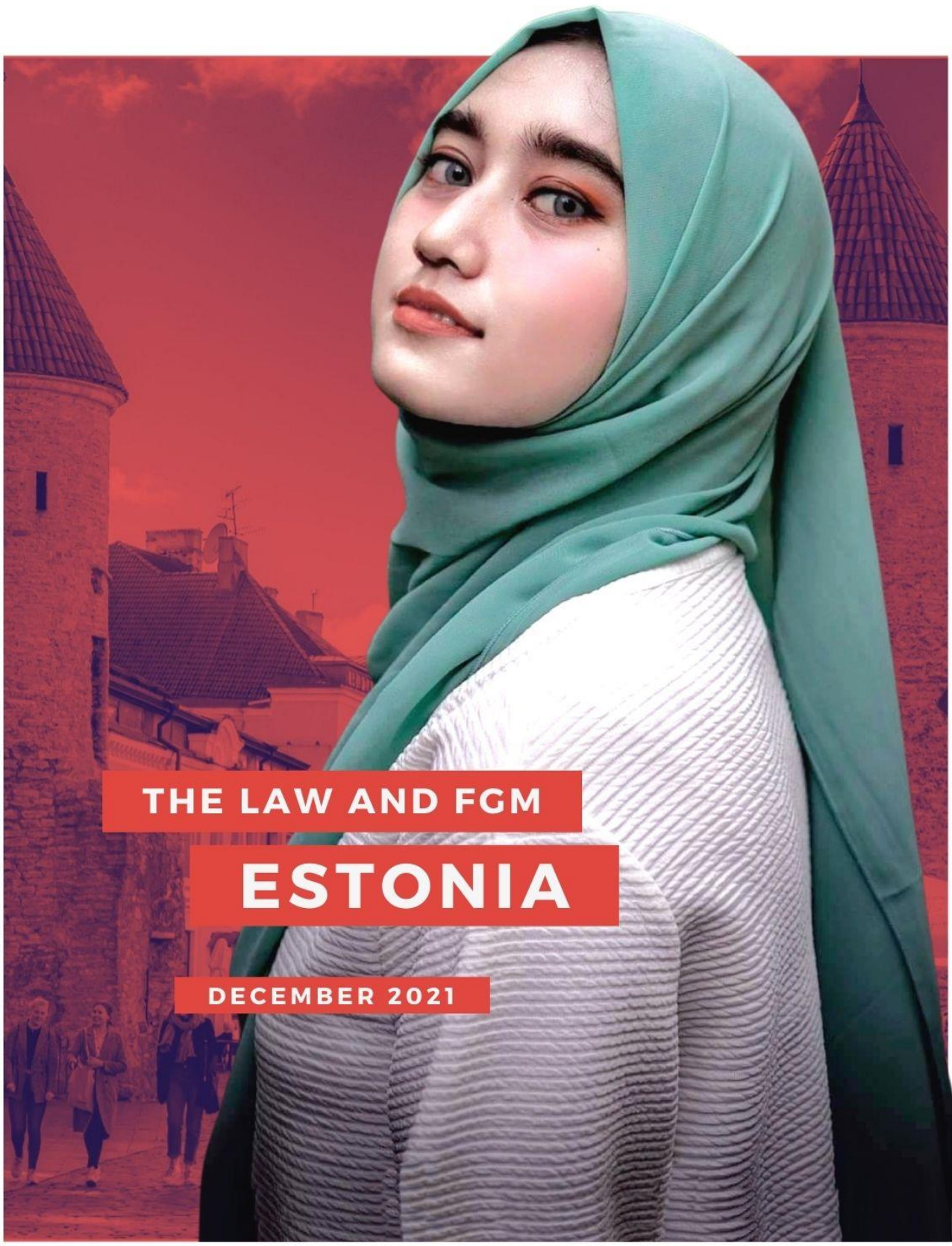
28 TOO MANY
FGM... let's end it.



# THE LAW AND FGM

# ESTONIA

DECEMBER 2021

# National Legal Framework

### Overview of National Legal Framework in Estonia

***National legislation:***

| | |
|---|---|
| X | Specific law/provision criminalising FGM |
| X | Provides a definition of FGM |
| ✓ | Criminalises the performance of FGM |
| ✓ | Criminalises the procurement, arrangement and/or assistance of acts of FGM |
| X | Obligation to report incidents of FGM to the authorities |
| ✓ | Criminalises the participation of medical professionals in acts of FGM |
| X | Extraterritorial application regardless of double criminality |

## Introduction

Estonia is a country in northern Europe with an estimated population of 1.3 million.[1] Estonia is a unitary republic with a parliamentary democracy. It has a civil-law legal system.

