



Special Report of the Public Defender of Georgia

# Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice

The report was drawn up together with the Initiative for Rehabilitation of  
Vulnerable Groups

The report was drawn up in accordance with Article 21 (g) of the Organic Law of Georgia on the Public  
Defender of Georgia

2020

## Table of contents

Introduction .....	4
Purpose of research.....	6
Research methodology .....	6
Target groups .....	6
Stages of research.....	6
Issues to be assessed as a result of the research .....	7
Research tools .....	7
Monitoring principles for the hearings of the cases of juveniles .....	7
Key findings .....	8
Analysis .....	9
Non-discrimination .....	10
Right of defence.....	11
Involvement of legal/procedural representative.....	12
Interpreter’s service .....	14
Involvement of specialized professionals .....	15
Judges.....	17
Prosecutors .....	18
Lawyers.....	19
Procedural representatives/psychologists.....	20
Administration of speedy justice.....	22
Individual assessment reports.....	23
Protection of confidentiality .....	26
Right of the child to participate and to be heard .....	27
Child-friendly environment (infrastructure) .....	30
Tbilisi City Court .....	31
Rustavi City Court .....	35
Kutaisi City Court .....	41

Infrastructure monitoring summery.....	45
Questioning of children in the court.....	47
Self-introduction and explanation of the purpose of the meeting/questioning by the judge and other questioners.....	50
Breaks during questioning.....	52
Process of questioning.....	53
Questions containing covert blame.....	54
Asking leading/suggestive questions.....	56
Repetition of questions.....	57
Closed questions.....	58
Professional terminology, obscure and hypothetical questions.....	59
Conclusion.....	60
Recommendations.....	62

## Introduction

In 2015, for the first time in the history of Georgia, the Juvenile Justice Code was drawn up and enacted with the main goal of protecting the best interests of the child and ensuring humane justice.

Protection of the best interests of the child, as the biggest value, during administration of justice is unequivocally welcome, and this is why both the Public Defender of Georgia and the civil society have welcomed the enactment of the Code.

The Code placed significant emphasis on restorative justice and called on the agencies conducting criminal proceedings to take measures in order to make it possible for the juveniles in conflict with the law to realize their responsibility for their actions, eliminate the consequences of the offence, compensate for the damage caused and/or reconcile with the victim. Measures of criminal law, especially custody, have been defined by the Code as a form to be used only in extreme cases. The Code also introduced qualifications in the juvenile justice specialization as a precondition for the communication between persons involved in the proceedings and juveniles in conflict with the law (hereinafter referred to as "defendant"),<sup>1</sup> juvenile witnesses and victims. For the administration of speedy justice, the Code provides for special, relatively shorter time-limits, etc.

It should be noted that Georgia ratified the UN Convention on the Rights of the Child in 1994 and thus undertook the Convention obligations. According to the Convention, children not only shall be entitled to special care, but shall be fully engaged in court proceedings, where their voices shall be clearly heard. Protection of the best interests of the child directly affects child's future development and role in the society. This is especially important for children dealing with the justice system.

The Beijing Rules emphasize that efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration.<sup>2</sup>

Monitoring of hearings is an important tool of judicial reform, promoting the protection of both international and domestic guarantees of a fair trial. Independent monitoring can identify the strengths and weaknesses of the judiciary and make recommendations for establishing better practices. Effective

---

<sup>1</sup> According to the Juvenile Justice Code (Article 3, part 2), a juvenile in conflict with the law may be a juvenile defendant or a juvenile who has committed an administrative offence. Accordingly, since the present report does not focus on administrative offences or related proceedings, the term "defendant" will be used in the report.

<sup>2</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Beijing Rules, Rule 30.3.

monitoring, evaluative system makes it possible to plan the targeted use of resources, develop and improve new initiatives.

Hearings of the cases of juveniles can be monitored in such a way as to protect an important principle, such as the right to privacy, as well as procedural and other rights under international and domestic laws, and the criminal policy to rely on effective quality control system.

Only the development of legislative regulations, obviously, cannot be considered the administration of proper justice. Examination of the practical implementation of the normative act is the aim of the present report.

The public is aware that the hearing involving children are closed and only the Public Defender's Office has the exclusive authority to monitor them.

Accordingly, in 2019, the Public Defender's Office and the Initiative for the Rehabilitation of Vulnerable Groups (NGO), based on a memorandum of understanding and with the financial support from the Embassy of the Kingdom of the Netherlands, carried out a joint project: "Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice."

Monitoring of hearings was chosen as a method of checking the quality of protection of the procedural rights of juvenile defendants, witnesses and victims in criminal justice.

Hearings were monitored, from July to December 2019, in three major cities, namely in the City Courts of Tbilisi, Kutaisi and Rustavi.

We would like to thank all the three courts for their cooperation and support in conducting the research.

Hearings were monitored by representatives of the Public Defender's Office and the Initiative for the Rehabilitation of Vulnerable Groups (non-commercial legal entity). A total of six monitors participated in the monitoring process (four representatives of the Public Defender's Office and two representatives of the Initiative for Rehabilitation of Vulnerable Groups, who were granted with a one-time special power of attorneys by the Public Defender). Monitors were trained in both legal and psychological aspects of juvenile justice.

For the purpose of effective implementation of the project, the Public Defender's Office and the Initiative for Rehabilitation of Vulnerable Groups developed a code of ethics for monitors, monitoring guidelines and methodology, and special questionnaires.

Monitoring results were summarized and monitors' questionnaires were analyzed by the experts of the Initiative for Rehabilitation of Vulnerable Groups in close coordination with the Public Defender's Office. The document includes joint recommendations of the Public Defender and the Initiative for the Rehabilitation of Vulnerable Groups.

## Purpose of research

The purpose of the research is to monitor court hearings in order to assess the quality of protection of the rights of juvenile witnesses/victims and juveniles in conflict with the law during court proceedings.

## Research methodology

### Target groups

- A) Direct: juveniles in conflict with the law; juvenile witnesses and victims.
- B) Indirect - judges; prosecutors; lawyers; legal/procedural representatives; psychologists; interpreters.

### Stages of research

- A) Information gathering. Information was gathered in two ways: by assessing the infrastructure of the courts of first instance; by monitoring hearings in the courts of first instance and examining the criminal case materials (audio recordings).

Monitoring was carried out at the following stages of court proceedings: first appearance/consideration of the measure of restraint and hearing of a case on its merits (with participation of juvenile defendants, witnesses/victims). In particular:

- A total of 49 hearings were monitored in the Tbilisi (42), Kutaisi (4) and Rustavi (3) City Courts;
  - First appearance/consideration of the measure of restraint was monitored in 3 cases and the hearing of a case on its merits was monitored 45 times (juvenile witnesses/victims were questioned during 9 hearings);
  - We monitored the actions of 35 defendants (4 girls) and 9 witnesses/victims (3 girls), 10 judges (of Tbilisi, Kutaisi and Rustavi City Courts), 19 prosecutors, 38 lawyers (10 private, 28 representing the Legal Aid Service), 40 legal representatives and 5 procedural representatives;
  - For the purpose of assessing the infrastructure, the Tbilisi, Kutaisi and Rustavi City Courts were monitored separately (3 visits).
- B) Analysis of the collected information. The collected information was analyzed in several stages: identification of problems; confirmation/documentation of problems and identification of the causes of the problems.
  - C) Preparation of the report. The research report focused on both challenges and positive dynamics. As a result of the report, recommendations were made to the parties/persons involved in the criminal proceedings (judge; prosecutor; lawyer; procedural representative;

psychologist; expert) and agencies (High Council of Justice; Ministry of Internal Affairs; Prosecutor General's Office; Legal Aid Service; Bar Association; Social Service Agency).

### Issues to be assessed as a result of the research

A) Procedural rights - right of defence; involvement of a legal/procedural representative; involvement of specialized persons; administration of speedy justice; service of an interpreter; consideration of individual evaluation reports; confidentiality.

B) Child-friendly environment - evaluation of the court infrastructure; explanation of the rights and responsibilities in a form and language understandable to children; involvement of the child (with the right to participate) and his/her right to be heard.

C) Assessment of issues related to specific groups. The following issues were assessed in relation to ethnic, religious and sexual minorities, persons with disabilities and girls: alleged discriminatory attitudes; use of hate speech; unethical treatment or behavior non-compliant with the best interests of the child.

### Research tools

As mentioned above, the following tools were prepared for carrying out the research:<sup>3</sup>

a) Guidelines for monitoring the court hearings involving juveniles;

b) Code of conduct for monitors - code of ethics;

c) Monitoring questionnaire –first appearance/consideration of the use of measure of restraint; hearing of a case on its merits (attended by the accused child); hearing of a case on its merits (attended by the child witness/victim); plea bargain hearing.

### Monitoring principles for the hearings of the cases of juveniles

The monitoring of the hearings of the cases of juveniles was based on the following principles:

a) professionalism (of monitors, researchers);

b) non-interference (respect for the independence of administration of justice);

c) objectivity and impartiality (of monitors, researchers);

d) confidentiality (protection of the personal data of children involved in the proceedings).

---

<sup>3</sup> The mentioned documents are attached to the report as an appendix.

## Key findings

The research showed that the Juvenile Justice Code has indeed resulted in some positive changes. As a rule, all parties are specialized in dealing with child defendants, victims and witnesses; they have certain specific knowledge needed to communicate with children. Several judges, prosecutors and lawyers particularly positively demonstrated professional skills. They were entirely focused on protecting the best interests of the child and were trying their best to make children the main subjects of the process, to communicate with them in a form and language understandable to them and to listen to them. However, unfortunately, the court hearings could not always be evaluated positively.

The environment where children were involved in the court proceedings was also problematic. The court infrastructure in most cases fails to meet standards. Much more positive situation in this direction could be found in the Rustavi City Court, which is really welcome.

The following were identified as key issues:

- Participation of a legal/procedural representative in the hearing is nominal;
- In most cases, children cannot feel the support of legal/procedural representatives or cannot communicate with them;
- In some cases, persons involved in the process, despite having taken a specialization course, do not have sufficient skills or proper qualifications;
- There is no effective mechanism to check the specialization of persons involved in the proceedings;
- There is no agency responsible for re-training (specialization) psychologists and procedural representatives (usually social workers);
- Interpreters do not always translate simultaneously or fully;
- Psychologists' involvement rate/frequency is very low;
- Proceedings are not always conducted in a form or language understandable to the child;
- The level of proactiveness of judges, in order to ensure children's participation in the trial, is low in some cases;
- The actions of judges, lawyers or prosecutors do not always serve the best interests of the child;
- The parties' knowledge and application of international principles, as well as the quality of justification, is unsatisfactory;
- Questioning of child witnesses/victims is characterized by significant shortcomings;
- Court hearings are often delayed or postponed;
- In many cases, children's personal information/privacy is not protected;
- Environment in the court is not tailored to children;<sup>4</sup>
- Courtrooms are ritualistic and intimidating for children;
- Court infrastructure is not fully adapted for children with disabilities;

---

<sup>4</sup> Situation is much more positive in this direction in the Rustavi City Court and we will talk about it in detail.



- There is no separate waiting area for children;
- Remanded juveniles are not placed in rooms compliant with standards.

There are a number of other issues beyond the above shortcomings, which will be discussed in detail in the analysis chapter below.

## Analysis

According to international standards, the utilization of research/analysis as the basis for a juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice.<sup>5</sup> It is important for the states to collect accurate, detailed data on the practice and administration of juvenile justice and control them. Effective monitoring and evaluation system makes it possible to plan the targeted use of resources and develop, improve initiatives. It is important that the quality control system be introduced in the agencies so that to analyze the process constantly, on a daily basis, to identify shortcomings and to develop recommendations for improving the system. According to the Beijing Rules, "Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation."<sup>6</sup> The document also says that "Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration."<sup>7</sup>

International standards stress the importance of a quality control system in the juvenile justice area. The UN Committee on the Rights of the Child clarifies that "It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions."<sup>8</sup>

Trial monitoring programmes can be multifaceted tools for states, civil society groups and international organizations seeking to enhance the fairness, effectiveness and transparency of judicial systems. A trial monitoring programme can be seen as a diagnostic tool to collect objective information on the administration of justice in individual cases and, through these, to draw and disseminate conclusions regarding the broader functioning of the justice system.<sup>9</sup>

---

<sup>5</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Beijing Rules, Rule 30, commentary.

<sup>6</sup> Ibid. Rule 30.1.

<sup>7</sup> Ibid. Rule 30.3.

<sup>8</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 97.

<sup>9</sup> Trial Monitoring, A Reference Manual For Practitioners, OSCE/ODIHR, 2012.

Various kinds of international documents developed by the Council of Europe and the European Union, as well as the United Nations, address various issues related to the involvement of child defendants and witnesses/victims in the court proceedings. The domestic legislation also addresses the same issues.

Domestic legislation, at the level of principles and basic provisions, fully complies with international standards. However, the research revealed gaps relating to various types of regulations that affect the proper conduct of court proceedings. In this regard, it is important to review the fundamental principles and rights enshrined in international standards, which should be taken into view in relation to children involved in criminal proceedings. In addition to international standards, it is important to review domestic legislation and then thematically present the monitoring results.

Before discussing these issues, we should emphasize the main principles set out in the UN Convention on the Rights of the Child. According to the Convention, "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>10</sup> The Convention also establishes procedural guarantees in the justice system for children in conflict with the law.<sup>11</sup> One of the important goals of the UN Convention on the Rights of the Child is to ensure harmonious development of the child's personal, mental and physical abilities.

The monitoring results are presented under the following structure: non-discrimination; the right of defence; involvement of a legal/procedural representative; assistance of an interpreter; administration of speedy justice; individual assessment report; protection of confidentiality; the right of the child to participate in the proceedings and to be heard; child-friendly environment (infrastructure); questioning of children in the court.

## Non-discrimination

### ➤ International standards

One of the main principles of the UN Convention on the Rights of the Child is non-discrimination. The Convention establishes that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."<sup>12</sup>

---

<sup>10</sup> United Nations Convention on the Rights of the Child, Article 3 (1).

