

Estonia

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1. Estonia ratified the CRPD and the Optional Protocol in 2012. Estonia's declaration states that considering Estonia's interpretation, article 12 does not prevent restricting a person's legal capacity "when such need arises from the person's ability to understand and direct his or her actions". The restriction of the rights of persons with restricted active legal capacity will be executed in accordance with Estonian national law.

The Hague Convention entered into force in Estonia in 2011. After adoption of the CRPD no changes or legislative reforms took place in the field of Family Law. At the moment there is no law draft in the Estonian Parliament about adult protection. Nor is there a prepared working paper from the Ministry of Justice under discussion to change the rules.

The Estonian Family Law Act entered into force on 1. July 2010.¹ The regulation of guardianship was reformed along with the new Family Law Act namely, but the main changes were not concerning protection of the autonomy of vulnerable adults. The new Family Law Act gave the court an active role by appointing the guardian and also put the supervision of the guardian under the control of court. If the court appoints a guardian, the court also conducts supervision over these persons. There has been no significant paradigm change regarding the supported autonomy of vulnerable adults after the ratification of the CRPD.

2. Estonian law uses the term "restricted legal capacity". According to § 8 of the General Part of the Civil Code Act, persons who due to mental illness, mental disability or other mental disorder are permanently unable to understand or direct their actions, have restricted active legal capacity. The restricted active legal capacity of an adult affects the validity of the transactions entered into by the person only to the extent in which he or she is unable to understand or direct his or her actions.² The Estonian Supreme Court have decided (07.12.2005, No 3-2-1-141-15), that these above-named requirements are sufficiently described in the General Part of the Civil Code Act.

When deciding upon guardianship, the interpersonal relations of the persons involved are taken into consideration. The responsibility of the legal guardian is to ensure that the person is receiving sufficient amount of health care, his/her everyday needs and social services. In cases where the guardianship is set to cover all actions of the person, the person is declared with limited capacity for voting rights and therefore loses the possibility to vote.

There are no continually updated statistics about the appointment of guardians. The submitted report of the Estonian Chamber of Disabled People³ recommends that the competent authorities regularly gather and publish data on legal guardianship (including number of legal guardianships established, with the limitation of legal capacity, timeframe on how long the guardianship lasts and who are the persons appointed as guardians).

A personal assistance service is available for all types of disabled people of any age. The law does not specify the type of user, but there are no clear regulations regarding the service and therefore decisions are made locally in each case separately. The service is regulated by the Social Welfare Act.⁴

3. A guardian shall be appointed only for the performance of the functions for which guardianship is required. The guardian has the right and obligation to take care of the person

¹ In English <https://www.riigiteataja.ee/en/eli/507022018005/consolide>

² In English <https://www.riigiteataja.ee/en/eli/502012019003/consolide>

³ Estonian Chamber of Disabled People submission
https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode

⁴ In English <https://www.riigiteataja.ee/en/eli/509042018001/consolide>

and property of the person under legal guardianship. Guardianship is not required if the interests of an adult can be protected by granting authorisation and through family members or other assistants. Unfortunately, the supporting system is not been reformed for years and has come under criticism.

Although the legal capacity should be limited only partially, the Estonian County Courts have not always followed these principle and in legal practice the legal guardianship is often set by the court for all actions.

Upon establishment of guardianship, a court shall assess the person's capability to understand the legal consequences of contraction of marriage, acknowledgement of paternity and other transactions concerning family law. A guardian's duties may include exercise of a ward's rights against third persons (§ 203 Family Law Act). Estonia utilises the substituted judgment model, which gives the legal guardian the right to decide instead of the person with disabilities. Procedural rules regarding the appointment of a guardian for an adult with restricted active legal capacity are settled in the Code of Civil Procedure.⁵

A natural person who is suitable to protect the interests of the ward taking account of his or her personal characteristics and abilities shall be appointed guardian. Upon appointing a guardian, the relationship between him or her and the ward shall be taken into account. If a suitable natural person is not found to be the appointed guardian, a legal person may be appointed guardian with its consent. If a suitable legal person cannot be appointed as a guardian, the rural municipality or city government with which the adult is most closely connected shall be appointed as guardian. An adult is most closely connected with the rural municipality or city government, inter alia, where the adult is from, where the adult has lived most of the time, with which the adult has preserved essential ties, where the adult's close persons or assets are located or where the adult's residence according to the population register is.

4. At the moment there are no reform plans nor a concrete law text draft to change adult protection in Estonia. There are a lot of critics from the Estonian Chamber of Disabled People; according to their submitted report, how current court decisions interpret legal capacity cannot be considered as supporting a human-rights based approach.⁶

5. A court shall verify at least once every five years whether the continuation of guardianship over a ward is necessary for the protection of the interests of the ward and whether grounds exist for extension or restriction of the duties of the guardian by making a respective ruling (§ 203 (3) Family Law Act). Most often a close relative is set the legal guardians and in cases where there are no close relatives, the local municipality. A court may require a guardian to submit information concerning the performance of his or her duties at any time. The Family Law Act states that without prior consent of a court, a guardian shall not conduct certain transactions on behalf of a ward.

As a rule, guardianship shall be performed free of charge. A court may order that a guardian receive remuneration for the performance of his or her duties if payment of the remuneration is reasonable considering the financial situation of the ward and the relationship between the parties. Although a guardian may apply for state legal aid in order to pay for the expenses and the remuneration according to the Family Law Act, there is no functioning system worked out by the Ministry of Justice and this possibility is unused.

The Estonian Chamber of Disabled People is the national cooperation and co-ordination body for the work implemented by and for disabled people in Estonia. <https://www.epikoda.ee/>

⁵ In English <https://www.riigiteataja.ee/en/eli/516012019001/consolide>

⁶ Estonian Chamber of Disabled People submission