### FGM Prevalence

There is no information available on the prevalence of female genital mutilation (*FGM*) in Estonia, either for girls and women who have undergone FGM or those who are at risk of FGM. It is known that very few women originating from countries where FGM is practised are living in Estonia.[2]

## National Legal Framework

### General Law

There is no specific law criminalising FGM in Estonia, nor have we encountered any statements by the Estonian Government condemning FGM or confirming the application of general criminal law to it.

However, Estonia has ratified the Istanbul Convention,[3] and general criminal law does implicitly apply to FGM.

FGM could fall under **Articles 118 and 121 of the Penal Code of the Republic of Estonia (2001, as amended)** (the *Criminal Code*) on causing serious health damage and physical abuse, respectively. Which offence FGM would fall under would be dependent on the consequences of a specific instance.

- **Article 118(1) of the Criminal Code** prescribes that health damage will be considered 'serious' if, *inter alia*, it results in (1) a danger to life, (3) severe mental disorder, and (6) loss or cessation of functioning of an organ. **Article 118(1)** could apply, depending on the consequences of FGM. FGM can sometimes be life threatening when there is excessive bleeding or an infection, can cause a severe mental disorder such

as PTSD, and can also result in the loss of sensation or the (proper) functioning of the clitoris and other sexual organs.

- **Article 121(1)** describes 'physical abuse' as causing damage to the health of another person or physical abuse that causes pain. This would apply to all forms of FGM. **Article 121(2)** prescribes that causing health damage that persists for four weeks and committing abuse in a close relationship or relationship of subordination are aggravating circumstances.

Another (less obvious) possibility for prosecution in relation to FGM is **Article 134 of the Criminal Code**. Article 134 criminalises taking a person, through violence or deceit, to a country where it is possible to persecute or humiliate them on grounds of race or gender, when the person lacks legal protection against such treatment and does not have the possibility of leaving the state. This could be applied in cases where girls are taken abroad to undergo FGM, usually unbeknownst to them, to countries where FGM is not criminal, since they have no legal protection against the treatment they are subjected to and they cannot leave because they are usually not in possession of their own travel documents. Under **Article 134(2)(2)**, it is an aggravating circumstance if the victim is a minor.

### Definition of FGM

The law does not contain a definition of FGM, nor have we been able to find any government source defining FGM.

### Women and Girls of All Ages

The performance of FGM on women and girls of all ages has been criminalised in Estonia. The law does not contain an age restriction for the offences under **Articles 118, 121 and 134 of the Criminal Code**.

### Procuring, Aiding and Abetting

Procuring, aiding and abetting FGM are criminalised in Estonia through general criminal law.

It is unclear whether procuring FGM, when someone has a cutter (or any other person) perform FGM on the victim, qualifies someone as a 'joint principal perpetrator' or an accomplice ('abettor'). **Article 21(2) of the Criminal Code** prescribes that an offence is deemed to have joint principal perpetrators if an act committed by several persons jointly and in agreement comprises the necessary elements of an offence. However, the provision nor the law specifies how closely involved a person must be in the commission to be considered a joint perpetrator. **Article 22(2)** prescribes that an abettor is a person who intentionally induces another person to commit an intentional unlawful act. **Article 22(2)** would in any case apply to someone who procures FGM because that person induced another with money to commit FGM.

Aiding and abetting FGM qualify someone as an accomplice under **Article 22(1)**. **Article 22(3)** describes an 'aider' as a person who intentionally provides physical, material or moral assistance to an intentional, unlawful act of another person. As aforementioned, **Article 22(2)** describes an 'abettor' as a person who intentionally induces another person to commit an intentional, unlawful act. **Articles 21 and 22** are both applicable to **Articles 118, 121 and 134**.

### Allowing the Use of Premises

Allowing the use of premises for the purpose of FGM is (most likely) criminalised in Estonia through general criminal law. Allowing the use of premises can qualify as providing material assistance to the intentional, unlawful act of another person and thus as 'aiding' under **Article 22(3) of the Criminal Code**.

## Providing or Possessing Tools

Providing (specific) tools for the purpose of FGM is (most likely) criminalised in Estonia under general criminal law. Providing (specific) tools can qualify as providing material assistance to the intentional, unlawful act of another person and thus as 'aiding' under **Article 22(3) of the Criminal Code**.

Possessing (specific) tools for the purpose of FGM has not been criminalised in Estonia. The **Criminal Code** does not contain a provision for the preparation of an offence, and possessing tools does not fall under the description of an 'attempt'. **Article 25(2)** prescribes that an 'attempt' is deemed to have started when a person directly starts the commission of the offence, according to the person's own understanding of the act. This cannot be said to apply to a situation where someone simply possesses the tools to start the commission of the offence.

