



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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SPECIAL REPORT

THE ADMINISTRATION OF JUSTICE ON CRIMES OF SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN

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Acronyms

UNICEF – United Nations Children’s Fund
CRC – United Nations Committee on the Rights of the Child
GREVIO – Council of Europe Expert Group on Women and Domestic Violence
CEDAW – UN Committee on the Elimination of Discrimination against Women
ECtHR – European Court of Human Rights
UNFPA – United Nations Population Fund
SDG Fund – Sustainable Development Goals Fund
NICHD – National Institute of Child Health and Human Development

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INTRODUCTION

This document is a special report reflecting the findings of the research and monitoring of administration of justice on crimes of sexual abuse and sexual exploitation of children conducted by the Public Defender's Office of Georgia, with the support of the United Nations Children's Fund (UNICEF), within the framework of the project "Strengthening the Capacities of the Public Defender's Department on the Rights of the Child in Monitoring Cases of Sexual Abuse of Children", covering the period from July 2020 to March 2021.

The Public Defender's Office has been pointing out for years that timely, effective and coordinated response to crimes of sexual abuse and sexual exploitation of children by the state agencies is one of the main challenges in the country. The involvement of all necessary, adequately retrained professionals in the justice process is crucial in terms of protecting children from secondary victimization and has a positive impact on the effectiveness of administration of justice. However, the number of staff working on crimes of sexual abuse of children in the country falls far short of the need in this regard. For example, in 2014-2020, a total of **1,092 juveniles** were identified as victims of sexual violence and sexual exploitation, **317** of them were identified in 2018-2019, although the State employs only 13 psychologists to work with them across the country.¹ Raising the qualifications of the relevant professionals on the specifics of crimes of sexual abuse of children is also problematic. The lack of rehabilitation services oriented to child victims of sexual abuse and sexual exploitation is even more problematic, as the scarce resources cannot provide rehabilitation of child victims of sexual abuse or their families and fail to create an effective supportive environment.

The main purpose of the monitoring was to assess the enforcement of Georgian legislation and administration of justice on cases of sexual abuse and sexual exploitation with interdisciplinary, victim-centered approaches and in accordance with the requirements of international human rights standards. Accordingly, we explored all stages of responding to crimes of sexual abuse and sexual exploitation of children, including detection of crime, administration of justice and provision of rehabilitation and support measures to children and their families.

Inter alia, we examined all the judgments delivered by common courts on cases of sexual abuse of children in 2018-2019 (169 judgments) and all the decrees (119 decrees) on termination of investigations and criminal prosecution in 2018-2019. In addition, information was requested from all governmental agencies involved in the administration of justice on cases of sexual abuse and sexual exploitation of children. As part of the research, meetings were held with professionals involved in administration of justice and representatives of non-governmental organizations.

¹ Correspondence N07/4360 of the *State Agency for the Protection and Assistance of Victims of Human Trafficking*, date: 30/06/2020. Correspondence of the Prosecutor General's Office of Georgia: N13/38462, date: 13/07/2020, N13/16988, date: 25/03/2021.

METHODOLOGY

The crimes of sexual abuse and sexual exploitation of children were studied and monitored within the scope of the authority granted by the Organic Law of Georgia on the Public Defender of Georgia.

The aim of the research was to evaluate legislation and administration of justice on cases of sexual abuse and sexual exploitation of children with interdisciplinary, victim-centered approaches and in compliance with international human rights standards. Based on the challenges identified, recommendations were developed for the purpose of improving legislation, policies and practices.

For the purposes of the research, the crimes of sexual abuse and sexual exploitation of children imply crimes referred to in Article 137 of the Criminal Code of Georgia (rape); Article 138 (other action of a sexual nature); Article 139 (coerced penetration of a sexual nature into the body of a person or other action of a sexual nature); Article 140 (penetration of a sexual nature into the body of a person under the age of 16); Article 141 (perverted action); Article 255² (offering a meeting to a child for sexual purposes); Article 253 (engagement in prostitution); Article 254 (promotion of prostitution).

The research covers cases qualified under the above articles, which involve victims who were under 18 years of age at the moment of the commission of the crime, and in which either a verdict was delivered or the investigation/prosecution was terminated in 2018–2019.

At the early stage, the research and monitoring methodology was developed on the basis of standards provided for by the good practice guidelines of the UN Convention on the Rights of the Child and its Optional Protocols,² General Comments of the UN Committee on the Rights of the Child, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention),³ its Explanatory Report and other human rights instruments. In addition, questionnaires were developed for professionals working on crimes of sexual abuse and sexual exploitation of children – **judges, prosecutors, investigators, lawyers and psychologists**.

At the same stage, necessary information was requested from the relevant state agencies and courts. Within the framework of the project, for the purposes of the research, the Public Defender's Office had communication with the Supreme Court of Georgia, courts of appeal and all relevant courts of first instance. Information was requested from the Prosecutor General's Office, Ministry of Internal Affairs, Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, Ministry of Education, Science, Culture and Sports, LEPL Levan Samkharauli National Forensics Bureau, LEPL Agency for State Care and Assistance of Victims of Trafficking, High Council of Justice, High School of Justice, LEPL Office of Resource Officers of Educational Institutions, LEPL Legal Aid Service, Academy of the Ministry of Internal Affairs and Public Health Foundation of Georgia.

At the **second stage**, the practices relating to sexual abuse and sexual exploitation of children were analyzed. In particular, **169 judgments** delivered by common courts on crimes under Ar-

² The Convention was adopted in 1989. Georgia ratified it in 1994. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) was adopted in 2000. Georgia ratified it in 2010. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was adopted in 2000. Georgia ratified it in 2005. The third Optional Protocol to the Convention on the Rights of the Child on a communications procedure was adopted in 2011. Georgia ratified it in 2016.

³ The Convention was adopted in 2007. Georgia ratified it in 2014.

ticles 137-141, 255-255² of the Criminal Code and **119 decrees** on the termination of **investigations** and criminal prosecution against specific persons were analyzed. In addition, full materials of **52 criminal cases** were requested and analyzed.⁴ In particular, materials were requested from the common courts relating to 10 cases qualified under Article 137, 9 cases qualified under Article 138, one case qualified under Article 139, 13 cases qualified under Article 140, 18 cases qualified under Article 141 and one case qualified under Article 255¹. Defendants were acquitted in five of the cases analyzed, one defendant was partially acquitted, one case was re-qualified, five cases were terminated due to the insanity of the defendants, guilty verdicts were delivered in the rest 39 cases, 11 of which were plea bargaining. In addition, 19 of the cases examined were appealed to the Court of Appeal and 10 were appealed to the Supreme Court, although only one decision of the court of first instance was overturned.

Within the framework of the research, we analyzed 15 decrees on the termination of investigations in cases qualified under Article 137 of the Criminal Code, 4 decrees relating to cases qualified under Article 138 of the Criminal Code, one decree relating to a case qualified under Article 139 of the Criminal Code, 73 decrees relating to cases qualified under Article 140 of the Criminal Code, 22 decrees relating to cases qualified under Article 141 of the Criminal Code and 2 decrees relating to cases qualified under Article 255 of the Criminal Code, as well as 2 decrees on the termination of criminal prosecution into cases qualified under Article 140.

According to the correspondence received from the Prosecutor General's Office of Georgia, the Ministry of Internal Affairs of Georgia and the Supreme Court of Georgia,⁵ no investigation was launched, no investigation/prosecution was terminated and no verdict was delivered into crimes committed against juveniles under Articles 253-254 of the Criminal Code in 2018-2019.

Within the framework of a survey conducted as part of the research, on the basis of specially designed questionnaires, we individually interviewed 29 professionals involved in the judicial proceedings, namely judges, prosecutors, investigators, lawyers, psychologists and social workers. In addition, an online meeting was held with the Head of the Psychologists' Department of the Academy of the Ministry of Internal Affairs, as well as the psychologist and the Head of the Public Health Foundation. Due to the busy schedule, 5 psychologists of the Psychiatric Examination Department of LEPL Levan Samkharauli National Forensics Bureau participated in the survey in writing.

The information obtained from the survey was processed with the participation of a legal expert and an expert psychologist, based on which the findings and Public Defender's recommendations were developed for the purpose of improving legislation, practices and approaches oriented to child victims of sexual abuse.

The Public Defender of Georgia thanks the common courts of Georgia, each state agency, each organization and relevant professionals for their cooperation.

⁴ Batumi City Court – 8 cases, Gori District Court – 4 cases, Zestaponi District Court – 2 cases, Tetrtskaro District Court – 3 cases, Rustavi City Court – 4 cases, Samtredia District Court – 3 cases, Senaki District Court – 1 case, Poti City Court – 2 cases, Khashuri District Court – 2 cases, Khelvachauri District Court – 2 cases, Tbilisi City Court – 13 cases, Mtskheta District Court – 1 case, Kutaisi City Court – 1 case, Zugdidi District Court – 1 case. Akhaltsikhe District Court – 1 case, Bolnisi District Court – 3 cases.

⁵ Correspondence N13/70869 of the Prosecutor General's Office of Georgia of Georgia, date: 23/12/2020; Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date: 15/12/2020; Correspondence No.os/383-20 of the Supreme Court of Georgia, date: 16/11/20.

KEY FINDINGS

Combating and preventing crimes of sexual abuse of children and the lack of effective mechanisms focused on the rehabilitation and support of child victims of violence are one of the main challenges in the country. Although the country has ratified international instruments⁶ that oblige the State to improve legislation and policies and to protect the interests of the child in the judicial process, there remain significant challenges, both in terms of legal regulation and practice. In particular, the timely identification/prevention of crimes of sexual abuse of children, proper administration of justice and provision of relevant services to child victims of sexual abuse remain problematic.

Legislation and standards of proof fail to address the specifics of crimes of sexual abuse of children, which creates significant barriers to access to justice for child victims of sexual violence. The State fails to provide an environment tailored to the needs of juveniles during the administration of justice, to protect them from secondary victimization or to provide services tailored to child victims of sexual abuse. In particular:

- ▶ Georgian legislation relating to rape and other forms of sexual violence does not meet the requirements of the UN Committee on the Rights of the Child, the Lanzarote Convention, the Istanbul Convention or other human rights instruments. In particular, the penetration of a sexual nature into the body of a child by abusing trust, authority or influence should independently constitute rape, without the necessary preconditions of violence, threats of violence or vulnerability (Article 137 of the Criminal Code). Similarly, any other action of a sexual nature, if it is committed by abusing trust, authority or influence, must independently constitute rape, without the necessary preconditions of violence, threats of violence or vulnerability (Article 138 of the Criminal Code).
- ▶ The action referred to in Article 139 of the Criminal Code should constitute rape and not coercion⁷ in relation to a minor (like in relation to an adult). The existing regulation (Articles 137 and 139 of the Criminal Code) in fact allows for the existence of two different offences equal to rape, one of which is a serious offence (Article 137) and the other is a less serious offence (Article 139).
- ▶ Under the current wording of Article 140 of the Criminal Code, a juvenile may, in fact, give consent to sexual intercourse at any age (although such consent is invalid and the action represents a crime even if there is the child's consent). Legislation does not provide for a threshold below which no consent should be assessed and the child should automatically be considered a person in a vulnerable position due to his/her age.
- ▶ Georgian legislation, contrary to international human rights standards,⁸ does not criminalize "buying sex" from the child and imposes administrative liability⁹ on children engaged in prostitution.

⁶ UN Convention on the Rights of the Child and its Optional Protocols, UN Convention on the Elimination of All Forms of Discrimination against Women, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe Convention on preventing and combating violence against women and domestic violence.

⁷ See on similar issue – GREVIO Baseline Evaluation Report Spain, 2020, § 220, available: <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f> [Last accessed: 04/2021]

⁸ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 19.1; See also Council of Europe Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007, § 130.

⁹ Administrative Offences Code of Georgia, Article 1733.

- ▶ The enforcement of child protection mechanisms and ensuring child-friendly approaches by the state agencies in accordance with the Juvenile Justice Code remain problematic.
- ▶ Physical violence still plays a special role in the qualification of crimes of sexual abuse of children and administration of justice, and no due attention is paid to the circumstances that suppress the will of the child. Such an approach ignores the vast majority of cases of sexual abuse that are not committed by the use of physical force and where victims do not resist physically.
- ▶ The standard of a body of evidence set by Georgian legislation,¹⁰ which is interpreted as the necessity of the existence of two pieces of evidence to deliver a guilty verdict, is substantially inconsistent with the specifics of sexual abuse of children and impedes access to justice on similar cases. The above is a discriminatory standard and should be revised in accordance with the requirements of international criminal law and international human rights law.
- ▶ The techniques of making decisions on the termination of an investigation and criminal prosecution in criminal cases vary. Often decisions do not fully reflect how the relevant agencies responded to a case, which would make it possible to assess how effective the response was and whether specifics of sexual abuse of children were considered.
- ▶ The buildings of the law enforcement agencies and courts, with few exceptions, fail to provide a child-friendly environment, namely a properly arranged room, where it would be possible to interview juveniles separately, only with the involvement of relevant professionals, without interaction with strangers, or to question them remotely during a trial.
- ▶ The involvement of a psychologist in cases of sexual abuse of children depends on the assessment of the above need by an investigator and a prosecutor, which is not an effective mechanism for protecting the best interests of the child and creates risks in terms of the provision of this service. Accordingly, in all cases of sexual abuse of children, the involvement of a psychologist should be a pre-prescribed procedure and not subject to assessment by an investigator or a prosecutor.
- ▶ The survey found that in some cases, it is not possible to prevent juvenile's interaction with various people. In particular, juveniles are accompanied by various psychologists, social workers and investigators during investigative procedures, which may increase the risk of their secondary victimization.
- ▶ The sharp inadequacy of the number of specialists, social workers and psychologists working on cases of sexual abuse of children substantially hinders the proper protection of the interests of the child in the justice process or even makes the above impossible. In addition, the above hinders the implementation of long-term, outcome-oriented child support measures. **Only one psychologist in each region** is an alarmingly low number,¹¹ which makes it impossible to provide specific services and creates problems with geographical accessibility of the service.

¹⁰ Criminal Procedure Code, Article 13 (2).

¹¹ Correspondence NN⁰⁷/4360 of LEPL *State Agency for the Protection and Assistance of Victims of Human Trafficking*, date: 30/06/2020.

- ▶ Lack of qualifications of specialists negatively affects the interests of juveniles and fails to ensure the proper protection of children from secondary victimization during administration of justice. The problem with retraining of social workers and psychologists, who have not had access to necessary trainings or resources for years,¹² is particularly serious. In addition, investigators, prosecutors and judges also need support in terms of constant trainings on sexual abuse of children.¹³
- ▶ The methodology, forms of communication and questions asked by defence lawyers to children during a trial are alarming, fundamentally contradicting the best interests of the child and creating a very high risk of secondary victimization of the child.
- ▶ The State does not have services specifically focused on child victims of sexual abuse, which would allow relevant specialists to plan and implement long-term rehabilitation measures based on the identification of individual needs.
- ▶ **Forensic examination on cases of sexual violence is conducted only in Tbilisi due to the lack of staff and equipment.** It is essential to increase the number of forensic experts employed at LEPL Levan Samkharauli National Forensics Bureau, by taking into account the gender balance, in order to make the examination process geographically accessible and efficient. Due to its traumatic nature, examination should be appointed only in cases of extreme necessity, and confirmation of sexual intercourse/rape should not be based on the condition of the hymen.
- ▶ The survey found that the presence of psychologists and social workers during interviews with child victims of sexual abuse or their questioning at the trial is mostly formal. It is necessary to specifically describe the rights and responsibilities of professionals in terms of their involvement in these procedures in a special document.
- ▶ The State does not have a mechanism for maintaining statistics on cases of sexual abuse of children. It is currently impossible to determine exactly how many cases of sexual abuse of children were reported to the law enforcement agencies and how many cases were investigated. This makes it impossible to accurately assess the current situation of sexual abuse of children in the country, on the basis of which it would be possible to plan effective measures.¹⁴
- ▶ The research results show that among the obstacles to prosecuting perpetrators of crimes of sexual abuse of children are stigma and discriminatory and stereotypical attitudes of the public, which force children and their parents not to talk about sexual violence, not to report a case or report it late.

¹² Ibid.

¹³ As the Public Defender of Georgia was informed, The Ministry of Internal Affairs plans to train its investigators on topics of sexual violence against children.

¹⁴ As the Public Defender of Georgia was informed, the Ministry of Internal Affairs has already conducted several inter-ministry meetings in order to ensure maintaining more accurate and specific statistic on cases of sexual violence against children.

I. LEGISLATION RELATING TO SEXUAL ABUSE AND EXPLOITATION OF CHILDREN

1. International instruments in relation to crimes of sexual abuse and exploitation of children

The United Nations Convention on the Rights of the Child (hereinafter referred to as the Convention on the Rights of the Child) obliges States to undertake all appropriate measures to protect children from all forms of violence, including **sexual abuse** perpetrated by their parents, guardians or any caregiver.¹⁵ The United Nations Committee on the Rights of the Child (hereinafter referred to as the Committee on the Rights of the Child) indicates that child abuse may also be committed by others.¹⁶

General Comment No. 13 of the Committee on the Rights of the Child clarifies that sexual abuse and exploitation includes: (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.¹⁷

The Committee on the Rights of the Child also clarifies that sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State Party for consensual sexual activities.¹⁸

The Optional Protocol to the Convention on the Rights of the Child prohibits the sale of children, child prostitution and child pornography.¹⁹ The Protocol defines child prostitution as the use of a child in sexual activities for remuneration or any other form of consideration.²⁰ According to the Protocol, each State Party shall ensure that, as a minimum, offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation are fully covered under its criminal or penal law.²¹

The principles established by the Convention on the Rights of the Child and the Committee are fortified and specified by the Council of Europe Convention on the Protection of Children against

¹⁵ UN General Assembly, Convention on the Rights of the Child, 20.11.1989, Article 19.

¹⁶ UN Committee on the Rights of the Child, General Comment No. 13 (2011): The right of the child to be protected from all forms of violence, 18.04.2011, CRC/C/GC/13, § 36.

¹⁷ Ibid. § 25.

¹⁸ Ibid. § 25.

¹⁹ UN General Assembly, Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 16.03.2001, A/RES/54/263, Article 1.

²⁰ Ibid. Article 2.b.

²¹ Ibid. Article 3.1.

Sexual Exploitation and Sexual Abuse²² (hereinafter referred to as the Lanzarote Convention).²³ The Lanzarote Convention defines **sexual abuse** of a child as the following:

- ▶ engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;²⁴
- ▶ engaging in sexual activities with a child where: – use is made of coercion, force or threats; or abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or – abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.²⁵

The Committee on the Rights of the Child considers that the age of consent to sexual intercourse shall be regulated by the States Parties and the Lanzarote Convention also shares this approach.²⁶ The Explanatory Report to the Lanzarote Convention indicates that it is not the intention of the Convention to criminalize sexual activities of young adolescents who are discovering their sexuality and engaging in sexual experiences with each other in the framework of sexual development.²⁷

The Lanzarote Convention defines offences concerning child prostitution²⁸ as follows:

- ▶ recruiting a child into prostitution or causing a child to participate in prostitution;
- ▶ coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
- ▶ having recourse to child prostitution.²⁹

According to the Convention, the term “child prostitution” shall mean the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.³⁰ According to the Explanatory Report to the Lanzarote Convention, the use of child prostitution, which shall be prohibited, implies the use of “sexual services” of a child prostitute.³¹ Accordingly, the Convention obliges States Parties to criminalize “buying sex” from the minor.

²² Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201.

²³ See also the *Council of Europe Committee of Ministers Recommendation No. R(91) 11* to Member States Concerning *Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults* and the *Council of Europe Recommendation Rec(2001)16 on the protection of children against sexual exploitation*.

