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Rights of Juvenile Defendants in Criminal Proceedings

Report of the study

Authors:

Anton Kelbakiani
Natalia Tsagareli
Giorgi Turazashvili

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Introduction

After the Juvenile Justice Code entered into force (on 1 January 2016, partially on 1 March 2016), various entities were imposed an obligation to draft normative acts detailing procedures and practice to be applied to children in conflict with the penal law during administering criminal justice, starting from the first contact of a child with law enforcement agencies and all the way to a court trial (including the execution of sentence). The abovementioned normative acts must regulate the process of effective implementation of the juvenile justice. The Beijing Rules specify: *“Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.”*¹ Moreover, the UN Committee on the Rights of the Child emphasizes: *“In order to ensure the full implementation of the principles and rights ..., it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system.”*²

In its narrowest sense, a legislative reform implies only the amendment of an existing law or the adoption of a new law. In practice, however, the process is way more comprehensive and goes beyond a mere review and amendment of a legal framework. A legislative reform involves: consideration of policy as well as budgetary and human resources; evaluation of institutional capacity and of the system of communication among institutions; professional training and practice; planning of the process of implementation of the law; transitional arrangements;³ monitoring in the process of implementation and a quality control system.

The adoption of the new Code has been repeatedly commended as an important and progressive step; however, no thorough analysis has been carried out to see whether the entities involved in the administration of justice interpret it in a uniform way. Nor has the enforcement of the Code in practice or in the light of effective quality control system been studied either. The mentioned shortcomings create a risk that the juvenile delinquency reform (its practical implementation) will go into a wrong direction and a non-uniform practice will be established among participants in criminal proceedings. At meetings dedicated to the Juvenile Justice Code, representatives of various entities and international organizations have repeatedly emphasized the importance of quality control and spoken about a number of practical issues that are interpreted in various ways or remain ambiguous and require further clarification and detailed regulation in the process of implementation.

¹ The Beijing Rules; Rule 30.3.

² UN Committee on the Rights of the Child, GENERAL COMMENT No. 10; Paragraph 90.

³ Guidance for Legislative Reform on Juvenile Justice, 2011; pg. 12.

Aim of the study

The study aims at assisting the government, after the entry into force of Juvenile Justice Code, to **assess** the situation with the protection of rights of juvenile defendants during criminal proceedings, **identify shortcomings** in this process and **analyze** them; also, to ensure a **uniform interpretation** and **implementation** of the existing legislation on juvenile defendants both by government entities and all other subjects involved in administering juvenile justice.

Structure of the study

Within the scope of this study we scrutinized the realization of the rights of juvenile defendants during criminal proceedings after the entry into force of Juvenile Justice Code (since 1 January 2016); analyzed shortcomings of the legislation, the existing practice and the state policy in the area of juvenile justice reform. The study covers the entire process - from the initial contact of a juvenile with law enforcement agencies up to a decision delivered by a court.

Study methodology

The following methods were applied in the study:

- **Analysis of statistical information** – under this component, various entities were requested to provide public information which was necessary for the study. The analysis of received information made it possible to identify specific approaches applied to juvenile defendants and the dynamics during 2016;
- **Analysis of existing situation (documents defining legislation, practice, policy)** – this component involved the analysis of legislation in the field of justice (normative acts) in the light of juvenile defendants' needs; also, the collection and analysis of information on the existing practice and the evaluation of state policy documents (strategies, action plans);
- **Analysis of disposed cases** – based on agreement reached in advance, the Office of Public Defender requested from courts documentation of disposed criminal cases of juvenile delinquents. These cases (depersonalized) were analyzed in terms of

realization of the rights of juvenile defendants and the results of the analysis were incorporated in the report;

- **Focus groups** – a focus group method, on the one hand, enables to gather information on a researched topic. On the other hand, a focused discussion creates a micro model of social group while a joint discussion of respondents facilitates a debate on a researched topic, the identification of a degree of group influence and collection of various information about a researched issue;
- **In-depth interview (semi-structured)** – this method helps gather information about a researched topic from respondents, learn about their attitudes and views.

Focus groups and in-depth interviews were conducted with **25** defense lawyers specialized in juvenile justice (18 defense lawyers from the Legal Aid Service and seven private defense lawyers), **14** prosecutors and **eight** judges (in Tbilisi, Kutaisi, Batumi and Rustavi). In-depth interviews were also conducted with legal representatives of **five** juvenile defendants. Despite our repeated requests, we were not able to hold a meeting with specialized police officers of the Ministry of Internal Affairs of Georgia.

The study is provided in two parts. Part I reflects that component of the study which was prepared as a result of conducted situation analysis, focus groups and interviews. The mentioned part was prepared by a team of experts of non-profit (non-commercial) legal entity Rehabilitation Initiative for Vulnerable Groups. Part II was prepared by the Office of Public Defender of Georgia on the basis of analysis of disposed cases on juvenile defendants (eight criminal cases were scrutinized).

Key findings

The study revealed significant shortcomings in the implementation of Juvenile Justice Code and active steps must be taken to eliminate them. Shortcomings were also seen in legislation as well as in practice which manifest in non-uniform interpretation of provisions. Moreover, the study showed that an effective quality control system is virtually absent in the area of juvenile justice. Shortcomings were also observed in state policy visions.

Recommendations

- Amend the Juvenile Justice Code to provide for mandatory specialization of social workers of guardianship and custodianship body (procedural representatives) in the field of juvenile justice;

- Develop a special training module and retrain those social workers of guardianship and custodianship body, who will have an obligation to engage, if need be, in juvenile justice proceedings;
- Start considering a possibility of increasing the number of social workers in the Social Service Agency;
- Introduce changes to the Juvenile Justice Code to stipulate a free legal aid to accused persons aged between 18 and 21 as an obligation of the state;
- Increase human and material resources of the Legal Aid Service;
- Introduce changes to the Juvenile Justice Code to specify, on the legislative level, an obligation to ensure the protection of witnesses aged between 14 and 18;
- Introduce changes to the Juvenile Justice Code to prohibit communication of representatives of law enforcement agencies with witnesses aged between 14 and 18 in the absence of legal/procedural representatives and defense lawyers, except in cases of urgent need which must be defined in advance in the form of legislation;
- Start considering a possibility of increasing the number of defense lawyers in the Legal Aid Service;
- Conduct a regular control of quality of performance of persons engaged in administering justice;
- Amend the Juvenile Justice Code to determine the criteria for the involvement of a psychologist in juvenile justice proceedings;
- Retrain psychologists, participating in interviewing/interrogating procedures, on principles of juvenile justice as well as a procedural role of psychologist;
- Amend the Juvenile Justice Code to delete a provision from the legislation, specifying a previous conviction as an aggravating circumstance;
- Make changes to a joint decree⁴ on the methodology, procedure and standard of individual assessment report, which serves as a basis for determining the terms of preparation of a report and the subjects authorized to request the preparation of the report. In particular, in case of a plea bargain, the right to request the preparation of report must be given to a prosecutor. The term for the preparation of a report shall be at least 10 working days in both cases;
- Develop guidelines on the preparation of individual assessment report, at the stage of imposing a sentence, for all subjects involved in this process;
- At the stage of imposing a sentence, provide a judge/prosecutor with an individual assessment report in the form of conclusion instead of sending him/her a full questionnaire that serves as a basis for the assessment and often contains personal data of special category which is actually irrelevant to the purpose of imposing a sentence;

⁴ The joint decree №132/№95/№23 of the Justice Minister, the Interior Minister and the Minister of Corrections of Georgia.

- Start considering a possibility of increasing the number of social workers in the National Probation Agency;
- Amend the government ordinance to define selection criteria of persons willing to work in the field of juvenile justice. Also, determine such regulations that ensure ongoing retraining of corresponding professionals in all relevant entities;
- Cause all entities involved in administering justice to develop and establish effective internal system of quality control, which will rely on research and analysis;
- Develop guidelines for the application of specialization standards in the juvenile justice in such criminal cases which involve an underage witness or/and victim;
- Establish guidelines, in the form of a normative act, for interviewing/interrogating children in conflict with law as well as underage witnesses and victims, and deliver training to relevant professionals;
- Ensure the development of special standards for creating a child-friendly environment; plan relevant steps that must be taken by the bodies administering justice towards this end in the medium- and long terms;
- Define indicators in the action plans of juvenile justice reform and improvement of standards in accordance with the SMART principle;
- Define a concrete amount of sum and ways of obtaining it for the implementation of each activity specified in the action plans;
- Define the need for each concrete activity specified in the action plans on the basis of evidence;
- Define risk factors associated with concrete activities specified in the action plans, which may impede their implementation;
- Define activities in the action plans in coordination with other entities in order to avoid overlapping of activities specified in the action plans;
- Ensure that prosecution detain a minor without a court resolution only on the basis of proper justification, in case of urgent necessity;
- Always record results of investigative actions in corresponding protocols;
- Fully indicate factual and legal grounds of investigative actions conducted at night because of urgent need;
- Ensure that each criminal case contain a document certifying the specialization in the juvenile justice of persons administering proceedings;
- In the course of criminal prosecution against a minor, to protect his/her interests, cause the prosecution to exercise its discretionary powers and timely demand from a relevant entity the preparation of individual assessment report regardless of the fact that this is not mandatory at the stage of investigation;
- Prepare an individual assessment report in a timely manner, before taking all those decisions when the preparation of a report is mandatory.

Part I

Section 1. Criminal investigation/prosecution

1.1. Participation of legal and procedural representatives

International instruments recognize the importance of involvement of legal and procedural representatives in juvenile justice proceedings: *“Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child... This involvement shall in general contribute to an effective response to the child’s infringement of the penal law.”*⁵ *“Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.”*⁶ Moreover, *“The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile.”*⁷

According to the Juvenile Justice Code, a person who has arrested a minor shall, upon the delivery of minor to a law enforcement agency, immediately inform his/her legal representative of the place and the reason of detention as well as of his/her rights.

The term “legal representative” is defined in the Juvenile Justice Code as *“a close relative of a minor, or a supporter, or a guardian or a custodian of a minor, who participates in juvenile justice procedure to protect the interests of the minor and who exercises the rights of the minor, except for rights which can be only exercised by minors due to the nature of these rights.”*

“Procedural representative,” however, is an employee of guardianship and custodianship body appointed by a judge, prosecutor or investigator, or other reliable person who exercise representative powers on behalf of and in favor of the best interests of a minor in cases stipulated in the Code. A procedural representative exercises the same rights as a legal representative. If the legal representative of a minor cannot be reached, an employee of law

⁵ UN Committee on the Rights of the Child, GENERAL COMMENT No. 10; Article 40 (2) (b).

⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); Part two, Article 10.1.

⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); Part two, Article 15.2.

enforcement agency immediately notifies the guardianship and custodianship body which nominates its employee as a candidate for a procedural representative. A procedural representative is appointed: if it is impossible to have the legal representative of the minor involved in the process within one hour after the minor has been brought to a law enforcement agency; if the minor does not reside with his/her legal representative or refuses to contact his/her legal representative or refuses the participation of the latter in the process; if the legal representative acts against the best interests of the minor; if the minor is a victim of or an eyewitness to a crime committed by the legal representative; if the legal representative is charged with the commission of the same crime; if the legal representative is inaccessible. Another reliable person is appointed as a procedural representative, taking into account the minor's opinion.

