

# Juvenile Justice in Armenia: Legislative Analysis

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The study was conducted by the Civil Society Institute NGO.

Author Siranush Sahakyan, legal expert.

Civil Society Institute  
Aygestan 11th str., 43 building  
Yerevan 0025, Armenia  
tel: (+37410) 574317  
fax: (+37410) 559634  
csi@csi.am  
www.csi.am, www.hra.am

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## INTRODUCTION

The juvenile justice system of the Republic of Armenia largely differs from the accepted international standards.

The Convention on the Rights of the Child, for instance, requires the States Parties to the Convention to develop and implement comprehensive policies of juvenile justice with a special focus on preventing offences by juveniles and implementing alternative responses to juvenile offence without resorting to judicial procedures.

The Beijing Rules encourage community-based interventions instead of legal proceedings and official investigations, the performance of inquiries in the best interests of the child in any state body, thorough examination of the case before depriving a juvenile of liberty, mandatory specialized training for the staff dealing with juvenile cases, consideration of the potential for early conditional release in cases of deprivation of liberty, and the organization and promotion of research needed for effective planning and policy making.

There are a number of shortcomings in the juvenile justice system of the Republic of Armenia.

Firstly, the legislation of the Republic of Armenia contains a limited number of provisions on juvenile justice. There is no standalone act on juvenile justice. The absence of legislative grounds renders the administration of juvenile justice impossible. Obviously, the Republic of Armenia lacks an overall national policy for crime prevention. The existing social programs for preventing juvenile crime are not highly effective.

The Republic of Armenia lacks specialized juvenile courts or special judges dealing only with juvenile cases.

The same gap exists in the prosecution system, too, which lacks a specialized unit for the investigation and criminal prosecution of juvenile cases.

In view of these and other institutional and legislative problems, juvenile justice in the Republic of Armenia does not correspond to the accepted standards.

## SYSTEM OF JUVENILE SENTENCES

A separate chapter of the Criminal Code of the Republic of Armenia entitled “Specifics of the Criminal Liability and Sentencing of Juveniles” prescribes fundamental provisions related to juvenile justice.

Article 85 of the Code provides: “A punishment or enforced disciplinary measures can be imposed in relation to a minor who committed a crime.” Article 86 provides the list of sentence types, which include the following types of sentences for juveniles:

- 1) fine;
- 2) public works;
- 3) detention;
- 4) imprisonment for a certain period.

The analysis of the sentence types imposed on juveniles demonstrates that the existing regulation does not take into consideration the needs and peculiarities of juveniles. It is unclear how effective a fine can be in relation to a juvenile, given the various limitations prescribed by the Labor Code of the Republic of Armenia. The Criminal Code provides that, when imposed on a juvenile, “a fine shall be applied in the event the juvenile has earnings of his own or property that can be confiscated.” The practice, however, shows that fines imposed on juveniles are mostly paid by their parents, which in turn violates the principle of personal liability prescribed by the Criminal Code.

As to public works, Article 17 of the Labor Code of the Republic of Armenia provides: “A person between ages of 14 and 16 may be engaged only in such temporary employment that does not harm his or her health, safety, education, and morals under Article 101, Paragraph 1(1) of Article 140, and Article 155 of this Code.

A person between the ages of 14 and 18 may not be engaged in employment on days of rest and non-working days (holidays and memorial days), except for cases of participation in athletic and cultural events.

A temporary labor contract shall be concluded with persons between ages of 14 and 16.”

The performance of public works must essentially comply primarily with the requirements of the Labor Code. While the law provides that public works may not be ordered in respect of persons under 16 years of age at the time of rendering the judgment, the performance of public works even by persons that have turned 16 can gravely affect their mental, psychological, and physical development, and undermine their self-realization in society and their self-esteem.

As to detention and imprisonment, a number of international instruments prescribe the main terms and criteria that must serve as a basis for the effective administration of juvenile justice taking into account the degree and peculiarities of their intellectual and physiological and social development.

Under the Havana Rules, for instance, deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.

In the Republic of Armenia, this principle, too, is frequently not honored, and juveniles are unnecessarily deprived of liberty. The social and psychological character of juveniles, not being mature yet, can be altered in prison conditions in a way that will increase the likelihood of reoffending by the juvenile.

