

Global Progress Survey on Violence against children 2011: Estonia

Comments of the Legal Information Centre for Human Rights regarding Recommendation 2 (“Prohibit by law all violence against children”)

Sexual offences against children

1. Legislation regarding sexual offences against children is relatively developed in Estonia. However, in the frames of the 2004 study (1,943 people aged 16-19 were interviewed), 15% of boys and 44% of girls claimed to be at least in one of the situation of sexual abuse mentioned by social scientists (someone has exposed themselves naked to the respondent; someone has groped the respondent; someone has forced the respondent to masturbate; respondent has been forced to have sexual intercourse; respondent has been forced to perform oral sex; respondent has been forced to perform anal sex).¹
2. In 2011, there were introduced important and progressive amendments in the Code of Criminal Procedure. Article 70 of the Code now permits video recording of testimonies of victims under 14 in cases of domestic violence or sexual abuse. This recording can be later used in court procedure if the victim’s examination in the court is “impossible due to age or mental condition.” Before these amendments a minor witness or victim shall be (almost always) summoned by court while age could not justify failure to be present in the court.

Sexual exploitation of children

1. Legislation on sexual exploitation of minors is new but rather developed. There are reasons to believe that some provisions (e.g. aiding prostitution involving minors) did have some preventive effect.
2. However, certain weakness of Estonian penal law lays in lack of criminalisation of *buying* sexual services from minors. There are also good reasons to believe that the low

¹ First two types of maltreatment were much more widespread. Kadri Soo, Dagmar Kutsar (ed.), *Sotsiaaluuring. Seksuaalse väärkohtlemise kogemused ja hoiakud Eesti noorte hulgas*, Tartu, 2004, p. 61.

age of sexual consent means increased risk of sexual exploitation, trafficking and child prostitution.

3. Estonian legislation does not provide efficient mechanism to punish for classical type of “sex tourism”. The penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the Estonian penal law and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act. However, this act shall be committed against a citizen of Estonia or a legal person registered in Estonia and the offender shall be a citizen of Estonia at the time of commission of the act or after that, or if the offender is an alien who has been detained in Estonia and is not extradited (Article 7 of the Penal Code). The Supreme Court emphasised that in case of sexual intercourse with minors under 14 the court shall verify if such actions are punishable in the countries where they had been committed.² Thus, Estonian legislation does not provide efficient mechanism to punish for “sex tourism” for two main reasons: 1. victims of these offences are normally persons who are not citizens of Estonia; 2. many countries have undeveloped legislation to protect children against sexual assault and exploitation.
4. In 2006, the Supreme Court confirmed that Article 177 of the Penal Code (then “use of minors as a model or actor in the manufacture of a pornographic or erotic work”) does not require distribution of such work or making it available to the public. Estonian penal law did not include definition of “erotica” or “pornography”. However, the definition of “erotica” belongs to necessary elements of the crimes provided for in Article 177 (1) of the Penal Code. The Supreme Court argued that it presupposes legal opinion which is primarily belongs to court competence.³ In general, absence of definition of “erotica” or “(child) pornography” applicable in criminal procedure may pose a problem for the court.
5. It should be noted that from 15 March 2010 the Penal Code is amended with Article 178-1 to address the problem of “grooming”. It is now penalised offering or making agreement to meet with a person of less than 18 years who is incapable to comprehend or with a person of less than 14 years and preparation of a meeting whereas the aim of the meeting is to commit against this person any of sexual offences as well as offences related to prostitution, pornography and erotic works.

² Supreme Court, Criminal Law Chamber, decision of 10 September 2007 in case no 3-1-1-35-07, section 13.

³ Supreme Court, Criminal Law Chamber, decision of 16 March 2006 in case no. 3-1-1-146-05, section 8.

Harmful practices

1. There is no specific regulation in Estonia regarding female genital mutilation. There is no information about such practices in Estonia. Considering the practices of child protection officers, one may presume that female genital mutilation will be regarded as abuse of parental rights and/or cruel treatment of the child. Furthermore, police authorities may make use of Article 118 of the Penal Code (causing serious damage to health which results in e.g. the loss or cessation of functioning of an organ) or Article 121 (causing damage to the health of another person, or beating, battery or other physical abuse which causes pain).
2. There is no information about such practices as forced marriage in Estonia. No special legal measures were taken either (including migration law). Estonian legislation provides decent guarantees against forced marriages.
3. There are reasons to believe that honour based violence take place very rarely in Estonia. The issue has never been widely publicly discussed. This problem has never been specifically addressed in Estonian legislation.

Physical abuse and neglect

1. Basic mechanisms of child protection in urgent or exceptional situations are separation of the child from family and deprivation of a right of personal care and/or a right of property care. The Family Law Act can hardly be regarded as a detailed set of rules that can guide the court. Too much is left to the discretion of judges or child protection officers.
2. Some general principles are established by the Child Protection Act: prohibition to humiliate, frighten or punish the child in any way which abuses the child, causes bodily harm or otherwise endangers his or her mental or physical health (Article 31 (1)); protection from all forms of sexual exploitation (Article 33). If an adult treats a child in a prohibited manner, the social services departments shall intervene in order to resolve the conflict and, if necessary, to apply for punishment under misdemeanour or criminal procedure (Article 31 (2)). Child protection is based on the principle that the best

interests of the child shall be a primary consideration at all times and in all cases (Article 3).

3. Most of acts of physical abuse are covered by relevant provisions of the Penal Code. Failure to report commission by another person of a criminal offence in the first degree is a crime foreseen by Article 307 of the Penal Code.⁴ For instance, this Article is applicable to rape of a minor but not to sexual intercourse with a minor under 14. This Article cannot be regarded as an efficient tool to ensure reporting the cases of physical abuse of minors.
4. Importantly, the Family Law Act provided for necessity to give notice of the danger to minor's well-being not only to local authorities but also to the court. In addition to persons mentioned in Article 37 of the Social Welfare Act (public officials, judges, police officers, prosecutors, healthcare and educational institutions workers) the Act explicitly mentions notaries, bailiffs, teachers and *other* persons who may possess information on the matter (Article 134 (2) of the Family Law Act).

Domestic violence

1. In Estonia domestic violence information sheets were launched in spring 2004 in the Western Police Prefecture. The system provides an overview of police perspective regarding the observed cases of domestic violence. The information sheet deals only with cases of domestic violence (including any incidents of domestic conflicts which have required police intervention) and reflects the role of persons involved in the case.⁵ By order of the Director General of the Police Board of 29 June 2006 domestic violence information sheets were introduced in all other police prefectures. The order of the Director General of 28 February 2006 stipulated how to forward information about violence victims to public victim support service.

06.10.2011

⁴ Offender's parent, child, adoptive parent, adopted child, brother, sister, grandparent, grandchild, spouse or a parent cannot be punished.

⁵ Helve Kase, Iris Pettai, *Perevägivald Lääne-Eestis 2004-2005, Politseistatistika analüüs*, Lääne Politseiprefektuur, Eesti Avatud Ühiskonna Instituut, Eesti Sotsiaalprogrammide Keskus, Tallinn, 2005, p.3.