



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD
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**WRITTEN REPLIES BY THE GOVERNMENT OF ESTONIA TO THE LIST OF
ISSUES (CRC/C/OPSC/EST/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE
CONSIDERATION OF THE INITIAL REPORT OF ESTONIA SUBMITTED UNDER
ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN,
CHILD PROSTITUTION AND CHILD PORNOGRAPHY (CRC/C/OPSC/EST/1) ***

[Received on 24 November 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

Reply to question 1 (a) of the list of issues (CRC/C/OPSC/EST/Q/1)

Registered crimes in 2006-2008		2006	2007	2008	Total
Sale or purchase of children	§ 173	0	0	0	0
Disposing minors to engage in prostitution	§ 175	0	1	9	10
Aiding prostitution involving minors	§ 176	2	4	6	12
Use of minors in manufacture of pornographic works	§ 177	10	4	4	18
Manufacture of works involving child pornography or making child pornography available	§ 178	29	22	52	103

Convicted persons, decisions made by court		2007	2008	Total
Disposing minors to engage in prostitution	§ 175	2	0	2
Aiding prostitution involving minors	§ 176	13	0	13
Use of minors in manufacture of pornographic works	§ 177	1	2	3
Manufacture of works involving child pornography or making child pornography available	§ 178	4	16	20

Reply to question 1 (b) of the list of issues

1. There have been no trafficking cases of children in Estonia within the last 3 years. In total there have been 12 persons (incl 2 males) potentially involved with trafficking in human beings in the years 2006-2008.

Reply to question 2 of the list of issues

2. The Chancellor of Justice may receive complaints directly submitted by children. Consent of a parent or a guardian is not necessary. But in practice the Chancellor of Justice has had very few complaints directly submitted by children. The Chancellor of Justice has received most of the complaints directly from children while carrying out inspection visits to different child welfare institutions.

3. In 2008 The Chancellor of Justice received overall 25 communications alleging violations of children's rights. Out of these 25 communications 13 were complaints and 12 were actions initiated by the Chancellor (inspection visits, round-table meetings etc). In 2008 the Chancellor of Justice received overall 2566 complaints, so the percentage of complaints alleging violations of children's rights is about 0,5%. In 2009 the Chancellor of Justice has received (data up to 01.10.2009) 22 communications alleging violations of children's rights out of which 13 are complaints. It makes the percentage of complaints alleging violations of children's rights in 2009 also about 0,5%. Unfortunately we don't have statistics about the number and percentage of complaints alleging violations of children's rights under the Optional Protocol.

4. There have been several discussions about setting up the institution of a children's Ombudsman at different levels. On the 14th of May 2009 there was an open discussion about setting up a children's Ombudsman in Legal Affairs Committee of the *Riigikogu* (Estonian Parliament). All parties who were present agreed on the necessity of setting up the institution of a children's Ombudsman. But at the present moment there is no decision yet about the position of such an institution with relation to state agencies and the Chancellor of Justice.

Reply to question 3 of the list of issues

5. The state has organised campaigns to provide information on risks related to child sex tourism and on minimising of such events such as child pornography on the internet. Trainings have also been carried out to children and parents on safety of internet use. No direct initiatives or actions have been taken to introduce the Code of Conduct of the World Tourism Organization to the public or companies in the field of tourism. However, the state has supported the activities of NGOs in the field of combating child sex tourism by enabling them to carry out awareness-raising events on the premises of the ministries, e.g. the Ministry of Justice and the Ministry of Social Affairs, which has added weight to the NGO-organised events.

6. The Ministry of Social Affairs also conducts a national network of safe internet for children, which consists of representatives of ministries, state agencies, non-governmental organisations and the private sector. Estonia is also joining the European Union Safer Internet Programme in the near future.