“A procedural representative may: a) express his/her opinion on the needs of the minor to the official of the body administering the procedure; b) keep in contact with close relatives, or a lawyer or friends of the minor; c) inform the minor about health care, or psychological or social services, and available means of receiving these services; d) provide information to the minor about his/her procedural status, the importance, duration and form of testimony, and the interrogation procedure; e) notify the minor about the time and place of the hearing, and about other relevant actions and available measures of defense; f) provide information to the minor on the procedure for appealing the procedural decision delivered against him/her; g) perform other actions to assist the minor.”⁸

The study revealed that in the majority of cases, legal and procedural representatives lack information about their rights and procedural functions; even more, their involvement in the proceeding is minimal and sometimes they are not only unable to defend interests of a minor but become an object of offence and rude treatment on the part of individual representatives of law enforcement agencies. Legal representatives involved in proceedings are seen as rather dysfunctional by a segment of interviewed lawyers too; as one defense lawyer said: *“legal representative does nothing.”* Legal representatives themselves are skeptical about their involvement and meaningful participation in procedures. During the interview one legal representative said: *“I am the mother and I was insulted. How can a person, who judges and arrests my child for a crime, arrest me or explain anything to my child and reprimand him when that person himself is uneducated, uncultured and has no conscience? He turned to me saying: ‘what kind of a woman you are when you cannot raise your child...’ I was standing there like an object, watching how they were handling issues... Even if I started shouting and fighting it would not help as it had been already decided what to do with whom. If a decision was made to put him in jail they would do so. No matter what you do and say, they do not care. Once you utter a word, they start insulting you.”* To a question as to what are

⁸ The Juvenile Justice Code, Article 50.

the functions of a legal representative, a participant in the study (a legal representative) said: *“a person without functions, who may be trampled upon because he/she raised such a child. I did not have any other function there.”*

Another legal representative engaged in the study explained that she was not informed of her functions and purpose in the process either upon or after her involvement in the procedure: *“I was just sitting and watching as a legal representative... I was rather an observer than a legal representative.”*

Judges express a certain amount of dissatisfaction about procedural representatives too. One judge expressed doubts about the training of the personnel who are nominated as procedural representatives by the guardianship and custodianship body: *“They need to be trained in this regard; I will, of course, explain the rights that are provided in the Juvenile Justice Code, but listening to the explanation of the rights is one thing whereas realizing them is another.”*

The Juvenile Justice Code stipulates an obligation to train professionals engaged in the field of juvenile justice and to develop corresponding training modules.⁹ Also, Chapter III of this Code is entirely dedicated to the specialization of persons administering juvenile justice. Moreover, a standard for specialization of persons administering juvenile justice was approved under the ordinance №668 of government of Georgia.¹⁰ The mentioned regulations and standards apply to all subjects involved in criminal proceedings (investigator, prosecutor, police officer, defense lawyer, **social worker**, mediator, probation officer, personnel of the National Probation Agency and the Center for Crime Prevention and a relevant penitentiary facility) with the only exception of procedural representatives which represents a serious shortcoming. In compliance with the Juvenile Justice Code,¹¹ an entity was specified, which was assigned a task to appoint, if need be, a procedural representative – guardianship and custodianship bodies of the Social Service Agency of the Ministry of Labor, Health and Social Affairs. Although the Juvenile Justice Code specifies the obligation to retrain, among others, social workers,¹² Article 101 of the Code, specifying the measures to be implemented, does not set out the obligations of the Ministry of Labor, Health and Social Affairs in regard with the training of social workers of guardianship and custodianship bodies. It should be noted here that although the Juvenile Justice Code refers to a procedural representative as a candidate nominated by the guardianship and custodianship body,¹³ or other reliable person, it does not specify whether this person must be a social worker or not.

⁹ The Juvenile Justice Code; Article 101.

¹⁰ Ordinance №668 of government of Georgia, Standard for Specialization of Persons Administering Juvenile Justice Procedure and Persons Involved in this Procedure.

¹¹ The Juvenile Justice Code, Article 50.

¹² The Juvenile Justice Code, Article 21.

¹³ The Juvenile Justice Code, Article 50.

It should be noted here again that the UN standards emphasize that *“Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.”*¹⁴ ... *“Juvenile justice personnel shall reflect the diversity of juveniles who **come into contact with the juvenile justice system.**”*¹⁵ We will discuss specialization issues in more detail in the following chapters.

Besides, it should be underlined that the functions of social workers of the guardianship and custodianship bodies of the Social Service Agency are quite diverse; apart from their function in the area of juvenile justice they are responsible for the following: *“to implement state program(s) of social rehabilitation and childcare, within the scope of powers granted under the Georgian legislation; within the scope of their competence, to coordinate activities of the Agency’s territorial offices concerning the social rehabilitation and childcare state program(s) in terms of issues related to the protection of rights; to perform the functions of the central guardianship and custodianship body; within the scope of its competence, to coordinate response to instances of violence against a child and/or domestic violence as well as children lacking care.”*¹⁶ Although since 1 January 2016 the functions of social workers were extended to include additional tasks, the number of social workers has not increased; this affects the quality of their work. A large number of municipalities have only one payroll position of a social worker (for example, in Kharagauli, Tkibuli, Bagdati, Vani, Sachkhere, Tskaltubo, Lentekhi, Tsageri, Khobi, Sagarejo, et cetera); given the existing needs, this cannot be regarded as a sufficient amount. See the number of social workers by regions in the table below:

Number of social workers by regions											Total
Tbilisi	Imereti	Racha- Lechkhumi Kvemo Svaneti	Guria	Samegrelo - Zemo Svaneti	Kakheti	Samtskhe- Javakheti	Mtskheta- Mtianeti	Shida Kartli	Kvemo Kartli	Ajara	
70	29	5	5	20	25	8	11	11	27	18	232

Recommendations:

¹⁴ The Beijing Rules; Rule 22.1.

¹⁵ Ibid., Rule 22.2.

¹⁶ Decree №109/n of the Minister of Labor, Health and Social Affairs of Georgia, on the Regulation of Social Service Agency; Article 25.

To Parliament of Georgia

- Amend the Juvenile Justice Code to provide for mandatory specialization of social workers of guardianship and custodianship body (procedural representatives) in the field of juvenile justice.

To the Ministry of Labor, Health and Social Affairs

- Develop a special training modules and retrain those social workers of guardianship and custodianship body of the Social Service Agency, who will have an obligation to engage, if need be, in juvenile justice proceedings;
- Start considering a possibility of increasing the number of social workers in the Social Service Agency.

1.2. Right to defense

The right of children in conflict with law to legal and other appropriate assistance is reflected in international documents. These documents provide for the child's right to receive legal assistance when he/she is interrogated as a suspect, also when a child is levelled with a charge and faces a court trial. Article 37 of the Convention on the Rights of the Child provides for the right of a child to prompt access to legal and other appropriate assistance. At the same time, pursuant to Article 40 (2) (b) (II) of the Convention, the state shall ensure each child *"to have legal or other appropriate assistance in the preparation and presentation of his or her defence."*

According to the Juvenile Justice Code, a minor is a person under the age of 18.¹⁷ The Code also specifies a new age group - persons aged from 18 to 21, and a special approach to them¹⁸ which, to a certain extent, is similar to the approach applied to juvenile defendants.

Paragraph 1 of Article 15 of the Juvenile Justice Code specifies the **right** of juvenile defendants to enjoy free legal aid. The Criminal Procedure Code of Georgia stipulates that it is mandatory for a juvenile defendant to have a defense lawyer.¹⁹ Moreover, the mentioned Code offers certain conditions for the defense of defendants aged between 18 and 21. In particular, Article 15 of the Code (the right to free legal aid) applies to persons aged between 18 and 21, having the status of the defendant.

¹⁷ The Juvenile Justice Code; Article 3 (1)

¹⁸ Ibid.; Article 2(1).

¹⁹ The Criminal Procedure Code; Article 45(a).

After the Juvenile Justice Code entered into force, a non-uniform practice has been established towards the exercise of the right to defense. In particular, a provision in the Code stipulating that enjoying defense is the right (this provision applies to persons aged between 14 and 21) and a provision in the Criminal Procedure Code stipulating that it is mandatory for a juvenile defendant to have a defense lawyer (this provision applies only to persons aged between 14 and 18) encouraged the formation of non-uniform practice. Namely, persons aged between 18 and 21 may enjoy this right if they apply to a relevant entity for it. Defense lawyers are not mandatorily appointed to them. Lawyers of the Legal Aid Service consider the right of persons under 21 to a mandatory defense acceptable because turning 18 does not automatically mean becoming instantly a fully mature person. Prosecutors interviewed within the framework of this study said that initially there was a tendency to ensure persons aged between 18 and 21 with a mandatory legal defense, but later the leadership of the Legal Aid Service gave a different interpretation to a relevant provision in the Code and now, persons aged between 18 and 21 are provided with a free legal aid only upon their request. A segment of judges interviewed within the scope of this study admitted that *“judges do not yet have formed a clear approach, especially towards persons aged from 18 to 21.”* Therefore, the practice is not uniform and the understanding of relevant provisions varies among subjects involved in criminal proceedings.

The Beijing Rules explain that *“A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.”*²⁰ The comment to this rule notes that *“... a wide variety of ages come under the definition of ‘juvenile’, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.”* Moreover, it is noted there that *“Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.”*

Thus, international standards allow provisions existing in juvenile justice to be applied to persons under 18 and above too. At the same time, the Juvenile Justice Code does not exclude persons aged 18-21 from receiving a free legal aid if they personally apply for that to a body administering a case. However, two types of provisions in different documents (the Juvenile Justice Code and the Criminal Procedure Code) saying that in certain instances it is the right (18-21 age group) while in other instances it is the obligation (14-18 age group) has led to the establishment of non-uniform practice.

It is therefore important to form a uniform approach and to stipulate in the law the right of persons aged under 21 to mandatory defense. At the same time, however, such amendment to the law must be introduced in parallel with the enhancement of capacities of the Legal

²⁰ The Beijing Rules; Rule 2.2.

Aid Service and the increase in its human and material resources. At present, the Legal Aid Service counts 80 defense lawyers specialized in juvenile justice, who have to provide legal aid to not only juvenile delinquents but adult offenders too. These lawyers are distributed by regions. According to information provided by the Legal Aid Service, one defense lawyer deals with, on average, 12-14 cases a month, which may also include cases of juvenile delinquents. Hence, imposing on them the obligation to provide mandatory defense to persons aged between 18 and 21 will further increase the load of these lawyers and thereby affect the quality of their performance. Detailed information about defense lawyers of the Legal Aid Service is provided in the table below.

Defense lawyers of the Legal Aid Service specialized in juvenile justice, by regions

	Tbilisi	Kvemo Kartli	mTskheta-Mtianeti	Kakheti	Shida Kartli	Imereti	Ajara	Samtskhe-Javakheti	Samegrelo	Total
Lawyers	29	9	3	6	4	14	4	3	8	80

Recommendations:

To the Parliament of Georgia

- **Introduce changes to the Juvenile Justice Code to stipulate a free legal aid to defendants aged between 18 and 21 as an obligation of the state.**

To the government of Georgia

- **Increase human and material resources of the Legal Aid Service.**

1.3. Arrest/right of minor witness to defense

As noted above, the right of children in conflict with law to legal aid is one of crucial elements of the juvenile justice. This right is guaranteed by a number of international documents. *“Children should have access to free legal aid, under the same or more lenient conditions as adults.”*²¹ *“The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence, which is strictly stipulated by the Convention. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate.”*²² According to the Juvenile Justice Code, *“At any stage of criminal proceedings, accused or convicted or*

²¹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

²² UN Committee on the Rights of the Child, GENERAL COMMENT No. 10; Article 40.

*acquitted minors and minor victims shall enjoy the right to free legal aid. At any stage of criminal proceedings, minor witnesses shall enjoy this right if they cannot afford a lawyer.*²³

The wording of law creates a situation in practice when during the first contact with police, a minor witness cannot exercise the right to mandatory defense if there is not an official document certifying his/her inability to afford a lawyer available. *“At any stage of criminal proceedings, minor witnesses shall enjoy this right if they cannot afford a lawyer.”*²⁴ A financial standing of a minor witness or his/her family may not constitute a ground for granting them a status of socially disadvantaged family, but at the same time, the family may lack sufficient material resources to hire a defense lawyer. The study revealed the practice of first summoning minors in the capacity of witnesses of criminal cases, interviewing them, asking them to confess or give a testimony favorable for the investigation, then charging them with offence and only after that providing a mandatory defense to them. Acting in the capacity of witnesses, minors are not provided with the right to defense, they does not understand that they may exercise the right to silence, not give a self-incriminatory testimony or testimony incriminating people close to them, give testimony only in a court, et cetera. It is therefore especially important to ensure that the right of a minor witness to defense is mandatory.