²⁴ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 18.a.

²⁵ Ibid. Article 18.b.

²⁶ Ibid. Article 18.2.

²⁷ *Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, 2007, §129.

²⁸ *Council of Europe Committee of Ministers Recommendation No. R(91) 11* to Member States Concerning *Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults*.

²⁹ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 19.1.

³⁰ Ibid. Article 19.2.

³¹ *Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, 2007, §130.

The requirements of the Council of Europe Convention on combating and preventing violence against women and domestic violence (hereinafter referred to as the Istanbul Convention) apply to children as well, indicating that “women” includes girls under the age of 18.³²

2. Georgian legislation relating to sexual abuse of children and the existing gaps

Georgian legislation pertains to various crimes of sexual abuse and sexual exploitation of children. In some cases they are presented as aggravating circumstances of articles of the Criminal Code pertaining to sexual offences (Articles 137, 138 and 139), while in other cases, such offences are criminalized separately (Articles 140 and 141).

Georgian legislation relating to rape and other forms of sexual abuse does not comply with the requirements of the Istanbul Convention or other human rights instruments (see the 2020 Report of the Public Defender on Administration of Justice on Sexual Violence Cases against Women in Georgia). In addition to the general gaps, additional problems have been identified in relation to juveniles, which will be reviewed in this chapter.

The Criminal Code defines **rape** as any penetration of a sexual nature into the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a vulnerable condition of a person affected (part 1 of Article 137 of the Criminal Code). An aggravating circumstance is defined as commission of an action against a juvenile, knowingly (subparagraph “c” of part 4 of Article 137 of the Criminal Code), as well as commission of an action against a juvenile, knowingly, by abusing trust, authority or influential position (subparagraph “d” of part 4 of Article 137 of the Criminal Code). In both cases, perpetrators shall be punished by imprisonment for a term of fifteen to twenty years or life imprisonment, with or without restriction of the rights relating to weapons.

The wording of the above article is problematic in relation to juveniles. The aggravating circumstance of Article 137 of the Criminal Code is described as a penetration of a sexual nature into the body of a juvenile by abusing trust, authority or influence. However, this action is described as rape if it is committed with violence, under the threat of violence, or by abusing the victim’s vulnerable condition. Penetration of a sexual nature into the body of a juvenile, if it is committed by abusing trust, authority or influence should independently constitute rape and its precondition should not necessarily be violence, threat of violence or vulnerable condition.

The same problem arises in relation to Article 138 of the Criminal Code, which punishes **other actions of a sexual nature** that do not contain signs of a crime referred to in Article 137 of the Code, committed with violence, under the threat of violence or by abusing the victim’s vulnerable condition (part 1 of Article 138 of the Criminal Code). An aggravating circumstance is defined as the same action committed against a minor, knowingly (subparagraph “a” of part 3 of Article 138 of the Criminal Code), by abusing trust, authority or influential position towards a minor (Article 138, part 3, subparagraph a, Criminal Code). In both cases, perpetrators shall be punished by imprisonment for a term of eleven to fifteen years, with or without restriction of the rights

³² Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe Convention on preventing and combating violence against women and domestic violence, 2014, Article 3.f.

relating to weapons. Another aggravating circumstance under the same article is commission of an action against a person under the age of fourteen, knowingly, (subparagraph “a” of part 4 of Article 138 of the Criminal Code), which is punishable by imprisonment for a term of fifteen to twenty years, with or without restriction of the rights relating to weapons. Similar to Article 137, other action of a sexual nature referred to in Article 138 should independently constitute rape if it is committed by abusing trust, authority or influence and its precondition should not necessarily be violence, threat of violence or vulnerable condition.

A perverted action knowingly committed by an adult against a person under the age of sixteen without violence is punishable by imprisonment for a term of five to nine years.

According to the court practice, when qualifying a case, the victim’s will, circumstances suppressing the will and the vulnerable condition are not properly taken into account. In particular, the absence of evidence of physical violence is often sufficient to qualify a case as “non-violent”. Violence is mostly perceived as physical violence, as a result of which, the victim was injured or suffered pain. The relationship between the accused and the victim, the family relationships (father and child) and the use of psychological, financial or other forms of violence are not considered as forms of violence. Speaking in a harsh tone, threatening, intimidating, tying up a 4-year-old child’s hands and legs,³³ grabbing the child’s neck,³⁴ forcing a child to touch genitals,³⁵ a 50-year-old man lying on the body of a child,³⁶ touching the breast against the will of a child by using force, (so strongly that a girl couldn’t make him let go), attempting to slip underneath clothes and punching a victim in the abdomen after being refused,³⁷ slapping and nipping are considered as separate offences, not directly in the context of sexual abuse, and are not regarded as sufficient to qualify an action as a violent offence. Because of this, cases are qualified under Article 141 (1) of the Criminal Code, which provides for a lighter punishment (imprisonment from five to nine years) than Article 138 of the Criminal Code (imprisonment from eleven to fifteen years). In addition, even if the juvenile has signs of violence on the body, the court requires the injuries to be in “erogenous zones” in order to assess an action as sexual abuse.³⁸

It is noteworthy that in one of the cases, an 11-year-old child said:

³³ Judgment N1/1060-19 of Kutaisi City Court.

³⁴ Judgment N1/259-18 of Zugdidi District Court.

³⁵ Judgment of Batumi City Court N1-257/19.

³⁶ Batumi City Court judgment N1-628/19. Juvenile victim: “I felt heavy weight on my abdomen, I opened my eyes and saw a bearded man, of same age as my mom, was sitting across my body. ... With one hand he gripped my wrist and with the other he touched my genitals again, I tried to push him and get rid of him, that’s when I bit him. He only gripped my wrist and the part where I felt pain got bruised.”

³⁷ Bolnisi District Court judgment N1/236-19, qualification: Article 141 (1) of the Criminal Code (perverted action) and Article 126 (11a) of the Criminal Code (violence). Testimony of the victim: “He took me up the stair holding me by hand. Then I pinched him and made him to let go of me. ... After going up two stairs he gripped my breasts from behind. I hit him with both my elbow and freed myself. .. He didn’t let me to walk up the stairs. When he had his hand wrapped around me he was touching my breast and was trying to put his hand under my shirt. I wanted to get up and go but he was pressing me down in a way that I couldn’t get up. He took his hand off my breast and tried to put his hand in my pants. At this point I hit his hand and got rid of him. As I made him to remove his hand and hit him, he couldn’t do anything, he turned to me and punched me in the stomach with his right hand.”

³⁸ Batumi City Court judgment N1536/18.

"I felt heaviness in my abdomen area, I opened my eyes and saw that a man about the age of my mother was sitting on my body. ... He hold my wrist with one hand, and touched my genitals again with the other hand, I tried to push him away, during which I bit him. ... He just grabbed my wrist.. I felt pain and had a small bruise. "

The case was qualified under part 1 of Article 141 of the Criminal Code, i.e. an action committed without violence, whereas the factual circumstances of the case indicated violence, namely the composition of Article 138.

Another case is also problematic, where the following was qualified as a perverted action committed without violence (Article 141): *"The abuser approached her and put his hand on her shoulder so hard that she could not push him away... He tried to slip his hand underneath her shirt, but she pushed his hand away, then he tried to slip his hand in her trouthers, she again pushed his hand away, after which he hit her in the abdomen, due to which, she suffered a great pain."* In this case, the violent action was qualified separately, as a crime under Article 126 of the Criminal Code and not as part of sexual abuse.³⁹

Similar to the above cases, it is problematic that an action committed against a 5-year-old victim was qualified as a non-violent perverted action (Article 141). In particular, the child said: *"I tried to stand up, but he caught me with his hands and did not allow me to stand up ... he told me to keep this secret, otherwise my mother would die... I did not like it and tried to take my hand out of his pants but he held my wrist and started to move my hand, with which I was holding his genitals, up and down."*⁴⁰

In another case, where a perverted action against a person with disabilities (autism spectrum disorder) under the age of 16 was committed with no obvious violence or physical coercion, but by promising the minor to buy something for her and persuading her not to tell anything about what happened, prosecution was launched under Article 138 of the Criminal Code, however, the court re-qualified the case under Article 141 of the Criminal Code on the grounds that there was no apparent physical violence, physical coercion or threat of violence.⁴¹ The judge used a limited interpretation of the law and did not take into account the fact that the evidence in the case indicated at least vulnerability of the juvenile or psychological violence, which might constitute a crime referred to in Article 138.

One of the rulings of the Tbilisi City Court, where the prosecution was launched and the verdict was delivered in relation to violence and physical coercion (he put his hands on her shoulders from behind and started touching her breasts and neck against her will) on the basis of Article 138 (3, c) of the Criminal Code, even though there was no evidence of physical injuries on the victim's body, should be evaluated positively.⁴² However, such cases are only few precedents and violence is usually interpreted narrowly.

Assessing the abuse of victim's vulnerability is also an important issue. Out of nine cases qualified under Article 138 of the Criminal Code, seven contained signs of apparent physical violence.

³⁹ Bolnisi District Court judgment N1/236-19.

⁴⁰ Gori District Court judgment N1/444-19.

⁴¹ Tbilisi City Court judgment N1/2215-19.

⁴² Tbilisi City Court judgment N1/3668-18.

The judgments do not consider the age of the victim or his/her relationship with the offender as circumstances causing his/her vulnerability or suppressing his/her will. Only one case of kissing and touching of genitals, which did not contain signs of violence or threat of violence, was qualified under Article 138 on the basis of the vulnerability of children due to their young age (3 and 5-year-old children).⁴³ It is noteworthy that in an identical case committed against a 5-year-old child, where a neighbor touched the genitals of the child and put his genitals on the body and face of the child, the vulnerability of the child was not considered and the case was qualified under Article 141 of the Criminal Code as a perverted action committed without violence.⁴⁴

In another case with no signs of physical violence or threat of violence, which was qualified under Article 138 of the Criminal Code, the victim was under the influence of alcohol and in a vulnerable condition during the sexual action committed against him.⁴⁵ It should be noted that in this case, commission of oral sex against the affected minor (male) was qualified as any other sexual action under Article 138 of the Criminal Code, instead of Article 137 of the Criminal Code, which pertains to rape.

Coerced penetration of a sexual nature into the body of a person or any other action of a sexual nature includes actions committed by threatening to spread defamatory information or to damage property, or to spread information about private life or information that can substantially violate the person's rights, or by using financial, official or other kind of dependence, or by using the victim's vulnerability, or material, official or other power (Article 139, part 1, of the Criminal Code). Committing a crime against a minor knowingly is considered an aggravating circumstance (Article 139, part 4, subparagraph "b", Criminal Code), which is punishable by imprisonment for a term of nine to fifteen years, with or without the restriction of rights relating to weapons.

The existence of this article in the Criminal Code is generally problematic, because through it, Georgian legislation acknowledges two different offences that equal rape. One of them is a serious crime and legislation provides for a stricter punishment (Article 137) and the other one is a less serious offence and legislation provides for a lighter punishment (Article 139). Such an approach, in relation to Spain, was strongly criticized by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (hereinafter referred to as GREVIO), who said that "rape is rape" and that any sexual act performed on another person without his or her freely given consent amounts to sexual violence, in accordance with Article 36 of the Istanbul Convention.⁴⁶ Accordingly, the action referred to in Article 139, in relation to a minor, should constitute rape and not coercion.

According to the practice, the court delivered a judgment only in one case qualified under Article 139 of the Criminal Code (domestic crime in conjunction with Article 138 (2, d)). A plea bargain was negotiated in the case and the defendant was sentenced to imprisonment for six years – three years in a penitentiary institution and three years as a conditional sentence during a three-

⁴³ Tbilisi City Court judgment N1/3551-18.

⁴⁴ Gori District Court judgment N1/444-19.

⁴⁵ Khelvachauri District Court judgment N1-214/18.

⁴⁶ GREVIO Baseline Evaluation Report Spain, 2020, § 220, available: <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f> [last accessed: 04/2021]

year probationary period.⁴⁷ There was no penetration in this case, however these types of cases are important to be qualified as rape based on the above human rights standards, especially when the victim is a juvenile.

Article 140 of the Criminal Code specifically applies to juveniles, according to which, penetration of a sexual nature into the body of a person below 16 years of age, committed knowingly by an adult, is criminalized (Article 140, part 1, Criminal Code). The act is punishable by imprisonment for a term of seven to nine years. This article is interpreted as an act committed with the consent of a juvenile, but is still punishable due to the age of the juvenile.

This article is problematic due to the fact that the legislature believes that a minor can, in fact, give consent to sexual intercourse at any age and no lower limit for valid consent is established. In addition, the law is not interpreted as that a person under the age of 16 cannot give consent – on the contrary. In the absence of violence, threat of violence or vulnerability, it is considered that the minor gave consent and the action is qualified under Article 140.

According to the court practice, most cases of sexual abuse of minors are qualified under Article 140 (1) of the Criminal Code, whereas in many cases, the factual circumstances of the case refer to rape and not the consent of the victim. Most of these offences are committed within the framework of “de facto marriage” and in most cases a plea bargain is signed with the accused, which results in the deprivation of liberty for three years, with rare exceptions, and which implies a probationary period of three years. In this regard, the practice of not using actual sentences is obvious in relation to the cases of early marriage, which was explained by one of the judges interviewed during the survey by the fact that the purpose of the action was to start a “family”, and given the public attitude, imprisonment for a term of seven to nine years under part 1 of Article 140 of the Criminal Code might not be commensurate with the cases of “de facto marriage”.

However, it should be noted that in one of the cases, plea bargaining was used in relation to an offence under Article 140 of the Criminal Code independently of “de facto marriage”. In particular, four years of imprisonment was determined as a penalty, which was served as a conditional sentence with a four-year probationary period. The case emphasizes that the sexual act was carried out on the basis of the will of the victim and that she was not abused. The minutes of the interview with a 14-year-old victim repeatedly indicates that she did not resist the accused. However, the juvenile also points to the fact that she asked the accused to stop the act, which the latter did not do. The case materials show that the juvenile was suffering due to the incident, which is why she told her family members about it. However, it is also indicated that the accused “*did not force*” the juvenile and that she had sexual intercourse on the basis of her free will, because she was in love with the accused, who promised to marry her.⁴⁸

In another similar case, a 14-year-old juvenile said during the interview that she had a good relationship with the accused and used to meet him voluntarily. The victim noted that at one of the meetings, she told the accused during physical contact that “*It is too early for such a relationship, we do not know each other well enough yet.*” Subsequently, the victim did not resist the accused, as repeatedly stated in the minutes of the interview and had consensual sexual intercourse. The

⁴⁷ Rustavi City Court judgment, case N1-808-19.

⁴⁸ Khashuri District Court judgment N1-1242019.

case was qualified under Article 140 of the Criminal Code. The case includes two episodes of an offence. On the basis of plea bargaining, the accused was sentenced to seven years of imprisonment – four years to be served in a penitentiary institution and three years to be served as a conditional sentence.⁴⁹

In addition, it should be noted that in cases of early marriage and in general in cases qualified under Article 140 of the Criminal Code, it is always clarified with the victim whether the sexual intercourse was based on her free will and whether she has complaints against the accused. It should be noted that cases of early marriage are usually detected after the victim gets pregnant or gives birth to a baby, which is why the victim's medical history is one of the most important pieces of evidence along with the minutes of witness interviews and the baby's birth certificate.

The court practice shows that there is no unified approach in relation to sentences in identical cases. According to Georgian legislation,⁵⁰ the court verdict shall be fair, the sentence shall be commensurate with the personality of the accused and the gravity of the crime committed. It should also be noted that according to the case materials, the only mitigating circumstance that the judges takes into account is the admission of guilt by the accused person. As for aggravating circumstances, the verdict delivered in a case qualified under Article 141 (1) of the Criminal Code is worth noting, in which the judge indicated that *"Aggravating circumstance lies in the essence of the act committed, as an adult, married public servant (an employee of a law enforcement agency) committed not only an action punishable by criminal law, but also absolutely unacceptable, morally reprehensible actions against an eleven-year-old child and made the child's daily life unbearable."* Finally the court sentenced the accused to six years in prison. The admission of guilt by the defendant was a mitigating circumstance in the case.⁵¹

Another case is also worth noting in this regard, in which the judge referred to part 2 of Article 53¹ of the Criminal Code as an aggravating circumstance, which in this case was the age of the juvenile and her vulnerable condition. The judge noted that *"The court takes into account the specifics and circumstances of the crime – the age of the victim (5 years) and repeated criminal actions committed for several months against the child, who was in a vulnerable condition due to her age."*⁵²

Practices vary, although the use of physical violence is often essential during qualification of cases of sexual abuse of children; in addition, the circumstances suppressing the will of the child are not properly assessed and cases are not qualified relevantly.

1. Material legislation related to child prostitution and its shortcomings

Georgian legislation relating to child prostitution is not in line with human rights standards, as it does not punish a number of acts and provides for administrative liability for a juvenile engaged in prostitution (see below).

According to the Criminal Code, an aggravating circumstance in relation to the **engagement in prostitution** (Article 253 of the Criminal Code) is commission of a crime against a minor. In

⁴⁹ Zestaponi District Court judgment, case N1/7-2020.

⁵⁰ Criminal Procedure Code of Georgia, Article 259.

⁵¹ Batumi City Court judgment N1-492/19, Criminal Code of Georgia, Articles 141(1), 181(1).

⁵² District Court judgment N1/444-19.

particular, if engagement in prostitution is committed against a minor knowingly, by threatening him/her to destroy her property, or through blackmail, deception, violence or threat of violence, it is punished by imprisonment for a term of fifteen to twenty years or by life imprisonment, with or without restriction of the rights relating to weapons (part 5 of Article 253 of the Criminal Code).

Aggravating circumstances in relation to **promotion of prostitution** under the Criminal Code (Article 254), i.e. inducing a person to prostitution and/or conducting any such other non-violent act that promotes the involvement of a person in prostitution, are considered to be commission of a crime against a minor (Article 254 of the Criminal Code, part 4) and is punishable by imprisonment for a term of seven to twelve years. The same act committed knowingly against a person under the age of fourteen is an additional aggravating circumstance (Article 254, part 5 of the Criminal Code), which is punishable by imprisonment for a term of twelve to twenty years.

According to the Administrative Offences Code of Georgia, **prostitution** is an administrative offence (Article 172³ of the Criminal Code), that may lead to a warning or a fine in the amount of up to half of the minimum wage. Administrative responsibility shall be imposed on a person who has reached the age of 16 (Article 13 of the Criminal Code).

Georgian legislation on prostitution contradicts the Lanzarote Convention (see above), which states that "buying sex" from a minor should be a crime in all cases (Lanzarote Convention, Article 19.c). Under current regulations, buying sex from a minor is not considered a crime, and if a child has reached the age of 16, the act may not even be part of any other action referred to in the Criminal Code. In addition, the Administrative Offences Code imposes liability under the article pertaining to prostitution (see above) on anyone under the age of 16. Accordingly, juveniles aged 16 and 17, contrary to the requirements of the Lanzarote Convention, are not considered victims but offenders.

Accordingly, the articles of the Criminal Code and the Administrative Offences Code of Georgia pertaining to sexual abuse and sexual prostitution of children need to be brought in line with the Istanbul Convention, the Lanzarote Convention and other human rights standards in order to ensure universal protection of juvenile victims and their access to justice.

II. Law on combating crimes directed against sexual freedom and inviolability

The Law on Combating Crimes against Sexual Freedom and Inviolability, on the basis of the conviction of a person of sexual offences, provides for the deprivation of various rights, including: the right to work in an educational institution, the right to approach an educational institution for juveniles within 30-meter radius, the right to work as a social worker, to right to work as a doctor, passive suffrage, to right to manufacture, purchase, store or carry weapons, the right to transport passengers, etc. (Article 3). The law provides for the creation of registry of convicted persons and those deprived of these rights (Article 8).