Reply to question 4 of the list of issues

7. Child prostitution and sale of children are both fully prohibited and criminalized.

Penal Code of Estonia

§ 173. Sale or purchase of children

(1) *The sale or purchase of children is punishable by 1 to 5 years' imprisonment.*

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

§ 175. Disposing minors to engage in prostitution

(1) *A person who by inducement, threat or any other act influences a person of less than 18 years of age in order to cause him or her to commence or continue prostitution, but the act does not have the necessary elements of an offence provided for in § 133 or 143 of this Code, shall be punished by a pecuniary punishment or up to 5 years' imprisonment.*

(2) *For a criminal offence provided in this section:*

- 1) *the court may impose, as supplementary punishment, a pecuniary punishment pursuant to the provisions of § 53 of this Code, or*
- 2) *the court imposes, pursuant to the provisions of § 83² of this Code, extended confiscation of the property obtained by the criminal offence.*

§ 176. Aiding prostitution involving minors

(1) *Aiding prostitution involving a person of less than 18 years of age by mediation, provision of premises or in any other manner is punishable by a pecuniary punishment or up to 5 years' imprisonment.*

(2) *The same act, if committed:*

- 1) *by a group or a criminal organisation;*
- 2) *by a person who has previously committed a criminal offence provided in this section or aiding prostitution, - is punishable by 3 up to 15 years' imprisonment.*

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

(4) *An act provided for in clause (2) 2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.*

(5) *For a criminal offence provided in this section:*

- 1) *the court may impose, as supplementary punishment, a pecuniary punishment pursuant to the provisions of § 53 of this Code, or*
- 2) *the court imposes, pursuant to the provisions of § 83² of this Code, extended confiscation of the property obtained by the criminal offence.*

§ 177. Use of minors in manufacture of pornographic works

(1) *Use of a person of less than 14 years of age as a model or actor in the manufacture of a pornographic or erotic picture, picture, film or other work, and use of a person of less than 18 years of age as a model or actor in the manufacture of a pornographic picture, film or other work is punishable by a pecuniary punishment or up to 5 years' imprisonment.*

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

§ 178. Manufacture of works involving child pornography or making child pornography available

(1) *A person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or person of less than 18 years of age in a pornographic or erotic situation shall be punished by a pecuniary punishment or up to 3 years' imprisonment.*

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

§ 179. Sexual enticement of children

(1) *A person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner shall be punished by a pecuniary punishment or up to one year of imprisonment.*

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

Reply to question 5 of the list of issues

8. There is a contractual relationship between the internet service provider and the end-user. The providing of the internet service may be restricted in case the user violates the terms of contract or in case it is provided by law. In addition to the provisions of the Electronic Communications Act, matters related to the contract are also regulated by the Law of Obligations Act. No direct notification obligation is provided.

9. Estonia has also acceded to the Council of Europe Convention on Cybercrime.

10. The provisions of the Electronic Communications Act set the obligation to provide information to surveillance agencies and security authorities and courts. The relevant provisions are listed below:

§ 112. Obligation to provide information to surveillance agencies and security authorities

(1) *Where adherence to the deadlines specified below is possible due to the nature of an enquiry, a communications undertaking is required to provide, within twenty four hours after receiving an urgent enquiry submitted by a surveillance agency or security authority, or within ten working days if the enquiry is not urgent, the surveillance agency or security authority with information at its disposal concerning:*

1) *information on the personal data of the sender and receiver of messages contained in the subscription contracts;*

- 2) *information on the location of the sender and recipient of messages;*
- 3) *the fact of transmission of messages, and the duration, mode and format of the messages;*
- 4) *the databases describing the transmission of messages in the process of message transmission and the data contained in the databases (the fact of transmission of messages, and the duration, mode and format of the messages).*

(2) The enquiry specified in subsection (1) of this section shall be submitted in writing or by electronic media. Enquiries concerning messages specified in clause (1) 1) of this section may also be made in oral form verifying the request with a password. Access to the data specified in subsection (1) of this section may also be granted online on the basis of a written contract.

§ 113. Obligation to grant access to communications network

(1) Communications undertakings shall grant surveillance agencies and security authorities access to the communications network for the conduct of surveillance activities or for the restriction of the right to confidentiality of messages, correspondingly.

(2) In connection with granting a surveillance agency or security authority access to the communications network, the communications undertaking is required to submit information concerning the technical parameters of the communications network to the agency or authority, if they so request. A communications undertaking shall assume the obligation to immediately inform the surveillance agency or security authority of any modifications which are made to the technical parameters of the communications network and of the launching of any new services, if this may interfere with the performance of the obligations specified in subsection (3) of this section, and shall commence the performance of such obligations with regard to all offered services within a reasonable period of time.

