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GEORGIA'S PRACTICE IN ENSURING RESPECT FOR THE BEST INTERESTS OF THE CHILD

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Summary. *The main purpose of the report is to provide information on Georgia's Practice in ensuring the protection of child's best interest according to Georgian legislation and practice, in the process of administration of justice on cases of sexual abuse and sexual exploitation with interdisciplinary, victim-centered approaches and in accordance with the requirements of international human rights standards. The report reflects all stages of responding to crimes of sexual abuse and sexual exploitation of children, including detection of crime, administration of justice and provision of rehabilitation and support measures to children and their families. The document shows State's shortcomings and recent positive steps towards providing an environment tailored to the needs of juveniles during the administration of justice, to protect them from secondary victimization or to provide services tailored to child victims of sexual abuse. Additionally, the report enables the audience to contemplate the role, precise and mandate of the Office of the Public Defender of Georgia in matters of monitoring and evaluating States actions in the framework of primary consideration of the best interest of a child.*

Keywords: *Children's Rights, Best Interests of Children, Georgia.*

The Office of the Public Defender of Georgia continuously monitors every field of practice and legislative measures taken by state agencies. Therefore, relevant reports are portraying current developments and remaining challenges in terms of respect for children's best interests. The Public Defender's Office has been pointing out for years the shortcomings in considering child's best interest in the process of administration of justice on cases of sexual abuse against children. Timely, effective, and coordinated response to crimes of sexual abuse and sexual exploitation of children by the state agencies is one of the major challenges in the country. In the similar vein, the involvement of all necessary, adequately retrained professionals in the justice administration process is crucial to protect children from secondary victimization. It also has a positive impact on the effectiveness of administration of justice. However, although the country has ratified international instruments [1, 2, 3, 4] that oblige the State to improve legislation and policies and to protect the interests of the child in the judicial process and despite the positive steps the State has already taken there remain significant challenges, both in terms of legal regulation and practice, in particular, combating and preventing crimes of sexual abuse of children and the lack of effective mechanisms focused on the rehabilitation and support of child survivors of violence are one of the remaining challenges in the country.

Ensuring respect for the best interest of children while tackling issues affecting them in any way, whether it is a legislative amendment, change in systematic practice, or in everyday approach to a child is essential. Georgia has taken positive steps towards ensuring primary consideration of the child's best interest by conducting necessary amendments in relevant legislation and adopting the Juvenile Justice Code and Child's Rights Code, which makes it mandatory in all cases involving children to take a child-centered approach.[1] Therefore, all decisions or actions concerning a child must be made with due respect for the child's best interest, while listening and considering their opinion, with the involvement of the professionals specifically trained in those matters, and by accommodating a child-friendly physical environment.

Additionally, the international standards clarify that age should not be a barrier for a child to take full part in the justice process, to express her or his views and that the child can form views from the youngest age, even when she or he may be unable to express them verbally. Every child should be treated as a capable witness. [5] The credibility of a child's testimony should not be questioned solely based on his or her age, and it is not up to the child to first prove his/her capacity. [5, §18] The child should have the opportunity to express his or her views and complaints about his or her participation in the justice process. [6, § 21] In addition, applying a best-interests approach means assessing the needs of a child and taking measures for their safety. [7]

Judicial proceedings should not aggravate the trauma suffered by the child. [8] In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner, [5, § 13, § 19] which also includes the need to reduce the number of interviews. [5, § 31 (a)] Professionals should perceive the child as a capable witness and should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. [5, § 25]

Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed of their rights, the procedures for criminal justice process, support services and complaints mechanisms. [5, § 19] The Council of Europe Guidelines [9] also clarify that this information should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.

Following the abovementioned guidelines, the Juvenile Justice Code of Georgia establishes special rules for interviewing minors. According to the Code, a juvenile

[1] Juvenile Justice Code of Georgia, 2015, art. 1, The Code on the Rights of the Child, 2019, art. 3;

may be interviewed if he or she can convey information relevant to the case verbally or otherwise and the interview must be conducted by a professional specialized in juvenile justice. In addition, the juvenile's legal representative and a lawyer should participate in the interview. In cases of sexual abuse, a juvenile is entitled to free legal aid. The participation of a psychologist in this process should be ensured by the person carrying out the procedural action, considering the best interests of the juvenile. However, following Public Defender's recommendations, the Ministry of Internal Affairs established a practice of pre-prescribed procedure of involving a phycologist in all cases of child sexual abuse, not leaving the matter to discussion. The function of the psychologist during the interview is to assess the needs of the child and to provide psychological support to him/her during the process.