II. ADMINISTRATION OF JUSTICE

1. International standards relating to investigation, prosecution and trial

The general standards relating to the administration of justice on cases of sexual abuse that apply to adults are important in relation to children as well. These standards include the following: investigation should be prompt and thorough; detection of signs of violence should not be essential to prove sexual abuse and the context and environmental circumstances should be taken into account; particular vulnerability of minors and persons with disabilities should be taken into account; criminal procedures should be fair and should not be influenced by prejudices or stereotypes, including gender bias and gender stereotypes; sensitive treatment of the victim is important, which also includes minimizing gynecological examinations; the number of interviews with victims should also be minimized, especially if the victim is a minor; interviews should not be intrusive and questions about previous sexual life should not be asked. The privacy and safety of the victim should be protected.⁵³

According to General Recommendation No. 33 of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), girls face particular barriers to accessing justice.⁵⁴ Accordingly, the Committee advises that States Parties to ensure that independent, safe, effective, accessible and child-sensitive complaints mechanisms are available to girls.⁵⁵ The investigations or prosecution of offences of sexual abuse and sexual exploitation of children shall not be dependent upon the report or accusation made by a victim, and the proceedings may continue even if the victim has withdrawn his or her statements.⁵⁶

The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime⁵⁷ indicate that age should not be a barrier for a child to take full part in the justice process and that every child should be treated as a capable witness. The credibility of a child's testimony should not be questioned solely on the basis of his or her age, and when a child is a witness, the child's testimony should be respected as true unless it is proved not to be true, and as long as the child understands the questions and has answered with or without help of communication and other means.⁵⁸

Justice on cases of sexual abuse and sexual exploitation of children should be administered in the best interests of the child and in accordance with his/her rights.⁵⁹ General Comment No. 14 of the Committee on the Rights of the Child clarifies that the assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection

⁵³ See, e.g. Duban, Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice (2017), 52-55.

⁵⁴ Committee on the Elimination of Discrimination against Women, General recommendation N33 on women's access to justice, CEDAW/C/GC/33, 23.07.2021, § 24.

⁵⁵ Ibid. § 25(b).

⁵⁶ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 32; X and Y v. the Netherlands, no. 8978/80, ECHR, 26/03/1985.

⁵⁷ United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005.

⁵⁸ Ibid. § 18.

⁵⁹ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 29.1.

against all forms of physical or mental violence, including sexual violence and exploitation.⁶⁰ In addition, applying a best-interests approach means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.⁶¹

Article 12 of the Convention on the Rights of the Child states that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." The Committee on the Rights of the Child, in its General Comment No. 12 clarifies that this article should not be seen as a limitation and States Parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.⁶² Article 12 of the Convention on the Rights of the Child also states that "The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

The Committee on the Rights of the Child further emphasizes that Article 12 imposes no age limit on the right of the child to express her or his views and says that **the child is able to form views from the youngest age, even when she or he may be unable to express them verbally.**⁶³ In addition, the child should have the opportunity to express his or her views and complaints about his or her participation in the justice process.⁶⁴ These standards are reflected and replicated by various guidelines⁶⁵ and regional instruments.⁶⁶

Judicial proceedings should not aggravate the trauma suffered by the child.⁶⁷ In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner,⁶⁸ which also includes the need to reduce the number of interviews.⁶⁹ Professionals should

⁶⁰ UN Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, § 1), 29.03.2013, CRC /C/GC/14, § 73).

⁶¹ Ibid. § 74.

⁶² UN Committee on the Rights of the Child, General comment No. 12 (2009): The right of the child to be heard, 20.07.2009, CRC/C/GC/12, § 20.

⁶³ Ibid. § 21.

⁶⁴ Ibid.

⁶⁵ See, e.g. WHO, Guidelines for medico-legal care for victims of sexual violence, 2003; UNODC, Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime, 2009; UNODC, Handbook on Effective Prosecution Responses to Violence against Women and Girls, 2014; European Union Agency for Fundamental Rights, Child-friendly justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States, 2017.

⁶⁶ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201; Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010.

⁶⁷ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No.: 201, Article 29.2.

⁶⁸ United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005, § 13.

⁶⁹ Ibid. § 31(a).

perceive the child as a capable witness and should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages.⁷⁰

In addition, the European Court of Human Rights⁷¹ and other human rights standards provide that prosecution of such cases should be given a priority and that cases should not be unduly delayed.⁷²

Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed of their rights, the procedures for criminal justice process, support services and complaints mechanisms.⁷³ The Council of Europe Guidelines⁷⁴ also clarify that this information should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.

2. Standard of proof in relation to cases of sexual abuse

The European Court of Human Rights reinforces the importance of context-based investigations into rape and other cases of sexual abuse. In the case of *M.C. v. Bulgaria*, the Court notes that when the case has little “direct evidence”, the relevant authorities “should take all possible measures to establish all the surrounding circumstances and assess sufficiently the credibility of the conflicting statements made.”⁷⁵ The Court also points out that in the absence of “direct” proof of rape, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances.⁷⁶

Georgian legislation establishes the need for a body of evidence to reach a guilty verdict.⁷⁷ According to the court practice, the interpretation of the above varies. In particular, in some judgments, a “body of evidence” implies the need for at least two pieces of direct evidence in order for a guilty verdict to be delivered.

The above contradicts the approach of the European Court of Human Rights, which does not consider the existence of more than one piece of evidence to be an absolute necessity in order to indict or convict a person. The Court explains that in order to indict and convict a person, “When the evidence is very strong and there is no risk of its unreliability, there is therefore less need to corroborate this evidence” (*Khan v. the United Kingdom*, 35. 35-37; *Kingdom*, § 43; *Bykov v. Russia* [GC], §. 90; *Haxhia v. Albania*, §. 129).

⁷⁰ Ibid. § 25.

⁷¹ *Y. v. Slovenia*, ECtHR, no. 41107/10

⁷² Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 29.3.

⁷³ United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 2005, § 19.

⁷⁴ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010.

⁷⁵ *M.C. v. Bulgaria*, no. 39272/98, ECHR, 03.12. 2003, § 176-178.

⁷⁶ Ibid. §181.

⁷⁷ Criminal Procedure Code of Georgia, Article 13(2).

At the same time, according to the UN Human Rights Council, States Parties should “take appropriate legislative and policy measures to ensure prompt and adequate investigation and criminal prosecution of offenders, as well as to strengthen the capacities of the criminal justice system,” and, in particular, “..they should repeal discriminatory provisions that require corroboration on cases of sexual abuse. ”

One of the judgments of the Batumi City Court explicitly stated: *“The court clarifies that beyond the reasonable suspicion, the standard implies the existence of at least two pieces of direct evidence to persuade a neutral and sensible person of the commission of an offence by the accused.”* When delivering a guilty verdict in the mentioned case, the court was guided by the minutes of interviews, identification protocols, correspondence, information received from the communication networks and the protocol of examination of social pages.⁷⁸

According to the Supreme Court of Georgia, rape “is usually not public by its nature and is not distinguished by a large number of eyewitnesses.”⁷⁹ However, in practice, a person cannot be found guilty on the basis of only one piece of direct evidence, only on the basis of the testimony of the victim, if specific material evidence cannot be obtained or the forensic report does not indicate the existence of signs of violence.

Interviews with judges and prosecutors also revealed that due to the specifics of sexual abuse, special attention is paid to the victim’s testimony, however, the above is not sufficient and needs to be corroborated by a number of other pieces of evidence.

The acquittal in a case qualified under part 1 of Article 141 of the Criminal Code states: *“The court considers that the existence of only one direct piece of evidence (the victim’s testimony) (other evidence is circumstantial) does not meet the standard established for a conviction of a person beyond a reasonable suspicion, so it cannot be used as a basis for convicting the accused person.”*⁸⁰ The case included indirect testimonies and testimonies of other juveniles, which coincided with the testimony of the victim, except for the part directly related to the perverted action, which had not been witnessed by anyone. As a result, the court acquitted the defendant. This approach, given the above standards, is extremely problematic.

It should be noted that in a similar case, the Tbilisi City Court delivered a guilty verdict in relation to a perverted action committed against a child, even though no one had directly noticed the perverted action. In this case, two young children, who witnessed the incident, only noticed that a strange man was sitting next to the child. However, the court clarified:

*“The Chamber will first and foremost focus on the testimony of the juvenile victim [child], its consistency with other factual circumstances established in the case. ... The sincerity and reality of the testimony are made even more convincing by the testimonies of psychologists and experts, as well as the report on the examination conducted by them.”*⁸¹

⁷⁸ Batumi City Court judgment N1/492-19.

⁷⁹ Supreme Court of Georgia, 19 November 2015. Case N253-15, § 3.

⁸⁰ Poti City Court judgment N1/173-2018.

⁸¹ Tbilisi City Court judgment N1/3465-19.

The cases where children change testimonies are especially problematic. In one of the cases,⁸² which was qualified under Article 138 (3, c) of the Criminal Code, a 12-year-old girl with bodily injuries asked neighbors to help and informed patrol police officers of the violence and other sexual actions committed by her stepfather in the presence of her neighbors. However, after talking to her mother, she denied her own initial statement. Although there were testimonies of four persons in the case that were in complete conformity with each other and the medical examination report also indicated injuries to the juvenile's body that coincided with the juvenile's initial testimony and the time of the offence, the court did not find the above sufficient for conviction. Regarding the injuries and causes mentioned in the medical report, the court noted that *"The injuries are not developed in areas that are common for crimes against sexual freedom and inviolability (such as in the perineum or erogenous zones)."* It also indicated in the verdict that *"As for other pieces of evidence, they are circumstantial and not enough for conviction."*

In the above case, the child's changed testimony became the basis for the acquittal of the defendant:

"... If the victim had given testimony against the accused at the trial and if that testimony had been consistent with the injuries on her body, the forensic examination report would have acquired other force against the accused. In this particular case, when the victim categorically denies the commission of a crime and even excludes any kind of violence by the accused and at the same time we see only slight damage of such localization, the forensic examination report cannot be considered as incontrovertible evidence of the crime. Such a report neither denies nor proves anything."

The court did not discuss the grounds for which the child changed her initial testimony and the possibility of pressure on her, even though the social worker referred to the above during the hearing. And in response to the prosecutor's question – *Who does the family rely on?* – the victim's mother named her husband, the defendant. The social worker said during the hearing of the case that after the initial testimony, when the juvenile indicated sexual abuse, neither she nor the psychologist had been allowed to work with the child.

The acquittal in the case was upheld by the Court of Appeal. However, the Supreme Court overturned the verdict and noted:

"Cases of domestic sexual abuse of children, as a rule, are not characterized by a large number of witnesses. The child is under the guardianship of his/her mother, who has no independent income and is financially dependent on the offender. The mother of the child does not hide that she wants the abuser to be at large and continue to take care of her and her family. The juvenile is left without any protective factors, is extremely frightened and is under the influence of her mother, who acts to the detriment of the child's interests and does her best to save the offender from responsibility for her own financial purposes."⁸³

The reasoning of the court of first instance and the Court of Appeal in this case is extremely problematic. In addition to the non-compliance of the requirement of "physical harm characteristic of

⁸² Batumi City Court judgment N1536/18.

⁸³ Judgment N828ap-19 of the Supreme Court of Georgia N828ap-19.

sexual actions” with international standards discussed above, it should be noted that Georgian legislation also provides for public criminal proceedings.⁸⁴ This means that investigation, prosecution or delivery of a sentence shall not depend on the victim’s testimony. When there is other evidence in the case, the prosecution should rely on the public interest test (which is automatically met by cases of sexual abuse of children) and the delivery of a guilty verdict should not be prevented by the absence of victim’s testimony in the case. This is also required by the Istanbul Convention and other human rights standards. According to the Convention, “The investigation or prosecution shall not be entirely dependent on the statement or complaint lodged by the victim” (Article 55.1; see also European Court case of *Opuz v Turkey*, no. 33401/02, 2009).

Interviews with prosecutors and investigators made it clear that the condition of the hymen and bodily injuries were not crucial to the qualification of a case as a violent action or in terms of the outcome of a case. However, the practice shows the opposite, according to which, victim’s testimony alone is not considered sufficient or credible at the trial stage. The expert’s report may be crucial in a case qualified under Article 137 of the Criminal Code, in which the victim precisely pointed to the fact of rape and noted that she had bodily injuries for a certain period of time. However, as several months had passed since the incident, the victim’s testimony could not be corroborated by the medical examination. The verdict stated that *“Only one piece of evidence in the form of the victim’s testimony cannot prove that the accused used violence to have sexual intercourse with the victim.”*⁸⁵ the case was re-qualified under Article 140 of the Criminal Code (i.e., an action committed with the consent of a person) and the defendant was sentenced to eight years in prison.

In cases where the only witness is a juvenile victim, some importance is also attached to the psychological examination, as evidence. The questions asked to the examination are usually whether the juvenile experienced psychological suffering or psychological stress due to the offence committed and whether the juvenile is able to properly perceive and convey facts. In one of the judgments, in which a juvenile referred to a perverted action committed by her guardian, the court found, in the presence of the composition of Article 141 of the Criminal Code (a perverted action committed against a person under the age of sixteen without violence), that the stress suffered by the juvenile according to the psychological examination report was not enough and that the child should have received “psychological trauma, with more severe psychological effects.”⁸⁶ This view was shared by both the court of first instance and the Court of Appeal, which stated in the judgment that:

“The Chamber, like the court of first instance, considers that the above explanations are consistent with the psychological examination report submitted by the defence, as psychological stress may be experienced by a person frequently, several times a day. The inability of implementation or improper implementation of a specific action may also entail the above. As for trauma, in case of any kind of violence, a person experiences psychological trauma, which means a much more severe psycho-emotional condition. Therefore, the violence against an eight-year-old child described in her testimony must have led to a much deeper psycho-emo-

⁸⁴ Criminal Code of Georgia, Articles: 100, 101.

⁸⁵ Tbilisi City Court judgment N1/1876-19.

⁸⁶ Batumi City Court judgment N1/229-19.

*tional condition than the psychological stress indicated in the report of the examination conducted by the prosecution.*⁸⁷

It should be noted that the court of both instances relied on the report of an independent expert who had not worked with the affected juvenile and prepared the report based on the report of LEPL Levan Samkharauli National Forensics Bureau.

In addition, in this case, the defence attached great importance to the fact that the juvenile used to *"lie frequently"*, in particular, she had been lying to her school teacher, and therefore, her testimony could not be considered credible. All other evidence obtained in the case was circumstantial and the court did not consider it sufficient for delivering a guilty verdict.⁸⁸

The testimony of a victim is one of the main pieces of evidence in sexual offences, however, in practice, it does not have adequate force if it is not corroborated by other evidence – which contradicts the human rights standards discussed above. It is particularly problematic when it is assumed that the victim is unable to properly perceive or convey facts due to his/her young age or disability.

Regarding the importance attached to the testimony of the victim, one of the judgments of the Tbilisi City Court is interesting, which reads:

"The court considers that the interviews with the juvenile victims at the trial made it clear that their age was not an obstacle for them to provide the court with information about the factual circumstances of the case; In addition, their testimonies were convincing and did not give the impression of narrating a text learnt by heart; Moreover, during interviews, the victims used gestures reflecting the actions of the accused, which also convinces the court that they were talking about real facts that happened to them." Regarding the evidence, *"the court clarifies that when assuming that the factual circumstances were true, the court was guided by the high, legal standard that is "beyond the reasonable suspicion", which requires not an abundance of proofs in the criminal case, but weighty and convincing evidence, the analysis of which (by assessing all together and not separately) would convince any sensible and objective person of the person's guilt.*⁸⁹

The conviction in the above case was based on the testimony of three young victims. The children were interviewed in the presence of a psychologist who was also interviewed at the hearing. The case also included indirect testimonies of the children's parents.

When a juvenile changes his/her testimony, there arises the need for obtaining additional evidence in order to initiate criminal proceedings against a particular person and to prove his/her guilt, although obtaining evidence may be associated with a high risk of secondary victimization and at the same time, obtaining such evidence may not be necessary. In one of the cases, the juvenile victim initially denied rape and stated during the medical examination that she had consensual sexual intercourse. However, the next day she changed her testimony and told the law enforcement agency about the incident. Although the case included the medical examination

⁸⁷ Kutaisi Court of Appeal, judgment N1/b-16-2020.

⁸⁸ Batumi City Court judgment N1/229-19.

⁸⁹ Tbilisi City Court judgment N1/3551-18.

and smear analysis of the child, the law enforcement agency considered it essential to conduct a covert investigative activity with the participation of the victim, during which she would have to meet the offender again, in the same forest where she was raped. The ruling stated that

*"According to the materials gathered in the case, there is a reasonable presumption that in case of a [repeated] meeting between the juvenile victim and the alleged perpetrator, the conversation will touch upon the rape that took place [during the first meeting] and the alleged perpetrator will probably confirm the offence. Other important information will also be obtained... The covert investigative activity – covert video and/or audio recording, taking photos – will obtain information that is essential to the investigation, which cannot be obtained by other means, or which requires unjustifiably great efforts."*⁹⁰

The case materials do not show the involvement of a psychologist. The juvenile's psychological condition or the expediency of the child's participation in the investigative activity had not been assessed, and no psychological examination had been conducted. The judge notes that *"The evidence proves that there is a reasonable presumption that the person against whom the covert investigative activity is to be conducted is a person who likely has important information about the crime, or is linked with the crime, while the juvenile is a voluntary participant in the covert investigative activity."*

Even juveniles have the feeling that the standard of proof in cases of sexual violence is unreasonably high and that there is often distrust towards victims. According to the verdicts, there were two cases⁹¹ where juveniles, in order to make others believe their stories, considered it necessary to record a video of sexual abuse and only after that they reported violence.

The court practices vary relating to the changed testimonies and the alleged pressure exerted on the child victim. In this regard, it should be noted positively that in one of the cases,⁹² the court considered the possibility of pressure exerted by a family member during the investigation of the case and did not question the victim's changed testimony. The juvenile denied rape by her father during the first interview, but subsequently provided full information to the law enforcers. In response to the position of the defence, according to which, the victim's testimonies were contradictory, the court explained: *"This is explained by the fact that she was under the influence of her father and was afraid of telling the truth to the investigation. The father was always accompanying the victim, including during the investigative experiment."* In the same case, the victim had difficulty in naming dates and times in exact order, so the judge relied on the psychologist's report and explained that *"As a result of the trauma, it is difficult to accurately determine dates, days or hours, which is natural, due to their age and the severity of trauma suffered by them."* The judge also used the psychologist's report relating to a false testimony and the juvenile's rehabilitation and explained that *"... during the period when the victim is in the relevant crisis center, enjoys the services of psychologists, undergoes mental rehabilitation, is not dependent on her father, has no contact with her father, works and feels safe in a new environment, according to the psychologists, it is illogical to presume that the child is giving a false testimony."* The judge explained that in cases of sexual abuse, special attention should be paid to the victim's testimony.

⁹⁰ Tbilisi City Court judgement N1/4093-19.

⁹¹ Tetritskaro District Court judgement N^o1/41-19; Poti City Court judgment N^o1/173-2018.

⁹² Tbilisi City Court judgment N1/63-19.

The study of the issue revealed that special attention is paid to the testimony of the child during the criminal proceedings relating to sexual abuse of children, as well as during the delivery of a verdict. However, it is also clear that it is not properly assessed why some children change their testimonies; the reasons for the above are not properly examined and the factors influencing the juvenile are not identified, which may serve as the basis for acquitting the defendant. In addition, despite certain judgments, where judges indicate the importance of the credibility and not the abundance of evidence for convicting a person⁹³ and note that these types of crimes are generally not characterized by a lot of pieces of evidence,⁹⁴ the record in Georgian legislation relating to a "body of evidence"⁹⁵ is interpreted as the existence of at least two direct pieces of evidence,⁹⁶ which does not take into account the specifics of sexual abuse offences and substantially impedes the delivery of guilty verdicts in cases of sexual abuse of children.