## Failure to Report FGM

Failing to report FGM has not been criminalised in Estonia; however, there are general exceptions in civil law to professional secrecy and obligations to notify the authorities regarding physical danger and abuse.

Under **Article 768(2) of the Law of Obligations Act**, healthcare providers are permitted to breach their professional secrecy to a reasonable extent if failure to disclose certain information could result in patients significantly damaging themselves or other persons. This would apply in cases where a woman or girl wants to commit FGM on herself and could apply when she wants someone else to perform FGM on her. However, it is unclear whether this exemption also applies when the problem is another person trying to hurt the patient against their will.

Under **Article 27(2) of the Child Protection Act**, anyone who knows of a child whose wellbeing is threatened or has suspicions that the child is being abused or neglected must notify the local government or the child helpline service. Under **Article 31 of the Child Protection Act**, anyone who knows of a child in danger is under an obligation to immediately notify the authorities.

Under **Article 134(2) of the Family Law Act**, an official of a state agency or local government agency, a police officer, a healthcare professional, a judge, a prosecutor, a notary, a bailiff, a teacher or any other person who has information on a child whose wellbeing is endangered must notify the rural municipality government or city government of the residence of the child or a court thereof.

## Medicalised FGM

Medicalised FGM would be criminalised in Estonia under **Articles 118 and 121 of the Criminal Code**. There is no specific provision on medicalised FGM in the Criminal Code, nor one on malpractice by a licensed medical professional or medical quackery.

## Extraterritoriality

The **Criminal Code** extends application of Estonian criminal law to the commission of FGM abroad under the requirement of double criminality in all cases. **Article 7(1)** prescribes that Estonian criminal law applies to acts that amount to offences under Estonian criminal law and are also punishable in the countries where they were committed (double criminality), if they were committed:

- against an Estonian national; or
- by someone who was an Estonian national at the time of commission, someone who becomes an Estonian national after the commission, or an alien who has been detained in Estonia and is not extradited.

However, in cases where FGM is not a criminal offence in the country itself, **Article 134** could apply, since it is a requirement of this provision that the victim does not have any legal protection against the treatment they are subjected to in the country they have been taken to.

**Article 8** does prescribe that double criminality is not required regarding any acts committed outside the territory of Estonia if the criminality of the act arises from international obligations binding on Estonia. This could be the case for FGM, since Estonia has ratified the Istanbul Convention.[4]

# Penalties

There are penalties for committing FGM and crimes related to FGM in Estonia, depending on which provision of the **Criminal Code** FGM can be prosecuted under in a specific instance.

- Article 118(1) prescribes a sentence of four- to twelve-years' imprisonment for causing serious health damage.
- Article 121(1) prescribes a sentence of up to one year's imprisonment or a fine for physical abuse.
- Article 121(2) prescribes a sentence of up to five years' imprisonment or a fine for physically abusing someone in a close relationship or relationship of subordination, or for causing health damage that persists for at least four weeks.
- Article 134(1) prescribes a sentence of up to five years' imprisonment or a fine for abduction.
- Article 134(2) prescribes a sentence of two- to ten-years' imprisonment for abducting a minor.

Under **Articles 22(4) and 22(5)** those who procure, aid in or abet FGM may be punished with the same sentences as principal offenders as prescribed by **Articles 118, 121 and 134**. The Court may choose to apply mitigated sentences as described by **Article 60**, but is not obligated to do so.

Under **Article 25(6)**, the same applies to someone who attempts to commit FGM. The Court may choose to apply mitigated sentences under **Article 60**, but is not obligated to do so.

# Protection

## Protecting Uncut Women and Girls

Uncut girls can be protected through child protection laws in general civil law. Under the **Child Protection Act**, measures and out-of-home placement are available when a child is in need in of assistance or in danger.

**Article 26 of the Child Protection Act** prescribes that a child is deemed to be in need of assistance when the child's wellbeing is threatened or when suspicions of abuse or neglect of a child or any other situation violating the rights of the child have arisen. If, after assessment, a child is deemed to be in need of assistance, the local government will provide for assistance in accordance with **Article 29 of the Child Protection Act**.

The **Child Protection Act** does not contain any set measures or structures of support that may be provided, but refers to **Article 29:1 of the Social Welfare Act** on case management, which prescribes a case-by-case approach in which the local government, within its competences, may choose a set of measures.

Based on **Article 29(3) of the Child Protection Act**, the local government may also forward the child's case to a competent official.