<sup>11</sup> Ibid. Article 40.

<sup>12</sup> Ibid. Article 2.

➤ **Domestic legislation**

Georgian legislation prohibits direct or indirect discrimination of the child or his/her legal representative on the grounds set forth in the Law of Georgia on the Elimination of All Forms of Discrimination.

➤ **Monitoring results**

No discriminatory attitude on religious, ethnic, sexual or other grounds could be identified in relation to children in conflict with the law or child witnesses/victims in the course of monitoring. The hearings were not attended by persons with disabilities and therefore, their involvement could not be assessed.

## Right of defence

➤ **International standards**

According to international standards, the accused child has the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence.<sup>13</sup> The UN Committee on the Rights of the Child emphasizes that any decision-making process related to the child should be attended by a lawyer.<sup>14</sup>

According to international standards, the child victim has the right to a lawyer, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the legal representative.<sup>15</sup> In addition, victims of sexual abuse or sexual exploitation shall be provided legal aid free of charge, if possible.<sup>16</sup>

➤ **Domestic legislation**

Under domestic law, at any stage of criminal proceedings, accused, convicted or acquitted children and child victims shall enjoy the right to free legal aid, if no lawyer hired by the child is involved in the case.<sup>17</sup>

According to domestic legislation, child victims shall be granted all the rights and shall have all the obligations of child witnesses.<sup>18</sup> The Juvenile Justice Code provides for a free legal aid for a witness/victim at any stage of criminal proceedings in certain cases. In particular, the law reads that “at any stage of criminal proceedings, a juvenile/witness may exercise this right, if he/she cannot afford a lawyer, or is to be questioned relating to crimes set forth in Chapters XIX, XX and XXII and Articles

---

<sup>13</sup> Ibid. 40 (2) (b) (II).

<sup>14</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 52.

<sup>15</sup> Directive 2012/29/EU, Article 24(1)(c).

<sup>16</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote Convention, Article 31 (3).

<sup>17</sup> Juvenile Justice Code, Article 15 (1).

<sup>18</sup> Ibid. Article 22.

144<sup>1</sup>-144<sup>3</sup> of the Criminal Code of Georgia.”<sup>19</sup> It is also noted that the aim of the above kind of support is to prevent victimization and revictimization.<sup>20</sup>

At any stage of criminal proceedings, both the child defendant and child witness/victim shall also enjoy the following rights:

- The right to receive information in a form adequate to his/her development;
- The right to use the service of an interpreter free of charge, if he/she does not understand or inadequately understands the language of the proceedings and/or if he/she cannot speak that language. The child may meet with the interpreter before the court hearing or procedural action to find out whether they can understand each other. Juveniles with disabilities involved in court proceedings shall use free of charge all the services they need in order to be informed about the case and to participate in the proceedings;<sup>21</sup>
- The right to be accompanied by a legal representative or a procedural representative;
- The right to receive consular assistance;
- Other rights provided for in domestic legislation.<sup>22</sup>

#### ➤ **Monitoring results**

During monitoring, both child defendants and child witnesses/victims could exercise their right of defence. None of the child has been prevented from exercising this right, including in those cases when no mandatory defender was appointed (witnesses/victims). Although the lawyers involved in the proceedings, in accordance with domestic law, were specialized in juvenile justice, it was clear that the qualifications of some of them did not meet the requirements of national law or international standards. In addition, there were two cases when two lawyers with no specialization in juvenile justice participated in the hearings. Such deficiencies endanger the effective exercise of the right of defence, which harms the interests of children involved in court proceedings. Detailed information and specific examples on this issue will be provided in the specialization chapter below.

#### [Involvement of legal/procedural representative](#)

#### ➤ **International standards**

According to international standards, the procedure of questioning of an accused/convicted child must be attended by a parent or other legal guardian.<sup>23</sup> With regard to child victims, international standards say that a child shall not be required to testify in the justice process without the presence of his or her parents or guardian, except in the following circumstances: the parents or the guardian are the alleged

---

<sup>19</sup> Ibid. Article 15 (1).

<sup>20</sup> Ibid. Article 23.

<sup>21</sup> Ibid. Article 30.

<sup>22</sup> Ibid. Article 15.

<sup>23</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 53.

perpetrators of the offence committed against the child; the court deems it not to be in the best interest of the child to be accompanied by his or her parents or guardian.<sup>24</sup>

➤ **Domestic legislation**

According to domestic legislation, any proceeding related to children must be attended by the child's legal representative.<sup>25</sup> Legislation also provides for the participation of a procedural representative (representative of guardianship and custodianship authority) in the proceedings, in cases where, for various reasons, the involvement of a legal representative is not possible. In particular, the guardianship and custodianship authority, on the basis of a request of the investigator, prosecutor, or judge, shall appoint its employee or other trusted person as a procedural representative, if:

- participation of a legal representative is impossible within an hour after the juvenile is brought to the law enforcement body;
- the juvenile does not live together with his/her legal representative and/or refuses to contact his/her legal representative or refuses the participation of the latter in the proceedings;
- the legal representative acts against the best interests of the child;
- the child is a victim or a witness of the crime committed by the legal representative;
- the legal representative is charged with the commission of the same crime;
- the legal representative is unavailable.<sup>26</sup>

It is inadmissible to allow that a child's legal representative be a person, who is allegedly abusive or whose impartiality is questionable because of the nature of his/her relationship with the abusive member of the family, or if there is other kind of conflict of interest. Another trusted person shall be appointed as a procedural representative, taking into account the child's opinion. The procedural representative is authorized to:

- express his/her opinion on the needs of the child to an official representing the body administering the proceedings;
- get in touch with the child's close relatives, lawyer or friends;
- inform the child about healthcare, psychological or social services, and available means of receiving these services;
- provide information to the child about his/her procedural status, the importance, duration and form of giving a testimony and the rules of questioning;
- inform the child about the time and place of the hearing, as well as other procedures and available measures of defence;

---

<sup>24</sup> UNODC/UNICEF (2009) Model Law, Article 20 (5.)

<sup>25</sup> Juvenile Justice Code, Article 52 (9).

<sup>26</sup> Ibid. Article 50 (1).

- provide information to the child about the procedure of appealing against the procedural decision delivered against him/her;
- carry out other actions to assist the child.<sup>27</sup>

At any stage of proceedings, the legal representative of the child witness/victim shall be entitled to:

- be informed about the essence of charges brought against the child;
- be informed about the relationship between the child witness and the defendant; upon request, he/she may obtain information about pre-trial restrictions imposed on the defendant, and about the release of the accused/convicted person from a detention or prison facility, unless this poses a real danger to the accused/convicted person.<sup>28</sup>

The judge is authorized to prohibit the legal representative of the juvenile witness from attending the proceedings only if the best interests of the child require so.

With regard to the involvement of a legal representative, domestic legislation is in full compliance with international standards. Deficiencies in this regard can be identified in practice, which are mainly related to the involvement of legal representatives in the court hearings.

#### ➤ **Monitoring results**

Legal or procedural representatives of both the defendants and witnesses/victims were always present at the hearings during monitoring. They in most cases were sitting on the seats intended for attendees and not directly next to children. Therefore, their involvement in the hearing was in fact not ensured.

When making any decision during a hearing, the child shall have the opportunity to consult not only the lawyer, but also the legal/procedural representative, as required by international standards and domestic law. However, the practice shows that children do not have the opportunity to talk to their legal/procedural representatives immediately, if they or their representatives see the need for it. This practice is, in fact, inconsistent with the legislative requirement of active involvement of a legal/procedural representative in the court hearing.

### Interpreter's service

#### ➤ **International standards**

According to international standards, the child shall have the free assistance of an interpreter if he/she cannot understand or speak the language used. The interpreter must be necessarily present during questioning, including in the police station and in the court.<sup>29</sup>

---

<sup>27</sup> Ibid. Article 50.

<sup>28</sup> Ibid. Article 23.

<sup>29</sup> United Nations Convention on the Rights of the Child, Article 40 (2)(b)(VI)/Directive 2012/29/EU, Article 15 (2).

### ➤ Domestic legislation

Under domestic law, at any stage of criminal proceedings, children, regardless of their status, have the right to receive the service of an interpreter free of charge.<sup>30</sup> In this regard, national legislation is partly in line with international standards. Legislation provides for the involvement of an interpreter, although no system has been established to control the interpreter's specialization or quality.

### ➤ Monitoring results

It is an integral part of the child-friendly environment to inform children and ensure their participation in the proceedings. Accordingly, children or their legal representatives, who do not know the language of the proceedings, must be provided with interpretation. In relation to children, it is the duty of the interpreter to not only interpret the text, but also to provide children with information in a form understandable to them and in a language that they can speak.

The need for interpretation had been identified five times during monitoring. In four cases, interpretation was provided for the legal representative and in one case - for the child victim. However, even these few cases made it clear that interpreters sometimes translated quickly or very briefly, which raised doubts relating to their qualifications, conscientiousness and diligence. In this regard, it is important to establish a mechanism for evaluating interpreters' specialization and qualifications, which may address these risks.

## Involvement of specialized professionals

### ➤ International standards

International standards call on the states to establish a separate juvenile justice system and to staff these systems with qualified specialists. International instruments emphasize the interdisciplinary nature of the juvenile justice system and recommend special trainings for all groups involved in this process (prosecutors, judges, lawyers, etc.).<sup>31</sup>

The UN Committee on the Rights of the Child emphasizes that a key condition for a proper and effective implementation of these rights or guarantees is the quality of persons involved in the administration of juvenile justice. The training of professionals should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities. The Committee also mentions separately that since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention

---

<sup>30</sup> Juvenile Justice Code, Article 15.

<sup>31</sup> Ursina Weidkuhn, Juvenile Justice and Children's Rights.

must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs.<sup>32</sup>

In addition, according to international standards, relevant bodies shall ensure that the personnel have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify and report them.<sup>33</sup>

➤ **Domestic legislation**

Domestic law addresses the issue of specialization of persons administering juvenile justice. Under domestic law, the juvenile justice proceedings shall be conducted only by persons specialized in juvenile justice.<sup>34</sup> In addition to various professionals (judge,<sup>35</sup> prosecutor,<sup>36</sup> investigator,<sup>37</sup> police officer,<sup>38</sup> lawyer,<sup>39</sup> social worker, mediator, probation officer, witness and victim coordinator, penitentiary system staff<sup>40</sup>), the psychologists involved in the proceedings are also required to have relevant specialization.<sup>41</sup>

Under domestic law, the Government of Georgia, the High Council of Justice (with respect to judges) and the Georgian Bar Association (with respect to lawyers) have been tasked with approving the specialization standard.<sup>42</sup> Relevant training system has been developed for judges and lawyers by the above-mentioned agencies. Resolution No 668 of the Government of Georgia specifies the specialization standard for other subjects involved in the juvenile cases and the agencies responsible for retraining, in particular:

- The Professional Development and Career Management Center of the Prosecutor's Office of Georgia shall retrain investigators and prosecutors of the system of the Prosecutor's Office, who are involved in juvenile justice;
- The Academy of the Ministry of Internal Affairs of Georgia shall retrain investigators and police officers involved in juvenile justice;
- The Penitentiary and Probation Training Center shall retrain investigators of the system of the Ministry of Corrections of Georgia,<sup>43</sup> as well as social workers, probation officers, staff of

---

<sup>32</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 40; 97. /United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 22.1.

<sup>33</sup> Lanzarote Convention, Article 5, 31 (1.c) /ECOSOC/RES/2005/20 Article 40.

<sup>34</sup> Juvenile Justice Code, Article 21 (1).

<sup>35</sup> Ibid. Article 17.

<sup>36</sup> Ibid. Article 18.

<sup>37</sup> Ibid. Article.18.

<sup>38</sup> Ibid. Article.19

<sup>39</sup> Ibid. Article.20.

<sup>40</sup> Ibid. Article 21.

<sup>41</sup> Ibid. Article 21.

<sup>42</sup> Ibid. Article 101.

<sup>43</sup> Now the Ministry of Justice.



juvenile rehabilitation institutions and penitentiary establishments, who are involved in juvenile justice;

- The Training Center of Justice of Georgia shall retrain mediators and social workers of the crime prevention center, who are involved in juvenile justice.<sup>44</sup>

However, although the Juvenile Justice Code directly provides for the requirement of specialization for psychologists and social workers (procedural representatives) involved in juvenile justice, no agency has yet been designated to retrain psychologists/social workers. Therefore, domestic legislation is partially in line with international standards in this direction.

### ➤ **Monitoring results**

When evaluating the qualifications of persons involved in the proceedings, it is important to underline two things: first, the quality of specialization required by law (whether he/she has taken formal training and received a certificate) and second, the practical skills of the parties involved in the proceedings, which drew our attention during monitoring. We evaluated 10 judges, 19 prosecutors, 38 lawyers (10 private, 28 representing the Legal Aid Service (free of charge)), 5 procedural representatives, 2 psychologists.

In general, it can be said that the monitoring results do not allow us to evaluate the qualifications of the above persons absolutely positively or absolutely negatively. There were cases, when they showed relevant knowledge and their decisions were focused on the best interests of the child, although there were opposite cases as well, when these persons did not act in the best interests of the child.

### Judges

All the judges involved in the monitoring process were specialized in juvenile justice, in accordance with the rules established by law. However, the judges showed different skills in the implementation of child-centered justice.

We saw some very good cases, when judges acted in the best interests of the child. For example, during one of the hearings, when the application of a measure of restraint (pre-trial detention) was being considered, the prosecutor requested that the child be remanded in custody due to the following circumstances - the person is charged with a particularly serious crime; there is a danger of committing a new crime and influencing witnesses; no new factual circumstances have been identified, which could have served as the basis for changing the measure of restraint.

The judge's position was as follows: *“In general, the grounds for the application of the measure of restraint is the grounds set forth in the Criminal Procedure Code, such as absconding, commission of a new crime or continuation of criminal activity, and the danger of influencing a witness. When*

---

<sup>44</sup> Decree No. 668 of the Government of Georgia, Article 3.

