TRIAL MONITORING REPORT

CASES INVOLVING JUVENILE DEFENDANTS

Organization for Security and
Co-operation in Europe
Office in Yerevan

Civil Society Institute NGO

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Civil Society Institute
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TABLE OF CONTENT

DEFINITIONS 5

LIST OF ACRONYMS 6

OVERVIEW OF THE PROJECT 7

CHAPTER 1: DESCRIPTION OF JUVENILE JUSTICE IN ARMENIA 12

- 1.1 Applicable international standards 12
- 1.2 National laws and initiatives 12
- 1.3 The judicial system 13
- 1.4 The police service 13
- 1.5 Juvenile correctional facilities and community-based prevention programs 13

CHAPTER 2: INTERNATIONAL FRAMEWORK ON JUVENILE JUSTICE 15

CHAPTER 3: COMMUNITY-BASED INTERVENTIONS 17

- 3.1 Diversion 17
- 3.2 Intervention in the context of judicial proceedings and the use of alternatives to custodial measures 21

CHAPTER 4: SPECIALISED BODIES AND PROCEDURES 27

CHAPTER 5: THE RIGHT TO A PUBLIC HEARING AND JUVENILES’ RIGHT TO PRIVACY 29

CHAPTER 6: PRESUMPTION OF INNOCENCE 31

CHAPTER 7: IMPARTIALITY OF JUDGES AND THEIR PROFESSIONAL CONDUCT 34

CHAPTER 8: ORGANISATION OF PROCEEDINGS IN A CHILD-FRIENDLY ENVIRONMENT AND CHILD FRIENDLY LANGUAGE 37

- 8.1 Preliminary conversation with the juvenile defendants 38
- 8.2 Explanation of charges in child-friendly manner 39
- 8.3 The psychological state of the juvenile defendant in court proceedings and court environment 40
- 8.4 Incitement of aggressiveness by the judge versus neutralization or prevention of expected aggressive behavior 41
- 8.5 Emotional and behavioral activity in court sessions 43
- 8.6 The ability of the child to express his/her views during the court proceedings and treated with respect and sensitivity 44

8.7 Accompaniment of a child (Legal counsel, parents and guardians) 45

8.8 Proceedings in compliance with age, mental, physical and emotional peculiarities of juvenile defendant 46

8.9 Duration of court proceedings 48

CHAPTER 9: ACCESS TO LEGAL ASSISTANCE AND EFFECTIVENESS OF THE LEGAL REPRESENTATION 50

CHAPTER 10: ACCELERATED COURT PROCEEDINGS IN JUVENILE CASES 54

CHAPTER 11: OTHER SERIOUS CONCERNS 58

11.1 Prevention 58

11.2 Inadequate protection of child victims and witnesses 58

11.3 Intimidation and pressure on juvenile defendants and victims 60

CONSOLIDATED RECOMMENDATIONS 63

ANNEX 1: COMPARATIVE TABLE ON DIVERSION AND ALTERNATIVE SANCTIONS IN DIFFERENT COUNTRIES 67

ANNEX 2: POTENTIAL AND GOOD PRACTICES STILL BEING DOCUMENTED BY UNICEF REGIONAL OFFICE, 2009 72

ANNEX 3: LIST OF INTERNATIONAL DOCUMENTS RELATING TO JUVENILE JUSTICE 75

ANNEX 4: RELEVANT NATIONAL LAW PROVISIONS (in force at the material time) 77

DEFINITIONS

Accelerated proceedings	Court hearing process for crimes punishable for maximum 10 years of imprisonment, which the defendant admits having committed, and accordingly, no facts or evidence are examined;
Child	Any person under the age of 18 years.
Child-friendly justice	Justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, giving due consideration to the child's level of maturity and understanding of his/her actions and their consequences, as well as the circumstances of each individual child. It is, in particular, an approach to justice that seeks to minimize trauma and intimidation that the young person might ordinarily experience in an adult adjudication system. It is accessible, age appropriate, speedy, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to privacy and to integrity and dignity.
Community sanctions	Any sanction which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations, and which is implemented by bodies designated by law for that purpose.
Deprivation of liberty	Any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at his/her free will.
Diversion	Arrangement by which children in conflict with the law are diverted away from formal court processes (through pre-trial diversion and informal / alternative sentencing processes).
Juvenile suspect/defendant	A child or young person who is alleged to have committed or who has been found to have committed an offence at the age from 14 (for limited types of crimes) or 16 to 18 and who may be dealt with for an offence in a manner which is different from an adult.
Juvenile-adult	A young person who is alleged to have committed an offence before reaching the age of 18, but became adult while or before proceedings were underway.
Offence	Any alleged behaviour (act or omission) that, if found to have taken place, is punishable by law under the respective legal systems.

LIST OF ACRONYMS

CC	Criminal Code of RA
COE	Council of Europe
CPC	Criminal Procedure Code of RA
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNICEF	United Nations Children’s Fund

OVERVIEW OF THE PROJECT

In February 2010 the Civil Society Institute NGO with the support of the OSCE Office in Yerevan launched a trial monitoring project of juvenile cases. The project lasted 8 months and included a monitoring of juvenile cases in three main cities of Armenia, namely Yerevan, Vanadzor and Gyumri. The selection of cities was based on statistics on the rate of juvenile crimes per region as received from the Police of Republic of Armenia. The statistics indicated that high juvenile crime rates were recorded in Yerevan, Shirak and Lori region.

The primary goal of the project was to assess Armenia's compliance with fair trial standards pertaining to juvenile justice, and to reveal any gaps in the justice system with respect to enforcement of children's rights under international and national standards based on the results of the monitoring in the judicial proceedings. In view of these results and findings, CSI developed recommendations and remedial solutions with the aim to serve as a reference tool and to contribute to further development of the juvenile justice system in Armenia, including law and improving implementation practices and bringing them into conformity with international human rights standards.

The project was implemented in three phases. The first phase was dedicated to implementation of preparatory works. At this phase, an official letter was addressed to the Court of Cassation, introducing the project, its goals and activities. An agreement of cooperation was reached. A meeting was held with Mrs. Elizaveta Danielyan, judge of the Court of Cassation, who expressed the Court's willingness to provide the necessary information and to support smooth and timely implementation of the project.

During implementation of the project the Court of Cassation has always been responsive to the requests made by the Organization by providing the required information. The CSI wishes to express its gratitude for such fruitful cooperation.

Information about court sessions was also gathered through the "Datalex" Court Informative system. The Datalex database, which was used mainly for case identification purposes, proved not to be very reliable due to the irregularity of updates, incompleteness of the database, etc.

During the preparation stage the CSI carried out the recruitment and selection of monitors. For this purpose a vacancy announcement was posted. Relevant education, work experience and an absence of conflict of interest were taken into consideration when selecting the monitors.

Selected monitors received two days of training on the methodology and scope of the project, as well as the main principles of monitoring, criminal law, criminal procedure law and international standards on juvenile justice. Special attention was paid to the Code of Ethics, which was explained to the monitors in detail. Afterwards, all monitors signed the Code of Ethics for monitors and undertook to strictly abide by it.

A legal expert, police investigator, sociologist and several attorneys were invited as trainers. The sociologist and the legal expert explained the developed monitoring report form. A moot court was organized at the end of the training, which was observed by the monitors. Monitoring report forms were subsequently filled and tested.

The team of monitors was comprised of 8 persons, 1 from Gyumri, 2 from Vanadzor, and 5 from Yerevan. Three persons were included in the reserve list. Activities of the monitors were supervised by a Coordinator, who assigned them new cases to monitor.

For monitoring purposes report forms were prepared with reference to international and national fair trial standards. Two monitoring report forms were developed; a court session report form, which was completed for each session, and a case report form, which contained generalized questions pertaining to each case as a whole. For each case observed, the responsible monitor prepared one case report and several session reports depending on the number of sessions held. Answers to the

questions about pre-trial phases were obtained through interviews with defendant's attorneys, legal guardians, and defendants. The reporting forms were divided into sections based on different rights. They were prepared in such a way as to reduce the factor of subjectivity. The last sections of the forms were provided for narrative description of the case, where the monitors could freely refer to the issues that were not raised in the forms. Forms also included questions about psychological aspects of the trial. The reports submitted by monitors and the interviews conducted with the defense counsels and other participants served as primary sources for the final report.

During the second phase of the monitoring implementation, the monitors observed court proceedings to determine the hearings' compliance with domestic and international fair trial standards. They did not systematically gather information on the pre-trial stages of the criminal proceedings, nor did they directly monitor the observance of the pre-trial rights of the detained and accused; however, where information about those stages emerged through interviews or observation, the monitors recorded that information.

The handling of cases was analyzed primarily as to its compliance with international human rights documents, which have been ratified by Armenia and are legally binding, particularly the CRC[1] and ECHR[2]. At the same time it should be noted that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), the UN Resolution 1997/30 – Administration of Juvenile Justice (the 'Vienna Guidelines'), the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), also contain detailed standards on juvenile justice administration. Therefore, due regard was also paid to Armenia's soft law standards.

For the period of March 1 to September 15, 45 cases were heard by the Courts located in Yerevan, Vanadzor and Gyumri. The monitors observed and reported on 124 court sessions held in a total of 37 cases. 34 of those cases reached final judgment by a court..[3]

The general statistics of monitored cases per Article is presented below.

Article of The Criminal Code	Number of cases
Article 177. Theft	37
Article 176. Robbery	5
Article 112. Inflication of willful heavy damage to health	3
Article 175. Banditry	2
Article 178. Swindling	2
Article 185. Willful destruction or spoilage of property	2
Article 104. Murder	1
Article 113. Infliction of willful medium-gravity damage to health	1
Article 116. Inflicting medium-gravity or grave damage by exeeding the limits of necessary defense	1

1 Convention on the Rights of the Child was adopted on 20 November 1989 and was acceded by Armenia on 23 June 1993.

2 Armenia has ratified the European Convention on Human Rights on 26 April 2002.

3 After the end of monitoring activities, the Project Staff was informed that in two non finalized cases the Court delivered its verdict. Through Datalex system the information on the outcome of the cases and the sentences was collected and used in this Report.

Article 137. Threat to murder, to inflict heavy damage to one's health or to destroy property	1
Article 179. Squandering or embezzlement	1
Article 258. Hooliganism	1
Article 259. Making a false statement about terrorism	1
Article 268 Illegal turnover of narcotic drugs or psychotropic materials without the purpose of sale.	1
Article 324. Theft of damage to documents, stamps or seals	1

TABLE 1. Charges under the Criminal Code in monitored cases4

The geographical distribution of the monitored cases is shown in Chart 1.

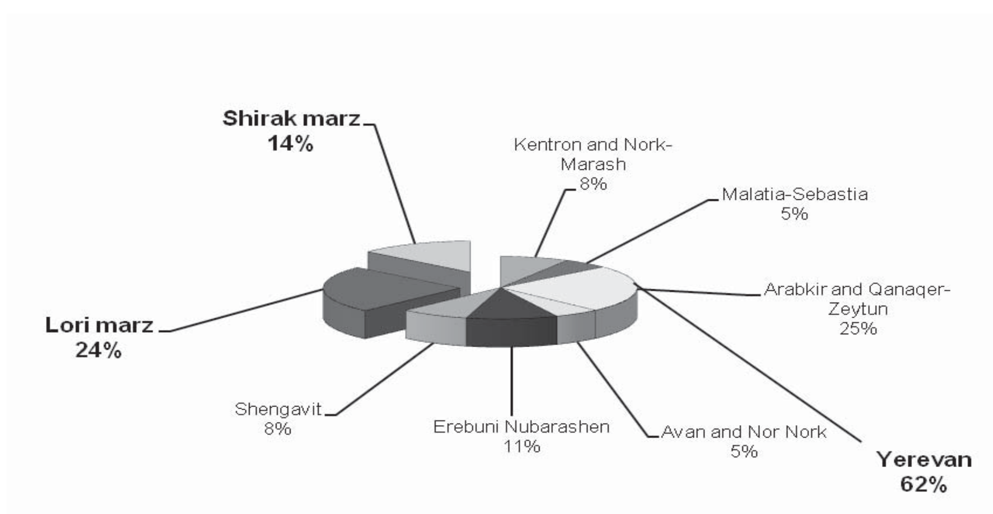

CHART 1. Geographic distribution of monitored cases in percentages

In the monitored cases 72 persons were involved as defendants, 39 of whom were juveniles, 10 people were juveniles when alleged to have committed an offence, but became adults during the trial, while 23 persons were adult co-defendants.[5]

The statistical data indicates that 29% of the juvenile defendants were 16 years old, while only 8% of involved defendants were 14 years old. According to CC, any person who reached the age of 16 before the committal of the crime is subject to criminal liability. Persons who reached the age of 14 before the committal of the crime are subject to criminal liability for limited categories of crimes, namely murder, inflicting injuries to health of severe or medium gravity, kidnapping, rape, violent sexual actions, banditry, theft, robbery, extortion, possession of a car or other means of transportation without the intention of appropriation, destruction or damage of property in aggravating circumstances, theft or

4 A person can be charged with several crimes; therefore, the number of Articles does not match to the number of defendants involved in the monitored cases. See Annex 4 for the text of Articles under the Criminal Code, in force at the time of monitoring activities.

5 Those persons who were minors at the time of committing a crime are regarded as minors for juvenile justice purposes. Therefore this information has relevance with respect to uniformity of application of certain procedural guarantees during the court trial, particularly, the compulsory involvement of defense lawyers, legal guardian, etc. Hence, number 49 (39 juveniles, 10 adults, who were juveniles when allegedly committing the crime) serves as a primary data for statistics, unless otherwise specified.

extortion of weapons, ammunition or explosives, theft or extortion of narcotic drugs or psychotropic substances, damaging the means of transportation or communication lines and hooliganism.[6]

The age group of juvenile defendants is presented in detail in Chart 2.

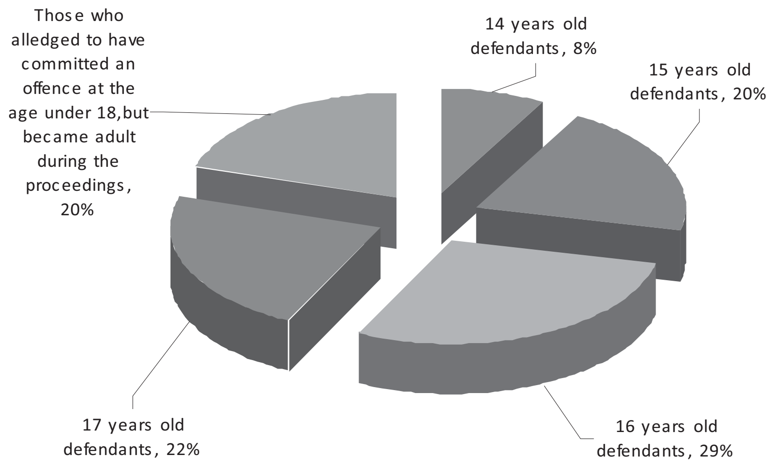

CHART 2. Age Groups of Juvenile Defendants

98 % of juvenile defendants were males and only 2 % were females. A majority of juvenile defendants came from full families and only 4 % of juveniles had divorced parents.

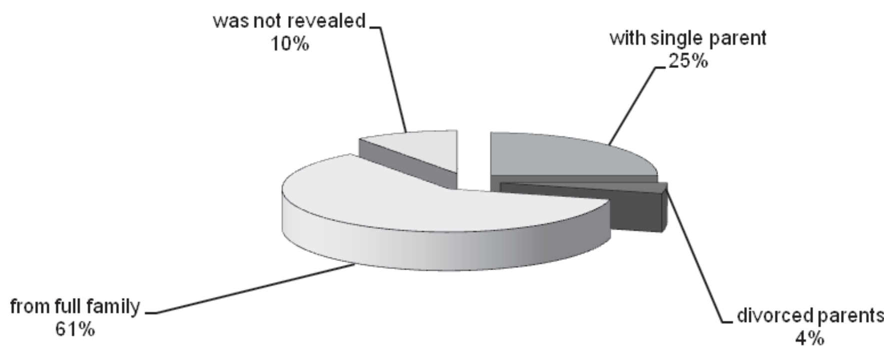

CHART 3. Family status of juvenile defendants

96% of juveniles live in the family with parent(s), 2% live in relatives' family and 2% - in the institution.

About 49 % of juvenile defendants were not attending schools, while 2 % of them were placed in special schools.

6 Article 24 of the CC.

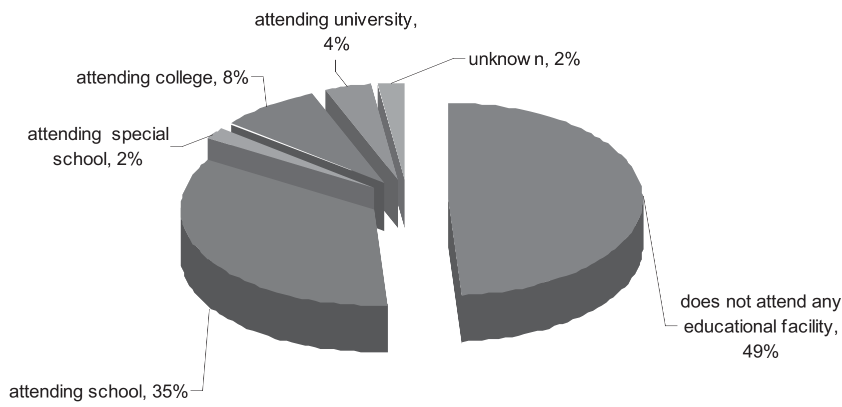

CHART 4. Education

The monitoring revealed a re-offending rate of 12% among the juveniles. On the other hand 6 % of the juvenile defendants were previously registered on police rosters of “at risk” children.

CHAPTER 1: DESCRIPTION OF JUVENILE JUSTICE IN ARMENIA

1.1 APPLICABLE INTERNATIONAL STANDARDS

On the 23rd of June 1993, Armenia acceded to the UN Convention on the Rights of the Child.

The CRC requires State Parties to develop and implement a comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of the CRC. Other international instruments, such as ICCPR, ECHR, ICESCR are also applicable and contain provisions on child friendly justice.[7]

1.2 NATIONAL LAWS AND INITIATIVES

There is no framework law on juvenile justice. The Criminal Code, the Criminal Procedure Code, the Criminal Executive Code and other laws and regulations govern justice administration.

In 2003, a National Plan of Action for the Protection of the Rights of the Child (the "2003 National Plan") was adopted, covering the years 2004–2015. Part VII of the 2003 National Plan refers to juvenile offenders in the context of other issues including vagrancy, trafficking and sexual exploitation of children. It calls for (i) the adoption of a law on the "prevention of vagrancy, begging and offending by minors"; (ii) the creation of centers of cultural education for juvenile offenders; (iii) prevention of offending and protection of juvenile legal rights; (iv) greater use of alternative sentences and expanding the application of non-custodial alternative sanctions or measures; (v) reduction of the number of juveniles in the correctional system; (vi) improved cooperation among responsible ministries, statistical and corrections services; (vii) study of the best international practices on victim-offender mediation with the purpose of introducing it; (viii) training of professionals in contact with children; and (ix) activities and other programs to keep juveniles occupied, including increasing the employment and employability of juveniles accused and/or convicted of crimes (taking into account Labor Code provisions on child labor).

In 2005, a National Commission for Child Protection was established, which is responsible for supervising the implementation of the 2003 National Plan. It is charged with the duty of analyzing problems regarding the rights of children and fostering cooperation between "state governance bodies, public, political, scientific and other organizations which are implementing protection of the rights and interests of the child."

In 2008 the Government by its decree N.1039-N adopted a National Plan of Action for Prevention of Crimes in Armenia (the "2008 National Plan"), which identifies critical areas of reform and sets a timetable for concrete measures. With respect to juvenile justice, it envisages the establishment of juvenile rehabilitation centers in Yerevan, Gyumri and Vanadzor from 2008-2010, strengthening cooperation between child protection units within municipalities and with other concerned organizations, and launching a pilot project of placing police officers in 10 schools in Yerevan. The 2008 National Plan also confirms that there is no unified state policy for crime prevention and notes that regarding the social prevention programs with respect to juveniles, the effectiveness is low.

7 See Annex 3 for the further list of child specific international instruments.

1.3 THE JUDICIAL SYSTEM

In Armenia there are no specialized juvenile courts or judges. Although state officials have indicated that there is an informal practice of specializing judges and assigning juvenile cases to the most professional ones, usually the president of the relevant court, such coherent practice has not been observed by the monitoring team.

Similarly, there is no unit specialized in investigation and prosecution of juvenile cases within the prosecution.

The Public Defender's Office currently provides free legal services to accused juveniles.

1.4 THE POLICE SERVICE

There is a Special Unit on Minors within the Police, which undertakes the responsibility mainly through the 'registration' of children at risk. The registration is done in accordance with the Decree of the former Minister of Interior Affairs (currently Chief of Police of the Republic of Armenia) No. 633 from 08.08.1996. Although the decree was intended for temporary application, it is still in force. This outdated decree contains many restrictive provisions in contradiction with Armenia's international commitments on child law and national legislation. According to that decree children registered in the police rosters as "children at risk" include convicted persons released from imprisonment, conditionally released defendants, convicted persons subjected to alternative sentencing, underage defendants, defendants released from criminal liability following imposition of administrative and public measures, persons returned from special institutions, vagrants, beggars, homeless children, children with behavioral problems. The names of registered children are kept in the rosters for a minimum period of one year, but no later than their coming of adult age at 18. This Police Unit mainly implements preventive work with the juveniles, such as monitoring their behavior and environment, or imposing other restrictions as defined by individual court decisions. The work is carried out in accordance with individual plans devised for each child.

1.5 JUVENILE CORRECTIONAL FACILITIES AND COMMUNITY-BASED PREVENTION PROGRAMS

There are two 'special schools' under the Ministry of Education (Republic Special Complex N1 (Vardashen) and Yerevan Special School N18 (Nubarashen)[8], whose students include an unknown number of underage offenders and children at risk, one correctional facility for convicted juveniles, and one centre for juveniles awaiting trial and sentencing, operating under the Ministry of Justice and one Children's Support Centre (previously known as the "reception and distribution centre") in the capital.

In recent years, the Police have entrusted the management of the Children's Support Centre to the Fund for Armenia Relief (FAR) based on bilateral agreement. FAR has converted it into a model centre for children at risk. The Juvenile Police Unit participates in innovative programs on community-based prevention and treatment, in cooperation with NGOs. Particularly, as a result of cooperation between the Police and Project Harmony International, a successful community-based prevention and rehabilitation program was launched, which is operational in six cities and is included in the 2003 National Plan. Children are referred to the Community Justice Centers by police departments and schools. Among the juveniles referred to the Community Justice Centers there are children who are both registered and unregistered in the Police rosters.

