the child in case the parent may be endangering the child's health or life (Child Protection Act § 33).

Here you can upload any file(s) in support of your answer

b. [automatic withdrawal of parental rights of parents convicted of sexual abuse of own child?](#)^[30] Please provide details.

[30] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (9.b Yes)

As explained under question 8, there is no automatic suspension of parental, visiting or any other rights. The Family Law Act sets a legal framework on how to suspend or limit/deprive parental rights in case the parent endangers the well-being of the child. The child protection services have a right to temporarily remove the child from the family environment and restrict the parent's right to communicate with the child in case the parent may be endangering the child's health or life (Child Protection Act § 33).

Here you can upload any file(s) in support of your answer

GUARANTEES OF PROTECTION FOR PERSONS REPORTING SUSPECTED OFFENCES Question 10.

How does your national legal framework ensure that any person reporting in good faith suspected sexual abuse and sexual exploitation of a child, including a person bound by professional confidentiality rules, does not get prosecuted or punished by judicial proceedings for defamation, libel or similar offences?^[31]

[31] Based on *Yuppala v. Finland* (no. 18620/03), 2 December 2008 and *M.P. v. Finland* (no. 36487/12), 15 December 2016. Partly based on Article 12 of the Lanzarote Convention.

Our national legal framework ensures the protection of any person reporting in good faith through specific sections at the Penal Code § 319 (False accusation) and § 320 (False testimony and perjury).

A person can commit § 319 and/or § 320 only knowingly. "Knowingly" means a direct intent to submit false accusation/false testimony/false perjury. If a person reports in good faith, he/she cannot get prosecuted or punished for § 319 and/or § 320 of the Penal Code.

Penal Code:

§ 319. False accusation

(1) Submission of knowingly false accusations concerning commission of a criminal offence by another person

is punishable by a pecuniary punishment or up to one year's imprisonment.

(2) The same act, if it involves fraudulent creation of evidence,

is punishable by a pecuniary punishment or up to five years' imprisonment.

(3) An act provided for in subsection 1 or 2 of this section, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I 2010, 8, 34 – entry into force 27.02.2010]

§ 320. False testimony and perjury

(1) A victim or witness who gives knowingly false testimony in a criminal or misdemeanour proceeding or civil or administrative court proceeding, or a party to a proceeding who gives knowingly false statements under oath or provides a knowingly incorrect inventory of assets or calculation of income or expenditure under oath

is punishable by a pecuniary punishment or up to three years' imprisonment.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(2) The same act, if it involves fraudulent creation of evidence,

is punishable by a pecuniary punishment or up to five years' imprisonment.

(3) An act provided for in subsection 1 or 2 of this section, if committed by a legal person,

is punishable by a pecuniary punishment.

[RT I, 19.03.2019, 3 – entry into force 01.07.2019]

§ 16. Intent

(1) Intent is deliberate intent, direct intent or indirect intent.

(2) A person is deemed to have committed an act with deliberate intent if the aim of the person is to create circumstances which belong to the necessary elements of an offence and is aware that such circumstances occur or if he or she at least foresees the occurrence of such circumstances. A person is also deemed to have committed an act with deliberate intent if the person assumes that the circumstances which constitute the necessary elements of an offence are an essential prerequisite for the achievement of the aim.

(3) A person is deemed to have committed an act with direct intent if the person knowingly creates circumstances which belong to the necessary elements of an offence and wants or at least tacitly accepts the creation of the circumstances.

(4) A person is deemed to have committed an act with indirect intent if the person foresees the occurrence of circumstances which constitute the necessary elements of an offence and tacitly accepts that such circumstance may occur.

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 11.

What kind of legislative or other measures does your national legal framework have in place to ensure that persons close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care?^[32]

[32] 1st Implementation Report Protection of Children against Sexual Abuse in the Circle of Trust: The Framework , Recommendation 30

The Social Insurance Board provides specific measures for assisting sexually abused children and these measures include supporting and counselling the child and persons close to the child (Child Protection Act § 29-1(3)). Such support is provided to children and families that have reached the Social Insurance Board's children's houses. The staff in children's houses provide primary assistance and if necessary, the child's close ones may be referred to victim support services.

The Victim Support Act provides for special measures to ensure that both the victim and his/her close ones receive psychosocial and also therapeutic assistance where needed. The state-funded victim support services include mental health assistance in support of recovery from trauma, which includes psychological and psychotherapeutic support. All victims of sexual violence (irrespective of criminal proceedings) are entitled to such mental health assistance and this service may be provided also to the child, grandchild, parent and other person raising the child, grandparent, sister, brother, person who is or has been married to or in a permanent partnership with the victim, if Social Insurance Board has established their need for mental health support following the abuse (Victim Support Act § 30).

Child Protection Act § 29-1: <https://www.riigiteataja.ee/en/eli/510042023004/consolide#para29b1>

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;

- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

Victim Support Act §-s 29 and 30: <https://www.riigiteataja.ee/en/eli/503042023004/consolide#para29>

§ 29. Purpose and content of mental health assistance in support of recovery from trauma

(1) The purpose of mental health assistance in support of recovery from trauma is to facilitate the restoration of the psychosocial balance of a victim and to reduce the likelihood or intensity of the occurrence of mental and behavioural disorders of the victim.

(2) Mental health assistance in support of recovery from trauma includes psychological and psychotherapeutic support.

§ 30. Persons entitled to mental health assistance in support of recovery from trauma

(1) The following persons are entitled to mental health assistance in support of recovery from trauma:

1) the victim of crime where criminal proceedings have been commenced with respect to the act committed against the victim;

2) the victim of domestic violence or sexual violence;

3) the child, grandchild, parent and other person raising the child, grandparent, sister, brother, person who is or has been married to or in a permanent partnership with the victim specified in clauses 1 and 2 of this subsection;

4) a person who participates in criminal proceedings as a witness.

(2) The persons specified in subsection 1 of this section have the right to receive mental health assistance in support of recovery from trauma where the Social Insurance Board has established their need for support.

Here you can upload any file(s) in support of your answer

ASSISTANCE TO THIRD PARTIES Question 12.

When determining the support required to the victim and the persons close to him or her, how does your national legal framework ensure that the child's disclosure does not worsen his or her situation and that of the other non-offending members of the family?^[33]

[33] *Ibid.*, Recommendation 31

Psychosocial and psychological assistance to the victim and the persons close to him/her under the Child Protection Act and the Victim Support Act (see question 11) do not depend on the child's disclosure or commencement of criminal proceedings in the case.

Here you can upload any file(s) in support of your answer

MONITORING OF OFFENDERS Question 13. Does your national legal framework provide for:

a. **a mechanism to monitor or supervise persons convicted of child sexual abuse and, specifically, persons convicted of child sexual abuse while holding a recognised position of trust, authority or influence?**^[34] Please provide details.

[34] *Ibid.*, Recommendation 33

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

(Outside of prisons/prison system) the convicted persons can be monitored in a system of probation and the relevant provisions of the Penal Code (PC) are § 87-1, § 75-78 and in some cases, where the punishment for § 143-2 of the PC is close to the minimum, also § 73 and § 74 may be relevant (bearing in mind that the probation period must be longer than the actual sentence).

