
The Permanent Mission of Estonia to the United Nations and Other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

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Office of the High Commissioner for Human Rights

GENEVA
Preventing and eliminating child, early and forced marriage: challenges, achievements, best practices and implementation gaps.

In Estonia, the entering into of a marriage (hereinafter also: contraction of marriage) is regulated by the Family Law Act\(^1\). The general principle is provided in Section 1 subsection 2: only adults may get married. Adults are persons who have attained 18 years of age. Adults have full active legal capacity, unless their active legal capacity is not restricted due to mental illness\(^2\). Minors – persons who are under 18 years of age – have restricted active legal capacity\(^3\).

General prerequisite to getting married is full active legal capacity\(^4\); therefore, minors, who have attained at least 15 years of age, have the possibility to get married only if court extends their restricted legal capacity. The Family Law Act Section 1 subsection 3 reads as follows: A court may extend the active legal capacity of a person who has attained at least 15 years of age pursuant to the provisions concerning the extension of active legal capacity of minors for the performance of acts required for the contraction of marriage and for the exercise of the rights and performance of the obligations related to marriage.

In this judicial procedure the will of the child is ascertained, although this alone is not sufficient. When rendering the judgment, two principles are taken into account by the court. Firstly, it is examined whether the child understands sufficiently the legal consequences of marriage and secondly, whether it is in the best interest of the child. The latter derives from the Children Protection Act Section 3 that provides the key principle of child protection – to always and everywhere put the child’s interest first.

1. How States are implementing their obligations under international human rights conventions and international human rights treaties on child, early and forced marriage at the national level;

In Estonia, the legal provisions for capacity to marry are stated in the Family Law Act and those provisions are in accordance with obligations deriving from international law.

Prerequisites for contraction of marriage:

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\(^3\) op cit General Part of the Civil Code Act § 8 subsection 2.

\(^4\) Family Law Act § 1 subsections 3,4 provide exceptions for minors and adults with restricted legal capacity.
A marriage is contracted between a man and a woman. Only adults (18 years old in Estonia) may get married. A court may extend the active legal capacity of a person who has attained at least 15 years of age pursuant to the provisions concerning the extension of active legal capacity of minors for the performance of acts required for the contraction of marriage and for the exercise of the rights and performance of the obligations related to marriage. An adult with restricted active legal capacity may marry only if he or she understands sufficiently the legal consequences of marriage. If a guardian has been appointed to a person, it is presumed that the person is unable to understand the legal consequences of marriage unless otherwise provided in the ruling concerning the appointment of a guardian.

A marriage shall not be contracted:
   1) between relatives in the ascending and descending lines;
   2) between brothers and sisters and a half-brothers and a half-sisters.

The provisions apply also if the family relationship between the persons has terminated as a result of adoption of one person. A marriage shall not be contracted between persons whose family relationship is based on adoption.

A marriage shall not be contracted between persons of whom at least one is already married.

A registry official of a vital statistics office shall not confirm the contraction of marriage if there is a reason to presume that the grounds for annulment or nullity of the marriage exist. A minister of religion who is entitled to confirm the contraction of marriage has the right to refuse to contract a marriage if a prospective spouse does not meet the requirements for the contraction of marriage according to the religion of the church, congregation or the association of congregations.

A marriage is contracted in the presence of a registry official of a vital statistics office. A marriage is contracted on the condition that prospective spouses express their will to contract a marriage before a registry official of a vital statistics office, both being present in person at the same time. A registry official of a vital statistics office shall ask both prospective spouses whether they want to contract a marriage with the other party. A declaration of intention to contract a marriage shall be unconditional. If both prospective spouses answer yes, the registry official of a vital statistics office shall declare that as of this moment both parties are legal spouses.

A promise of a marriage does not provide grounds for a claim for the contraction of marriage or for the compensation of damage upon failure to keep the promise. An agreement which derogates from the provisions of the first sentence is void.

Grounds for annulment of a marriage by court

A court may annul a marriage by an action if:

   1) a requirement for marrying age or active legal capacity has been violated upon the contraction of the marriage;
   2) the prohibition on marriage provided earlier has been violated upon the contraction of the marriage;
   3) the formal requirements have been violated upon the contraction of the marriage;
   4) at the time of contraction of the marriage, at least one spouse had a temporary mental disorder or was incapable to exercise his or her will for any other reason;
5) the marriage was contracted by a fraud, threat or violence, including by concealing the state of health or other personal details of a spouse where such details are relevant to the contraction of the marriage;

6) it was not the intention of one or neither of the parties to perform the obligations arising from the marital status, but the marriage was contracted with other intentions, in particular with an aim to obtain a residence permit of Estonia (ostensible marriage).