A segment of prosecutors also acknowledge the need of additional explanation on the issue of witnesses' defense. According to them, there are instances when lawyers of the Legal Aid Service refuse to provide a mandatory defense to a witness because his/her family is not registered in the database of socially disadvantaged families and has not been awarded relevant scores to be regarded as such. In reality, however, a family lacks sufficient funds to hire a private lawyer and an underage witness is actually deprived of the right to defense. As put by one defense lawyer, *“a situation arises when a minor, who in the capacity of witness gives self-incriminatory testimony, may be left without a defense lawyer.”* According to a judge interviewed within the scope of this study, a problem is that minors are first summoned as witnesses and only after that are charged with crimes. *“This is a controversial issue, if a minor is a potential defendant, he/she must be provided with all the rights of a defendant from the very beginning; when he/she gives a testimony in the capacity of a witness, the law does not protect him/her to the extent it protects an accused person; this is the issue which is often arguable,”* a defense lawyer said.

The abovementioned problem was also revealed by another study which concerned the procedural rights of accused persons in the criminal justice, in general, and naturally, included juvenile defendants too. That study reads: *“Researchers observed that in most cases*

²³ The Juvenile Justice Code; Article 15.

²⁴ The Juvenile Justice Code; Article 15.

police questioned arrestees as witnesses even though sufficient evidence already existed to support that they should indict him. Moreover, even in those cases where a person admits to a crime and the evidence corroborates his statement, police still question him as a witness. In this way, investigators attempt to create the perception of a legal obligation to motivate the person to provide as much information as possible, even if that information could potentially be used to directly or indirectly incriminate him. Furthermore, investigators, when informing the person of his rights, place special emphasis on the witness' legal obligation to provide comprehensive and truthful information rather than his right not to provide any information that might be self-incriminatory."²⁵

The study also revealed that representatives of police frequently conduct so called "interviews" with minors, when minors are put into a car or taken to a police department without drawing up the apprehension report. This informal interview is the stage with heightened risk of exerting pressure on juvenile defendants. One of defense lawyers interviewed within the scope of this study said: *"A child with a previous conviction was apprehended at 5 a.m. It is actually the arrest when a child is put into a police car in front of his house and taken to a police department... There are instances when a person is actually arrested but an apprehension report is not drawn up officially."* Other interviewed lawyers also say that people are sometimes apprehended in streets and taken to police departments. Before reaching the police department, arrestees are "interviewed." Defense lawyers declare that when police officers take a decision on arresting someone they do not indicate the time of actual arrest but rather the time when decided to arrest the person, though the Constitutional Court of Georgia clearly explained in the case *Giorgi Chkheidze vs Parliament* that *"the time of arrest must be counted from the moment of actual restriction of liberty of a person; lawyers assert that police officers often start counting the time of arrest from the moment when they take a decision to arrest a person, not the moment when they actually arrested the person."*

During an unofficial "interview," police often promise a minor plea bargain or diversion in exchange for admitting to a crime. According to defense lawyers: *"police indicates another time than the time of delivery of a person to police; when asked to provide CCTV recording, they refuse to give it saying that the CCTV was switched off or the recording was erased, et cetera; all this violates the child's rights."* *"During the investigation, the prosecution gives priority to the need to establish a culprit and the principle of best interests of the child is informally downgraded."* *"They do not consider it as an arrest having a child in a police department from night till the next day when the defense lawyer arrives; they say it was not an arrest."* *"First of all, they do not have the right to take them to the police; putting a minor into a police car and taking him/her to a police department and then claiming that the minor*

²⁵ The Procedural Rights of Suspects in Georgia; Besarion Bokhashvili, Giorgi Mshvenieradze, Irakli Kandashvili.

did so voluntarily is something which is illogical to believe. Taking by force is coercion and illegal deprivation of liberty.” “They first ‘handle’ everything as they like and then allow us to get involved.” “An arrest has only one definition that it is the moment of restricting movement. One cannot find anywhere written that an arrest is the moment when a report is drawn up.”

According to international standards, coercion is not a physical and clear psychological pressure alone, but also forced confession or a desired testimony in exchange for release. *“There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true.”²⁶*

There are frequent cases when by the time a legal representative arrives at the police department, a minor has already admitted to a crime. According to a legal representative, by the time he arrived at the police department, the minor had already been *“interrogated as he was about to sign a written testimony. Police were writing it themselves; the child asked them to show what he was caused to sign, but they did not allow him to read it. When the child told them that he should know what he was signing, they started intimidating him... Just when a person wants to exercise his rights, he gets offended, manhandled and insulted... they told him, you either sign whatever is written or get into trouble so that you will regret about it.”* Another legal representative also confirms that by the time he arrived at a relevant agency, the minor had already admitted to the crime: *“When I arrived they were about to write a confession... When I came, he was in one of investigators’ room, who was filling in the application and causing him to write the confession.”*

The study revealed that during informal interview police, sometimes, resort to psychological and physical abuse. A legal representative said: *“child told me that he was beaten in the police department; at the trial I told this to the judge; that police officer was there and he told the child that he had nothing to prove that he was beaten.”* Defense lawyers speak also about incorrect records: *“the legal representative was handed over a summons at 10 a.m. as if the child was summoned at that time. In reality, by that time, the child had been detained for five hours. Of course, they refused to give us CCTV recording.”* Such statements were also confirmed by a segment of interviewed judges: *“such instances were recounted during the trials; of course this is an illegal action.”*

²⁶ Committee on the Rights of the Child, General Comment No. 10, para. 57.

Proceeding from the above said, the right of an underage witness to defense should be guaranteed and should not depend on his/her financial status which is quite difficult to evaluate objectively in the existing system. It is also important that in the juvenile justice the protection of best interests of the child prevails over the interests of delivering justice and that the best interests of the child are not neglected for the aim of securing a confession. The right to mandatory defense of witness will notably decrease those risks that were discussed above. However, such a step must be taken in parallel with the enhancement of the capacity of the Legal Aid Service.

Recommendations:

To the Parliament of Georgia

- **Introduce changes to the Juvenile Justice Code to specify, on the legislative level, an obligation to ensure the protection of witnesses aged between 14 and 18;**
- **Introduce changes to the Juvenile Justice Code to prohibit communication of representatives of law enforcement agencies with witnesses aged between 14 and 18 in the absence of legal/procedural representatives and defense lawyers, except in cases of urgent need which must be defined in advance in the form of legislation.**

To the government of Georgia

- **Start considering a possibility of increasing the number of defense lawyers in the Legal Aid Service;**
- **Conduct a regular control of quality of performance of persons engaged in administering justice.**

1.4. Involvement of psychologist

The Beijing Rules call on the states to ensure, on the normative level, the training of representatives of law enforcement authorities by delivering special and regular trainings on how to work with children and allowing only such trained law enforcement representatives to interview/interrogate children.²⁷

The General Comment of the Committee on the Rights of the Child explains that sometimes a child cannot understand or speak the language used by the juvenile justice system because the child's language differs. Lack of knowledge or experience as well as level of development

²⁷ The Beijing Rules; Rule 12

may impede the child's full understanding of the questions and lead to incorrect answers. In this regard there is a need of specialist – be it interpreter or psychologist.²⁸

The Juvenile Justice Code also speaks about the need of psychologist during an interview/interrogation and envisages a possibility of inviting a psychologist.²⁹ However, the law does not specify who in particular should invite a psychologist.

In practice, the parties use the service of psychologist during interviewing/interrogation. For example, in the course of the study a prosecutor said: *“There was one case in which a minor was beaten and we invited a psychologist. We listen to a child's opinions and understand his/her capacity of perception and based on that decide whether to invite psychologist or not.”*

Prosecutors also spoke about the importance of involving a psychologist. According to them, psychologists get involved in cases such as domestic violence and sexual offence.

Defense lawyers believe that the attendance of psychologist of interviews/interrogations is important because sometimes police employees exert psychological pressure on minors. According to defense lawyers: *“a senior officer who is passing by says ‘did you do that, boy?’; then his deputy passing by says ‘you are in trouble, man’; then someone else says ‘you are a shame for your family’ and so on and so forth. This is not an interrogation this is an informal indictment.”* *“Everyone passing by ridicules minors and exert psychological pressure on them.”*

Interviews with prosecutors and defense lawyers made it clear that parties involved in the administering of juvenile justice deem the attendance of psychologist at interview/interrogation of minors important; however, a general provision about the involvement of a psychologist in the process of administering justice needs to be clarified. The existing wording gives a broad discretion to a body administering a case to decide about the need of the involvement of psychologist and to choose a psychologist itself. It is important to stipulate preconditions for mandatory involvement of psychologist while in case when such preconditions do not exist, grant a discretion to a body administering the case to take a decision, taking into account the situation and best interests of the child, on the involvement of psychologist. It is also important to ensure that invited psychologists are competent and are aware of main principles of juvenile justice. For psychologists to serve the real aim of their involvement, they must be ensured a procedural independence; otherwise,

²⁸ Committee on the Rights of the Child, General Comment No. 10.

²⁹ The Juvenile Justice Code; Article 52(3).

such involvement may degrade into a formal procedure and even contribute to legitimation of violations of minors' rights.

Recommendations:

To the Parliament of Georgia

- Amend the Juvenile Justice Code to determine the criteria for the involvement of a psychologist in juvenile justice proceedings.

To government of Georgia

- Retrain psychologists, who participate in interviewing/interrogating procedures, on principles of juvenile justice as well as their procedural role.

Section 2. Court trial

2.1. Previous conviction as stigma

According to international standards, it is the children's right to have their privacy fully respected at all stages of the proceedings. The Convention on the Rights of the Child³⁰ stipulates: *"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."* ... *"To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: Every child alleged as or accused of having infringed the penal law has at least the following guarantees:"* ... *"To have his or her privacy fully respected at all stages of the proceedings."* General Comment №10 of the Committee on the Rights of the Child³¹ prescribes that *"All stages of the proceedings' includes from the initial contact with law enforcement up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty."*

³⁰ The Convention on the Rights of the Child; Article 40 (2) (VII).

³¹ General Comment №10 of the Committee on the Rights of the Child; para. 64.

According to the Juvenile Justice Code, a conviction shall be considered expunged immediately after the sentence has been served.³² The same Code allows a fixed-term imprisonment of a minor if he/she has a previous conviction.³³ Defense lawyers believe that the mentioned provision *“leads to different interpretations in practice; this must be a mistake made by the legislator because a past conviction is mentioned in the Code several times as if it is a sort of aggravating circumstance in case of minors. For example, a conditional sentence may be imposed, or a judge may impose a lesser sentence than minimum provided that the minor has no previous conviction – such provisions are in the Code.”*

The aim of respect to privacy is the avoidance of that damage that may be inflicted on a child by an unjustified publicity of the case. A negative publicity may lead to stigmatization of a child, thereby negatively affecting the child’s chances to obtain education, find job and place of residence. Publicity of confidential personal information has a negative impact on the reintegration of a child. The Beijing Rules state that *“Rule 8 stresses the importance of the protection of the juvenile’s right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as ‘delinquent’ or ‘criminal’.”*³⁴ Moreover, the Committee on the Rights of the Child also stresses that *“reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.”*³⁵

The mentioned shortcoming heightens the risk that the data about a child may be accessed by those persons or authorities who lack relevant qualification and competence. Improper use of this data or unjustified publicity thereof may lead to stigmatization of the child, which is a factor hampering the child’s effective integration into society. Moreover, stigmatization, in general, may adversely affect mental state of a minor and radically alter his/her attitude towards law enforcement authorities, the state and society. These factors will have a clear negative impact on the development of a child into a full-fledged member of society. To avoid stigmatization it is of crucial importance to expunge a previous conviction upon serving the sentence.

The Juvenile Justice Code provides a child in conflict with the law, a convict, with the right to have his/her conviction expunged after he/she has served the sentence. However,

³² The Juvenile Justice Code; Article 12.

³³ The Juvenile Justice Code; Article 73.

³⁴ The Beijing Rules; Rule 8, comment.

³⁵ General Comment №10 of the Committee on the Rights of the Child; para. 29.

Paragraph 1 of Article 73 of the Code says that a fixed-term imprisonment (a relatively tougher punishment) may be imposed on a minor if a **judgment of conviction** has been delivered against him/her in the past. Such wording enables a judge to impose a fixed-term imprisonment on a minor because of past judgment of conviction irrespective of the fact that the past conviction has been expunged.