Convicted persons can be monitored also within the restraining order (§ 310-1 of the Penal Code).

In this context it may be relevant to mention that we also have restrictions on persons who are not allowed to work with children. This can also be seen as a monitoring mechanism, because the employer must conduct regular background checks at least once a year. Furthermore, it is recommended that the employer conducts a background check of already employed persons every 6 months to check that no penalties have been added during the period of the employment relationship. Section 20 (Restrictions for working as child protection officials and persons working with children) of the Child Protection Act establishes restrictions on persons who are not allowed to work with children. This restriction must ensure that people who have been sentenced or subjected to compulsory treatment for human trafficking, crimes against sexual self-determination or crimes concerning prostitution and child pornography cannot enter professions that include contact with children. For persons convicted of child sexual abuse while holding a recognised position of trust, authority or influence, the restriction on working with children is lifelong, regardless of whether the sentence is valid or has expired. Illegal enabling of work with children is separate offence -- § 179-1 of the Penal Code.

Regarding restrictions for working with children, please see also this information page within the webpage of the Ministry of Justice of Estonia (in Estonian): <https://www.just.ee/kontrollitausta>

Also, please see these instructions given at the webpage of Centre of Registers and Information Systems (in Estonian): <https://www.rik.ee/et/karistusregister/lastega-tootamise-piirangu-kontrollimine>

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Child Protection Act: <https://www.riigiteataja.ee/en/eli/510042023004/consolide>

Here you can upload any file(s) in support of your answer

b. **sharing with other countries data concerning persons convicted of child sexual abuse?**^[35] Please provide details.

[35] Based on Article 38 of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

In the context of restrictions for working with children, the national Criminal Records Registers of the European Union Member States share information through the European Criminal Records Register. So, if the candidate (who wishes to apply for work with children) has lived or worked in another European Union country, information concerning their criminal record must be requested (by the employer) through the European Criminal Records Register from the country where they resided. Estonia as a EU Member State also cooperates with other EU Member States and answers such applications regarding Estonians.

Also, please see these instructions given at the webpage of Centre of Registers and Information Systems (in Estonian): <https://www.rik.ee/et/karistusregister/lastega-tootamise-piirangu-kontrollimine>

Here you can upload any file(s) in support of your answer

MEASURES IN RESPECT OF PROFESSIONALS AND LEGAL PERSONS Question 14. Does your national legal framework:

a. **allow for the immediate removal or suspension of a professional or volunteer working with children suspected of sexually abusing a child?**^[36] Please provide details.

[36] Based on Article 27§3(b) of the Lanzarote Convention.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.a Yes)

Yes, the most relevant provision here are the § 141 of the Code of Criminal Procedure - Suspending the suspect or accused from an official position. This provision covers both, working in the public and in the private sector.

Also, please see also the response to the Question 13 regarding the restrictions on working with children.

Code of Criminal Procedure:

§ 141. Suspending the suspect or accused from an official position

(1) The suspect or accused is suspended from their official position on an application of the Prosecutor's Office by order of the pre-trial investigation judge, or by court order, if:

[RT I 2004, 46, 329 – entry into force 01.07.2004]

- 1) they may commit further criminal offences, should they continue to work in their position;
- 2) their continuing to work in their position may harm criminal proceedings in the case.

(2) A copy of an order suspending the suspect or accused from their official position is handed to the suspect or accused and to the Head of the institution that employs them.

(3) If the grounds for suspension cease to be present before the statement of charges is sent to court following the rules provided by subsection 3 of § 226 of this Code, the pre-trial investigation judge or the

Prosecutor's Office revokes the suspension by a corresponding order.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

b. **ensure that professionals working in the public, private or voluntary sectors failing to report offences of child sexual abuse occurring in “out-of-home care”^[37] settings are held liable?^[38]** Please provide details.

[37] In accordance with the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse adopted at its 25th meeting (15-18 October 2019), out-of-home care represents all settings in which children can be placed out of their home for care (see point b of the Declaration).

[38] Based on the Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse, point 6.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.b Yes)

Penal Code:

§ 307. Failure to report crime

(1) Failure to report commission by another person of a criminal offence in the first degree is punishable by a pecuniary punishment or up to three years' imprisonment.

(1-1) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) Failure by the offender's parent, child, adoptive parent, adopted child, brother, sister, grandparent, grandchild, spouse or a parent thereof to report commission of a criminal offence in the first degree does not constitute guilt.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

Child Protection Act:

§ 26. Child in need of assistance

A child in need of assistance is a child whose well-being is threatened or in the case of whom doubt has arisen concerning his or her abuse, neglect or any other situation violating the rights of the child and a child whose behaviour threatens his or her well-being or the well-being of other persons.

§ 27. Notification of child in need of assistance

(1) All persons who have knowledge of a child in need of assistance are required to notify of the child in need of assistance

(2) A child in need of assistance must be immediately notified of to the local government or to child helpline service 116 111.

(3) The authority or official having received the notice of a child in need of assistance, except for the local

government of the child's residence entered in the population register or the child protection official thereof, shall be required to forward the notice immediately to the local government of the child's residence entered in the population register.

(4) If the local government of the child's residence entered in the population register is unknown or it cannot be ascertained, the notice of a child in need of assistance shall be immediately forwarded to the local government where the child is staying.

(5) The identity of the person having notified of a child in need of assistance or the fact of notification shall not be disclosed, except for in proceedings of an offence. The person notifying of a child in need of assistance shall have the right not to disclose his or her data upon notification for his or her own protection or the protection of his or her family.

§ 30. Child in danger

A child in danger means a child who is in a situation which endangers his or her life or health and a child who endangers his or her life or health or that of the others through his or her behaviour.

§ 31. Notification of child in danger

(1) All persons who have knowledge of a child in danger shall be required to notify of the child in danger.

(2) A child in danger shall be immediately notified of through the emergency call number 112.

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Child Protection Act: <https://www.riigiteataja.ee/en/eli/510042023004/consolide>

Here you can upload any file(s) in support of your answer

c. **ensure that legal persons failing to protect children in their care from sexual abuse are held liable?**^[39]

Please provide details.

[39] *Ibid.*, see point 7.

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (13.c Yes)

Yes. Please see the response for Question 14b. Penal Code § 307 (1-1) also stipulates the liability of a legal person/legal entity.

Please note that almost all crimes in our Penal Code also stipulate the liability of a legal person.

§ 307. Failure to report crime

(1) Failure to report commission by another person of a criminal offence in the first degree is punishable by a pecuniary punishment or up to three years' imprisonment.

(1-1) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(2) Failure by the offender's parent, child, adoptive parent, adopted child, brother, sister, grandparent, grandchild, spouse or a parent thereof to report commission of a criminal offence in the first degree does not constitute guilt.

[RT I 2003, 83, 557 – entry into force 01.01.2004]

§ 14. Liability of legal person

(1) In the cases provided by law, a legal person shall be held responsible for an act which is committed in the interests of the legal person by its body, a member thereof or by a senior official or competent representative.