## **SUBSTITUTION OF CRIMINAL LIABILITY WITH ALTERNATIVE/ COMMUNITY MEASURES**

Although the Criminal Code of the Republic of Armenia allows exempting from criminal liability the juveniles that have committed a non-grave or medium-gravity crime for the first time and imposing educational compulsory measures, there still remains a great need for alternative sanctions for juveniles. Substitution of criminal liability with alternative measures allows keeping juveniles away from the criminal proceedings and developing a “criminal experience.” The application

of alternative measures mitigates the stigma, violence, humiliation, and social rupture associated with imprisonment. Imprisonment sentences forge the criminal identity of juveniles. Juveniles learn criminal techniques, acquire certain speech patterns, and get accustomed to the prison culture. Once a juvenile perceives himself as a criminal, it becomes very hard to change and to adapt to school and family life.

Therefore, juveniles should be kept away from criminal proceedings and unnecessary imprisonment.

The international standards require measures to be taken in relation to juvenile offenders without resorting to judicial proceedings and with due respect for human rights and legal safeguards. Taking into account that most of the juvenile offenders commit non-grave offences, it is necessary to instill a practice of removing juveniles from the criminal justice system and applying to alternative (social) services (i.e. substitution of criminal liability with alternative measures), which can and should be applied in the majority of cases.

Hence, it is necessary to develop and implement diverse measures as part of a comprehensive policy of juvenile justice, which would ensure the wellbeing of juvenile offenders and be adequate to the circumstances of committing the crime and the gravity of the offence. Such measures should include:

- Care;
- Warnings;
- Custody;
- Behavior control;
- Probation;
- Counseling;
- Educational and training programs; and
- Alternatives to placement in special institutions.

The UN Convention on the Rights of the Child prescribes certain conditions for applying alternative measures, such as:

- Criminal liability will be substituted with alternative measures, if there is credible evidence that the crime has been committed by the juvenile and voluntary confession of the guilt;
- The law shall contain provisions on the cases of substituting criminal liability with alternative measures. In this case, the powers of the police, prosecution, and other bodies shall be revised and regulated;
- In cases in which the competent authorities propose alternatives to criminal liability in relation to a juvenile, legal or other support on the appropriateness and relevance of the choice of measure should be offered to the child; and
- When using alternatives in criminal cases involving juveniles, the case should be finitely terminated and all criminal records on the juvenile destroyed.

Presently, there is no legislative basis in the Republic of Armenia for substituting criminal liability with alternative measures:

- In the Republic of Armenia, a juvenile who has committed a crime is not substantively different from adult criminals, consequently there is no autonomous system of juvenile justice;
- Non-punitive educational compulsory measures can be applied only in the stage of court proceedings, which contradicts one of the primary goals of substitution of criminal liability with alternative measures — the goal of resolving cases of juvenile offenders without resorting to judicial proceedings;
- In the context of the Armenian legislation, reconciliation between the victim and the offender must serve as a basis for exempting from criminal liability without resorting to alternative measures. Therefore, reconciliation between the victim and the offender essentially serves as a formal condition of exemption from criminal liability. Nevertheless, in case of manifestly criminal conduct of the accused, reconciliation alone does not eradicate the root causes and conditions conducive of committing the crime;
- The range of measures applied in early stages of criminal proceedings is very limited: in contrast, many countries have

created numerous community programs such as community service, intensive educational programs, family counseling, and other methods of restorative justice, including damage restitution and victim compensation.

## **LEGAL AID AND OTHER ASSISTANCE IN JUVENILE CASES**

The provision of appropriate legal aid and counseling is an important condition of safeguarding the principle of fair trial in the administration of juvenile justice.

According to Article 69 of the Criminal Procedure Code of the Republic of Armenia, “the participation of a defender in the criminal proceedings is mandatory when ... the suspect or the accused was a minor at the time of committing the crime.”

In the pre-trial phase and during the criminal proceedings, the juvenile shall receive legal assistance from an appropriate advocate.

In order to safeguard the right of a juvenile to effective and high-quality defense, it is necessary to guarantee profound specialization of advocates participating in proceedings involving juveniles and their knowledge of international standards of juvenile justice.

As a rule, advocates demonstrate purely legal knowledge, without the psychological and social qualities needed to communicate with juveniles. Advocates do not participate in training courses on juvenile development, pacifying their emotional state, responding to adolescent rebelliousness, abrupt conduct, demonstrative courage, and other typical features of juvenile conduct.