(3) Upon granting access to a communications network, a communications undertaking is required to:

- 1) *enable the surveillance agency or security authority to select messages and to ensure their transmission to a central or portable surveillance device of the surveillance agency or security authority in an unchanged form and in real time;*
- 2) *ensure the quality of message transmission which must be equal to the quality of the regular services provided by the communications undertaking;*
- 3) *ensure the protection of the messages and the data related to their transmission.*

(4) Transmission by a communications undertaking of messages to a central or portable surveillance device of a surveillance agency or security authority shall be decided by the surveillance agency or security authority. A surveillance agency or security authority shall inform the Ministry of Economic Affairs and Communications of communications undertakings

who transmit messages to central or portable surveillance devices of the surveillance agency or security authority.

(5) Transmission of messages to a central surveillance device shall be carried out by using a message splitting interface and appropriate hardware and software, which ensures the preservation of independent log files concerning the actions performed by the central surveillance device (time, type, object and number of action) for a period of at least five years.

(6) For transmission of messages to a portable surveillance device, a surveillance agency or security authority shall submit an application to a communications undertaking in writing or by electronic means for access to the communications network which shall set out the date, number and term of validity of the court order for the conduct of a surveillance activity or for the restriction of the confidentiality of messages. The communications undertaking is required to preserve such application for a period of at least five years.

(7) In the event of termination of the provision of communications services by a communications undertaking, the death, or dissolution of an undertaking, including as a result of merger or acquisition, or declaration of bankruptcy of a communications undertaking, the medium containing the log files specified in subsection (5) of this section and the applications specified in subsection (6) of this section shall be immediately transferred to the Communications Board. The procedure for preservation of log files and applications, transfer thereof to the Communications Board and for the transfer and destruction thereof shall be established by the Minister of Economic Affairs and Communications.

(8) In order to exercise supervision over the activities of surveillance agencies and security authorities, a Prosecutor's Office and the security authorities surveillance committee of the Riigikogu⁴ have the right to examine the applications specified in subsection (6) of this section and in the case of transmission of messages to a central surveillance device, also with the log files which are preserved.

(9) A communications undertaking is required to preserve the secrecy of information related to the conduct of surveillance activities, and activities which restrict the right to inviolability private life or the right to confidentiality of messages.

(10) Extraordinary and unavoidable acts necessary for enabling access to a communications network which interfere with the provision of communications services, as well as work performed by the undertaking on the communications network which interfere with the transmission of messages to the surveillance devices shall be performed under conditions agreed upon by the communications undertaking and the surveillance agency or the security authority in writing.

§ 114. Obligation to provide information to courts

In order to establish the truth, a communications undertaking shall provide the court, on the basis of a single written inquiry thereof, with information at its disposal which is specified in clauses 112 (1) 1)–4) of this Act on the bases and pursuant to the procedure prescribed in the Code of Civil Procedure and within the term specified by the court. For the purposes of this

section, single inquiry is an inquiry for obtaining the information specified in clauses 112 (1) 1)–4) concerning a particular telephone call, a particular electronic mail, a particular electronic commentary or another communication session related to the forwarding of a single message.

11. Relevant provisions of the Information Society Services Act which set the restricted liability of service providers include:

§ 8. Restricted liability upon mere transmission of information and provision of access to public data communications network

(1) Where a service is provided that consists of the mere transmission in a public data communication network of information provided by a recipient of the service, or the provision of access to a public data communication network, the service provider is not liable for the information transmitted, on condition that the provider:

- 1) does not initiate the transmission;*
- 2) does not select the receiver of the transmission;*
- 3) does not select or modify the information contained in the transmission.*

(2) The acts of transmission and of provision of access in the meaning of subsection (1) of this section include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the public data communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

§ 9. Restricted liability upon temporary storage of information in cache memory

Where a service is provided that consists of the transmission in a public data communication network of information provided by a recipient of the service, the service provider is not liable for the automatic, intermediate and temporary storage of that information, if the method of transmission concerned requires caching due to technical reasons and the caching is performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- 1) the provider does not modify the information;*
- 2) the provider complies with conditions on access to the information;*
- 3) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used in the industry;*
- 4) the provider does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information;*
- 5) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been*

disabled, or that a court, the police or a state supervisory authority has ordered such removal.