[RT I 2008, 33, 200 – entry into force 28.07.2008]

(2) Prosecution of a legal person does not preclude prosecution of the natural person who committed the offence.

(3) The provisions of this section do not apply to the state, international organisations, local governments or to legal persons in public law.

[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

Penal Code: <https://www.riigiteataja.ee/en/eli/520032023010/consolide>

Child Protection Act: <https://www.riigiteataja.ee/en/eli/510042023004/consolide>

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 15. How does your national legal framework ensure that special representatives and guardians ad litem who are appointed to avoid a conflict of interest between the holders of parental authority and the child victim:

a. [receive appropriate training and legal knowledge to ensure and safeguard the best interests of the child victim during criminal investigations and proceedings?](#)^[40]

[40] 1st Implementation Report Protection of Children against Sexual Abuse in the Circle of Trust: The Framework , Recommendation 35

Only attorneys and other persons with a Master's degree in legal studies may be assigned as representative of a child victim under the rules of state-funded legal aid (see question 16). This ensures the representative has sufficient legal knowledge to protect the child's rights. The Estonian Bar Association provides continuing legal training to attorneys on different topics and specific trainings on child rights, child-friendly interviewing etc are mandatory for attorneys that represent children under the rules of state-funded legal aid.

Here you can upload any file(s) in support of your answer

b. [avoid combining the functions of a lawyer and guardian ad litem in one person?](#)^[41]

[41] *Ibid.*, Recommendation 36

Only attorneys and other persons with a Master's degree in legal studies may be assigned as representative of a child victim under the rules of state-funded legal aid (see question 16). This ensures the representative has sufficient legal knowledge to protect the child's rights. The Estonian Bar Association provides continuing legal training to attorneys on different topics and specific trainings on child rights, child-friendly interviewing etc are mandatory for attorneys that represent children under the rules of state-funded legal aid.

Here you can upload any file(s) in support of your answer

c. [are provided free of charge for the child victim?](#)^[42]

[42] *Ibid.*, Recommendation 37

Only attorneys and other persons with a Master's degree in legal studies may be assigned as representative of a child victim under the rules of state-funded legal aid (see question 16). This ensures the representative has sufficient legal knowledge to protect the child's rights. The Estonian Bar Association provides continuing legal training to attorneys on different topics and specific trainings on child rights, child-friendly interviewing etc are mandatory for attorneys that represent children under the rules of state-funded legal aid.

Please see also replies to Question 16.

Here you can upload any file(s) in support of your answer

SPECIAL REPRESENTATIVES Question 16. [for 22 Parties + Malta]

a. [Do you appoint a special representative or guardian ad litem when there is a conflict of interest between the holders of parental authority and a child?](#)^[43] Please provide details.

[43] *Ibid.*, Recommendation 34

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.a Yes)

Yes. In criminal proceedings a child victim shall be assigned a representative under the rules of state-funded legal aid if it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim or if the underage victim has been separated from their family (Code of Criminal Procedure § 41(3-1)). The victim may have up to three representatives. An attorney or other person with a Master's degree in legal studies may serve as a representative. In addition, if the child has been separated from the family environment and the child's parents have been deprived of parental authority (possibly in relation to the case of abuse), the child always has a guardian

appointed by the civil court. The guardian cooperates with the child's legal representative.

Code of Criminal Procedure § 41: <https://www.riigiteataja.ee/en/eli/505092023002/consolide#para41>

§ 41. Representative of the victim, of the civil defendant and of a third party

(1) An individual victim, civil defendant or third party may participate in criminal proceedings personally or through a representative. Personal participation in such proceedings does not deprive the person concerned of the right to have a representative.

/.../

(3-1) The proceedings authority assigns, under the rules for State-funded legal aid, a representative to a victim of limited active legal capacity, if:

1) it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim;

2) the underage victim has been separated from their family;

3) the victim is an unaccompanied minor for the purposes of the Act on the Granting of International Protection to Aliens.

(4) The victim, civil defendant or third party may have up to three representatives. A representative may have several principals provided there is no conflict of interests between the principals. In judicial proceedings, the following persons may serve as a contractual representative: an attorney or another person who has acquired at least an officially recognised Master's degree in the field of legal studies or a qualification that is equivalent to such a degree for the purposes of subsection 2 of § 28 of the Republic of Estonia Education Act, or an equivalent foreign qualification.

Family Law Act §-s 171 – 173 and 176: <https://www.riigiteataja.ee/en/eli/504062023004/consolide#para171>

§ 171. Prerequisites for establishment of guardianship

(1) If neither of the parents of an underage child has the right of representation or if it is not possible to ascertain the origin of a child, a guardian shall be appointed to the child.

§ 172. Content of guardianship

A guardian has both physical custody of the child and property guardianship over the property of the child.

§ 173. Establishment of guardianship

(1) A court decides on establishment of guardianship on its own initiative or on the basis of an application of a rural municipality or city government or an interested person. A court may address a rural municipality or city government in order to find a person suitable to act as a guardian.

§ 176. Rural municipality government or city government as guardian

(1) Until appointment of guardian, the duties of a guardian shall be performed by the rural municipality or city government of the child's place of residence entered in the population register if the prerequisites for the establishment of guardianship have been complied with. Upon the performance of the duties of a guardian, a rural municipality or city government has the rights and obligations of a guardian arising from this Act.

(2) Upon failure to find a suitable natural or legal person, the rural municipality or city government with which the child is most closely connected shall be appointed guardian. A child is most closely connected with the rural municipality or city government, inter alia, where the child is from, where the child has lived for most part of the time, with which the child has preserved essential ties, where the child's close persons or assets are located or where the child's residence according to the population register is.

b. **Is this person allowed to be present throughout the criminal proceedings?**^[44] Please provide details.

[44] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (16.b Yes)

Yes, both the guardian and the legal representative of the child may be present throughout the criminal proceedings.

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 17. In investigative and judicial proceedings how does your national legal framework ensure that:

a. **protection measures are available to all children irrespective of their age?**^[45] Please provide details.

[45] *Ibid.*, Recommendation 38

The Social Insurance Board provides specific measures for assisting sexually abused children and these measures include supporting and counselling the child and persons close to the child (Child Protection Act § 29-1(3)). Such support is provided to children that have reached the Social Insurance Board's children's houses (Barnahus) – and majority of child sexual abuse victims do. The staff in children's houses provide primary support and if necessary, the child is referred to mental health assistance by victim support services.

The Victim Support Act establishes state-funded support services to all victims, including child victims of sexual abuse. The victim support services include mental health assistance in support of recovery from trauma, which includes psychological and psychotherapeutic support by mental health professionals (Victim Support Act §-s 29 to 30). All victims of sexual violence are entitled to such mental health assistance, irrespective of criminal proceedings, but provided that Social Insurance Board has established their need for mental health support following the abuse.