It should also be noted that the psychologist's report and psychological examination somewhat have the power of ascertainment in cases of sexual abuse of children. In particular, the question asked to the examination of whether the child was traumatized by the defendant's actions may be seen as a mechanism⁹⁷ for establishing whether the incident really happened to the child or not, which is unjustified and inconsistent with the child's interests, as it is indicated in the document as well. Similar approach was also observed in relation to forensic medical examination. In particular, the existence of bodily injuries and their localization are of special importance in establishing whether the child was sexually abused or not.⁹⁸

It is noteworthy that when assessing the credibility of the testimony, the defence often refers to the young age of the victim of sexual abuse, the characterization of the minor by other witnesses (e.g., he/she often lies) or the disability of the victim. In this regard, the reasoning of several judges, who directly indicated in the judgment that the juvenile's young age or disability status should not directly impact the admissibility of his or her testimony should be noted positively.⁹⁹ However, the practice and the emphasis placed by the defence during interviews, including in the court, indicate the need of raising awareness in this regard.¹⁰⁰

5. Existing practice on termination of investigations and prosecution

Timely and effective response to cases of sexual abuse of minors is one of the major challenges. At this stage, the methodology of the maintenance of statistics at the Ministry of Internal Affairs of Georgia does not even make it possible to determine exactly how many cases of sexual abuse of minors were reported and how many investigations were launched into criminal cases.¹⁰¹ This

⁹³ Tbilisi City Court judgment N1/3551-18.

⁹⁴ Judgment N 828ap-19 of the Supreme Court of Georgia.

⁹⁵ Criminal Procedure Code of Georgia, Article 13(2).

⁹⁶ Batumi City Court judgment N1/492-19; Poti City Court judgment N1/173-2018.

⁹⁷ Batumi City Court judgment N1/229-19.

⁹⁸ Batumi City Court judgment N1536/18.

⁹⁹ Tbilisi City Court judgment N1/3551-18; Tbilisi City Court judgment N1/2215-19.

¹⁰⁰ This issue is discussed in more detail in the following chapters.

¹⁰¹ Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02699713, date: 18/11/2020.

hinders the implementation of proper, long-term and outcome-oriented measures based on accurate analysis of cases of sexual abuse of children and the challenges identified.

According to the information obtained from prosecutors and investigators during the survey, an investigation is launched into each incident of sexual abuse and sexual exploitation of minors detected by the law enforcement agencies, and there are no standards or criteria in this regard. Therefore, the launch of an investigation does not require the victim to file an application with the law enforcement agency. However, it should be noted that the decisions to terminate an investigation or prosecution are not always informative. For example, 18 of the 116 decisions did not specify what became the basis for launching the investigation.

The practices of qualifying cases of early marriage in conjunction with Article 11¹ of the Criminal Code vary. In particular, in 28 of the 73 cases qualified under Article 140 (1) of the Criminal Code, despite the signs of early marriage, Article 11¹ of the Criminal Code was not applied in conjunction with Article 140 (1), while in other identical cases, the said qualification was used. This prevents the production of accurate statistics on domestic crimes and identification of the relevant trend in the country.

In addition, some decrees do not include complete information about the investigative activities and the grounds for termination of an investigation.¹⁰² In addition, the form of drawing up a decree varies from region to region and there is no uniform standard about what kind of information should be included in the decree on the termination of an investigation.

Since the issue concerns minors, it is essential to identify the professionals and experts involved in the case. However, in this regard, the decrees only indicate the conduct of medical examinations. None of the decree shows the involvement of a psychologist.

In addition, the decrees do not make it clear whether the juvenile was referred to the relevant state agencies for appropriate rehabilitation services. In the decrees¹⁰³ where perverted actions are indicated, but the investigation is terminated due to the fact both persons are minors, it is not indicated whether the case was referred to the relevant agency for the rehabilitation of the juvenile.

The tendencies in decrees on termination of investigations vary according to the articles of the Criminal Code. In particular, the reason for the termination of an investigation under Article 137 of the Criminal Code, in most cases (8 out of 15 cases), is the denial of violence by the alleged victim, who refuses a medical examination for assessing the bodily injuries and the condition of the hymen (see problems with this practice below), as well as the denial of rape by victim's witnesses and other witnesses, on the basis of which the investigation is terminated. The involvement of a psychologist and conduct of a psychiatric examination can be seen only in two cases qualified

¹⁰² Case N058100618001 – Article 137, Mestia District Prosecutor's Office; Case N004100518013 – Article 140. Tbilisi's Isani-Samgori District Prosecutor's Office; Case N071080818003 – Article 141; Zugdidi District Prosecutor's Office; Case N031241119004 – Article 137; Marneuli District Prosecutor's Office.

¹⁰³ Case N001260818015 – Article 141, Tbilisi's Gldani-Nadzaladevi District Prosecutor's Office; Case N064161018003 – Article 141, Poti District Prosecutor's Office; Case N004070518003 – Article 138, Tbilisi, Isani-Samgori District Prosecutor's Office; Case N012200519009 – Article 141, Rustavi District Prosecutor's Office; Case N061051019001- Article 141, Samtredia District Prosecutor's Office.

under Article 137 of the Criminal Code. In one of the cases, the child was in state care and in another case, the child's sanity was under question. According to the decrees on the termination of investigations, the main evidence includes the minutes of interviews with alleged victims, defendants and witnesses and the medical examination reports confirming that no damage was inflicted to the body and the hymen was not broken (see problems relating to this practice below). The involvement of a psychologist cannot be seen even in cases where juveniles state that they lied about sexual abuse.¹⁰⁴

A frequent reason for terminating an investigation into a crime against a juvenile referred to in Article 137 (rape) of the Criminal Code is the denial of sexual abuse by the juvenile. In this case, the investigative authority interviews the juvenile, alleged perpetrator and other witnesses, who deny rape, and obtains other evidence, which, according to the decrees in the said cases, mainly includes telephone messages. In addition, a medical examination is appointed to check the bodily injuries and the condition of the hymen.¹⁰⁵ However, in some cases, minors refuse a medical examination.¹⁰⁶

According to one of the decrees on termination of an investigation into a case qualified under Article 137 of the Criminal Code,¹⁰⁷ the juvenile had a forehead injury, due to which she was transferred from the district hospital to the referral hospital. Upon admission to the clinic, her mother stated that her child had been injured as a result of violence and requested a gynecological examination to check the condition of the child's hymen. The juvenile categorically refused the medical examination and explained the incident by falling off a bicycle. Eventually, the mother of the child also changed her testimony and said she had no complaints against anyone. The decree on the termination of the investigation shows that the testimonies of the juvenile, her parent, other family members and the district hospital doctor, according to which, the juvenile said she had received the injury by falling off a bicycle, were used as evidence. The protocol on the seizure of a phone is also included in the case as evidence in the case, however, nothing is mentioned about its importance or other investigative activities. The involvement of a psychologist cannot be seen at any stage of the investigation. This case was provided to the Public defender of Georgia from the Prosecutor's office as a decision on termination of investigation on sexual violence against juvenile. However, as a result of further communication with the Ministry, the Public Defender was informed that alleged victim in this case had already turned 18 (one month prior to the alleged crime) when the alleged violence occurred. This circumstance of course, cannot be considered as an exculpatory to using the child victim oriented approach, preventive mechanisms to secondary victimization. Additionally, denial of sexual violence after reporting the case a refusal to medical examination cannot be understood as the crime was not committed and this cannot be interpreted as the grounds for termination of investigation. It is crucial to

¹⁰⁴ Case N041020518002 – Article 139, Kutaisi District Prosecutor's Office.

¹⁰⁵ Judgment N004010618023 – Article 137, Tbilisi's Isani-Samgori District Prosecutor's Office; Judgment N068030518001 – Article 137, Senaki District Prosecutor's Office; Judgment N175300718002 – Article 137, Khelvachauri District Prosecutor's Office; Judgment N031080219006- Article 137, Marneuli District Prosecutor's Office; Judgment N031241119004- Article 137, Marneuli District Prosecutor's Office.

¹⁰⁶ Judgment N058100618001 – Article 137, Mestia District Prosecutor's Office; Judgment N172280118001 – Article 137, Batumi District Prosecutor's Office; Judgment N051070319004- Article 137, Senaki District Prosecutor's Office; Judgment N052170919002- Article 137, Zestaponi District Prosecutor's Office.

¹⁰⁷ Case N058100618001 – Article 137, Mestia District Prosecutor's Office.

use all existing mechanisms to have trust-based effective communication with the alleged victim of sexual violence. Additionally, every possibility of pressure and coercive circumstances (paralyzing the will and action of the child victim). This also indicates the crucial need for involvement of a psychologist in sexual violence cases.

A case qualified under Article 137 of the Criminal Code,¹⁰⁸ where the 5-year-old child's genitals were swollen and bleeding, is also noteworthy. Upon admission to a clinic, the mother of the 5-year-old child suspected that the child had been sexually abused. After visual examination, the doctor considered it necessary to apply to the law enforcement agency for conducting a forensic examination. However, at that point, the mother of the child denied any form of violence against the child and said that according to the child, she damaged her genitals with a stick while playing in the yard. The investigation was terminated on the basis of the medical examination, according to which, the hymen was not broken and no anal injury was found. The investigation considered the mother's changed testimony and minutes of interviews with other family members to be credible. The involvement of a psychologist cannot be seen at any stage of the investigation. Taking a very specific nature of sexual violence cases into consideration, it is crucial to sufficiently study all possible reasons and grounds for changing the statement. Additionally, it is important that the document on termination of investigation contains information on what actions were taken and which specialists were involved in the case in order to ensure trust-based and effective communication with victim.

One of the decisions on the termination of an investigation into a case qualified under Article 137 of the Criminal Code¹⁰⁹ was based on the examination report of LEPL Samkharauli Forensics Bureau. The report of four doctors of one of the medical institutions discovered sperm in the smear analysis of a 5-year-old child. The smear sample was sent to the Samkharauli Forensics Bureau, where additional smear samples were taken from the child's anus and vagina. Four days later, the examination concluded that no male DNA samples were found in any of the samples. Sexual abuse of the child was denied by her parents as well, on the basis of which the investigation was terminated. The decree shows that the child was interviewed, although there is no indication of a psychological examination or the involvement of a psychologist in the case. The decree does not indicate what made the four specialists of the clinic state that sperm was found in the child's smear analysis.

According to decrees studied by us,¹¹⁰ in cases qualified under Article 140 (1) of the Criminal Code, which pertains to penetration of a sexual nature by an adult into the body of a person under the age of sixteen, the grounds for termination of an investigation are mainly the young age of both persons involved (24 cases). It is also common to terminate an investigation ongoing under Article 140 (1) of the Criminal Code on the grounds that the victim was already 16 years old at the time of the sexual intercourse (28 cases). In such cases, the decrees also state that sexual intercourse was consensual. However, there have been also cases when the alleged victim refused to conduct an examination and denied that she had been sexually abused or sexually penetrated, therefore, no offence could be proved at the investigation stage and the case was terminated.

¹⁰⁸ Case N031241119004 – Article 137, Marneuli District Prosecutor's Office.

¹⁰⁹ Case N031080219006 – Article 137, Marneuli District Prosecutor's Office.

¹¹⁰ Correspondence N13/58282. 08/10/2020 of the Prosecutor General's Office of Georgia.

According to the decrees on termination of investigations into cases qualified under Article 140 of the Criminal Code, the main evidence is the minutes of interviews, medical examination, medical history, birth certificates and babies' birth records. In case of de facto marriage, it is not possible to obtain accurate evidence to establish the time of the crime and the above is calculated only according to the term of pregnancy of the victim, which often does not provide the composition of a crime referred to in Article 140 of the Criminal Code, if the victim has already reached 16 years by the time she gets pregnant. In addition, another approach was identified in relation to early marriages that began when both persons were minors, but they were only cohabiting with each other when one of them reached adulthood. Investigations are terminated in similar cases qualified under Article 140 of the Criminal Code due to the lack of evidence.¹¹¹ It is especially difficult to obtain evidence in sexual violence cases. Specifically when the victim denies the violence or refuses to cooperate with the investigation. In cases like this, it is crucial to study every possibility of pressure on victim and the existence of coercive circumstances (paralyzing the will and action of the child victim). This also indicates the need to involve all necessary specialists in the case, including the psychologist.

The decrees on termination of investigations revealed several cases of early marriage, where the court had already made rulings under part 1 of Article 140 of the Criminal Code, but they turned out to be ineffective. According to one of the rulings, the defendant was serving a conditional sentence and an investigation was launched on the grounds that a minor under the age of 16, who was in de facto marriage, gave birth to her second child. The reason for the termination of the investigation was the fact that *"...such sexual contact can no longer prevent the normal physical and moral development of a person under 16 years of age. Her sexual inviolability can no longer be subject to criminal protection."*¹¹² This is a discriminatory practice, which is backed by Georgian legislation.¹¹³ The above contradicts the requirements of international human rights law (see above p.) and Georgian legislation, which does not recognize a similar grounds for terminating an investigation/prosecution.

Investigations are terminated even in similar cases, if the minor denies sexual intercourse, refuses medical examination or other witnesses deny the fact of early marriage. It is also noteworthy that the decrees on the termination of investigations into cases of early marriage always refer to the "consensual" marriage of a minor under 16 years of age. This assessment is against law, as according to Georgian legislation,¹¹⁴ the age of marriage is 18 years and the will expressed by a person under 18 is invalid. Identifying possible coercive circumstances (paralyzing the will and action of the child victim). is crucial in these cases, too. It is important that a formalistic consent of a juvenile is not considered as demonstration of will to get married.

¹¹¹ Case N040010418001 – Article 140, Signaghi District Prosecutor's Office; Case N031071119001- Article 140, Marneuli District Prosecutor's Office; Case N064120919001- Article 140, Samtredia District Prosecutor's Office; Case N171180119004- Article 140, Batumi District Prosecutor's Office; Case N173260719004- Article 140, Khelvachauri District Prosecutor's Office; Case N001151119012 – Article 140, Tbilisi's Gldani-Nadzaladevi-Samgori District Prosecutor's Office.

¹¹² Case N033010218003 – Article 140, Signaghi District Prosecutor's Office.

¹¹³ Private Part of Criminal Law, (Book I), Fourth Edition, Mzia Lekviashvili, Nona Todua, Gocha Mamulashili, Meridiani Publishing House, Tbilisi, 2011, p. 190.

¹¹⁴ Criminal Code of Georgia, Article 1108.

The decrees on termination of investigations into cases qualified under Article 140 of the Criminal Code do not mention the involvement of a psychologist either, especially in cases where early marriage is not obvious. In particular, one decree¹¹⁵ states that a 13-year-old girl was taking prescribed contraceptives, whereas, according to her gynecologist, her hymen was broken. It is noteworthy that the time when the hymen was broken was precisely indicated – four months ago, whereas all other medical examination reports of the Samkharauli Bureau say that it is impossible to determine when the hymen was broken if more than two weeks have passed. In addition, according to the decree, the juvenile self-harmed with a pen and did not have sexual intercourse. According to the case materials, the juvenile underwent a medical examination to assess the condition of the hymen, according to which, the hymen was intact. Based on the denial of sexual intercourse by the juvenile and the medical examination reports, it was decided to terminate the investigation. The case also indicates that a 13-year-old child was consuming contraceptive which is given only by obtaining prescription for it. The child was specifying that she was using the pills for menstrual cramps. However, the document on termination of investigation didn't specify the findings on who issued the prescription and why the legal representatives of the child were not informed about the prescription.

The decisions on the termination of investigations also include a case where a law enforcement agency learned about the case of early marriage late and noted that the investigation was terminated due to the expiration of the statute of limitations.¹¹⁶ The alleged violator noted in his statement that at that time he didn't know that a girl was only 14 years old. He only received this information after the girl gave birth to their child. The alleged violator also noted that after being informed on the age of the girl, he didn't commit sexual acts with her until she turned 16. Anonymous call was the ground for launching the investigation. The caller informed the police that the girl was victim of violence, she was deprived of liberty to go outside the house. It is important to note that this was the second time the police were informed on the possible violence against juvenile girl. The response from the police to the first report was to visit the victim at her house, where she lives with her alleged violator husband and interviewed her while her husband was still at the house, just next room. The alleged victim denied violence on both times, noting that she didn't tell her age to her husband and it was her will not to go outside the house. This case shows the obstacles that can occur on delayed notification of possible domestic sexual violence and indicates the difficulties concerning the communication with the victim.

Another challenge is to determine what constitutes a perverted action. It is clear from the case materials that there is a fairly high standard for qualifying an action under Article 141 of the Criminal Code. According to the rulings, putting a hand on the juvenile's feet and offering a kiss, touching the juvenile's chin, or trying to take off pants are not enough for an action to be qualified under Article 141 of the Criminal Code. According to one of the rulings, a law enforcement agency was applied by an alleged victim of rape. The investigation revealed that the alleged perpetrator offered "fun" to the victim. The decrees do not indicate the age of the juvenile.¹¹⁷ One case was re-qualified as sexual harassment, on the grounds that the victim was found to be an adult.¹¹⁸

¹¹⁵ Case N004100518013 – Article 140, Tbilisi's Isani-Samgori District Prosecutor's Office.

¹¹⁶ Case N031220119003–Article 140, Marneuli District Prosecutor's Office.

¹¹⁷ Case N004230218002 – Article 137, Tbilisi's Isani-Samgori District Prosecutor's Office.

¹¹⁸ Case N^o176081119001 – Article 141, Khelvachauri District Prosecutor's Office

The decree relating to a case qualified under Article 141 of the Criminal Code stated that the man *"did not touch the children on any other part of the body except the chin"*, on the basis of which the investigation was terminated.¹¹⁹

According to the decree relating to a case qualified under Article 141 of the Criminal Code,¹²⁰ a taxi driver offered to transport a child free of charge, telling her that he himself was going in the same direction. However, he then changed the direction and pulled over, put his hand on the girl and asked her if she could kiss her. The investigation was terminated on the grounds that *"the taxi driver did not offer sexual contact... no perverted action has taken place and, consequently, there has not been any criminal action."*

According to the decree in a case qualified under Article 141 of the Criminal Code,¹²¹ the parent of a child with disabilities, in particular, with mental problems, presumed that a perverted action had taken place against the child. The juvenile noted that her neighbor had put his hand on her shoulder. According to the decision on the termination of the investigation, the medical examination could not find any bodily injuries and three persons interviewed by the investigation denied sexual abuse, as a result of which, the investigation was terminated. The case does not show the involvement of a psychologist or a psychiatrist. It is important to use all existing resources corresponding to the specific circumstances of individual case, to conduct trust-based and effective communication with the child, including involving the psychologist and if necessary psychiatrist. Identifying the coercive circumstances (paralyzing the will and action of the child victim). and eliminating every possibility of possible violence, coercion or pressure on the child.

According to the ruling¹²² in a case qualified under Article 141 of the Criminal Code, a man touched a 7-year-old boy on his arm and allegedly tried to take off his pants. The investigation into the case was terminated on the grounds that *"Only alleged attempt to take off pants is neither physical nor intellectual perverted action."* However, the investigation had been ongoing from September 10, 2017 to June 3, 2019.