The main point of international standards is that a crime committed by a minor in the past should neither hamper his/her effective integration into society nor be considered as an aggravating circumstance in future. This view is also supported by the Riyadh Guidelines which emphasize that “...*youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.*”

Consequently, the above mentioned provision renders the provision of Article 12 of the Juvenile Justice Code senseless, which aims to protect children in conflict with the law from being stigmatized in the process of integration into society. Therefore, it is important to amend the Juvenile Justice Code so that to prevent a past conviction from being considered as an aggravating circumstance.

Recommendations:

To the Parliament of Georgia

- **Amend the Juvenile Justice Code to delete a provision from the legislation, specifying a previous conviction as an aggravating circumstance.**

2.2. Individual assessment report when imposing a sentence

International standards recognize a necessity of individual approach to minors, including at the stage of imposing a sentence. *“In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.”*³⁶

According to the Juvenile Justice Code, when carrying out an individual assessment, a relevant authority studies a level of maturity of a minor; conditions of his/her life, upbringing and development; education; health status; family situation, and other

³⁶ The Beijing Rules; Rule 16.

circumstances that allow to assess the character and behavior of minors and identify their needs. The Code requires the preparation of an individual assessment report at the following stages of criminal proceedings: determination of a diversion measure; sentencing; individual planning of a custodial sentence; execution of a non-custodial sentence; consideration of the issue of release on parole. In addition: *“By a resolution of the prosecutor, an individual assessment report may also be prepared and considered at the stage of deciding on the exercise of other discretionary powers, provided that the course and time limits of the criminal proceedings allow for it.”*³⁷

At the stage of sentencing, persons responsible for the preparation, and the procedure of preparation, of individual assessment report are determined in a joint decree #132/#95/#23 of the Justice Minister, Interior Minister and the Minister of Corrections of Georgia, dated 15 March 2016. *“The aim of preparation of an individual assessment report on a minor in conflict with law at the stage of sentencing is to study a social environment, abilities and individual needs of the minor and thus help a judge impose an objective sentence based on the best interests of the minor.”*³⁸ The Decree specifies persons authorized to request the preparation of report - a judge and a prosecutor. According to the same Decree, at the stage of sentencing, during the consideration of a case on merits, a report is sent to the judge in two parts. The first part is prepared before a decision on guilt of a minor is taken and does not contain two articles of the questionnaire (Article 3 and Paragraph 5 of Article 9), which concern a minor’s attitude towards a committed action as well as suitable services in a penitentiary facility. These are filled in only after a court takes a decision on the issue of guilt. In practice there is a confusion about who should request the preparation of report at the stage of signing a plea bargain when agreement is reached on guilt as well as sentence and the stages of finding guilty/not guilty and sentencing are not separated from each other. Moreover, a question arises whether the filling in of the questionnaire in full at this stage violates the applicable normative act or not.

As the study proved, opinions of participants in proceedings differ about a subject authorized to request the preparation of assessment report in case of signing a plea bargain. A segment of representatives of the prosecutor’s office believe that since in case of plea bargain the sentence is imposed (as a result of approval of plea bargain) by a court, an individual assessment report should be requested by the court. According to a prosecutor interviewed within the scope of this study, *“one issue which we referred to was that when a case is considered on merits, i.e. is heard in the court, and we want to impose a sentence on the*

³⁷ The Juvenile Justice Code; Article 27.

³⁸ The joint Decree #132/#95/#23 of the Justice Minister, Interior Minister and the Minister of Corrections of Georgia, dated 15 March 2016.

basis of plea bargain, who should request the preparation of this report; there were problems in this regard.”

Judges interviewed within the scope of this study believe that in case of plea bargain an individual assessment report must be requested by prosecutors because they are the persons who should reach agreement with a minor on a proportionate, optimal sentence. A judge noted: *“We cannot approve a plea bargain unless an individual assessment report is obtained and the parties, when agreeing on a sentence, should take this into account and ensure that the report is available.”* As regards opinions of defense lawyers, one of them said: *“when delivering a verdict, it is a court that applies [for the preparation of individual assessment report]... I have a case in my practice, which is still pending a decision because how could the prosecution request the preparation of the report and then obtain when the practice of preparing report was not established; thus the proceeding protracted and a plea bargain was signed with delay.”*

The analysis of the data obtained through the study convinces us that in case of plea bargain an individual assessment report should be requested by prosecutors in order to ensure that they take into account individual characteristics of juvenile delinquents when agreeing on a sentence; especially, given that the Code grants the power to a prosecutor to request, by a resolution, the preparation of individual assessment report at the stage of deciding on the exercise of other discretionary powers too, provided that the course and time limits of the criminal proceedings allow for it.

As regards the impossibility to divide a report into two parts in case of a plea bargain, judges do not see any infringement of the best interests of minors in that; even more, they believe that such a division is often a mere formality. According to them even when a minor admits to a crime and provides self-incriminating information in the report, it cannot become a ground for finding him/her guilty if the case lacks other compelling cumulative evidence. In judges' view, supply of a report in full cannot affect their inner conviction either because only compelling evidence is evaluated by inner conviction and without such evidence, an individual assessment report cannot serve as a ground for a guilty verdict. Judges say that since a plea bargain rests on a confession, discussing the attitude towards a committed action on that stage cannot run against the interest of minor; moreover, the involvement of defense lawyer is mandatory in the process of agreement on plea bargain, which decreases risks of coerced confession and pressure. According to one judge: *“a sitting for the imposition of sentence is a separate sitting and sometimes, I think, there is no need for that because the aim of a sitting for the imposition of sentence is to find a person guilty after which the court will apply to another entity for the preparation of individual assessment report and taking into account this report and other circumstances, will impose an adequate sentence within*

seven days; however, in addition to that, Article 14 requires that a court, when making any decision, take into account upbringing and development and other characteristics of a minor. If the court does not have the individual assessment report before finding a person guilty, it cannot really evaluate all these circumstances without the report because the report gives a fuller idea about a minor, about his upbringing, environment, circle, what led him/her to a crime, et cetera.”

According to judges, since the period of seven days after taking a decision on the issue of guilt was not a sufficient time to prepare a report, judges and social workers agreed that on the final stage of considering a case on merits, a judge would apply to the Probation Agency for a report. As noted above, the Probation Agency sends a judge a report where two rows are blank in order to avoid the violation of the presumption of innocence. Judges believe that the filling in these rows about the crime will not breach the presumption of innocence and cannot influence a decision of a judge. A judge said: *“In reality, I think, this is not a problem at all. Firstly, an individual assessment report does not represent any evidence and has a nature of recommendation; secondly, if a case lacks sufficient evidence, no matter what the report says, we will not be able to find a person guilty... In the end of the day, holding a separate sitting for imposing a sentence has actually become a mere formality because a judge has already formed his/her opinion, especially when he/she found a person guilty; that report is prepared only after that and I cannot understand how it can influence... If a judge falls under its influence, it is a problem of the judge.... I quite often had my inner conviction, but delivered verdicts of not guilty because cases lacked evidence.”* According to another judge: *“Even if a report is filled in completely, I, as a professional judge with long experience, believe that it will change nothing for a judge.... Recently, at a meeting I said that a confession in the case does not exist as evidence for me as a judge; inner conviction does not exist for me because no matter what is my inner conviction, I take decisions based on the evidence. If I have inner conviction but insufficient evidence, I will not find a person guilty.”*

A segment of prosecutors raise questions concerning the use and interpretation of a report. They say: *“I wonder how should I, a prosecutor, rely on an individual assessment report before signing a plea bargain, when it virtually does not contain any information about a sentence; it says nothing to sway me towards a minimal sentence and imposition of minimal sentence or vice versa, towards maximal sentence; and in general, how should I understand this individual assessment report?”*

As regards the timeframe of preparation of an individual assessment report, according to the joint decree, the term of preparation of a report is determined by a judge/prosecutor; the practice, however, showed that to fully prepare a report, the Probation Agency needs 10 working days to obtain information from all sources. Although this term is not determined in

the form of regulation at this stage, there is an agreement reached by parties at inter-agency meetings to observe this term. Nevertheless there are instances when probation officers are not given sufficient time for the preparation of a report and consequently, a report is not prepared in a comprehensive manner; this runs counter to the best interests of a minor. According to a judge, *“since this is to be done at every stage and as stipulated by law, the term of seven days which we have for the conduct of a sitting on the imposition of sentence should have been a reasonable time for the National Probation Agency; but since an entity administering a proceeding - for example, in a case of especially grave crime which excludes the application of diversion - does not prepare this report at all and we reach a stage of verdict without having this assessment, the National Probation Agency finds it difficult to prepare a report within seven days.”*

For the preparation of a report it is important to determine a concrete term in a regulation; this would enable all parties to work in a smooth and competent manner. At present, there are still frequent instances in practice when probation officers fail to contact all sources indicated in the questionnaire and limit themselves to interviews with accused persons and their family members. To obtain a maximally objective conclusion, however, it is important to interview not only a minor and his/her family, but also his/her circle, neighbors, educational institution which a minor in conflict with the law attends. Judges and defense lawyers also make remarks about incompleteness of report. According to judges: *“report is not completed because time is still insufficient for them [to complete the report]... Information from school is important because a school is a place where minors spend much of their time and even parents might be unaware of what teachers know about the minors.”*

Defense lawyers also noted that in the reports they had read they found interviews only with family members; *“I think it is more important to go to school, interview a minor’s friends, learn how he/she lived; mother and father may describe an absolutely different picture... As I said, interviewing parents is not sufficient; probation officers should inquire about the child’s past, interview his/her friends, neighbors, teachers, et cetera.”*

The issue of the term for the preparation of assessment report is linked to the issue of human resources of the Probation Agency. At present, there are 35 social workers employed in the Probation Agency. Each of them deals with, on average, 40 cases per month; this is quite a high indicator and may affect the quality of performance of social workers. Because of limited number and broad functions of social workers, each social worker has to prepare reports of various types. In fact, they might have to prepare on one and the same issue several reports of different types for various entities; therefore, it is important to increase the number of social workers. It is important to give social workers sufficient time for the preparation of reports so that these reports do not become a formality but serve the aim they

were established for. It is also important to give participants in proceedings (prosecutor's office, courts) more specific recommendations and explanations in order to make these reports really useful and informative for them.

Currently, social workers of the National Probation Agency, instead of providing only a conclusion drawn up on the basis of analysis of questionnaire, send a completed version of questionnaire (a working instrument) to a court and the prosecution, which they fill in as a result of visits to various sources. This practice does not fully conform to the aims of individual report and the legislation on the personal data protection. **Relevant entities must be supplied with information that is necessary for the implementation of their legitimate aim** (in this case this would be a conclusion of individual assessment report with relevant sources indicated, which would reflect the information which is necessary for a judge to determine a sentence) while those details that have been investigated and built a basis for a conclusion contain information which is not proportionate to the legitimate aim (since it is much more than needed, often contain personal information of special category and given the professional ethics of social worker should remain between a social worker and an interviewee). It should also be noted that the content of interview is confidential (a meeting is held face-to-face, without the presence of a defense lawyer or legal representative) and supplying full documentation of the interview to the prosecution, defense lawyer and court undermines the principle of confidentiality. Nevertheless, judges think it important to receive a complete questionnaire, because it may contain a valuable piece information which has not been included in the conclusion. According to one of recommendations of the Council of Europe, *“information in a case record shall only be disclosed to those with a legal right to receive it and any information disclosed shall be limited to what is relevant for the task of the authority requesting information.”*³⁹ According to the Law of Georgia on Personal Data Protection, *“data may be processed only for specific, clearly defined and legitimate purposes. Further processing of data for purposes that are incompatible with the original purpose shall be inadmissible; ... data may be processed only to the extent necessary to achieve the respective legitimate purpose. The data must be adequate and proportionate to the purpose for which they are processed.”*⁴⁰

Recommendations:

To Minister of Justice of Georgia

To Minister of Corrections of Georgia

To Minister of Internal Affairs of Georgia

³⁹ Council of Europe Recommendation (CM/REC(2008)11).

⁴⁰ Law of Georgia on Personal Data Protection; Article 4.