*evaluating these threats, the court never asserts - that the juvenile will inevitably commit a new crime, or influence a witness, or abscond. This is evaluated according to the standard of assumption. The court considers that there may be similar risks when applying any other measure of restraint. However, when the court is considering the use of the strictest measure of restraint in order to ensure that the accused behaves appropriately before the final verdict is reached and the goals of the measure of restraint are achieved, it is important to consider whether these goals can be achieved with less severe measure of restraint. ... As for the identification of new circumstances, the court cannot agree with the above position of the prosecution, as the Juvenile Justice Code does not unconditionally require the existence of new substantial circumstances when reviewing the use of the measure of restraint. Instead, the court shall re-assess the necessity of the use of detention as a measure of restraint and the reality each time after the defendant was detained, the measure of pre-trial detention was applied, revised or upheld... As for the threat of influencing a witness, the court considers that this threat always exists theoretically and in case of very strong desire, there is an opportunity to influence the persons involved in the proceedings with the help of other people even when the juvenile is in the penitentiary establishment. And as for the danger of absconding, such a danger, of course, exists theoretically. But the circumstances indicated by the defence, according to which, the juvenile was first questioned as a witness and then was arrested, somewhat neutralize these circumstances.”* In the mentioned case, the judge overturned the pre-trial detention and ordered bail of GEL 5,000.

This case is a good example of what a child-friendly approach means and how the norms should be interpreted. Unfortunately, in other cases, when considering the necessity of the measure of restraint – pre-trial detention, the reasoning of other judges was completely different, formal (e.g. no new circumstances have been identified; there is an "abstract" threat that the accused may influence witnesses or abscond, etc.).

During monitoring, there was also a case when - *the parties were asked by the judge to deliver brief introductory speeches, as the hearing began late and another hearing was scheduled for 12:00.* This attitude cannot be considered a decision in the best interests of the child.

There were cases, when the judge did not proactively involve the child in the trial (see details in the following chapters: "Right of the child to participate and to be heard" and "Questioning of children in the court").

## Prosecutors

All the prosecutors evaluated during monitoring were specialized in juvenile justice, in accordance with the rules established by law. As for their practical skills, different tendencies were identified.

In some cases, prosecutors acted in the best interests of the child, but there were cases when their decisions were not based on that principle. For example, in one of the cases, in order to justify the measure of restraint (detention), the prosecutor referred to the previous conviction of the accused

juvenile, which had already been spent. The essence of the spent conviction is that the conviction should no longer be taken into account when making a decision. When conviction is spent, the person is considered to have no conviction and decisions must be made with the above in mind. In this particular case, the prosecutor's motion did not comply with the principles set out in international or domestic law.

In addition, there was a case, when the prosecutor, in response to the motion of the lawyer, which concerned the return of a case from the court to the prosecutor for the purpose of diversion, made the following explanations against the decision: 'I've always said and I will say it again that, unfortunately, the property crimes have become very frequent and the Juvenile Justice Code has contributed to this, as it served as instigator of these crimes.' Such an assessment by the prosecutor was not based on any kind of evidence (there is no study on this issue) and it generally contradicts the general idea of the Juvenile Justice Code, according to which, the possibility of applying diversion shall be considered in the first place.<sup>45</sup> It is also noteworthy that when substantiating a motion, there was only one case, when the prosecutor referred to international standards, which further raises questions in this regard.

Describing these specific cases is not aimed at generalizing this problem, although individual cases are enough to identify negative signals. However, it should be noted there were also cases, when prosecutors acted in the best interests of the child when making a decision, showed appropriate skills and satisfactory quality of specialization.

## Lawyers

The majority of monitored lawyers (10 private, 28 representing the Legal Aid Service) were specialized in juvenile justice, in accordance with the rules established by law. However, at least two (private) lawyers with no specialization in juvenile justice took part in the court proceedings.

With regard to the practical skills of lawyers, varied tendencies were identified. In some cases, lawyers showed knowledge of general standards of protection of children's rights during court proceedings, but there were cases, when their practical skills did not meet the requirements of domestic law.

There was a case, when the motion of the lawyer (of the Legal Aid Service) concerning the return of a case to the prosecutor for the purpose of diversion was very well substantiated. The lawyer talked in detail about the positive characteristics of the child, which were described in the individual assessment report. The motion also referred to international standards - "I've cited the Convention on the Rights of the Child and the Beijing Rules in the motion. I'm sure that the court is familiar with these documents. To put it briefly, all these international documents, like Georgian legislation, give preference to the termination of criminal prosecution and the use of alternative measures". In addition, the motion referred to the researches in the field of criminology, which made the motion even more

---

<sup>45</sup> Juvenile Justice Code, Article 38 (1, 2).

substantiated - "The motion refers to the study authored by Professor Moris Shalikashvili, who talks about the juvenile criminality and says that in the criminological literature, the offence committed by a juvenile is believed to result in the least economic loss and danger. The above is a normal phenomenon, spread in all segments of society and characterized by episodic nature." The judge granted the lawyer's motion and returned the case to the prosecutor for diversion. This example shows a fairly high qualifications and skills of the lawyer, which is welcome.

In another case, the position of the defence was weak and less informative. The lawyer demanded a lighter measure instead of custody, such as conditional sentence. The lawyer provided a rather strange justification relating to the juvenile's interest in firearms and cold steel indicated in the individual assessment report: *"Everyone is fond of firearms. When Giorgi reaches full age and is able to officially register a gun in his name, he will have it at home, he will look at it and then put it back and he will thus satisfy his needs. The prosecutor says that the offence is violent, but the law does not prohibit the use of conditional sentence for less serious or serious offences. Neither the family conditions nor his past described in the individual assessment report give us grounds to necessarily place him in custody."*

We also identified a motion of the lawyer that was, in fact, unjustified and was formulated as follows: *"Since I've read the juvenile's individual assessment report, I believe that the juvenile defendant x is subject to re-socialization and rehabilitation, rather than punishment. Consequently, I ask the court to apply the measure of diversion under Article 59 of the Juvenile Justice Code."* In this case, the defence failed to provide arguments, grounds (if such existed) for the motion.

Like prosecutors, there was only one case, when the lawyer referred to international standards when justifying the motion (example was provided above), which further raises questions about qualifications. No significant differences have been observed between the skills of private lawyers and Legal Aid Service lawyers. However, there were two cases, when a private lawyer with no specialization in juvenile justice participated in the hearing.

### Procedural representatives/psychologists

With regard to the specialization of procedural representatives (social workers of guardianship and custodianship authority) and psychologists, one of the main challenges is a gap in legislation. Although their specialization is mandatory under the Juvenile Justice Code, no agency responsible for retraining these individuals has been designated. Therefore, it is unclear how judges shall assess the specialization of these individuals, when there is no agency that would retrain these individuals and issue appropriate certificates.

As for the practical skills of these persons, their involvement in the hearings was not ensured (see the chapter on the involvement of legal/procedural representatives), due to which, we could not assess their skills.

As for psychologists, there were only 2 cases during monitoring, when a psychologist participated in the questioning of the child, which did not allow us to assess this issue in depth.

One of the reasons for the above may be the fact that domestic legislation provides for the participation of a psychologist in the procedural action quite generally. In particular, the Juvenile Justice Code stipulates that participation of a psychologist shall be ensured in the court proceedings, at the initiative of the judge, to protect the best interests of the child. The role of the psychologist is also defined - "The psychologist shall assess the needs of the juvenile and provide psychological support during the proceedings."<sup>46</sup>

The general norms in the legislation relating to the involvement of a psychologist mainly comply with international standards. However, it is unclear what is meant in the assessment of the child's needs and psychological support. The role of a psychologist in this process is not specified. In addition, the law does not specify in what case the judge should make a decision on the involvement of a psychologist. This represents a fairly large discretionary authority, which creates a risk of developing varied practices.<sup>47</sup>

The above factors may be one of the reasons of why the number of psychologists attending the hearings was quite low during monitoring. However, despite the rather low involvement of psychologists, it is interesting to discuss those few cases, when they were involved. In one of the cases, the psychologist was actively involved in the questioning of the juvenile victim. For example: *"Even at the introductory stage, when the judge tried to talk to the child about something pleasant and mentioned gifts, asked her about what she liked and what she was happy about, the psychologist engaged in the conversation and said that the child loved to put on make-up. The child agreed with the psychologist. During the hearing, the child requested that the testimony given by her to the investigator be read. The prosecutor asked her about how X touched her with his penis and other actions. The prosecutor repeated the question twice. After the prosecutor asked the same question for the second time, the child got a little irritated or annoyed and said that she did not know. When she was asked for the first time, she recalled the incident and said that X touched the back and front sides of her body with his penis. When the prosecutor asked again the same question, the child said that she did not know. After that, the child requested the prosecutor to read her testimony. The judge addressed the procedural representative and the lawyer. They agreed, since the child wanted it... the judge was hesitating, because of not wanting to make it public. The psychologist actively engaged in the conversation and said that the child had already described the incident and it was not necessary to read the testimony. The judge agreed with the above. During the hearing, the psychologist made remarks or in some cases helped the child understand. In addition, when the child said that she wanted to go to the bathroom and asked for water, the psychologist showed care for her."*

Although the law does not specify what role the psychologist should play in the court proceedings or how decisions should be made about his or her involvement, this one example shows the positive role

---

<sup>46</sup> Ibid. Article 23.

<sup>47</sup> Available at: < <https://www.rivg.ge/media/1001537/2020/01/20/4811c6652cd87c83c6ac059fca3697b5.pdf> >

of the psychologist in trying to protect the child against various risks. Therefore, it is important to take steps to regulate the involvement of psychologists in court proceedings.

### Administration of speedy justice

#### ➤ **International standards**

International standards<sup>48</sup> require that an individual accused of having infringed the penal law be brought to justice within a "reasonable" period of time and that delay be avoided. The main principle of juvenile justice is to avoid delays in the hearing of a case.

Generally, there is no standard definition of what can be regarded as a delay, although it is established that a "reasonable" delay in relation to children is shorter than in relation to adults. In addition, this issue is directly related to an important principle, such as the child's right to development.<sup>49</sup> The harmonious development of the child implies his/her ability to enjoy all the rights enshrined in the Convention (education, vocational training, physical development, etc.). Protracted procedures, regardless of whether a child is deprived of his/her liberty or not, significantly hinders the exercise of these rights.

#### ➤ **Domestic legislation**

Under domestic law, the cases of juvenile must be heard without any unjustified delay. The court is obliged to hear the case of a juvenile in conflict with the law as a priority.<sup>50</sup>

Legislation sets different deadlines for investigating and hearing the cases involving juveniles. The juvenile may be charged for a single crime for a period of no longer than six months before the pre-trial hearing, unless he/she is charged for another crime before this period expires. The hearing of the juvenile's case in the court of appeal shall be held within two weeks after the appeal as declared admissible. The court of appeal shall deliver a judgment in an oral hearing within one month after the appeal is declared admissible. The court of cassation shall deliver the final judgment within three months after the appeal is declared admissible.<sup>51</sup>

#### ➤ **Monitoring results**

Despite the fact that under domestic law, the time frame set for the hearing of cases involving juveniles differs from the time frame of the hearing of cases of adults, it does not mean that the term should be

---

<sup>48</sup> Convention on the Rights of the Child, Article 40(2)(b) (III)./ General Comment No. 10, UN Committee on the Rights of the Child, paragraphs 51, 52, 83./International Covenant on Civil and Political Rights, Article 14(3)(c). /United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 20.1./Vienna guidelines, paragraph 23.

<sup>49</sup> Convention on the Rights of the Child, Article 6.

<sup>50</sup> Juvenile Justice Code, Article 11.

<sup>51</sup> Ibid. Article 55.

used maximally. The body conducting the proceedings must ensure that the case is heard without any delay and that the term is not maximally used, if the case and the workload allow it.

We have identified two types of delays in the proceedings: postponement of the hearing and late start of the hearing.

Our monitors arrived at the courts to attend hearings 94 times, but they were able to attend the hearings only in 49 of these cases. In more than 50% of cases, the hearing was postponed. Particular shortcomings were identified in this regard in the Kutaisi City Court, where our monitor was able to attend only 4 hearings, while in 15 cases, hearings were postponed. Postponment of hearings was frequent in the Tbilisi City Court as well (35). One of the cases was postponed 5 times. None of the hearing has been postponed in the Rustavi City Court. As for the late start, hearings started late in more than 90% of cases (10, 15, 30 or 40 minutes late).

The reasons for the postponement or late start of the hearings were different and were not directly related only to the court. Among the reasons were - the judge was presiding over another case; courtrooms were overcrowded; the prosecutor, lawyer, procedural/legal representative did not arrive or arrived late. Given all this, it is important to address the shortcomings relating to the common problem of the overload of courts, qualifications of persons involved in the proceedings, assessment of their performance, etc.

## Individual assessment reports

### **International standards**

With regard to both accused and victim children, international standards say that individual assessment of children should be an integral part of criminal proceedings.<sup>52</sup> Individual assessment shall be carried out at the earliest appropriate stage of the proceedings.<sup>53</sup> Individual assessment should be carried out with the close involvement of the child and his/her views should be reflected in the report.<sup>54</sup> The purpose of assessment of the child victim is to protect him/her from secondary and repeat victimization and to plan appropriate measures.<sup>55</sup>

Individual assessment shall take into account the personal characteristics of the victim (such as age, sex, gender identity, ethnicity, race, religion, sexual orientation, disability, citizenship, communication difficulties, attitude towards the abuser and history of violence), the type or nature of the crime (such as, violence caused by hatred, violence caused by discrimination, sexual violence, etc).<sup>56</sup>

---

<sup>52</sup> Directive 2016/800/EU; Directive 2012/29/EU.

<sup>53</sup> Directive 2016/800/EU Article 7(5,6); Directive 2012/29/EU Article 22.

<sup>54</sup> Directive 2016/800/EU Article 7(7); Directive 2012/29/EU Article 22(6).

<sup>55</sup> Directive 2012/29/EU Article 22(1,4).

<sup>56</sup> Directive 2012/29/EU Article 22(2).