According to the rulings¹²³ received from the Prosecutor's Office, a minor was repeatedly touched by a man in a crowded bus, which is why the child called the police. The decision on the termination of the investigation says that the juvenile *"has no complaints against ... because he apologized for the inconvenience and the child did not experience any psychological stress."* It is noteworthy that the case was investigated for four months, despite the fact that the alleged perpetrator apologized to the girl soon after the incident. Similar cases indicate the obstacles concerning obtaining evidence in cases of sexual violence against children and difficulties of communicating with the possible victims and their families. The grounds for termination of an investigation in cases qualified under Article 140 of the Criminal Code are, for the most part, the fact that both the victim and the alleged offender are minors, or the fact that the victim was already 16 years old during sexual intercourse. It should be noted that according to the decrees on termination of investigations, the main evidence is the minutes of interviews with victims, alleged offenders

¹¹⁹ საქმე №004210818013 – 141-ე მუხლი, თბილისი, ისანი-სამგორის რაიონული პროკურატურა.

¹²⁰ Case N004300617007 – Article 141, Tbilisi's Isani-Samgori District Prosecutor's Office.

¹²¹ Case N071080818003- Article 141.

¹²² Case N 012100917003- Article 141.

¹²³ Case N008240419022- Article 141.

and other persons who deny sexual abuse, as well as the victim's medical examination report, pregnancy of the minor victim, birth certificates of the alleged offender and the victim, and a birth record of the baby, on the basis of which the date of the first alleged sexual intercourse is calculated in order to check if the victim was already 16 years old.

In 2018 and 2019, an investigation was terminated only in one case¹²⁴ qualified under Article 139 of the Criminal Code, on the basis of a statement of the juvenile, according to which, she made up the story of violence and the name of the victim, and used the name of his neighbor as the name of the perpetrator. Both the juvenile and her family members, as well as the neighbor were questioned, all of whom denied violence, which turned out to be enough to terminate the investigation. The case does not show the involvement of a psychologist.

According to the rulings received from the Prosecutor General's Office of Georgia, in 2018 and 2019, an investigation was terminated in a total of two cases qualified under Article 255 of the Criminal Code. In both cases, no relevant evidence were obtained through the search or seizure procedures.

¹²⁴ Case N041020518002 – Article 139, Kutaisi District Prosecutor's Office.

III. PROTECTION OF VICTIMS FROM SECONDARY VICTIMIZATION

1. International standards

Children are vulnerable individuals, while girls are particularly vulnerable and may face discrimination at all stages of the justice system.¹²⁵ Therefore, special services and protection will need to be instituted to take account of gender and the different nature of specific offences against children, such as sexual assault involving children.¹²⁶ When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.¹²⁷

Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care.¹²⁸ Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken shall take due account of the child's views, needs and concerns.¹²⁹ Following the trial, particular health care and appropriate social and therapeutic intervention programmes or measures should be provided for victims of violence.¹³⁰

The reporting of instances should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.¹³¹

The confidentiality rules imposed on certain professionals called upon to work in contact with children should not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse.¹³²

When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures shall include the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with the best interests of the child.¹³³

¹²⁵ United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 2005, § 7(c); CEDAW, General Recommendation No. 33, § 24.

¹²⁶ United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 2005, §17.

¹²⁷ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 11.2.

¹²⁸ Ibid. Article 11.1.

¹²⁹ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18.04.2011, CRC/C/GC/13, § 52. Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No.: 201, Article 14.

¹³⁰ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010, §75-83.

¹³¹ UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18.04.2011, CRC/C/GC/13, §49.

¹³² Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 12.

¹³³ Ibid. Article 14.

The State shall take the necessary measures to ensure the coordination, notably between the education sector, the health sector, the social services and the law-enforcement and judicial authorities. Each State shall encourage cooperation between the competent state authorities, civil society and the private sector and take measures to set up mechanisms for data collection.¹³⁴

2. Legislation of Georgia

Georgian legislation provides for various guarantees for juveniles victims of violence. According to the Juvenile Justice Code (hereinafter: Code), their purpose is to „protect the rights of juvenile victims and juvenile witnesses, to prevent secondary victimization of juvenile victims and witnesses, and to prevent the re-victimization of juvenile victims.“ (Article 2)

According to the Code, the juvenile justice process and all procedures should be performed only by specialized persons (Article 16.1). The child victim has the right to free legal aid, and both victims and witnesses of sexual offences have the right to free legal aid at any stage of the proceedings (Article 15.1).

Protection mechanisms for child victims of violence are also set out in the Code on the Rights of the Child. In particular, Article 43 sets out health care measures for juvenile victims and witnesses, while Article 62 obliges the State to provide support and rehabilitation programmes for child victims of violence and child witnesses. The same article provides for the obligations to compensate for damages and protect children from secondary victimization and re-victimization, and requires professionals working with minors to have relevant specialization.

I. Legal representative

The procedure, in which juvenile interviewees/witnesses participate, shall be attended by their legal representatives (Article 23.1). During the hearing of a case, the judge, as well as the prosecutor at the stage of the investigation, is authorized to prohibit the legal representative of the juvenile witness from attending the procedure only if the best interests of the juvenile require so (Article 23.3). During the hearing of a case – the judge, as well as the prosecutor at the stage of the investigation, is authorized, taking into account the best interests of the juvenile, to prohibit the legal representative of the juvenile interviewee/witness from attending interview/interrogation if he/she participates as an interviewee/witness in the same case (Article 23.8).

It is inadmissible to involve a person, who is a suspected abuser or whose bias is suspected due to the nature of the relationship between this person and the abuser’s family member or in any other case of conflict of interest, as a legal representative in criminal proceedings relating to domestic violence, as well as to allow him/her to have access to the testimony given by the minor (the minutes of the interview, explanations) (Article 50.2).

II. The role of the psychologist

In the best interests of the juvenile, the participation of a psychologist shall be ensured on the initiative of the judge during the trial and on the initiative of the prosecution at the stage of the investigation. The psychologist shall assess the needs of the juvenile and provide psychological support to him/her during the proceedings (Article 23.1 and Article 29.22).

¹³⁴ Ibid. Article 10.

III. The role of the witness and victim coordinator

Taking into account the interests of the juvenile victim, the prosecutor may involve a **witness and victim coordinator** in the case, while the witness/victim and his/her representative have the right to refuse it (Articles 23.4, 23.5 and 23.6). The role of the witness and victim coordinator is to provide the juvenile with relevant information about the criminal proceedings, inform him/her of his/her rights and assist in receiving appropriate services (legal, psychological, medical), attend investigative and procedural activities, as well as trials, in order to emotionally support the juvenile (Article 23.7). The coordinator, if juvenile witnesses and juvenile victims wish so, may also attend the process of examining the evidence with the participation of juvenile witnesses and juvenile victims at a closed court session (Article 29.1¹³⁵), as well as the procedural activities involving juvenile witnesses/victims (Article 2 (29¹)).

During the hearing of a case by a panel of judges in the district (city) court, as well as during the hearing of a case in the Court of Appeal and the Supreme Court of Georgia, the chamber/panel shall include one judge specialized in juvenile justice, if the victim in the case is a juvenile (Article 17.3).

IV. Detection of sexual exploitation of children and referral procedure

The resolution of the Government of Georgia of September 12, 2016 on the approval of child protection referral procedures aims to promote the protection of children from all forms of violence in or outside family by establishing a coordinated and effective system of referral procedures and defines the functions and rules for coordinated work between relevant bodies/institutions, in order to respond effectively and quickly to the cases of violence (Article 1).

In particular, the child referral system includes: a) identifying the child victim of violence; B) assessing the child's condition; C) informing the relevant bodies of child abuse; D) if necessary, separating and placing the child in the relevant specialized institution/shelter/foster care, which will contribute to his/her safety and rehabilitation; E) monitoring the cases of violence (Article 4).

More than ten different bodies are involved in the referral procedure and their powers and responsibilities are defined in detail in the resolution. Within the framework of their functions, the relevant referral responsibilities are assigned to the police, bodies of the Ministry of Education, Science, Culture and Sports and the Ministry of Justice of Georgia, Prosecutor's Office of Georgia, LEPL Crime Prevention Center, kindergartens, LEPL Office of Resource Officers, educational, art and/or sports institutions, children's specialized institutions and shelters, medical service providers (including rural doctors), municipal administrations/city halls (Article 5). The resolution specifies the role of each body and the principles of the methodology for identifying violence against children.

3. Procedural issues at the stages of investigation and criminal prosecution

3.1. International standard

Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialized in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose.¹³⁵ In the process of inves-

¹³⁵ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 34; UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18.04.2011, CRC/C/GC/13, §51.

tigation, as noted, re-victimization of the child should be avoided.¹³⁶ During investigation, the investigator and the prosecutor should also take into account that children rarely report sexual abuse as soon as it occurs¹³⁷ and should plan the investigation accordingly.

Interviews with the child should take place without unjustified delay, in premises designed or adapted for this purpose. When more than one interview is necessary, they should preferably be carried out by the same person.¹³⁸ The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime also say that interviews, examinations and other forms of investigations should be conducted by trained professionals.¹³⁹ The number of interviews should be as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings. The child may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice.¹⁴⁰ In addition, child victims and witnesses, their legal representatives should be promptly and adequately informed of all procedures of justice, as well as of support and rehabilitation services intended for children and their families.¹⁴¹

According to the WHO Guidelines, individuals interviewing children should be sensitive to the child's feelings of vulnerability. It is important to ensure that contact with the child is established before the interview and communication with the child should take into account his or her level of development. The interviewer should introduce himself/herself as a person who needs his or her help. No complicated sentences should be used by the interviewer and it is important for the child to be able to convey facts in his/her own language.¹⁴² The number of interviews should be limited as far as possible, the child should not be interviewed by different individuals, and the process should be observed by members of the multidisciplinary team remotely, from a separate room.¹⁴³ All interviews with the child should be videotaped and the videotaped interviews may be accepted as evidence during the court proceedings.¹⁴⁴

In addition, the child should have access to free legal aid and should be able to represent himself/herself. Lawyers working with children should have the relevant specialization and represent the child's opinion in the process, as well as provide him/her with all necessary information and explanations. The parent may not be a representative of the child, if the latter is the alleged perpetrator.¹⁴⁵

¹³⁶ Ibid.

¹³⁷ WHO, Guidelines for Medico-Legal Care for Victims of Sexual Violence (2003), p. 75.

¹³⁸ See also the Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010.

¹³⁹ United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005.

¹⁴⁰ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 35.1.

¹⁴¹ United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005.

¹⁴² WHO, Guidelines for Medico-Legal Care for Victims of Sexual Violence (2003), p. 83.

¹⁴³ Barnahus Quality Standards, Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence, 2017.

¹⁴⁴ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 35.2.

¹⁴⁵ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010, §37-43.

3.2. Georgian legislation

In criminal proceedings, the Code establishes special rules for interviewing minors. In particular, according to the Code, a juvenile may be interviewed if he or she is able to convey information relevant to the case orally or otherwise (Article 52.2). In addition, as mentioned above, the juvenile's legal representative and lawyer shall participate in the interview. In a number of cases, including sexual abuse, a juvenile interviewee/witness is entitled to free legal aid during an interview/interrogation. The participation of a psychologist in this process should be ensured by the person carrying out the procedural action, taking into account the best interests of the juvenile. The function of the psychologist during the interview/interrogation of the juvenile is to assess the needs of the juvenile and to provide psychological support to him/her during an interview/interrogation. If the juvenile is a person/witness or victim to be interviewed in relation to sexual exploitation or sexual abuse, the interview/interrogation may be audio-videotaped. The audio-videotaped testimony given by the juvenile may be used during the court hearing (Article 52.3).

If the minor is under 14 years of age, different rules apply to him/her. In particular, in this case, the interview/interrogation of the child shall be conducted only with the consent of and in the presence of his/her legal representative. The legal representative has the right to express opinion and clarify a question asked to a person under 14 years of age, with the permission of the court. The child shall be informed of his/her duty to tell only the truth, but shall not be warned of the criminal liability in case of giving a false testimony or refusing to testify (Article 52.4).

If the juvenile is a witness or victim in a case of sexual exploitation or sexual abuse, the number of interviews shall be as limited as possible and shall be conditioned by the necessity of achieving the objectives of criminal proceedings (Article 52.5). In addition, minors may not be questioned from 22:00 to 08:00 (Article 52.6) and shall be provided with adequate food and drinking water at least every four hours and shall be allowed to use toilet without restriction (Article 52.7).

As for procedural activities – in the case of a juvenile victim, his/her legal representative and lawyer are required to attend the procedure (in case of a juvenile witness, the attendance of the lawyer is not required), and the involvement of the psychologist, who shall assess the juvenile's needs and provide psychological support, shall be provided in the best interests of the child. The procedural action may be attended by the witness and victim coordinator if the minor victim wishes so (Articles 52.8 and 52.9).

The legal representative may be prohibited from attending a procedural activity if the best interests of the juvenile require so. The relevant decision shall be made by the judge during the court hearing, and at the stage of the investigation – by the prosecutor (Article 52.10).

In addition, in the presence of an abusive parent or legal representative, it is prohibited to interview a juvenile interviewee/witness or a juvenile victim in connection with domestic crime, violence against women and/or domestic violence (Article 52.11).

3.3. Existing practice

Given that the police station is a place where the child victim of violence first appears after the incident, the practice of this service is crucial, in particular, it is important what the trajectory of

the service provided to the child victim is, whether pre-prescribed procedures are tailored to the child's needs, whether child-friendly environment is provided, whether he/she is interviewed after the relevant preparation, by taking into view his/her emotional condition, age characteristics and other indicators of vulnerability, whether he/she has to talk about the trauma he/she experienced several times, whether the person interviewing the child is specialized, whether the child is supported by the relevant persons in a rather stressful situation, etc.

It is noteworthy that currently the Ministry of Internal Affairs has Human Rights' Protection and Monitoring Department which monitors the cases of violence against children, with special priority on cases of sexual violence against children. This department is a useful mechanism to ensure that the process of administration of justice on cases of sexual violence against children is conducted using child oriented approach. Additionally, it is crucial to note that Tbilisi Police Department has Juvenile Affairs Main Division. However, it is important to increase this resource, considering geographical accessibility. It is also noteworthy that, currently only six structural units of the Ministry of Internal Affairs have a room specially arranged for interviewing juveniles.¹⁴⁶ According to prosecutors and investigators, a child-friendly environment is provided in the above rooms to protect children's emotional safety and to prevent their integration with strangers as much as possible. Similar environment is provided in the Main Division of Juvenile Affairs of the Tbilisi Police Department, Patrol Police Department, Kutaisi City Division, Pankisi Police Station, Rustavi City Division and Academy of the Ministry of Internal Affairs. Consequently, the physical environment in other agencies fails to protect the best interests of the juvenile. It is also noteworthy to highlight the environment in which psychologists interview juveniles at LEPL Levan Samkharauli National Forensics Bureau, as one of the important factors causing additional stress among children.¹⁴⁷

Interviews conducted with professionals within the framework of the survey show that in some cases the involvement of a specialized investigator in the proceedings relating to juvenile victims is formal. According to them, "We have had cases when the victim child was accompanied by an investigator specialized in juvenile justice, who did not have any information about the case and was engaged in the case only because of being specialized in juvenile justice. They try to get basic information about the case from psychologists after bringing children. And the case is being investigated by another investigator. There have been many such cases." It is important to note that, in some cases the investigators are not fully aware of their role and obligations while taking the child to NICHD interviews. They tend to consider their role is to only take the child to the interview and aren't informed about their attendance or involvement in the interview. As a result of communication with other professionals, it was made clear that it is often not possible to talk to a child before the interview, in order to prepare him/her. State agencies do not have a proper physical environment.

A juvenile victim of sexual abuse is assigned a legal/procedural representative¹⁴⁸ before the start of any investigative or procedural activity, including an interview. According to the case materials, legal/procedural representatives in most cases are social workers. There are relatively fewer

¹⁴⁶ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date: 15/12/2020

¹⁴⁷ Correspondence N5002080021 of LEPL Levan Samkharauli National Forensics Bureau, date: 05/04/2021

¹⁴⁸ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date 15/12/2020.

cases when the child is represented by his/her parent or trustee, who participates in all kinds of procedures together with the juvenile. After being identified as a victim, the juvenile is assigned a lawyer, who in most cases (27 out of 41 cases) is female and is involved in interviews as well as trials. However, the involvement of the witness and victim coordinator prior to interviews is conditioned only by the relevant need in a particular case, which is not defined by any standard or guideline, and the investigator individually assesses the need of the involvement of the witness and victim coordinator, which contains a risk that the emotional needs of the child victim may remain beyond attention. In addition, there is no tool for assessing the psycho-emotional condition of the child victim of sexual abuse or any methodology that would measure the risks of complication of the emotional condition and would use an individual approach during an interview. Investigators or prosecutors make a decision to involve a psychologist in accordance with the Juvenile Justice Code, which regulates the involvement of the psychologist in the juvenile justice process in the best interests of the child and sets out the psychologist's obligation to assess the juvenile's needs and psychologically support him/her during the procedural activities.¹⁴⁹ However, according to the Ministry of Internal Affairs,¹⁵⁰ after interviewing investigators, prosecutors and judges, it was made clear that the above mechanism is used only in relation to child victims of sexual violence.

Professionals working with affected juveniles, despite many shortcomings in the system, indicate positive changes and the increased role of psychologists during interviews -

"This has improved in recent years, these processes have improved. Interviews with children contained many shortcomings in previous years. Investigators used to ask questions like -"Did you enjoy it?" But in recent years, I emphasize, the practice of interviewing a child relating to sexual abuse has greatly improved. The role of psychologists has increased. We are allowed to have a private conversation with the juvenile, to prepare the child to enable him/her to speak painlessly and not to have bad feelings during an interview. We have improved all this in recent years."¹⁵¹

The case materials show that in most cases, psychologists attend interviews with juveniles in relation to cases of sexual abuse. Psychologists are invited either from the Social Services Agency or the Police Academy. However, according to the professionals, there are cases when a stranger is invited as a psychologist and there is no leverage to assess his/her competence – *"Since we apply to the special service of the Ministry of Internal Affairs and they provide the psychologist's service, we do not ask for additional documents proving his/her qualification. If the psychologist is a stranger, who does not assist but hampers the investigative activity, I may simply have questions to the agency that sent him/her."¹⁵²* The fact that the number of staff in the Social Service Agency and the Police Academy is insufficient and interviews with juveniles may be attended by random professionals (psychologists), who are not specialized in working with child witnesses/victims or specifics of interviewing them, is a serious shortcoming, as working with traumatized children requires relevant theoretical and practical knowledge, which is not possessed by all professionals

¹⁴⁹ Juvenile Justice Code, Article 23;

¹⁵⁰ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date 15/12/2020.

¹⁵¹ One of the respondent psychologists.

¹⁵² One of the respondent investigators.

who have psychologist's diplomas. From this point of view, a suspicion arises that in some cases the involvement of a psychologist is formal.

It is not taken into account that sexual violence or perverted action against a child is a serious traumatic circumstance, and when using a child-centered approach, the involvement of a psychologist should be a statutory obligation to provide equal opportunities for all children with this type of traumatic experience. At this stage, there are no guidelines about the role of a psychologist in the process of interviewing a child, his/her rights/responsibilities or limits of competence. It is not considered mandatory for the invited psychologist to have the relevant specialization, like other professionals involved in the process. All of these circumstances carry a risk that the involvement of a psychologist may depend on the will of a particular investigator or be just formal. An example of this is the opinion of one of the professionals – *“We had a case when the psychologist attended the investigative activity in a purely procedural, formal manner. The child from whom I received information did not need the involvement and assistance of the psychologist. However, there have been cases when psychologists performed the role of an investigator.”*¹⁵³ Psychologists of LEPL Levan Samkharauli National Forensics Bureau also point out the need for more active involvement of psychologists in the investigation, criminal prosecution or trial and note that they should guide the protection of the child's interests during every proceeding.¹⁵⁴

Our interviews with professionals also made it clear that there had been cases when a juvenile was accompanied by a social worker during an interview, who was not aware of the case, or when an investigator accompanied a juvenile only because he/she was specialized in juvenile justice, but was not an investigator in that particular case. Consequently, there was no effective communication with the psychologist and no complete information could be provided to him/her about the case before the interview.