- Make changes to a joint decree⁴¹ on the methodology, procedure and standard of individual assessment report, which serves as a basis for determining the terms of preparation of a report and the subjects authorized to request the preparation of the report. In particular, in case of a plea bargain, the right to request the preparation of report must be given to a prosecutor. The term for the preparation of a report shall be at least 10 working days in both cases;
- Take steps to improve the quality of individual assessment report, at the stage of imposing a sentence, by means of establishing an effective internal quality control system;
- Develop guidelines on the preparation of individual assessment report, at the stage of imposing a sentence, for all subjects involved in this process;
- Provide a judge/prosecutor with an individual assessment report in the form of conclusion at the stage of imposing a sentence instead of sending them a full questionnaire that serves as a basis for the assessment and often contains personal data of special category which is actually irrelevant to the purposes of imposing a sentence.

To the government of Georgia

- Start considering a possibility of increasing the number of social workers in the National Probation Agency.

Section 3. Quality control system

3.1. Analysis and evaluation

The Juvenile Justice Code stipulates an obligation to train professionals working in the field of juvenile justice and to develop relevant training modules. In particular, Article 101 reads: ”*By 1 January 2016, the Government of Georgia shall adopt the ordinance of the Government of Georgia provided for by this Code; By 1 January 2016, the High Council of Justice of Georgia shall adopt the decision of the High Council of Justice of Georgia provided for by this Code; By 1 January 2016, the Minister of Justice, the Minister of Internal Affairs, the Minister of Education and Science and the Minister of Corrections shall ensure the adoption of subordinate normative acts provided for by this Code and shall ensure bringing of relevant normative acts into compliance with this Code; By 1 January 2016, the Georgian Bar Association shall approve the form of the document certifying specialization of lawyers in juvenile justice.*”⁴²

⁴¹ The joint decree №132/№95/№23 of the Justice Minister, the Interior Minister and the Minister of Corrections of Georgia.

⁴² The Juvenile Justice Code; Article 101.

Besides, by the ordinance №668, the government of Georgia approved the standard of specialization of persons administering implementing juvenile justice proceeding and participating in this process. According to this ordinance, every person engaged in administering juvenile justice shall be trained on the following topics: the Juvenile Justice Code; international standards of juvenile justice; psychological aspects of antisocial behavior; violence against children and its impact on the development of children; interviewing/interrogating underage victims and witnesses.⁴³ The same ordinance determines the aims of each training module and the educational institutions that have obligation to train relevant professionals. The ordinance only specifies the components based on which training programs shall be evaluated, namely, the analysis of feedback from participants in training; assessment of attendance of program participants; results of observations by partners of the implementation of the program.⁴⁴

The mentioned ordinance does not specify **criteria for the selection of candidates for retraining, who will become responsible for effectively administering of juvenile justice proceedings within the scope of their competences.** Nor does it determine norms regulating continuous process of retraining, though it is crucial to maintain a uniform standard. According to Beijing Rules, *“Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.”*⁴⁵ It is also noted there that *“Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system.”*⁴⁶ Professional qualification is a necessary element of impartial and effective administration of juvenile justice. Consequently, it is necessary to improve the selection, promotion and professional training of personnel and to provide them with all means in order to enable them properly perform their functions.

The UN Committee on the Rights of the Child specifies: *“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.”*⁴⁷

⁴³ The ordinance №668 of the government of Georgia on the standard of implementing juvenile justice proceeding and specialization of persons involved in this process; Article 1.

⁴⁴ Ibid., Article 4.

⁴⁵ The Beijing Rules; Rule 22.1.

⁴⁶ The Beijing Rules; Rule 22.2.

⁴⁷ General Comment №10 of the Committee on the Rights of the Child; para. 97.

Unfortunately, the above mentioned ordinance and the following practice make it clear that the specialization in the juvenile justice was of one-off nature and there is no evidence of ongoing training process and existence of a system of evaluating the application of obtained knowledge in practice.

Within the scope of the study, a segment of defense lawyers noted that although investigative actions are carried out by persons with relevant specialization, the infrastructure of a department, the hierarchy in investigative agencies do not allow for interviewing minors in isolation, without the presence of other unspecialized persons. Defense lawyers spoke about instances when the head of department or other officials enter into communication with minors during the interviews of the latter and sometimes, even exert psychological pressure on them.

According to a segment of private lawyers in Batumi, since little time was left before the enactment of the Juvenile Justice Code, which was not sufficient to deliver a full course of training to employees of relevant agencies, a segment of personnel of these agencies were merely distributed certificates, without them undertaking any training. *“As we know, very many of them – both prosecutors and judges - have not undertaken any training but were merely awarded the certificates. This was done repeatedly. At the initial stage, public lawyers were also distributed certificates.”*

It is important to establish such a quality control system in agencies that will allow to carry out a constant, daily analysis of the process, to identify shortcomings and develop recommendations for the improvement of the system. The Beijing Rules state that *“Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.”*⁴⁸ It is also stressed that *“Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.”*⁴⁹ It is also important to ensure ongoing training for specialized officials. Under the ongoing training the specialists, even if a segment of them failed to undertake a full course of specialization before the enactment of the Code, will be able to learn about peculiarities of the work with juveniles and to acquire relevant skills at the following stages of training.

According to the Riyadh Guidelines, *“Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services,*

⁴⁸ The Beijing Rules; Rule 30.1.

⁴⁹ The Beijing Rules; Rule 30.3.

*the justice system, youth, community and development agencies and other relevant institutions.*⁵⁰ It is also noted that *“The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.”*⁵¹

The use of research/analysis as a basis for an informed 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. Constant mutual feedback between research and policy is especially important in juvenile justice.⁵²

After the states have adopted a legislation establishing a juvenile justice system and all specialists employed in this system have been retrained, problems concerning its implementation may still remain. The Committee on the Rights of the Child recommends that the states conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism.⁵³

It is important that the states collect, and control, accurate, detailed data on the practice and administration of juvenile justice. This will enable the states to identify trends in juvenile delinquency and evaluate effectiveness of preventive measures and programs. Effective monitoring and evaluation enables the states to plan targeted allocation of resources and develop and improve initiatives.

Recommendations:

To the government of Georgia

- **Amend the government ordinance⁵⁴ to define selection criteria of persons willing to work in the field of juvenile justice. Also, determine such regulations that ensure ongoing retraining of corresponding professionals in all relevant entities;**
- **Cause all entities involved in administering justice to develop and establish effective internal system of quality control, which will rely on research and analysis.**

⁵⁰ The Riyadh Guidelines; para. 60.

⁵¹ The Riyadh Guidelines; para. 61.

⁵² The Beijing Rules; Rule 30, comment.

⁵³ General Comment №10 of the Committee on the Rights of the Child; para.99.

⁵⁴ Ordinance №668 of government of Georgia, Standard for Specialization of Persons Administering Juvenile Justice Procedure and Persons Involved in this Procedure.

3.2. Scope of application of specialization

As noted above, the Juvenile Justice Code of Georgia sets an obligation of specialization of persons involved in juvenile justice proceedings.⁵⁵ According to this Code, a juvenile justice procedure regulates the administration of cases on administrative or criminal offences involving minors, including investigation of crimes, criminal prosecution, court trials, execution of imposed sentences and other measures, and also the re-socialization and rehabilitation of minors.

The Juvenile Justice Code, naturally, underlines that juvenile justice proceeding against juvenile defendants as well as those involving underage witnesses and victims shall be carried out by persons specialized in juvenile justice. However, the practice applied to underage witnesses and victims involved in criminal proceedings is not uniform.

There are instances when criminal proceedings involve mainly adults, including an adult defendant and consequently, the case, at the investigation stage, is handled by a non-specialized prosecutor. However, when an underage victim/witness joins such a proceeding, the questions arise: in what case and at which stage is necessary to involve specialized persons? How necessary is it to have a specialized prosecutor or defense lawyer alone to conduct investigation and gather full evidence when the investigation is carried out against an adult defender and other persons involved in the proceeding are adults too? This problem is seen at the stage of court trial too, when the evidence of a non-specialized party (prosecutor/defense lawyer) features a minor in the capacity of a victim or witness who is not included in the list of persons to be interrogated. Although a non-specialized prosecutor/defense lawyer may investigate the evidence, some judges often require from them the specialization in the field of juvenile justice and do not agree to an unspecialized prosecutor or defense lawyer conducting a concrete minor-related investigative or procedural action.

As prosecutors say: *“One may wonder about the extent to which investigation should be conducted, for example, in a criminal case which involves an underage victim, because in my personal view, as of a prosecutor, this Code aims at ensuring the administration of cases involving minors, at the stages of investigation and court trial, by only those persons who have specialization and competence and a corresponding approach to minors in order to avoid any infringement of the interests of minors at any stage of proceedings.”*

⁵⁵ The Juvenile Justice Code; Article 16.

Defense lawyers also note that *“when a prosecutor deals with an adult defendant in a court, it is possible that a prosecutor has no specialization [in Juvenile Justice] and to engage a prosecutor who undertook that [training] course to carry out investigative actions, for instance, an interrogation of a [child] victim, while other procedures will be conducted by that person who is not specialized.”* *“A court has an approach and has established the practice in relation to not only juvenile defendants and underage victims but also towards underage witness according to which when a witness is to be interrogated or investigated as evidence, specialized prosecutors and defense lawyers must get involved.”* One prosecutor also said: *“I cannot see the meaning of this Code in a case when, on the whole, I do not have any contact and communication with a minor, why should other witnesses be interrogate by specialized prosecutors? This is absolutely incomprehensible.”*

One may say that the situation is almost analogous when it comes to defense. A defense lawyer who defends an adult and provides a legal aid in the interests of a client may face a fact when, in the form of procedural or/and investigative action, a need arises to interview, interrogate and question an underage victim or/and witness in court, also, to conduct other investigative actions such as inspection, sampling, et cetera. The defense lawyer selected at the will of and upon the agreement of a client, finds and invites, with the consent of the client, a specialized defense lawyer who carries out concrete action and draws up a corresponding report.

National legislation as well as international standards require that when carrying out various investigative/procedural actions, minors shall be dealt with only by specialized professionals. In cases which involve minors as witnesses or victims there is no necessity to have all participants in the proceeding specialized. It suffices to involve a specialized person for the conduct of concrete investigative/procedural actions. Apart from it being unnecessary, such practice leads to overloading of relevant subjects (investigators, prosecutors, defense lawyers) and irrational use of their resources.

Regardless of relevant provisions in abovementioned legislative regulations and international standards, a non-uniform practice has been established and existing norms are interpreted in different ways. For example, in certain cases which had only one underage witness, judges demanded that all participants in proceedings be specialized (for example, in Batumi). However, this practice was not observed in all cases. Consequently, it is important to develop guidelines for the use of specialization in relation to such criminal cases which involve an underage witness or/and victim.

Recommendations:

To the government of Georgia

- **Develop guidelines for the application of specialization standards in the juvenile justice in such criminal cases which involve an underage witness or/and victim.**

3.3. Guidelines for interrogation/interview

The UN Convention on the Rights of the Child defines an obligation of the states to protect child's rights, on the legislative level, during his/her interviewing/interrogation. The state must ensure that each child is guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defense. In accordance with their age and degree of development, children must be given time to spend with their legal representatives, to receive legal advice from a lawyer and to realize the importance of the situation they found themselves in.

Children having found themselves in the justice system are especially vulnerable. Caution must be exercised when obtaining information from them in order to minimize stress experienced by children. In the majority of cases the initial contact of a child with the law enforcement system begins with a meeting with a police officer/investigator i.e. relationship with those people who conduct investigative interview/interrogation or obtain information about an alleged crime. Along with a special retraining it is important for these professionals to have concrete guidelines how to conduct a process of interrogation.

Council of Europe's guidelines on child-friendly justice specify that the child-friendly justice implies a process in which:

- A child has the right to be heard. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity;
- In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.
- Language appropriate to children's age and level of understanding should be used;
- Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long;

- Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals.
- Interviews of child victims or witnesses should be conducted by relevant trained specialists in special adapted rooms and child-friendly environment;
- The number of interviews should be limited and when more than one interview is needed, they should be carried out by the same person;
- Interview protocols that take into account age and different stages of the child's development should be designed and implemented to underpin the validity of children's evidence;
- A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.