8 The Yerevan Special School N18 (Nubarashen) was reformed to "Poqr Mher" educational complex as Nubarashen branch in Yerevan by Government decree N 1722 of 23.12.2010

The centers adopted the model of the US (specifically Vermont) Community Justice Centers and are regarded as an alternative to police departments,[9] which often helps to avoid stigmatizing. These centers do not serve as a non-incarcerative alternative to detention/imprisonment, instead they mainly work with children under the age of criminal responsibility, who were registered at the police departments or children under 18 who have committed minor administrative offences. The center consists of Restorative Board members (psychologists, teachers, social workers etc., who facilitate reparative activities with children. In addition, the centers have a good number of active community members and students who volunteer there.

In 2010, 100 juveniles were referred to these centers. Work with 31 juveniles is still in process; work with 58 juveniles was effectively wrapped up; 8 juveniles refused to attend the centers.

9 If the child is registered in the police department, s/he is obliged to comply with certain obligations and the fulfillment is supervised by the police. For instance, a weekly visit to the child by a police officer. In cases of child referral to the center, the police formally maintain their supervisory role over the child, yet it is a less intensive surveillance. In case of referrals, the police officers coordinate their supervision over a child mainly through the Community Justice Centers' work and feedback. The Centers serve as proxy "supervisors" for police.

CHAPTER 2: INTERNATIONAL FRAMEWORK ON JUVENILE JUSTICE

The CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on almost all members of the United Nations. It is therefore more powerful and more widely binding than some other international instruments. The most specific articles in relation to juvenile justice are Articles 37 and 40. However, the CRC is not just a list of separate articles. It was designed to look at children as whole human beings. It is therefore very important to set Articles 37 and 40 in the context of the overall framework of the CRC and its main 'umbrella rights.' These include the right to life, survival and development, the best interests of the child as a primary consideration, non-discrimination on any grounds, and the right to participation. The CRC also contains articles relevant to the aspects of prevention and General Comment No.10 on Children's Rights in Juvenile Justice.

The 'Riyadh Guidelines' represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school, community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather as a means of positively promoting general welfare and well-being. It requires a more proactive approach that should involve "efforts by the entire society to ensure the harmonious development of adolescents". More particularly, countries are advised to develop community-based interventions to assist in the prevention of children coming into conflict with the law, and to recognize that "formal agencies of social control" should be utilized only as a means of last resort. General prevention consists of "comprehensive prevention plans at every governmental level" and should include: mechanisms for the co-ordination of efforts between governmental and non-governmental agencies; continuous monitoring and evaluation; community involvement through a wide range of services and programs; interdisciplinary co-operation; and youth participation in prevention policies and processes. The Riyadh Guidelines also call for the decriminalization of status offences and recommend that prevention programs should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

The 'Beijing Rules' provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach. They pre-date the CRC, are specifically mentioned in the CRC Preamble, and several of their principles have been incorporated into the body of the CRC. The Rules encourage: the use of diversion from formal hearings to appropriate community programs; proceedings before any authority to be conducted in the best interests of the child; careful consideration before depriving a juvenile of liberty; specialised training for all personnel dealing with juvenile cases; the consideration of release both on apprehension and at the earliest possible occasion thereafter; and the organization and promotion of research as a basis for effective planning and policy formation. According to the Rules, a juvenile justice system should be fair and humane, emphasize the well being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the defendant as well as the offence. The importance of rehabilitation is also stressed, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organisations, local institutions and other community resources to assist in that process.

The 'Havana Rules', set out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective, and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed to be 'at risk') by order of any judicial, administrative or other public authority. In addition, the Havana Rules include principles that universally define the specific

circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. In the context where deprivation of liberty is unavoidable, detailed minimum standards of conditions are set out. The Havana Rules serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.

The 'Tokyo Rules', are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society. When implementing the Tokyo Rules, governments shall endeavor to ensure: proper balance between the rights of individual offenders, victims and concern of society for public safety and crime prevention. In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society, and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender, if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.

The 'Vienna Guidelines' provide an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programs of action to promote the effective application of international rules and standards in juvenile justice. The document contains, as an annex, Guidelines for Action on Children in the Criminal Justice System, which was elaborated during the meeting of experts held in Vienna in February 1997. This draft program of action provides a comprehensive set of measures that need to be implemented in order to establish a well functioning system of juvenile justice administration according to the CRC, Riyadh Guidelines, Beijing Rules and the Havana Rules.

CHAPTER 3: COMMUNITY-BASED INTERVENTIONS

The introduction of a legislative framework involving early intervention, restorative justice and a multi-disciplinary approach to working with juveniles facing criminal prosecution contributes to improvement of the delivery of youth justice services and reduces youth offending[10]. This can most effectively be done by focusing on diversion and rehabilitation involving greater use of community-based interventions and the promotion of initiatives to deal with young people in conflict with the law. In this process it is also important to encourage the involvement and participation of families in addressing the problem of offending.

International standards require the adoption of measures for dealing with children in conflict with law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.[11] Given the fact that the majority of child defendants commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.[12]

Children in conflict with the law, including those with prior convictions, have the right to be treated in ways that promote their reintegration. The arrest, detention or imprisonment of a child may only be used as a measure of last resort. It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children determined to have committed crimes are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, warnings, guidance and supervision, counseling, probation, foster care, educational and training programs, and other alternatives to institutional care.[13]

Two kinds of interventions can be used by the State authorities when dealing with children alleged to be, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings.[14] They will be separately discussed in following sub-sections.

However, it should also be noted that a large number of juveniles who are accused, and even those who actually committed a crime, will cease the behavior that brought them into conflict with the law ***without institutional intervention***.[15] Institutional options are to deal with those likely to reoffend – the small number of juveniles with multiple cases and convictions, but not the majority. For instance, the monitoring initiative documented a 12% recidivism rate. It is that 12%, and those sentenced to incarceration that require institutional intervention.

3.1 DIVERSION

Diversion refers to measures which channel children in conflict with the law away from judicial proceedings and enable them to be dealt with by non-judicial bodies, thereby avoiding the potentially negative effects of formal judicial proceedings and a criminal record, and reducing the likelihood of

10 Mark W. Lipsey ; David B. Wilson ; Lynn Cothern, Effective Intervention for Serious Juvenile Defendants.

11 Article 40.3 of the CRC.

12 Children and Juvenile Justice. Proposals for Improvement. Council of Europe, Commissioner for Human Rights, which can be found at https://wcd.coe.int/wcd/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1370644&SecMode=1&DocId=1417380&Usage=2

13 UNCRC Article 40.4.

14 General Comment No. 10 (2007) on Children's rights in juvenile justice, para. 22.

15 Austria is one country with very low rates of institutionalization, and very low rates of recidivism among juveniles.

further offending. Diversion is also an important component of restorative justice and has regard for the needs of those harmed by an alleged criminal act. It can provide the complainant with the opportunity to speak directly to a child about the injury or harm that they have caused. In some cases, there may be a mediation process or other agreement on how the child can compensate the victim or do something positive for the community, such as an apology to the person harmed by the proscribed conduct, financial or other reparations, or an initiative involving the child's family and community that might help to prevent re-offending.

Diversion breaks the revolving cycle of stigmatisation, violence, humiliation, and rupturing of social relationships that accompany incarceration. It avoids labeling children and reinforcing their criminal experience, isolating them in the company of those convicted of crimes and avoids limiting children's' options for reintegration and future development.

Defendants sentenced to punishment that introduce them to more criminals (in particular in custodial sentences), learn criminal skills, language and culture that are very likely to reinforce a child's self-identification with criminality and offending behaviour. Once defined as a criminal in their own eyes and those of wider society, they find it much more difficult to change and adjust to the world of schoolwork and family life. Therefore children should be diverted from court proceedings and from custody whenever possible.[16] Moreover, it is inconsistent with the interests of the child to exclude those with prior convictions from diversion – in all cases, the least restrictive response to conduct must be considered, by an individualized analysis of each young person and his/her alleged offense.

On the other hand, diversion also benefits society as a whole. By sparing society the expense of trial and the stigmatizing consequences of a criminal conviction, successful divertees are given the opportunity to make reparations to their communities through integration rather than isolation from social networks. Similarly, analyses of societal costs of incarceration that cull information from all the agencies involved in implementing custodial sentences demonstrate that society pays a high monetary price for correctional costs, as well as a high social price when stigmatization and socialization within prison lead to subsequent arrests and conviction.

The CRC has set certain conditions, which must be met in the case of diversions. Among them, the following are of particular importance:

1. Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that s/he freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;[17]
2. The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination and to increase the likelihood of full re-integration into society following an arrest; In keeping with the CRC and accompanying standards, diversion should be considered in ***all*** cases. The defense should be tasked with presenting non-state options for diversion tailored to the child, whom the defense can come to know better than other justice institutions, by virtue of the confidential relationship it enjoys with clients. Through that relationship, information the defense offers is more likely to supplement rather than duplicate actions by other justice actors. Additionally, individuals are more likely to comply with measures they helped to design than those imposed by others. However, there should be some guidelines of factors to consider in deploying diversion.

16 Petty, C. and Brown, M. (eds), Justice for Children, 1998, p.12.

17 This provision of the CRC General Comment seems problematic. If a child did not commit the crime charged, he/she is ineligible for diversion, which could result in the innocent child being detained in police custody, and the guilty being released. There is a perverse incentive under this reading of diversion for all juvenile defendants to admit the offense to gain the benefit of non-custodial diversion.

3. The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure; (the defense should be working as hard as the police/prosecution to develop alternatives to state intervention, tailored to each individual child).
4. The completion of the diversion by the child should result in a definite and final closure of the case.

The project observed many instances where the defendant should have been eligible for diversion, but his/her case was instead presented for trial. From this perspective, the Armenian legislative framework also seems weak and inadequate for operative and non-discriminatory diversion in juvenile cases, as the experience in a positivist justice environment leaves justice actors feeling constrained in their actions to do only what is expressly spelled out by law, rather than using discretion or being governed by general principles. In this context, the absence of specific instructions to police, prosecutors and judges on use of diversion acts as a disincentive, even though nothing in the law prohibits consideration of a broad range of alternative solutions.

The Criminal Code and Criminal Procedure Code of Armenia provides for the possibility to exempt a defendant from criminal responsibility in certain cases. Article 37 of the Code of Criminal Procedure gives prosecutors, judges, and investigators with the consent of prosecutors, discretion to decline or discontinue the prosecution in certain circumstances envisaged by Articles 72, 73 and 74 of the Criminal Code. These cases include repentance, victim-defendant reconciliation[18] and substantial change of situation respectively. These articles apply regardless of the age of the accused. However, it is worth mentioning that exception from criminal responsibility is confined to a concrete category of crimes, namely, petty crimes under Articles 72 to 74 and crimes with medium gravity under Articles 72 and 74.

On the one hand, the terms used in the mentioned provisions that would allow the least restrictive option for the juvenile defendant are too broad: aside from what is specifically named in the CC, the terms “changed circumstances”, “sincere repentance” imply some discretion, but prosecutors rarely consider a more lenient response to an accusation without clear-cut standards and instructions. Without express guidelines, it is much simpler for police and prosecutors not to apply any alternative measures. Similarly, without prosecutor-initiated alternatives, judges also lacking specific instructions also find it easier to follow standard trial and sentencing procedures used in all criminal cases regardless of the defendants’ age.

Where the abovementioned conditions are met, the prosecutor or judge, applying Article 37 of the Criminal Procedure Code, can abate the case and discontinue the proceedings. However, they are not required to impose any education or other measures whatsoever taken with respect to the defendant. The juvenile defendants are simply discharged of criminal responsibility.

Article 91 of the Criminal Code contains a special provision applicable to juveniles, pursuant to which, the courts have discretion to impose non-penal measures on defendants with no prior record who are accused of crimes of minor or medium gravity. These ‘educational coercive measures’ – warning, parental custody, reparation of the victim, restrictions on conduct or placement in special educational facilities for juvenile defendants or ‘medical-educational’ facilities – are not considered as sentences. If the juvenile does not comply with the measures imposed, the order may be cancelled and a sentence may be imposed.

If the minor regularly violates the enforced educational coercive measures, by motion of the local body of self-government or competent bodies supervising the convict’s behavior, the documents are forwarded to the court, to resolve the issue of cancellation of the enforced educational coercive measure and subjecting the minor to criminal liability. When committing a new crime, the minor is not

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18 According to Article 73 of the Criminal Code, the person who committed a not grave crime can be exempted from criminal liability, if he/she reconciles with the aggrieved, mitigates or compensates the inflicted damage in some other way.

subjected to criminal liability for the previous crimes for which s/he was sentenced to enforced educational coercive measures. There is also the provision that judges may impose sentences lower than the lowest contemplated sentence stipulated to in the Criminal Code.[19]

However, in contrast to the simple exemption of a juvenile from criminal liability under Article 37, Article 91 goes further and allows the courts (but not the prosecutor or investigator) to impose educational measures. In addition, Article 91 can only be applied in instances when the pre-trial investigation is over and the criminal case with an approved criminal indictment has been sent to the court for the final determination. Therefore, this provision can hardly be regarded as a diversion in the context of interventions without resorting to judicial proceedings, as the powers of diversion under Article 91 can only be exercised once a trial has begun, and are not available to prosecutors or investigators in the pre-trial stages. This measure is more relevant to intervention in court proceedings and as such is discussed in more detail in the next section.

The legislative basis for diversion is not adequate for several reasons;

1. The law does not recognize juvenile defendants as qualitatively different from adults accused of crimes, and so there is no juvenile justice system that pursues a different goal from the standard crime-solving and punishment system for adults.
2. The application of non-penal disciplinary-educational measures is only possible at trial stage, in contravention of one of the primary aims of diversion - to deal with children in conflict with law without resorting to judicial proceedings.
3. In the context of Armenian legislation, complainant-defendant reconciliation (when achieved) might serve as a ground for exception from criminal responsibility without resorting to alternative diverting measures. Therefore, in fact, victim-defendant reconciliation constitutes a formal condition for absolving from criminal responsibility. However, in cases of clear-cut unlawful conduct by the defendant, reconciliation does not in itself address underlying causes of the offense.
4. Exception from criminal responsibility following complainant-defendant reconciliation can be carried out only in petty crimes with respect to both adults and minors. The system as it stands now equates the needs and interests of adults and minors without any specificity of regulation.
5. Referral of cases by police to Children's Support Centers does not have legal basis in criminal procedural legislation. Although in practice, six Community Justice Centres are operating in Armenia,[20] there is no law which contains specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard in order to protect the child from discrimination.
6. The list of measures, which can be applied at earlier stages of criminal procedure, is very restrictive. In contrast, in many countries a variety of community-based programmes have been developed, such as community service, intensive educational programs, supervision and guidance by, for example, social workers or probation officers, family conferencing[21] and other forms of restorative justice including restitution to and compensation of complainants.

19 Article 64 of the Criminal Code

20 The Centres have been established by PH International, in accordance with the National Programme for the Prevention of Crime. The Centres have a dual purpose, both prevention and diversion. Some beneficiaries are children aged 14 years or older involved in offences referred by the police. The referral is made before the case is forwarded to the prosecutor. Upon referral, the child and his/her parent(s) must sign an agreement regarding participation. The duration of participation depends on the progress made, typically from two to five months. Services provided include victim-defendant mediation, crafts (especially pottery), computer literacy, recreational activities and informal counseling. Agreement of the victim to participate in mediation is not a prerequisite for referral. The participation of the victim is sought after referral has been made, and services are provided even if the victim does not agree to participate.

21 Family conferencing is widely used in the context of police diversion and involves the young person and his/her family in finding a solution to the problems underlying the offending behaviour.

Therefore, police and justice professionals generally lack the combination of legal discretion, procedures and services that would allow them to divert children away from the formal criminal justice system. Although some "unprompted" diversion may be taking place, this lacks coherence and legality to help the child avoid coming into conflict with the law again and the safeguards required to discourage corruption.

3.2 INTERVENTION IN THE CONTEXT OF JUDICIAL PROCEEDINGS AND THE USE OF ALTERNATIVES TO CUSTODIAL MEASURES

When judicial proceedings are initiated by the competent authority, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/ or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as measures of last resort.

Article 37(b) of the CRC requires that in the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time. This means that State Parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention[22].

On the other hand, pursuant to article 40 (1) of the CRC, 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, his/her alleged crime, or criminal record. 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.

In Armenian legislation some alternatives to custodial measures do formally exist. According to Article 134 of the Criminal Procedure Code, the following preventive measures can be applied with respect to the accused: 1) arrest; 2) bail; 3) a written obligation not to leave the jurisdiction; 4) personal voucher; 5) an organization's vouching for the defendant; 6) release to parental supervision; and 7) release to the supervision of commander.

In general, pretrial detention may only be imposed for a crime punishable by more than one year of imprisonment, or if there is sufficient reason to think that the accused may flee justice or commit another offence. Article 442 of the Criminal Procedure Code contains *lex specialis* on juveniles, which provides that an accused juvenile may be detained only if charged with a crime of medium or more severe gravity.

In contrast, under international standards, there can be no restriction of when a non-custodial pre-trial or post-conviction measure can be used[23] – limiting to only those crimes punishable by less than one year is a violation of children's rights on several levels: (1) no law should preclude consideration of alternatives to custody for juveniles; (2) a ***crime-***based analysis is tantamount to presuming guilt of the defendant, as opposed to a ***risk-***based analysis examining the likelihood of a defendant fleeing or intimidating witnesses; and (3) in practice, the language of Article 442 (allowing pre-trial detention only when there is a charge of medium or greater gravity), is interpreted as meaning that use of pre-trial detention is automatic when defendant is eligible by virtue of the gravity level of the crime of which s/ he is charged.

With respect to juvenile defendants, an additional alternative to pretrial detention includes release under the supervision of parents or guardians. Supervision of a juvenile suspect or accused is carried out by parents, guardians, trustees or the administration of the institution for children where the minor

22 General Comment No. 10.
23 Article 5 of the ECHR, Patsuria v. Georgia, no. 30779/04 (Sect. 2) (Eng) – (6.11.07)

is kept. The above mentioned persons shall be responsible for the appropriate behavior of the minor, his/her appearance in court, as well as his/her fulfillment of other court proceeding responsibilities.[24] Parents, guardians or trustees retain the right to refuse to supervise a juvenile suspect or accused. However, this provision is also problematic, as the use of detention in response to parents' negligence effectively punishes the child for his/her parents' conduct, rather than selecting the appropriate pre-trial options.

Section 5 of the Criminal Procedure Code defines the peculiarities of punishment and criminal responsibility.[25] Article 85 and 86 of the Criminal Code enumerates the types of punishment applicable to juvenile defendants, which include fines, community work, detention and imprisonment, as well as outlining alternatives in the form of educational coercive measures.[26]

This regulation is quite restrictive and inadequately considers the nature of adolescence and childhood: juveniles are rarely able to pay fines, and work could violate the labor code, amounting to narrower options for alternatives for children than those that are available to adults.

Armenian legislation permits absolving the juvenile from criminal responsibility or punishment by applying educational measures.

Pursuant to Article 91 of the Criminal Code noted above, a minor for the first time accused of a crime of minor or moderate gravity, can be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced educational measures.[27]

The court can assign the following enforced educational coercive measures in relation to the minor:

1. warning, i.e., an explanation to the minor about the damage inflicted by his act and about the consequences of repeated committal of crimes envisaged in this Code;
2. handing over for supervision to the parents, persons replacing the parents, local self-government bodies, or competent bodies supervising the convict's behavior for up to 6 months;

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24 Article 148 of the CPC.

25 Being a minor at the time of the committal of the crime is regarded as a mitigating circumstance under Article 62 of the Criminal Code.

26 Fines can be used with respect to a child if the minor has his own income or a property which is subject to confiscation by law. Fines are calculated by reference to a multiple (10 to 500) of the current minimum rate established in the Republic of Armenia by law, at the time of assignment of the punishment (Article 87 of the CC) Detention for the period from 15 days to 3 months, can be only imposed on a minor who has reached the age of 16 years at the moment of sentencing (Article 88 of the CC), A minor can be imprisoned for petty crimes for a term up to a year; for medium-gravity crime a term up to 3 years; for grave or particularly grave crime, committed when under 16 years of age, a term up to 7 years; for grave or particularly grave crime, committed at the age of 16 to 17 years, a term up to 10 years (Article 89 of the CC). When assigning punishment to a minor, his home life and upbringing are taken into account, the degree of mental development, health, other features of personality, as well as the influence of other persons (Article 90 of the CC).

27 Article 443 of the CPC allows application of educational coercive measures instead of punishment, if the Court reaches the conclusion that the minor can be corrected without a punishment. Article 93 of the Criminal Code, specifies that a minor who committed a petty or medium-gravity crime can be exempted from punishment, if the court finds that the purpose of the punishment can be achieved by placing the minor in a specialized educational and disciplinary or medical and disciplinary institution. Assignment to specialized educational and disciplinary or medical and disciplinary institution is imposed for the term of up to three years. However, if the juvenile reaches the age of majority while serving his/ her sentence, he/she must be released from the institution period no further measures are taken after the adult is released.

Other alternatives can also be applied. For instance by virtue of Article 94 of the Criminal Code, the sentence can be suspended and the juvenile can be pre-released, if he/she has already served:

1) no less than one quarter of the punishment assigned for a petty or medium-gravity crime;

2) no less than one third of the punishment assigned for a grave crime; or

3) no less than half of the punishment assigned for a particularly grave crime.

3. imposing the obligation to mitigate the inflicted damage, within a deadline established by the court; or
4. restriction of leisure time and establishment of special requirements to the behavior, for up to 6 months.[28]

A juvenile can also be absolved from criminal responsibility due to expiry of limitation periods.

On the other hand, Article 70 of the Criminal Code specifies general conditions for non-application of punishment conditionally.

When assigning a punishment in the form of public work, arrest, imprisonment or detention in the disciplinary battalion, the court comes to the conclusion that the correction of the convict is possible without serving the sentence, the court can decide not to apply this punishment conditionally.

When not applying the punishment conditionally, the court takes into account the features characterizing the personality of the perpetrator, liability, mitigating and aggravating circumstances. In not applying the punishment conditionally, the court establishes a probation period, from 1 to 5 years.

Under the CRC, a child should never be beyond consideration of release – the least restrictive means possible, with restriction being the means "of last resort" and for the shortest appropriate time means that at no time should a juvenile be excluded from consideration of a non-custodial release, determined only by an individualized examination of each child.

However, the monitoring results indicate that in practice custodial preventive and sentencing measures are being widely used, in contrary to international requirements and in reality non-custodial, less intrusive measures are not being deployed. Despite the availability of alternatives, the detention or imprisonment of a child was not used as a measure of last resort and for the shortest appropriate period of time.

All the general principles of juvenile justice that are included in the CPC and CC in theory track international standards, but ignore local practice, in which discretionary options for reduced restriction of children's freedom are unlikely to be used broadly absent specific guidelines, instructions, and extensive training.

Monitoring results indicate that in 1/4 of monitored cases (25 %) detention was selected as a measure of restraint. In 6% of these cases bail was imposed as an alternative measure. The use of preventive measures is presented in the Chart 5.