§ 10. Restricted liability upon provision of information storage service

(1) Where a service is provided that consists of the storage of information provided by a recipient of the service, the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

1) the provider does not have actual knowledge of the contents of the information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent;

2) the provider, upon obtaining knowledge or awareness of the facts specified in clause 1) of this section, acts expeditiously to remove or to disable access to the information.

(2) Subsection (1) of this section shall not apply when the recipient of the service is acting under the authority or the control of the provider.

§ 11. No obligation to monitor

(1) A service provider specified in §§ 8–10 of this Act is not obligated to monitor information upon the mere transmission thereof or provision of access thereto, temporary storage thereof in cache memory or storage thereof at the request of the recipient of the service, nor is the service provider obligated to actively seek facts or circumstances indicating illegal activity.

(2) [Invalid]

(3) Service providers are required to promptly inform the competent supervisory authorities of alleged illegal activities undertaken or information provided by recipient of their service specified in §§ 8–10 of this Act, and to communicate to the competent authorities information enabling the identification of recipients of their service with whom they have storage agreements.

(4) Service provider must on the bases and pursuant to the procedure prescribed in the Code of Criminal Procedure present to a prosecuting authority and investigative authority in order to ascertain the truth and on the bases and pursuant to the procedure prescribed by law to the security and surveillance authority by their prescribed date existing information on the recipient, who is provided information storage service by the service provider.

(5) Service provider must on the bases and pursuant to the procedure prescribed in the Code of Civil Procedure present to the court by its prescribed date on its single inquiry in order to ascertain the truth existing information on the recipient, who is provided information storage service by the service provider. A single inquiry within the meaning of the present Article is an inquiry on the personal data of the service recipient and on the fact of transmission of

information, its duration, manner and form in connection with the communication session related to the submission of specific e-mail, electronic comment or other single message.

12. In its judgment of 10 June 2009 (No. 3-2-1-43-09), the Supreme Court of the Republic of Estonia found that the restricted liability of a service provider stated in §§ 8-11 of the Information Society Services Act does not apply in case of an online news and entertainment portal which allows and encourages online commenting, as the portal does not merely transmit information but has control over it.

13. An Estonian leading online news and entertainment portal, undertook no measures to remove obviously obscene and vulgar comments directed at a well-known businessman from its site, letting such comments be available to the public for almost two months. The Supreme Court found the portal to be a co-publisher of the comments together with the actual commentators as it had integrated the commenting environment into its news portal, it actively incited commenting on published news, it had an economic interest in added comments, it prescribed the rules in the commenting environment and finally had control over the commenting environment by removing and altering inappropriate comments.

14. The Supreme Court found that the portal must either implement measures that prevent the publishing of obviously obscene and vulgar comments or it has to monitor the published comments to prevent unlawful damage to a person by violation of personality rights.

Reply to question 6 of the list of issues

15. Guidelines for identifying and helping a victim of trafficking, including guidelines for helping child victims, have been prepared in 2009 and distributed to partners in Estonia by the Ministry of Social Affairs in co-operation with the Ministry of Justice. To prevent criminals' access to the guidelines such guidelines are not publicly available.

Reply to question 7 of the list of issues

16. Regardless of their legal status, all children are provided emergency social assistance according to § 28¹ of the Social Welfare Act. Emergency social assistance is provided to everyone who finds themselves in a socially helpless situation.

17. According to the statistical data collected on the bases of the proceedings carried out by the Citizenship and Migration Board (the number of residence permits issued etc), as at the beginning of November 2009, 2284 of under 15-year-old children with undetermined citizenship were staying in Estonia on the basis of a valid residence permit or the right of residence. There is no data collected on the number of children whose one or both parents are stateless.

18. There is a state-financed and state-organised rehabilitation for juvenile offenders in Estonia.

19. The Ministry of Justice is currently drafting a Development Plan on Combating Violence for the years 2010-2014. The Ministry of Social Affairs is coordinating the subsection of the prevention and reduction of violence against children of the mentioned development plan.