Since it is not very clear, what can be considered as protection measures under this Question, then the following provisions might also be relevant: prohibition of stay (§ 140-2 of the Code of Criminal Procedure (CCP), temporary restraining order with or without electronic monitoring (§ 141-1 of the CCP), deprivation of liberty through committal in custody (§ 130 and following of the CCP), substituting electronic monitoring for committal in custody (§ 137-1 of the CCP) etc. Bearing in mind also the § 37-2 of the CCP.

Child Protection Act § 29-1:

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of

a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

Victim Support Act §-s 29 and 30:

§ 29. Purpose and content of mental health assistance in support of recovery from trauma

(1) The purpose of mental health assistance in support of recovery from trauma is to facilitate the restoration of the psychosocial balance of a victim and to reduce the likelihood or intensity of the occurrence of mental and behavioural disorders of the victim.

(2) Mental health assistance in support of recovery from trauma includes psychological and psychotherapeutic support.

§ 30. Persons entitled to mental health assistance in support of recovery from trauma

(1) The following persons are entitled to mental health assistance in support of recovery from trauma:

- 1) the victim of crime where criminal proceedings have been commenced with respect to the act committed against the victim;
- 2) the victim of domestic violence or sexual violence;
- 3) the child, grandchild, parent and other person raising the child, grandparent, sister, brother, person who is or has been married to or in a permanent partnership with the victim specified in clauses 1 and 2 of this subsection;
- 4) a person who participates in criminal proceedings as a witness.

(2) The persons specified in subsection 1 of this section have the right to receive mental health assistance in support of recovery from trauma where the Social Insurance Board has established their need for support.

Here you can upload any file(s) in support of your answer

b. [specificities of sexual abuse committed in respect of a child by someone in a recognised position of trust, authority or influence are taken into account in the measures and procedures applied during criminal investigations and proceedings in order not to aggravate the trauma experienced by the child?](#)^[46] Please provide details.

The Social Insurance Board provides specific measures for assisting sexually abused children and these measures include supporting and counselling the child and persons close to the child (Child Protection Act § 29-1(3)). Such support is provided to children that have reached the Social Insurance Board's children's houses (Barnahus) – and majority of child sexual abuse victims do. The staff in children's houses provide primary support and if necessary, the child is referred to mental health assistance by victim support services.

The Victim Support Act establishes state-funded support services to all victims, including child victims of sexual abuse. The victim support services include mental health assistance in support of recovery from trauma, which includes psychological and psychotherapeutic support by mental health professionals (Victim Support Act §-s 29 to 30). All victims of sexual violence are entitled to such mental health assistance, irrespective of criminal proceedings, but provided that Social Insurance Board has established their need for mental health support following the abuse.

Child Protection Act § 29-1:

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

Victim Support Act §-s 29 and 30:

§ 29. Purpose and content of mental health assistance in support of recovery from trauma

(1) The purpose of mental health assistance in support of recovery from trauma is to facilitate the restoration of the psychosocial balance of a victim and to reduce the likelihood or intensity of the occurrence of mental and behavioural disorders of the victim.

(2) Mental health assistance in support of recovery from trauma includes psychological and psychotherapeutic support.

§ 30. Persons entitled to mental health assistance in support of recovery from trauma

(1) The following persons are entitled to mental health assistance in support of recovery from trauma:

- 1) the victim of crime where criminal proceedings have been commenced with respect to the act committed against the victim;

- 2) the victim of domestic violence or sexual violence;
 - 3) the child, grandchild, parent and other person raising the child, grandparent, sister, brother, person who is or has been married to or in a permanent partnership with the victim specified in clauses 1 and 2 of this subsection;
 - 4) a person who participates in criminal proceedings as a witness.
- (2) The persons specified in subsection 1 of this section have the right to receive mental health assistance in support of recovery from trauma where the Social Insurance Board has established their need for support.

Here you can upload any file(s) in support of your answer

c. **a child who is a presumed victim of sexual abuse is supported by a professional trained to safeguard children's psychological well-being?**^[47] Please provide details.

[47] Based on *N.Ç. v. Türkiye* (no. 40591/11), 9 February 2021

The Social Insurance Board provides specific measures for assisting sexually abused children and these measures include supporting and counselling the child and persons close to the child (Child Protection Act § 29-1(3)). Such support is provided to children that have reached the Social Insurance Board's children's houses (Barnahus) – and majority of child sexual abuse victims do. The staff in children's houses provide primary support and if necessary, the child is referred to mental health assistance by victim support services.

The Victim Support Act establishes state-funded support services to all victims, including child victims of sexual abuse. The victim support services include mental health assistance in support of recovery from trauma, which includes psychological and psychotherapeutic support by mental health professionals (Victim Support Act §-s 29 to 30). All victims of sexual violence are entitled to such mental health assistance, irrespective of criminal proceedings, but provided that Social Insurance Board has established their need for mental health support following the abuse.

Child Protection Act § 29-1:

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as

evidence in offence proceedings;

3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;

4) support and counsel the child and persons close to the child;

5) monitor the performance of measures applied for assisting the child.

Victim Support Act §-s 29 and 30:

§ 29. Purpose and content of mental health assistance in support of recovery from trauma

(1) The purpose of mental health assistance in support of recovery from trauma is to facilitate the restoration of the psychosocial balance of a victim and to reduce the likelihood or intensity of the occurrence of mental and behavioural disorders of the victim.

(2) Mental health assistance in support of recovery from trauma includes psychological and psychotherapeutic support.

§ 30. Persons entitled to mental health assistance in support of recovery from trauma

(1) The following persons are entitled to mental health assistance in support of recovery from trauma:

1) the victim of crime where criminal proceedings have been commenced with respect to the act committed against the victim;

2) the victim of domestic violence or sexual violence;

3) the child, grandchild, parent and other person raising the child, grandparent, sister, brother, person who is or has been married to or in a permanent partnership with the victim specified in clauses 1 and 2 of this subsection;

4) a person who participates in criminal proceedings as a witness.

(2) The persons specified in subsection 1 of this section have the right to receive mental health assistance in support of recovery from trauma where the Social Insurance Board has established their need for support.

Here you can upload any file(s) in support of your answer

SUPPORT FOR CHILD VICTIMS IN INVESTIGATIVE AND JUDICIAL PROCEEDINGS Question 18.

Since the adoption of the 1st implementation report in the 1st monitoring round in 2015, has your national legal framework been amended to ensure that the justice system accommodates more fully the specificities attached to the participation of children as victims in proceedings and not solely as perpetrators of criminal offences?^[48] Please provide details.

[48] 1st Implementation Report Protection of Children against Sexual Abuse in the Circle of Trust: The Framework , Recommendation 40

Yes

No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (18 Yes)

As of May 2022 the Child Protection Act was amended and the Social Insurance Board was given specific legal tasks related to child victims of sexual abuse, thus clarifying the role and functions of the children's houses (Barnahus) in Estonian legal and child protection systems. These amendments emphasized the need to support the wellbeing of such child, including providing a child-friendly environment for carrying out child protection and criminal proceedings with regard to the child and providing services supporting the rehabilitation of the child (Child Protection Act § 291).