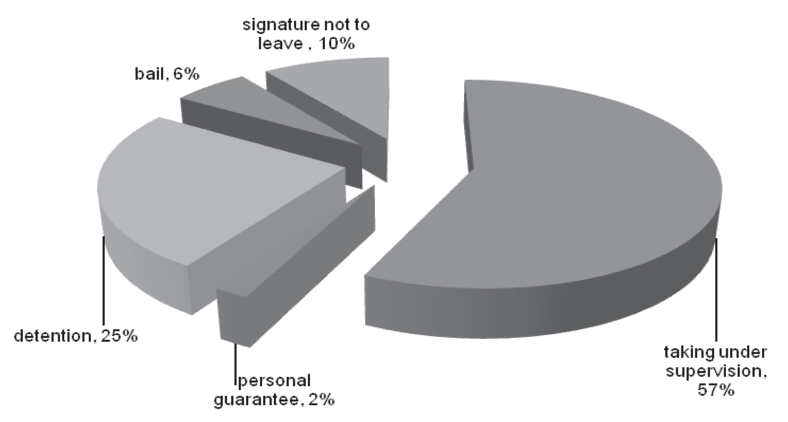

CHART 5. Use of preventive measures

28 Article 91 of the CC.

The table below compares the use of preventive measures with respect to juvenile vs. the adults involved in mixed juvenile-adults cases.

Imposed Preventive Measure	Defendant's age		Total
	juvenile	adult	
Detention	24.5%	52.2%	33.3%
Bail	6.1%	0%	4.2%
Signature not to leave	8.2%	47.8%	20.8%
Personal guarantee	2.0%	0%	1.4%
Taking under supervision	59.2%	0%	40.3%

TABLE 2. Preventive Measures

Monitoring results indicate that the widely applied punishment with respect to juvenile defendants is imprisonment. In 90% of cases the courts applied imprisonment. In contrast educational coercive measures were applied only in 2 % of cases. 47% of juveniles out of 90 % were conditionally released with the application of Article 70 of the Criminal Code.[29] 14% of juveniles were released based on the amnesty.

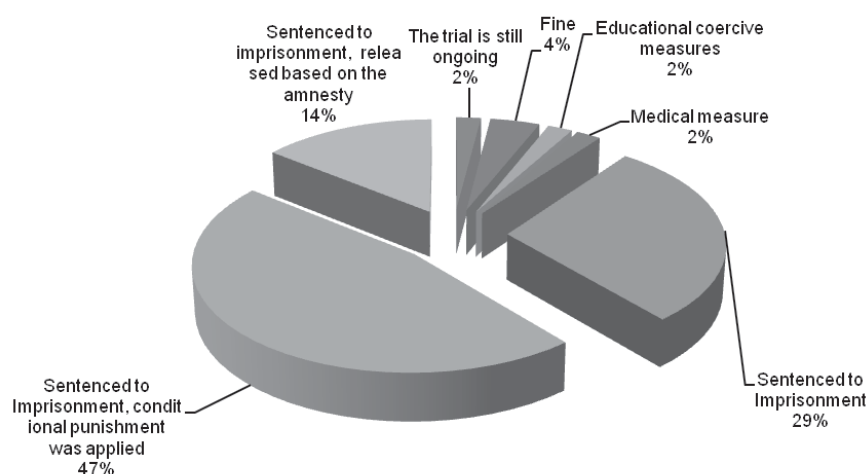

CHART 6. Sentencing policies

The monitoring indicates that terms of detention and imprisonment are very long and strict for juveniles.

29 According to Article 70 of the Criminal Code, when assigning a punishment in the form of imprisonment the court comes to the conclusion that the correction of the convict is possible without serving the sentence, the court can decide not to apply this punishment conditionally.

Term of the detention	Defendant's age		Total
	juvenile	adult	
Not known	-	3	3
Was already imprisoned	1	0	1
3 months	1	1	2
6 – 7 months	3	2	5
8 – 9 months	5	4	9
10 – 11 months	2	2	4
Total	12	12	24

TABLE 3. Duration of pre-trial detention

The monitoring results clearly show that prosecutors were inclined to demand custodial measures, while the judges mostly granted their requests without paying due attention to vulnerability of children and the need to correct child defendant by application of alternative non-custodial measures. This infringed on well known international standards and approaches. Moreover, although the monitoring project did not specifically track pre-trial detention determinations, those instances when the project gained information on pre-trial detention demonstrated that such decisions are being made with no grounding in fact or law.

The monitoring reports also disclosed interesting correlation between pre-trial status and outcome (guilt/innocence), as well as ultimate sentence.

Court sentences	Preventive measures imposed on the juvenile defendants					
	detention	bail	written obligation not to leave the place	personal guarantee	taking under	total
Fine	0	0	1	0	1	2
Imprisonment	10	1	0	0	3	14
Imprisonment. Conditional punishment	0	2	2	1	18	23
Imprisonment. Amnesty	1	0	1	0	5	7
Educational coercive measures	0	0	0	0	1	1
Medical measures	0	0	0	0	1	1
Total	11	3	4	1	29	48

TABLE 4. Sentencing Polices Depending on Imposed Preventive Measures[30]

30 Trial proceedings of one case have not finished so far. A juvenile who is involved as a defendant in this case has

Recommendations

- *Create child oriented, developmentally-appropriate, and restorative juvenile justice system that reflects international standards.*
- *Introduce a community based alternatives to the formal justice system (including appropriate mediation and diversion mechanisms and exemplify the roles of police, investigators, prosecutors and courts in this respect.*
- *Introduce a new legal and procedural framework for reorientation of the justice system on the child's constructive integration in society following examination of criminal charges, rather than crime-solving and punishment.*
- *Reduce the over-use and length of custodial measures (pre-trial detention and imprisonment), as well as consider the possible introduction of new alternatives.*
- *Shorten the maximum period of pre-trial detention of juvenile to up to 6 months.*

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been imposed detention as a preventive measure.

CHAPTER 4: SPECIALISED BODIES AND PROCEDURES

In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in Article 40 (3) of the CRC, State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child. Rule 12 of the Beijing rules draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. From this perspective, as police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

The Committee on the Rights of the Child recommends that where this is not immediately feasible for practical reasons, the State Parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice. In addition, specialized services such as probation, counseling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child defendants.

Study of international practices indicates that there are special criminal youth courts/or judges in many countries, such as Austria, Canada, Croatia, Czech Republic, France, Germany, Greece, Hungary, Italy, the Netherlands, Serbia, Slovenia, Kazakhstan (two cities), Switzerland, etc. In some other countries laws set additional requirements for judges dealing with juveniles cases. For instance: expert knowledge (Greece), judicial training (Finland, Italy), specialization (Turkey). Some countries also have specialized youth prosecutors (Romania, Kosovo, Germany) and specialized children police (Turkey).

Furthermore, many countries are involving social welfare institutions in the justice process for juveniles. In Turkey, for instance, specialist social workers are attached to the courts, and have duty to compile information on juvenile's social and personal circumstances. In England and Wales "Independent Advocates" are available to children in custody, to whom they can raise concerns/ complaints. In Bulgaria, Estonia and Northern Ireland, there are juvenile committees composed of representatives from different agencies and always include at least one social worker or social pedagogue, which settle cases at youth conference. In Germany there is a special branch of the Youth Welfare Office, Juvenile Court Aid, which supports the prosecutor and the court during the proceedings. In addition, in juvenile trials the participation of the social court assistant (*Jugendgerichtshilfe*), being a social worker of the community youth welfare department, is required. The latter must prepare a social report and give evidence about the personal background of the juvenile, including assisting the judge in finding the appropriate sanction.

As noted above, Armenian legislation does not contain functioning laws or procedures specializing in juvenile justice as a comprehensive approach to administering justice with regard to juveniles. Instead, the Criminal Procedure Code and Criminal Code include separate chapters on the peculiarities of prosecution and sentencing of juvenile defendants and a number of piecemeal provisions scattered throughout the pages of the codes. Ordinary courts and judges handle juvenile cases, and the supposedly informal practice of assigning juvenile cases to more experienced judges, namely the court chairmen, does not appear to be coherently applied. More specifically, in 37 monitored cases 25 judges were involved. Only two of them were presidents of the courts.

The results of the monitoring project did not identify any consistency in case distribution among the specially trained judges, prosecutors and public defenders, and did not track any evident specialisation. The official submission, therefore, is that the system of informal specialisation of judges is not effectively practiced and has not been observed or confirmed during the monitoring process.

The monitoring team made several queries to different agencies: UNICEF, EU, CoE. OSCE, Court of Cassation, the Chamber of Advocates and the Police. In response to these queries, it was discovered that organised training was irregular and provided for a very limited number of participants on an ad hoc basis.

UNICEF in particular, has organized two training events for judges, prosecutors and police officers from 17 to 19 July and 24 to 26 July 2008. As a result recommendations were developed, emphasizing the need to conduct interviews of juveniles by professionals and specialized police officers, the need to have professional judges to hear children's cases, the need to have specialized prosecutors, experienced in questioning and aware of the psychological peculiarities of a juvenile.

Pursuant to the information provided by the Court of Cassation two training days for 20 judges, 17 of which from courts of general jurisdiction and 3 from the appeal court, were provided by the judicial school. According to the information presented by the Court of Cassation, the courts of general jurisdiction, the appeal courts and the court of cassation have 220 judges. The Court of Cassation has also informed us that issuance of an instruction, according to which the juvenile cases will be dealt only by the trained judges, is anticipated in the upcoming session of the Council of Chairmen of the Courts.

The Chamber of Advocates informed the trial monitoring team that no training was organized on juvenile justice by the Chamber. Several years ago training was conferred by the OSCE and a few lawyers took part.

Lack of specialisation clearly prejudices the quality of justice in juvenile matters, which was manifested in a different way. In particular, the judges did not demonstrate a sufficient knowledge of age psychology, which undermined the effective organization of the court proceedings. Discrimination and prejudice, as well as defiance and indifference, in some cases, occurred during the questioning. Other negative appearances, such as inappropriate comments, lack of understanding of how to talk to adolescents; how to explain proceedings, ignorance of the non-criminal justice goals of criminal proceedings (restorative justice) and failure to treat the proceedings differently from the average criminal case persisted.

A description of the aforementioned shortcomings and their frequency is introduced in Chapter 8.

Recommendations

- *Specialize the judges, prosecutors, investigators, police officers and the lawyers of public defender's office in juvenile cases.*
- *Prohibit by law the participation of judges, prosecutors, investigators, public defenders in juvenile cases who have not undergone special training on juvenile justice,*
- *Assist the Chamber of Advocates to offer special training on juvenile justice for private lawyers.*
- *Ensure that children's rights and child protection practices are officially incorporated into the initial and in-service training curricula of professionals to ensure that the training is replicable, sustainable and consistent.*

CHAPTER 5: THE RIGHT TO A PUBLIC HEARING AND JUVENILES' RIGHT TO PRIVACY

The Constitution of the Republic of Armenia guarantees everyone the right to a public hearing, permitting restrictions only in the interest of morals, public order, national security, *protection of the private life of the participants*, or if the administration of justice so requires.[31] The CPC also provides that trials shall be public and that this right may be restricted by a court decision in specific circumstances and in a manner prescribed by law in crimes relating to private and family life, honour and dignity, sexual freedom and immunity, as well as for the protection of participants of criminal proceedings and their close relatives.[32]

The monitoring results highlight courageous practices in holding public hearings, which is crucial in evolving justice systems. Until Armenia has a juvenile justice system in place in which all "crime-solving" and punishment goals become subordinate to restorative justice, holding a closed trial on juveniles will be detrimental to the interests of the child.

Article 16 of the CRC protects the right of a child to have his/her privacy fully respected during all stages of the proceedings, namely 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.

The primary aim of this provision is to avoid harm caused by undue publicity or by the process of labeling or alienation of the child from his peers and community at large. Therefore, no information shall be published that may lead to the identification of a child defendant because of its stigmatization effect and possible impact on his/her ability to have access to education, work, housing or to be safe.

The right to privacy also requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the records of child defendants should be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication, and ruling of the case. With a view to avoiding stigmatization and/or prejudgments, records of child defendants should not be used in adult proceedings in subsequent cases involving the same defendant.[33]

In assessing the Armenian legislation and implementation practices in light of these standards, it becomes evident that the privacy of child defendants has been seriously violated. The monitoring results show that the names of juvenile defendants were made public and their anonymity has not been kept in procedural documents. The monitors even observed a case, which was videotaped for broadcasting on a program called "judicial hour". Upon the motion and persistent objections of the defense counsel only the part pertaining to examination of the juvenile defendant was excluded.

One of the key concerns in this field remains the broadcasting of official "02" TV program of the Police in Public television, which periodically shows arrested persons, including juveniles, without voice or face distortion. The official version of the committed crime is being presented in detriment to the principle of presumption of innocence.

Furthermore, the monitoring results show that neither newspapers nor the media were banned from naming children accused of crime or from showing their faces and criminal records, all of which contains the risk of ruining a child's adult life before s/he reaches adulthood.

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31 Constitution of the Republic of Armenia, Article 19.

32 CPC, Article 16.

33 The Beijing Rules, rules 21.1 and 21.2.

Recommendations

- *Impose a duty to preserve confidentiality on all persons (judges, police officers, investigators, attorneys, witnesses, accused, etc) who are involved in proceedings in which juvenile defendants is involved.*
- *Place an injunction on the press and media to prevent broadcasting or publication of a juvenile's name, image or any other information that may identify the child.*
- *Withhold the names of children in the judgment or other documents which are being made public.*
- *Expunge all records of any conviction for an act committed by a child under the age of 18 following extinguishing of any conditions.*
- *Conduct trainings for print and broadcast media on juvenile rights.*

CHAPTER 6: PRESUMPTION OF INNOCENCE

The presumption of innocence is fundamental to the protection of human rights of children in conflict with the law. The child alleged to be or accused of having infringed the penal law has the benefit of doubt and is considered guilty as charged only if these charges have been proven beyond reasonable doubt, as decided by a judge.

In reality, mistakes happen. Children may get drawn into the conduct of others that they never intended to partake in, they can be suggestible, and confess to acts they did not commit and sometimes witnesses misidentify individuals they associate with commission of a crime.

The presumption of innocence is the defendant's protection against an error that can lead to the conviction of someone who is not guilty. Although the presumption of innocence applies to all defendants across the board, the consequences of a wrongful conviction of a juvenile are dire and dangerous. For these and other reasons, it is imperative that justice actors approach each defendant with an understanding that s/he may not have committed any crime, or may be overcharged. It is also critical that the police, prosecutors and judges value not only laws that empower justice agencies, but also those rights that place restrictions on those agencies' powers, in favor of juveniles accused of crimes, including a real presumption of innocence.

The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. Under the CRC, State Parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Information on the child's development is relevant to an individualized analysis of each defendant and to sentencing if the child is guilty. Lacking an understanding of the process and its consequences, immaturity, fear, defensive bravado or other factors can cause the child to behave in a manner that would be inappropriate for an adult, and can be misinterpreted by justice actors. But the authorities must not assume that the child is guilty based on behavior that they do not understand, unless there is proof of guilt beyond any reasonable doubt.

Armenian legislation reaffirms the guarantees of the presumption of innocence, the prohibition against placing the burden of proof on the defence and the requirement that any potential doubt be interpreted in favor of the accused.

The monitors evaluated the attitude of courts towards the defendants, more specifically, whether the courts displayed any preconceived inclinations and/or demonstrated a biased approach towards the defendants and their guilt.

The monitoring revealed that the courts sometimes displayed preconceived bias towards juvenile defendants, even going so far as to pressure them to admit guilt in order to justify that bias before evidence was submitted.

The monitors observed numerous court sessions in which judges made comments implying defendants' guilt prior to any final finding of guilt based on evidence. These comments were often combined with an accusatory or even openly hostile attitude demonstrated by judges. Such comments and attitudes are incompatible with the juveniles' right to a fair trial and undermine public trust in the impartial administration of justice and presumption of innocence.

Example

> *In one case, the judge got irritated and yelled at the juvenile defendant saying "You were not fighting with other boys… so why didn't you slaughter them?"*

Example

The defendants and their legal guardian arrived late to the hearing and the judge, in rude manner, began shouting, saying that "You disrespect the court. Two days ago I granted the motion on detention of two thieves like you. Why shouldn't I? They are thieves, let them be detained and they will certainly not be late for trial as they will be transported from and to the prison."

Example

During the consideration of a case with involvement of two brother co-defendants (juvenile and adult), the judge turned to the older defendant and said "I really feel sorry that a person who went to the army and was a good soldier later became a bandit It is a fact that the father has not paid enough attention to his sons. The sons have been kept in deprivation of their liberty for several months, and you /father/ are so calm and don't compensate damages caused to the victims."

Example

While the defendant was responding to questions from the victim's father, the Judge interrupted him and said in a loud voice: "This is not an essay competition... you say a new thing every day, this is about reciting the atrocity you committed".

International and national standards provide guarantees against self-incrimination. To ensure full respect to this right, Armenian law requires a judge to explain to the defendant the right not to testify against himself, his spouse or close relatives, the right not to be bound by any confession or denial of guilt made during pre-trial stages and the right to remain silent. The monitors observed occasions when the courts did not properly discharge their obligation to explain some of the defendants' rights, which form a constituent part of the presumption of innocence and have essential significance for a fair trial.

Monitoring results show that the judges did not discharge this important duty in high number of cases. The Charts below illustrate this problem in figures.

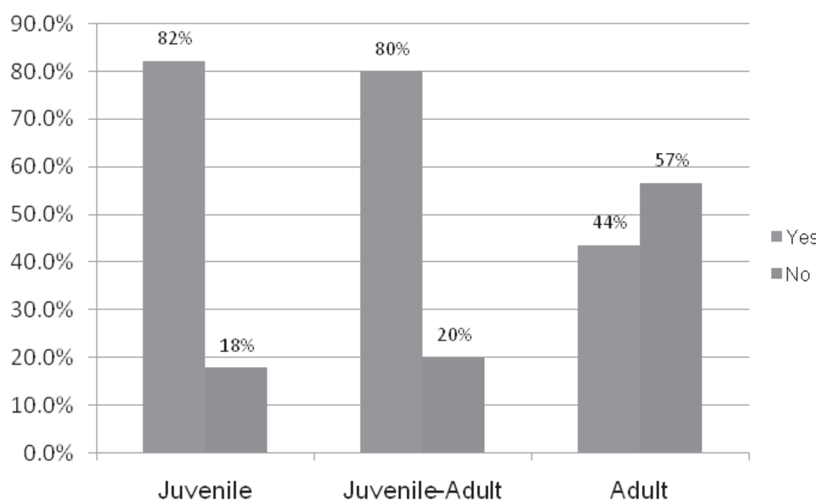

CHART 7. Explanation of the defendant's right not to testify and not to be bound by any confession

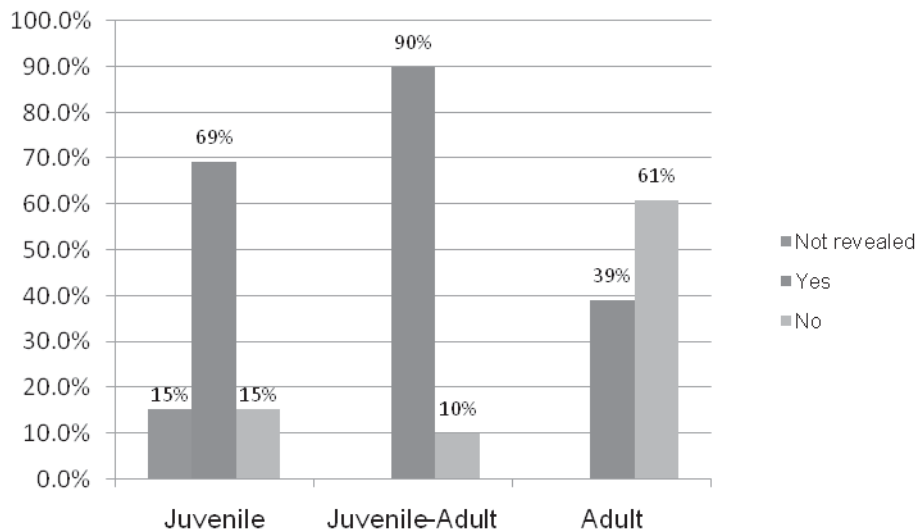

CHART 8. Whether the defendants were explained that they do not have a duty to answer the questions and that their refusal of answering the questions cannot be interpreted against them

Recommendations

- *Judges should refrain from holding views or making comments that suggest their position as to the guilt of the defendants.*
- *Training of judges on the presumption of innocence and on mistakes that an enforced presumption helps to reduce should be conducted.*
- *Judges, prosecutors and defense attorneys should be instructed to regard juvenile trials as exploration of outcomes that can launch the child to education, vocational training or other constructive occupation following conclusion of a given case.*
- *Violation of the presumption of innocence by the judges should serve as legal ground for (1) mandatory recusal of the judge, and (2) reversal of the verdict if the judge in question refuses to recuse him/herself, (3) imposition of disciplinary sanctions on judges.*
- *Ensure that judges follow the procedural law requirements and explain the rights of juvenile defendants properly.*

CHAPTER 7: IMPARTIALITY OF JUDGES AND THEIR PROFESSIONAL CONDUCT

In addition to the above examples regarding failures with respect to preserving the presumption of innocence, the monitoring revealed other serious concerns regarding the impartiality and professional conduct of judges. This chapter examines manifestations of prosecutorial bias and unbecoming statements, which have the potential to damage public perception of the judiciary as impartial, unbiased and dignified, also undermining faith in the justice system and its outcomes.

The CPC specifically requires that courts be fair and impartial. Issues pertaining to judicial impartiality and the professional conduct of judges are specifically addressed by the Judicial Code, which incorporates a set of provisions that form the Rules of Judicial Conduct. The Judicial Code includes both a general requirement that a judge “aspire to ensure the impartiality and independence of the court,” and provides for specific constituent elements of such impartiality. In particular, the Rules of Judicial Conduct prohibit judges from allowing themselves to be influenced by external parties, creating an impression of such influence or using their office for their own or a third party’s benefit.

Specifically, judges are required to “display a patient, dignified, and calm attitude towards all persons with whom the judge comes into contact in his official capacity” and to ensure that court staff exhibit a similar attitude. In addition to a general requirement of impartiality, the Rules of Judicial Conduct incorporate a prohibition against verbally or nonverbally expressing bias or discriminatory attitude or what may be interpreted as such.

The maintenance of these rules is especially important in cases with participation of juvenile defendants, whose sense of justice, fairness and faith in laws of the society among whom they are about to make their lives as adults is in the hands of justice officials. A biased judge or flawed proceedings can create a cynical individual contemptuous of society and the rights of others; a proceeding a juvenile perceives to be fair tends to model the kind of conduct the justice system expects of young persons accused of crimes.

The UN Basic Principles on the Independence of the Judiciary expressly endorse the principle of judicial impartiality, while the UN Bangalore Principles of Judicial Conduct detail its constituent elements, including the requirement of unbiased and unprejudiced performance of judicial duties, the prohibition of making statements that can affect the outcome of proceedings and requirements for a judge’s recusal. The Bangalore Principles advise, *inter alia*, that, a judge shall perform his or her judicial duties without favour, bias or prejudice. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the practitioners and litigants in the impartiality of the judge and of the judiciary.