In the Republic of Armenia, there is no legal provision on the participation of psychologists or social workers in the interrogation of juveniles and in proceedings involving juveniles.

From this standpoint, it is extremely important to engage psychologists that will help the court to draw the right conclusions and to help the juvenile lead a proper life after adjudication of the case.

Article 207 of the Criminal Procedure Code of the Republic of Armenia provides: “The interrogation of a witness or victim who is under 16 years of age shall be carried out with the participation of an pedagogue.”

The Armenian practice shows that the pedagogue involved in the interrogation of a witness or victim under 16 years of age is his school teacher. The participation of school teachers in the proceedings restrains the juveniles and creates difficulties for their future reintegration in society. To avoid such problems, additional legislative regulation is needed, and the range of persons that may act as an “pedagogue” should be defined.

The law currently provides that the legal representative of a juvenile has the right to be present in the interrogation of a juvenile witness or victim. For the cases of potential conflicts between the legal representative and the juvenile or the legal representative engaging in conduct that contradicts the interests of the juvenile, there is no defined procedure of removing the legal representative or solving potential conflicts.

Article 439 of the Criminal Procedure Code of the Republic of Armenia defines a special procedure for juvenile cases, which is applied in cases of crimes involving persons that have not turned 18 at the time of committing the crime. Furthermore, the law does not define the procedure of examining cases of accused persons that were juvenile when committing the crime, but became adults during the investigation of the case.

## **PROVISION OF LEGAL ASSISTANCE TO JUVENILE VICTIMS AND WITNESSES**

The international standards require making effective legal assistance available to juvenile victims and witnesses in line with the best interests of the child. In addition to special legal requirements on the provision of free legal aid to juvenile victims, the fundamental human

rights standards, too, require free legal aid with a view to safeguarding the right of access to court.

The Criminal Procedure Code of the Republic of Armenia prescribes the right of victims and witnesses to receive legal assistance if they so wish. According to Article 10 of the Criminal Procedure Code, everyone has the right to receive legal assistance.

“... The body conducting the criminal proceedings shall be obliged to safeguard their right to receive legal assistance. The body conducting the criminal proceedings shall have no right, during the interrogation of the victim, to prohibit the participation of an advocate invited by the victim as a representative. The body conducting the criminal proceedings may render a decision on the provision of free legal aid to the suspect or the accused in view of his financial situation.”<sup>1</sup>

Moreover, Article 86 of the Criminal Procedure Code prescribes the right of the witness to appear to the body conducting the criminal proceedings together with his advocate. Article 69 of the Criminal Procedure Code prescribes the cases in which the participation of an advocate is required. Under Article 69, the participation of an advocate is required when the suspect or the accused was a juvenile at the time of committing the crime. Nevertheless, such provisions do not provide the right to free legal aid in cases involving juvenile victims and witnesses, especially in cases of sexual violence. Therefore, in cases in which a juvenile victim wishes to have representation of his interests by an advocate, but does not sufficient funds, the right becomes unachievable in practice. On the other hand, the presence of an advocate during the interrogation of a witness is formalistic, because the advocate has no right to ask questions or interpret responses. This limitation reduces the ability of the advocate to deliver effective and relevant legal assistance to victims and witnesses.

To this end, the domestic legislation is not consistent with the international standards and does not safeguard the protection of juvenile victims and witnesses needing protection. However, many civil-law countries and some common-law jurisdictions recognize the

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1 Article 10 of the Criminal Procedure Code of the Republic of Armenia.

right of victims and witnesses to receive legal aid during the criminal proceedings. In some countries, victims of crime receive aid financed by the state. Even witnesses, which are not victims of crime, have the right to receive legal advice by a so-called “legal counselor for witnesses.” In appropriate cases, when the witness cannot exercise his rights, or there is pressure on the witness, the legal counselor is appointed and paid by the state. In such countries, the legal counselor for witnesses has the right to participate in the interrogation of the witnesses starting from the inception of the criminal proceedings. In this way, the legal counselor can check whether or not the rights of the witness have been upheld, or demand that they be honored.