Child Protection Act § 291:

§ 291. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

(2) The Social Insurance Board starts to perform the functions provided for in this section also based on the inquiry of another agency or person or based on the information received through the child helpline. In such case the Social Insurance Board shall notify the local government agency responsible for the child's case management, and in case of criminal proceedings, taking into account the provisions of § 214 of the Code of Criminal Procedure on the disclosure of data in pre-trial procedure.

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

(4) The video recording of hearing a child specified in clause 2 of subsection 3 of this section shall be preserved by the Social Insurance Board for up to six months following the date of the video recording. The conditions of and procedure for preserving the recording shall be provided for in the regulation established under subsection 5 of this section.

(5) The specific conditions of and procedure for the performance of functions specified in subsection 3 of this section shall be established by a regulation of the minister in charge of the policy sector.

Here you can upload any file(s) in support of your answer

INVESTIGATION Question 19. In the investigation phase:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

a. are interviews of child victims arranged in a child-friendly setting separate from the usual premises where investigations and interviews are conducted (such as police, hospital or court premises), and are such settings provided throughout your territory?^[49] Please provide details.

[49] *Ibid.*, Recommendation 41

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.a Yes)

It is possible to arrange interviews at the Barnahus (Child Protection Act § 29-1). There are also child-friendly rooms at the police departments and at the court premises. All of these are provided throughout our territory.

Guidelines for creating a child friendly environment in the law enforcement (in Estonian):

<https://lapsesobralikmenetus.just.ee/sites/default/files/2023-05>

[/soovitused_lapsesobraliku_keskkonna_loomiseks_oiguskaitses_2021_0.pdf](https://soovitused_lapsesobraliku_keskkonna_loomiseks_oiguskaitses_2021_0.pdf)

"Best practices for treating the victim" -- guidelines for law enforcement and for prosecutors which they have been trained and have agreed to follow in their everyday work. The guidelines were issued by the Public Prosecutors Office in 2019 (in Estonian): <https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Kannatanu.pdf>

Code of Criminal Procedure:

§ 37-2. Assessment of specific protection needs of an individual victim

(1) The proceedings authority is obligated to assess whether any circumstances are present that amount to a reasonable cause to believe that the individual victim requires special treatment and protection – including victim support services – in the proceedings.

[RT I, 06.01.2023, 1 – entry into force 01.04.2023]

(2) The assessment takes into consideration the victim's personality, the gravity and nature of the criminal offence, who the suspect is, the circumstances in which the criminal offence was committed and the harm caused to the victim. Any minor victims are presumed to require special treatment and protection in criminal proceedings.

(3) As a result of the assessment, a decision is made concerning which of the means provided for by this Code for ensuring the safety of the victim it is possible to employ, as well as whether the interview with the victim should be conducted in premises adapted for their special needs or by, or with the participation of, a specialist trained to interview victims with special protection needs or, if possible, by the same person throughout the proceedings or whether a victim who has special needs may require victim support services.

[RT I, 06.01.2023, 1 – entry into force 01.04.2023]

§ 70. Special rules for interviewing or examining an underage witness

(1) The proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness.

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if:

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

- 1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being;
- 2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse;
- 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(3) Where this is needed, the interview with, or examination of, the minor is video recorded. In a situation mentioned in subsection 2 of this section, the interview with the minor is video recorded if – for the reason that the minor's first-hand examination in court is not possible due to the minor's age or the minor's mental state – the intention is to use that interview as evidence in judicial proceedings.

(4) During pre-trial proceedings, the suspect has a right to acquaint themselves with the video recordings mentioned in subsection 3 of this section. During five days following their having acquainting themselves with the recordings, the suspect or the defence counsel has a right to put questions to the witness. The Prosecutor's Office considers the corresponding application within five days following its filing. Denial of the application is issued as an order, a copy of which is transmitted to the person who filed the application. The fact that an application has been denied does not prevent its being filed anew in accordance with the rules provided by § 225 of this Code or during judicial proceedings.

Here you can upload any file(s) in support of your answer

b. [are all staff responsible for interviewing child victims required to undergo suitable qualifying training?](#)^[50]
Please provide details.

[50] *Ibid.*, Recommendation 42

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.b Yes)

Yes, the staff responsible for interviewing child victims are required to undergo suitable qualifying training.

Handbook for child interviewing (in Estonian): https://lapsesobralikmenetus.just.ee/sites/default/files/2023-05/lapse_kusitlemise_kasiraamat_2016.pdf

"Best practices for treating the victim" -- guidelines for law enforcement and for prosecutors which they have been trained and have agreed to follow in their everyday work. The guidelines were issued by the Public Prosecutors Office in 2019 (in Estonian): <https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Kannatanu.pdf>

Code of Criminal Procedure:

§ 37-2. Assessment of specific protection needs of an individual victim

(1) The proceedings authority is obligated to assess whether any circumstances are present that amount to a reasonable cause to believe that the individual victim requires special treatment and protection – including

victim support services – in the proceedings.

[RT I, 06.01.2023, 1 – entry into force 01.04.2023]

(2) The assessment takes into consideration the victim's personality, the gravity and nature of the criminal offence, who the suspect is, the circumstances in which the criminal offence was committed and the harm caused to the victim. Any minor victims are presumed to require special treatment and protection in criminal proceedings.

(3) As a result of the assessment, a decision is made concerning which of the means provided for by this Code for ensuring the safety of the victim it is possible to employ, as well as whether the interview with the victim should be conducted in premises adapted for their special needs or by, or with the participation of, a specialist trained to interview victims with special protection needs or, if possible, by the same person throughout the proceedings or whether a victim who has special needs may require victim support services.

[RT I, 06.01.2023, 1 – entry into force 01.04.2023]

§ 70. Special rules for interviewing or examining an underage witness

(1) The proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness.

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if:

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being;

2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse;

3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(3) Where this is needed, the interview with, or examination of, the minor is video recorded. In a situation mentioned in subsection 2 of this section, the interview with the minor is video recorded if – for the reason that the minor's first-hand examination in court is not possible due to the minor's age or the minor's mental state – the intention is to use that interview as evidence in judicial proceedings.

(4) During pre-trial proceedings, the suspect has a right to acquaint themselves with the video recordings mentioned in subsection 3 of this section. During five days following their having acquainting themselves with the recordings, the suspect or the defence counsel has a right to put questions to the witness. The Prosecutor's Office considers the corresponding application within five days following its filing. Denial of the application is issued as an order, a copy of which is transmitted to the person who filed the application. The fact that an application has been denied does not prevent its being filed anew in accordance with the rules provided by § 225 of this Code or during judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

c. [does your national legal framework require that interviews with child victims are conducted as soon as possible after the offence, that their duration and number are limited, and that in their organisation account](#)

is taken of the child's age and attention span?^[51] Please provide details.

[51] *Ibid.*, Recommendation 43

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.c Yes)

Yes. Please see replies 19a and 19b.