**Article 135(1) of the Family Law Act** prescribes that 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.

A child may be placed out of the home (temporarily) if considered to be a child in danger. **Article 30 of the Child Protection Act** describes a 'child in danger' as a child who is in a situation that endangers his or her life or health. **Article 32(1)**, in conjunction with **Article 32(3)**, prescribes that, if necessary, a child protection official, the local government or the police may, without consent of the parent(s), place a child in danger in safety until the danger has passed. Under **Article 33(1)**, the local government or Social Insurance Board may separate a child from the family, without consent of the parent(s), if:

- the child has been endangered due to the activity or inactivity of the parent(s); or
- the parent(s) refuse(s) the temporary placement of the child with a service provider.

If necessary, the local government and Social Insurance Board may also determine the procedure of communication of the parent and the child.

**Article 135(2) of the Family Law Act** prescribes that a court may only deprive a parent of the right of custody if other measures have not yielded any results or if there is reason to presume that the application of the measures is not sufficient to prevent danger.

There are no specific or general laws protecting uncut women, aside from general criminal law.

# Implementation of The Law

### Court Cases

There are no Estonian court cases in relation to FGM known to 28 Too Many.

# Conclusions and Recommendations

## Conclusions

FGM is **not explicitly criminalised** in Estonia under a specific law, provision or governmental declaration. However, Estonia has ratified conventions condemning FGM, including the Istanbul Convention, and general criminal law does implicitly apply to the practice.

Consequently, the law does not contain any definition of 'FGM' and it is not clear whether all **types of FGM** would fall under general assault laws.

**Procuring, aiding and abetting** FGM would be criminalised through general laws on participation in offences.

There is an obligation under general civil law for anyone to **report** cases where FGM has been performed or is imminent.

The Criminal Code extends **extraterritorial application** of Estonian criminal law to the commission of FGM abroad under the requirement of double criminality in all cases.

## Recommendations

We recommend that Estonia order an inquiry into the prevalence of FGM and the number of possible girls and women at risk of it.

We recommend that Estonia issue a governmental declaration confirming the application of criminal law to FGM, including a definition of FGM that corresponds to the WHO's and specifying that FGM is a criminal offence if performed on a woman or girl of any age, regardless of (perceived) consent (especially in the case of a minor).

We also recommend that Estonia remove the requirement of double criminality in all cases for the performance of FGM abroad.

# Appendix I: International and Regional Treaties

| ESTONIA | Signed | Ratified/ Acceded | Reservations on reporting? |
|---|---|---|---|
| **International** | | | |
| **International Covenant on Civil & Political Rights (1966) (*ICCPR*)[5]** | X | ✓ 1991 | No |
| **International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)[6]** | X | ✓ 1991 | No |
| **Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)[7]** | X | ✓ 1991 | No |
| **Convention on the Rights of the Child (1989) (*CRC*)[8]** | X | ✓ 1991 | No |
| **Regional** | | | |
| **Istanbul Convention[9]** | ✓ 2014 | ✓ 2017 | No |
| **European Convention on Human Rights[10]** | ✓ 1993 | ✓ 1996 | No |

**'Signed'**: a treaty is signed by countries following negotiation and agreement of its contents.

**'Ratified'**: once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

**'Acceded'**: when a country ratifies a treaty that has already been negotiated by other states.

# Appendix II: National Laws

## Criminal Code

### Art. 7

(1) Eesti karistusseadus kehtib väljaspool Eesti territooriumi toimepandud teo kohta, mis on Eestis karistusseaduse järgi kuritegu, kui teo toimepanemise kohas on selline tegu karistatav või seal ei kehti ükski karistusõigus ning:

1) tegu on toime pandud Eesti kodaniku või Eestis registreeritud juriidilise isiku vastu või

2) teo toimepanija oli teo toimepanemise ajal Eesti kodanik või sai selleks pärast teo toimepanemist või välismaalane, kes on Eestis kinni peetud ja keda ei anta välja.

(2) Eesti karistusseadus kehtib:

1) väljaspool Eesti territooriumi toimepandud teo kohta, mis on Eestis karistusseaduse järgi kuritegu ja mille toimepanija on teenistuskohustusi täitev kaitseväelane;

2) väljaspool Eesti territooriumi toimepandud pistise või altkäemaksu andmise, võtmise või vahendamise või mõjuvõimuga kauplemise kohta, kui selle teo on toime pannud või selles on osalenud Eesti kodanik, Eesti ametiisik või Eestis registreeritud juriidiline isik, samuti Eestis kinnipeetud välismaalane, keda ei anta välja.

### Art. 8

Teo toimepanemise koha õigusest sõltumata kehtib Eesti karistusseadus väljaspool Eesti territooriumi toimepandud teo kohta, kui teo karistatavus tuleneb Eestile siduvast rahvusvahelisest kohustusest.