Besides, some countries provide other measures of protection and support, as well. The Criminal Code of Germany, for instance, defines a discretionary system of protection and participation depending on the impact of the crime on the witness.

To comply with the international standards, the Armenian legislation should define the right of juvenile victims and witnesses to receive free legal aid. At the request or upon the motion by the juvenile victim or witness or the parent, guardian, or caregiver, if any, or at the initiative of the court, legal aid financed by the state should be made available to juvenile witnesses or victims.

## **APPLICATION OF PREVENTIVE MEASURES IN RELATION TO JUVENILES**

Excessive use of pre-trial detention in relation to juvenile defendants is problematic, too. The law provides that juveniles may be detained only in exceptional cases, when they are charged with a medium-gravity, grave, or particularly grave crime. Furthermore, the law does not prescribe any additional grounds that should be taken into consideration when applying detention as a preventive measure in relation to juveniles. The possibility of placement under supervision is not reviewed prior to imposing detention. The international standards provide that detention should be imposed only in exceptional cases,

when alternative means cannot secure the proper conduct of the accused juvenile during the proceedings. The law does not stipulate a differentiated approach to the detention terms of accused juveniles, either.

## **DURATION OF PROCEEDINGS INVOLVING JUVENILES**

The international standards require judicial proceedings to be organized in conditions adapted for juveniles and in a language that they understand. Throughout the judicial processes, juveniles should be treated adequately in view of their age, special needs, maturity, and level of understanding, taking into account any potential difficulties of communication. Court cases involving juveniles should be conducted without intimidating them and in conditions adapted for juveniles.

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” This legal provision is also prescribed in the Republic of Armenia Constitution and Criminal Procedure Code.

Article 6 safeguards everyone’s right to an effective remedy for violations of rights and to a trial of his case in a reasonable period for the determination of the charges against him. In the case of juveniles, reasonable periods should be determined taking into account their level of education and psychological development.

With this circumstance in mind, investigation bodies and judges should take steps to complete proceedings in cases of juveniles within reasonable periods. Most importantly, the law should prescribe the maximum duration of proceedings in cases of juveniles, as well as the cases and terms of extending the prescribed time periods.

## EFFECTIVE PARTICIPATION OF JUVENILES IN CRIMINAL PROCEEDINGS

Article 40(2)(b)(iv) of the UN Convention on the Rights of the Child<sup>2</sup> requires the States Parties to ensure the effective participation of juveniles in the criminal proceedings. To this end, they are required to provide explanations of the charges to each juvenile in a language that he understands, as well as of juvenile justice and the court-ordered measures. the proceedings should be conducted in such conditions in which the juvenile can freely participate and present his positions.

Article 328 of the Criminal Procedure Code of the Republic of Armenia provides the obligation of the judge to explain to the defendant his rights and obligations: the presiding judge shall explain to the defendant his rights and obligations prescribed by Article 65 of the Code, as well as his rights in case of imposing a court sanction in accordance with the procedure stipulated by Part 6 of Article 314.1 of the Code.

Clearly, judges are not required, when explain to juveniles their rights and obligations, to take into consideration their age and peculiarities. Experience in Armenia shows that the aforementioned requirement is fulfilled only by means of providing a written document listing the rights and obligations of the defendant, or by quickly reading out the rights prescribed by Article 65. The legislation and practice of Armenia in the field of juvenile justice do not correspond to the international standards. In view of the interests of child protection, the judge should not only provide a separate document on rights and obligations, but also give an understandable oral explanation thereof to juvenile defendants taking into account their age and psychology.

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2 Article 40(2)(b)(iv) of the UN Convention on the Rights of the Child.

## EXPEDITED PROCEEDINGS IN CASES OF JUVENILES

Article 375<sup>1</sup> of the Criminal Procedure Code of the Republic of Armenia provides: “If the prosecutor has not objected in the indictment to the application of expedited proceedings, then the defendant or the accused shall have the right, in case of agreeing with the charges filed against him, to request expedited court proceedings to be applied in cases of crimes for which the sentence prescribed by the Criminal Code of the Republic of Armenia does not exceed imprisonment for a term of 10 years.”

According to the established procedure, the court shall not carry out the regular examination of the evidence obtained in the criminal case in expedited court proceedings. Instead, the court shall review the data personally characterizing the defendant and the circumstances aggravating and mitigating liability and the sentence.