The National Institute of Child Health and Human Development (NICHD) Protocol regulates the method of interviewing/interrogation a child. The structure of the protocol allows to build initial mutual understanding with a child when interviewing/interrogating him/her; train his/her memory; exercise caution in transition to substantive issues. The NICHD Protocol applies open-ended, direct (non-suggestive) questions; separation of incidents; cautious assistance to memory; elicitation of information that has not been mentioned or/and disclosed by a child; a neutral topic for talk with a child.⁵⁶

As noted above, the Georgian government's ordinance approved a standard for specialization of persons administering, and involved in, juvenile justice proceeding.⁵⁷ Based on this standard, types of training to be undertaken by persons involved in juvenile justice have been determined:

	Module	Area
1.	Juvenile justice	Law
2.	International standards of juvenile justice	Law
3.	Social aspects of antisocial behavior	Psychology
4.	Violence against children and its impact on child development	Psychology
5.	Interviewing/interrogating child victims and witnesses (protocol)	Improvement of skills

⁵⁶ The National Institute of Child Health and Human Development (NICHD) Protocol.

⁵⁷ Ordinance №668 of government of Georgia, Standard for Specialization of Persons Administering Juvenile Justice Procedure and Persons Involved in this Procedure.

Professional retraining is a crucial element in specialization of relevant subjects, but the conduct of trainings alone does not provide a guarantee that the practical implementation will be in line with training programs. According to information provided by the Academy of Ministry of Internal Affairs, out of 1018 police officers who undertook the training in juvenile justice only 440 police officers, i.e. 40%, were able to receive certificates.

	Admitted	Graduated
Tbilisi	303	141
Ajara	69	28
Guria	36	16
Samegrelo-Zemo Svaneti	103	41
Imereti-Racha Lechkhumi	141	73
Mtskheta-Mtianeti	60	18
Shida Kartli	71	31
Samtskhe-Javakheti	56	24
Kvemo Kartli	85	22
Kakheti	91	45
Abkhazia	3	1
Total	1018	440

Apart from the fact that the effectiveness of training process must be evaluated separately (considering existing results), the abovementioned shortcoming stresses the need for developing special guidelines on interviewing/interrogating children in conflict with law as well as child victims and witnesses. The development of such guidelines, coupled with the establishment of effective quality control system, will create more guarantees of legal protection of minors involved in criminal proceedings. Moreover, as noted above, the practice clearly shows shortcomings in communication of representatives of Interior Ministry with child witnesses and minors in conflict with the law.

Therefore, guidelines for child interviewing/interrogation (both for children in conflict with law and child victims and witnesses) should be developed in the form of a normative act.

Recommendations:

To the Minister of Justice of Georgia

To Chief Prosecutor's Office of Georgia

To Minister of Internal Affairs of Georgia

- **Establish guidelines, in the form of a normative act, for interviewing/interrogating children in conflict with law as well as underage witnesses and victims, and deliver training to relevant professionals.**

3.4. Child-friendly environment

According to a judgment of the European Court of Human Rights: *“Making a courtroom child-sensitive can enable a child to participate by reducing his or her distress and level of intimidation.”*⁵⁸ The European Court of Human Rights held that the physical environment of the court alone would not itself have been sufficient for a finding of an unfair trial, but that it was a significant contributory element. *“Making the court environment child-sensitive includes, for example, requiring judges not to wear their formal robes but to dress casually instead, having court staff sit at the same level as the child rather than on a raised bench or podium, allowing the child to sit next to a parent or other adult, etc.”*⁵⁹

Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice stipulates that *“In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have. Cases involving children should be dealt with in non-intimidating and child-sensitive settings⁶⁰ ... interviewing and waiting rooms should be arranged for children in a child-friendly environment⁶¹ ... specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor’s office.”*⁶²

However, the study showed that none of the entities can often ensure child-friendly environment, including a confidential talk with a child, let alone an adequate treatment of a child and the protection of child’s best interests. In particular, the study proved that unspecialized persons, sometimes, enter into communicate with children; in a police building and the prosecutor’s office children are interviewed in the presence of other accused persons and police employees. As regards placement of minors in isolator of temporary detention, they are placed separately from adults, but no special standard regarding their place and environment has been established by the legislation. Within the scope of the study a defense lawyer said: *“It is prohibited for an unspecialized person to arrest people. However, when a specialized police officer brings a detainee to police there are many unspecialized employees there, including a deputy head, investigators, et cetera. The child often enters into communication with everyone. Everyone has contact with the child. This clearly conflicts with the child’s interests as well as the law which requires that no specialized person must be in contact with a minor.”* *“A child is kept in a place which is*

⁵⁸ T. and V. v. United Kingdom, No. 24888/94; [1999].

⁵⁹ Guidance for Legislative Reform on Juvenile Justice, UNICEF, May 2011.

⁶⁰ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice; para. 54.

⁶¹ Ibid., para. 62.

⁶² Ibid., para. 63.

shared by everyone, a common space. There were instances when children were taken in the basement. In one instance, a child was chained with handcuffs to a radiator in the basement.” A segment of prosecutors say that although a special place for minors is not provided, during their interviews standards set in the Code are observed to the maximum possible extent: *“minors are not interviewed in those large halls where detainees are usually interrogated; otherwise defense lawyers would have necessarily complained about that but there are no such complaints as of now. Children are interrogated in appropriate rooms, though not in such rooms which are isolated and without doors and windows but in ordinary rooms where a child may be interviewed. The main thing is to prevent anybody from going in and out of that room; this is something which is under control. However, we do not have special rooms at present.”* According to another prosecutor, *“it would not be correct to say that everything is provided in the police, but it is indeed approximated to the environment in which a child should be interrogated. This will be improved.”* According to yet another representative of the prosecutor’s office, due to lack of adequate infrastructure resources, there were instances of interrogating a child at a psychologist’s place in order to protect the best interests of minors: *“if there is a need to interview a child in such a room which is necessary for the best interests of the child and interrogation of a child in an investigative entity will cause the same damage as experienced by him/her earlier, we may take him/her to a psychologist’s place and interrogate the child there. We have done so many times, even in my practice. Infrastructure may not be there, but the use of additional resources of psychologist helps ensure all this.”*

An opposite situation is described by legal representatives involved in this study. According to them, interrogations are conducted in ordinary rooms, often, in the presence of other persons. There were instances when children were not provided with food although the interrogation lasted for a long time: *“the child was sitting hungry throughout the day. I went, I suffer from diabetes and felt bad, asked to let me go and brought food to the child.”* The legal representative described an interview room as *“an ordinary room where others were working and also going in and out.”* A segment of representatives of the prosecutor’s office also deem it important to adapt places allocated for the placement of minors to their needs and to create a child-friendly environment: *“there must be a separate room where a child will be taken alone and explained his/her rights; seeing so many police officers and law enforcement personnel makes a child more distressed and restrained. I think, it is better if this happens separately in such an environment that is not too much associated with the police and law enforcement body.”*

As regards opinions of judges about a child-friendly environment, they attach great importance to the environment in which juvenile delinquents find themselves – be it at the stage of court trial or investigation, and approaches to them. According to them, courtrooms

are not adapted, do not contribute to alleviation of distress of a child. As courtrooms, in general, are in shortage in courts, any unoccupied room is used to conduct a trial. As one judge said: *“at court we do not have a room which would be adapted to a juvenile. Even more, since we have jury trials, we consider cases of juveniles in the same hall. This hall is so large that even I as a judge feel a different responsibility when entering it; even acoustics is different, et cetera and during closed trials there are six of us in this large hall. This is our infrastructural problem; although they do not complain about it but I as a judge, when considering the case, have a feeling that I am sitting on a raised bench while they are sitting on a much lower level; it would be desirable for all of us to sit on the same level.”*

Thus, it is important to develop special standards for the creation of child-friendly environment in all agencies administering juvenile justice; to develop and plan relevant steps that should be taken gradually in the medium- and long-terms.

Recommendations:

To the government of Georgia

To Supreme Court of Georgia

- **Ensure the development of special standards for creating a child-friendly environment in agencies administering justice; plan relevant steps to be taken in the medium- and long terms.**

Section 4. Analysis of state policy documents

It is very important to evaluate the state policy for the development of juvenile justice system, especially in the area of realization of the rights of accused minors. Apart from the legislation and public statements of state political appointees, the state policy is reflected in various strategies and action plans. Main documents directly or/and indirectly relating to children in conflict with the law are the government action plan on the protection of human rights and the criminal justice reform strategy and action plan. It is therefore important to discuss those strengths and weaknesses of these documents, which are seen in their implementation.

4.1. Action Plan of the Government of Georgia on the Protection of Human Rights

With the Ordinance №445 of 9 July 2014, the government of Georgia approved the Action Plan of the Government of Georgia on the Protection of Human Rights (for 2014-2015), also

the composition of interagency coordination council and the regulation of this council. This action plan was revised in 2016 and cover the 2016 and 2017 period. With this normative act the government of Georgia showed its serious intention to adopt, in parallel with other effective acts, an action plan of the government of Georgia on the protection of human rights which would comply with the National Human Rights Strategy of Georgia (for 2014-2020) endorsed by the Parliament of Georgia, and define main directions of the policy to be implemented by the executive branch. The abovementioned action plan covers the main areas of human rights protection, inter alia, the protection of the rights of the child (Chapter 12) which includes the development of child-friendly justice system (Chapter 12.6).

4.2. Criminal Justice Reform Strategy and Action Plan

Under the Decree №591 of 13 December 2008, a Criminal Justice Reform Inter-Agency Coordination Council was established. The council is authorized to develop and implement criminal justice reform in accordance with international standards and to coordinate interagency activities in the field of criminal justice. The council is composed of representatives of government entities as well as nongovernmental and international organizations and independents experts. The regulation of the coordination council defines the rule of membership and functions of the council. This council periodically updates the strategy and the action plan.

The strategy includes the following areas: strategy of criminal justice legislation reform; police reform strategy; prosecution reform strategy; strategy of the Legal Aid Service reform; strategic directions of judiciary reform; penitentiary reform strategy; probation reform strategy; **juvenile justice reform strategy**; legal education reform strategy; strategy of Public Defender's Office; resocialization and rehabilitation strategy in the criminal justice system.

The juvenile justice strategy contains the following priority directions:

1. Improvement of the existing legal framework;
2. Prevention of juvenile delinquency;
3. Development of alternative measures to criminal prosecution;
4. Use of imprisonment as a last resort;
5. Rehabilitation and reintegration of juveniles in conflict with the law;
6. Specialization of professionals;
7. Development of database system;
8. Awareness raising campaign.

Based on the above mentioned strategies, the action plans were drawn up which specify concrete steps by the directions; the implementation of actions plans is supervised by the coordination council.

4.3. General analysis

In general it is commendable that the state policy documents reflect various components which relate to directions of juvenile justice reform. This clearly indicates about the will of the state to make positive changes in this area too. However, the analysis showed that there are a number of challenges concerning the effectiveness of action plans. The study also identified main shortcomings that are characteristic for these documents, in particular:

- **Indicators**

There are general standards defining the criteria for indicators. Indicators should be S (Specific), that is concrete, detailed, clearly defined; M (Measurable) i.e. could be measured (in numbers, amounts); A (Achievable) that is feasible, possible to attain; R (Realistic) i.e. taking into account available resources; and T (Time-bound) that is attached to a timeframe (with deadlines for the accomplishment).

Concrete indicators given in the action plans are largely incompliant with these criteria and therefore, it is not clear how this or that activity will be evaluated.

For example, an activity specified in the criminal justice reform action plan (8.4.1) for 2016-2017 is to “improve conditions for the juvenile defendants/convicts if needed.” The responsible body specified is the Ministry of Corrections. The indicator is “Local and international monitoring assessment.” It is rather unclear how the accomplishment of this activity can be assessed with this indicator, what type of activity may be regarded as the accomplishment of the activity – painting of one wall or the construction of a residential building.