Here you can upload any file(s) in support of your answer

d. **[for Serbia]** how do you ensure that child victims of sexual abuse by someone in a recognised position of trust, authority or influence are not repeatedly interviewed during the proceedings?^[52]

[52] *Ibid.*, Recommendation 54

Here you can upload any file(s) in support of your answer

e. where it is indispensable to interview the child victim more than once, does your national legal framework require that the interviews should, if possible and where appropriate, be conducted by the same person and under the same material conditions as the first?^[53] Please provide details.

[53] *Ibid.*, Recommendation 44

- Yes
- No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (19.e Yes)

Yes. Please see replies 19a and 19b.

Here you can upload any file(s) in support of your answer

f. does your national legal framework offer criminal defence the possibility to contest a child's disclosure during the interview through questions, thus obviating the need for the child to be present in the court room during the proceedings?^[54] Please provide details.

- Yes
 No

If appropriate, please provide more information (19.f No)

Code of Criminal Procedure:

§ 70. Special rules for interviewing or examining an underage witness

(1) The proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness.

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if:
[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being;

2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse;

3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(3) Where this is needed, the interview with, or examination of, the minor is video recorded. In a situation mentioned in subsection 2 of this section, the interview with the minor is video recorded if – for the reason that the minor's first-hand examination in court is not possible due to the minor's age or the minor's mental state – the intention is to use that interview as evidence in judicial proceedings.

(4) During pre-trial proceedings, the suspect has a right to acquaint themselves with the video recordings mentioned in subsection 3 of this section. During five days following their having acquainting themselves with the recordings, the suspect or the defence counsel has a right to put questions to the witness. The Prosecutor's Office considers the corresponding application within five days following its filing. Denial of the application is issued as an order, a copy of which is transmitted to the person who filed the application. The fact that an application has been denied does not prevent its being filed anew in accordance with the rules provided by § 225 of this Code or during judicial proceedings.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 290-1. Special rules concerning statements made during pre-trial proceedings by an underage witness

(1) On a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where:

1) the witness is younger than ten years of age and repeated questioning may have a harmful effect on their mental well-being;

2) the witness is younger than fourteen years of age and the interview is related to domestic violence or sexual abuse;

3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(2) If the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it

is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

JUDICIAL PROCEEDINGS Question 20. In the judicial proceedings:

In 2023 the Steering Committee for the Rights of the Child (CDENF) circulated a questionnaire in the framework of its mapping study of the implementation and development of Barnahus model in Europe. Should your authorities have responded to this questionnaire, you may reiterate those replies and complete as need be.

a. **is systematic use of video equipment made in order to record interviews of child victims or enable him or her to testify remotely during the proceedings?**^[55] Please provide details.

[55] *Ibid.*, Recommendation 46

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.a Yes)

Child Protection Act § 29-1:

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

/.../

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

(4) The video recording of hearing a child specified in clause 2 of subsection 3 of this section shall be preserved by the Social Insurance Board for up to six months following the date of the video recording. The conditions of and procedure for preserving the recording shall be provided for in the regulation established under subsection 5 of this section.

(5) The specific conditions of and procedure for the performance of functions specified in subsection 3 of this section shall be established by a regulation of the minister in charge of the policy sector.

Code of Criminal Procedure:

§ 290-1. Special rules concerning statements made during pre-trial proceedings by an underage witness

(1) On a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where:

- 1) the witness is younger than ten years of age and repeated questioning may have a harmful effect on their mental well-being;
- 2) the witness is younger than fourteen years of age and the interview is related to domestic violence or sexual abuse;
- 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(2) If the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

b. [does your national legal framework make an exception in the requirement to be physically present at court hearings for child victims of sexual abuse, including when they are giving evidence?](#)^[56] Please provide details.

[56] *Ibid.*, Recommendation 59

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.b Yes)

Code of Criminal Procedure § 290-1. Special rules concerning statements made during pre-trial proceedings by an underage witness

(1) On a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where:

- 1) the witness is younger than ten years of age and repeated questioning may have a harmful effect on their mental well-being;
- 2) the witness is younger than fourteen years of age and the interview is related to domestic violence or sexual abuse;
- 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(2) If the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

c. [is there any difference in the scope of the application of this requirement based on the child's age?](#)^[57]

Please provide details.

[57] *Ibid.*, Recommendation 60

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.c Yes)

Code of Criminal Procedure:

§ 290-1. Special rules concerning statements made during pre-trial proceedings by an underage witness

(1) On a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where:

- 1) the witness is younger than ten years of age and repeated questioning may have a harmful effect on their mental well-being;
- 2) the witness is younger than fourteen years of age and the interview is related to domestic violence or sexual abuse;
- 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(2) If the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 70. Special rules for interviewing or examining an underage witness

(1) The proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness.

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

(2) If the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if:

[RT I, 11.07.2013, 1 – entry into force 01.09.2013]

- 1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being;
- 2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse;
- 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders.

(3) Where this is needed, the interview with, or examination of, the minor is video recorded. In a situation mentioned in subsection 2 of this section, the interview with the minor is video recorded if – for the reason that the minor's first-hand examination in court is not possible due to the minor's age or the minor's mental

state – the intention is to use that interview as evidence in judicial proceedings.

(4) During pre-trial proceedings, the suspect has a right to acquaint themselves with the video recordings mentioned in subsection 3 of this section. During five days following their having acquainted themselves with the recordings, the suspect or the defence counsel has a right to put questions to the witness. The Prosecutor's Office considers the corresponding application within five days following its filing. Denial of the application is issued as an order, a copy of which is transmitted to the person who filed the application. The fact that an application has been denied does not prevent its being filed anew in accordance with the rules provided by § 225 of this Code or during judicial proceedings.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

§ 290. Special rules for examining an underage witness

(1) Adversarial examination is not used to examine a witness of less than fourteen years of age.

(2) To examine a witness of less than fourteen years of age, the court may use the assistance of a child protection official, social worker, teacher or psychologist of who may put questions to the witness with the permission of the judge.

(3) The judge invites an underage witness of less than fourteen years of age to tell the court everything they know concerning the criminal case.

(4) After an underage witness of less than fourteen years of age has testified, they are examined by the prosecutor and defence counsel in the order determined by the court. The accused may put questions to the witness through the defence counsel.

(5) The court excludes any inadmissible or irrelevant questions. With permission of the court, leading questions may be put to the witness.

(6) Taking into consideration the mental or physical condition and age of the witness, the court may interrupt their examination by the parties to judicial proceedings and examine the witness of its own motion or based on written questions submitted by the parties.

(7) If the presence of an underage witness is not required after they have been examined, the court removes the witness from the courtroom.

Also § 69 (distance interview or distance examination) might be relevant.

Here you can upload any file(s) in support of your answer

d. [are video recordings of interviews of child victims regarded as admissible evidence?](#)^[58] Please provide details.

[58] *Ibid.*, Recommendation 47

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.d Yes)

Yes. It is clearly stated in the § 70 (3) and § 290-1 of the Code of Criminal Procedure as well as in the § 29-1 of the Child Protection Act (regarding video recordings made at the Barnahus).