Various preventive as well as intervening activities regarding violence against children are planned in the framework of the development plan. The most important measures include increasing the professional skills of experts, improving the mechanisms of reporting of violence, primary prevention, influencing of public attitudes and awareness-raising.

Reply to question 8 of the list of issues

20. The Estonian legislation makes a difference between the definition of an under-aged person and a minor. An under-aged person is considered a child less than 14 years of age. A minor is considered a child of the age 14 to 18 years (i.e. until adult age). Specifications concerning hearing of witnesses or victims who are minors have been prescribed by § 70 of the Code of Criminal Procedure of the Republic of Estonia (statements given during the pre-court investigation) and § 290 (statements given during a court hearing).

21. § 70 of the Code of Criminal Procedure specifies that a witness under 14 years of age shall be heard in the presence of a child protection official, social worker or psychologist. The body conducting the proceedings may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age. During the interview, all possible measures shall be taken in order to ensure that all the procedures conducted in case of a minor (witness/victim) are as painless and convenient as possible especially in case of the existence of the following circumstances: the victim is a minor; the crime is targeted towards the privacy of the body of the minor and/or his/her sexual self-determination, the sexual abuse has been committed in reality or in the virtual world and the abuser is a close relative or a stranger.

22. The recording of the interview is very often exercised in case of an under-aged person and especially if a person is under 10 years old. The aim of the recording is to avoid repeated interviews and to watch the body language of the child victim which is an essential factor of the interview. Similar practice has been introduced in most European countries.

23. Police prefecture offices have specially furnished rooms for interviewing children. The rooms are designed to have a child-friendly atmosphere to reduce fear and uncertainty. Sometimes dolls or puppets are used to make it easier for the child victim to give statements and explain the experienced events. Asking leading questions is not allowed in case of child victims (in Estonia this requirement applies to the interviewing and interrogation of all witnesses and victims regardless of their age).

24. In all the police prefectures there are child protection divisions established or special officers whose duty is to process crimes against children during the pre-court investigation. Also, special prosecutors have been assigned to deal with this matter. Such specialisation enables to select officers with suitable personal qualities to process the cases. All the police officers working with children have received police training and supplementary training in psychology. Also additional regular trainings are conducted to such police officers. Supplementary training is also provided to prosecutors.

25. The Estonian police and prosecution authorities are making efforts to ensure that the child victims have no contacts with their sexual abusers or the person who caused them physical damage, or minimise the unavoidable contacts. According to the Estonian legislation, a child

may also be placed in a shelter to ensure his/her security during the pre-court investigation. This practise is used frequently in case the crime perpetrator is a close relative – a parent, step-parent, sibling, grandparent, uncle or aunt. In addition, a forensic-psychiatric examination may be conducted and if necessary (with permission of the court) a child victim may be given psychiatric treatment.

26. In case the aforementioned offences have been committed by a person unfamiliar to a child, the child and his/her family are included in the victim support network where they are able to receive psychological consult and crises aid. Also, the victim support services shall be used in case the perpetrator was someone close to the child and the rest of the family is in shock. The aim is to relieve the dramatic experience for the child and avoid causing additional damage during the pre-court investigation and also to help the child and a close relative to overcome the shock and to simplify the adaptation to every day life as soon as possible.

27. The requirements on the hearing of witnesses who are minors are stated in § 290 the Code of Criminal Procedure which are similar to the requirements in case of the pre-court investigation.

28. If possible, the child is not heard in the court room in the presence of the perpetrator and a previously conducted and recorded interview and/or a long distance interview may be used, in order to avoid actual eye contact in the court room. Expedited procedures and settlements are encouraged in cases the victim is a child and the precondition is that the perpetrator has completely admitted his/her guilt. The positive effect of such proceedings is that in such cases no court hearings are held and causing additional stress to the child is avoided. The negative effect of such procedures is that the penalty may be reduced by 1/3.

29. However, in a situation where the severity of the punishment and the welfare of a child are at stake, it is normally decided in favour of the latter. Also, in addition to the principal punishment one of the possible sanctions imposed on the perpetrator may be a restraining order towards the victim.