A lot of judges, lawyers and prosecutors stated during the survey that psychologists' involvement, even in terms of formulating questions, was low. Psychologists should emotionally support juveniles, although it is not specifically described what emotional support may involve and what role should be played by psychologists during interviews with juveniles. The survey also made it clear that there had been cases when the social worker and the psychologist first met the minor during an interview, which prevents children from perceiving the above persons as defenders of their interests.

In addition, despite the fact that the Juvenile Justice Code took effect in 2016 and the Code on the Rights of the Child came into force on September 1, 2020, there is no standardized, evidence-based instructions for interviewing juveniles relating to cases of sexual abuse. According to the Ministry of Internal Affairs of Georgia, at this stage, they are working on a protocol for interviewing juveniles relating to cases of sexual violence, in cooperation with international organizations, after which the protocol will be implemented in practice.¹⁵⁵

¹⁵³ One of the respondent investigators.

¹⁵⁴ Correspondence N5002080021 of Levan Samkharauli National Forensics Bureau, date: 05/04/2021.

¹⁵⁵ Correspondence MIA 0 20 01462848 of the Ministry of Internal Affairs of Georgia, date: 30/06/2020.

According to the Ministry, juveniles are interviewed by specialized investigators and, if necessary, by investigators of the same sex.¹⁵⁶ However, there are no written rules in this regard, and it is not defined who and how should assess the existence of such a need. Psychologists, investigators and prosecutors, who have personally interviewed juvenile victims of sexual abuse, note that each case should be assessed individually and the gender of the professional working with a child should be determined according to his/her needs. According to them, it is impossible to say with certainty that the opposite sex of the investigator or any professional is necessarily a disturbing circumstance for the child.

According to the case materials, practices vary in this respect and no single tendency can be distinguished. However, in one of the cases, the psychologist directly explained at the trial that it was difficult for the juvenile to talk to the male investigator about violence.¹⁵⁷

According to prosecutors, representatives of the law enforcement agencies try to limit the number of interviews with juveniles. In particular, they plan the first interview with a juvenile in detail and try to get all the necessary information during the very first interview. However, case materials show that juvenile victims are usually interviewed twice. In addition, there were cases when the second interview with the juvenile was attended by the different social worker or psychologist. There are also frequent cases when the second interview or other investigative activity is carried out by another investigator.

Interviews conducted with psychologists within the framework of the survey revealed that juveniles are often interviewed several times by the investigator and only after that they are interviewed under the NICHD protocol.¹⁵⁸

According to the information received from the Prosecutor General's Office, in order to rationally use resources, the involvement of witness and victim coordinators is a priority in criminal cases where the victim/witness objectively needs emotional support.¹⁵⁹ In particular, according to the Manual of the Witness and Victim Coordinator Service, which, according to the Prosecutor General's Office,¹⁶⁰ was developed by their agency and determines the priority involvement of a coordinator in cases of domestic crime, domestic violence, trafficking, sexual violence, intolerance-motivated crimes of discrimination and cases where the witness is a minor or a person with disabilities. A particular priority is attached to criminal cases where a child victim/witness of sexual violence is involved. The document also includes recommendations for preparing witnesses/victims to testify at the trial. Nevertheless, according to the case materials, the witness and victim coordinator was involved in a total of two cases.

It is clear from the interviews with professionals that the decision on the involvement of witness and victim coordinators is mainly made by prosecutors. An interesting opinion was shared by one of the respondents – - *"The coordinator was involved in the case on the initiative of the prosecutor, but when the prosecutor's goal is to solve a case and take relevant steps, do you think the coordinator will go against the request of his/her colleague, who is in a higher position, for the sake of the interests of the child? I do not consider this practice effective."*

¹⁵⁶ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date: 15/12/2020.

¹⁵⁷ Mtskheta District Court.

¹⁵⁸ Evidence-based interviewing tool of the US National Institute of Child Health and Human Development (NICHD).

¹⁵⁹ Correspondence N13/70869 of the Prosecutor General's Office of Georgia, date: 23/12/2020.

¹⁶⁰ Ibid.

In addition, at this stage, there is no special protocol relating to the establishment of direct communication with the minor. According to the minutes of interviews, investigators in cases relating to rape may ask victims about his/her feelings during sexual intercourse, the detailed description of which may be traumatic for the victim and it may not provide important information to the investigation. In particular, during an interview, the victim indicated that

„...he put his genitals into my genitals, which was painful and I felt very bad ... and he continued the sexual intercourse for several minutes. I was in a lot of pain and I felt very bad. ... he started to rape me, after which I threw him off the bed, but he still came to me and raped me by force. He took my clothes off by force and had sexual intercourse with me. I was in great pain.“¹⁶¹

“He put his genitals in my anus, during which I experienced severe physical pain. I want to tell you that I cried during the forced sexual intercourse.“¹⁶²

“He put his hand in my genitals and started to touch them, but I did not like it, because he treated me roughly.“¹⁶³

3.4. Investigative experiment

Investigative experiment¹⁶⁴ carries a very high risk of secondary victimization of the child, therefore, it is crucial not to carry out the procedure unless it is an extreme necessity in the case. It is important to properly prepare the juvenile and emotionally support him/her during the investigative experiment. According to case materials, as well as the survey results, it is clear that before participating in an investigative experiment, the juvenile is provided with information about the planned investigative/procedural activity by his/her legal/procedural representative. The decision to involve a psychologist, as well as a witness and victim coordinator, in the process is made by the investigator if there is such a need. However, it is not explicitly stated under what circumstances such a need may arise or by what criteria the need should be assessed. The study identified cases where the officials read the victim her/his statement before starting the investigative experiment and while conducting the inspection of the area the victim is being photographed while standing and pointing at the specific areas, where the alleged crime has been committed. This raises the risk of secondary victimization and contradicts to child's interests. Juveniles are always accompanied by procedural or legal representatives during investigative experiments. However, it is worth noting that in one of the cases, in which the mother of the minor was alleging that the child was abused by her father, the juvenile was brought to the police station by her father. The child denied the commission of violence by her father and referred to false facts during the investigative experiment, which was also attended by her father. With regard to the mentioned fact, the court noted: *“This is explained by the fact that she was under the influence of her father and was afraid of telling the truth to the investigation. The father was always with the victim, including during the investigative experiment.“¹⁶⁵*

According to the information received from the Ministry of Internal Affairs of Georgia, coordi-

¹⁶¹ Tbilisi City Court judgment 1/4039-18

¹⁶² Tbilisi City Court judgment N1/474-18

¹⁶³ Tbilisi City Court judgment N1/1880-19

¹⁶⁴ Juveniles participated in the investigative experiments in 11 of the 51 cases examined.

¹⁶⁵ Tbilisi City Court judgment N1/63-19

nators, social workers and psychologists are involved if child victims of sexual violence are in emotional crisis. Children are provided with information about state services through the above persons.¹⁶⁶ However, there is no special protocol on what should be immediately done when an emotional crisis arises. In addition, there is no prescribed approach relating to the prevention or management of the emotional crisis of the minor.

3.5. Forensic medical examination

Medical examination, which is a difficult process for the affected child,¹⁶⁷ is further complicated by the lack of staff and medical equipment at LEPL Levan Samkharauli National Forensics Bureau. In particular, according to the Levan Samkharauli Forensics Bureau,¹⁶⁸ in cases involving actions of a sexual nature, a forensic examination should be conducted by at least two forensic experts of the victim's sex, although such resources are available only at the central office of the Bureau.

Consequently, it is possible to conduct a medical examination of victims of sexual violence only in Tbilisi. Due to the problem with geographical accessibility, child victims of sexual violence have to travel several hours from regions by vehicle of the law enforcement agency to undergo a medical examination. According to one of the lawyers, the fact that the Bureau does not work on non-working days further hinders the timeliness of the examination, which has a particularly negative effect on minors and also jeopardizes the evidence to be obtained as a result of the examination. According to the letter received from the Levan Samkharauli National Bureau,¹⁶⁹ at this stage, the Bureau employs a total of 32 forensic experts, only seven of whom are female. Twelve experts work in Tbilisi, six of whom are female, three persons work in the Kakheti Medical Examination Division, four persons – in the Kvemo Kartli Medical Examination Division, three persons – in the Shida Kartli Medical Examination Division and 1 person in the Samtskhe-Javakheti Medical Examination Division. The Western Georgia Regional Forensics Department currently employs a total of four people and only one of them is a woman. The Adjara Regional Forensics Department employs five people, all of whom are men. When dealing with sexual violence, a medical examination must be carried out by at least two experts of the victims' sex, which further complicates the process, as there are only six female medical experts in the Tbilisi branch.

The forensic medical examination carries a high risk of secondary victimization of a juvenile victim of sexual violence. Therefore, according to the information provided by the professionals working on cases of sexual violence, such an examination is appointed only in cases when the victim indicates physical violence or sexual penetration. However, there are cases when a forensic medical examination is appointed to determine the condition of the hymen, or when the child does not indicate sexual harassment or physical violence.¹⁷⁰

¹⁶⁶ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date: 15/12/2020.

¹⁶⁷ Psychologists of the Levan Samkharauli National Forensics Bureau also point out that medical examination is one of the most painful processes, correspondence: N5002080021, date: 05/04/2021.

¹⁶⁸ Correspondence of LEPL Levan Samkharauli National Forensics Bureau N5003601620, 02/07/2020.

¹⁶⁹ Ibid.

¹⁷⁰ Batumi City Court judgment N1-229-2019; Batumi City Court judgment 1-1044 / 18; Batumi City Court judgment N1-492/19; Bolnisi District Court judgment N1 / 236-19 of; Judgment N1/94-20 of Gori City Court; Judgment N1/444-19 of Gori District Court; Judgment of Tbilisi City Court N1-3668-18.

According to the information provided by the Levan Samkharauli National Forensics Bureau,¹⁷¹ there is no special requirement/admission criteria for conducting a forensic examination of juveniles in relation to crimes of sexual violence and the only rule applied is the one established in the theory of forensic medicine. Medical examinations are attended by procedural representatives and lawyers (not in all cases).

3.6. Appointment of a forensic medical examination to determine the condition of the hymen

There are no factual, scientific or medical grounds to believe that it is possible to establish the size, morphology or integrity of the hymen, as well as to precisely establish whether vaginal penetration was carried out into a woman's body.¹⁷² The WHO assess the so-called "virginity testing" as degrading and discriminatory practice that has no scientific validity.¹⁷³

According to Georgian legislation, forensic medical examination shall be appointed in a criminal case by the decision of the investigator or the prosecutor or by the judge on the basis of the motion of the defence, if the report of the relevant specialist is necessary to determine the factual circumstances of the case.¹⁷⁴

A medical examination aimed at assessing the condition of the hymen may result in secondary victimization of the juvenile victim of sexual abuse and, in addition, may not provide the investigation with relevant information as to whether or not rape was committed. Nevertheless, the case materials show that even when juveniles indicate that they were subjected to perverted actions only, the investigator appoints a forensic examination, where questions asked to an expert are related to the integrity of the hymen and the existence of anal injuries.¹⁷⁵ In addition, the question asked to experts about the hymen is the only question, on the basis of which, investigators/prosecutors intend to establish whether the alleged perpetrator penetrated the victim's body vaginally. As mentioned above, this practice is discriminatory and lacks scientific validity.

In one of the cases, a juvenile referred to a perverted action by a family member, namely she said that the abuser touched her genitals and forced her to touch his genitals. A medical examination was initially appointed by the investigator to establish the existence of physical injuries on the juvenile's body. After the report by the Samkharauli Forensics Bureau indicated that the child did not have any injuries on the body, the investigator appointed another forensic examination on

¹⁷¹ Correspondence of LEPL Levan Samkharauli National Forensics Bureau N5003601620, 02/07/2020.

¹⁷² Physicians for Human Rights, *Through Evidence, Change is Possible*, p. 1, available: https://s3.amazonaws.com/PHR_other/virginity-and-hymen-testing.pdf [last accessed: 02/04/2021]

¹⁷³ World Health Organization, *Health care for women subjected to intimate partner violence or sexual violence, a clinical handbook*, 2014, p. 46, available:

<https://www.who.int/reproductivehealth/publications/violence/vaw-clinical-handbook/en/> [last accessed: 02/04/2021]
Independent Forensic Expert Group (2015), *Statement on Virginity Testing*, *Journal of Forensic Medicine*, 33, 121-124; -- needs to be verified; CEDAW General Recommendation No 35, § 29 (c) (ii), cf. Link: <https://undocs.org/CEDAW/C/GC/35>

¹⁷⁴ Criminal Procedure Code of Georgia, Article 1144.

¹⁷⁵ Batumi City Court judgment N1-229-2019; Batumi City Court judgment 1-1044/18; Batumi City Court judgment N1-492/19; Bolnisi District Court judgment N1/236-19; Gori District Court judgment N1/94-20; Gori District Court judgment N1/444-19; Tbilisi City Court judgment N1-3668-18.

the same day to establish the integrity of the victim's hymen and existence of anal injuries, as well as to calculate when the injuries were sustained. It should also be noted that in the time interval between the appointment of these two examinations, no new evidence was obtained that would indicate alleged sexual penetration into the body of the minor.¹⁷⁶

It is also noteworthy that in one of the cases, a juvenile was forced to take photos of her body and send them to the accused person, who had been threatening her with violence. The investigator of the case appointed a forensic medical examination in this case too and the question asked to the examination was again related to the integrity of the juvenile's hymen and the existence of anal injuries.¹⁷⁷

In another case, a 15-year-old minor pointed to a perverted action committed against her by precisely describing the incident, which did not involve sexual penetration. Despite this, the investigator of the case made a decision to conduct a forensic medical examination and the question asked to the examination was the existence of bodily injuries, the integrity of the hymen and anal injuries.¹⁷⁸

In one of the cases, a 10-year-old child just pointed to a perverted action committed by an older man. The juvenile was interviewed in the presence of a psychologist, after which the investigator of the case deemed it necessary to appoint a forensic examination to check the integrity of the hymen and the existence of anal injuries.¹⁷⁹

A similar decision was made by an investigator in a case concerning a perverted action committed against a 5-year-old child, where the juvenile was allegedly forced by the accused to touch his genitals. The questions asked to the forensic medical examination were again related to the integrity of the hymen and anal injuries.¹⁸⁰

In one of the cases qualified as any other action of a sexual nature under Article 138 of the Criminal Code, a 13-year-old juvenile indicated two incidents when the abuser forcedly cuddled her and touched her genitals by threatening with violence. The investigator of the case made a decision on the appointment of a forensic medical examination to check the integrity of the hymen and the existence of anal injuries.¹⁸¹

Another case concerning a perverted action, which was qualified under Article 138 of the Criminal Code, is also worth nothing. The juvenile interviewed under the NICHD protocol indicated that the accused touched her from the outside of pants. Nevertheless, on the basis of the investigator's decision, a forensic examination was appointed to establish the existence of anal injuries.¹⁸²

At the same time, it should be noted that several specialists interviewed by us consider that the condition of the hymen is one of the qualifying circumstances. However, some of the judges, prosecutors and investigators point out that in the presence of other evidence in the case, the

¹⁷⁶ Batumi City Court judgment N1-229-2019.

¹⁷⁷ Batumi City Court judgment N1-492/19.

¹⁷⁸ Bolnisi District Court judgment N1/236-19.

¹⁷⁹ Gori District Court judgment N1/94-20.

¹⁸⁰ Gori District Court judgment N1/444-19.

¹⁸¹ Tbilisi City Court judgment N1-3668-18.

¹⁸² Tbilisi City Court judgment N1/2215-19.

condition of the hymen cannot be decisive in terms of qualifying a case. Inter alia, in order to establish sexual penetration, it is not necessary that the integrity of the hymen be broken or damaged. The court used this approach in a case concerning sexual intercourse with a minor under the age of 16, where the forensic examination did not establish any damage to the integrity, although experts did not rule out sexual penetration, which led to the conviction of the defendant.¹⁸³

A case concerning a perverted action against a person under 16 years of age is also an interesting case.¹⁸⁴ The action was carried out by the father of the minor in such a way that no hymen was damaged and no traces of damage could be observed on the body. However, the victim's statement – "I am no longer a virgin" – during her phone call to the police played a crucial role for appointing a medical examination. Although she consistently and convincingly spoke about the perverted action during an interview, and although the psychologist also concluded, according to the child's emotional condition and narrative, that she had suffered traumatic stress due to the perverted action, the medical examination report played a decisive role, which said that the hymen of the child was not broken – the court concluded that the child was lying and did not consider the circumstances of the perverted action to be credible.

Despite the above, when we asked the professionals involved in the justice process about the importance of the condition of the hymen for establishing sexual violence, they said: – *"It does not matter at all. The hymen may be penetrated but not damaged, or it may be elastic. It does not matter in terms of qualifying a case as rape."*

3.7. Forensic psychological-psychiatric examination

According to the information received from the Levan Samkharauli National Forensics Bureau,¹⁸⁵ the procedures for conducting forensic-psychiatric, forensic-psychological and complex psychiatric-psychological examinations are determined by the Rules of Forensic Psychiatric Examination approved by Order No. 124/N of the Minister of Labour, Health and Social Affairs on June 19, 2008.

According to the information received from the Bureau,¹⁸⁶ juvenile victims of sexual violence are assessed in the same manner and under the same procedures as all other persons and there is no specific approach that would be tailored to children only. This in fact indicates that the Bureau does not recognize the requirements of the Juvenile Justice Code or the Code on the Rights of the Child. Such an approach is also inconsistent with the international standards discussed above, which make it mandatory in all cases involving children to take a child-centered approach, especially if there is a traumatic experience and the child is a witness or a victim.

The Bureau assesses the psychological-emotional harm and trauma suffered by child victims of sexual abuse by reviewing available materials, having a clinical conversation with the person and

¹⁸³ Zestaponi District Court judgment N1/7-2020.

¹⁸⁴ Mtskheta-Mtianeti District Court judgment.

¹⁸⁵ Correspondence of LEPL Levan Samkharauli National Forensics Bureau: N5003601620, date: 02/07/2020; N5007417220, date: 14/12/2020.

¹⁸⁶ Ibid.

summarizing the results of psychological tests and questionnaires. A victim of sexual abuse undergoes a primary medical examination by a doctor-therapist and a neurologist, which is aimed at assessing his/her somatic-neurological condition, after which a conversation is held with a psychologist and a psychiatrist, depending on the type of examination scheduled. According to the age and individual characteristics of the juvenile, various tests and questionnaires may be used during a psychological examination.¹⁸⁷ Psychologists of the Psychiatric Examination Department of LEPL Levan Samkharauli National Forensics Bureau, when assessing the individual characteristics of the child, take into account the purpose of assessment, various test factors, possibility of conducting a test, characteristics of the person, situational, personal, cultural, linguistic and other specifics, which may impact the assessment process or results, or reduce the possibility/accuracy of interpretation.¹⁸⁸

According to the information provided, a clinical conversation with the psychiatrist involves both collecting information about the person's medical history (from the person who is being examined and those accompanying him/her), as well as assessing his or her current mental state. The communication style is as sparing and discreet as possible. To prevent retraumatization, it is possible to make changes in the examination process, for example, the psychiatrist and the psychologist may simultaneously talk to the minor.