### Art. 21

(1) Täideviija on isik, kes paneb süüteo toime ise või teist isikut ära kasutades.

(2) Kui vähemalt kaks isikut panevad süüteo toime ühiselt ja kooskõlastatult, vastutab igaüks neist täideviijana (kaastäideviijad). Kaastäideviimine on ka see, kui mitme isiku ühine ja kooskõlastatud tegu vastab süüteokoosseisu tunnustele.

### Art. 22

(1) Osavõtjad on kihutaja ja kaasaaitaja.

(2) Kihutaja on isik, kes tahtlikult kallutab teise isiku tahtlikule õigusvastasele teole.

(3) Kaasaaitaja on isik, kes tahtlikult osutab teise isiku tahtlikule õigusvastasele teole füüsilist, ainelist või vaimset kaasabi.

(4) Osavõtjale mõistetakse karistus seaduse sama sätte järgi, mille järgi vastutab täideviija, kui käesoleva seadustiku §-s 24 ei ole sätestatud teisiti.

(5) Kaasaaitaja puhul võib kohus kohaldada käesoleva seadustiku §-s 60 sätestatut.

### Art. 25

(1) Osavõtjad on kihutaja ja kaasaaitaja.

(2) Kihutaja on isik, kes tahtlikult kallutab teise isiku tahtlikule õigusvastasele teole.

(3) Kaasaaitaja on isik, kes tahtlikult osutab teise isiku tahtlikule õigusvastasele teole füüsilist, ainelist või vaimset kaasabi.

(4) Osavõtjale mõistetakse karistus seaduse sama sätte järgi, mille järgi vastutab täideviija, kui käesoleva seadustiku §-s 24 ei ole sätestatud teisiti.

(5) Kaasaaitaja puhul võib kohus kohaldada käesoleva seadustiku §-s 60 sätestatut.

## Art. 60

(1) Käesoleva seadustiku üldosas nimetatud juhtudel võib kohus kergendada isiku karistust käesoleva paragrahvi lõigetes 2 kuni 4 sätestatud korras.

(2) Kergendatud karistuse ülemmäär ei või olla üle kahe kolmandiku seaduses sätestatud karistuse ülemmäärast.

(3) Kergendatud karistuse alammäär on käesoleva seadustiku üldosas sätestatud vastava karistusliigi alammäär.

(4) Kui käesoleva seadustiku eriosas on kuriteo eest karistusena ette nähtud eluaegne vangistus, mõistetakse karistuse kergendamisel tähtajaline vangistus kolmest kuni viieteistkümne aastani.

## Art. 118

(1) Tervisekahjustuse tekitamise eest, kui sellega on põhjustatud:

1) oht elule;

2) tervisehäire, mis kestab vähemalt neli kuud või kui sellega kaasneb töövõime püsiv kaotus vähemalt 40 protsenti täistöövõimest;

3) raske psüühikahäire;

4) raseduse katkemine;

5) nägu oluliselt moonutav ravimatu vigastus;

6) elundi kaotus või selle tegevuse lakkamine või

7) surm, –

karistatakse nelja- kuni kaheteistaastase vangistusega.

(2) Käesolevas paragrahvis sätestatud teo eest, kui selle on toime pannud juriidiline isik, – karistatakse rahalise karistusega.

(3) Kohus kohaldab käesolevas paragrahvis sätestatud kuriteo eest kuriteoga saadud vara laiendatud konfiskeerimist vastavalt käesoleva seadustiku §-s 832 sätestatule.

## Art. 121

(1) Teise inimese tervise kahjustamise eest, samuti valu tekitava kehalise väärkohtlemise eest – karistatakse rahalise karistuse või kuni üheaastase vangistusega.

(2) Sama teo eest, kui:

1) sellega on tekitatud tervisekahjustus, mis kestab vähemalt neli nädalat;

2) see on toime pandud lähi- või sõltuvussuhtes või

3) see on toime pandud korduvalt, –

karistatakse rahalise karistuse või kuni viieaastase vangistusega.

(3) Käesoleva paragrahvi lõikes 1 või 2 sätestatud teo eest, kui selle on toime pannud juriidiline isik, – karistatakse rahalise karistusega.

## Art. 134

(1) Vägivalla või pettusega inimese toimetamise ja jätmise eest riiki, kus teda on võimalik rassilisel, soolisel või muul põhjusel taga kiusata või alandavalt kohelda ja kus tal puudub sellise kohtlemise vastu seaduslik kaitse ja võimalus sellest riigist lahkuda, – karistatakse rahalise karistuse või kuni viieaastase vangistusega.