## **Domestic legislation**

Domestic legislation defines the rules and procedures of preparing an individual assessment report for specific cases. Such reports are made only in relation to children in conflict with the law:

- when considering the measure of diversion;
- when determining a sentence;
- when individually planning a custodial sentence;
- when executing a non-custodial sentence;
- when considering a parole application.

By the decision of the prosecutor, an individual assessment report may also be prepared and considered at the stage of making a decision on the exercise of other discretionary powers, provided that the course and time limits of the criminal proceedings make it possible. The report shall be prepared by the National Probation Agency (when considering the measure of diversion; determining a sentence; executing a non-custodial sentence) and the Special Penitentiary Service (when individually planning a custodial sentence; when considering a parole application).

In the course of individual assessment, the relevant body shall take into account the level of development of the juvenile, his/her living, upbringing and development conditions, education, health condition, family situation and other circumstances that help assess his/her character and behavior and identify his/her needs.<sup>57</sup>

Domestic legislation in this area fully complies with international standards and makes it possible to prepare such reports at various stages of criminal proceedings.

## **Monitoring results**

Individual assessment reports are of great importance in terms of obtaining additional information about juveniles. The purpose of the report is to provide information to the judge about the child's bio-psycho-social portrait and enable him/her to correctly determine the size and type of the penalty. The report is just a reference and not evidence. Such reports may be submitted to the court for other purposes as well (e.g. for diversion).

The court practice shows that individual assessment reports are not usually reviewed in detail during hearings. Although the above is not prohibited by law, no such a case could be identified by our monitors. Practice shows that the parties receive individual assessment reports in advance so that they can read them before the hearing. In the course of monitoring, only 3 cases were identified, when the parties discussed the content of individual reports during hearings. The reason for the above is that

---

<sup>57</sup> Ibid. Article 27.



such reports are usually prepared at the stage of determining a penalty during the consideration of a case on its merits, while our monitors were not able to attend a lot of such hearings.

However, it should be noted that we identified two cases, when lawyers actively used the content of individual assessment reports to substantiate their motions. In particular, one of the lawyers said: "It is indicated on page 12 of the individual assessment report that the juvenile expressed a liking towards a social worker during interview and is ready to enroll in any programme needed for diversion. With regard to the report, it should be noted that it is absolutely positive. Let's start with an overview of X's place of residence: the social worker checked the place of residence and saw that the sanitary-hygienic norms were observed, everything was in order. Family members are not in conflict with the law, do not consume harmful substances for health, are not addicted to gambling. X has never been a victim of parental abuse or neglect. X has strong support from his relatives and neighbors. The report also says that the child has always been hopeful for their support. Parents have a daily relationship with their child, control his daily routine and with regard to the incident in question, they point out that there had never been such a incident earlier and that they try to teach their child the norms accepted in the society; at the same time, they show care and attention and try to solve problems together. The parents negatively evaluate Giorgi's actions, rule out a recurrence of such an action in the future, and assess the offence as a mistake caused by inexperience. The parents say they are able to better monitor their child in the future and to prevent the recurrence of any wrongdoing."

There was also another case, when the content of the individual assessment report was used for justification, in particular - "The individual assessment report was positive, no problems were identified in terms of establishing positive communication. To make it clearer, according to the individual assessment report, the place where X lives is a two-storey private house, where he lives together with his mother, father and older sister. The house is newly renovated and equipped with all necessary appliances and furniture. The teenager has his own bedroom and personal computer. The family is engaged in small business and grows herbs. As for the activities of X, he is a football player. He plays football so well that he had been going to X school, but his family had to bring him back to Kutaisi due to financial problems. Currently he plays in X team. The teenager notes that he likes football very much and has a desire to achieve great success in this direction. As for the social network, it has been revealed that he also has a caring family, which supports him."

In addition to these cases, at one of the hearings, the defence just made a reference to the content of an individual assessment report, namely, by saying - "The individual assessment report refers to the mental retardation of the defendant, due to which, it was impossible to get complete information from the child."

The cases described above do not make it possible to assess the quality of individual assessment reports and in general the practice of their application. However, based on these examples, the fact that such reports are prepared and actively used in practice can be evaluated positively.

## Protection of confidentiality

### ➤ International standards

According to international standards, children shall have their privacy fully respected at all stages of the proceedings. The UN Convention on the Rights of the Child reinforces the above.<sup>58</sup> The Committee on the Rights of the Child<sup>59</sup> states that "all stages of the proceedings" includes from the initial contact with law enforcement up until the release from supervision, custody or deprivation of liberty.

The purpose of the above is to avoid harm caused by undue publicity of the case. Inadmissibility of publicity is important to protect the identity and privacy of the child victim or witness and appropriate measures should be taken for this purpose, for example, the hearing should be closed when a child testifies.<sup>60</sup> In addition, it is advisable that the victim of sexual abuse or sexual exploitation be heard in the courtroom without being present.<sup>61</sup> States should protect the privacy of children, who are victims of sexual abuse or sexual exploitation, their identity and reputation, and should take steps to prevent the disclosure of any information that may make it easier to identify them.<sup>62</sup>

### ➤ Domestic legislation

Domestic legislation emphasizes the importance of protecting the child's personal data. The legislation says that "the privacy of juveniles shall be ensured at all stages of the juvenile justice procedure." The legislation also says that "the personal data of juveniles may not be disclosed or published, except as referred to in the Law of Georgia on Personal Data Protection."<sup>63</sup>

For the very purpose of complying with this principle, the Juvenile Justice Code includes a norm on closed hearings -"Cases of juveniles in conflict with the law shall be reviewed in closed court hearings,"<sup>64</sup> while the closure of hearings of child victims and witnesses is the discretionary (not mandatory) power of the court, which is applied by the court on the basis of the motion of a prosecutor or a lawyer.<sup>65</sup>

In this regard, domestic legislation is fully in line with international standards. Shortcomings can be mainly identified in practice, which are discussed in the monitoring results below.

### ➤ Monitoring results

---

<sup>58</sup> Convention on the Rights of the Child, Article 40, paragraph 7.

<sup>59</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 64.

<sup>60</sup> ECOSOC/RES/2005/20 Article 12 and 20/Directive 2012/20/EU, Article 23 (3).

<sup>61</sup> Lanzarote Convention, 36 (2) (Material from the textbook - International and European Legislative Framework for Children in Conflict with the Law, Defence for Children, Public Health Foundation).

<sup>62</sup> Lanzarote Convention, 36 (1,e).

<sup>63</sup> Ibid. Article 13

<sup>64</sup> Ibid. Article 29 (1).

<sup>65</sup> Ibid. Article 24 (c).

Our monitoring made it clear that the violation of privacy of children involved in the court proceedings is mostly related to faulty infrastructure. The Tbilisi, Rustavi and Kutaisi City Courts do not have separate entrances or waiting rooms for child defendants, witnesses/victims. All persons (parties, attendees, etc.) use the common entrance and common waiting area, which makes it easy to communicate with children and identify them. The juveniles under detention pending trial are the only exception. They use a separate entrance, which is designed generally for the detainees (see details below, in the chapter on child-friendly environment (infrastructure)).

Display boards are installed in the common waiting areas of the courts, which provide information about the progress of hearings and the parties involved in them. The display boards do not show information about the accused, his/her first or last name. As a rule, they only provide information about the time of the hearing, the name of the judge, asterisks (\*\*\*\*\*) and also the number of the courtroom. However, it should be noted that the use of asterisks instead of the first or last name of the accused makes it clear that the hearing involves a juvenile and any stakeholder can look through the transparent glass of the courtroom door and see the juvenile in the hall (see details below). There should be additional protection mechanisms in this regard.

It should also be noted that although hearings are held behind closed doors in the Kutaisi City Court and children are not identified on the display boards, the court officer publicly announced the names of the juvenile defendants in several cases (which was witnessed by our monitors), for the purpose of ensuring their timely arrival at the courtroom. This fact clearly indicates that some of the court officers either are not informed or are not properly informed that children involved in the proceedings should not be identified. They acted according to common practice, which shows no different approach to children.

## Right of the child to participate and to be heard

### ➤ International standards

The language used in the court proceedings is difficult to understand for ordinary citizens, especially for children. In addition, sometimes professionals are not trained in juvenile justice or are too familiar with representatives of the law enforcement system and are not child-friendly, which may serve as a psychological constraint on free expression of opinion. Therefore, it is important to provide children with information about their rights and responsibilities in a form and language that they understand.

According to the Convention on the Rights of the Child, the child has the right to express his/her views freely in all matters affecting him/her.<sup>66</sup> In this regard, due attention should be paid to his/her age and maturity. Article 40 of the UN Convention on the Rights of the Child also reflects an important principle, according to which, an integral part of the child's right to participate in the proceedings is the right to decide when to express his/her opinion and in what form. Therefore, it is important to

---

<sup>66</sup> Convention on the Rights of the Child, Articles 12, 13.

ensure that the child's right to be heard is clearly provided in the legislation. However, it is not enough for States to simply write in the legislation that children have the right to be heard within the juvenile justice system. States must also ensure that children are able to express their views "freely" in situations that affect them. This means that children should be able to express themselves without any violence, pressure, influence or restraint.

Children shall be informed promptly and directly of the charges against them, through their parents/legal guardians.<sup>67</sup> They shall also be provided with information about their rights and the general course of legal procedures. In addition, international standards separately define the obligation of providing relevant information to child victims and witnesses.<sup>68</sup>

➤ **Domestic legislation**

The Juvenile Justice Code emphasizes an important principle, such as the right to be heard and to participate - "The juvenile in conflict with the law has the right to participate in the proceedings directly and/or through a legal representative. The child also has the right to be heard and his/her opinions be taken into account in accordance with his/her age and level of development.<sup>69</sup> In order to facilitate the participation of the juvenile in the hearing of a case, the court shall:

- ensure that the case is considered according to the juvenile's ability of perception and understanding;
- announce breaks between hearings at reasonable intervals, taking into account the age, health, and development of the juvenile and other circumstances.

At any stage of criminal proceedings, children enjoy the following rights: to receive information in a form appropriate for their development; to be provided with interpretation free of charge - if necessary; to be accompanied by a legal representative or procedural representative; to be provided with consular assistance.<sup>70</sup>

With regard to the admissibility of the admission of guilt by children, law reads that "when considering the admissibility of the admission of guilt by the juvenile, the court shall take into account, together with other relevant circumstances, the ability of the juvenile to perceive and understand, the length of questioning, and the fear of uncertainty or possible detention."<sup>71</sup>

---

<sup>67</sup> Convention on the Rights of the Child, Article 40(2)(b)(II).

<sup>68</sup> ECOSOC/RES/2005/20 Article 20. Directive 2012/29/EU Article 3 (2).

<sup>69</sup> Juvenile Justice Code, Article 10 (1).

<sup>70</sup> Ibid. Article 15.

<sup>71</sup> Ibid. Article 57.

In this regard, the legislation is fully in line with international standards. Shortcomings can be mainly identified in practice, which are discussed in the monitoring results below.

➤ **Monitoring results**

During the course of monitoring, the children participating in the court proceedings, in most cases, had the opportunity to express their views directly, without legal representatives/lawyers. In this regard, we identified the active and positive role of some of the judges in terms of trying to involve children in discussion, which is really welcome. For example, there were hearings, where children could freely express their views and be personally heard. Moreover, their involvement was facilitated by the judges. For example, *“Defendant X asked the judge about diversion, in particular, whether diversion could be used during the first commission of an offence by a juvenile. The judge provided detailed information about the use of diversion in relation to children. He also clarified that the child was not restricted from applying to court for diversion.”*

However, there were cases (about 25%), when judges did not ask the juveniles immediately whether they agreed with the position of the lawyer or whether they had anything to add.

Children were not restricted from expressing their opinions, although the above was not proactively offered to them by the judge.

As already mentioned, it is important for the judge not to be passive, but to play an active role in the proceedings involving children, when in general the best interests of the child require it. Judges should actively try to involve children in the court proceedings and should not wait for them to show initiation. We may say that judges are obliged to do so given that the best interests of the child are considered a priority.<sup>72</sup>

The monitoring showed that children, in most cases, were informed of their rights in an understandable language and form, which is welcome. However, there were cases, when some judges did not provide information to children in a form or language understandable to them. For example, in one of the cases, when informing a child of his rights, the judge spoke quite quickly and did not explain the content of each right. When explaining the charge, the judge simply read the relevant article of the Code, for example, the definition of robbery - “i.e. explicit seizure of another person’s movable property for its unlawful appropriation, which resulted in considerable damage and was committed with a prior agreement by a group”, and the judge did not explain the above in an easier language to the child.

There was also a case, when the judge explained the rights of the child in the following way - *“You have the right to remain silent, not to incriminate yourself, not to answer questions, to have access to a lawyer - it is mandatory to have a lawyer since you are a juvenile and your lawyers are present; legal*

---

<sup>72</sup> Ibid. Article 4.

*representatives are also procedurally mandatory, and if they are not present, a procedural representative shall be appointed, but your legal representatives are present. You also have the right to lodge a motion, make a challenge, file for a plea bargain.*” Obviously, the above cannot be considered a form understandable to the child, but rather a formal fulfillment of the legislative requirement.

In addition, during monitoring one of the hearings, there was a case, when the judge read the child's rights so quickly that even the monitor could not hear or perceive everything, which cannot be described as an approach oriented to the best interests of the child.

Most part of the monitoring did not coincide with the stage of the proceedings, when children are informed of their rights. However, the above could be evaluated at 10 hearings and in most cases children were provided with information about their rights. However, judges showed different approaches, which may be related to their qualifications or experience. Access to information about one's own rights and case is a procedural right of all children involved in criminal proceedings. It is clear that formal explanation of this information by the judge is not enough. The form of provision of information to the child is of particular importance. Therefore, we can say that the children, who were formally provided with information about their rights, but not in a language and form understandable to them, could not enjoy their procedural right.