Experts are selected according to the pre-established schedule, however, the gender of a person to be examined is also taken into account. The total duration of the examination, for the most part, is 1-1.5 hour. The procedure must be necessarily attended by the juvenile's procedural/legal representative and lawyer. In case of aggravation of emotional condition during the examination, experts may resort to special methods (make the conversation even more sparing, change the topic of conversation, take a short break).¹⁸⁹ However, it has been revealed that in some cases the juvenile has to wait after arriving at the National Forensic Bureau until the investigator resolves the formal issues of the examination.¹⁹⁰

With regard to the examination of young children, we were informed by the Bureau that the best interests and needs of children are substantially taken into account in the process of conducting forensic psychiatric and complex psychiatric-psychological examinations of children under the age of ten. However, the above is questionable, as according to them, the staff of the Bureau have not been trained on children's issues. They do not use the structured protocol of the National Institute of Child Health and Human Development (NICHD) for interviewing child victims and witnesses,¹⁹¹ which is based on numerous scientific studies conducted, both in practice and in the laboratory, with the involvement of scientific psychologists and highly qualified detectives and lawyers. This would further reduce the risk of re-victimization of juveniles and would help to create a child-friendly environment. Another question is whether the examination methods used by the Bureau in relation to juveniles who have experienced violence (including sexual violence) are relevant, evidence-based and up-to-date. In particular, reasoning examination tests: "Subject

¹⁸⁷ Ibid.

¹⁸⁸ Correspondence of LEPL Levan Samkharauli National Forensics Bureau: N5002080021, date: 05/04/2021.

¹⁸⁹ Correspondence of LEPL Levan Samkharauli National Forensics Bureau: N5003601620, date: 02/07/2020; N5007417220, date: 14/12/2020.

¹⁹⁰ Correspondence of LEPL Levan Samkharauli National Forensics Bureau: N5002080021, date: 05/04/2021.

¹⁹¹ National Institute of Child Health and Human Development (NICHD) protocol (La Rooy et al. 2015; Sternberg et al. 2001).

classification method” and “The fourth is surplus”, attention tests: Bourdon test and Schultz table; memory tests: “Ten words”, Lüscher projection test.

According to the case materials, in addition to the above methods, the following methods are used during the psychological-psychiatric examination of the juvenile: Sheehan self-assessment scale, Beck depression inventory, techniques of free association and clinical conversation. They also explore social attitudes.

Due to the lack of the relevant rooms, juveniles are examined in experts’ rooms, which, of course, are not arranged in the best interests of the child.

As a result of reviewing the reports prepared by the Bureau, several significant circumstances were identified:

The questions asked to the Bureau by the Ministry of Internal Affairs are mainly focused on assessing the mental health condition of the victim: “Is the minor mentally ill? If yes, what mental disorder does he/she have?”¹⁹² “Does the juvenile have a chronic mental illness, a temporary mental disorder, mental retardation, other mental illness?” “Could the juvenile give a correct testimony given his/her mental condition? “Please assess how well can he perceive facts”.¹⁹³

The content of questions asked to the Bureau show discriminatory attitudes, in particular, by emphasizing mental health condition, the authors of questions doubt the reliability of information received from people with mental health problems, and at the same time, they use terms such as “illness”, “weak-minded”, “psychiatric illness”.

In general, the analysis of the materials shows that the need for psychological and psychiatric examinations is seen by investigative structures largely for the purpose of establishing whether the child is lying, how credible the child’s story is, and so on, which is a misunderstanding of the psychological and psychiatric examination and contradicts the requirements of Georgian legislation, according to which, it is inadmissible to conduct an examination in order to assess the credibility of the witness/victim.¹⁹⁴

As scientific studies show, even very young children can provide consistent and reliable information during proper interviews and communication. The studies also show that children with mild to moderate mental retardation can recall information that might be useful for the investigation.¹⁹⁵ Experimental studies showed that mental age is an optimal guide. The interviewer should take the above into account in order to accurately select the language spoken to the child, considering his/her age, emotional condition, abilities and disabilities, in order to obtain information about the incident on the one hand and to avoid the risk of secondary victimization on the other hand. In addition, the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime¹⁹⁶ indicate that age should not be a barrier to a child’s right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and

¹⁹² Appeal of the Marneuli District Division of the Ministry of Internal Affairs of Georgia to Samkharauli Forensics Bureau.

¹⁹³ Appeal of the Gardabani District Division of the Ministry of Internal Affairs of Georgia to Samkharauli Forensics Bureau.

¹⁹⁴ Criminal Procedure Code, Article 51.3.

¹⁹⁵ Interviewing Child Victims or Witnesses – Guide, Public Health Foundation of Georgia, 2017

¹⁹⁶ United Nations Economic and Social Council, Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005.

his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.¹⁹⁷

The same view was expressed by specialists participating in the survey, who share the importance of child-centered approaches in the process of interviewing and evaluating an affected child. They believe that the use of psychological assessment for establishing whether the child is lying or not is *"beyond ethical norms and in such cases we offer them to assess the child's development, perception-memorization-transmission skills, and not whether he/she is lying or not. If a child has these skills developed accordingly and the interview is conducted according to the protocol that has a high degree of credibility, I always object to this question and say that we have all the evidence that this child can generally remember, perceive and convey information and therefore there should be no more questions."*¹⁹⁸ Specialists also point to the need for holistic assessment of children, taking into account the context, family, social factors and the history of violence. *"Of course, the story is important, but in my opinion, the child and the story should be perceived as a whole, including the prehistory and future. It is precisely this integrity that must be taken into account."*¹⁹⁹ The Public Defender also refers to the need of paying special attention to the prehistory of violence in her 2020 Special Report on Administration of Justice on Sexual Violence Cases against Women in Georgia, where a recommendation is made the investigators and prosecutors to conduct a thorough examination of prehistory regardless of whether an offence relating to him/her had been reported in the past and whether a restraining or protective order had been issued.²⁰⁰

Interviews with professionals make it clear that the Samkharauli Forensics Bureau, in relation to children under the age of 10, mainly issues reports indicating that the child is not able to accurately perceive facts or convey information due to his/her age, but *"however, when we questioned this expert in the court, he said that the above did not mean that the child was not able to perceive facts or convey information, but they are guided by some standards. However, the practice shows the opposite. I have had a case when we interviewed a 3-year-old child and he/she gave us a testimony."*

The analysis of the questions asked to the Bureau and their reports also reveals that if the child does not experience severe traumatic stress as a result of the violent action committed against him/her, it may be used against him/her and become an additional stress factor, for example – the "stress" indicated in the psychological examination report did not turn out to be enough, as the child had not received *"psychological trauma with more severe psychological effects."* At the same time, serious discussion was held during the trial about the fact that the juvenile was characterized by telling lies, in particular, she used to lie to her teacher and therefore, her testimony could not be considered credible (a perverted action without violence against a person under the age of sixteen). It should be noted that the analysis of the cases involving child victims of sexual abuse shows that the assessments made by psychologists often carry the burden of proof,

¹⁹⁷ Ibid. §18.

¹⁹⁸ Representative of the NGO, psychologist, source – in-depth interview.

¹⁹⁹ One of the prosecutors.

²⁰⁰ Public Defender's Office of Georgia, Special Report on Administration of Justice on Sexual Violence Crimes Against Women in Georgia, 2020, available at: <https://ombudsman.ge/res/docs/2020121613551185316.pdf> [last accessed:14/04/2021].

whereas in order to protect the best interests of the child, the investigation should be focused on obtaining factual circumstances and correctly interviewing the child, even when the harm suffered by the child is not very serious, as the above does not rule out that the child was subjected to some kind of harmful action, given that there exist certain types of protective factors,²⁰¹ such as stress resistance, individual characteristics, coping skills, child-supportive environment, etc., which play the role of a protective factor.

Interviews with professionals (psychologists) show the same attitude, which is obviously based on their qualified theoretical knowledge and practical experience -

*"Two persons may suffer the same injury, but one of them may resist, while the other persons may need very serious intervention. It is also important to consider how much time has passed since what happened. Second, all this depends on coping mechanisms and the human structure and human experience. I think reports should indicate a thing like this: at this stage I do not see a high degree of trauma, but this does not mean that it did not exist or did not happen."*²⁰²

It is easy to see gaps in the psycho-emotional assessment of an 8-year-old child victim of a perverted action committed by a caregiver.²⁰³ The psychological condition of the child was assessed by a psychologist of the Social Service Agency, the Levan Samkharauli Forensics Bureau and an expert involved on the initiative of the defence, however, it was not clear whether the expert-psychologists of the Samkharauli Forensics Bureau and the alternative forensics bureau were specialized in juvenile justice matters. The psychologist of the Social Service Agency stated in the report²⁰⁴ that *"The child's psyche is currently occupied by traumatic feelings suffered as a result of violence, which is why she is in the position of a victim."* And, according to the report²⁰⁵ of the National Forensics Bureau, the child received psychological stress due to the alleged perverted action committed by the accused. However, the forensic examination conducted on the initiative of the defence – questioned exactly the link between the child's psychological stress and the alleged perverted action committed against her, noting that on the basis of such violence, *"the child should have received psychological trauma and not psychological stress, which is a much lighter state of anxiety and tension."* It should be noted that this report represents an assessment of the reports of the Social Service Agency and the National Forensics Bureau, as well as the minutes of

²⁰¹ <https://journals.sagepub.com/doi/pdf/10.1177/070674371105600505>

²⁰² Representative of a non-governmental organization, Master of Science in Mental Health, Psychotraumatologist. Source – in-depth interview.

²⁰³ Judgment of Batumi City Court, case N1-229/19.

²⁰⁴ It should be noted that in this case, the examination conducted by the psychologist from the Social Service Agency was based on the projection methods that are often used in both local and international practice to identify safety signs in the child protection system, available at:

<https://www.dcp.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/SignsOfSafetyFramework2011.pdf> [last accessed: 14/04/2021]

Methodology used by the psychologist in the case – NICHD structured protocol for interviewing child victims and witnesses, observation of the behavior during examination, projection methods: incomplete sentences, drawing – "Three houses", "Joy and heartache", „Safe environment", "Black and red" house. However, the specialist did not specify what post-traumatic symptoms were leading in the case, which would have made her reasoning more convincing.

²⁰⁵ The report did not specify which psychometric instruments were used to assess the child's cognitive, emotional or social functioning characteristics or which of the symptoms showed that the child was stressed as a result of the actions taken against him/her. In addition, the use a multiprofile personality test by the expert to assess the personality traits of an 8-year-old child is also problematic, given that the child is still in the process of personality formation due to the age.

interviews with the child (which are not accurate transcripts²⁰⁶ of the story told by the child or his/her condition during the storytelling), it represents theoretical reasoning and does not reflect the assessment of the child's emotional state and the degree of trauma. The expert also did not take into account a number of protective factors, even at the individual level (stress resistance), which may affect the degree of harm suffered by the child. Nevertheless, the defendant was acquitted and the court, in fact, relied on the analysis of the reports that had been prepared by experts involved on the initiative of the defence and not on empirical facts or evidence.

According to the information obtained from the research, case analysis and interviews with professionals, it is clear that the forensic psychological-psychiatric examination is characterized by significant violations and systemic deficiencies, namely:

- ▶ No methodology or assessment tools are defined, the use of which would be relevant to the age of the affected child or characteristics of the child with traumatic experiences and at the same time would not be holistic, would not take into account the impact of child's development, preconditions, family environment or other preceding factors on what happened and is focused only on what happened, which creates a high risk that we may miss the needs of the child, his or her best interests, in the justice process and when planning rehabilitation measures;
- ▶ Psychologists, who attend interviews with children and prepare reports for the court, are often not specialized on the psychological aspects of justice process relating to child witnesses-victims, do not recognize or are NOT aware of the NICHHD structured interviewing protocol, which puts disadvantaged children, whose cases are under investigation or are heard by the court, in an unequal situation;
- ▶ There is no systematic or professional agreement on the term either, for example, what would be the relevant scientific term – "suffering", "traumatic stress" or "stress", which, in case of biased approaches, allows to be interpreted differently by individual specialists;
- ▶ There are no guidelines, ethical norms for psychologists involved in the process of interviewing or evaluating affected children, which also carries the risk of unqualified and biased approaches.

3.8. Protection from discrimination

Article 2 of the Convention on the Rights of the Child obliges States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. The Committee on the Rights of the Child²⁰⁷ clarifies that the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified.²⁰⁸

²⁰⁶ The transcript should show where the child pauses, the authentic spoken language that the child uses, the child's body reactions as well, for example voice shaking, blushing, etc.

²⁰⁷ UN Committee on the Rights of the Child (CRC), General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27.11.2003, CRC/GC/2003/5, 4.

²⁰⁸ UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10.11.1989.

The Special Rapporteur on the rights of persons with disabilities notes in his 2017 report that girls and young women with disabilities who experience sexual and gender-based violence encounter significant challenges when attempting to access justice. Sexual assault is often underreported, and even more so when the individual has a disability. In addition, their testimony, especially that of girls and women with intellectual disabilities, is generally not considered credible, resulting in perpetrators avoiding prosecution.²⁰⁹

The Council of Europe Guidelines emphasize that special attention should be paid to children belonging to vulnerable groups, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.²¹⁰

In addition, the report of the UN High Commissioner for Human Rights on access to justice for children clarifies that children should be able to participate in an “effective and meaningful” way in all proceedings, including to be heard directly during proceedings without discrimination.²¹¹

In 2018, 21 prosecutors and investigators of the Prosecutors’ Office took part in the training relating to discrimination on the grounds of gender and sex. In 2018-2019, 140 representatives of the system, including prosecutors, managers and investigators of the system, were trained on prohibition of all forms of discrimination. During the two-day training course, participants received information about national and international legal norms related to discrimination.

3.9. Protection of privacy and obligation to provide information

Article 16 of the Convention on the Rights of the Child states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks. The personal information of children involved in trials and other procedures shall be protected.²¹²

From their first involvement with the justice system, child victims and witnesses, their parents, caregivers and other legal representatives should be promptly and adequately informed of their rights, the system and procedures involved, the existing support mechanisms and complaints mechanisms.²¹³ The Council of Europe Guidelines also clarify²¹⁴ that this information should be adapted according to gender and cultural specifics, in accordance with the child’s age and level of development, in a language he or she understands.

²⁰⁹ Sexual and reproductive health and rights of girls and young women with disabilities, Note by the Secretary-General, 14 July 2017, A/72/133, §36.

²¹⁰ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010, §78.

²¹¹ United Nations High Commissioner for Human Rights, Access to Justice for Children, A/HRC/25/3, 16.12.2013, §46.

²¹² Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010, §57-62.

²¹³ United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 2005, § 19.

²¹⁴ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010.

Interviews with professionals working on cases of sexual violence revealed that they are informed of the importance of confidentiality. Consequently, cases of sexual abuse of minors are heard at closed court sessions. At the same time, when conducting an investigative experiment in public space, they try to select the time of the experiment in such a way as to avoid contact of the victim with strangers as much as possible.

Despite the above, a case²¹⁵ was identified where a minor victim of sexual abuse requested not to inform her friends or family about the incident and her communication with law enforcement. After the family members of the child were informed of her sexual abuse, she completely stopped communication with the law enforcement agency, as well as the social worker and the psychologist involved in the case. The family of the minor also agreed with her position.

²¹⁵ Judgment of Batumi City Court N1-257/19.

IV. JUVENILE VICTIMS DURING A TRIAL

1. International standard relating to proceedings involving juvenile victims

All persons involved in the proceedings – judges, prosecutors and lawyers – shall be trained on the rights of the child and sexual exploitation and sexual abuse of children.²¹⁶ The hearing shall be held at a closed session. The testimony of the victim should be heard in the courtroom in the absence of the victim, through communication technologies.²¹⁷

Prior to the proceeding, the child should be informed in a language he or she understands of the layout of the court or other relevant building, the role and identity of all persons involved in the proceeding. Regular breaks should be announced during the proceeding. Interviewing and waiting rooms should be arranged in a child-friendly environment.²¹⁸ Their testimonies should not be presumed to be invalid or untrustworthy simply on the basis of their age.²¹⁹

Judgments and court rulings affecting children should be duly reasoned and explained to them in a language that children can understand.²²⁰

2. Georgian legislation relating to juvenile victims during a trial

According to the Code, the judge may, on his/her own initiative, or at the request of the juvenile witness, his/her legal representative, lawyer or prosecutor, apply the following protection measures (Article 24):

- ▶ Interview the minor remotely or behind a non-transparent screen, by using image and/or sound-changing devices;
- ▶ Interview the minor witness with the participation of the defendant's lawyer before the court session and videotape the interview;
- ▶ Partially or completely close the court session;
- ▶ Temporarily remove the defendant from the courtroom if the minor witness refuses to testify in the presence of the defendant or if the circumstances indicate that the minor witness may not tell the truth in the presence of the defendant or may be re-victimized. The Code stipulates that in this case the participation of the defendant's lawyer in the court hearing is mandatory.

²¹⁶ Council of Europe, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 12.07.2007, CETS No. : 201, Article 36.

²¹⁷ See also UN Committee on the Rights of the Child, General Comment No. 13 (2011): The right of the child to be protected from all forms of violence, 18.04.2011, CRC/C/GC/13, §54-56; Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010; United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 2005; Resolution adopted by the General Assembly 65/213 on Human rights in the administration of justice, 21.12.2010.

²¹⁸ Committee of Ministers of the Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17.11.2010, § 54-62, 29-30.

²¹⁹ Ibid. §64-74, 30-31

²²⁰ Ibid. § 44-49, 28.

3. Practice relating to participation of minor victims in a trial

It is clear from the case materials and interviews with relevant professionals that the preparation of the child victim for the trial and identification of his/her needs are handled solely by a prosecutor, who has to play several professional roles, namely that of the prosecutor, social worker and psychologist (assesses the level of development, living, upbringing and development conditions, education, health status, family environment and other circumstances); It is interesting what standardized assessment tools are used by a prosecutor when meeting with a child and how much it is possible to acquire such specific knowledge within the framework of a 5-day specialization training module, the last two days of which are devoted to the psychological part and key recommendations relating to communication with abused children, according to information received from the Prosecutor General's Office of Georgia.²²¹ The Prosecutor's Office offers a 5-day training course for prosecutors and investigators of the Prosecutor's Office on "Juvenile Justice, Psychology and Communication Methods." The training course covers the following: Development of the juvenile according to his/her age and developmental disorders, psychological grounds for antisocial behavior, adolescent and his/her social environment, forms of violence against children (including sexual violence), components of their assessment from the psychological perspective and key recommendations relating to communication with child victims of violence, causes/risk factors of violence, consequences of child abuse, penitentiary stress, appropriate environment for interviewing/interrogating child victims/witnesses and interview/interrogation protocols.

It is noteworthy that neither the duration of the training programme nor the list of issues included in it can provide the prosecutor with skills or competencies necessary for ensuring professional biopsychosocial or clinical assessment of the child in all of the above directions, making us think that the needs of the child with a severely traumatic experience may be ignored, especially at an important stage such as the preparation of the child for the trial.

Interviews with professionals involved in the proceedings show that the prosecution is more focused on solving a crime than on protecting the interests of the child. It is thought that solving a crime is linked with the best interests of the child. However, shortcomings in the proceedings – interviewing a child several times, mistakes made during investigative activities, rules of conducting an examination – are often beyond the best interests of children and cause their trauma.

It can be particularly stressful for a child victim of violence to have a case heard in the court where he/she has to show up as a victim. It should be noted in this regard that only Tbilisi City Court, Kutaisi Court of Appeal, Rustavi City Court and Zugdidi District Court have a special, child-friendly room, from which the child can be interviewed without being present in the courtroom.²²²

To avoid secondary victimization, it is important to prepare children for a trial; anything (even formal procedures when entering the courthouse, layout of the courtroom, the rules to be followed during the trial, cross-examination, etc.) can serve as an additional stress factor. For this, it

²²¹ Correspondence N13/70869 of the Prosecutor General's Office of Georgia, 23/12/2020

²²² Correspondence N06-8876 of the Common Courts Department of the High Council of Justice of Georgia, date: 23/12/2020

is important to inform children in advance of all details, starting from the infrastructural arrangement, names of persons participating in the proceeding, procedures, etc. Special emotional state of the child may make it necessary to interview him/her remotely by using special technologies. In addition, it is important for all persons involved in this process to possess specific knowledge and skills that will help them communicate with children and interview them properly. During a trial, children should have the sense of physical and emotional safety and should be protected from re-victimization.