The procedure of carrying out expedited proceedings are prescribed, as well. The law requires the prosecutor to present the indictment, while judges are required to ascertain that the defendant understands the charges filed, agrees with the charges, and comprehends the consequences for him of conducting expedited proceedings.

Although expedited proceedings are also used in cases of juveniles, their permissibility remains controversial. Some experts claim that the Armenian legislation does not permit expedited proceedings in cases of juveniles. This approach is explained by the fact that there is no special legislative basis for conducting expedited proceedings in cases of juveniles, hence its application is void of legal grounds.

In the determination of applying expedited court proceedings in juvenile justice, the right of the juvenile to express his opinion should be safeguarded. In the Armenian practice, the charges filed by the prosecutors are often not clear and comprehensible for the juveniles. The judges fail to ask questions in order to ascertain whether or not the accused have really understood the charges.<sup>3</sup>

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3 “Trial Monitoring Report. Cases involving juvenile defendants.” Civil Society Institute, 2011.

Under such circumstances, juveniles are more likely to accept the offers, given the extremely limited ability of juveniles to understand the consequences of their actions. They are simply more likely to accept solutions that would help to close the case, even if the consequences will deteriorate after a month.

Another important problem has to do with the cases in which the juveniles and their parents/guardians disagree on the application of expedited proceedings. In such cases, in the absence of specific legislative grounds, it is unclear whether the judge will give preference to the parent or the juvenile.

In this situation, more clear guidance on expedited proceedings is required for judges. Alternatively, the application of expedited proceedings in cases of juveniles should be prohibited by a specific provision of law, and general criminal proceedings should be conducted in all cases involving juveniles, in line with the requirements of safeguarding human rights and all legal remedies.

The Cassation Court of the Republic of Armenia has expressed a position on the use of expedited court proceedings. According to the Cassation Court, the Criminal Procedure Code should require the defendant or the accused to be mature and to have reached 18 years of age at the time of committing the alleged crime, in addition to the requirements already prescribed by the Criminal Procedure Code on expedited court proceedings.<sup>4</sup>

## **PUBLIC TRIAL AND THE RIGHT OF JUVENILES TO PRIVACY**

Article 16 of the Criminal Procedure Code of the Republic of Armenia provides: “The trial of criminal cases shall be public in all courts. The court may decide to hold a trial in camera in cases of crimes related to state and official secrets. At the court’s initiative or by motion of participants in proceedings in exceptional cases, provided that it will not undermine the administration of justice and will not unreasonably

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4 Judgment of the Cassation Court in case number EKD/0209/01/10, para. 25.

restrict the principle of publicity of trial, the court may decide to hold the trial also in the following cases:

1. Cases concerning crimes related to private and family life or the honor or dignity of the person;
2. Cases concerning crimes against the person's sexual freedom and sexual immunity; and
3. In case of necessity of protecting persons participating in criminal proceedings or their close relatives.”

There is essentially no special approach to juvenile cases in this respect. Courts should try juvenile cases in camera. In case of public trial, the court must take measures to protect the rights and interests of accused juveniles.

The right of juveniles to privacy requires that all participants in proceedings, which ensure the application of measures ordered by the court or other competent bodies, keep the information concerning juveniles confidential in their interactions. Information on accused juveniles should be kept confidential and closed for third parties, save for cases in which such persons are directly engaged in pre-trial or trial stages, including the stage of rendering the judgment.

In the Republic of Armenia, all persons involved in proceedings of juvenile cases should be required to maintain confidentiality in the administration of justice in juvenile cases. To protect the interests of juveniles and to facilitate their social reintegration in the future, mass media should be prohibited from publishing the name or photo of the juvenile or any other information concerning the private life of juveniles.

## **PLACEMENT OF JUVENILES IN SPECIAL EDUCATIONAL INSTITUTIONS**

The Criminal Code of the Republic of Armenia provides the possibility of exempting from the sentence juveniles that have committed non-grave or medium-gravity crimes: Article 93 of the Code provides that a

juvenile who has committed a non-grave or medium-gravity crime may be exempted of the sentence, if the court finds that the goals of the sentence can be achieved by placing him in a special educational or medical-educational institution.

Juveniles may be placed in a special educational or medical-educational institution for a maximum term of three years, but not beyond reaching adulthood.