In conclusion, we can say that varied practices have been identified with regard to the child's right to participate and to be heard. This issue is related to the qualifications of judges, parties and other persons involved in the proceedings (see more details above, in the chapter on the involvement of specialized persons), as well as to the shortcomings in the quality control/monitoring system in relation to all professionals involved in the process.

### Child-friendly environment (infrastructure)

#### ➤ International standards

According to international standards, the architectural environment may make children feel uncomfortable or may even turn out to be risky for them. As defined by international standards, children's right to be heard is closely linked to the environment. According to the Committee on the Rights of the Child: "A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age", "Particular attention needs to be paid to... the design of courtrooms, clothing of judges and lawyers, sight screens, and separate waiting rooms".<sup>73</sup>

---

<sup>73</sup> General Comment No. 12, UN Committee on the Rights of the Child, paragraph 34 (Ursina Weidkuhn, December 2016, Georgia, Child-Friendly Environment: Concept).

The European Court of Human Rights had similar reasoning in the case of T AND V v. UNITED KINGDOM,<sup>74</sup> where the Court held that the official, ritual environment of the Royal Court was intimidating for children and that children could not enjoy their right to a fair trial.

European guidelines on child-friendly justice explain that the case involving a child should be heard not in an intimidating, but child-sensitive environment,<sup>75</sup> where he or she can feel safe and therefore can speak more freely. It is especially important: to introduce children to the court environment and persons involved in the proceedings before the hearing begins; to show respect and sensitive attitude when communicating with the child; to arrange waiting rooms tailored to children; to ensure that questioning of the child is conducted in a child-friendly room, where no one interferes or bothers him/her; to prevent contact between the alleged offender and the child victim; it is preferable that the employees wear plain clothes instead of uniforms; to interview children in the judge's room, where there is a less formal environment.

➤ **Domestic legislation**

Domestic law provides general principles that may be related to the mentioned issue. However, no specific norms regarding the arrangement/organization of infrastructure are provided.

Therefore, national legislation, generally complies with international standards at the level of principles, although it is desirable that specific norms be reflected in legislation, which would allow to regulate this issue. Major shortcomings were identified in this direction in practice, which are reflected in the monitoring results.

➤ **Monitoring results**

Tbilisi City Court

• **Entrance**

Tbilisi City Court has a main entrance, which is used by both child witnesses/victims and accused children. This entrance is adapted for persons with disabilities. In particular, the staircase has a ramp on both sides for wheelchair users. There is no separate entrance for child witnesses/victims.

---

<sup>74</sup> Available at: < <https://archive.crin.org/en/library/legal-database/t-and-v-v-united-kingdom.html> >

<sup>75</sup> See paragraph IV 54ff and the explanatory memorandum (Ursina Weidkuhn, December 2016, Georgia, Child-Friendly Environment: Concept).



*\* Entrance to the Tbilisi City Court*

The court also has a separate entrance for juveniles under detention. This entrance is located in the back part of the building. There is an adapted entrance that directly leads to the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> halls. However, the mentioned entrances are used by both juveniles and adults. There is no adapted waiting room. The above entrance is not adapted for the needs of persons with disabilities, in particular, for wheelchair users.



*\* Entrance to the Tbilisi City Court for juveniles under detention*

- **Rooms for defendants under detention**

There are three separate rooms of same size for juveniles under detention. The floor of these rooms is made of concrete, the walls are painted white. The rooms have small windows, which cannot provide enough natural light. Therefore, artificial light is used in the rooms. The windows do not open. Ventilation is installed in the rooms. A sofa-like seat is built at one of the walls, with a wooden surface attached to it. There are footprints and inscriptions on the walls. Women, as well as representatives of sexual minorities, are placed in the same cells. However, juveniles are always placed separately. There is a toilet next to these three rooms, which is not adapted for persons with disabilities. Hygienic norms are satisfactory in the toilet. The place, where these three rooms are located, is separated from the space



where cells for adults are located. These two spaces are connected by stairs. Namely, the cells intended for juveniles are isolated from the cells intended for adults. If a detained defendant, including a juvenile, is a person with disabilities, who uses a wheelchair, he/she has to enter the building through another entrance, which is adapted, i.e. has a ramp. This entrance is also in the back part of the building and is connected to the halls. There is no any obstructive architectural barrier in the entrance.



*\*Temporary placement rooms for juveniles under detention in the Tbilisi City Court*

- **Waiting area**

The juveniles who are not under detention use the central entrance of the building and there is no special waiting room for them. They are waiting for the start of the hearings in the common lobby, which is used by everyone (lawyers, prosecutors, stakeholders, citizens, representatives of the media). The court provides a wheelchair for persons with disabilities, if necessary. The detainee, who is a person with disabilities, is always brought to the court exactly before the start of the hearing, so that he/she is not placed in the cell.

The building has three separate waiting rooms for juveniles under detention pending trial. According to the court manager, these rooms are also intended for women and sexual minorities. There is only one long chair in the room. The room has a small closed and dimmed window that slightly provides natural light. The room also has a ventilation system. There is one individual toilet for these three rooms, which is not adapted for persons with disabilities. The area leading to these rooms is not adapted either, as it involves stairs only. However, as mentioned above, persons with disabilities are brought directly to the courtroom. There is a display board in the lobby, which, according to the manager, shows the location of halls. The building has an elevator, which can be used if necessary.

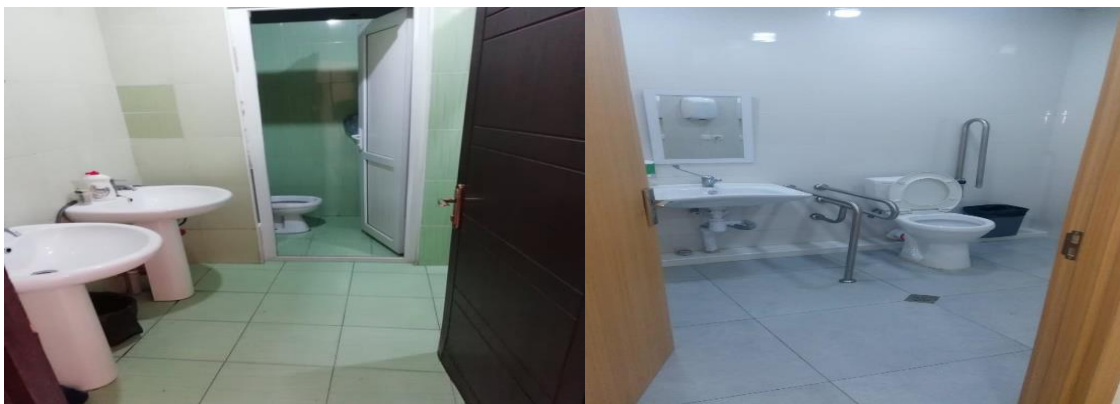
There is a map in the lobby that shows how to reach the halls. Safety evacuation maps are also provided in the corridors. There are no brochures/booklets tailored to the needs of children in the lobby.



*\*Waiting areas in the Tbilisi City Court*

- **Toilet**

The toilets on the 1<sup>st</sup> floor of the building, which are located on the right and left sides of the lobby and are used by any citizen in the building, are not adapted. The only adapted toilet on the 1<sup>st</sup> floor is located in the newly built wing of the building intended for civil cases, at the extreme end of the corridor, on the right side of the main entrance. Accordingly, the mentioned toilet is far from some of the halls. The toilets near the 1<sup>st</sup> hall are not adapted. The building also has an elevator, which is usually used by judges, although the court manager explained that it can be used by persons with disabilities as well, if needed.



*\* Toilets in the Tbilisi City Court*

- **Courtrooms**

The halls on the 1<sup>st</sup> floor are intended for criminal cases. The cases of juveniles are mostly heard in the 1<sup>st</sup> hall, but sometimes in other halls as well. The 1<sup>st</sup> hall has large mosaic stained glass windows overlooking the yard. In case of switching off the artificial light, natural light can be seen, however, it cannot be described as sufficient. Halls nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 41 have small windows, although they open not in the open space but in the corridor. And halls nos. 2, 3, 14 and 15 do not have

even that type of windows. The furniture and equipment of the halls are of dark brown colours, which cannot be considered as a child-friendly approach.

The main doors of the halls are not hermetically closed, which makes us assume that hearings are not held in an acoustically protected condition. The courtrooms are equipped with an audio recording system used for making transcripts that are an integral part of the minutes. Video cameras are also installed in the hall for security reasons. According to the court manager, video cameras are switched off during closed hearings.

## Rustavi City Court

- **Entrance**

The Rustavi City Court building has two entrances. The main entrance to the building leads to the lobby. The main entrance is used by both persons involved in the process, including defendants who are not under detention, and attendees. The entrance is used by both adults and minors. The entrance is adapted for people with disabilities, as it has a ramp and allows wheelchair users to access the building.

The defendants under detention pending trial enter the building through the second entrance, which is used by both adults and juveniles. The back entrance of the building is not adapted for wheelchair users, as it involves a staircase which is to be passed necessarily in order to enter the building. Before the start of the hearing, defendants under detention are placed in special cells located on the minus floor. The cells are connected to the special entrance door of the courtroom, intended only for defendants under detention, only through a staircase, which means that they are not adapted. The building does not have a separate entrance for juvenile witnesses/victims.



*\*Entrance to the Rustavi City Court*

There are many obstacles in the building for wheelchair users. There is no elevator in the building, so it is necessary to use stairs to reach all the floors. There are fewer obstacles on the 2<sup>nd</sup> floor, as the main entrance to the lobby can be reached through a ramp. It is possible to reach the halls of this floor without any obstacles. However, some obstacles may be encountered when going to the toilet. As the court staff explained, if a person involved in the hearing is a wheelchair user or a person with disabilities, the hearing is appointed in the hall located on the 2<sup>nd</sup> floor. The order issued by the court chairman regulates the issue of bringing persons with disabilities to the courtroom.



*\*Stairs of the Rustavi City Court (upper floors can be accessed only by stairs)*

- **Rooms for defendants under detention**

There are 17 rooms designed for 300 people in the building, which are intended for defendants under detention. None of them is specifically intended for children. Juvenile detainees are placed in the cells separately from adults and they are not allowed to communicate with each other. The cells are located on the minus floor and detainees are brought there from the back entrance, which is not adapted for persons with disabilities, as it involves stairs. Detainees need to use stairs to reach the courtrooms as well. The cells do not have windows or electricity. Therefore, there is no artificial light. There is a shared toilet outside the cells, which is not separately provided for the cells. In addition, the toilet cannot meet even the basic requirements. The cells are equipped only with long chairs. Detainees are not provided with a bed or a table. Ventilation is only artificial and it is switched on only if there is a smell, otherwise it is off, because of its noise. When the detainee needs a toilet, he or she is taken to a shared toilet, which has two wings, one for the penitentiary staff (escort service) and the other one for prisoners. The cells have lattice doors that allow detainees placed in different cells to have verbal contact with one another.



*\*Temporary placement room for defendants under detention in the Rustavi City Court*

- **Waiting area**

An information tribune, information board, courtroom location board, court statistics board and many more can be found in the lobby of the courthouse that is used by everyone (except for defendants under detention). There is also a map in the lobby, which shows how to access halls, and safety evacuation maps.



*\*Waiting area and information boards of the Rustavi City Court*

- **Courtrooms**

The 3<sup>rd</sup> and 4<sup>th</sup> halls on the 2<sup>nd</sup> floor and the 6<sup>th</sup> and 7<sup>th</sup> halls on the 3<sup>rd</sup> floor are intended for the hearings of cases of juveniles. The 4<sup>th</sup> hall has 6 windows and air conditioners, like the 7<sup>th</sup> hall, which provide enough natural light and ventilation. There are no windows in the 3<sup>rd</sup> or 6<sup>th</sup> halls, so neither natural light nor ventilation is sufficiently provided. These halls are equipped with air conditioners for artificial ventilation. The witness/victim questioning room (see details below) is remotely connected only to the 2<sup>nd</sup> and 4<sup>th</sup> halls.

The main door leading to the courtroom cannot be closed hermetically, making us assume that the hearings are not held in an acoustically protected condition. However, the court staff explained that the halls were large and it was even necessary to install sound amplifiers in some of them to make the content of the hearings accessible across the hall. The juvenile witnesses/victims are questioned through connection with the 4<sup>th</sup> hall (see details below). The furniture and equipment of the halls are mainly of dark brown colours, which cannot be considered as a child-friendly approach.

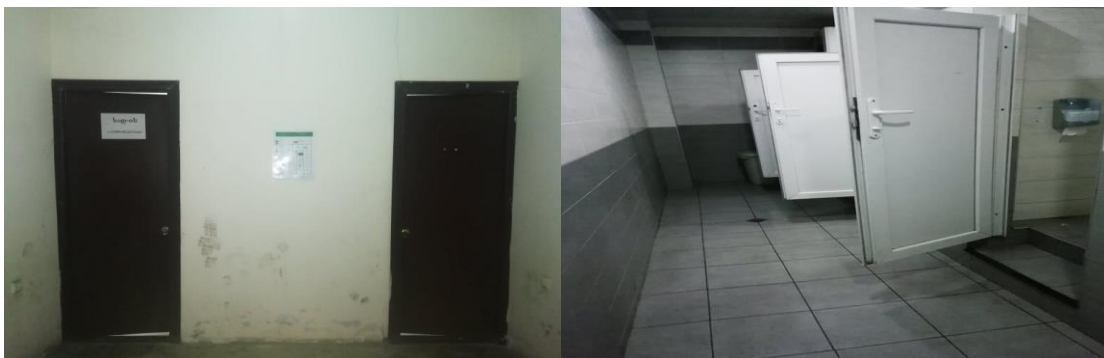
The halls are equipped with an audio recording system used for transcripts. There are also two types of cameras installed in the halls, one of which is connected to the audio recording system and the other one is used for security purposes. According to the chief court officer, only audio recording is carried out during closed hearings, while video cameras are usually switched off.