(2) Sama teo eest, kui see on toime pandud:

1) kahe või enama isiku suhtes või

2) noorema kui kaheksateistaastase isiku suhtes, –

karistatakse kahe- kuni kümneaastase vangistusega.

(3) Käesoleva paragrahvi lõikes 1 või 2 sätestatud teo eest, kui selle on toime pannud juriidiline isik, –karistatakse rahalise karistusega.

# Child Protection Act

## Art. 26

Abivajav laps on laps, kelle heaolu on ohustatud või kelle puhul on tekkinud kahtlus tema väärkohtlemise, hooletusse jätmise või muu lapse õigusi rikkuva olukorra suhtes, ja laps, kelle käitumine ohustab tema enda või teiste isikute heaolu.

## Art. 27

(1) Kohustus abivajavast lapsest teatada on kõigil isikutel, kellel on olemas teave abivajavast lapsest.

(2) Abivajavast lapsest tuleb viivitamata teatada kohaliku omavalitsuse üksusele või lasteabitelefonil 116 111.

(3) Abivajava lapse kohta teate vastu võtnud asutus või ametiisik, välja arvatud lapse rahvastikuregistrisse kantud elukoha järgne kohaliku omavalitsuse üksus või selle lastekaitsetöötaja, on kohustatud teate viivitamata edastama lapse rahvastikuregistrisse kantud elukoha järgsele kohaliku omavalitsuse üksusele.

(4) Kui lapse rahvastikuregistrisse kantud elukoha järgne kohaliku omavalitsuse üksus ei ole teada või seda ei ole võimalik välja selgitada, tuleb teade abivajavast lapsest viivitamata edastada selle kohaliku omavalitsuse üksusele, kus laps viibib.

(5) Abivajavast lapsest teatanud isikut ega teatamise fakti ei avalikustata, välja arvatud süüteomenetluses. Abivajavast lapsest teavitaval isikul on enda või oma perekonna kaitseks õigus jätta teavitamisel enda kohta andmed avaldamata.

## Art. 29

(1) Abivajavale lapsele abi osutamine on lapse heaolu toetava meetme kohaldamine viisil, mis parandab lapse ja last kasvatava isiku vahelisi suhteid.

(2) Abi osutamisel tuleb rakendada võrgustikutööd, järgides juhtumikorralduse põhimõtteid sotsiaalhoolekande seaduses sätestatud korras.

(3) Kohaliku omavalitsuse üksus peab kümne päeva möödumisel abivajavast lapsest teada saamisest tegema otsuse juhtumikorralduse algatamiseks või algatamata jätmiseks või juhtumi edastamiseks pädevale ametiisikule.

(4) Juhtumikorralduse võib algatamata jätta ainult juhul, kui lapse abivajadus on võimalik rahuldada ühekordse meetmega.

(5) Kohaliku omavalitsuse üksus peab abivajava lapse abivajaduse hindamisel ja abi osutamisel välja selgitama ja dokumenteerima lapse arvamuse ning lisama selle lapsega seotud kohustuslikule juhtumiplaanile, kui eriseadus ei sätesta teisiti.

## Art. 30

Hädaohus olev laps on laps, kes on oma elu või tervist ohustavas olukorras, ja laps, kelle käitumine ohustab tema enda või teiste isikute elu või tervist.

## Art. 31

(1) Kohustus hädaohus olevast lapsest teatada on kõigil isikutel, kellel on olemas teave hädaohus olevast lapsest.

(2) Hädaohus olevast lapsest tuleb viivitamata teatada hädaabinumbril 112.

## Art. 32

(1) Hädaohus olevat last tuleb viivitamata abistada ning likvideerida selleks lapse elu või tervist ohtu seadnud olukord. Vajaduse korral võib hädaohus oleva lapse toimetada ohututesse tingimustesse kuni ohu möödumiseni, küsimata selleks lapse hooldusõigust teostava isiku nõusolekut.

(2) Kui lapse ohtu sattumine ei olnud põhjustatud lapse hooldusõigust teostava isiku tegevusest või tegevusetusest või temast tulenev oht on lõppenud, antakse hädaohus olev laps üle lapse hooldusõigust teostavale isikule.

(3) Hädaohus oleva lapse toimetab ohututesse tingimustesse lapse viibimiskoha järgse kohaliku omavalitsuse üksuse lastekaitsetöötaja või politsei korrakaitseseaduse § 46 lõike 1 punktis 8 sätestatud alusel.

(4) Hädaohus olev laps paigutatakse ohututesse tingimustesse selleks sobivat teenust osutava sotsiaal-, tervishoiu- või haridusasutuse või isiku (edaspidi teenuseosutaja) või lapse jaoks turvalise isiku juurde sõltuvalt lapse olukorrast ja vajadustest.