International standards emphasize that justice must exist both as a matter of fact and as a matter of reasonable perception. The Bangalore Principles of Judicial Conduct expressly provide that justice must not merely be done but must also be seen to be done. The jurisprudence of the ECtHR supports and reinforces the standards of judicial impartiality, including the requirement of the appearance of impartiality as reasonably perceived by an external observer. Appearance of partiality may leave a sense of grievance and of injustice, undermining trust and confidence in the judicial system.

Monitors were asked to assess the professional conduct of judges in the observed proceedings.

The monitors have reported many instances of unprofessional conduct by judges. The monitoring revealed that in a number of cases judges conducted proceedings in a manner that left their impartiality open to doubt. There were also clear instances when judges treated trial participants and members of the public without due respect in ignorance of professional ethics.

In 12% of monitored cases the monitors reported what they regarded as unbecoming statements or actions by the bench. These included insensitive, tactless or blatantly rude remarks to trial partici-

pants and members of the public and otherwise not treating those present in the courtroom with due respect.

Several instances of exertion of psychological and other pressure by judges on defendants, victims, witnesses or other participants of the court session were also evidenced.

Emotional instability of the judges, their limited self-control ability and some cases of aggressiveness served as primary tool for assessing the existence of psychological pressure or even psychological abuse.

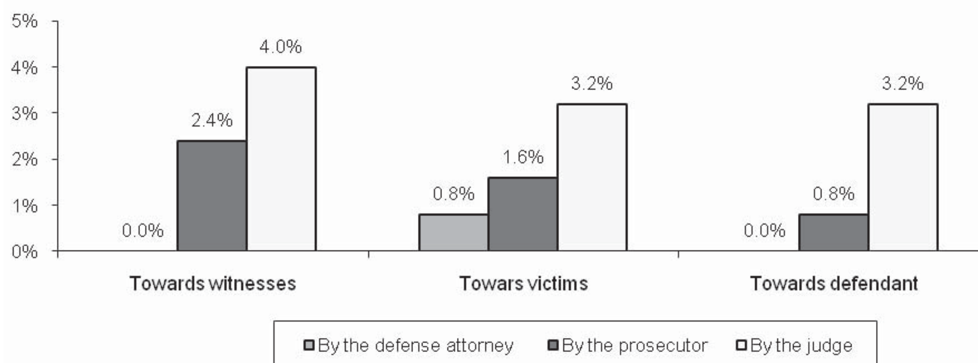

CHART 9. Pressure exerted during the court proceedings

Furthermore in 10.4% of cases the pressure on participants of the proceedings was exerted directly by the judge.

Example

During the examination of the legal guardian of the victim, the judge told the victim's father. "Your 'NOBLE' son has given a false testimony. He wrote stupid things of all sorts in 5-6 pages. How would you explain this? Don't you feel in seventh heaven because your son was recognized as a victim?".

Example

The judge treated the victim's legal guardian in an unethical manner by saying: "You have made so many omissions in this life, you think your head was never battered by hail, … this (pointing at the son) is your unripe product".

Example

After pronouncing the pre-trial testimonies of the child victim, the judge confirmed that there was a contradiction with trial testimonies. The victim explained that he was intimidated and under pressure has provided false testimonies. To this submission the judge rudely "advised" the victim "Stop being provocative. You are not a man".

Example

A judge said that he would impose a conditional sentence on the defendant, if his legal counsel obtained a letter from the military conscription office to confirm that,

over the next few days, the defendant would go to the armed forces of the Republic of Armenia to serve.

Example

The judge told one witness that he should not brag, and that the court would not believe his fairy tales.

Example

When the defendant tried to say something to the witness the judge shouted at the defendant in a way that everyone was intimidated. The defendant dared to tell the judge that the latter should not shout at him, the judge lost self-control and shouted again, saying that he should not instruct the court, because the judge is the one to give instructions.

Example

The judge put pressure on the witness in different ways, saying that the witness was trying to get the criminal acquitted and that he would face severe criminal liability for doing so. The judge also shouted at the witness and even repeatedly threatened that he would impose criminal liability on the witness.

Finally, the study indicates that the late commencement of trials were ordinary phenomena, the fact itself being sufficient to amount to pressure. Any stage of the administration of justice creates psychological pressure and tension for juveniles, which requires the latter to strain all of their internal resources. "Fatal" expectations create feelings of uncertainty and hopelessness, which can undermine the psychological stability of not only the juvenile, but also his legal guardians. In this context, the fact that court sessions almost always (in 98.1% of the cases, according to the research) start late can also be considered psychological pressure.[34]

Recommendations

- *Avoid any expression or conduct that might manifest subjective impartiality of the judge.*
- *Judges must pay attention to their abilities of self constraint and emotional stability.*
- *Judges should avoid exertion of psychological and other pressure on juvenile defendants, victims, witnesses, or other participants of the court session.*
- *Judges should ensure timely opening of the court hearings, without undue delays.*
- *Judges violating the impartiality and acting in breach of their professional conduct should be subject to disciplinary sanctions.*
- *Complaints against the judges must be properly investigated and disciplinary action should be taken against judges whose conduct is incompatible with the Judicial Code and ethical norms.*

34 Աղուզումցյան Ռ., Գասպարյան Ա., Մելքոնյան Վ. "Իրավաբանական հոգեբանություն/ուսումնական ձեռնարկ". "Ասողիկ Երևան 2003. Արզումանյան Ս., Էլդա Գրին. "Իրավաբանական հոգեբանություն. "Զանգակ-97", Երևան 2004. Васильев В.Л. "Юридическая психология". М., 2005. Волков В.Н. "Юридическая психология". М., 2002. Еникеев М. И. "Юридическая психология". М., 2002. Cameron C.A. Theory of futique. Man under stress // proc. 9th annual cond. Univ. Adelaide, 1974.

CHAPTER 8: ORGANISATION OF PROCEEDINGS IN A CHILD-FRIENDLY ENVIRONMENT AND CHILD FRIENDLY LANGUAGE

International standards require the organization of proceedings to be in a child friendly environment and child friendly language. 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 settings.

Child-friendly justice requires representation of a juvenile defendant by a legal adviser throughout the proceedings as well as participation of parents or a guardian. Before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved. Judges and other professionals should interact with them with respect and sensitivity, court sessions involving children should be adapted to the child's pace and attention span. Furthermore, to facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.

The initial establishment of rapport between the juvenile and the judge, as a rights-protecting and justice-administrating authority, is also of paramount importance. Paragraph 10.3 of the UN Beijing Rules provides that the relationship between a juvenile and the law-enforcement bodies should be administered in such a way as to respect the juvenile's legal status, to contribute to the juvenile's well-being and to avoid the infliction of harm upon the juvenile with due respect for the circumstances of the case.

In light of the mentioned factors, the monitoring team has assessed the compatibility of the trials with the components of child-friendly justice. The monitoring results revealed serious shortcomings in affording child-friendly justice for juvenile defendants, which is outlined below.

Court sessions often lasted longer than five hours, which undermines the juvenile's ability to create a psychological link and to fully understand the link between his act and the judgment/sentence. This also creates a risk that the child will not be able to follow the proceedings or participate in his or her own defense, in light of adolescents' shorter attention span than that of adults.

An initial rapport between judges and defendants is not created, which greatly undermines the judge's understanding of the juvenile defendant and the judge's ability to treat him adequately and with respect. All of this hinders the administration of justice in relation to juveniles.

While the speech of judges and the presentation of the charges and the judgment often comply with the legislative requirements, their execution and psychological impact are often neglected. This factor can greatly undermine the defendant's (and potential future convicted person's) ability to understand the connection between his alleged act, its legal, social-psychological and moral assessment and the content of the final judgment. Such comprehensive understanding of the essence of the committed act is required for the person to treat his correction and reformation adequately.

Judges often fail to take into account the person's perceptive abilities, speech development level, current psychological state and a number of other psychological and physiological peculiarities, which lead to the court proceedings being perceived as meaningless and prejudiced.

Judges are often unable to manage the proceedings or neutralize the aggressive behavior of the defendant, victim, witness, or other participants. In some cases, judges contribute to increased tension, anxiety and aggressiveness by the participants in proceedings.

Due to the lack of basic knowledge on deviant behavior, age psychology and psychological causality of offending behavior, judges are often unable to manage the psychological emotional states and conduct of the key participants in proceedings.

Judges often lack psychological abilities of self-restraint, resilience to stress and psychological impact of speech.

8.1 PRELIMINARY CONVERSATION WITH THE JUVENILE DEFENDANTS

Before proceedings began, the judges failed to hold informal conversations and familiarize children in the presence of counsel with the layout of the court or other facilities and the roles and identities of the officials involved.

The professional work of a judge is one of the most complex forms of human activities, which requires straining the psychological and physical force, as well as excellent analytical and weighing abilities. In a relatively short period, judges have to develop an adequate understanding of the defendant's profile, including the defendant's personality and his relationship with the whole social environment. The profile should clearly reflect the defendant's personal development, future projections of the socialization and social development, and the methods and means that can potentially influence the adolescent's future reintegration within society by virtue of his personal characteristics. As a result of all of this, rendering a fair judgment will serve as the first step towards resolving the conflict between the defendant and society.

The monitoring results show that there are virtually no cases of initial establishment of rapport between the juvenile and the judge. The judges had a general conversation with the juveniles in only 10.2% of the court sessions monitored.

The initial conversation can have a strong psychological and social-psychological effect on the juvenile's adequate understanding of the trial process, the manifestation of proper conduct and emotions by the juvenile during the trial and the ability to manage them.[35]

The juvenile should experience that the court and the state are not outraged or cruel towards her/him. S/he should see and comprehend that the trial is not about exacting revenge upon him and that the court is not limited to exercising a punitive function and has much more of an educational and preventive function. In this context, it is extremely important that the convicted juvenile fully comprehends his act, especially the fact that the legal consequences of his act, which take the form of the investigation and the trial, are nothing but methods of enforcement and that his act has a more far-reaching social and social-psychological impact, including impact on values and morals, which can more gravely affect the state, society, his family, neighborhood, surroundings, neighbors and peers.

During this contact, the judge should become familiar with the defendant's family circumstances, the related favorable and unfavorable factors, the social and psychological conditions conducive of the offence and the like.[36]

In this regard, the statistical information obtained shows that about 25% of the defendants are without one parent. About 50% either do not attend school or attend special schools. A key feature is that about 88% of the researched juveniles are facing charges for the first time, which causes a considerable amount of additional tension, anxiety and neuropsychological instability.

The initial establishment of contact, thus, contributes to the achievement of the legal-psychological and psychological-criminological objectives of the court, which are the very essence of the administration of justice.

35 See supra note 34, Արզումանյան Ս., Էլդա Գրին

36 Арзуманян С. Дж. Психолого-криминологическая теория становления личности правонарушителя (генезис криминогенных установок и их раняя профилактика). Ереван, 2000.

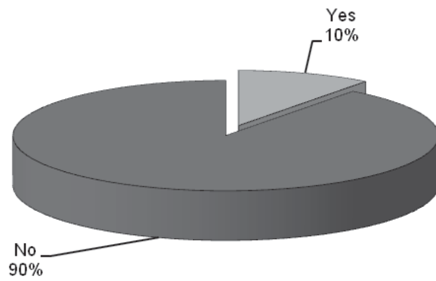

CHART 10. Preliminary conversation with the juvenile defendants[37]

8.2 EXPLANATION OF CHARGES IN CHILD-FRIENDLY MANNER

A key social-psychological factor contributing to the formation and development of offending behavior in juveniles is the negative attitude towards education, which makes them oppose to the school, class, peers and the whole educational process. The words of the judge will be more accessible and understandable if these peculiarities are taken into consideration.[38] However, research shows that in about 53% of the cases judges presented the accusation in perplexing language, as a consequence of which it becomes hard for defendants to fully understand the charges filed against them.

To this end, it is extremely important that all proceedings and the final ruling be understandable and comprehensible.

Monitoring data shows that judges not only fail to present the final ruling in full, but they also read the judgment in language that is alien even to adults. This factor can undermine the defendant's ability to focus on the proceedings, to understand what goes on and in the event of a guilty finding to comprehend the logical and psychological link between his act and the judgment.[39]

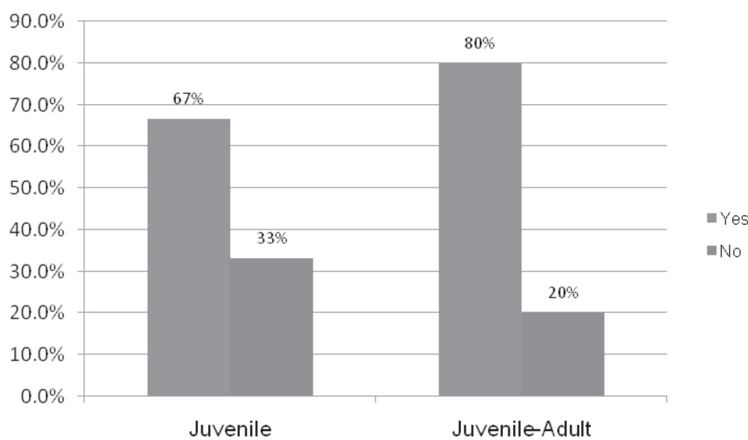

CHART 11. Whether judge has explained the charges in a clear and comprehensible manner

37 This chart only refers to juvenile who were under 18 at the time of the court trial.

38 See Supra note 36

39 See Supra note 28, Волков В.Н. "Юридическая психология". М., 2002.

8.3 THE PSYCHOLOGICAL STATE OF THE JUVENILE DEFENDANT IN COURT PROCEEDINGS AND COURT ENVIRONMENT

The monitors were also requested to assess the psychological state of the juvenile defendants. The psychological state of the defendant is normally assessed on the basis of the feelings and the conduct demonstrated during the court proceedings. Those are the feelings that arise due to the presence of a judge, advocate, prosecutor or relatives, as well as their attitudes and the defendant's participation in trial in general.[40]

For purposes of this monitoring, the psychological state of defendants was assessed as per the following extremes: calm versus emotional, indifferent versus aggressive, respectful versus disrespectful, adequate versus inadequate and full self-control versus no self-control. This polarization of the psychological states allowed obtaining a more differentiated and objective understanding of how the different conditions emerged.

In order to assess physiological aspects of the trial and reduce the possibility of the monitors' subjectivity certain standards were introduced to the monitors to assess concrete requirements. In particular, the requirements of more subjectivity were physiological state of the defendant as well as assessment of his/her behaviour, appropriate or non- appropriate behaviour.

In order to assess appropriateness of juveniles' conduct in court, assessments looked at whether the child was able to refrain from emotional outbursts or crying behavior of relatives who were present, acceptance of the guilt, new perspectives in life. Fully understanding of the court verdict, low panic and aggression contribute to all of this.

Monitors recorded as inappropriate conduct offensive words spoken to the judge or others in court, disorientation, aggressive, hostile or confrontational conduct, poor comprehension, speaking, evidence of delayed psychological development, as well as other peculiarities.

Research into these conditions showed that defendants were calm more than 60% of the time during court proceedings (i.e. they realized what they had done and the possible punishment and sentence, displayed non-emotional behavior and were calm and predictable). Defendants were able to fully manage their psychological condition about 80% of the time. About 70% of the time, the psychological condition during the whole session was adequate, i.e. the defendant did not cry or shout, did not succumb to the emotions of the relatives present, and in case of disagreement with the judgment, made a statement through the defense counsel, or in the absence thereof, after obtaining the judge's permission to speak.

The monitoring also showed that the presence of relatives mostly did not influence the defendants; the monitoring did not find any cases in which the presence of relatives negatively affected the defendants. The overall atmosphere of 31.1% of the monitored sessions was assessed as calm, and 17% as tense.

At first sight, most of the trials took place in a calm atmosphere, with the defendants mostly demonstrating emotional stability and control. However, more in-depth criminal-psychological analysis shows that the seemingly calm and predictable psychological state may be really due to a feeling of indifference towards the court, the punishment, the sentence and the justice process altogether. Possible further proof of this point is the fact that, during the sessions, about 70% of the defendants were indifferent, which being the opposite extreme of aggressiveness for purposes of this monitoring, still demonstrates a certain attitude towards the trial process as a whole. This concern grows even further if one considers that the international experience and scientific sources show that such attitudes

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40 Абрамова Г.С. Возрастная психология. М., 2000.

See Supra note 30, Арзуманян С. Дж.

are most frequently demonstrated by persons with two or more convictions.[41] The monitoring showed that the majority (88%) of the juveniles were charged for the first time. The mentioned indifference, the relatively calm and predictable psychological state and the small number of strained court sessions could be due to a number of objective and subjective factors.

	1	2	3	4	5	
controlled himself entirely	52%	26%	9%	13%	1%	did not controlled at all
appropriate	44%	28%	17%	6%	6%	unappropriate
respectful	53%	16%	17%	8%	6%	non respectful
indifferent	15%	54%	13%	12%	6%	agressive
calm	37%	24%	15%	16%	8%	emotional

CHART 12. Psychological state of the juvenile defendant in court proceedings

8.4 INCITEMENT OF AGGRESSIVENESS BY THE JUDGE VERSUS NEUTRALIZATION OR PREVENTION OF EXPECTED AGGRESSIVE BEHAVIOR

Juveniles can often become aggressive as a consequence of severe unfairness, lies, the shouting of those present in the session, crying, weeping or the anger of the mother or father who is present.[42] The judge has the professional duty not only to invite participants to respect the order, but also to revise and restate the questions in such a way as to avoid the tension. It is frequently necessary to skip a question and return to it later.[43] For instance, any "yes or no" question ("are you guilty" or "do you plead guilty") normally generates aggressiveness. It is also important to avoid a certain tone, human accusations and reprimands ("what kind of person are you" or "do you consider yourself a man" or "your parents are guilty" and the like).

In forensic psychological practice, aggressiveness includes words of obvious disrespect or insults, reprimand and acute criticism, which can be expressed in relation to the juvenile defendant, other participants in the session, the judge or other officials. To this end, it is extremely important to have a conversation with the juvenile prior to the start of the session, to discover the social-psychological peculiarities of the juvenile defendant, and to assess his/her psychological readiness for the trial tension and stress.[44] Moreover, it is necessary for the judge to be psychologically ready to engage in a conversation with the juvenile and to have good conversational and self-control skills.[45]

41 Антонян Ю.М., Еникеев М.И., Эминов В.Е. Психология преступления и наказания. М., 2000. Долгова А.И. "Криминология". М., 2001. Пирожков В.Ф. Криминальная психология. М., 2001.

42 Бандура А. Подростковая агрессия. М., 2000.

Фельдштейн Д. И. Психология взросления. М., 2001.

43 Афанасьева О.В., Пищелко А.В. Этика и психология профессиональной деятельности юриста. М., 2001.

44 Чуфаровский Ю.В. Юридическая психология. М., 2003 See Supra note 28, Աղուզումցյան Ռ., Գասպարյան Ա., Մելքոնյան Վ. and Васильев В.Л.

45 See Supra note 28 Արզումանյան Ս., Էլդա Գրին and supra note 37, Афанасьева О.В., Пищелко А.В.

The judge neutralized aggressiveness in 16% of the sessions and showed aggressiveness in 2.9%. In some cases, for instance, the judge was aggressive due to the absence of the defense counsel or adopted an accusatory stance and shouted in a nervous manner, creating an aggressive atmosphere in the courtroom.

The monitoring results demonstrate that the judges often conduct themselves improperly, disrespectfully, or insultingly in relation to the defendants or their parents, victims, witnesses and other participants.

Example

> *The judge was informed that the juvenile accused had introduced himself to the victim "as little cruel teen". The judge persisted in addressing the accused with this name.*

Example

> *The judge urged all the participants in the session to turn off their mobile phones, but he did not do the same and the phone rang when the judgment was being published.*

Example

> *In the presence of the defendant's legal mother, the judge said in a patronizing tone: "You should have taken care of your child, instead of letting him get to this situation… you should have gotten treatment for him, so that he did not make someone else unhappy, or make yourselves unhappy…," and added in a warning tone: "if you have anything to say, say it now, so you do not speak afterwards outside of the court".*

Example

> *During the questioning/testifying of the victim, the judge said, in a threatening tone: "You should know that I am going to publish in this courtroom everything that you wrote," or "look, boy, listen… do you think that we are idiots here listening to you," or "you should not give instructions to the judge, being whoever you are," and at the end "you did not follow my advice, you did not purge yourself, you harmed yourself, you did not remove the mud from your soul, and it will remain there for the rest of your life".*

Example

> *After the victim's testimony given during the pre-trial investigation was read in court and it became clear that some of the testimony contradicted the statements made in court, the victim said it was due to his fear causing him to perjure, the judge told him in a loud voice: "Stop being a provocateur, be a bit of a man, stop it". After completing the questioning of the victim, the judge told him: "Drop on your chair, you are not a human being, you were not breastfed by your mother".*

8.5 EMOTIONAL AND BEHAVIORAL ACTIVITY IN COURT SESSIONS

As a strained situation, court proceedings require psychological, emotional, and intellectual efforts of all the participants in the session. It is essential for the judge to be emotionally stable, resilient to stress, able to make grounded decisions and so on. They are important not only as personal qualities that a judge must have. They should help the judge ensure stress resilience and ability to act in tense situations also for other participants in the proceedings (including the defendants, the victims, the witnesses, the legal guardians, the legal counsel, the prosecutor and others present in the session).[46]

The analysis of the participants' psychological state, as manifested in court proceedings in various ways, shows that there are frequent instances of crying, shouting, cursing, insulting and other improper behavior. The data shows that emotionality and active behavior in the courtroom are most frequently displayed by defendants (26.6%), who most frequently shouted (8.9% of the cases). Shouting occurred in 25.8% of the observed sessions. Judges and prosecutors shouted rather frequently (in 8.1% and 4.8% of the cases). In 13.7% of the cases, guiding questions were posed by the prosecutor (7.2% of cases), the judge (4.8%), and the defense attorney (1.6%).

The criminological psychological analysis of these behaviors shows the following:

- The judges did not carry out psychological preparatory work with the defendants to prepare the latter for stress factors emanating from the external world (words of the victim, witness testimonies, the prosecutor's final speech and the like).
- The judges did not reveal the psychological features of juveniles, which could help to overcome neuropsychological instability, tension, and aggressiveness.
- Judges, prosecutors, and advocates did not have sufficient ability to act effectively in tense situations.
- Officials are not sufficiently resilient to stress, lack management skills, cannot adequately exercise self-control and lack skills for swift decision-making in stress situations.

The table below shows the emotional and behavioral environment in the courtroom.