Here you can upload any file(s) in support of your answer

e. [what measures do you take to guard against any further contact between a child victim of sexual abuse by someone in a recognised position of trust, authority or influence and a presumed offender during the criminal proceedings?](#)^[59]

[59] *Ibid.*, Recommendation 48

There are several options, for instance prohibition of stay (§ 140-2 of the CCP), temporary restraining order with or without electronic monitoring (§ 141-1 of the CCP), deprivation of liberty through committal in custody (§ 130 and following of the CCP), substituting electronic monitoring for committal in custody (§ 137-1 of the CCP) etc.

Code of Criminal Procedure:

§ 140-2. Prohibition of stay

To provide for the performance of a procedural operation, a prohibition of stay may be imposed in respect of a particular place or person following the rules provided by § 44 of the Law Enforcement Act.

§ 141-1. Temporary restraining order

(1) The suspect or accused in proceedings concerning a criminal offence against the person or a criminal offence against a minor may, in order to protect the privacy or other personal rights of a victim and on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or of the court, be prohibited from attending any places determined by the court, from approaching any persons determined by the court or from communicating with such persons.

[RT I 2006, 31, 233 – entry into force 16.07.2006]

(1-1) The court may, together with a temporary restraining order and with the consent of the suspect or accused, impose electronic monitoring as provided for by § 75-1 of the Penal Code.

[RT I, 12.07.2014, 1 – entry into force 01.01.2015]

(1-2) In a situation of urgency, the restraining order provided for by subsection 1 of this section may be imposed by order of the Prosecutor's Office and regardless of the victim's consent. In such a situation, the Prosecutor's Office notifies the imposition of the restraining order to the court within two working days and the court, having regard to the victim's consent, decides on the permissibility of the order following the rules provided by subsections 13–6 of this section.

[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(1-3) The order which is mentioned in subsection 1 of this section and by which a temporary restraining order is imposed and the order which is mentioned in subsection 12 and by which a restraining order is declared permissible may be made as a note on the corresponding application, motion or order of the Prosecutor's Office.

[RT I, 06.05.2020, 1 – entry into force 07.05.2020]

(2) A temporary restraining order is imposed on the suspect or accused with the consent of the victim.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3) To make a temporary restraining order, the pre-trial investigation judge acquaints themselves with the criminal file and questions the suspect or accused and, where this is needed, the victim in order to ascertain whether the application for a temporary restraining order is justified. The prosecutor and, should the suspect or accused make the corresponding application or motion, their defence counsel are also summoned before the court or the pre-trial investigation judge and their opinions are heard.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(3-1) The pre-trial investigation judge or the court may organise the participation, in the disposition of the application or motion for imposing a restraining order, of the persons mentioned in subsection 3 of this section by means of a technical solution which complies with the requirements mentioned in clause 1 of subsection 2 of § 69 of this Code.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

(4) A temporary restraining order states:
1) the reasons for the order;
2) the conditions of the order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(5) The victim, the Prosecutor's Office, the suspect, the accused or their defence counsel may, following the rules provided by Chapter 15 of this Code, file an interim appeal against the imposition of a temporary restraining order or against a refusal to impose such an order.
[RT I 2006, 31, 233 – entry into force 16.07.2006]

(6) A copy of the temporary restraining order is provided to the suspect or accused and to the victim, and another one is sent to the Police and Border Guard Board. The pre-trial investigation judge or the court also notifies the imposition of the temporary restraining order, without delay, to any other persons who are affected by the order.
[RT I, 29.12.2011, 1 – entry into force 01.01.2012]

Here you can upload any file(s) in support of your answer

f. [does your national legal framework allow taking the child's testimony without the presumed offender being present?](#)^[60] Please provide details.

[60] *Ibid*

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.f Yes)

Yes. Please see previous responses under Questions 19 and 20. Relevant provisions are § 29-1 of the Child Protection Act, §§ 37-2, 70, 290-1, 290 and 69 of the CCP. Also several different guidelines (pointed out in responses under Question 19) are relevant here.

Here you can upload any file(s) in support of your answer

g. [how do you ensure that face-to-face confrontation with the defendant during the proceedings does not take place?](#)^[61]

[61] *Ibid*

Yes. Please see previous responses under Questions 19 and 20. Relevant provisions are § 29-1 of the Child Protection Act, §§ 37-2, 70, 290-1, 290 and 69 of the CCP. Also several different guidelines (pointed out in responses under Question 19) are relevant here.

Here you can upload any file(s) in support of your answer

h. [what measures do you take to prevent violation of the child victims' right to privacy by the media through disclosure or publication of personal information or data?](#)^[62]

[62] *Ibid.*, Recommendation 49

Relevant provisions in the Code of Criminal Procedure: § 11-13 (Public access to trials or hearings; Imposing restrictions on public access to a trial or hearing; Restrictions on the making of records at trials or hearings) and § 214 (Conditions for disclosure of information concerning pre-trial proceedings). Then there is also the "Estonian Code of Journalism Ethics" (in Estonian language: <https://meedialiit.ee/eetikakoodeks/>) which also includes point 4.8.: When publishing materials about offenses, lawsuits and accidents, a journalist must consider whether the identification of the parties involved is absolutely necessary and what kind of suffering it may cause to the parties involved. Victims and juvenile offenders are generally not identified to the public.

Code of Criminal Proceedings:

§ 214. Conditions for disclosure of information concerning pre-trial proceedings

(1) Information concerning pre-trial proceedings is disclosed only with permission of and to the extent allowed by the Prosecutor's Office and under the conditions provided by subsection 2 of this section.

(2) Disclosure of information concerning pre-trial proceedings is permitted in the interests of the proceedings, of the public or of the data subject, provided this does not inordinately:

- 1) encourage crime or render detection of a criminal offence more difficult;
- 2) prejudice the interests of the Republic of Estonia or of criminal proceedings;
- 3) endanger a business secret or harm the activities of a legal person;

[RT I 2007, 12, 66 – entry into force 25.02.2007]

4) prejudice the rights of the data subject or of third parties, particularly where personal data of a special category are disclosed.

[RT I, 13.03.2019, 2 – entry into force 15.03.2019]

(3) Where the prohibition of disclosure of information concerning pre-trial proceedings has been violated, the pre-trial investigation judge may, on an application of the Prosecutor's Office, enter an order by which they impose a fine on a party to proceedings, on any other person participating in the proceedings or on a

non-party. No fine is imposed on the suspect or accused.
[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

i. [does your national legal framework provide for free legal aid to child victims of sexual abuse by someone in a recognised position of trust, authority or influence under the same or more lenient conditions as that available to adults?](#)^[63] Please provide details.

[63] *Ibid.*, Recommendation 50

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.i Yes)

Yes, according to the § 41 (3) and (3-1) of the Code of Criminal Procedure, the conditions are more lenient. (See also response to the Question 16).