Moreover, both the government action plan on human rights protection (para. 12.6.1.1.) and the criminal justice reform action plan (para. 8.6.1) specify the specialization of professionals as an activity to be implemented in 2016-2017, while the indicator for the evaluation of this activity in both action plans is the number of professionals. This activity does not make it clear how many employees from which entity should be trained. The retraining of five or 505 professionals will be equally regarded as the accomplishment of this activity. The plan of these entities is ambiguous in this regard.

- **Responsible bodies**

Both the government action plan on human rights protection (para. 12.6.) and the criminal justice reform action plan (para. 8.1.2., 8.3.1., 8.7.1., 8.6.1., 8.7.1.) often indicate several entities as being responsible for the implementation of a concrete activity. This is a type of shortcoming which is also characteristic for other action plans, with those exceptions when only one entity is named as a responsible body. In such cases one cannot define which part of a concrete activity each entity is responsible for.

Part of activities reflected in the action plans have not been implemented. For example, both the government action plan on human rights protection (para. 12.6.3.2.) and the criminal justice reform action plan (para. 8.4.1.) specify the preparation and publication of analytical studies as an activity to be implemented in 2016. The bodies responsible for this activity are the Chief Prosecutor's Office and the Ministry of Internal Affairs. However, in 2016, no such report was published.

Also, the government action plan on human rights protection (para. 12.6.1.3.) specifies the creation of child oriented environment as an activity for 2016-2017. The Chief Prosecutor's Office is indicated as a single responsible body for the implementation of this activity. This seems a little strange because it is the activity which all entities that are involved in criminal justice proceedings and especially the Ministry of Internal Affairs need to implement. It must also be noted that the plan does not specify the amount of sum needed for the implementation of this activity.

- **Budget**

One of main shortcomings characteristic for the action plans is the absence of the budget. Often, state budget and donor organizations are named as a source of funding. However, a concrete amount needed for the implementation of an activity is never specified. Moreover, with regard to budget monies, the action plans do not specify particularly from which item of the budget may these resources be allocated; whether the Finance Ministry is or will be involved in this process; whether these expenditures will be reflected in any item of program budgeting or will, in general, be reflected in other components of budget, et cetera. Ways of receiving funding from donor organizations are also ambiguous; it not specified either what will happen with the activity if these amounts are not obtained.

- **Evidence-based goals and objectives**

The action plans reflect activities of various types. It is important to draw up strategies and action plans based on concrete evidence (studies, reports, analysis) and needs which exist in achieving separate objectives. The study showed that activities for the action plans are suggested by relevant entities, but these documents do not provide the evidence for the need of this or that activity. The only filter for an activity to make it into a relevant action plan is the compliance with the overall goals of the strategy, however, the ground of the need to reflect this or that activity in an action plan is not provided in these documents. A proof of it is the fact that regardless of the obligation in the action plans, internal studies of entities were not published.

Moreover, the study identified the needs in various directions, which are not reflected in the action plans as activities to be implemented in the future. In particular, the creation of **child oriented environment** is, as indicated in the action plan, the sole responsibility of the Chief Prosecutor's Office although there is a need of creating such environment in all entities, especially in the Interior Ministry. Also, the study revealed the **need for developing guidelines on interviewing/interrogation** as well as for the **establishment of effective control system**, but the plans do not specify corresponding activities in these directions.

- **Risks**

Risks associated with the implementation of various components of each action plan may be that due to some reasons (change in the policy, problems in obtaining resources, et cetera) activities will not be implemented or will need to be revised. Any activity bears risk/risks. Risk management is necessary in order to consider main difficulties that each entity may face and envisage them in the relevant action plans. Unfortunately, the action plans do not include a risk assessment component.

It is commendable that various types of state policy documents envisage the needs of children in conflict with the law. However, the above mentioned shortcomings create a risk that the majority of activities specified in the action plans will not be implemented.

Recommendations:

To the government of Georgia

To the Criminal Justice Reform Inter-Agency Coordination Council of Georgia

- **Define indicators in the action plans in accordance with the SMART principle;**
- **Define a concrete amount of sum and ways of obtaining it for the implementation of each activity specified in the action plans;**

- Define the role and functions of each responsible body for every activity in the action plans;
- Define the need for each concrete activity specified in the action plans on the basis of evidence;
- Define risk factors associated with concrete activities specified in the action plans, which may impede their implementation;

The analysis of Part I of this study revealed serious shortcomings in various areas of juvenile justice such as arrest/criminal prosecution, implementation of the right to defense, involvement of procedural representatives, preparation of individual assessment reports and establishment of non-uniform practice in various directions. Moreover, it must be stressed that one of significant shortcomings revealed by the study is the existence of a very weak quality control system in the field of juvenile justice, which must be a crucial tool for a successful development of the field. Shortcomings were also seen in state policy documents, which are manifested in ambiguity of visions and thus, question the effectiveness of such documents.

Part II

Analysis of practice (disposed cases)

As noted in the beginning of this report, the Office of Public Defender studied eight disposed criminal cases of juvenile delinquents. The Office of Public Defender is a crucial mechanism of the protection of human rights and is authorized to study disposed cases and court decisions on juvenile delinquents, which entered into force.

Section 1. Introduction

With the entry into force of the Juvenile Justice Code, Georgia expressed its will to protect best interests of children. To this end, the Code shares the rights-based approach within which the juvenile justice system must develop. It applies international and regional instruments of human rights protection, in particular: the Convention on the Rights of the Child (CRC),⁶³ the International Covenant on Civil and Political Rights (ICCPR),⁶⁴ the

⁶³ The UN Convention on the Rights of the Child, adopted under the Resolution N44/25 of the UN General Assembly on 20 November 1989 and entered into force on 2 September 1990.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (standards and rules),⁶⁵ and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).⁶⁶

The Public Defender of Georgia commends the development of the Juvenile Justice Code and the will, enshrined in the Code, to regulate the protection of child's interests by a separate, systematized entirety of norms; the entirety of norms must be in line with international standards of child's rights as well as other international or regional human rights instruments which the state has adhered to.

Provisions of the Juvenile Justice Code must be implemented in such a way as to ensure the achievement of the aim of the Code – the best interests of child – in each individual case. It is precisely with this view that the Public Defender of Georgia scrutinized the implementation of provisions of Juvenile Justice Code in a daily practice.

The Juvenile Justice Code regulates the involvement of children in conflict with the law in proceedings. Consequently, the scope of assessment is very broad and it includes various spheres of justice. Among these spheres, the Public Defender of Georgia prioritized the practice of participation of children in criminal proceedings; the choice was made because of peculiarities of this type of proceedings as it regulates very tough relations, provides very restrictive measures and leads to strictest results.

The Office of the Public Defender of Georgia together with the nongovernmental organization, Rehabilitation Initiative for Vulnerable Groups, studied eight disposed criminal cases of juvenile delinquents. The analysis of these cases does not allow for full generalization of shortcomings that were observed in practice. Nevertheless, it provides a certain amount of information about the types of shortcomings that exist and the likelihood of types of problems in other cases.

⁶⁴ The International Covenant on Civil and Political Rights, 16 December 1966, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, United Nations, Treaty Series, vol. 993, pg.3.

⁶⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), adopted and proclaimed by General Assembly resolution UN GAOR A/RES/45/112 of 14 December 1990; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution UN GAOR A/RES/40/33 of 29 November 1985; The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), adopted by General Assembly resolution UN GAOR A/RES/45/113 of 14 December 1990, appendices 45, UN GAOR and (N 49A) and 205, UN Doc. A/45/49 (1990). The Havana Rules provide detailed standard minimum rules for care and treatment of juveniles deprived of their liberty. See also, Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), the UN Economic and Social Council resolution 1996/13 of 23 July 1996.

⁶⁶ The Convention on the Elimination of all Forms of Discrimination Against Women, adopted by General Assembly resolution UN GAOR A/RES/34/180 of 18 December 1979.

It should be noted that the presented study does not include the analysis of cases under investigation, which the Office of Public Defender is scrutinizing and involve gross violations, including alleged improper treatment by law enforcement officers.⁶⁷ This is because the study, in this particular case, was focused on the scrutiny of disposed criminal cases alone.

Section 2. Methodology of study into criminal cases

To study criminal cases against juvenile delinquents, the Office of Public Defender, within the framework of the project Rights of Juvenile Defendants in Criminal Proceedings of the nongovernmental organization Rehabilitation Initiative for Vulnerable Groups, requested relevant information and documentation from common courts⁶⁸ and the prosecutor's office⁶⁹, for the period between 1 January and 31 August 2016. By applying a random selection and observing the territorial principle (to more or less cover the whole of the country), the Public Defender's Office requested 10 cases⁷⁰ from the Supreme Court of Georgia.

Out of 10 requested cases, courts provided eight criminal cases while failing to provide a criminal case with acquittal because, according to the Supreme Court of Georgia, since 1 January 2016, there was only one case with the verdict of not guilty and it is being considered now by the Chamber of Criminal Cases of the Supreme Court of Georgia.

When studying the requested cases, the attention was drawn to the quality of implementation of procedural guarantees specified in the Juvenile Justice Code; considering the mandate of the Public Defender, the issue of guilt was not studied.

⁶⁷ A criminal case against a minor L.Sh.

⁶⁸ Over the period between 1 January and 31 August 2016, there were considered 185 cases against 240 persons, with juvenile defendants involved in 110 cases (146 persons), underage witnesses in 23 cases (32 persons), underage victims in 52 cases (62 persons). Two minors were acquitted. Verdict of guilty were delivered on 79 cases (against 106 persons) including one person found guilty but not imposed a sentence. Plea bargains were signed with 59 minors. 35 minors were deprived of liberty. Non-custodial sentence was applied to 70 minor convicts.

⁶⁹ Over the period between 1 January and 31 August 2016, criminal prosecutions were launched against 128 minors; suspended against 71 minors; diversion was applied to 303 minors; criminal prosecutions were renewed against three minors due to violation of diversion terms.

⁷⁰ They are: one case with guilty verdict; two cases with guilty verdicts after signing plea bargains and minors were sentenced to imprisonment; one case with guilty verdict after signing the plea bargain and the minor was not sentenced to imprisonment; four cases with guilty verdicts after the consideration of cases on the merits and minors were sentenced to imprisonment; two cases with guilty verdicts after the consideration of cases on the merits and minors were not sentenced to imprisonment.

Section 3. Shortcomings identified in the administration of criminal cases involving minors.

The study into the cases did not reveal any fact of gross violation of the rights. Separate shortcomings of non-systemic nature were identified when, both at the stages of investigation and court trial, behavior of persons administering proceedings were incompliant with general principles and aims of juvenile justice legislation. Consequently, the best interests of minors were not properly protected in the process of administering justice. One should underline here that the study of materials of disposed criminal cases does not enable us to analyze an issue in question from every angle and therefore, this section of the study must be analyzed together with Part I. The study showed that the most problematic issue was the preparation of pre-trial report; though there were separate cases where violations of various types were revealed during the conduct of investigative actions: a problem of specialization of persons involved in administering juvenile justice; the timing of the conduct of investigative actions against minors; shortcomings in the preparation of individual assessment reports.

The issues identified as a result of the analysis cannot be evaluated as systemic and essential shortcomings of the juvenile justice; however, the Public Defender of Georgia believes that in order to ensure the protection of best interests of the child in administering justice in accordance with the principles and aims of juvenile justice, it is crucial to thoroughly analyze, adequately assess and eliminate any shortcoming and alleged facts of violation.

Section 4. Preparation of individual assessment report

As noted above, a juvenile justice procedure primarily considers the best interests of a minor. Moreover, when taking a decision concerning a minor, one must take into account his/her individual characteristics: age, maturity, conditions of life, upbringing and development, education, health, family situation and other circumstances which allow to evaluate the character of a minor, peculiarities of his/her behavior and define his/her needs. At any stage of juvenile justice procedure, a person administering juvenile justice proceeding shall treat a minor with special care.⁷¹

The Juvenile Justice Code⁷² also establishes mandatory stages of preparation and consideration of an individual assessment report in criminal justice proceeding, in particular at the stages of:

⁷¹ The Juvenile Justice Code; Article 14.

⁷² The Juvenile Justice Code; Article 27.

- determination of a diversion measure;
- sentencing;
- individual planning of a custodial sentence;
- execution of a non-custodial sentence;
- consideration of the issue of release on parole.