*\*Courtrooms in the Rustavi City Court*

- **Toilet**

The toilets are located in the corridor, separately for detainees and staff. According to the staff, there is only one toilet for persons with disabilities in the building, which is located in the wing of the building intended for the administrative staff, which cannot be accessed by outsiders. The major building has toilets, which are separated from the main part of the building by staircases, which makes them inaccessible by wheelchair users. If a person involved in the court proceedings is a wheelchair user, he or she will only be able to reach the hall located on the 1<sup>st</sup> floor without facing obstacles.

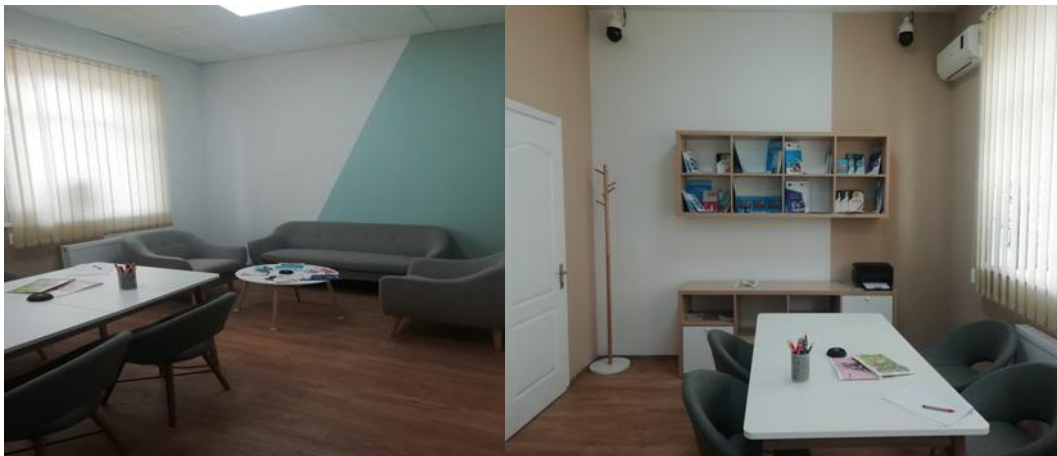


*\*Toilets of the Rustavi City Court*

- **Child victim/witness questioning room**

There is a separate room in the courthouse, where juvenile witnesses/victims are questioned remotely during hearings. They are involved in the hearing, namely in the questioning process, from another room through electronic communication. Children usually wait for the hearing in the same room. The room is well furnished. The furniture is not unpleasant for children. There are brochures, e.g. "Justice and the Rights of the Child"; "Convention on the Rights of the Child"; "Elimination of Violence against Children at School"; "What you need to know when you are in a temporary detention facility"; "What you need to know when you are in a rehabilitation facility"; "Tell me what happened, Interrogation/questioning of child victims and witnesses, Manual for trainers and professionals"; "Information about Additional Protocol No. 3 to the Convention on the Rights of the Child"; "Justice and the Rights of the Child" (civic education handbook for teachers); "Convention on the Rights of the Child; "Decisions of the European Court of Human Rights", etc. There are pencils on the table. In addition, a small book – "Children and Law" is available in the entrance to the courthouse.

The juvenile witness/victim questioning room is located on the 3<sup>rd</sup> floor, which can be accessed only by stairs, as there is no elevator in the building. With this in mind, it can be said that the building is not adapted for juvenile witnesses/victims using wheelchairs. According to the staff, if they know that a juvenile witness/victim is to be questioned, they try to take him/her to the above-mentioned room in order to ensure that the juvenile waits for the hearing in that room and not in the common lobby. Only a legal representative and other persons provided for by law are allowed to enter the said room together with the juvenile.







*\*Juvenile witness/victim questioning room in the Rustavi City Court*

## Kutaisi City Court

- **Entrance**

The courthouse has a total of three entrances: the major one is adapted for persons with disabilities (on the right side of the building) and for defendants under detention (in the back part of the building). Consequently, only detained juveniles enjoy a separate entrance. As for juvenile witnesses/victims, they use the main entrance. There is a separate adapted entrance for persons with disabilities. However, they can access only the 1<sup>st</sup> floor of the building.



*\*Entrance to the Kutaisi City Court*

- **Waiting area**

There is no separate waiting room for juveniles. They mostly have to wait in the lobby on the 1<sup>st</sup> floor of the building or, in rare cases, in the lawyers' room on the same floor, where they may be in contact with other people. There is an information board on the 1<sup>st</sup> floor of the building, which indicates the layout of halls. In addition, there is a board, which, during monitoring, did not provide the identity of juveniles, but there was a case, when the court officer announced the names of all juvenile defendants before the start of the hearing in order to inform the parties of the start of the hearing.



*\*Waiting area in the Kutaisi City Court*

- **Room for persons under detention**

Juveniles under detention pending trial are placed on the ground floor of the building, where there are 5 cells used by both juveniles and adults. The cells with concrete floors/walls, small windows and with no artificial lighting or furniture cannot be described as proper. There is only a thin seat made of wood. Juvenile defendants are placed separately from adults.



*\*Temporary placement room for juveniles under detention in the Kutaisi City Court*

- **Toilet**

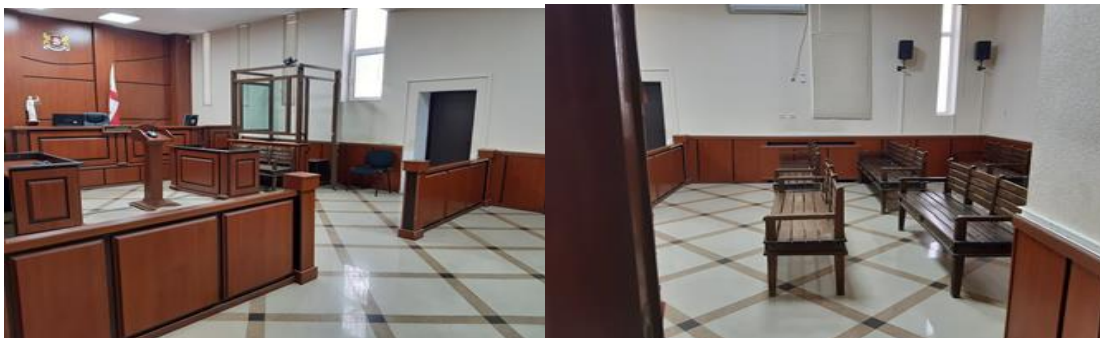
The toilet is located on the ground floor, therefore, it is not accessible for persons using wheelchairs because of stairs (there is no elevator). Persons using wheelchairs are taken to the toilet with the assistance of court officers. The monitoring showed that the adaptation of the toilet is on the agenda, although it is unknown when exactly this issue will be resolved.



*\*Toilets of the Kutaisi City Court*

- **Courtroom**

The halls are more or less the same. All of them have one or two windows, the furniture in all the halls are standard brown and dark in general. During monitoring, the content of the hearings was not accessible across the halls. Whenever the court was informed in advance that the accused or any other person involved in the proceedings was a person with disabilities, the proceedings were held in the 1<sup>st</sup> hall, which is located on the 1<sup>st</sup> floor, so that persons with disabilities do not face additional problems. The court officers meet and take persons with disabilities to the hall.



*\*Courtroom of the Kutaisi City Court*

## *Infrastructure monitoring summery*

The final assessment of the court infrastructure is given in the conclusion under the same structure that was used during its general description.

### *Entrance*

Every court, the infrastructure of which has been assessed, has a common entrance, which is used by all persons who go to the court for a specific purpose - prosecutors, lawyers, defendants, convicts, acquitted persons, victims, witnesses, experts and citizens wishing to attend court hearings. Therefore, the accused/convicted/acquitted children or child witnesses/victims use this common entrance, where they may have contact with anyone involved in their cases or other persons. Therefore, the confidentiality of children involved in court proceedings is not protected in accordance with international or local standards.

The main entrances to the courts are adapted for persons with disabilities, in particular for wheelchair users. The only exceptions are the accused/convicted children under detention. They use a separate entrance. Detained adults use the same entrance (see details below). This entrance is not adapted for people with disabilities, in particular for wheelchair users.

### *Waiting area*

Similar problems have been identified with the regard to the waiting areas, lobbies. All the courts that have been evaluated have a common waiting area for all persons mentioned in the above chapter and children may have contact with other persons, so their confidentiality is not protected. Exceptions are children under detention in this case too or children who, as an exception, wait for the hearing in another space (e.g. the questioning room in the Rustavi Court, lawyers' room in the Kutaisi court).

Information boards in the waiting rooms do not disclose information about children. However, for example, despite the fact that the information board in the Tbilisi City Court did not show the identity of the child (asterisks were used), it was possible to identify the courtroom, where the hearing was held. So the confidentiality of courtrooms is problematic (see details below).

These waiting areas are adapted for persons with disabilities, in particular for wheelchair users. However, in some cases, it is a problem to access upper floors (e.g. in the Rustavi Court), as there is no elevator. Because of this, the hearing is held on the 1<sup>st</sup> floor, if a person with disabilities is involved in it.

### *Rooms for persons under detention*

All courts, which have been assessed, have special cells for persons under detention, where they are waiting for their hearings. These cells are intended for both adult and juvenile detainees.

The cells are absolutely incompatible with international standards. There is no natural ventilation or light in the cells; privacy of juveniles is not protected; furniture does not meet the standards that should

be applied in relation to children (there is a hard seat; there is no table; the furniture is of dark colours, etc.). This environment not only does not meet the child protection standards, but it is also incompatible with general standards of restriction of liberty (e.g. the Mandela Rules), including for adults placed there.

These cells are not adapted for people with disabilities, particularly for wheelchair users.

### *Courtrooms*

The courtrooms do not comply with the principles of a child-friendly environment under international standards. Most of them do not have natural light or ventilation; the furniture is of very dark colours, not adapted for children, which creates a very formal and ritualistic environment. In some courtrooms, where cases of children are heard, the accused/convicted children are placed in a cell-like glass cabin (e.g. in the Tbilisi City Court). In some of the courtrooms, it is possible to peep through a non-hermetic door and identify participants. Some of the halls are not soundproof either.

Therefore, the courtrooms that have been assessed do not meet international standards.

### *Child witness/victim questioning room*

The child witness/victim questioning room of the Rustavi City Court turned out to be the only exception in terms of a child-friendly environment. The room is used for remote questioning of child witnesses/victims during hearings. The room has natural light and ventilation; furniture is adapted and different types of information brochures are provided in the room, in a form and language understandable to the child. **The room is a very good attempt to create a certain model of a child-friendly environment in the court system, based on which, it is possible to gradually modify the infrastructure of courts.**

### *Toilets*

Our monitoring showed that generally there are toilets for persons with disabilities in the courts, although access to them is quite limited due to various circumstances. In the Tbilisi City Court, the toilet for persons with disabilities is located in a new wing where civil cases are heard; In the Rustavi Court, the toilet for persons with disabilities is located in the part of the building intended for the administrative staff, and in the Kutaisi City Court, the toilet is located on the ground floor, which has no elevator and can be accessed only by stairs.

Therefore, it can be said that the toilets in the courts are not adapted for persons with disabilities, in particular for wheelchair users.

## Questioning of children in the court

### ➤ International standards

International standards provide special regulations for the questioning of children. It is very important to prepare children for the questioning process. Relevant professionals should ensure that the child has information about the proceeding he/she is involved in and has accurate expectations. Questioning must be planned in advance and communication with specialists must also be consistent.<sup>76</sup>

### *The right of the child to be informed*

When testifying, the child should have the opportunity to express his/her views and should be supported in this process by relevant professionals.<sup>77</sup> Both the child defendants and child witnesses/victims should be provided with information about their rights and responsibilities (see details above).

### *Interviewing/questioning method*

Any interaction with the child, including questioning, should be conducted in a language that the child uses and understands.<sup>78</sup> Communication should be carried out in a simple and understandable language and the characteristics of the child should be taken into account, including any disability that may adversely affect the child's ability to understand or be understood.<sup>79</sup>

Professionals should make efforts to ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.<sup>80</sup>

Professionals should make every effort to ensure that child victims and witnesses are enabled to express their views and concerns regarding their involvement in the justice process freely and in a manner they prefer.<sup>81</sup> They should also be able to participate in the proceedings and to provide evidence. Due account shall be taken of the child's age and maturity.<sup>82</sup>

---

<sup>76</sup> ECOSOC/RES/2005/20 Article 25.

<sup>77</sup> ECOSOC/RES/2005/20 Article 21.

<sup>78</sup> General Comment No. 10, UN Committee on the Rights of the Child, paragraph 14.

<sup>79</sup> Directive 2012/29/EU Article 3 (2).

<sup>80</sup> ECOSOC/RES/2005/20 Article 31 (c).

<sup>81</sup> ECOSOC/RES/2005/20 Article 21 (b).

<sup>82</sup> Directive 2012/29/EU Article 10 (1).

Child victims of sexual abuse or sexual exploitation should be enabled to be heard, to supply evidence and to choose the means of having their views presented, directly or through an intermediary, and considered.<sup>83</sup>

➤ **Domestic legislation**

Under domestic law, the juvenile may be questioned/interviewed if he or she can verbally or otherwise provide information relevant to the case. His/her questioning shall be conducted in the presence of his/her legal representative and lawyer. The juvenile should be questioned at appropriate intervals, taking into account the age and maturity of the child, and other circumstances. If a juvenile is a witness or victim of sexual exploitation or sexual abuse, the number of questionings should be limited as much as possible and should be conditioned by the necessity of achieving the purposes of criminal proceedings.

The questioning of a person under the age of 14 may be conducted only with the consent and presence of his/her legal representative. The legal representative has the right to express his/her opinion and, with the permission of the court, to clarify the question asked to a person under the age of 14. A person/witness under the age of 14 shall be informed of his/her obligation to tell only the truth, but shall not be warned of criminal liability for refusing to testify, or for giving a false testimony.<sup>84</sup>

Children may not be questioned from 22:00 to 08:00. Children shall be provided with appropriate food and drinking water at least every four hours, from 08:00 to 22:00, and shall enjoy the right to unlimited use of the toilet.<sup>85</sup>

Underage persons/witnesses or victims may not be questioned in connection with domestic crimes, violence against women or domestic violence, while underage victims of domestic violence or violence against women may not be questioned (explanations may not be obtained from them) in the presence of the abusive parent(s) or legal representative, when protective or restraining orders are being issued or when a social worker is making a decision on the separation of the abused child.<sup>86</sup>

Domestic legislation also provides for the participation of a psychologist in the proceeding. In particular, according to the Juvenile Justice Code, considering the best interests of the juvenile, participation of a psychologist in the proceedings shall be ensured on the initiative of the judge during the hearing, or the prosecutor at the stage of investigation. The Code also defines the role of the psychologist - "The psychologist shall assess the needs of the juvenile and provide psychological support during the proceedings."<sup>87</sup>

---

<sup>83</sup> Lanzarote Convention, Article 31 (1, c).