(5) Kui hädaohus olevat last ei ole võimalik üle anda lapse hooldusõigust teostavale isikule, võib lapse ajutiselt paigutada teenuseosutaja juurde sobiva teenuse saamiseks või lapse jaoks turvalise isiku juurde järgmistel juhtudel:

1) lapse hooldusõigust teostava isiku nõusolekul;

2) kohaliku omavalitsuse üksuse lastekaitsetöötaja otsusel, kui lapse hooldusõigust teostav isik ei ole kättesaadav, või

3) Sotsiaalkindlustusameti lastekaitsetöötaja otsusel, kui lapse hooldusõigust teostav isik ei ole kättesaadav.

## Art. 33

(1) Kohaliku omavalitsuse üksus või Sotsiaalkindlustusamet võib eraldada lapse perekonnast ja vajaduse korral määrata lapse ja vanema suhtluskorra enne hooldusõiguse piiramise kohtumäärust, kui lapse jätmine perekonda või vanema ja lapse vaheline suhtlus ohustab lapse tervist või elu. Kohaliku omavalitsuse üksus või Sotsiaalkindlustusamet teeb otsuse hädaohus oleva lapse ajutiseks perekonnast eraldamiseks järgmistel juhtudel:

1) lapse ohtu sattumise on põhjustanud lapse hooldusõigust teostav isik oma tegevuse või tegevusetusega;

2) lapse hooldusõigust teostav isik keeldub lapse ajutisest paigutamisest teenuseosutaja juurde sobiva teenuse saamiseks.

(2) Käesoleva paragrahvi lõikes 1 nimetatud otsusega eraldatakse hädaohus olev laps perekonnast ja määratakse tema viibimiskoht ning vajaduse korral lapse ja vanema suhtluskord kuni 72 tunniks alates lapse perekonnast eraldamisest.

(3) Kohaliku omavalitsuse üksus või Sotsiaalkindlustusamet peab hindama lapse olukorda ja abivajadust ning käesoleva paragrahvi lõikes 2 sätestatud tähtaega arvestades pöörduma kohtusse hooldusõiguse ja vajaduse korral suhtlusõiguse piiramiseks perekonnaseaduses sätestatud alustel.

(4) Kui hädaohus olev laps tuleb ise või satub muul viisil teenuseosutaja juurde, peab teenuseosutaja viivitamata taotlema käesoleva paragrahvi lõikes 1 nimetatud otsust lapse ajutise perekonnast eraldamise kohta, kui talle on saanud teatavaks või tal on alust arvata, et lapse hooldusõigust teostav isik on põhjustanud lapse hädaohtu sattumise.

# Social Welfare Act

### Art. 29:1

(1) Kui isik vajab iseseisva toimetuleku parandamiseks pikaajalist ja mitmekülgset abi, mis hõlmab ka sotsiaalteenuse või -toetuse määramise vajadust, kasutatakse abi osutamisel juhtumikorralduse põhimõtet.

(2) Abi osutamine juhtumikorralduse põhimõttel hõlmab:

1) isiku juhtumi hindamist;

2) eesmärkide püstitamist ja tegevuste planeerimist;

3) juhtumiplaani ja selle juurde kuuluva tegevuskava koostamist;

4) isiku nõustamist ja juhendamist tegevuskava täitmisel;

5) tegevuste läbiviimist erinevate isikute või asutuste poolt;

6) tulemuste hindamist ja vajaduse korral juhtumiplaani ning selle juurde kuuluva tegevuskava muutmist.

(3) Juhtumiplaan on kirjalik dokument, mis koosneb hinnangust isiku abivajadusele ja tema probleemide lahendamist käsitlevast tegevuskavast. Juhtumiplaan on informatiivse tähendusega.

(4) Juhtumiplaanile kirjutavad alla kohaliku omavalitsusüksuse sotsiaalvaldkonnaga tegelev ametnik või kohaliku omavalitsusüksuse volitatud isik ning isik, kellele juhtumiplaan on koostatud. Abivajav isik kinnitab allkirjaga, et ta on tutvunud juhtumiplaani sisuga ning et ta osaleb juhtumiplaanis nimetatud tegevuste elluviimisel.

(5) Juhtumiplaani vormi kehtestab valdkonna eest vastutav minister määrusega.

# Family Law Act

### Art. 135

(1) Kohus võib lapse vanematest eraldada ainult juhul, kui lapse huvide kahjustamist ei ole võimalik ära hoida vanemate ja lapse suhtes kasutusele võetud muude toetavate abinõudega.