30. According to § 16 section 2 of the Code of Criminal Procedure the victim is an equal participant in a proceeding. Other relevant provisions of the Code of Criminal procedure regarding the rights of a victim in the criminal proceedings (which all apply to child victims as well) include:

§ 11. Public access to court sessions

(1) *Every person has the opportunity to observe and record court sessions pursuant to the procedure provided for in § 13 of this Code.*

(2) *The principle of public access applies to the pronouncement of court decisions without restrictions unless the interests of a minor, spouse or victim require pronouncement of a court decision in a court session held in camera.*

(3) *The principle of public access applies as of the opening of a court session until pronouncement of the court decision, taking into account the restrictions provided for in §§ 12 and 13 of this Code.*

(4) *A court may remove a minor from a public court session if this is necessary for the protection of the interests of the minor.*

§ 12. Restrictions on public access to court sessions

(1) *A court may declare that a session or a part thereof be held in camera:*

- 1) in order to protect a state or business secret;*
- 2) in order to protect morals or the private and family life of a person;*
- 3) in the interests of a minor;*
- 4) in the interests of justice, including in cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.*

(2) *A court shall adjudicate restrictions on public access to a court session on the grounds provided for in subsection (1) of this section by a ruling made on its own initiative or at the request of a party to the court proceeding.*

(3) *With the permission of the court, an official of an investigative body, a court official, witness, expert, interpreter, translator or a person close to the accused within the meaning of subsection 71 (1) of this Code may observe a court session held in camera.*

(4) *If a court session is held in camera, the court shall warn the parties to the court proceeding and other persons present in the courtroom that disclosure of the information relating to the proceeding is prohibited.*

§ 13. Restrictions on recording of court sessions

(1) *As of the opening of a court session until the pronouncement of the court decision, the persons present in the courtroom may:*

- 1) take written notes;*
- 2) make audio-recordings if this does not interfere with the court session.*

(2) *Other means for recording a court session may be used only with the permission of the court.*

(3) *If a court session is held in camera, the court may decide that written notes only may be taken.*

§ 37. Victim

(1) *A victim is a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.*

(3) *The provisions applicable to witnesses apply to victims in the performance of procedural acts unless otherwise prescribed by this Code.*

§ 38. Rights and obligations of victims

(1) *A victim has the right to:*

- 1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in §§ 207 and 208 of this Code;*
- 2) file a civil action before termination of examination by court in the county court;*
- 3) give or refuse to give testimony on the bases provided for in §§ 71-73 of this Code;*
- 4) submit evidence;*
- 5) submit requests and complaints;*
- 6) examine the report of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas record shall be made of such statements;*
- 7) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;*
- 8) participate in the court hearing;*
- 9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment and the damage set out in the charges and the civil action;*
- 10) give consent to the application of temporary restraining order and request application of restraining order pursuant to the procedure provided for in § 310¹ of this Code.*

(2) *A victim is required to:*

- 1) appear when summoned by an investigative body, Prosecutor's Office or court;*
- 2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.*

(3) *The filing of a civil action for compensation for proprietary damage in a criminal proceeding is exempt from state fees.*

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

(1) A victim, civil defendant or third party who is a natural person may participate in the criminal proceeding personally or through a representative. Personal participation in a criminal proceeding does not deprive the person of the right to have a representative.

(2) A victim, civil defendant or third party who is a legal person may have a contractual representative in a criminal proceeding in addition to the legal representatives specified in subsections 37 (2), 39 (2) and 401 (2) of this Code.

(3) In criminal proceedings, state legal aid shall be provided to victims, defendants and third parties on the bases and pursuant to the procedure prescribed in the State Legal Aid Act. If a court finds that the essential interests of a victim, defendant or third party may be insufficiently protected without an advocate, the court may decide to grant state legal aid to the person on its own initiative and on the bases and pursuant to the procedure prescribed in the State Legal Aid Act.

(4) A victim, civil defendant and third party may have up to three representatives. A representative may have several principals if the interests of the principals are not in conflict. An advocate or any other person who has acquired Master's Degree in law on the basis of an accredited curriculum or has a foreign certificate of higher education concerning completion of equivalent studies which is recognised by the Centre specified in subsection 6 (3) of the Recognition of Foreign Professional Qualifications Act pursuant to the procedure provided for in section 28¹ of the Republic of Estonia Education Act or who has completed at least the first degree of academic higher education in law on the basis of a study programme with the nominal length of study of four years pursuant to the procedure in force before the entry into force of the amendments of the Universities Act which entered into force on 10 March 2003 or at least the first degree of academic higher education in law on the basis of a study programme with the nominal length of study of five years pursuant to the procedure in force before the entry into force of the Republic of Estonia Education Act may be a contractual representative in court proceedings.