Annulment of marriage cannot be claimed if a spouse has concealed his or her financial status.

**Nullity of marriage**

A marriage is void if:

1) persons of the same sex are married;

2) contraction of the marriage has been confirmed by a person who does not have the competence of a registry official of a vital statistics office, or

3) even only one party has not expressed his or her will to contract marriage.

If the prospected spouse has not made a declaration of intention i.e. it is absent, then the annulment of the marriage is not needed, the marriage is automatically void. Family Law Act §10 point 3 provides that a marriage is void if even only one party has not expressed his or her will to contract the marriage. A void marriage has no legal consequences from inception.

A marriage shall not be annulled if:

1) the requirement for marrying age has been violated but, by the time of annulment of the marriage, the court has extended the active legal capacity of the minor to marry or upon becoming an adult the spouse confirms that he or she wishes to continue the marriage;

2) the requirement for active legal capacity has been violated, but the adult spouse whose active legal capacity was restricted at the time of contraction of the marriage confirms after restoration of his or her active legal capacity that he or she wishes to continue the marriage;

3) the spouse who contracted the marriage in a state where he or she was incapable to exercise his or her will confirms after restoration of his or her capability that he or she wishes to continue the marriage;

4) in the case of an ostensible marriage, the spouses have lived together as spouses for at least three years or children have been born in the marriage.

An action for annulment of the marriage may be filed by the spouse who has contracted marriage under influence of fraud, threat or violence. An adult spouse with restricted active legal capacity may file an action with the consent of the guardian. The guardian may file an action on behalf of a spouse with restricted active legal capacity, if, at the time of contraction of marriage, a spouse who is a minor did not have active legal capacity required for the contraction of the marriage, an action shall be filed by his or her legal representative. In other cases, a spouse who is a minor shall file an action himself or herself without the need for the consent of the legal representative.
Consequences of annulment of marriage

If a court judgement concerning annulment of a marriage has entered into force, the marriage is void from inception. In the case of nullity of a marriage, the marital property contract is void. Unless otherwise provided by the relations between the parties, the provisions concerning civil law partnerships apply to their proprietary relations. If a marriage is annulled because one of the prospective spouses concealed from the other prospective spouse that he or she was already married, or influenced the other spouse to marry by fraud, threat or violence, a court may order support for the person who was in a void marriage with him or her and apply the provisions provision of maintenance to a divorced spouse.

Forced marriage is punishable as human trafficking

According to Estonian Penal Code placing a person in a situation where he or she is forced to work under unusual conditions, engage in prostitution, beg, commit a criminal offence or perform other disagreeable duties, or keeping a person in such situation, if such act is performed through deprivation of liberty, violence, deceit, threatening to cause damage, by taking advantage of dependence on another person, helpless or vulnerable situation of the person, is punishable by 1 to 7 years’ imprisonment.

The same act, if:
1) committed against two or more persons;
2) committed against a person less than 18 years of age;
3) committed against a person in a helpless situation;
4) committed in a torturous or cruel manner;
5) serious health damage is caused thereby;
6) danger to life is caused thereby;
7) committed by two or more persons;
8) committed by taking advantage of official position;
9) serious consequences are caused thereby;
is punishable by 3 to 15 years’ imprisonment.

2. Surveys, Assessments and studies carried out at national and sub-national level on the prevalence of child, early and forced marriage and/or its impact on the human rights of women and girls and other affected groups;

In Estonia there have not been considerable problems with child, early and forced marriage, therefore there has not been a need to conduct the abovementioned surveys, assessments and studies.
3. Policies, projects and measures at national and sub-national level to promote the elimination of child, early and forced marriage specifically including action taken to address the issue in marginalised and minority communities, and to address or mitigate its impact including information on the outcomes of such policies, projects and measures;

In Estonia there has been no need to take such measures because there are have not been problems with child, early, and forced marriage.

4. Steps taken to prohibit a child, early and forced marriage as well as examples of positive experience encountered to the national level in adopting policies, measures and implementing strategies to address this issue;

Respective provisions in the Family Law Act are considered as a sufficient measure to prevent child, early and forced marriage.

5. Recommendations and good practices regarding possible appropriate measures and strategies to prevent and eliminate child, early and forced marriage.