	Judge	Prosecutor	Defense attorney	Defendant	Victim	Witness	Parents/ guardian	Other Person	Total
Cry	-	-	-	4	2	-	4	1	11
Shouting	10	6	1	11	3	-	-	1	32
Swearing	-	-	-	6	-	-	-	-	6
Insult	-	-	-	6	2	-	-	1	9
Not appropriate physical behaviour	-	-	-	6	-	-	-	1	7
Violence	-	-	-	-	-	-	-	-	0
Provocation	-	-	-	-	1	-	-	-	1
Guiding questions	6	9	2	-	-	-	-	-	17
Total	16	15	3	33	8	0	4	4	83

TABLE 5: Emotional and behavioral environment in the courtroom

46 See supra note 37, Афанасьева О.В., Пищелко А.В., supra note 28, Васильев В.Л. and Cameron C.A.

8.6 THE ABILITY OF THE CHILD TO EXPRESS HIS/HER VIEWS DURING THE COURT PROCEEDINGS AND TREATED WITH RESPECT AND SENSITIVITY

The questioning of juveniles (victims, witnesses, or defendants) is a vital stage of the criminal case proceedings. Unlike the investigation phase when information on the case is received, analyzed and summarized in a rather long period of time and the investigator has the possibility of differentiating the essential and non-essential circumstances of the case after a thorough review the judge's time is extremely limited. The judge receives information on the essential facts and circumstances of the case indirectly via the case materials, the speeches of the defense and the prosecutor and the questioning of the defendants and other parties to proceedings. In this stage, it is essential for the judge, defense attorney and prosecutor to pay due attention to the psychological peculiarities of the person's age. Primary concerns are related to the impartial and non-discriminatory treatment of juveniles regardless of their social origin, the eloquence of their speech, or the incriminated act. Another key factor has to do with the juvenile's world-view, values and positions, which are manifested via his speech. To this end, it often happens that, when answering questions, juveniles focus on secondary events (intentionally or without realizing that they are secondary). It is necessary for the questioning to be aligned with the juvenile's train of thoughts. The juvenile should be allowed to express himself in whatever way s/he sees fit, with the exception of statements the defense deems contrary to the defendant's interests.[47]

Monitoring results show that judges do not necessarily display the needed level of patience towards juvenile defendants' speech. Speech, as well as intellectual capacity and the state of one's mental-emotional development and age peculiarities are psychological characteristics that must be taken account in order to ensure the juvenile's active engagement in the trial.

The age-related psychological peculiarities of juveniles, which result in differences in perception, attention, recollection, thinking and psychological development are often overlooked.

The Charts below provide information in figures on questions whether the defendants have been given an opportunity to express themselves during the questioning before being asked the questions and whether the defendants have been given an opportunity to express themselves without any interruption by the judge or prosecutor during the whole trial.

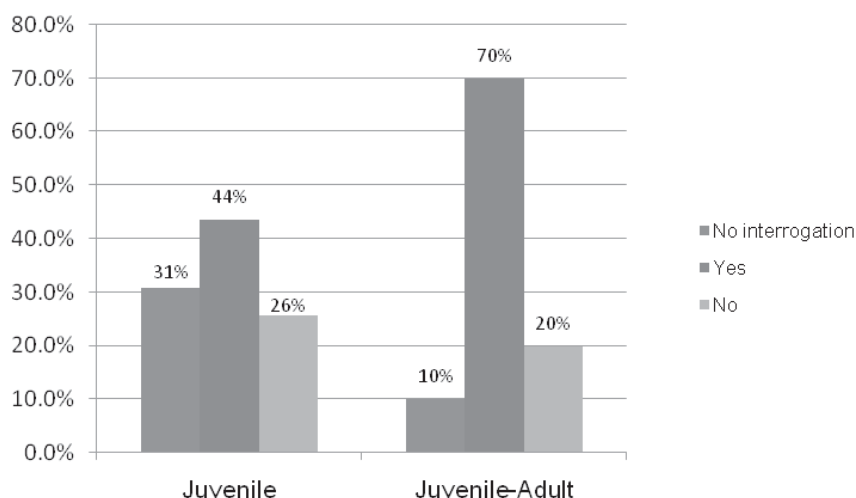

CHART 13. Whether the defendants have been given an opportunity to express themselves during the court inquiry?

47 See supra note 30, Арзуманян С. Дж., supra note 28, Еникеев М. И. and supra note 38, Чуфаровский Ю.В.

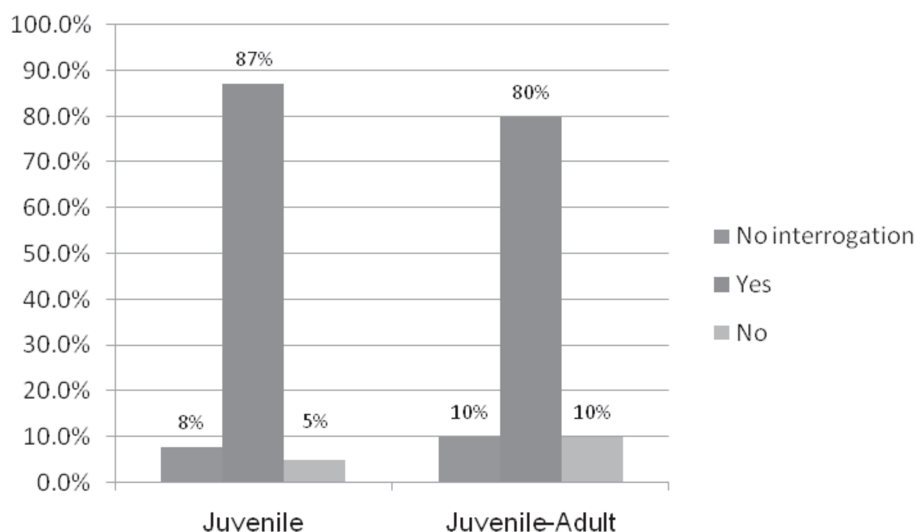

CHART 14: Whether the defendants have been given an opportunity to express themselves without any interruption during the whole trial?

8.7 ACCOMPANIMENT OF A CHILD (LEGAL COUNSEL, PARENTS AND GUARDIANS)

Parents or legal guardians should also be present during the court proceedings because they can provide general psychological and emotional assistance to the child.[48] To promote parental involvement parents must be notified of the apprehension of their child as soon as possible.

With respect to juveniles accused of crimes, domestic regulations require the mandatory involvement of a defense counsel[49] and a legal guardian in juvenile cases.[50] There is no provision requiring the involvement of pedagogues or social workers during the interrogation and trial of the juvenile defendant. In contrast, interrogation of a minor witness or a victim under the age of 16 must be conducted with the participation of a pedagogue and legal counsel.[51]

The monitoring also demonstrates that even these limited special procedural guarantees of juvenile justice have not been maintained in practice.

The practice also discloses inconsistencies in practices related to the participation of legal guardians for adult defendants who were juvenile at the time of the crime. In 8 cases juvenile-adult defendants were accompanied with legal guardians, while in two cases the hearing was conducted in the absence of legal guardians. Similarly, in two cases juveniles were deprived of this important safeguard and were not represented by their legal guardians.

48 See Rule 15 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

49 Article 69, Part 1 (6) of the CPC.

50 Article 441 of the CPC.

51 Article 207 of the CPC.

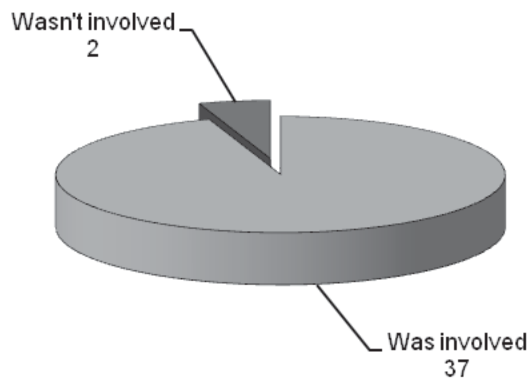

CHART 15 Involvement of legal guardian during court proceedings

8.8 PROCEEDINGS IN COMPLIANCE WITH AGE, MENTAL, PHYSICAL AND EMOTIONAL PECULIARITIES OF JUVENILE DEFENDANT

The monitoring results show that, in about 40-45% of the cases, judges are unable to take into consideration the age-specific and developmental peculiarities of defendants due to age, speech development and perception.

The psychological peculiarities of age imply that a person between ages 12 and 17/18 is normally in an acute process of self-identification, which is often accompanied with aggressiveness, high propensity for conflict and strong emotionality. To reckon with these issues a judge should be understanding and perceptive, avoid any provocation speak or act aggressively and abstain from making rude statements or unnecessarily reprimanding the defendant. In about 40% of the cases, courts failed to take these factors into account. The monitoring data shows that the attitude of judges towards juvenile defendants (including their questioning) is often the same as that towards adult defendants. In some cases, judges even noticeably ignored the defendant.

The monitoring revealed that, while in session, judges often speak very quickly and use harsh legal statements that are difficult to comprehend even for the lawyers present. In some cases, the statements of the judge and what goes on in the court session could not be understood by the defendants in particular.

Similarly, the statements and questions of the judge must correspond to the juvenile's speech perception and response pace. Courts failed to take into consideration the juvenile's perception speed and intensity in about 44% of the cases. In practice, judgments are read quite quickly, with words and sentences pronounced in a way that is often difficult or impossible to understand. The speed with which the judge read his or her ruling, as well as the judge's speech (pronunciation) clearly made some details of the judgment hard to comprehend for not only juveniles, but also their legal guardians.

During the monitoring, attention was paid to the juvenile's vocabulary, logical speech, size, clarity of expression and appropriateness and relevance of responses. Juvenile defendants who have dropped out of school not only displayed underdeveloped speech, but also a very limited vocabulary, with frequent use of slang. This phenomenon too, should be adequately noted by judges, rather than ridiculing or potentially irritating the child with a negative response to such speech issues. Research shows that, in about 45% of the cases, courts failed to take into account the defendant's speech development and other factors affecting his or her ability to express thoughts. In explaining rights and

obligations to defendants, judges often just read directly from their prepared texts without giving any explanation in words that the juveniles could understand.

It is also important for judges to consider the health and emotional state of the juvenile. In particular, a lack of stability, depression, disorientation, a particularly short attention span or attention deficit. These issues may be especially acute in defendants transferred to court from detention centers. In about 47% of the cases judges failed to take into consideration that the defendant appeared disturbed (behaved very strangely), instead the judge admonished the defendant, demanding that he conduct himself in a normal manner.

In addition to the aforementioned circumstances, the presence of psychologists and pedagogues during the questioning of juvenile defendants, witnesses, and victims is not ensured. In fact, the precise role of these respective individuals is not clearly delineated in the law. However, the intent is to provide a more comfortable, supportive environment to the child. The monitoring found that experts or specialists were not engaged in any of the monitored court cases. In rare cases, an expert or specialist took part in the questioning of juvenile witnesses. This circumstance makes it even more difficult for judges to reckon with the age-related and other personal peculiarities of juveniles. Unless the judges have thorough training in working with juveniles, they are not equipped to engage juveniles actively in the trial process, to ensure that they understand and adequately respond to the questions posed, and to provide for a feeling of psychological security and protection in general.[52]

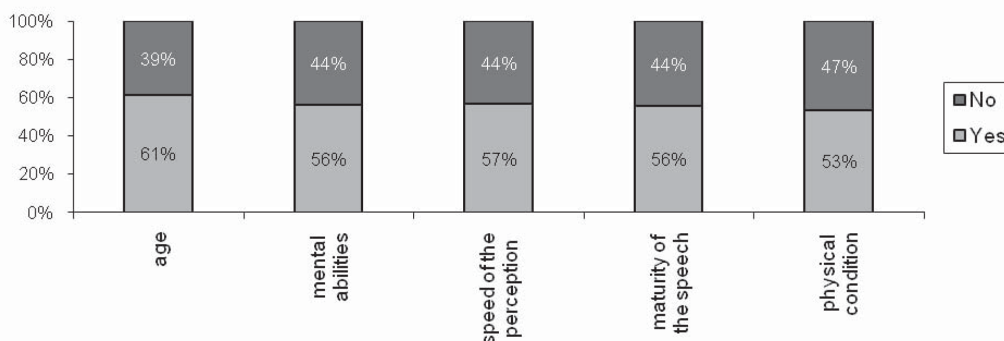

CHART 16. During the investigation of the case whether the judge has taken into account the age, mental abilities, speed of the perception, maturity of the speech, physical condition

Example

In explaining the rights of accused persons the judge mechanically enumerated the legislatively defined list of rights, including the right to refuse assistance of a lawyer, whereas the juvenile defendants are not vested with this right. The judge also informed defendants about criminal responsibility for giving a false testimony, which is not applicable with respect to a minor under 16.

Example

The judge asked a juvenile whether he wanted to challenge the judge without explaining the essence of challenges and potential grounds.

52 Антонян Ю.М., Юстицкий В.В. Несовершеннолетние преступники с акцентуациями характера. М., 1993. See supra note 34, Абрамова Г.С. and supra note 28, Cameron C.A.

8.9 DURATION OF COURT PROCEEDINGS

The monitoring results shows that court sessions frequently last from two to five and a half hours. Given that trial is a strained and stressful process for juveniles, a court session lasting five and a half hours can exacerbate the juvenile's neuropsychological fragility, anxiety, and mental excitement, which can often manifest itself in the form of aggressive behavior.

Judges must do their best to make sure that court sessions end in an optimal time period, short enough to facilitate the underage defendant's ability to understand the whole session and psychological readiness to listen to the ruling issued in his case.

Recommendations

- *Ensure the participation of legal guardians in all juvenile cases (including the juvenile-adults).*
- *Conduct hearings in a child-friendly manner without subjecting the child to harsh treatment or traumatisation.*
- *Use child-sensitive procedures, including court environments, adapted to the needs of children.*
- *Conduct court proceedings paying due regard to the age, mental abilities, physical state and emotional stability of the child.*
- *Develop and mainstream psychosocial assistance to juveniles in conflict with the law by supplying psycho-social assistance to aid defense attorneys in developing alternative solutions tailored to the individual client and what he is likely to be able to fulfill satisfactorily, under confidentiality rules applicable to and shared with the attorney as part of the attorney-client relationship; in instances in which the defense establishes the child client's desire to acknowledge responsibility for the charged conduct, provide assistance to the courts to design alternatives to incarceration.*
- *Conduct an initial interview with the juvenile defendant for establishing initial rapport in the presence of counsel, inquire as to the juvenile need to avoid using labels in the contexts of juvenile's anti-stigmatization priority. Discover and emphasize the juvenile's positive features based on which rapport can be created and the juvenile can be motivated to focus on correction and rehabilitation.*
- *Given the importance of the education level and psychological-emotional state of defendants present the charges in as clear language as possible for the juveniles to understand them.*
- *Present the ruling in a way that makes it as accessible as possible for the defendant, given the importance of the judgment for the ability of the juvenile to understand the outcome of the proceedings, and in the event of a guilty finding, to appreciate the nature of his offense and proposed remedial measures.*
- *Pay close attention to the age specific traits of the juvenile and his current mental and emotional state and listen to the juvenile for as long as possible during the interview..*
- *Conduct the questioning in an unrestrained and trustful environment making the questions to juveniles clear, understandable and concrete.*
- *Pay attention to the juvenile's social environment, values and education, which are the most relevant factors for the child's adjustment and reintegration into society following proceedings.*
- *During the questioning of juvenile defendants, witnesses or victims, close attention should be paid to their current psychological state, age peculiarities, speech and perception speed and pace. Questions should be formulated in keeping with their vocabulary and speech development, while answers should be expected with due regard for their speech and perception speed.*
- *The attitude towards juveniles should be as visible as possible, clearly differentiating from how adult defendants are treated especially in the following areas: pitch of voice, speech structure and*

ways of addressing the defendant. Empathy and delicacy are needed, whilst also being rigorous and clearly enforcing the requirements of the legislation.

- *To the extent possible, the active engagement of juveniles in the court proceedings should be ensured. While using legal terms in speech, it is also important to make sure that juveniles understand their rights and responsibilities, the questions posed to them and the events occurring around them.*
- *In case of necessity (speech defects, communication difficulties, evidence of mental illness or inability understand the proceedings), the presence of specialists (defectologist, logopedist, clinical psychologist and the like) should be ensured during the court proceedings.*
- *Taking into account the person's psychological state and the impact of proceeding on the child, preclude any disrespectful, insulting, or ignoring attitudes towards any participant in proceedings, especially defendants, witnesses, victims and their legal guardians.*
- *Improve the ability of judges to exercise self-restraint, to manage their emotions and to maintain a comfortable, minimally stressful and emotionally even atmosphere in court. Duration of proceedings should be limited, when possible, to one hour at a time for the child's concentration.*

CHAPTER 9: ACCESS TO LEGAL ASSISTANCE AND EFFECTIVENESS OF THE LEGAL REPRESENTATION

The concept of fairness enshrined in international law requires that the accused have the benefit of the assistance of a lawyer.

The UDHR, the ICCPR and the ECHR all set forth the right of a person accused of a crime to defend oneself in person or by defence counsel. States should create efficient and non-discriminatory procedures and mechanisms for effective and equal access to a lawyer as well as to ensure the provision of sufficient funding and other resources for legal services to the poor.

The state has a duty to provide competent and effective representation for the defendant. The ECtHR noted that although a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes, nevertheless, the competent national authorities are required under Article 6 § 3 (c) of the ECHR to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way.

Armenian legislation also enshrines the right of everyone to legal assistance as well as to the assistance of a legal defender chosen by him/her starting from the moment of his/her arrest, subject to a measure of restraint or indictment. The CPC further details this right by providing that every suspect or accused in a criminal case has the right to defend him or herself in person or through the legal assistance of a defense counsel and/or a legal guardian, with the ensuing obligation on the part of the criminal proceedings body to explain to the person in question his/her rights and facilitate the exercise thereof, as well as to ensure that the legal guardian of the suspect/accused takes part in the proceedings.

Furthermore, according to Article 69 of the CPC of Armenia, the involvement of a defense counsel is mandatory, if the accused is a minor. In pre-trial and trial stages the child must be assisted by a defense lawyer.

The best interests of the child require special training of lawyers representing children.[53] Usually these lawyers should be trained in and knowledgeable on children's rights and related issues, adolescent development, de-escalation of emotional arousal, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. Moreover, where legal counsel often has a tendency to regard "cases" as their responsibility, a child's lawyer can only be effective if the lawyer addresses the young person who is the client, mindful of the consequences of a case not just in the immediate pendency of proceedings, but the impact of the case's outcome on the child's future. This is a very different and specialized orientation for defense attorneys from standard criminal defense.

The involvement of a defense lawyer from the very beginning of the proceedings is a essential guarantee to all criminal defendants, but it is even more imperative in juvenile cases, where the child lacks sophistication, education and maturity to understand laws and legal tactics or to take decisions affecting his/her future. Additionally, world statistics indicate that it is in the earliest stages of a case's investigation that the bulk of violations take place - the use of force, threat, fraud, violation of the dignity of the juvenile defendants or other illegal means, impairing the reliability of the facts and the fairness of the proceedings as whole.

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether s/he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him.

53 Rule 22 of the Beijing Rules.

During the monitoring, the monitors have observed that all child defendants were assisted by defense counsels. In 37 cases observed, the monitors reported that defendants were represented by private counsel in 53% cases, by public defenders in 47 % of cases.

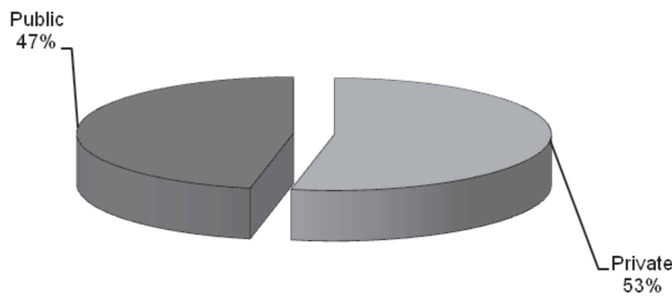

CHART 17. Proportionality of privately contracted and state-appointed defense counsels

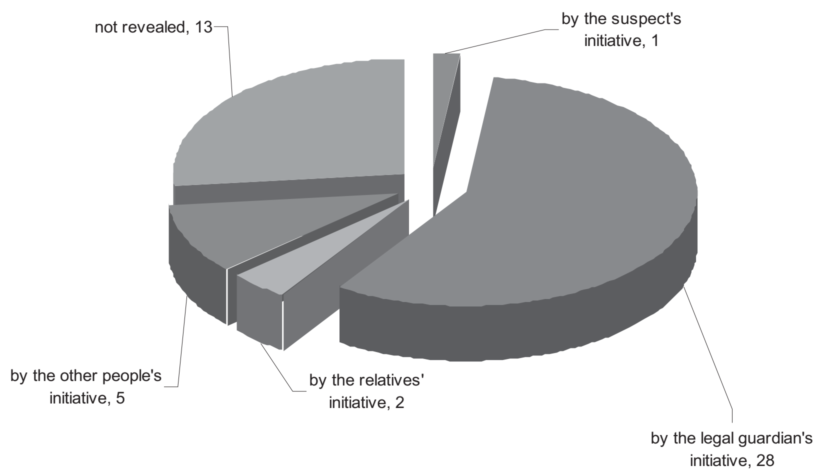

CHART 18. Involvement of defense counsels

Instances of changing an acting lawyer for another were also recorded."Vertical representation" has obvious advantages for most defendants, particularly children who have the greatest need for continuity in representation.

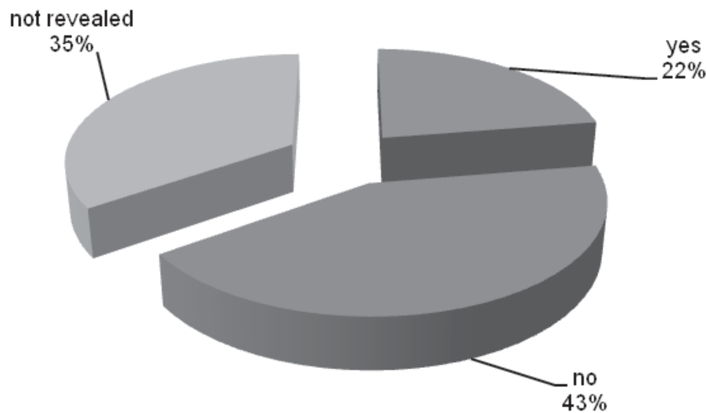

CHART 19. Whether the attorney was changed

Although access to legal counsel at the pre-trial stages of the proceedings was outside the scope of the monitoring, instances of denial of such access or delayed access to the arrested juveniles were raised during the trials or reported by defense counsels during the interviews. The monitoring also revealed concerns regarding the quality of legal representation and the role of counsels in juvenile cases. In many cases, the monitors reported that the defense counsels were generally passive. Some appeared to be ill-informed about the charges against their clients and the facts of their cases. They did not always submit motions to request presentation of evidence, examine new witnesses or file briefs on procedural matters. These concerns point to the need for improvement of the overall quality of representation, especially rendered through the Public Defender's Office. The Public Defender's Office functions within the Chamber of Advocates. The public defender work is remunerated by the State Budget. In Criminal Cases, free legal aid is provided on the basis of the decision by the investigating agency (police/court/other state agency), upon the appointment by the head of the Office. The public defender's Office has 36 public defenders. 17 of them are based in Yerevan and 19 in regions. Defense lawyers working on an hourly basis are also contracted by the office to work in regions.