(5) A representative has all the rights of the principal. A representative of a natural person or the contractual representative of a legal person does not have the right to give testimony in the name of the principal.

31. Because the provisions applicable to witnesses apply to victims, the following §§ from the Code of Criminal procedure are relevant as well:

§ 66. Witness

(1) A witness is a natural person who may know facts relating to a subject of proof.

(2) A suspect or accused or the official of the investigative body, the prosecutor or the judge conducting the proceedings in the criminal matter shall not participate in the same criminal matter as witnesses.

(3) *A witness shall give truthful testimony unless there are lawful grounds specified in §§ 71–73 of this Code for refusal to give testimony.*

§ 67. Ensuring safety of witnesses

(1) *Taking into account the gravity of a criminal offence or the exceptional circumstances relating thereto, a preliminary investigation judge may, at the request of the Prosecutor's Office, declare a witness anonymous by a ruling in order to ensure the safety of the witness.*

(2) *In order to make a ruling on anonymity, the preliminary investigation judge shall question the witness in order to ascertain his or her reliability and the need to ensure his or her safety, and shall hear the opinion of the prosecutor. If necessary, the preliminary investigation judge shall examine the criminal file.*

(3) *A fictitious name shall be assigned to an anonymous witness on the basis of the ruling on anonymity and the name shall be used in procedural acts pursuant to subsection 146 (8) of this Code.*

(4) *Information concerning the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and place of employment or the educational institution of a witness declared anonymous shall be enclosed in an envelope bearing the number of the criminal matter and the signature of the person conducting the proceedings. The envelope shall be sealed and kept separately from the criminal file. The information contained in the envelope shall be examined only by the person conducting the proceedings who shall seal and sign the envelope again after examining the information.*

(5) *In a court proceeding, a witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in clause 69 (2) 2) of this Code using voice distortion equipment, if necessary. Questions may be submitted to the witness also in writing.*

(6) *Regardless of whether or not a witness has been declared anonymous, the provisions of the Witness Protection Act may be applied to the witness in order to ensure his or her safety.*

§ 68. Hearing of witnesses

(1) *The rights and obligations of witnesses and the right to write the testimony in hand-writing shall be explained to a witness.*

(2) *A witness of at least 14 years of age shall be warned against refusal to give testimony without a legal basis and giving knowingly false testimony, and the witness shall sign the minutes of the hearing to that effect. If necessary, it is explained to the witness that intentional silence on the facts known to him or her shall be considered refusal to give testimony.*

(3) *While giving testimony, a witness may use notes and other documents concerning numerical data, names and other information which is difficult to memorise.*

(4) *A witness may be heard only as regards the facts relating to a subject of proof. It is prohibited to pose leading questions.*

(5) *The testimony of a witness concerning such facts relating to a subject of proof of which the witness has become aware through another person are evidence only if the direct source of the evidence cannot be heard.*

(6) *Questions concerning the moral character and habits of a suspect, accused or victim may be posed to a witness only if the act which is the object of the criminal proceeding must be assessed in inseparable connection with his or her previous conduct.*

§ 69. Long-distance hearing

(1) *A body conducting the proceedings may organise long-distance hearing of a witness if the direct hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim.*

(2) *For the purposes of this Code, “long-distance hearing” means hearing:*

1) *by means of a technical solution as a result of which the participants in the proceeding, see and hear the witness giving testimony outside the investigative body, Prosecutor’s Office or court directly via live coverage and may question the witness through the person conducting the proceedings;*

2) *by telephone, as a result of which the participants in the proceeding directly hear the witness giving testimony outside the investigative body or court and may question the witness through the person conducting the proceedings.*

(3) *Long-distance hearing by telephone is permitted only with the consent of the person to be heard and the suspect or accused. The consent of the suspect or accused is unnecessary for the long-distance hearing of anonymous witnesses by telephone.*