Paragraph 5 of Article 27 of the Juvenile Justice Code specifies that by a resolution of the prosecutor, an individual assessment report may also be prepared and considered at the stage of deciding on the exercise of other discretionary powers, provided that the course and time limits of the criminal proceedings allow for it.

The Juvenile Justice Code does not impose restrictions on a party and a prosecutor, within the shortest time after the start of criminal prosecution, may apply to the National Agency of Execution of Non-custodial Sentences and Probation, a Legal Entity in Public Law under the Ministry of Corrections of Georgia, with a request to prepare an individual assessment report in order to have the document prepared in a timely manner, which helps parties to a proceeding and a court to better understand characteristics of a minor, conditions of his/her upbringing and development, family situation and other circumstances. This helps parties to a proceeding and a court to take more adequate decisions in relation to an accused minor while taking into account best interests of a child. Neglect of this principle may undermine aims and principles of the Juvenile Justice Code and harm a minor in conflict with the law.

That the preparation of an individual assessment report is not mandatory at the stage of investigation and consequently, the failure to prepare it is not a breach of law is a practice which should be changed. Such change will better serve the best interests of the child. Besides, the application of report is encouraged by the law since an individual assessment report, in general, may be prepared in every case when a decision is taken on the exercise of other discretionary powers.

In the cases of juvenile delinquents, studied by the Office of Public Defender of Georgia, individual assessment reports are, as a rule, prepared at the stage when a court determines a sentence. In none of the cases studied, an individual assessment report was prepared at the stage of investigation upon the request of defense.

In one of the cases studied by the Public Defender, it would have been desirable if an individual assessment report had been prepared after a minor was charged with a crime and not at the stage of sentencing. In particular, in this case, the minor was accused on 29 February 2016 while the verdict was delivered on 13 June. Taking into account the best

interests of minor, an individual assessment could have been prepared during these three months, which would have allowed the judge to see **the need for a more lenient, diversion measures instead of guilty verdict.**

The study into criminal cases against minors also revealed a case in which the prosecution, at the investigation stage, did not apply, in favor of the minor, a retroactive force of the Code as well as a discretionary power to request the preparation of individual assessment report. Here as well, the report was prepared only at the stage of sentencing.

The minor was charged with a wrongdoing on 29 December 2015 while a bail was applied to him on 30 December, though due to the failure to pay it, the accused minor remained in pretrial detention until the delivery of verdict. In this case, a court applied to a relevant entity for the report on 11 March 2016; the preparation of assessment report began on 11 March and was completed on 15 March while the verdict was delivered on 16 March. Thus the individual assessment report was prepared at the stage of sentencing. Although the Juvenile Justice Code had not been enacted⁷³ by the time when a criminal prosecution was instituted against the minor, it entered into force at the time when investigation was going on. Consequently, it would have been better if the prosecutor used the opportunity of individual assessment report, which was already provided by the law, during the investigation.

Pursuant to Article 64 of the Juvenile Justice Code, “If detention has been imposed on an accused minor, the judge shall, on his/her own initiative, consider the issue of keeping the detention in force at the first pre-trial hearing, irrespective of whether a party has filed a motion on changing or revoking the detention. Thereafter, the judge shall, based on his/her own initiative, consider the issue of keeping the detention in force at least once in every 20 days.” Subparagraph “b” of Paragraph 4 of Article 219 of the Criminal Procedure Code of Georgia also provides a mechanism of applying, changing and revoking detention. Consequently, in this case the prosecutor could, upon the entry into force of the Juvenile Justice Code, apply to a relevant entity for the preparation of individual assessment report in order to review a restriction measure in the light of minor’s characteristics provided in the document.

A more serious shortcoming was seen in three criminal cases involving juveniles, where the requirement to prepare individual assessment reports was neglected even at the stage of sentencing; in particular:

⁷³ The Juvenile Justice Code was adopted on 12 June 2015 and entered into force on 1 January 2016.

In one criminal case, studied by the Public Defender of Georgia, an individual assessment report was not submitted to a lower court although it was already mandatory. Particularly, the minor was charged with an offence on 17 August 2015 while the Gori district court delivered a decision on 14 February 2016. The decision was appealed. When considering this criminal case, a judge of Tbilisi Court of Appeals applied for an individual assessment report on 25 April 2016; the assessment was launched on 25 April and completed on 10 May. The court delivered its decision on 13 June 2016. This case showed that the lower court did not have the individual assessment report on the stage of sentencing although pursuant to Article 27 of the Juvenile Justice Code it was mandatory to have it.

Another criminal case against five minors, which ended in plea bargain in the Rustavi City Court on 29 March 2016, did not include an individual assessment report at all.

The third case against one minor, which was separated from the abovementioned criminal case, which ended in plea bargain much earlier, on 9 February 2016, also lacked an individual assessment report.

Section 5. Specialization of persons administering juvenile justice proceedings

As noted above, a juvenile justice procedure primarily considers the best interests of a minor. Moreover, when taking a decision concerning a minor, one must take into account his/her individual characteristics: age, maturity, conditions of life, upbringing and development, education, health, family situation and other circumstances which allow to evaluate character of a minor, peculiarities of his/her behavior and define his/her needs. At any stage of juvenile justice procedure, a person administering juvenile justice procedure shall treat a minor with special care.

Consequently, a legislator sets a necessary condition of proper qualification of persons involved in juvenile justice, thereby ensuring the protection of the best interests of a minor.

According to the Juvenile Justice Code of Georgia, a juvenile justice procedure is carried out only by persons specialized in juvenile justice (except as stipulated by the Code). If a procedural action has been performed in relation to minors by a person who is not specialized in juvenile justice, the minor shall immediately notify a person specialized in juvenile justice, who shall continue the process, and the person who is not specialized in juvenile justice shall be immediately dismissed from the juvenile justice procedure.

In a district (city) court, cases of minors in conflict with the law are considered by judges specialized in juvenile justice but if a case is considered by a collegium, at least two members of the court collegium, including the chairman of collegium, are specialized in juvenile justice. In the Court of Appeal and the Supreme Court of Georgia, cases of minors in conflict with the law are considered by a court chamber with at least two of its members, including the chairman of the chamber, being judges specialized in the juvenile justice.

The study of criminal cases against minors, carried out by the Office of Public Defender of Georgia, revealed instances when only several persons involved in the proceeding had documents certifying their specialization in juvenile justice. For example, some cases contain documents certifying a corresponding specialization of a defense lawyer and an investigator, but lack the same in relation to a prosecutor and a judge. Other cases contain documents certifying the specialization in juvenile justice of defense lawyers alone.

Although the lack of document certifying the specialization in juvenile justice of this or that person administering a criminal case does not necessarily indicate about the breach of standard established by the law (conduct of a juvenile justice procedure only by persons specialized in juvenile justice), it is desirable to have such a document in every case on a minor as this, on the one hand, will contribute to the establishment of uniform practice in juvenile justice proceedings and on the other hand, will exclude a likelihood of neglecting the standard established by the legislation.

Section 6. Timing of investigative action against a minor

According to the Criminal Procedure Code of Georgia,⁷⁴ an investigative action may not be carried out at night, except in the case of urgent necessity.

Nevertheless, the criminal cases against minors, studied by the Office of Public Defender of Georgia, show instances when various investigative actions were carried out against minors at night. For example, in one case, a minor was interrogated as a witness over the period between 00:55 and 02:25 while in another case, an investigative experiment with the involvement of a minor was carried out over the period between 00:20 and 03:20.

Unfortunately, the above mentioned criminal cases do not provide those factual circumstances that necessitated the conduct of investigative action at night. Such practice jeopardizes the will of legislator and undermines the principle of protection of the best interests of a child. Representatives of investigative bodies must respect the best interests of

⁷⁴ The Criminal Procedure Code of Georgia; Paragraph 5 of Article 111.

the child and in each concrete case, conduct an investigative action at night only by observing the principles of necessity and proportionality. Such action must be necessitated by interests of effective investigation and an urgent need of a concrete case while the information about these circumstances must be detailed in a document (protocol) on a concrete investigative action.

Section 7. Legal ground for the arrest of a minor

According to Article 171 of the Criminal Procedure Code of Georgia: “If there is probable cause that a person has committed a crime for which the law stipulates imprisonment, or the person will flee or will not appear before a court, destroys information important for a case, or will commit a new crime, upon motion of the prosecutor, the court, according to the place of investigation and without oral hearing, shall deliver a ruling for the arrest of the person.” In a criminal case, an accused minor was arrested without a court ruling; in particular, the arrest took place on 27 December 2015 when the Juvenile Justice Code was not fully enacted (the bulk of the Code entered into force on 1 January 2016) and relevant provisions of the Criminal Procedure Code were applicable.

According to the materials of the case, law enforcement agencies had a reasonable doubt that a concrete crime was committed by a minor. A prosecutor was to submit a motion to a court for a ruling on the arrest of the person. It is worth noting that the identity of the minor was established by an investigator while the minor’s living address was established with the help of witnesses. This suggests that the postponement of the arrest until after a court ruling had been obtained would not cause a material damage and impediment; consequently, the prosecutor was to file a motion to arrest the minor to a court. If there was a threat of material damage in case of delay in the arrest, it should have been clearly substantiated. One should also take into consideration that according to Article 316 of the Criminal Procedure Code, “At any stage of procedure, a minor shall be treated with special care.” A court control in the process of arrest of a minor better ensures effective protection of rights guaranteed to a minor.

8. Documenting investigative actions

The study into the criminal cases against juveniles, carried out by the Office of Public Defender of Georgia, revealed procedural violations; in particular, police officers who after receiving a notification about a crime went to interview citizens, arrested a minor; during an oral interview, conducted in the presence of his relative, the minor admitted to an action

envisaged in the Criminal Code; however, the minor was not handed over either a copy of a resolution about the accusation or a protocol on the arrest. Later, an investigator noted in the interrogation protocol that a relevant documentation was not drawn up because the police officers did not take relevant forms with them.

The Juvenile Justice Code ⁷⁵stresses that the arrest of minors is a measure of last resort and the state must apply it with great caution after properly evaluating an outweighing benefit of such action. Moreover, to defuse a stressful environment for a minor and alleviate a psychological stress, the law requires that upon the delivery of a minor to a law enforcement agency, a person having arrested the minor immediately contact the minor's legal representative to notify him/her about the arrest and if the minor does not have a legal representative or a legal representative cannot be reached, to notify the guardianship and custodianship authority. This provision reinforces procedural rights of a minor; moreover, it is necessary to take into account psychological and social conditions of the minor. It is noteworthy that these provisions⁷⁶ reinforce the rights envisaged in Paragraph 2 of Article 38 of the Criminal Procedure Code. Consequently, although law enforcement officers were not technically prepared, it was necessary, for the aim of protecting the best interests of minor, to draw up a protocol on the arrest and hand it over to him upon the arrest or if he was not arrested, to hand over a copy of resolution about the accusation.

Section 9. Recommendations

Shortcomings revealed as a result of the analysis of above mentioned cases show the need for the improvement of practice. The Public Defender of Georgia believes that persons involved in administering juvenile justice must be distinguished for their compassion, empathy, competence and focus on the best interests of a child. Consequently, to ensure effective juvenile justice, the Public Defender of Georgia issues the following recommendations:

- 1. The prosecution should arrest a minor without a court order only on the basis of proper substantiation, in case of urgent need;**
- 2. Results of investigative actions should always be detailed in corresponding protocols;**
- 3. Factual and legal grounds of the conduct of investigative action at night due to urgent need should be fully described in a corresponding protocol;**

⁷⁵ The Juvenile Justice Code; Article 9.

⁷⁶ The Juvenile Justice Code; Article 49.2.

4. Each criminal case should include documents certifying the specialization in juvenile justice of persons administering proceedings;
5. In the course of criminal prosecution against a minor, for the aim of protecting interests of a minor, the prosecution should express its discretionary will and timely apply to a relevant entity for the preparation of an individual assessment report irrespective of the fact that this is not mandatory at the stage of investigation;
6. An individual assessment report should be prepared in a timely manner, before taking all those decisions when the preparation of report is mandatory under the law.