It was noted that the attorneys displayed pure legal knowledge and did not possess psycho-social skills needed to communicate with their clients. Attorneys do not generally receive training on adolescent development, deescalating charged emotional states, responding to adolescent defiance, impulsiveness, bravado or other manifestations of adolescent behavioral characteristics. From this perspective, it is crucial for attorneys to be supplemented by the services of mental health professionals aiding them with collection of mitigating evidence resolving family conflicts that may be integral to resolution of the case, easing relations with the client and communicating with the child about the case, as well as helping the defendant draw up potential outcomes and structure for resuming a normal life after a case's resolution.

Example

The defense counsel informed the monitors that he was not involved at the pre-trial stage. The accused told him that the previous lawyer had not assisted him during that stage either. The investigator had only once introduced someone as his defense counsel, but such counsel never met with the accused or provided any advice.

Example

> *The defense counsel was involved only at the stage of bringing an official charge. Before his involvement, the accused was interrogated in absence of a lawyer, but was accompanied by legal guardian and a pedagogue. During his first meeting with the lawyer, the juvenile informed him of the use of force and threats, claiming that the investigator hit him hard on his head. The accused was also under a de facto deprivation of liberty and the juvenile was released only after the involvement of the defense counsel.*

Example

> *The juvenile A. was taken by the police from his house at 11pm without his legal guardian, where he was subjected to beatings. He was interrogated as a witness, rather than a suspect and provided self-incriminatory statements. The defense lawyer was involved only after 4 days.*

Example

> *During the interview with the defense counsel held on 10.03.10, the defense counsel informed the monitor that he had been involved since the preliminary investigation stage and that the "pre-trial stage was conducted in a perfect and fair manner". He informed the monitor that the hearing held on 10.03.10 was the second hearing. However, on the same day the court registrar informed the monitor that it was fifth hearing. During the previous hearing the legal guardian of the accused had sought to substitute the defense counsel, but later changed his mind and continued using the services of the same counsel.*

Recommendations

- *Establish specialised lawyers' group for juveniles both among PDOs and private lawyers.*
- *The legal services of defense counsels should be improved through training and other measures, as necessary.*
- *Attorney services should be supplemented by the assistance of menthal health/psycho-social support as part of the defense and covered by attorney-client privilege. University practica can help fill this need.*
- *The focus of attorneys specializing in juvenile defense should be the client's future, and resolution of the client's difficulties that may have led to his arrest, rather than merely dispensing with each individual case as quickly as possible. The attorney should see as his priority, first and foremost, to provide activity plans and non-custodial resolutions to cases that the client will be capable of satisfying, using the special attorney-client trust to develop individualized solutions to the client's needs, so as to reduce the likelihood of any further contact with the criminal justice system.*

CHAPTER 10: ACCELERATED COURT PROCEEDINGS IN JUVENILE CASES

The CPC of Armenia defines the right of the accused or defendant to motion for application of accelerated court proceedings if the person pleads guilty.[54] This typically entails the defendants' renouncing or waiving, of some important procedural rights and receiving more lenient punishment. In cases where the maximum sentence prescribed by law for the alleged offense does not exceed ten years of imprisonment, the CPC allows for accelerated proceedings at the defendant's request. The prosecutor may object to an accelerated procedure in the indictment but is entitled to change his position before the trial.[55] In any case, in order to be considered by the court, the defendant's request for an accelerated trial must pass a three-pronged test. It must be demonstrated that (a) the applicant fully realizes the nature and consequences of the request; (b) the request is submitted at the applicant's own free will; and (c) the request is submitted after consultations with the applicant's defence counsel.

The key feature of accelerated proceedings is that the evidence that can be called at trial is limited. The court, however, is required to conduct a full inquiry into the defendant's personal character, the degree of responsibility, as well as any mitigating and/or aggravating circumstances that may affect the liability and sentencing. A sentence imposed in a case that received an accelerated disposition cannot exceed two thirds of the maximum sentence provided by law for the offence.[56] If two thirds of the maximum sentence is a more lenient punishment than the minimum sentence provided by law, then the minimum sentence should be imposed. The final judgment may be appealed in court pursuant to the regular appeals procedure, with the exception that evidentiary errors cannot serve as a ground for repealing the judgment by the appeals court.

Of the 37 cases monitored, 23 of cases were tried in accelerated proceedings. Of the 32 defendants sentenced through these expedited trials, 16 were set free by the court with conditional non-application sentences, 6 were released on amnesty and only 7 (18,7%) received imprisonment terms. In contrast, out of 16 defendants tried in ordinary court proceedings, 7 (43.7%) of juvenile defendants received imprisonment terms.

What kind of sentences were decided by the court?	Order of the trial		Total
	general order of the trial	accelerated order of the trial	
Fine	0	2	2
Imprisonment	7	7	14
Imprisonment. Conditional punishment	7	16	23
Imprisonment. Enforcement of amnesty decision	1	6	7
Educational coercive measure	0	1	1
Medical measure	1	0	1
Total	16	32	48

TABLE 6. Sentencing polices depending on court proceedings[57]

54 Article 375.1, CPC.
55 Ibid.
56 Article 375.3, CPC.
57 One case is still ongoing, that is why the total number of sentences is 48.

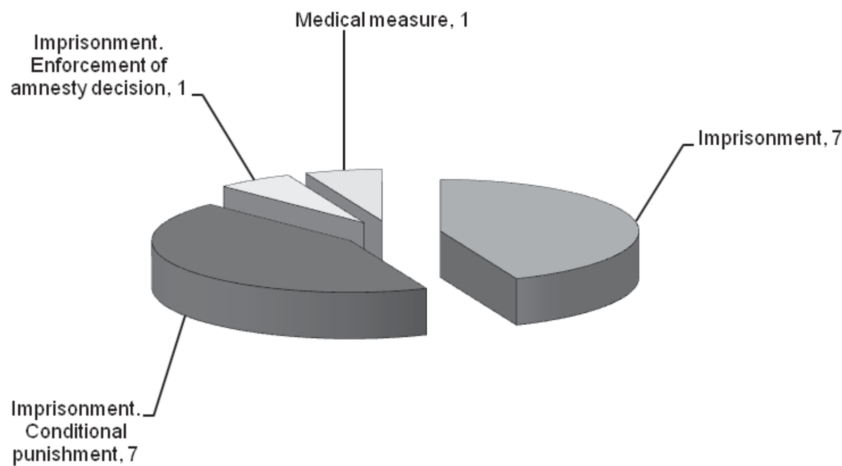

CHART 20. General order of the trial

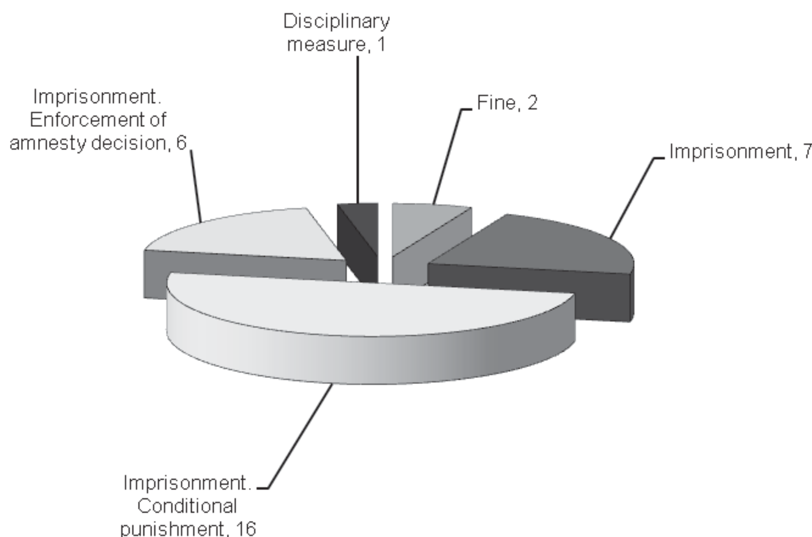

CHART 21. Accelerated order of the trial

As noted above, the law sets a procedure for conducting an accelerated court proceedings.

In particular, the law requires prosecutors to present the charges, while the judges must ascertain that the defendant understands the charges, agrees with them and is aware of the consequences of his motion to forego the full trial.

The monitors observed that in a number of cases the charges presented by prosecutors were not clear and understandable for minors. Judges did not ask specific questions to ascertain whether the defendants actually understood the charges.

In general, the courts seemed to treat their duty to verify the pre-conditions for accelerated trials as a mere formality. Judges often asked the questions prescribed by the law in rapid succession: whether the charge is clear to the defendant, whether s/he agrees with the charge, whether s/he stands by the motion for an accelerated trial, whether the motion is made voluntarily, whether s/he consulted with his counsel before filing the motion and understands the consequences of an accelerated trial? A single

"yes" from the legal guardian was deemed sufficient to rule on the application of accelerated proceedings. There were doubts as to whether all defendants were properly informed and fully aware of the consequences of choosing an abbreviated trial. The existing guarantees of ensuring that defendants enter a guilty plea knowingly and voluntarily need to be implemented more rigorously in juvenile cases.

In ruling on accelerated court proceedings, the right of the juvenile to be heard has not been fully respected. A fair trial requires that the child alleged or accused of having infringed the penal law be able to effectively participate in the trial and therefore needs to comprehend the charges and possible consequences and penalties.

Rule 14 of the Beijing Rules clearly provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely.

Accelerated trials are the antithesis to this CRC provision– providing for resolution before trial or without full judicial examination only if the child pleads guilty – a direct contradiction of the requirement that "human rights and legal safeguards are fully respected."

In this sense, expedited trials are extremely problematic. Children can be more susceptible to suggestion, and more confined to the extreme present tense in their understanding of the consequences of their actions. As a result, they may be especially inclined to accept solutions that will make a case go away, even if the consequences in a month will be worse. Children should never be penalized for going to trial (directly or indirectly). Moreover the use of guilty pleas/admission as the only instrument allowing for early resolution without a full trial is morally questionable. No alternatives should be allowed to be off limits as a result of a child's insistence on his innocence and decision to take a case to trial. More clear-cut instructions are also necessary to guide judges through early, expedited proceedings that do not hinge on an admission of guilt as a condition for fulfilling the CRC requirement of resolving the case in the shortest possible time.

Some Armenian authors,[58] having profound knowledge and expertise in criminal procedure law, suggest that Armenian legislation does not permit holding accelerated proceedings in juvenile cases. The reasons submitted are the following: Although Chapter 45.1 of the Criminal Procedure Code does not contain any clear ban on application of accelerated court proceedings in juveniles cases, Article 439, Part 2 of the Code contains a clue in resolving this legal casus. According to that provision, general rules and the rules under Chapter 50 of the Criminal Procedure Code are applicable to the proceedings with the involvement of juvenile defendants. Article 439 does not define the possibility of application of accelerated court proceedings, namely for proceedings differentiated from the general proceedings. Therefore, lack of any specific legal regulation, there is no legal ground for the application of accelerated court proceedings in juvenile cases.

Example

During the hearing the minor accused pleaded gulity. Shortly after, the legal guardian, the father of the juvenile, motioned the court to apply accelerated court procedure. In response to the question whether the accused had consulted with the defense counsel, the lawyer replied that he had held consultations with the legal guardian. Then the judge clarified whether the legal consequences were clear, again the legal guardian provided a positive reply. The position of the accused juvenile was not asked or heard.

58 A. Ghambaryan, T. Poghosyan, "Accelerated court proceedings in the Criminal Procedure Law of Armenia", available at http://www.ghambaryan.com/hratarak_file/82_Aragacvac%20karg%20Artur.pdf.

Furthermore, in accelerated case proceedings a case was observed when the judge ruled on punishment without going to a deliberation room.

Example

> *In the case of A.A. the judge granted motion on accelerated court proceedings. After the speeches of the prosecutor and the defense counsel the judge without entering the deliberation room, decided to impose an imprisonment for a period of 2 years with application of Article 70 (conditional release).*

Recommendations

- *Prohibit the application of accelerated court proceedings in juvenile cases.*
- *Judges should ensure rigorous application of existing safeguards to guarantee that children be able to waive their due process rights only knowingly and voluntarily.*
- *Special allowances should be made to envision expedited proceedings not based on guilty pleas in juvenile cases.*
- *In all instances the right of a juvenile to be heard should be strictly respected.*

CHAPTER 11: OTHER SERIOUS CONCERNS

11.1 PREVENTION

Prevention is crucial to being able to systematically address the socio-economic and psychosocial problems faced by children and young people which contribute to them coming into conflict with the law.[59] The emphasis on prevention in any juvenile justice reform strategy cannot be over-emphasized, although it is often neglected at the expense of shorter-term, more politically visible 'tough on crime' policies. Successful prevention work revolves around efforts to create society-wide conditions of non-discrimination, inclusion and access to basic services, thereby mitigating against marginalisation, exclusion, exploitation and other elements of social injustice.

The UN Guidelines on the Prevention of Juvenile Delinquency cover both general, "developmental" prevention (addressing the root causes of the creation of social problems such as poverty and inequality) and 'responsive' prevention (programs targeted at those children most at risk of coming into conflict with the law). The Riyadh Guidelines encourage a positive emphasis on socio-economic support and quality of life rather than a "negative" crime prevention approach. They cover virtually all social areas such as family, school, community, media, social policy, legislation and juvenile justice administration.

Article 440 of the Criminal Procedure Code explicitly states that in juvenile cases it is mandatory to find out the following circumstances: the age of the defendant, conditions of his life and education, state of health and general development.

Article 90 of the Criminal Code states that the punishment imposed must address the child's life circumstances – education level and aptitude, mental health, medical conditions if any, other characteristics of a person, as well as external influence on juvenile.

The monitoring results show that the courts have failed to systematically address the socio-economic and psychosocial problems faced by children and young people, which contribute to them, coming into conflict with the law. In the cases of accelerated court proceedings, the judges failed to touch on these issues, confining themselves to clarifying issues pertaining to mitigating and aggravating circumstances.

Without examination of socio-economic and psychological problems it is impossible to implement effective prevention program and encourage socio-economic support of a child by selecting adequate community, educational measures.

Recommendation

- *Socio-economic and psychological conditions of the juvenile should be revealed and adequately assessed in all cases to put an effective prevention programmes for juveniles.*

11.2 INADEQUATE PROTECTION OF CHILD VICTIMS AND WITNESSES

Existing international legal instruments on the protection of children give an indication of the need for a special judicial procedure adapted to the child victims and witnesses. These standards recognize the need for recognition of child victims' vulnerability, adaptation of procedures to their special needs, their right to be kept informed of the progress of proceedings and to be represented when their interests are at stake, as well as protection from intimidation and ill-treatment.

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59 The Interagency Panel on Juvenile Justice (IPJJ) http://www.juvenilejusticepanel.org/en/priorities.html

The monitoring results reveal that the criminal justice system in Armenia is not fully receptive to the unique problems and needs of child victims and witnesses in criminal processes. The court practices indicate that protective measures are not being used to afford adequate protection of child victims and witnesses. Inadequacy of risk assessment provision of sufficient safeguards has even led to fatal incidents. During a monitoring period one unfortunate incident has been recorded.

Example

> *In 2009, a minor B was murdered. According to the facts of the case, Y went to the house of initial victim B with their common friend A and committed a murder in the presence of A. Y was charged for murder and threats against life. A was also recognized as a victim, as the life threats had been directed at him. After the conviction of the minor defendant Y, a 13 year old boy, A, was taken to the hospital with multiple stab-cut wounds on the neck and other parts of the body. The boy died in hospital without regaining consciousness. On the same day a man came to the police station and confessed to having committed the murder. He turned out to be the father of the boy B. the primary victim of the murder case.*

The implementation practices did not provide greater protection for child victims and witnesses. It was observed that even minimum procedural guarantees afforded by Armenian law to make the investigation and court process less traumatic for them, like participation of legal guardians and pedagogues were not met in practice.

For instance, in 23.5 % of cases child witnesses were involved. In 11.8 % of cases, in breach of international and national standards, a pedagogue has not been involved during the interrogations.

On the other hand, it should be noted that the Soviet-originated presence of a pedagogue is not necessarily in the child's interests. It presumes that teachers are actually competent to support a child and that nothing taking place in a criminal investigation can negatively affect the child's future in that school. This goes equally for defendants and child witnesses. Teachers are not inherently competent representatives simply by virtue of being trained as pedagogues. Worse, revealing information about pending criminal charges to a teacher may violate the child's privacy rights. Moreover, «victimization» of a child is psychologically damaging at times; even if an assigned teacher is sympathetic to the child, having a teacher pity the child is also not necessarily helpful.

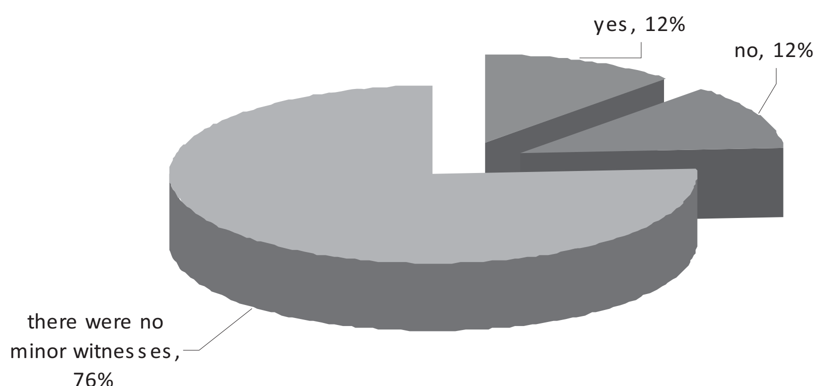

CHART 22. Involvement of a pedagogue during questioning of minor witnesses at court

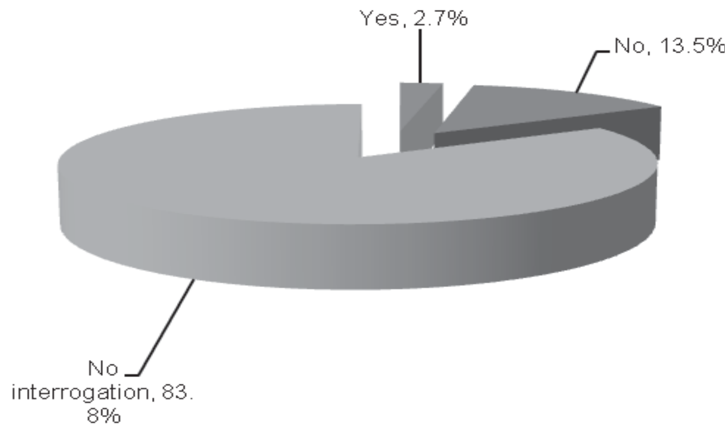

CHART 23. Involvement of a pedagogue during questioning of victim under 16 years old at court

Example

> *After the opening of the hearing, the judge started questioning the defendant although the procedural examination of defendant was over. The judge attempted to clarify why fingerprints could not be found at the crime scene. The accused responded that both he and the victim were wearing gloves. Then the judge posed questions to the victim, who denied that he was wearing the gloves. It is worth mentioning that at the time of the hearing the victim was under the age of 14, and the pedagogue was not present at this hearing. In response to the prosecutors suggestion to conduct an additional examination of the victim in presence of the pedagogues, the judge replied that there was no need any more.*

Recommendations

- *Review domestic laws, procedures and practices so as to ensure full implementation of international standards on protection of child victims and witnesses into Armenian legislation. It is offered to adopt a specific law on protection of child victims and witnesses on the basis of the Model Law on Witness Protection that contains the minimum safeguards for effective victim-witness protection.*
- *Provide a framework for legal, psychological and social assistance for child witnesses and victims.*
- *Provide for strict penalties for interviews and interrogations conducted with child witnesses who later are transformed into defendants.*

11.3 INTIMIDATION AND PRESSURE ON JUVENILE DEFENDANTS AND VICTIMS

The CRC requires that a child not be compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child.

It is important to adopt multidisciplinary approach and encourage close co-operation between different professionals in order to obtain a comprehensive understanding of the child as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation and needs for full socialization at the conclusion of any criminal proceeding. A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.

The child being questioned must have access to a legal or other appropriate representative and must be able to request the presence of his/her parent(s) during questioning. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, the presence of legal or other counsel, parent(s) or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in physically or psychologically coerced or unreliable confessions or testimonies.

The monitoring results indicate that judicial authorities were not responsive to allegations on pressure or intimidation by police officers towards juveniles, as well as allegations of failure to take appropriate measures by ordering protective measures to protect the best interests of child participant. On some occasions, the judges themselves also exerted pressure on victims and defendants in detriment to the interest of children and justice. This raises serious concerns with respect to the implementation practices in Armenia of issuing emergency protective orders, as well as investigation of instances of impermissible and condemnable practices of intimidation, fear, pressure, harassment against children victims and defendants.