§ 41. Representative of the victim, of the civil defendant and of a third party
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(1) An individual victim, civil defendant or third party may participate in criminal proceedings personally or through a representative. Personal participation in such proceedings does not deprive the person concerned of the right to have a representative.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(2) In criminal proceedings, a corporate victim, civil defendant or third party may, in addition to the statutory representatives mentioned respectively in subsection 2 of § 37, subsection 4 of § 39 and subsection 4 of § 401 of this Code, have a contractual representative.
[RT I, 06.01.2016, 5 – entry into force 01.07.2016]

(3) In criminal proceedings, State-funded legal aid is provided to victims, civil defendants and third parties on the grounds and following the rules prescribed in the State-Funded Legal Aid Act. If the court finds it likely that, without the assistance of an attorney, a victim's, civil defendant's or third party's material interests would remain unprotected, the court may, of its own motion, decide to grant State-funded legal aid to the person concerned on the grounds and following the rules prescribed in the State-Funded Legal Aid Act.
[RT I 2007, 2, 7 – entry into force 01.02.2007]

(3-1) The proceedings authority assigns, under the rules for State-funded legal aid, a representative to a victim of limited active legal capacity, if:

- 1) it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim;
- 2) the underage victim has been separated from their family;
- 3) the victim is an unaccompanied minor for the purposes of the Act on the Granting of International Protection to Aliens.

[RT I, 06.01.2016, 5 – entry into force 16.01.2016]

(4) The victim, civil defendant or third party may have up to three representatives. A representative may have several principals provided there is no conflict of interests between the principals. In judicial proceedings, the following persons may serve as a contractual representative: an attorney or another person who has acquired at least an officially recognised Master's degree in the field of legal studies or a qualification that is equivalent to such a degree for the purposes of subsection 2 of § 28 of the Republic of Estonia Education Act, or an equivalent foreign qualification.

[RT I 2008, 29, 189 – entry into force 01.07.2008]

(5) A representative has all the rights of their principal. The representative of a person or the contractual representative of a corporate entity does not have a right to give statements or testimony in the name of the principal.

[RT I 2007, 2, 7 – entry into force 01.02.2007]

(6) The representative is required to maintain secrecy concerning any information they become privy to when providing legal aid in the course of criminal proceedings. The representative is allowed to disclose such information to their principal. The representative may disclose information that concerns their principal and that derives from pre-trial proceedings only with the consent of the principal and under the conditions prescribed in § 214 of this Code.

[RT I, 23.02.2011, 1 – entry into force 01.09.2011]

Here you can upload any file(s) in support of your answer

j. [does your national legal framework grant to child victims of sexual abuse by someone in a recognised position of trust, authority or influence the right to be represented in their own name by a lawyer trained in the relevant matters?](#)^[64] Please provide details.

[64] *Ibid.*, Recommendation 51

- Yes
 No

Please provide information in support of your answer, if possible referring to specific legal provisions and their exact wording (20.j Yes)

Yes. In criminal proceedings a child victim shall be assigned a representative under the rules of state-funded legal aid if it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim or if the underage victim has been separated from their family (Code of Criminal Procedure § 41(3-1)). The victim may have up to three representatives. An attorney or other person with a Master's degree in legal studies may serve as a representative.

The legal representative of the child may be present throughout the criminal proceedings.

Only attorneys and other persons with a Master's degree in legal studies may be assigned as representative of a child victim under the rules of state-funded legal aid (see question 16). This ensures the representative has sufficient legal knowledge to protect the child's rights. The Estonian Bar Association provides continuing legal training to attorneys on different topics and specific trainings on child rights, child-friendly interviewing etc are mandatory for attorneys that represent children under the rules of state-funded legal aid.

Code of Criminal Procedure § 41: <https://www.riigiteataja.ee/en/eli/505092023002/consolide#para41>

§ 41. Representative of the victim, of the civil defendant and of a third party

(1) An individual victim, civil defendant or third party may participate in criminal proceedings personally or through a representative. Personal participation in such proceedings does not deprive the person concerned of the right to have a representative.

/.../

(3-1) The proceedings authority assigns, under the rules for State-funded legal aid, a representative to a victim of limited active legal capacity, if:

1) it may be presumed under the circumstances that the interests of the victim's statutory representative are in conflict with those of the victim;

2) the underage victim has been separated from their family;

3) the victim is an unaccompanied minor for the purposes of the Act on the Granting of International Protection to Aliens.

(4) The victim, civil defendant or third party may have up to three representatives. A representative may have several principals provided there is no conflict of interests between the principals. In judicial proceedings, the following persons may serve as a contractual representative: an attorney or another person who has acquired at least an officially recognised Master's degree in the field of legal studies or a qualification that is equivalent to such a degree for the purposes of subsection 2 of § 28 of the Republic of Estonia Education Act, or an equivalent foreign qualification.

Here you can upload any file(s) in support of your answer

k. [what assistance, if any, do you provide to child victims of sexual abuse by someone in a recognised position of trust, authority or influence, once a criminal justice decision has been taken?](#)^[65]

[65] *Ibid.*, Recommendation 52

Child victims of sexual abuse are children in need of assistance according to the Child Protection Act § 26 and the children's needs are assessed and necessary support provided in the child protection proceedings by the local municipality's child protection worker and specialists at the Social Insurance Board's children's houses (Barnahus).

Child Protection Act §-s 26, 28 and 29-1:

§ 26. Child in need of assistance

A child in need of assistance is a child whose well-being is threatened or in the case of whom doubt has arisen concerning his or her abuse, neglect or any other situation violating the rights of the child and a child whose behaviour threatens his or her well-being or the well-being of other persons.

§ 28. Assessment of need for assistance

(1) Before the application of a suitable measure to a child in need of assistance, the child's need for assistance must be assessed. The child's need for assistance shall be assessed by a child protection official or a person working with a child, except for a person in direct contact with a child in the course of voluntary activity, serving in alternative service, participating in employment services or practicing as a trainee, by involving a relevant specialist therefor, if necessary.

(2) Upon assessing the child's need for assistance, the child protection official or a person working with a child shall give an assessment to:

1) the physical, medical, psychological, emotional, social, cognitive, educational and economic situation of the child;

2) the parenting skills of the person raising the child.

§ 29-1. Measures of Social Insurance Board for assisting sexually abused children or children behaving in sexually abusive manner

(1) A local government agency shall notify the Social Insurance Board immediately after becoming aware of a child in need of assistance if the child:

- 1) has been sexually abused or in case of suspicion thereof;
- 2) is a suspect or a person subject to proceedings in a sexual offence or the sexual behaviour of the child threatens the wellbeing of other persons or the child.

/.../

(3) To support the wellbeing of a child specified in subsection 1 of this section, the Social Insurance Board shall:

- 1) provide a child-friendly environment for making child protection and offence proceedings acts with regard to the child and providing services supporting the rehabilitation of the child;
- 2) hear the child, if necessary, to ascertain the abuse and shall video record the hearing to use it as evidence in offence proceedings;
- 3) assess the need for assistance resulting from the abuse of the child or associated with the abusive behaviour and also the risks associated with the abusive behaviour of the child, by involving a relevant specialist therefor, if necessary;
- 4) support and counsel the child and persons close to the child;
- 5) monitor the performance of measures applied for assisting the child.

Here you can upload any file(s) in support of your answer

Contact

[Contact Form](#)