Additionally, Georgia has just recently established a psychological-social service center for child survivors of violence. The center is based on the Barnahus model and provides one space approach for children victims of sexual violence where the children can be interviewed by a specially trained psychologist in a child-friendly environment. The interviews are videotaped, and the social worker, investigator, lawyer, and prosecutor monitor the process from distance without any interaction with a child.

Furthermore, any forensic medical examination is conducted in the same building specifically equipped and designed in a child-friendly manner. Georgia has also been providing a child-friendly environment in Police Departments and Courts, to provide a safe space for children and to prevent their interaction with strangers as much as possible. However, this approach is not systematic and, in some cases, doesn't prevent a child from attending a court hearing, which by itself is stressful for a child, and in most agencies, physical environment still fails to meet the best interests of a child.

Currently, state agencies are making progressive steps towards eliminating the practice of conducting several interviews with children, which creates a huge risk of secondary victimization. The psychological-social service center has a tremendous role in this process. However, there are legislative gaps that need to be addressed to make this process more flexible and child-oriented without damaging investigative interest.

According to the Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, all persons involved in the proceedings – judges, prosecutors, and lawyers – shall be trained on the rights of the child and sexual exploitation and sexual abuse of children. The hearing shall be held in a closed session. The testimony of the victim should be heard in the courtroom in the absence of the victim, through communication technologies.

Unfortunately, our monitoring revealed the methodology, forms of communication, and questions asked by professionals to children during a trial, were alarming, fundamentally contradicting the best interests of the child and creating a very high risk of secondary victimization of the child. Therefore, per PDO recommendations, a vast number of professionals, investigators, prosecutors, judges, and forensic experts involved in those cases were further trained and evaluated.

Considering the child's best interest as a superior value during the administration of justice, confidentiality, and the child's separation from stressing and potentially harmful environment is essential. In this regard, court hearings where the child is present are always conducted without an alleged perpetrator attending the hearing, so that a child won't have any contact with him/her. Additionally, if the court has a child-friendly room child remains there during the hearing and the parties to a case can ask questions through video-audio recording, in those cases, often the judge voices the questions stamped from both sides to avoid any risk of secondary victimization by formulating the question in a non-harmful way.

Additionally, while administrating such cases, the investigative, judicial, or rehabilitation proceedings can be conducted without the child's parental representative being involved, if the child requests such measures and it is in his/her best interest. For instance, during the interview or hearing of a case, the judge, as well as the prosecutor, at the stage of the investigation, is authorized to prohibit the parental representative of the juvenile from attending the procedure only if the best interest of the juvenile requires so. In those cases, social worker and a psychologists attend any investigative or procedural action involving a child and protect his/her best interest. Concerning this approach, there have been cases when a child of sexual or other forms of violence requests from PDO complete confidentiality from their parents and family members. In such cases, PDO refers the case to relevant state agencies indicating a child's request and the necessity of its primary consideration, to protect a child from any form of violence or aggravation of his/her emotional state. Additionally, even in cases of violence against children, if a child specifically expresses, she/he is not emotionally ready to refer the matter to the police and it will aggravate her emotional state, PDO informs relevant state agencies on the matter, requesting a social worker and a psychologist to work with a child, prepare him/her for the process of administration of justice and refer the case directly to the police. For more safeguarding measures, even when the case is already being investigated the interview of a child won't be conducted if a psychologist doesn't indicate a child's readiness for that process.

Furthermore, while combating and preventing crimes of sexual abuse of children raising public awareness of sexual abuse of children is essential, especially among minors. The lack of reporting or late reporting of crimes of sexual violence against children to the law enforcement agencies is caused, inter alia, by the widespread stereotypes and stigma, forcing children and their parents to avoid talking about sexual abuse and contributing to the creation of an environment where rape goes unpunished.

Therefore, in every individual case, concerning children, the best interest of a child must be determined through a specifically tailored, established methodology, considering a child's own opinion on the matter. The PDO of Georgia continues thorough monitoring of the process and envisages certain changes in legislation and existing practice. Future relevant recommendations will be developed by incorporating children's views on the matter.

References:

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4. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2014.
5. United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005.
6. UN Committee on the Rights of the Child, General Comment No. 12 (2009): The right of the child to be heard, 20.07.2009.
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