Example

> *The pretrial statements of the accused radically contradicted his statements at trial. In pre-trial statements the accused pleaded guilty, whereas in the court he has submitted that he was innocent. He claimed that the earlier statements were false, as police and investigator extracted them under duress.*
>
> *The defense attorney also submitted before the court that the accused was taken from D. region. He spent the night in F. city, accompanied by police officers, and then he was kept another day in Arabkir police station, Yerevan. Before the involvement of a defense counsel, he was interrogated three times, primarily at nighttime. The legal guardian had been invited and allowed to meet with the juvenile only after the juvenile had already written and signed an explanation. Later by the decision of an investigator, those explanations were recognized as evidence and attached to the case. The juvenile could only be released with the intervention of the Human Rights Defender of Armenia.*

Example

> *During the break, when the audience was still in the courtroom the prosecutor said: "Don't you see this brat. He thinks that he is grown enough to instruct the judge what to do. He should be put in prison, for a long period too."*

Recommendations

- *Institute regular multidisciplinary meetings between justice actors involved in each juvenile case (without the defendant) to discuss options for pre-trial resolution of cases, and all non-custodial options for those convicted.*
- *Judges should react to all allegations of pressure, intimidations, ill-treatment and refer this information to the responsible authorities for an effective investigation.*
- *Expand the existing list of protective measures with the focus on physiological protection of children.*
- *Review the practice of the use of protective measures and initiate an inclusive discussion on improving the effective application of those measures.*
- *Reduce potential intimidation, for example by using testimonial aids or appointing psychological experts during the examinations of juvenile defendants*
- *Questioning by the judge, prosecution or the defense in the courtroom also needs to be done in a child-friendly manner with the assistance of professionals.*
- *Set up programmes to carry out psychosocial measures as part of the defense for the juvenile accused to prevent further intimidation (only where a child is demonstrably mentally ill should court-ordered psychiatrists be consulted, when the child is not competent to stand trial or if and when the defense offers a psychological defense).*
- *Put in place adequate training, selection procedures as well as make education and information available to those professionals (educational, psychosocial and medical professionals, legal and law-enforcement professionals, including judges and police officers), who work with children, with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with children.*
- *Provide independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced given the vulnerability of the child in contact with law.*

CONSOLIDATED RECOMMENDATIONS

- *Create child oriented, developmentally-appropriate, and restorative juvenile justice system that reflects international standards.*
- *Introduce a community based alternatives to the formal justice system (including appropriate mediation and diversion mechanisms and exemplify the roles of police, investigators, prosecutors and courts in this respect.*
- *Introduce a new legal and procedural framework for reorientation of the justice system on the child's constructive integration in society following examination of criminal charges, rather than crime-solving and punishment.*
- *Reduce the over-use and length of custodial measures (pre-trial detention and imprisonment), as well as consider the possible introduction of new alternatives.*
- *Shorten the maximum period of pre-trial detention of juvenile to up to 6 months.*
- *Impose a duty to preserve confidentiality on all persons (judges, police officers, investigators, attorneys, witnesses, accused, etc) who are involved in proceedings in which juvenile defendants is involved.*
- *Place an injunction on the press and media to prevent broadcasting or publication of a juvenile's name, image or any other information that may identify the child.*
- *Withhold the names of children in the judgment or other documents which are being made public.*
- *Expunge all records of any conviction for an act committed by a child under the age of 18 following extinguishing of any conditions.*
- *Conduct trainings for print and broadcast media on juvenile rights.*
- *Judges should refrain from holding views or making comments that suggest their position as to the guilt of the defendants.*
- *Training of judges on the presumption of innocence and on mistakes that an enforced presumption helps to reduce should be conducted.*
- *Judges, prosecutors and defense attorneys should be instructed to regard juvenile trials as exploration of outcomes that can launch the child to education, vocational training or other constructive occupation following conclusion of a given case.*
- *Violation of the presumption of innocence by the judges should serve as legal ground for (1) mandatory recusal of the judge, and (2) reversal of the verdict if the judge in question refuses to recuse him/herself, (3) imposition of disciplinary sanctions on judges.*
- *Ensure that judges follow the procedural law requirements and explain the rights of juvenile defendants properly.*
- *Avoid any expression or conduct that might manifest subjective impartiality of the judge.*
- *Judges must pay attention to their abilities of self constraint and emotional stability.*
- *Judges should avoid exertion of psychological and other pressure on juvenile defendants, victims, witnesses, or other participants of the court session.*
- *Judges should ensure timely opening of the court hearings, without undue delays.*
- *Judges violating the impartiality and acting in breach of their professional conduct should be subject to disciplinary sanctions.*
- *Complaints against the judges must be properly investigated and disciplinary action should be taken against judges whose conduct is incompatible with the Judicial Code and ethical norms.*

- *Ensure the participation of legal guardians in all juvenile cases (including the juvenile-adults).*
- *Conduct hearings in a child-friendly manner without subjecting the child to harsh treatment or traumatisation.*
- *Use child-sensitive procedures, including court environments, adapted to the needs of children.*
- *Conduct court proceedings paying due regard to the age, mental abilities, physical state and emotional stability of the child.*
- *Develop and mainstream psychosocial assistance to juveniles in conflict with the law by supplying psycho-social assistance to aid defense attorneys in developing alternative solutions tailored to the individual client and what he is likely to be able to fulfill satisfactorily, under confidentiality rules applicable to and shared with the attorney as part of the attorney-client relationship; in instances in which the defense establishes the child client's desire to acknowledge responsibility for the charged conduct, provide assistance to the courts to design alternatives to incarceration..*
- *Conduct an initial interview with the juvenile defendant for establishing initial rapport in the presence of counsel, inquire as to the juvenile need to avoid using labels in the contexts of juvenile's anti-stigmatization priority. Discover and emphasize the juvenile's positive features based on which rapport can be created and the juvenile can be motivated to focus on correction and rehabilitation.*
- *Given the importance of the education level and psychological-emotional state of defendants present the charges in as clear language as possible for the juveniles to understand them.*
- *Present the ruling in a way that makes it as accessible as possible for the defendant, given the importance of the judgment for the ability of the juvenile to understand the outcome of the proceedings, and in the event of a guilty finding, to appreciate the nature of his offense and proposed remedial measures.*
- *Pay close attention to the age specific traits of the juvenile and his current mental and emotional state and listen to the juvenile for as long as possible during the interview.*
- *Conduct the questioning in an unrestrained and trustful environment making the questions to juveniles clear, understandable and concrete.*
- *Pay attention to the juvenile's social environment, values and education, which are the most relevant factors for the child's adjustment and reintegration into society following proceedings.*
- *During the questioning of juvenile defendants, witnesses or victims, close attention should be paid to their current psychological state, age peculiarities, speech and perception speed and pace. Questions should be formulated in keeping with their vocabulary and speech development, while answers should be expected with due regard for their speech and perception speed.*
- *The attitude towards juveniles should be as visible as possible, clearly differentiating from how adult defendants are treated especially in the following areas: pitch of voice, speech structure and ways of addressing the defendant. Empathy and delicacy are needed, whilst also being rigorous and clearly enforcing the requirements of the legislation.*
- *To the extent possible, the active engagement of juveniles in the court proceedings should be ensured. While using legal terms in speech, it is also important to make sure that juveniles understand their rights and responsibilities, the questions posed to them and the events occurring around them.*
- *In case of necessity (speech defects, communication difficulties, evidence of mental illness or inability understand the proceedings), the presence of specialists (defectologist, logopedist, clinical psychologist and the like) should be ensured during the court proceedings.*
- *Taking into account the person's psychological state and the impact of proceeding on the child, preclude any disrespectful, insulting, or ignoring attitudes towards any participant in proceedings, especially defendants, witnesses, victims and their legal guardians.*

- *Improve the ability of judges to exercise self-restraint, to manage their emotions and to maintain a comfortable, minimally stressful and emotionally even atmosphere in court. Duration of proceedings should be limited, when possible, to one hour at a time for the child's concentration.*
- *Establish specialised lawyers' group for juveniles both among PDOs and private lawyers.*
- *The legal services of defense counsels should be improved through training and other measures, as necessary.*
- *Attorney services should be supplemented by the assistance of menthal health/psycho-social support as part of the defense and covered by attorney-client privilege. University practica can help fill this need.*
- *The focus of attorneys specializing in juvenile defense should be the client's future, and resolution of the client's difficulties that may have led to his arrest, rather than merely dispensing with each individual case as quickly as possible. The attorney should see as his priority, first and foremost, to provide activity plans and non-custodial resolutions to cases that the client will be capable of satisfying, using the special attorney-client trust to develop individualized solutions to the client's needs, so as to reduce the likelihood of any further contact with the criminal justice system.*
- *Prohibit the application of accelerated court proceedings in juvenile cases.*
- *Judges should ensure rigorous application of existing safeguards to guarantee that children be able to waive their due process rights only knowingly and voluntarily.*
- *Special allowances should be made to envision expedited proceedings not based on guilty pleas in juvenile cases and not resulting in criminal records.*
- *In all instances the right of a juvenile to be heard should be strictly respected.*
- *Socio-economic and psychological conditions of the juvenile should be revealed and adequately assessed in all cases to put an effective prevention programmes for juveniles. However, a child should not be physically searched without consent, or without a warrant, as psychosocial "searches" are psychological invasions of the child's privacy and integrity.*
- *Review domestic laws, procedures and practices so as to ensure full implementation of international standards on protection of child victims and witnesses into Armenian legislation. It is offered to adopt a specific law on protection of child victims and witnesses on the basis of the Model Law on Witness Protection that contains the minimum safeguards for effective victim-witness protection.*
- *Provide a framework for legal, psychological and social assistance for child witnesses and victims.*
- *Provide for strict penalties for interviews and interrogations conducted with child witnesses who later are transformed into defendants.*
- *Institute regular multidisciplinary meetings between justice actors involved in each juvenile case (without the defendant) to discuss options for pre-trial resolution of cases, and all non-custodial options for those convicted.*
- *Judges should react to all allegations of pressure, intimidations, ill-treatment and refer this information to the responsible authorities for an effective investigation.*
- *Expand the existing list of protective measures with the focus on physiological protection of children.*
- *Review the practice of the use of protective measures and initiate an inclusive discussion on improving the effective application of those measures.*
- *Reduce potential intimidation, for example by using testimonial aids or appointing psychological experts during the examinations of juvenile defendants*

- *Questioning by the judge, prosecution or the defense in the courtroom also needs to be done in a child-friendly manner with the assistance of professionals.*
- *Set up programmes to carry out psychosocial measures as part of the defense for the juvenile accused to prevent further intimidation (only where a child is demonstrably mentally ill should court-ordered psychiatrists be consulted, when the child is not competent to stand trial or if and when the defense offers a psychological defense).*
- *Put in place adequate training, selection procedures as well as make education and information available to those professionals (educational, psychosocial and medical professionals, legal and law-enforcement professionals, including judges and police officers), who work with children, with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with children.*
- *Provide independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced given the vulnerability of the child in contact with law.*

ANNEX 1: COMPARATIVE TABLE ON DIVERSION AND ALTERNATIVE SANCTIONS IN DIFFERENT COUNTRIES

Diversion

Ireland	Irish Garda (Police) Diversion Program - Uses family conferencing (finding solution to problems underlying the offending behaviour); restorative justice; supervision (by specially trained officers).
Bosnia-Herzegovina	Laws for educational recommendation without judicial proceedings.
Finland	Victim-defendant mediation is practiced, which can constitute grounds for waiving prosecution.
Italy	Pre-trial, court approved probation is available, and compliance can result in a pardon.
Belgium	Public prosecutor can decide not to proceed to trial if the child agrees to a diversionary measure, e.g. Reparation of damage/volunteer job in the community. Public prosecutors and judges may refer cases to mediation centres. Focus on victim-defendant mediation, and also educational, retributive and restorative measures. More than 70% of cases dealt with informally by diversionary measures.
France	Prosecutors can impose alternatives to judicial proceedings, including “Maisons de Justice” or community justice centres, which also offer victim-defendant mediation to settle the dispute out of court.
Netherlands	Charges can be dropped on condition of the defendant paying compensation to the victim or attending the HALT (Het AL-Ternatief) program. Juvenile defendants can be admitted to a HALT program if they confess and if they haven’t previously participated more than twice in the program. Youths who go through program must repair vandalism/damage that they caused and counselors work with young people to assist with employment/ housing/ educational issues. Upon successful completion of the program, police charges are dropped and the case is dismissed. The prosecutor may drop charges, even without consent of a judge if certain conditions are met by the defendant, including, for example, up to 40 hours of community service, up to 40 hours of attendance of a learning project (include sexual education learning, focus on the victim learning, social skills learning), or up to 6 month youth probation. The first three options are carried out by the Alternative Sanctions Bureau within the Child Protection Board.

Australia	Expanded use of police cautions and restorative justice based programs called Family Group Conferences, where victim, defendant and families have a meeting with a professional coordinator.
Germany	No police diversion (as in England/Wales), all forms of diversion are provided only at the level of juvenile prosecutor or juvenile judge. The law emphasizes the discharge of juvenile and young adult defendants either because of petty nature of the crime, or because other social/ educational interventions already taken place. There are no restrictions concerning nature of the offences - even felony offences can be diverted in certain circumstances, eg robbery - if the defendant has repaired damage or made another form of apology to the victim. These practices covers 18-21 year old young adults also. Four levels of diversion: 1) Diversion without any sanction - priority in petty offences; 2) Diversion with measure taken by other agencies (parents/school) or in combination with mediation, and dismissal of the case after educative measures have been taken (mediation as particular educational measure is given special attention); 3) Diversion with intervention - prosecutor proposes that the juvenile court judge imposes minor sanction such as warning, community service, participation in training course, certain obligations, e.g. reparation/ restitution, apology to victim, community service, or a fine. Once fulfilled, prosecutor will dismiss the case in cooperation with the judge; or 4) Introduction of one of measures 1-3 after charge has been filed and proceedings already begun.
Albania	UNICEF has recently reported on the success of a pilot victim-defendant mediation program.
Serbia	UNICEF has recently reported on the success of a pilot victim-defendant mediation program.
England/Wales	Police diversion: 1) No further action; 2) Informal warning with no formal record kept; 3) Reprimand - available to a first defendant and if the offence is not very serious; or 4) Final warning and referral to Youth Offending Team to assess suitability for compulsory rehabilitation or “change” program. This system of diversion is more restrictive now than before the 1998 Crime and Disorder Act. Prosecutor diversion - prosecutor ultimately decides whether a case should proceed to court and may decide not to on public interest grounds, although this is rare.

Austria	1) Diversion with intervention - including minor fines and victim-defendant mediation; 2) “Decriminalisation” - immunity for 14-15 year old defendants in cases of moderate/non-serious misdemeanors if there are no convincing reasons urging the court to enforce juvenile penal law to prevent the defendant from committing further acts.
Greece	The prosecution can conditionally suspend the case and the minor can be obliged to fulfill certain educational measures, including reparation or compensation to the victim. After fulfillment of conditions, prosecutor discharges the case.
Czech republic	Available measure include: a) conditional dismissal of the case, with probationary period of 6m-2 yrs; or b) mediation and abandonment of criminal prosecution. These measures can be applied by prosecutor as well as by courts, although judges have so far been reluctant to apply these measures and prosecutors also seem to be reserved in their application.
Slovenia	Large number of cases are dismissed (almost 2/3 in 2002).
Canada	The Youth and Criminal Justice Act emphasizes the use of diversion programs by stating that they are “presumed to be adequate to hold a young person accountable for his or her behaviour” (s.4 (c)(d). If the young person completes the requirements of the program, all charges are dismissed. Police and prosecutors are specifically authorised to use the following measures: i) no further action; ii) informal warning by police officer; iii) police cautions;iv)referrals by police to community programmes or agencies; or v) Crown caution - given by prosecutor after police refers the case to them.

New Zealand	Family Group Conferences

A FGC must be convened in the following six situations and the following decisions can be made in each:

1. "child defendant care and protection conference" - in respect of an alleged young defendant when an enforcement officer believes that the child is in need of care or protection, and that, after consultation with the coordinator, an application for a declaration is required in the public interest.

- the FGC can decide whether the offence has been committed and what steps should be taken, including whether to make a declaration that the child is in need of care or protection.

2. "pre-charge FGC" - where a young person is alleged to have committed an offence, and has not been arrested, no charge can be laid in the Youth Court before there has been consultation between the police and the FGC Coordinator. If after consultation the police still wish to charge the young person, a FGC must be convened.

- the FCG can decide whether the offence was committed and if a charge should be laid in Court.

3. "custody conference" - where a young person denies a charge, but pending its resolution the Youth Court orders the youth to be placed in Child Youth and Family (a service of the Ministry of Social Development) or Police custody a FGC must be convened.

- the FGC can decide whether detention of the child should continue and where s/he should be placed pending the resolution of the case.

4. Where a young person does not deny a charge in the Youth Court, the Court must direct that a FGC be held - a "court-ordered FGC". This is the most common type of FGC.

- the FGC can decide what action and/or penalties should be imposed.

5. Where a charge is proved before the Youth Court and there has been no previous opportunity to consider the appropriate way to deal with the young defendant a FGC will be held.

- the FGC can decide what action and/or penalties should be imposed.

6. A Youth Court may direct that a FGC be convened at any stage in the proceedings if it appears necessary or desirable to do so - including, in the case of purely indictable charges, whether Youth Court jurisdiction should be offered.

Participants of the FGC consist of the young person, their youth advocate if one has been arranged, members of the family/family group and whoever they invite, the victims and supporters or representative of the victims, the police, the Youth Justice Coordinator, and, in cases where the Child Youth and Family service has had a role regarding the custody, guardianship or supervision of the young person, a Child Youth and Family social worker may also attend.

Alternative sanctions

Germany	Alternative sanctions, including mediation. General trend towards relying on community sanctions, with drop in the percentage of community sanctions attributable to extended application of diversion. Extended practice of probation and suspended sentences, even for repeat defendants. Juvenile court judges apply principle of imposing imprisonment as last resort and for shortest periods possible.
Belgium	a) Courts can order children to be placed under supervision of social services, with educational conditions attached, or can be placed with reliable person in foster home, or put under supervision for observation and educational purposes; b) Widespread practice of mediation; c) Use of family conferencing.
Bosnia-Herzegovina	Restorative justice option - mediation procedure, incorporating personal apology, compensation and community volunteering.
Netherlands	Restorative Justice and welfare approaches involving social services.
Ireland	Law provides for parental supervision orders, mentoring orders, and residential, intensive supervision and educational training orders. Law states that prison sentence should not be imposed unless there is no reasonable alternative.
England/Wales	Youth Rehabilitation Orders - enables courts to select from full range of community measures when sentencing.
Finland	Fines are the most common penalty, accounting for 74% of court sentences issued against 15-17 year olds. Very low level of imprisonments (0.8% of all cases dealt with by the courts in 2006.
Greece	75% of cases result in imposition of educational measure, of these, 50% is reprimand. Imprisonment is second most commonly ordered sentence, with more than 20% of all dispositions sentenced to imprisonment.
Slovenia	Imprisonment rare (1% of all cases) but commitment to a juvenile institution is applied more often (7% of all cases in 2006) Supervisions account for more than 50% of all sentences

ANNEX 2: POTENTIAL AND GOOD PRACTICES STILL BEING DOCUMENTED BY UNICEF REGIONAL OFFICE, 2009

	Children under the minimum age of criminal responsibility	Diversion	Alternatives to Custodial Sentences	Budgeting for Juvenile Justice reform	Monitoring and Accountability	Building on Justice Sector Reform
ALBANIA	UNICEF in partnership with Albanian Foundation on Conflict Resolution (AFCR) and Norvegian Mediation Services, has supported a pilot project offering mediation for juvenile offenders, which began in 2006 in Tirana, along with training activities for police officers, judges and prosecutors and the adoption of an agreement with the state police concerning the modalities of the programm					
AZERBAIJAN	In 2007 a pilot project was established in one district of Baku and expanded in 3 others in 2008. It serves as a diversion measure in keeping children away from the justice system, as an alternative measure for convicted juveniles and as a support provided to the reintegration process of children above or under the minimum age for prosecution as a juvenile.				In order to reduce the frequent reported cases of child rights violations within the law enforcement system (offenders, witnesses or victims), UNICEF and its partners agreed with the Ministry of Interior (MoI) to develop the curriculum on juvenile justice and to include UN Convention on the Rights of the Child education into regular training of the Police Academy under the Ministry of Interior.	UNICEF and its partner NGO Alliance for Children's Rights in close cooperation with the Ombudsman Office and OSCE office in Baku established the Children's Rights Legal Clinic in Baku capital in 2007. The main purpose of this project is to model the provision of free legal aid, legal counseling, legal support and representation in trials for vulnerable children and their families
GEORGIA						In 2007 a Legal Aid Service was established. It has now 12 offices throughout the country. Any person under the age of 18 can request free legal advice that includes representation on criminal cases to all detained, accused and convicted persons at pre-trial investigation stage and at the court hearing.
KOSOVO	Terre des hommes Kosovo has developed a program of education and support for children at risk of delinquency referred by schools, Centres for Social Work and Community Police. 350 children have currently benefited from this project. Since April 2007 this project has been part of the "Support to Juvenile Justice System of Kosovo" supported by EAR and implemented by UNICEF through Terre des hommes.					
	Tdh Kosovo, with the support of UNICEF and in agreement with UNMIK authorities has piloted the establishment of Community Services Orders (116 cases managed from 2002 to 2004) that has been institutionalized with the Juvenile Justice Criminal Law and the establishment of the Probation Services of Kosovo (2004).					

MACEDONIA					UNICEF has been involved in the development and adoption of a specialized juvenile justice preservice curriculum for law enforcement officers –A national expert team was selected from the Police Academy to develop an in-service curriculum on juvenile justice and child victim of crime. The final version of the curriculum was submitted to the Educational Council of the Police Academy and it was endorsed. With this it became official part of the higher education programme for law enforcement officers.	
					A National Juvenile Justice Working Group was established under the auspices of the Ministry of Justice (MoJ) to develop the Juvenile Justice Law. Once the Law was finalized and adopted, the role of this Working Group changed. The Group became the highest national JJ coordination body and developed an action plan for implementation of the JJ law.	
MOLDOVA		The concept of probation has been developing in Moldova since 2001 by the working group of Institute for Penal Reform and of the Ministry of Justice of the Republic of Moldova. The practical implementation started in 2004 with the piloting of presentence report in Centru sector in Chisinau municipality that was extended in three other districts in 2007. The same year, the Probation Service was established within the Department of Enforcement of Judicial Decisions. In 2008 the Law on probation entered into force providing innovative mechanisms of pre-trial, community based, penitentiary and post-penitentiary probation.				
MONTENEGRO					In Montenegro, the creation of a National Commission for Juvenile Justice reform had a positive impact on the way the professionals dealt with children and empowered them to call on the government to commit to the reform.This inter-sectoral body composed of JJ professionals from all relevant sectors: judiciary, police, social sector, education serves as a driving force of the reform.	The cooperation was established with the Ombudsman's Office. An agreement was made in order to specialize Ombudsman's Office officials in the area of children's rights and to include the Ombudsman representatives in several reform projects, including the Commission for Juvenile Justice.
TAJIKISTAN	The Juvenile Justice Alternatives project aims to implement international standards and norms, identify and address the needs of children who have offended and are at risk of re-offending and the needs of their family as well as bring State and NGO bodies together in order to prevent offending and reoffending and finally to demonstrate the benefits of rehabilitating children within their own communities to Government and law enforcement bodies.					