Stay in such institutions may be prematurely terminated if the court finds, based on a motion by the head of such special educational or medical-educational institution, that the juvenile does not need to continue serving the measure.

Armenia has special public schools (longer-day and boarding schools) delivering general public and special public educational curricula for organizing the education of children with special educational needs and children that have demonstrated antisocial behavior.

There is one special school (public special school number 1 in Vardashen) for children that are in difficult life situations and have demonstrated antisocial behavior. However, a court may not order placement in this school of juveniles on whom the court has imposed educational compulsory measures.

In Armenia, there is also one correctional institution for convicted juveniles, a center for juveniles awaiting the court judgment (under the jurisdiction of the Ministry of Justice), and one center for child support. All the centers operate on the basis of the US model of community justice centers. They are essentially considered alternatives to police stations.

The problem is that none of the centers is an alternative to detention or imprisonment. Most of the activities focus on children below the age of criminal liability and children registered in the police rosters, or juveniles below the age of 18 that have committed minor administrative offences.

Besides, the Criminal Procedure Code contains no provision on referral of juveniles to restorative or educational centers by the

police. Although there are educational centers for juveniles, there is no law regulating the alternative measures, namely the placement of juveniles in educational centers and the related powers of inquest and investigation authorities.

Thus, the following main problems exist in Armenia in connection with the educational and special educational centers:

- There are no educational institutions in which juveniles that have committed crimes may be placed;
- There is no legislation clearly regulating the placement of persons that have committed crimes in educational institutions, leading to a situation in which the courts do not apply the educational compulsory measures; and
- The existing institutions (educational and medical-educational) do not meet the relevant standards.

To this end, it is necessary to create a child-centered system of restorative justice for juveniles, in line with the relevant international standards, with the participation of special educational institutions, which will ensure the application of alternatives to sentencing in relation to juveniles.

## **PROTECTION OF JUVENILE WITNESSES AND VICTIMS**

The Criminal Procedure Code of the Republic of Armenia contains a separate chapter dedicated to the protection of persons participating in criminal proceedings. Under the Armenian legislation, victims and witnesses are considered persons participating in criminal proceedings.

Everyone participating in criminal proceedings, who is able to provide data that can be significant for solving the crime and finding its perpetrator, which may endanger his or his family member's or close relative's or close one's life, health, property, rights, or interests, shall be entitled to protection. The body conducting the proceedings shall carry out the protection of the "person in need of protection" or

the “protected person.” The body conducting the criminal proceedings shall, having discovered that the person needs protection, decide on the basis of the person’s written application or its own initiative that a protection measure shall be applied, and such decision shall be executed immediately.

The Criminal Procedure Code of the Republic of Armenia prescribes the following protection measures:

1. Giving official warning to the person from whom threat of violence in relation to the protected person or the commission of another crime is expected;
2. Protecting the personal identity of the protected person;
3. Ensuring the personal security of the protected person and protecting his home and other property;
4. Providing individual protection measures to the protected person and informing the protected person of danger;
5. Use of technical means of surveillance and wiretapping telephones and other communications;
6. Ensuring the security of the protected person when appearing to the body conducting the criminal proceedings;
7. Imposing on the suspect or the accused a kind of preventive measure that will preclude the possibility of him exerting violence in respect of the protected person or committing another crime;
8. Transferring the protected person to another place of residence;
9. Substituting the personal identification documents or changing the appearance of the protected person;
10. Changing the place of employment, service, or education of the protected person;
11. Removing certain persons from the courtroom or conducting the court hearing in camera; and

12. Questioning the protected person in court without disclosing information about his identity.<sup>5</sup>

Clearly, the domestic legislation reflects most of the international standards related to witness and victim protection, including a wide array of protection measures. Some of them, such as concealing the person's identity, removing certain individuals from the courtroom, holding the court hearing in camera, and changing the place of residence of a person, are essential for the protection of juvenile witnesses and victims and can be rather effective for the purposes of such protection. Article 98<sup>3</sup>, for instance, prescribes concealment of personal identification data, which is done:

1. By means of restricting the information about the person in the criminal case files, other documents, information media, and minutes of investigative actions or court hearings by replacing the protected person's name, surname, and patronymic with aliases in the criminal case records. Personal data of the protected person may be changed on the basis of a decision of the body conducting the proceedings. The decision of the body conducting the criminal proceedings to restrict data and the materials related to such decision shall be separated from the rest of the criminal case materials and held by the body conducting the proceedings. The decision separated from the core proceedings and the related materials shall be accessible only for the court and the body conducting the proceedings, while other participants in proceedings may access them only with the permission of the body conducting the criminal proceedings, if it is necessary for the protection of the suspect or the accused or for the determination of any circumstances of material effect for the criminal case investigation; or
2. By means of temporarily prohibiting the provision of any information about the protected person.