<sup>84</sup> Ibid. Article 52 (4).

<sup>85</sup> Ibid. Article 52.

<sup>86</sup> Ibid. Article 52.

<sup>87</sup> Ibid. Article 23.



Common standards of the participation of a psychologist in the process of interview/questioning is defined both in relation to juveniles in conflict with the law and child witnesses/victims - "During questioning of juveniles, the persons conducting the procedural action shall ensure the participation of a psychologist, taking into account the best interests of the child. The psychologist shall assess the needs of the juvenile and provide psychological support during questioning".<sup>88</sup> However, there are separate rules for questioning underage persons, witnesses or victims in connection with sexual exploitation and sexual abuse. Such questioning may be subject to audio or video recording. The audio or video recording of the testimony given by the child may be played (demonstrated) at the court hearing.<sup>89</sup> The procedural action, if the juvenile victim wishes so, may be attended by the coordinator of the victim/witness.<sup>90</sup>

### ➤ **Monitoring results**

Both domestic legislation and international standards provide general regulations regarding the questioning of children in conflict with the law or child witnesses/victims. However, in addition to general standards, the mentioned documents provide for higher requirements in relation to the questioning of witnesses/victims. Therefore, this process was assessed by observing the questioning of child witnesses/victims.

The questioning of child witnesses/victims was analyzed as a result of monitoring 10 hearings. In 6 cases, the juvenile witnesses were questioned in relation to physical conflicts between children (robbery, murder); in 2 cases the juvenile witnesses were questioned in relation to domestic violence; one juvenile victim was questioned with regard to domestic violence and another juvenile victim (girl) was questioned in relation to sexual violence.

It is important to note that child witnesses/victims are often the only witnesses to the crime/violence committed and their questioning is a prerequisite for obtaining key evidence during the investigation. However, such information should not be obtained at the expense of traumatizing or victimizing the child. The events experienced by the child witnesses/victims should be restored and stated in the most careful manner.

For this purpose, the questioning of child witnesses/victims is important to be carried out by specialized professionals, who are trained in the child's memory and speaking skills, are well aware of their communication style, skills, level of development, issues of persuasion and use special tools. In this regard, the National Institute of Child Health and Human Development (NICHD) has developed

---

<sup>88</sup> Ibid. Article 52.

<sup>89</sup> Ibid. Article 52.

<sup>90</sup> Ibid. Article 52 (8).

structured questioning technique, which is used to get the most complete and reliable testimony from the child witnesses/victims.<sup>91</sup>

### Self-introduction and explanation of the purpose of the meeting/questioning by the judge and other questioners

A courtroom is a radically different space from a normal environment for children and talking about other people's (perhaps those who are familiar or close to them) guiltiness in this space may cause not only anxiety and tension in children, but also strong stress, strong fear of revictimization and other risk factors, which is detrimental to children and may have a substantial impact on the content and reliability of information provided by them.

With this in mind, it is important to introduce children in advance to the environment in which they will be questioned, as well as to the persons who will be conducting the questioning process. If the child witness/victim expresses consent, it is advisable for him/her to meet the judge and other participants in the proceedings before the questioning in the courtroom. This, on the one hand, will reduce stress, which can be caused by the questioning in the courtroom, and on the other hand, is a good opportunity for judges and questioners to be informed of the juvenile's language and communication style, as well as the terms used by him/her, and to agree on basic rules: the child may request additional explanations during questioning, say "I do not know", etc.

As a result of monitoring the questioning of child witnesses/victims in the court, it was revealed that preliminary meetings with children did not actually take place. Moreover, the parties involved in the process almost never provided information to the child about the purpose or essence of the meeting, or the progress of questioning. There were only few hearings, when judges and prosecutors introduced themselves to the child witnesses/victims. In three cases, questions were asked about the child's favorite activities, school and subjects, which had partly positive impact on the process of questioning. At the same time, in many cases, communication with children was very official, or the question-and-answer procedure started without any introduction.

The report on monitoring the questioning of a girl victim of sexual violence makes it clear that the judge tried to make the child feel comfortable, talked to her about school, her favorite subjects, favorite birthday gifts, etc. At the same time, the judge explained that he/she would not allow anyone to offend her and called on the parties to be careful and not to say anything inappropriate during questioning.

In one of the cases, during questioning of a juvenile girl, the prosecutor explained the questioning chronology to the witness in a friendly tone and with understandable terminology, namely that questions would first be asked by the judge and then by the lawyer; that she had to answer only the questions she had answers for. At the beginning of questioning, the prosecutor tried to get information

---

<sup>91</sup> Guide to Communication with Child Victims and Witnesses, Public Health Foundation, 2017, page 29.

about the hobby of the juvenile, or how she spent her free time, what she liked to do. Unlike the prosecutor, the lawyers began to question the child without any introduction.

A similar positive introduction was made during the questioning of a child victim of a physical conflict between juveniles:

- Prosecutor: (name) which school do you go to? And which grade are you in?
- Victim: I am in the 12<sup>th</sup> grade;
- Prosecutor: Are you finishing school this year?
- Victim: Yes;
- Prosecutor: Where do you want to continue to study?
- Victim: I am considering tourism;
- Prosecutor: So is this an area you are interested in and will you follow it? What is your hobby?
- Victim: I love to dance;
- Prosecutor: Georgian dances or ...?
- Victim: Georgian;
- Prosecutor: Very good. (Name) do you feel relaxed or are you still nervous?
- Victim: I'm nervous.
- 
- Prosecutor: (Name) I will ask you a few questions and you will say what you know exactly. Do not try to guess the answer, or do not be afraid by assuming that if you do not answer the question, there will be a big problem. For example, you will not be able to tell me the name of my dog, will you? Therefore, you should not try to guess the answer. Therefore, tell me what you know about the fact. If you don't remember anything, say that you don't remember.

In contrast, during the questioning of a 7-year-old boy, who had witnessed domestic violence, the prosecutor introduced himself briefly, literally only by saying his name. In addition, the prosecutor directly asked the witness/victim about his family.

Thus, in order to reduce the stressful factors associated with questioning and to establish a close relationship of trust with children, to understand their feelings and thoughts, it is important for judges and other questioners to understand the above and other issues related to the questioning of juveniles and to have a plan on making the situation easier. In particular, there should be a meeting before the hearing. In order to reduce stress among child witnesses/victims, judges can minimize formalities: take off a robe, allow children to address them informally/by name, allow children to engage in prohibited behaviors (e.g., to stand up, walk in the courtroom), to answer a question by whispering or without eye

contact (especially if a child has autistic spectrum disorder), etc.<sup>92</sup> It is also important to explain the essence, purpose, chronology and significance of questioning in a form and language understandable to the child. It is necessary for a person conducting the questioning to introduce himself or herself and have a conversation with the child.

### Breaks during questioning

During questioning, children need additional breaks. Additional breaks may be scheduled in advance, or used in case of witness's stress/confusion or may be requested by other parties involved.

In general, child's ability to concentrate decreases in every 15 minutes, regardless of whether it is visible or not. In general, cross-examination should not last longer than an hour. If witnesses request a break in similar situations, this often happens only after they get extremely tensed.<sup>93</sup>

The monitoring showed that in most cases no breaks were used during the questioning of child witnesses/victims. It is true that judges/prosecutors offer a break, but it generally happens after children request it themselves. Juveniles generally refuse to take a break, which may be due to being shy, or wishing to complete the questioning as soon as possible, or due to other circumstances. The main argument of the questioner is the short duration of questioning. However, in fact, judges or other parties involved in the process do not assess children's emotional condition, whereas they may not show that they are very tired, stressed. There were two cases, when the judge did not use a break even though it was clear that the child was tired and anxious.

According to the minutes of one of the questionings, the juvenile, who had witnessed robbery, was questioned in a very active and intensive manner and the process lasted literally for one hour and 35 minutes, which was quite tiresome. In addition, the juvenile was waiting for the questioning for about 2 hours and 15 minutes. It is also noteworthy that the questioning ended at 18:50, after the end of working hours. Overall, the juvenile looked tired and the legal representative even pointed to the above in a low voice.

No break was announced during the questioning of a girl victim of physical conflict between juveniles either. Despite tension and anxiety, full questioning was conducted. Only once, at the request of the witness/victim, a 5-minute break was announced 45 minutes after the beginning of questioning.

A girl victim of sexual abuse was not offered a break even when she asked whether the questioning was over after the questions of the prosecutor. She was only told that the questioning would end soon. It is also noteworthy that during questioning, the child asked for her mother, to which the psychologist responded by saying that her mother was nearby and that they would leave soon and she would be able

---

<sup>92</sup> Pre-Trial Case Management Guideline, Benchmark, December 2018, page 19.

<sup>93</sup> Pre-Trial Case Management Guideline, Benchmark, December 2018, page 17.

to hug her. In addition, during the 35-minute questioning, the child said she needed to go to the toilet, due to which, the questioning was interrupted for several minutes.

It should be concluded that the court should be able to provide more flexibility so that child witnesses/victims could enjoy breaks in a way that allows them to relax. The court should not rely on the request of child witnesses/victims, as they may be intimidated, embarrassed, or simply may want to end everything soon. Rather the persons conducting the process should consider the need for a break themselves, even if the child does not request it (for example, they should announce automatic short breaks, etc.).

### Process of questioning

When questioning a child, there are a lot of circumstances that matter, which play a crucial role in obtaining information, as well as in preventing retraumatization/revictimization of the child. Juvenile witnesses/victims find it difficult to provide important information to the court about their feelings, thoughts or content, or to provide sufficiently detailed information.

When juvenile witnesses/victims testify, their role differs from normal relationship with adults. They find it difficult to understand that other people do not have the same information that they have and that they kind of play the role of "experts" in matters they are being questioned about. Children think the adults also know what happened, even though they were not present.

Some juvenile witnesses/victims are aware of possible consequences of disclosure of information. They may refuse to answer questions in case of having extremely stressful experience and reasons for the above may be various:

- close relationship with the persons involved;
- loyalty to the persons involved;
- fear of revenge or abandonment;
- feelings of guilt, shame;
- thinking that their desires and actions will have a negative impact on others;
- thinking that they will not be believed or will be punished;
- anxiety caused by the fear that their family will break up.<sup>94</sup>

In view of all this, it is of great importance how correctly questions are chosen, formulated and asked during questioning, in order to get as much correct and complete information from child witnesses/victims as possible, without causing additional harm to them.

---

<sup>94</sup> Questioning Children, Benchmark, March 2019, page 22.

### Questions containing covert blame

Questions asked to the child during being questioned in court significantly determine the reliability of information to be obtained in the first place and the degree of stress suffered by the witness/victim child in the second place. Therefore, our monitoring was focused on the types of questions that are particularly risky during questioning of child witnesses/victims, both in terms of reliability of information and retraumatization. The questions that use the word “why” may contain covert blame. In many cases, the child is unaware of the intent of the offence/violence committed against him/her.<sup>95</sup>

The monitoring of questioning of juvenile witnesses/victims made it clear that in many cases questioners blame child witnesses/victims. For example, when questioning a juvenile, who had witnessed robbery involving another juvenile, questions were asked about why he/she did not call the police or contact anyone else, which clearly contained the risk of victimization, so that the witness could blame himself/herself for what had happened. Such a question could provoke and exacerbate the juvenile’s feeling that he/she would have avoided the death of his/her friend if he/she had informed the police or his/her father.

#### ***The case of the juvenile who witnessed robbery involving his/her peer:***

- Lawyer: "Why couldn't you go to the stadium?"
- Witness: "I was scared."
- Lawyer: "Did the family of X (victim) express any dissatisfaction? Why didn't you help X?"
- 
- Lawyer: "There were four of you together with X and you were scared to defend him?"
- Witness: "Yes."
- Lawyer: "After realizing that you couldn't help your friend physically or morally, did any of you consider calling the police or telling someone?"
- Witness: "I was considering telling my father, but I didn't do it, because X himself didn't tell his parents. I don't have any big person, who would settle this in a street style."

Similar risky questions were asked by the judge to the juvenile victim of domestic violence:

- Judge: "There have been two incidents. Was your father drunk on both days? And why didn't you call the police during the first incident? Didn't you think it was a police matter? "

<sup>95</sup> Guide to Communication with Child Victims and Witnesses, Public Health Foundation, 2017, pages 22 and 24.

- Witness: "I don't know."

The risk of secondary victimization has also been identified during the questioning of underage girl victims of violence. In particular, the lawyer of one of the accused said in his/her introductory speech that his client had committed a crime of passion, as it was preceded by the publication of a photo and text degrading him by the victim on the social network. According to the lawyer, the above was enough to trigger aggression against the person who did such a disgusting thing and that the crime was provoked by the victim herself. The questions asked by the lawyer during the questioning of the victim, which was aimed at supporting the above position, clearly contained the risks of secondary victimization:

- Lawyer: "Why were you afraid of X (defendant)? What have you done ... for example, I am an adult woman and I also have a feeling of fear sometimes, when I do something wrong, or when I do something that may cause the feelings of fear. So why do you think you were afraid of X (defendant)?"
- Witness: "I saw a video, where X (defendant) hit a child and moreover ..."
- Lawyer: "I may also be scared of X (defendant), but I have not done anything wrong, so can you say what did you do?"
- Witness: .....
- Lawyer: "Maybe you wrote him a bad word, or did something bad, or talked to anyone. What did you do that made you afraid of X (defendant)?"
- Witness : .....
- Lawyer: "Well, then I will repeat the question: Did you do anything that might make you scared? Were you afraid of meeting X (defendant), because he might make you pay for something?"
- Witness: "I have not done anything like that".