SERBIA		The Law on Juvenile Offenders was adopted in 2005 and entered into force in 2006. Since then, the juvenile justice reform has a legally basis. The new law is a major achievement as it clearly recognizes certain forms of restorative justice (apologies, compensation and community service as alternatives and as diversion). It also establishes new procedures on diversion, the prosecution and adjudication of accused juveniles as well as on the execution of custodial and non custodial sentences.		The Law on Juvenile offenders enforced since 2006 clearly stipulates that professionals including judges, prosecutors, attorneys and police that are dealing with cases concerned with juvenile offenders need to be certified and need to have completed specialized training in the field of child's rights and juvenile justice. This new obligation has resulted in the implementation of mandatory training as well as the development of training materials. UNICEF supported the implementation of the JJ law and provided assistance to the Judicial Training Centre, institution responsible for the mplementation of the training.	UNICEF has been conducting several activities at JCIK in order to improve the psycho-social care and protection of children in conflict with the law and to develop life skills and leave care programmes that will give children deprived of their liberty means to reintegrate into society. As part of its efforts to promote deinstitutionalization and shorter length of stay of children in institutions, the Juvenile CorrectionalInstitution at Krusevac was selected as a pilot site for the development of a Behaviour Management Programme (BMP) to introduce a "levels" and "points" system.
		Victim Offender Mediation in Serbia was piloted it in three different ways. The first one consisted of opening a Victim offender Mediation Centre in the city of Nis. The second way was to mainstream VOM as a conflict resolution approach within a juvenile correctional institution and the third one to mainstream VOM into the work of NGO "mobile teams" providing outreach services in close cooperation with 14 Centres for Social Work.			
UKRAINE	Restorative justice activities has been supported by the Ukrainian Centre for Common Ground (UCCG) in several regions of Ukraine. Restorative justice processes bring offenders face-to-face with the victims of their crimes, with the assistance of a trained facilitator, usually a community volunteer. Crime is personalised as offenders learn the human consequences of their actions, and victims (who are largely ignored by the justice system) have the opportunity to speak their minds and express their feelings to the one who most ought to hear them, contributing to the healing process of the victim and sometimes other members of community who may be affected by the crime as well.				Kharkiv PDO under Charitable Organisation 'Legal Aid Pilot Project' was opened on 1 August 2006, in accordance with the Concept of Reforming the System of Free-of-Charge Legal Aid in Ukraine, approved by President of Ukraine's Decree dated 9 June 2006, and with International Renaissance Foundation's financial support. Kharkiv PDO is a pilot project aimed at testing organisational forms of free-of-charge legal aid to eedy persons by involving qualified lawyers. The office's defenders conscientiously perform their professional duties, provide comprehensive defence to their clients, and advocate wider use of restorative and conciliatory justice
TURKEY				In 2001, Turkish National Police (TNP) was reorganized to make the services towards children better and "Child Police Units" were established in 81 City Police Departments. The units operate under the Public Order Department and each consists of five bureaus: social services, prevention of juvenile delinquency, missing and wanted children, judicial affairs and administrative bureaus. All judicial and administrative policing services towards children aged 0-18, including children living on streets, abandoned and refugee children as well as children in conflict with the law, are carried out by these units. Currently there are about 4,000 child police personnel nationwide and they are provided with regular in-service trainings on how to work with children.	The Ministry of Justice with technical support from UNICEF and funding from the European Union have achieved a new standard in training design and delivery for Psychosocial and Other Professionals working with Children in Prisons, Detention and Education Houses in Turkey. The entire programme was enabled by implementers and central Ministry personnel being involved from the start; this in turn encouraged the keen sense of ownership. The activity is an example of participatory methods being used with absolute success; it was developed within the MoJ, for the MoJ, usingTurkish consultants, providing management training, tools and information to work more effectively with children. The modules have nurtured and positive change of attitude towards the children detained. The programmes have been adopted into the MoJ training system and are self sustaining

ANNEX 3: LIST OF INTERNATIONAL DOCUMENTS RELATING TO JUVENILE JUSTICE

1. Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Resolution 2000/14.
2. Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
3. Council of Europe Convention on Contact concerning Children (2003).
4. European Convention on the Exercise of Children's Rights (1996).
5. Guidelines for Action on Children in the Criminal Justice System.
6. Human Rights Council Resolution (A/HRC/10/L.15) on human rights in the administration of justice, in particular juvenile justice (20 March 2009).
7. Recommendation Rec (2000)20 on the role of early psychosocial intervention in the prevention of criminality.
8. Recommendation Rec (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families.
9. Recommendation CM/Rec(2008)11 on the European Rules for Juvenile Defendants subject to sanctions or measures.
10. Recommendation CM/Rec(2009)10 on Policy Guidelines on integrated national strategies for the protection of children from violence.
11. Recommendation Rec (87) 20 on social reactions to juvenile delinquency.
12. Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.
13. Recommendation Rec(2005)5 on the rights of children living in residential institutions.
14. Recommendation Rec(2006)2 on the European Prison Rules.
15. Resolution (78) 62 on juvenile delinquency and social change.
16. Resolution No. 2 on Child-friendly Justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, October 2007).
17. Resolution (66) 25 on short-term treatment of young defendants of less than 21 years
18. Revised European Social Charter (1996).
19. UN Committee on the Rights of the Child General Comment No. 10 (2007) on "Children's rights in juvenile justice".
20. UN Guidelines on the Administration of Juvenile Justice: the "Vienna Guidelines", ECOSOC Resolution 1997/30 (1997).
21. UN Standard Minimum Rules for Non-Custodial Measures: The Tokyo Rules.
22. United Nations Convention on the Rights of the Child (1989).
23. United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009).
24. United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh guidelines", 1990).
25. United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 2005).
26. United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("The Havana Rules", 1990).

27. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules", 1985).

ANNEX 4: RELEVANT NATIONAL LAW PROVISIONS (IN FORCE AT THE MATERIAL TIME)

A. ARTICLES OF THE CC JUVENILE WERE CHARGED WITH

Article 104. Murder

1. Murder is illegal willful deprivation of one's life punished with imprisonment for 6 to 12 years.

2. Murder:

1) of 2 or more persons,

2) of the person of close relative of the latter, due to service and public duty of the person;

3) combined with kidnapping or taking hostage;

4) of a visible pregnant woman;

5) with particular cruelty;

6) committed in a way dangerous for the life of many people;

7) by a group of people or by an organized group;

8) out of mercenary motives and combined with extortion and banditry;

9) combined with terrorism;

10) out of hooliganism;

10.1) that was committed during a mass disorder by a participant

11) to conceal another crime or to facilitate the committal of the latter;

12) combined with rape or violent sexual actions;

13) out of motives of national, race or religious hate or fanatism;

14) for the purpose of utilization of the parts of the body or tissues of the victim;

15) by a person who previously committed a murder, except actions envisaged in Articles 105-108 of this Code, is punished with 8-15 years of imprisonment or for life.

Article 112. Infliction of willful heavy damage to health.

1. Infliction of willful bodily damage which is dangerous for life or caused loss of eye-sight, speech, hearing or any organ, loss of functions of the organ, or was manifested in irreversible ugliness on face, as well as caused other damage dangerous for life or caused disorder, accompanied with the stable loss of no less than one third of the capacity for work, or with complete loss of the professional capacity for work obvious for the perpetrator, or caused disruption of pregnancy, mental illness, drug or toxic addiction, is punished with imprisonment for the term of 3 to 7 years.

2. The same act, committed:

1) in relation to two or more persons;

2) in relation to the person or his relatives, concerned with this duty or carrying out one's public duty;

3) lost the legal force

4) with particular cruelty;

5) by a means dangerous for other people's life;

6) by a group of persons, by an organized group;

7) with mercenary motives8) accompanied with terrorism;

9) with hooligan motives;

10) to conceal another crime or facilitate its committal;

11) accompanied with rape or violent sexual acts;

12) with motives of national, racial or religious hatred or religious fanatism;

13) with the purpose of using the parts of the body or tissues of the aggrieved,

14) if caused the death of the aggrieved by negligence, is punished with imprisonment for the term of 5 to 10 years.

Article 113. Infliction of willful medium-gravity damage to health.

1. Infliction of willful bodily injure or any other damage to health which is not dangerous for life and did not cause consequences envisaged in Article 114 of this Code, but caused protracted health disorder or significant stable loss of no less than one third of the capacity to work, is punished with arrest for the term of 3 to 6 months or imprisonment for the term of up to 3 years.

2. The same act, if committed:

1) in relation to 2 or more persons;

2) in relation to the person or his relatives, concerned with this person in the line of duty or carrying out one's social duty;

3) by a group of persons or by an organized group;

4) for mercenary purposes;

5) with particular cruelty;

6) with hooligan motives;

7) with motives of national, racial or religious hatred or religious fanatism, is punished with imprisonment for the term of up to 5 years.

Article 116. Inflicting medium-gravity or grave damage by exceeding the limits of necessary defense.

1. Inflicting medium-gravity damage by exceeding the limits of necessary defense is punished with a fine in the amount of 50 to 150 minimal salaries or with arrest for up to 2 months, or with imprisonment for the term of up to 1 year.

2. Inflicting grave damage by exceeding the limits of necessary defense is punished with, a fine in the amount of 100 to 250 minimal salaries or with arrest for 1-3 months, or with imprisonment for the term of up to 2 years.

Article 137. Threat to murder, to inflict heavy damage to one's health or to destroy property.

1. The threat to murder, to inflict heavy damage to one's health or to destroy property of big volume, provided there was real danger that this threat would be carried out, is punished with a fine in the amount of 50 to 150 minimal salaries, or imprisonment for up to 2 years.

2. The term “property of big volume” in this article shall mean to the amount of 500 to 3000 minimal salaries.

Article 175. Banditry.

1. Banditry, i.e. an assault for the purpose of capturing someone’s property, committed with violence dangerous for life or health, or with a threat to commit such violence, is punished with imprisonment for the term of 3 to 6 years, with or without confiscation of property.

2. Banditry committed:

1) by a group with prior agreement;

2) n large amount of assets;

3) by illegal entering an apartment, warehouse or facility;

4) by using a weapon or other item as weapon,

5) repeatedly, is punished with imprisonment for the term of 6 to 10 years, with or without confiscation of property.

3. Banditry committed

1) in particularly large amount with the purpose of theft;

2) by an organized group;

3) inflicting grave damage to health,

4) Action committed by a person with two or more convictions for crimes envisaged in Articles 175-182, 222, 234, 238, 269 of this Code, is punished with imprisonment for the term of 8 to 15 years, with or without confiscation of property.

4. In this chapter, by petty amount we mean the amount (value) not exceeding 5 minimal salaries established at the moment of committal of the crime in the Republic of Armenia.

In this chapter, by significant amount we mean the amount (value) not exceeding 5 to 500 minimal salaries established at the moment of committal of the crime in the Republic of Armenia.

In this chapter and in Artiicle 216 of this Code. by large amount we mean the amount (value) not exceeding 500 to 3000 minimal salaries established at the moment of committal of the crime in the Republic of Armenia.

In this chapter and in Artiicle 216 of this Code, by particularly large amount we mean the amount (value) exceeding 3000 minimal salaries established at the moment of committal of the crime in the Republic of Armenia.

In this chapter, in envisaged cases, embezzlement is considered repeated, if it was committed by a person who committed a crime under Articles 175-182, 234, 238, 269 of this Code.

The prosecution of persons who committed theft (Article 177, part 1) or swindling (Article 178, part 1) or embezzlement, or squandering (Article 179, part 1) with respect to persons considered to be close relatives of the aggrieved is done based on the complaint from the latter.

Article 176. Robbery.

1. Robbery, i.e. overt theft of somebody’s property, is punished with a fine in the amount of 200 to 600 minimal salaries, or arrest for the term of 2 months, or with imprisonment for the term of up to 3 years.

2. Robbery committed:

1) by a group with prior agreement;

2) in large amount;

3) by illegal entering an apartment, warehouse or facility,

4) was accompanied with violence not dangerous for life or health, or threat of violence,

5) repeatedly is punished with imprisonment for the term of 3 to 6 years.

3. Robbery committed:

1) in particularly large amount;

2) by an organized group;

3) lost the legal force

4) committed by a person with two or more convictions for crimes envisaged in Articles 175-182, 222, 234, 238, 269 of this Code, is punished with imprisonment for the term of 4 to 8 years, with or without confiscation of property.

Article 177. Theft.

1. Theft, i.e. clandestine appropriation of somebody's property in significant amounts, is punished with a fine in the amount of 100 to 400 minimal salaries, or arrest for the term of 1 to 2 months, or with imprisonment for the term of up to 2 years.

2. Theft committed:

1) by a group with prior agreement;

2) in large amounts,

3) by illegal entering into an apartment, warehouse or facility,

4) repeatedly,

5) lost the legal force, is punished with a fine in the amount of 200 to 600 minimal salaries, or with imprisonment for the term of 2 to 6 years.

3. Theft committed:

1) in particularly large amount;

2) by an organized group;

3) committed by a person with two or more convictions for crimes envisaged in Articles 175-182, 222, 234, 238, 269 of this Code, is punished with imprisonment for the term of 4 to 8 years, with or without confiscation of property.

4. Petty theft from the person's clothes, bag or other handbags, is punished with a fine up to 200 minimal salary, or with arrest for the term of up to 2 months.

Article 178. Swindling.

1. Swindling, i.e. theft in significant amount or appropriation of somebody's property rights by cheating or abuse of confidence, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.

2. The same action committed

1) by a group with prior agreement,

2) in large amounts;

3) repeatedly,

4) lost the legal force,

5) with the pretense of a bribe is punished with imprisonment for the term of 2 to 6 years

3. Swindling committed:

1) in particularly large amount;

2) by an organized group,

3) committed by a person with two or more convictions for crimes envisaged in Articles 175-182, 222, 234, 238, 269 of this Code, is punished with imprisonment for the term of 4 to 8 years, with or without property confiscation.

Article 179. Squandering or embezzlement.

1. Squandering or embezzlement is theft of somebody's property entrusted to the person in significant amount, punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labor for 6 months to 1 year, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.

2. Same actions:

1) with abuse of official position,

2) committed by a group with prior agreement;

3) in large amount,

4) repeatedly,

5) lost the legal force

are punished with a fine in the amount of 400 to 700 minimal salaries, or imprisonment for 2-4 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

3. Action envisaged in part 1 or 2 of this Article, committed:

1) in particularly large amount;

2) by an organized group,

3) committed by a person with two or more convictions for crimes envisaged in Articles 175-182, 222, 234, 238, 269 of this Code, is punished with imprisonment for the term of 4 to 8 years, with or without property confiscation.

Article 185. Willful destruction or spoilage of property.

1. Willful destruction or spoilage of somebody's property, which caused significant damage, is punished with a fine in the amount of 50 to 100 minimal salaries or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.

2. Same action which:

1) was committed by arson, explosion or other publicly dangerous method;

2) inflicted large damage;

3) was committed, in relation to the person's official or public duty, or, on the same grounds, was related to his close relative,

4) was committed for motives of national, racial or religious hatred or religious fanatism, is punished with imprisonment for the term of up to 4 years.

3. Actions envisaged in parts 1 or 2 of this Article, which:

1) caused particularly large damage;

2) caused human death by negligence;

3) caused destruction of items of historical, scientific or cultural value, is punished with imprisonment for the term of 2 to 6 years.

Article 258. Hooliganism.

1. Hooliganism is brutal violation of public order which is manifested in express disrespect in relation to citizens is punished with with a fine in the amount of up tp 50 minimal salaries, or with arrest for the term up to 1 month,

2. the same action combined with violence or threat to use it, as well as distruction or damage of somebody's property is punished with a fine in the amount of 100 to 300 minimal salaries, or with arrest from 1to 3 months, or imprisonment up to 2 years

3. The action envisaged in part 2 of this Article, committed:

1) by a group of persons or organized group;

2) by offering resistance to a representative of authorities, or a person carrying out a duty of public order protection or a person preventing breach of public order,

3) By a person who has previously committed hooliganism.

4) Combined with medium gravity damage to the health of the person combined with exceptional cynicism, is punished with a fine in the amount of 200 to 500 minimal salaries, or imprisonment for up to 5 years

4. The act envisaged in parts 2 or 3 of this Article, committed with a weapon or another item used as a weapon, is punished with imprisonment for the term of 4 to 7 years.

Article 259. Making a false statement about terrorism.

Making an obviously false statement about a prepared act of terrorism, is punished a fine in the amount of 200 to 400 minimal salaries, or correctional labor for up to 1-2 years, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 3 years.

Article 268. Illegal turnover of narcotic drugs or psychotropic materials without the purpose of sale.

1. Illegal manufacture, processing, procurement, keeping, delivery or supply of narcotic drugs or psychotropic materials without the purpose of sale, is punished with arrest for the term of up to 2 months or with imprisonment for the term of up to 1 year.

2. The same action committed:

1) repeatedly

2) in large amount:

Is punished with imprisonment for the term of up to 3 years.

3. The same action committed in particularly large amount:

Is punished with imprisonment for the term of 2 to 6 years.

Article 324. Theft of damage to documents, stamps or seals.

1. Theft of a citizen's passport or other important document, is punished with a fine in the amount of 200 to 400 minimal salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 1 year.

2. Theft, destruction, damage or concealing of official documents, stamps or seals that was committed for mercenary or other personal interests, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term of 1-3 months, or with imprisonment for the term of up to 2 years.

B. JUVENILE SPECIFIC PROVISIONS OF CC

Section 5. Peculiarities of criminal liability and punishment for minors

Chapter 14. Peculiarities of criminal liability and punishment for minors

Article 85. Criminal liability and punishment of minors.

1. Minors are subject to criminal liability and punishment that is assigned to them in accordance with the propositions of this Code, taking into account the rules envisaged in this Section.

2. A punishment or enforced educational coercive measures of educative nature can be assigned in relation to a minor who committed a crime.

Article 86. Types of punishment.

The types of punishment assigned in relation to minors are as follows:

1) fine;

2) public work;

3) arrest;

4) imprisonment for a certain period.

Article 87. Fine.

1. Fines are used if the minor has individual income or in the case of such property, to which confiscation can be extended.

2. Fines are assigned in the amount from 10 to 500 minimal salaries established in the Republic of Armenia by law, at the time of assignment of the punishment.

Article 88. Arrest.

Arrest, for the period from 15 days to 2 months, is assigned in relation to a minor who has reached the age of 16 years at the moment of sentence.

Article 89. Imprisonment.

1. Lost the legal force

2. Imprisonment in relation to minors is assigned:

1) for not grave crime up to 1 year and for medium-gravity crime, a term up to 3 years;

2) for grave or particularly grave crime, committed under 16 years of age, a term up to 7 years;

3) for grave or particularly grave crime, committed at the age of 16 to 17 years, a term up to 10 years.

Article 90. Assigning punishment.

1. When assigning punishment to a minor, his living and rearing conditions are taken into account, the degree of mental development, health, other features of personality, as well as the influence of other persons.

2. Imprisonment by accumulation of crimes in relation to persons under 16 years of age who committed medium-gravity, grave or particularly grave crimes can not exceed 7 years.

3. Imprisonment by accumulation of crimes in relation to persons from 16 to 18 years of age who committed medium-gravity, grave or particularly grave crimes can not exceed 10 years.

4. The final punishment assigned in the form of imprisonment by accumulation of sentences can not exceed 12 years.

Article 91. Exemption from criminal liability by application of enforced educational coercive measures of educative nature.

1. The minor who committed for the first time a not grave or medium-gravity crime can be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced educational coercive measures of educative nature.

2. The court can assign the following enforced educational coercive measures in relation to the minor:

1) warning;

2) handing over for supervision to the parents, persons replacing the parents, local self-government bodies, or competent bodies supervising the convict's behavior for up to 6 months;

3) imposing the obligation to mitigate the inflicted damage, within a deadline established by the court;

4) restriction of leisure means and establishment of special requirements to the behavior, for up to 6 months.

3. By motion of competent bodies supervising the convict's behavior, the court can apply other forced educational coercive measures of educative nature to the minor.

4. Several enforced educational coercive measures of educative nature can be assigned in relation to a minor at the same time.

5. If the minor regularly evades from the enforced educational coercive measures of educative nature, by motion of the local body of self-government or competent bodies supervising the convict's behavior, the documents are forwarded to the court, to resolve the issue of cancellation of the enforced educational coercive measure and subjecting the minor to criminal liability.

6. When committing a new crime, the minor is not subjected to criminal liability for the previous crimes for which he was sentenced to enforced educational coercive measures of educative nature.

Article 92. The essence of enforced educational coercive measures.

1. Warning is an explanation to the minor about the damage inflicted by his/her act and about the consequences of repeated committal of crimes envisaged in this Code.

2. Handing over for supervision to the parents, persons replacing the parents, competent bodies supervising the convict's behavior or local bodies of self-government is imposing the duty to exert educative influence and monitor the minor's behavior.

3. The duty to mitigate the inflicted damage is imposed taking into account the property status of the minor and the existence of appropriate labor capacities.

4. Restriction of right to leisure time and establishment of special requirements to the behavior can envisage a prohibition of visiting certain places, of certain types of leasure, including the ban to drive mechanical means of transportation, staying out of home at certain time of the day, traveling without authorization of the local body of self-government. The minors can be also required to return to an educational institution or to be employed by motion of the local self-government body.

Article 93. Exemption from punishment by placement in specialized institutions of educative or of medical-educative nature.

1. A minor who committed a not grave or medium-gravity crime can be exempted from punishment, if the court finds that the purpose of the punishment can be achieved by placing the minor in a specialized ***institution of educative or of medical-educative nature***.

2. Assignment to a specialized institution ***of educative or of medical-educative nature*** is done for the term of up to three years, but not more than needed to become major.

3. Staying in the institutions described in the first or the second part of this article can be terminated ahead of time, if by motion of the head of the specialized educational and disciplinary or medical and disciplinary institution, the court finds that the minor does not need any longer the application of this measure.

Article 94. Exemption from punishment on parole.

Exemption from punishment on parole in relation to a minor who committed a crime and was sentenced to imprisonment for a crime committed at a minor age can be applied, if the convict actually has served:

1) no less than one quarter of the punishment assigned for a not grave or medium-gravity crime;

2) no less than one third of the punishment assigned for a grave crime;

3) no less than half of the punishment assigned for a particularly grave crime.

Article 95. Exemption from criminal liability or punishment due to expiry of prescription period.

When exempting a person who committed a crime under 18 years of age from criminal liability or punishment due to expiry of prescription period, the prescription periods envisaged in Articles 75 and 81 of this Code are reduced by half respectively.

Article 96. Quashing the criminal record.

1. After having served a punishment not related to imprisonment, the criminal record of the person is considered quashed.

2. For persons under 18 who committed crime, the deadlines of criminal record quashing specified in Article 84 of this Code, are reduced, and are respectively equal to:

1) 1 year, after having served an imprisonment for medium-gravity crime;

2) 3 years, after having served an imprisonment for grave crime;

3) 5 years, after having served an imprisonment for particularly grave crime.

C. JUVENILE SPECIFIC PROVISIONS OF CPC

Chapter 50. Peculiarities of Proceedings on Cases Concerning the Under-Aged

Article 439. Procedure of cases involving the under-aged

1. The provisions of this chapter are applied in relation to the crimes committed by those persons who were under 18 years of age at the moment of commitment of the crime.

2. The procedure of proceedings concerning the cases of the under-aged is regulated by the general rules of this Code and by the articles of this chapter.

Article 440. Circumstances demanding verification for cases in regard of an under-aged person

Except for the demand of verification of the the circumstances on cases, in cases regarding an under-aged person it is necessary to establish the following data about the under-aged person:

The age (birth date, year, month, day);

Life and rearing conditions;

Health condition and general level of development.

Article 441. Participation of the legal guardian of the under-aged person in the investigation of the case

The legal guardian of an under-aged accused or suspect participates in the investigation of cases concerning the crimes of the under-aged person.

Article 442. Application of arrest to an under-aged person as a mean of prevention

Application of arrest to an under-aged suspect or accused is allowed only in the case when medium, grave or particularly grave crimes are incriminated to him.

Article 443. Exemption of the under-aged person from punishment by applying to him disciplinary enforcement measures of educative nature

When making a verdict in regard of an underaged person, the court can exempt the under-aged person from the punishment and use disciplinary enforcement measures of educative nature, if the court concludes that the under-aged person can be improved without criminal punishment.

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