(2) Isikuhooldusõiguse võib kohus vanemalt täielikult ära võtta üksnes juhul, kui teised abinõud ei ole tulemusi andnud või kui on põhjust eeldada, et nende rakendamisest ei piisa ohu ärahoidmiseks.

(3) Isikuhooldusõiguse olulise piiramise või täieliku äravõtmise asja läbivaatamisel kaasab kohus menetlusse arvamuse andmiseks valla- või linnavalitsuse.

(4) Kui lapse jätmine perekonda ohustab lapse tervist või elu, võib valla- või linnavalitsus lapse perekonnast eraldada enne kohtumäärust. Sellisel juhul peab valla- või linnavalitsus viivitamata esitama kohtule avalduse vanema õiguste piiramiseks lapse suhtes.

1 Statistics Estonia (2021) *Population figure*. Available at https://www.stat.ee/en/find-statistics/statistics-theme/population/population-figure (accessed 30 June 2021).

2 European Institute for Gender Equality (2021) *Current situation of female genital mutilation in Estonia*. Available at https://eige.europa.eu/publications/current-situation-and-trends-female-genital-mutilation-estonia (accessed 30 June 2021).

3 - Council of Europe (2021) *Chart of signatures and ratifications of Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=signatures-by-treaty&treatynum=210 (accessed 30 June 2021).

- Council of Europe (2021) *Reservations and Declarations for Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=declarations-by-treaty&numSte=210&codeNature=0 (accessed 30 June 2021).

4 *Convention on the Rights of the Child* (1989) United Nation Treaty Collection: Status of Treaties. Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (accessed 30 June 2021).

5 *International Covenant on Civil and Political Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en (accessed 30 June 2021).

6 *International Covenant on Economic, Social and Cultural Rights* (1966) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4 (accessed 30 June 2021).

7 *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) United Nations Treaty Collection: Status of Treaties. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en#9 (accessed 30 June 2021).

8 *Convention on the Rights of the Child* (1989) United Nation Treaty Collection: Status of Treaties. Available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en (accessed 30 June 2021).

9 - Council of Europe (2021) *Chart of signatures and ratifications of Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=signatures-by-treaty&treatynum=210 (accessed 30 June 2021).

- Council of Europe (2021) *Reservations and Declarations for Treaty 210, Convention on preventing and combating violence against women and domestic violence*. Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197/?module=declarations-by-treaty&numSte=210&codeNature=0 (accessed 30 June 2021).

10 - Council of Europe (2021) *Chart of Signatures and Ratifications of Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=signatures-by-treaty&treatynum=005 (accessed 30 June 2021).

- Council of Europe (2021) *Reservations and Declarations for Treaty 005, Convention for the Protection of Human Rights and Fundamental Freedoms*. Available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/?module=declarations-by-treaty&numSte=005&codeNature=0 (accessed 30 June 2021).

***Cover images:*** Kapi Ng (2019) *The Viru gate of Old Town Tallinn, which is consisted of two towers and is the most recognizable entrance of Tallinn Old Town*. Shutterstock ID 1524147119.

Fahri Ramdani (2020) *'my love' – woman in green hajib standing near green plants*. Available at https://unsplash.com/photos/DnLCNwHabf8.

*Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM.*

This report analyses and discusses the application of national (criminal) laws to the commission of FGM and any possible related crimes. It also explores other legal factors deemed relevant, such as legal obligations to report the commission or likely upcoming commission of FGM, available legal protective measures for girls and women at risk of FGM, and any obligations of national governments in relation to FGM.

The initial research conducted for this report consisted of a questionnaire developed by 28 Too Many and Ashurst LLP. The information contained in the responses to that questionnaire was then reviewed by Middelburg Human Rights Law Consultancy, updated and used as the basis of further research from relevant sources. This report is mainly based on primary legal sources such as legislation, case law and authoritative literature, but does use secondary sources such as government documents, journal articles and newspaper articles.

This report has been prepared as a work of legal research only and does not represent legal advice in respect of any of the laws of Estonia. It does not purport to be complete or to apply to any particular factual or legal circumstance. It does not constitute, and must not be relied or acted upon as, legal advice or create an attorney-client relationship with any person or entity. Neither 28 Too Many, Ashurst LLP and Middelburg Human Rights Law Consultancy nor any other contributor to this report accepts responsibility for losses that may arise from reliance upon the information contained herein, or any inaccuracies, including changes in the law since the research was completed in August 2021. No contributor to this report holds himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in this project or contribution to this report. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction/s when dealing with specific circumstances. It should be noted, furthermore, that in many countries there is a lack of legal precedent for the penalties laid out in the law, meaning that, in practice, lesser penalties may be applied.

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