Nonetheless, it should be noted that this chapter contains some general notions that are applicable to the pre-trial investigation and

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5 Article 98<sup>1</sup> of the Criminal Procedure Code of the Republic of Armenia.

court proceedings of any crime, without specifying the peculiarities of their application in cases involving juveniles (including their binding nature). It implies that the applicability of protection measures is determined individually in each case, while the law does not require their protection by virtue of the vulnerability of juvenile victims and witnesses. On the other hand, the legislation does not prescribe certain requirements and criteria for assessing the feasibility and appropriateness of certain protection measures in respect of specific individuals.

The only legal provision that specifically concerns juvenile victims is reflected in Article 341 of the Criminal Procedure Code, which provides that, when the complete, comprehensive, and impartial investigation of the case so requires, a juvenile witness may be questioned in the absence of the defendant upon the motion of either party or at the court's initiative.

However, the practice of applying protection measures in Armenia shows that they are not widely used, rendering them formalistic and ineffective.

Moreover, the protection measures stipulated by the Armenian legislation are specifically targeted at the physical protection of witnesses and victims. In the context of pre-trial investigation and trial in court, there are three fundamental principles of witness protection, which could be generalized as physical and psychological protection against unfair treatment.

“Witness protection” has traditionally been understood as physical and other, psychological forms of witness protection, which are important, as well.

The main element of psychological protection, which is missing in Armenia, is the stabilization of the victim's psychological state and avoidance of any future stress and strain, including re-victimization and other psychological trauma caused by the proceedings in the case.

Psychological safeguards can include the provision to victims and witnesses of complete information about the court proceedings, the

way in which the trial involving them will be held, the questions they will be asked, allowing a person who is credible for the victim to escort and give advice to the victim during the questioning, engaging judges, prosecutors, and investigators specifically trained to work with victims, displaying utmost care during the questioning and review of victims, and the like.

Thus, the meaning of the protection measures under the Armenian legislation should not be narrowly interpreted to include only physical protection of victims and witnesses; rather, it should cover the provision of psychological assistance to them in order to prevent re-victimization.

To meet the international standards on victim and witness protection, it is necessary to align the protection measures with the victims' and witnesses' requirements and to introduce a special framework for their application. When determining whether protection measures are warranted, the presumption should be in favor of using them in the case of juvenile victims. The bodies conducting proceedings should not have discretion to decide whether or not to use protection measures; rather, the law should prescribe clear criteria for assessing the physical safety and psychological state of the protected person. In cases involving juvenile victims and witnesses, protection measures must be mandatory, allowing the court only the freedom to choose the particular protection measure in view of the specific circumstances and factors such as the consequences of the sexual violence syndrome, the consequence of psychological stress and trauma, the impact of court-related fear, fear of the accused, and the consequences of extreme stress for the physical state of the person.

## RECOMMENDATIONS

1. Impose monetary fines on juvenile defendants above the age of 16 only if they have independent earnings, and introduce a deferred payment scheme for the fine, prescribing the minimum amount payable;
2. When imposing public works on juveniles above the age of 16, take into consideration the juvenile's abilities, level of education, and interests, and engage them in such work the performance of which will not undermine the physical, intellectual, and psychological development of the juvenile;
3. Allow imprisonment sentences only for crimes of greater danger to society (grave and particularly grave crimes) in cases when the goals of punishment of the juvenile cannot be attained through other sanctions;
4. Prescribe a sanction type for juveniles in the form of limitation of freedom, subject to the nature of the crime, to include deprivation of the right to visit certain places and institutions and the right to communicate with certain individuals;
5. Substitute criminal liability of juveniles with alternative measures to the extent possible: the law should provide such alternatives to criminal liability as probation, counseling, educational, restorative, and training programs, placement in a special educational institution for a short time, and the like;
6. Expand the scope of application of measures considered alternatives to criminal liability, so that they can be applied in relation to juveniles under the age of 16 in cases of not only non-grave and medium-gravity crimes, but also grave and particularly grave crimes, taking into account the juvenile's role and extent of participation in the committed crime, as well as for juveniles between ages 16 and 18 for non-grave and medium-gravity crimes;
7. Designate judges specially trained in peculiarities of juveniles (psychological, social, physiological, and the like) to administer criminal justice in relation to juveniles;