The questions asked by the lawyer of the second defendant in the same case also contained covert blame against the juvenile victim:

- Lawyer 2: Well, as I've heard, (name of the defendant) told you to stop seeing his girlfriend. You told him that you were not seeing (name of the defendant's girlfriend) and that you had already stopped doing that, didn't you?
- Witness: Yes.

- Lawyer 2: Well, then why did you have an argument and fight? Why were you abused, if you had agreed to everything? Maybe you were aggressive...?
- Witness: No.
- Lawyer 2: Did you try to escape and get out of that situation?
- Witness: Yes.
- Lawyer 2: Why didn't you shout if there were people nearby?
- Witness: Something happened nearby, the police were there and ...
- Lawyer 2: So you called, but your voice could not be heard? Why didn't your friend (name), who was nearby, try to help you, or call someone?
- Witness: I don't know, I don't remember.

During the questioning of another victim of sexual assault, the lawyer accused the parent of the victim:

- Lawyer: "Did you tell your mommy everything?"
- Victim: "Yes";
- Lawyer: "Then didn't she check you?"
- (The child could not understand the question);
- Lawyer: "Didn't she take your panties off and look there? Who examined your body?"

### Asking leading/suggestive questions

It is problematic and risky to ask suggestive/leading questions to juvenile witnesses/victims during questioning. When using such questions, the questioner mentions a detail, event, or action not mentioned by the child and requests its confirmation or denial from him/her, thus influencing the child. The correctness of answers to such questions raises serious doubts. Despite this, leading/suggestive questions are often used in practice, on the motive that children do not provide comprehensive information.<sup>96</sup>

The monitoring made it clear that in most cases questioners used leading questions, which sometimes became a reason for children to avoid answering the question. For example, during the questioning of

---

<sup>96</sup> Tell Me What Happened, Questioning of Child Victims and Witnesses – Guidelines for Trainers and Professionals, Public Health Foundation of Georgia, 2014, page 69.



a witness to a physical conflict between minors, both the prosecutor and the lawyer repeatedly asked leading questions. In particular, during the screening of video footage, the juvenile witness was asked: "It was X (first and last name), wasn't it?"; "He stabbed you and then he ran away, didn't he?" "You knew Y (surname), didn't you?"

In addition, during the questioning of a victim of sexual violence, the defendant's lawyer began cross-examination with a leading question, which at the same time did not stem from the information already provided by the child. In particular, he asked about when that particular person painted something on her abdomen. The child was surprised and said that he did not paint anything, which was followed by the lawyer's question - "Didn't he paint?" Only then the prosecutor pointed out that the child had not said such a thing.

The prosecutor also used suggestive questions during the same questioning, when the child had already talked about the topic. For example, the child said how the accused took her clothes off, then how he took off his pants and underwear, how he touched her with his penis, how he made her hold it with her hand, after which the prosecutor again asked questions, such as "He hugged you naked, didn't he?" "He had his underwear pulled down, didn't he?", etc.

When questioning a juvenile, it is important to avoid leading questions as much as possible.

### Repetition of questions

Another thing that drew our attention was the repetition of questions or the use of repeated questions, which may make children feel that the answers given by them were not "correct" or "desirable" and retell their statement/initial testimony.

The more the questions are repeated, the more the child's inner resistance grows. The best practices show that if it is necessary to repeat a question: a) it should be explained why the question is asked again (for example, to check if you correctly heard the answer); the above would reduce the pressure that may make the juvenile change his or her initial answer; (B) it should be avoided to ask children closed or suggestive questions (which require yes or no answer or are suggestive) repeatedly; C) the number of repeated questions should be reduced.<sup>97</sup>

The negative effect of the repetition of a question was especially evident during the questioning of a witness/victim of domestic violence, where at the end of the questioning, the juvenile changed his/her initial answer:

“- Prosecutor: It was hard to hear what you just told us and it must be especially hard to live with that everyday. What can you tell us about this? Your emotions .. this is my subjective opinion, but what do you feel because of all this?

<sup>97</sup> Questioning Children, Benchmark, March 2019, page 14.

- Witness: .....
- Prosecutor: Do you feel well? Do you feel bad?
- Witness: I feel bad;
- Prosecutor: How easy or difficult is it for you to live with all this?
- Witness: It's hard, because you can't be happy, of course ,when you see that your father treats your mother like this;
- Prosecutor: I delivered a verdict in this case and I acknowledged you as a victim. Do you think that this offence, or how would you call it, harms you as a child and witness to all this?
- Witness: No;
- Prosecutor: Don't you think that all this affect you?
- Witness: Not personally me;
- Prosecutor: Then what does it mean that you are worried and crying?
- Judge: Ms (name), I think she answered your question. Ms (name), am I mistaken?
- Witness: I did not understand exactly what you asked me, or what you meant by that;
- Prosecutor: Were you affected by what happened?
- Witness: No, it was just hard ...
- Psychologist: She cannot just understand what the concept of “affected” means. The fact that you are crying now, that you feel bad because of what you have witnessed, that it impacted you psychologically, all this means that you were affected, that is, when you feel bad and are nervous, it means that you are affected. You feel affected after such things, don't you?
- Witness: Yes, yes;
- Judge: Are you being damaged, or were you damaged because of this? Do you know what damage is? For example, if I drop this laptop, it will be broken and damaged, will not it? And something may also be damaged inside, so that it may not be visible. Do you understand what I am saying? Do you get it? Have you been damaged inside or outside?
- Witness: That is ...
- Judge: Were you damaged inside?
- Witness: Yes."

Thus, after being repeatedly asked the same question by several persons, the juvenile changed his/her original statement, which ultimately resulted in a different outcome.

### Closed questions

When asking questions that require "yes" or "no" answers, children are more likely to say “yes” and agree with the person asking the question. Such questions influence children and they may name a fact that has not occurred and that requires confirmation or denial. During the questioning of a minor witness/victim of domestic violence:

"Prosecutor: Was it conditioned by your father's .. how should I say it... ownership mindset towards your mother?  
- Witness: I do not understand;  
- Prosecutor: For example, the kind of attitude when a woman is required to be in the kitchen or something like that;  
- Witness: Yes";  
- "Judge: And was he angry when she would express dissatisfaction with his swear words?  
- Witness: Yes."

Asking open-ended questions activates different memory processes and requires different answers compared to closed questions. They are aimed at recalling things. This process may activate some details or make them more accessible. Thus, the child may recall more information by thinking on his/her own rather than by answering questions asked from the outside (during which the risk of obtaining false information may increase). As a result, the use of open-ended questions result in more accurate, detailed information, while the use of closed questions makes children adjust an answer to a question, as the question may sound familiar or correct to him. There is a high risk that the child will simply agree with the person asking a question, instead of offering his or her own correct answer or correcting the mistake of that person.

### Professional terminology, obscure and hypothetical questions

Judges and lawyers use the kind of words, phrases and grammar that are beyond the child's ability to understand and his/her answer does not make it clear whether he/she understood the question or not. In addition, stress affects children's and adolescents' memory and their ability to understand and answer questions. Children rarely say that they could not understand a question: due to shyness or nervousness, or failure to realize that they could not understand the content. As a result, they try to answer questions that they do not understand.<sup>98</sup>

The use of legal phrases should first and foremost be avoided when asking questions to children, as they complicate questions and differ from children's language. For example, it is advisable to reduce the use of terms such as defender, prosecutor, witness, etc. The use of formal terms is not advisable even when children use formal words themselves, as they may only partially understand or misinterpret the content, which leads to misunderstanding.<sup>99</sup>

During monitoring the questioning of one of the juveniles, who had witnessed domestic violence, the judge used the term "parties" when explaining certain rights, which presumably could not be understood or perceived by the 7-year-old child: "The questions the **parties** may ask you concern the story involving your father, and before the **parties** ask you the questions and before you tell us anything,

<sup>98</sup> Questioning Children, Benchmark, March 2019, page 3.

<sup>99</sup> Questioning Children, Benchmark, March 2019, page 10.

we must make one thing clear - whether you want to tell us the story for which we bothered you and brought you to the court."

During the questioning of a juvenile witness and victim of domestic violence: - "Do you know why I am asking this? There is a legal term such as gender motive. In this case it is important and we need to find out the cause of the argument and fight. Was he arguing for no reason or was there any minor reason? For example, was he telling her - do not say a word, this is what you have to do (the witness said "yes"), why are you going outside, why are you wearing it? Have there been such cases? "

It is also important to avoid abstract concepts, irony, metaphors and idioms that may be confusing.

***The case of a juvenile girl victim of sexual violence.*** - "The following was said by the prosecutor:

- Describe the thing that (name of the abuser) took out;
  - The child described the size by her hand and added - "This big" - and she also said - "Something like all the boys have";
- The prosecutor smiled and said - "How would you know how big all the boys have." The child was embarrassed and said she did not know."

Asking children hypothetical questions make them recall inaccurate information. For example, when asking questions to the juvenile witness to robbery, the lawyer often used imaginary questions:

- Lawyer: "If this person lived in the tenth quarter, in the same district where you live, would you be able to identify him?"
- Lawyer: "If you had anybody, would you ask for help?"

The following questions asked to the girl victim of physical conflict between juveniles also requires imagination:

- Lawyer: "If there had been a bad word, would you remember it? ....."
- Lawyer: "I'm not a medical worker, but does hitting your head result in concussion?"
- Victim: "Yes."

## Conclusion

The research showed that the Juvenile Justice Code laid the solid foundations for significant positive changes. Consideration of the best interests of the child and speedy justice, preparation and consideration of individual assessment reports and involvement of specialized professionals make the

participation of juvenile defendants, witnesses and victims in the court proceedings less traumatic and more complete.

However, the present report clearly shows that the court infrastructure is for the most part not ready for the proper implementation of juvenile justice. The principle of confidentiality is not observed in the courts, the environment do not make it possible for children to feel as comfortable, protected or not intimidated as possible.

Hearings are frequently postponed or delayed for various reasons.

The qualifications or skills of persons involved in the proceedings often do not meet standards or are not focused on protecting the best interests of the child. Involvement of a support subject - legal/procedural representative - is often nominal, while the involvement of a psychologist was observed only in few cases.

Communication with juveniles in conflict with the law has not always been carried out in a form and language understandable to the child. Not all the necessary information, rights or duties were explained to children in an easy, clearly understandable manner, or in detail, for the purpose of effectively protecting their legal rights. The qualifications and diligence of interpreters were questionable in some cases. The hearings were not simultaneously or fully translated.

In many cases, the questioners do not protect the best interests of the child or create a safe environment in order to obtain information/testimony from them with less harm or revictimization, which would be a way of receiving reliable and rich information. In contrast, it is not common to establish close relationship of trust with children, or to use breaks when children get tired. Breaks were not used even when children cried, were anxious, etc. Therefore, it is important to develop a standard approach in the form of guidelines to provide instructions for all judges on how to conduct a meeting with children in advance, agree with them on the rules and explain the essence and purpose of the proceedings. It is also important for judges to be informed of the child's communication language and its characteristics, which should be taken into account during the hearing.

The process of questioning was also stressful, especially when the prosecutor, judge, or defendant's lawyer exerted some psychological pressure on the child to get the desired answer, using suggestive/leading questions. There have been a lot of attempts of blaming and traumatizing the child. In more than half of the cases, the juvenile witnesses/victims were reprimanded for their failure to contact an appropriate person/agency for assistance and were blamed themselves for the offences committed against them.

During the questioning of child witnesses/victims, the questioners did not often follow the structured protocol of the National Institute of Child Health and Human Development (NICHD). Neither the

phases of the protocol nor its basic principles – to encourage free narrative style and ask open-ended questions - were observed.

The above refers to the need of taking active steps to control/monitor the quality of questioning. It is necessary to constantly train relevant professionals in the specifics of questioning of children according to the (NICHD) protocol, as well as to create a periodic supervision/feedback mechanism for this method of questioning.

It is also important to develop a child support institution, as during monitoring, the witness/victim coordinator was involved in the process of questioning only in one case and the psychologist - in two cases. It should be noted that the psychologist was actively involved in the questioning of the child, both in terms of referring to leading questions and other issues. However, due to the lack of involvement, it is difficult to assess their best role in the process.

In addition to addressing these practical shortcomings, it is necessary to implement the recommendations provided below in order to ensure that juvenile justice truly serves the best interests of the child and meets both national and international standards.

## Recommendations

### **Proposal to the Parliament of Georgia:**

- By making legislative changes, ensure that child witnesses are provided with the obligatory right of defence;

### **Recommendation to the Government of Georgia:**

- Designate an agency responsible for training/retraining psychologists in juvenile justice specialization and developing the quality control system;

### **Recommendation to the High Council of Justice of Georgia:**

- Develop a time-bound plan for the improvement of the court infrastructure (environment should be tailored to juvenile defendants/witnesses/victims; the infrastructure should be adapted for the needs of persons with disabilities; the courthouse should make it possible to protect the principle of confidentiality; appropriate conditions should be provided for children under detention and it should be made possible to place them separately from adults; special waiting areas should be provided for non-detained child defendants, witnesses and victims);
- Develop a training/retraining mechanism for interpreters in the specialization of juvenile justice, as well as quality control system;
- Develop guidelines for the involvement of psychologists in the court proceedings by judges.

**Recommendation to the Prosecutor General's Office of Georgia:**

- Develop an effective mechanism for controlling the qualifications (specialization in juvenile justice) and quality of prosecutors;
- Develop guidelines for making a decision on the involvement of a psychologist in the questioning of children.

**Recommendation to the Georgian Bar Association/Legal Aid Service:**

- Develop a continuous training system for lawyers and effective qualification (specialization in juvenile justice) and quality control mechanism.

**Recommendation to the Ministry of Justice of Georgia:**

- Develop an effective qualification (specialization in juvenile justice) and quality control mechanism for social workers (those acting as procedural representatives).