(4) *The minutes of a long-distance hearing shall contain a notation that the witness has been warned against refusal to give testimony without a legal basis and giving knowingly false testimony.*

(5) *The provisions of § 468 apply to the hearing of witnesses staying in a foreign state.*

(6) *The Minister of Justice may establish more specific requirements for organising long-distance hearing.*

§ 70. Specifications concerning hearing of witnesses who are minors

A witness under 14 years of age shall be heard in the presence of a child protection official, social worker or psychologist. The body conducting the proceedings may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

§ 280 section 5:

(5) Witnesses under 14 years of age shall not be warned about a criminal punishment but the obligation to speak the truth in court shall be explained to them.

§ 281. Explanation of rights and obligations to victims and civil defendants

A judge shall explain the rights and obligations provided for in §§ 38 and 40 of this Code to victims and civil defendants.

§ 290. Specifications concerning hearing of witnesses who are minors

(1) In the hearing of a witness under 14 years of age, he or she shall not be cross-examined.

(2) A witness who is a minor of less than 14 years shall be heard in the presence of a child protection official, social worker or psychologist who may question the witness with the permission of the judge. The body conducting the proceeding may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

(3) A judge shall make a proposal to a witness who is a minor of less than 14 years of age to tell the court everything he or she knows concerning the criminal matter.

(4) After a witness who is a minor of less than 14 years of age has given testimony, he or she shall be examined by the parties to the court proceeding in the order determined by the court.

(5) The court shall overrule leading and irrelevant questions.

(6) If the presence of a minor is not necessary after he or she has been heard, the court shall ask him or her to leave the courtroom.

32. Please note, that the Estonian Ministry of Justice has elaborated draft amendments to the Code of Criminal Procedure. The draft also includes several amendments regarding minors: the hearing of minor witnesses/victims via video-link, interrogation of a child witness/victim only once during the criminal proceedings etc. As the amendments are currently in draft status, it is not yet possible to provide examples of the specific provisions, however, the fact illustrates that Estonia is constantly working to provide best protection to minor witnesses/victims and their rights during criminal proceedings to avoid re-victimisation.

33. Prosecutors and judges have received training and lectures regarding work with child victims and avoiding re-victimisation.

34. Specific strategies: the Ministry of Justice has elaborated The *Development Plan for Reduction of Juvenile Delinquency 2007-2009* and The *Development Plan for combating Trafficking in Human Beings 2006-2009*. Also the drafting of the Development Plan on Combating Violence for the years 2010-2014 is currently in progress. This strategy is primarily aimed at the most vulnerable victims of violence (e.g. children) and covers fields like domestic violence, child abuse, youth violence, human trafficking.

Reply to question 9 of the list of issues

35. Victim support compensation is provided to victims of offences under the Optional Protocol in case the offence is followed by the victim's death, severe health damage or a health disorder lasting for at least six months. No specific record is kept regarding compensation appointed to children. According to the report "State social security 9 months 2009" 2958 persons have received victim support services in the sum of 109,4 thousand *kroons* and compensation to crime victims has been paid in the sum of 1532.3 thousand *kroons* to 251 persons.

36. Statistical data exists regarding children who have turned to victim support officials:

- In 2007, 49 children against who violence had been used turned to victim support officials. Victim support officials were present at a minor's interrogation in 1138 cases. At the beginning and the end of the interrogation initial counseling is provided, if necessary. In 2007 victim support officials mediated psychological counseling in case of 48 minors and referred 11 minors to psychological counseling.

- In 2008, 227 children against who violence had been used turned to victim support officials. Victim support officials were present at a minor's interrogation in 1215 cases. At the beginning and the end of the interrogation initial counseling is provided, if necessary. In 2008 victim support officials mediated psychological counseling in case of 43 minors and referred 27 minors to psychological counseling.

- During the first 9 months of 2009, 195 children against who violence had been used turned to victim support officials. Victim support officials were present at a minor's interrogation in 786 cases. At the beginning and the end of the interrogation initial counseling is provided, if necessary. During this time victim support officials mediated psychological counseling in case of 39 minors and referred 48 minors to psychological counseling.