8. Create a unit of prosecutors specially trained in cases of juveniles in the prosecution system, and create a unit in the prosecution system to supervise the execution of sentences in relation to juvenile convicts;
9. Similarly, designate investigators specially trained on the peculiarities of investigating juvenile cases to conduct the pre-trial investigation of juvenile cases;
10. Clearly prescribe a special procedure for the court trial of juvenile cases in the Criminal Procedure Code;
11. In addition to the mandatory participation of an advocate for suspected or accused juveniles, prescribe the mandatory participation of a psychologist, social worker, or other specialist in the proceedings;
12. Introduce legislation defining an exhaustive list of psychologists, social workers, or other specialists engaged, and prescribe the mandatory requirement of consent of the suspect or the accused for involving a person in proceedings in order to preclude any psychological influence on juveniles;
13. Introduce legislation defining the procedure of resolving disagreement between suspected/accused juveniles and their legal representatives;
14. Set higher standards for the application of detention as a preventive measure in relation to accused juveniles, and set six months as the maximum term of detention of accused juveniles;
15. Introduce legislation defining the responsibility of the bodies conducting the proceedings to investigate juvenile cases in shorter time;
16. Ensure proper clarification of the rights and obligations of suspected or accused juveniles to them by the pre-trial investigation bodies and by court;
17. Ensure safeguards of effective participation in the criminal case proceedings for suspected and accused juveniles;
18. Simplify the possibility of conducting expedited judicial proceedings in juvenile cases by the Criminal Procedure Code;

19. Prescribe the presumption in favor of conducting court proceedings in juvenile cases in camera by the Criminal Procedure Code, and, in case of conducting public trial, secure the confidentiality of personal information concerning juveniles, and prohibit the mass media from publishing information concerning juveniles, showing photos, and presenting materials that would otherwise identify the juvenile;
20. Prescribe the obligation of the bodies conducting the proceedings to keep information concerning suspected and accused juveniles confidential from third parties: such information should include private data of the juvenile and other information on intellectual and physical development and the psychological state, and define the situations in which disclosure of legally protected data by the body conducting the proceedings shall not be considered a violation of law;
21. Set a clear timeline for destroying the materials of cases concerning juveniles (in case of imposing either criminal liability or alternative measures), and set differentiated deadlines for non-grave, medium-gravity, grave, and particularly grave crimes in view of the nature and dangerousness of the offence;
22. Introduce legislation clarifying the status of educational and medical-educational institutions, their conditions, subordination, placement procedure, and other criteria in accordance with the internationally-accepted standards;
23. Revise the domestic legislation, procedures, and practice, ensuring the implementation in the Armenian legislation of international standards aimed at protection of juvenile victims and witnesses, which implies the adoption of a special law on witness and victim protection based on the model law on witness protection that contains the minimum safeguards of witness and victim protection; the law should also clearly define criteria and instructions for assessing threats to the physical safety and psychological state of protected persons;
24. Revise the practice of protection measures applied in relation to victims and witnesses (judicial and investigative), and organize

broad-based discussions on the effective application of protection measures;

25. In cases of violence against children, introduce an automated procedure for application of protection measures in relation to juvenile victims and witnesses during the pre-trial investigation and trial in court, guided by the presumption that legal proceedings are harmful for children: the court has discretion to choose the particular types of protection or rehabilitation measures in specific situations, and the court should have the discretion to choose the specific protection measures in light of the circumstances of the case, or to involve specialists in assessing the impact of legal procedures for juvenile victims and witnesses;
26. Engage supporting professionals (psychologists and social workers) in the performance of interrogations, expert examinations, and other investigative actions with the participation of accused juveniles or juvenile victims and suspects;
27. Introduce legislation prescribing the right of juvenile victims and witnesses to receive free legal aid.