The practice of preparing a child for a trial was described by one of the respondents as follows:

"During the preparation for the trial, I had the impression that the prosecutor was trying to make the child repeat her testimony as many times as possible. He explained this by the need to punish the offender, which he considered to be in the best interests of the child. This child had to repeat this information several times. At one point the child even asked why she was asked again about what had happened. She was often praised during the interview and she felt so encouraged that she asked if she would have to tell the story again. I thought the child could not realize it, but the process was leading to her secondary victimization, although the prosecutor considered the above necessary in order to punish the perpetrator."

The respondent believes that in order to avoid this shortcoming, in the best interests of the child, it is important to interview children only once and to videotape the interview. This position of the professional involved in judicial proceedings contradicts the position of a representative of the same field – *"The child should be interviewed as many times as necessary. When we interview a child for the first time, we may not get the full information we need. During the first interview, we just receive general information about what happened. After questioning other witnesses and the accused, it is necessary to interview the child again to clarify some specific issues."* Such a difference between the opinions of professionals indicates that the system has not yet developed a unified vision, which increases the risk of harming the child due to the different approaches and views of specific professionals.

Nevertheless, the analysis of the materials examined during our research, minutes of the court sessions, interviews, child assessment documents and in-depth interviews with professionals showed that the best interests of the child and his/her protection from secondary victimization are not always taken into account during a trial.

Child victims are accompanied in the court by a procedural representative or legal representative and a lawyer (not always). The survey results show that the role of procedural representatives is vague, for example it is not clear how much they are interested in the child's condition and in general what role they have apart from attending the court sessions. In addition, it is believed that *"this is not a specific person's problem, but a systemic problem. They have so many things to do after being appointed as procedural representatives. I have no information whether they show interest in any condition of the child. It is problematic how further attention is paid to the child."* The attendance rate of a psychologist during interviews with children is even lower. According to the interviews with professionals and court practice, except for few cases, psychologists are not actively involved in the interview process. Professionals confirmed cases when children were accompanied by psychologists, who had not been involved in the case before and met the chil-

dren for the first time at the court session. The involvement of social workers for the purpose of supporting children during a trial is even lower. The role and functions of these professionals in protecting the best interests of the child during a trial are not even prescribed.

Juveniles are usually interviewed for half an hour or an hour. Before the juvenile enters the courtroom, the judge always grants the motion to remove the accused from the courtroom. According to the minutes of the Tbilisi City Court sessions, judges see juveniles for the first time at the session, without having any prior communication with them. It should be noted that before interviewing children, judges always introduce themselves informally, ask children how they feel, get interested in their hobbies and daily life, after which they introduce the parties and provide information about the proceeding. In addition, judges often praise juveniles during interviews. Children are informally informed of the rules of asking clarifying questions and enjoying breaks. The same approach is used by prosecutors and in some cases by defence lawyers as well. According to the case materials, in one of the cases, where the victim was a minor with autism spectrum disorder, the court session was held at her place of residence.

Prosecutors ask juveniles direct and not leading questions after greeting and have a brief conversation with them, giving children the freedom to tell themselves about what happened. They are also told that it is not a problem if they do not have an answer to any particular question.

The judge, before bringing the juvenile into the courtroom, reminds the parties of the child's age and specificity of the case and calls for the use of the skills acquired during the relevant training. Nevertheless, there have been cases during cross-examination, when the defence asked questions that clearly intended to mislead or confuse the juvenile.

It is clear from the case materials that the presence of psychologists during interviewing juveniles is not systematic and at this stage, it is clear that their involvement depends on the gravity of the crime and the age of the juvenile.

There are no guidelines or protocols defining the psychologist's rights or responsibilities during a trial. It is clear from the obtained materials that it depends on the good will of the judge whether the psychologist is able to perform his/her professional role and protect the juvenile from retraumatization. Therefore, case materials show both good and bad practices. There was a case when the judge explained in detail the role of the psychologist to the persons involved in the proceeding, namely that the psychologist could help the parties to formulate a question asked to the child, in a language he/she understood, or recommend a break, if he/she considered the situation harmful to the child, or make a recommendation if he/she thought that the question was formulated in such a way that it could have a detrimental impact on the emotional state of the child.²²³ The same trial clearly shows the active involvement of the psychologist, support to the child and recommendations she made to the defence regarding the formulation of questions. Although the case concerned a severe form of violence – rape perpetrated against a minor girl by her father, the victim, as a result of the professional approach of the judge and the psychologist, managed to testify in a safe and quiet environment, without the risk of aggravation of her trauma.

²²³ Judgment of Rustavi City Court N1/231-18.

A similar attitude towards the role of the psychologist was expressed by one of the respondents:

"I do not remember interviewing a victim in this category of cases without the presence of a psychologist. Prior to the hearing, psychologists interview children, check their readiness to provide the court with information about certain facts. If we have information that the child is tense and nervous, in this case the recommendation of the psychologist is crucial as to whether to interview the child on that day or not. In addition, I give a lot of time to the psychologist when interviewing children. If the psychologist thinks that the question asked by any party can have a detrimental effect and cause secondary victimization, I ask the psychologist to be actively involved and provide us with recommendations. I have protected children from certain questions on the basis of psychologist's recommendations."

The analysis of the interviews conducted within the framework of the survey shows that it is important for the professionals involved in the judicial proceedings that the rights and duties of the psychologist at all stages of the proceedings be defined at the legislative level. *"The Juvenile Justice Code obliges the psychologist to participate, but it does not elaborate on the dose of his/her involvement or his/her rights/obligations, what communication we should have with the psychologist or how decisive his/her recommendation may be. Unfortunately, these issues are not prescribed and we have to regulate all this according to practice."* Given these circumstances, it is clear that the role of the psychologist in the judicial proceedings is not systemically regulated and his/her involvement and participation depends on certain circumstances.

There have been cases when the psychologist's participation in the trial was formal, the judge simply introduced him/her, but did not explain his/her rights or duties, and therefore the psychologist's participation in the process was nominal, he/she did not interfere even when the defence asked questions that might cause stress in the juvenile victim.

According to the court practice, interviews with juveniles usually do not involve psychologists, except for few cases. At this stage, no specific involvement of social workers or lawyers can be seen either, except for the fact that they are present at the court hearing. However, there have been few cases when the child was interviewed by the social worker (procedural representative). Namely, the judge noted at the beginning of the hearing that the social worker was specialized on children's issues, knew the child well, and as the child (7-year-old girl) felt safe with her, empowered the social worker to conduct the interview. It is clear from the minutes of the court session that the social worker considered the psycho-emotional condition, age and character of the child victim, and conducted the process consistently and sparingly. Although the psychologist was present at the hearing, her involvement cannot be seen, according to the minutes of the session.²²⁴

According to the minutes of court sessions and analysis of audio recordings, the attitude of the defence towards juvenile victims of violence during a trial is worth noting. In particular, it is clear that even though they are specialized in the specifics of communication with child victims/witnesses, are aware of their psychological characteristics and are also familiar with the Juvenile Justice Code, international human rights standards relating to sexual abuse and sexual exploitation of children, their behavior at the trial and questions asked to victims make it clear that a

²²⁴ Samtredia City Court – For a unified style, I think it is important to indicate the dates of the case.

child-centered approach is not a priority for them, they do not take into account the emotional state of the victim or the risks of retraumatization; on the contrary, they try to confuse children, ask questions that activate the feeling of self-blame and aggravate their emotional condition. Defence lawyers mainly use closed-ended and leading questions during interviewing children.

The victim's testimony²²⁵ relating to a perverted action committed by a teacher shows how she was confronted by the whole community, how she was under pressure from the school principal, relatives, neighbors – *"They scared me by saying that I would not be able to prove the truth"*. The victim's testimony shows that she tried to commit suicide twice because of such a confrontation with the community and the sense of injustice. *"Then I thought that people would say that the girl committed suicide because she was guilty. So I thought it would hurt my family more."* Despite such an emotional statement by the victim, the defence lawyers tried to influence her emotionally, trying to confuse her at the very beginning of cross-examination:

Defence: – You said during the first interview that he made you stay after lessons, didn't you?

Victim: – Yes

Defence: – Then you said during the second interview that he told you to go to him before the start of lessons, didn't you?

Victim: – Is not this the same? He asked me before the last lesson to go to him after lessons.

Despite this explanation, the defence repeated the same question several times and stopped only after the judge told him to do so.

In addition, the question asked by the lawyer contained an attempt to involve the victim in legal reasoning: *"The principal tried to hide the facts, right? The principal went to the neighbors and asked them not to talk, right? So did the principal cover up the crime?"*

Despite the fact that the juvenile tried to talk about facts and not evaluate the principal's behavior, the lawyer repeated this question several times.

The victim felt several times that the defence lawyer was mocking her. (*"So all were silent in the village, right? You are a preacher of the truth and they all were silent?"*) This attitude of the defence, as it can be seen from the minutes of the session, provokes a strong reaction in the juvenile (her voice was shaking, she was going to cry, she paused, was unable to continue talking).

The minutes of the court session also make it clear that the victim refused the judge's offer to have a break and calm down, which creates the impression that she did the above because she did not want the court to doubt her truth and she got even more nervous because of that. Although the juvenile girl's story revealed many risky circumstances and the process of interviewing was quite faulty, the psychologist did not take any part in the proceeding. In general, the case does not show at all whether the juvenile girl with quite severe traumatic experience and the risk of committing suicide received any psychological support.

The case (discussed above as well) where the minor changed her testimony is particularly complicated. In particular, a 12-year-old girl with bodily injuries asked her neighbors to help and,

²²⁵ Judgment of Poti City Court N1/173-2018.

along with them, informed the patrol police officers of the violence and sexual acts committed by her stepfather.²²⁶ However, after talking to her mother, she denied her initial statement. It should be noted that the case includes a medical examination report that fully matches the juvenile's initial statement and the time of the incident. In addition, the case includes the testimonies of the juvenile neighbors and patrol police officers that are also consistent with each other, as well as with the girl's initial testimony. Nevertheless, the court, on the ground that the testimonies of the said persons were circumstantial, did not consider them sufficient. As for the injuries and their causes indicated in the medical report, the judge noted that *"These injuries are not inflicted in the areas that are largely characteristic for crimes against sexual freedom and inviolability (for example, in the perineum or in the erogenous zones)."*

The court did not consider the reasons for which the child changes her initial testimony or the possibility of pressure exerted on her. The court did not ask questions to the relevant professionals as to what could cause such memory problems (unlike the first testimony, the girl stated in the court that she had a high fever and did not remember how she received injuries, did not remember whether her stepfather tried to have sex with her, did not remember how she found herself barefoot in a neighbor's house, etc.). Neither court nor social workers asked questions to the relevant expert – namely whether a high fever could cause such problems with memory. They did not ask a mental health professional to explain what kind of psychological trauma or somatic condition could cause such problems or how credible the situation, described by the victim after changing her testimony, could be. During the trial, the defence lawyer asked the girl closed-ended and leading questions, as a result of which, we heard a story radically different from the initial testimony:

Defence: – "Did you have a fever that day?"

Victim: – "Yes"

Defence: – "Did A called your mother and were A and your mother talking? "

Victim: – "Yes"

Defence: – "Had A behaved like this ever before?"

Victim: – "No"

Defence: – "Did he cut your lip?"

Victim: – "No"

Defence: – "Did not A molest you?"

Victim: – "No"

Defence: – "Has not A hit you during these three years?"

Victim: – "No"

Defence: – "Did A respect you?"

²²⁶ Judgment of Batumi City Court N1536/18.

Victim: – “Yes”

Defence: – “Did A pay for your education?”

Victim: – “Yes”

The defence lawyer did not follow the mandatory rules of interviewing/interrogating a child, in particular, he did not ask an open-ended question at the beginning, in order to obtain information, which would facilitate the free narration of the witness. He did not use clarifying questions after free narration, which would enable us to obtain comprehensive information. The lawyer began cross-examination directly with leading and close-ended questions. For example, “Has not he [defendant] hit you?” “Did he [defendant] cut your lip?” “Did A pay for your education?” “Did not he [defendant] molest you?”, etc. The questions created the impression that the child already knew what answer was expected from her. Although the court was aware that the child had radically changed her testimony and there was a suspicion that she might be under some pressure, these types of questions asked by the lawyer were not objected by either the procedural representative or the judge. It should be noted that the involvement of the psychologist or conduct of a psychological examination cannot be seen in the case. In the same case, when the prosecutor asked a question at the hearing – Who does the family depend on? – the victim’s mother named her husband, the defendant. In addition, the social worker stated at the court hearing that she had not been allowed to have contact with the child after the first testimony, when the juvenile indicated sexual abuse. She also noted that neither the psychologist was able to work with the child. Although there were circumstances indicating alleged pressure on the child and the neglect by the parent of the need to involve the child in psychological services, neither the social service nor the court of first instance could protect the best interests of the child victim of violence. The court of first instance acquitted the defendant (the case is discussed above as well), while the court of appeal upheld the decision. The accused was found guilty by the Supreme Court. The verdict stated:

“The cases of domestic sexual violence against children, as a rule, are not characterized by a large number of witnesses. The child is under the custody of her mother, who has no independent income and financially depends on the abuser. The mother of the child does not hide that she wants the abuser to be at large and continue to take care of her and her family...The juvenile is left without any protective factors, is extremely frightened and is under the influence of her mother, who acts to the detriment of the child’s interests and does her best to save the abuser from responsibility for her own financial purposes.”²²⁷

The interviews conducted with judges within the framework of the survey are worth noting with regard to this issue: *“I have one case, where the victim is a 12-year-old girl and the defence lawyer claims that the child looks like an adult. Usually, the rights of the accused are protected at the expense of degrading such children;”²²⁸ “Defence lawyers find it difficult to use that training in relation to minors and try to discredit the child, especially by arguing that he/she is a child and he/she is lying, why he/she did not tell his/her mother about what happened.”²²⁹*

²²⁷ Judgment of the Supreme Court of Georgia N 828 Ap-19.

²²⁸ Excerpt from a judge’s interview.

²²⁹ Excerpt from a specialist’s judgment.

The “greeting” offered by a defence lawyer to a 9-year-old victim was also unprofessional, as it is clear that the lawyer was not aware of the basic rules of communication with children of this age, the questions asked by him were close-ended, biased and confusing:²³⁰

“Think and tell the truth (addresses the child). A lot depends on your testimony”-

Questions asked by a defence lawyer to a 9-year-old victim:

- “You do not know what facial expression is, do you?”
- The facial expression is, for example, when someone has a scary or funny face, when someone has various facial expressions.
- How one should make various facial expressions, Nino?
- I do not know.
- You do not know, ok. You do not know various facial expressions.”

....

– How much was the t-shirt torn? It was completely torn off, wasn't it? (According to the case materials, the size of the torn part of the t-shirt was two fingers long). ... the torn part was the size of two pens, the size of the monitor, wasn't it?

- No.
- I do not know, but it was torn a bit.
- So you do not know how much the t-shirt was torn. Didn't you look at it?
- I looked at it and it was torn a bit.
- How big was it?

Only then did the judge intervene and reprimanded the lawyer.

The minutes of the hearing also make it clear that the defence put the child under moral pressure,²³¹ asking questions that strengthened the feeling of guilt and shame in the child, which generally contains a high risk of retraumatization and aggravation of the child's emotional condition, since according to the psychological nature of the victim, this type of trauma is characterized by a strong sense of guiltiness and shame.²³²

“Do you unintentionally lie?”

“Haven't you tried to shout?” – a question asked by the defence during a trial concerning the rape of a child by her father, which made the victim cry.

In the same case: *“Did your father tell you to live a moral life?”* During interviewing the victim of

²³⁰ Tbilisi City Court Session, judgment N1/1686-18.

²³¹ Tbilisi City Court Session, judgment N1/63-19.

²³² Friedrich, W. N. (1993). Sexual victimization and sexual behavior in children; <http://phf.org.ge/ka/resources/seqsualuri-dzaladobis-gamxela/>

rape committed by the victim's father, a reference was often made to "moral life" in relation to the victim, as well as to the fact that the minor had sexual partners.

In the same case: *"You are not alone in this stressful environment, we are in the same situation and therefore, I think that you should put aside shyness"* – the defence lawyer told the juvenile, who did not want to answer a question because the issue was "too private".

In the same case: *"Do you know that your mother lives a depraved life and is, so to speak, a prostitute?"* – the defence asked the victim.²³³

There are cases when during interviewing a child, the focus is made on the fact that the child tends to lie. At the same time, questions with one and the same content are repeated several times, which can be confusing and stressful for the child:

A prosecutor interviewing a child victim during a trial:

- "Do you love lies? Namely have you ever lied?
- I do not love lies, but sometimes I lie
- In what case do you lie?
- When something happens to me or when I cry about something, and when I go to school and they ask me why I cry, I say that I just fell down.
- Do not you lie in other cases? Or do you only lie at school?
- Only in this case.
- Do not you lie in other cases? What about your mother? Do you lie to your mother like that?
- No.
- Then who are you lying to? Only to your classmates?
- Yes
- So what do you say to your mother?
- I tell the truth to my mother.
- ...
- You said that sometimes you lie and you even gave a specific example. I wonder if you have blamed anyone for anything?
- No.²³⁴

The interviews conducted during the survey and information obtained from the case materials make it clear that there is currently no guideline on how the system should act at different stages

²³³ Tbilisi City Court Session, judgment N1/63-19.

²³⁴ Batumi City Court Session, case N1-229/19.

if there is aggravation of the emotional condition of the child, retraumatization, dissociation or other problems during interviews or investigative procedures, especially given that the cases involving children with severe traumatic experiences always contain similar probability. In fact the system does not have any kind of crisis management scheme and in case of aggravation, they have to make spontaneous decisions which can be detrimental to the child. Professionals note that such guidelines are "vital. One thing is the specialization in juvenile justice and the other is the psychological attitude, approach and methods that we should use in this category of cases. I feel scarcity. Whatever we do is based on my personal point of view, recommendation and trainings – although there have not been many of them, but there have been few and they help me, but it is not enough. If there were such guidelines, we would grow significantly".

V. ADDITIONAL BARRIERS FACED BY MEMBERS OF VULNERABLE GROUPS

It is especially problematic to accurately identify and address the needs of victims of sexual abuse. Professionals working on cases of sexual abuse of children indicate the need for special knowledge and appropriate training in this regard. According to the information received from the Ministry of Internal Affairs,²³⁵ law enforcement agencies, in order to protect the interests of juveniles with disabilities, are guided by the recommendation on the effective involvement of persons with disabilities at the stage of investigation, which was developed within the framework of a joint programme supported by the Sustainable Development Goals Fund with the assistance of the UNFPA Georgia Office – Transforming Social Security for Persons with Disabilities. This recommendation includes, inter alia, practical recommendations and principles of working with sexually abused persons with disabilities.

At the same time, according to the letter received from the Prosecutor General's Office of Georgia,²³⁶ the Prosecutor's Office is guided in this regard by the Recommendation on the Investigation of Criminal Cases Involving Persons with Disabilities, which was developed in 2016. At the same time, in 2020, the Human Rights Division of the Prosecutor General's Office of Georgia, in order to conduct effective investigations of crimes against persons with disabilities, completed work on the Recommendation on Standards for Working with Witnesses, Victims and Defendants with Disabilities intended for prosecutors and investigators of the Prosecutor's Office. The recommendation addresses issues such as: procedural status of persons with disabilities, standard and proportionality of rights, legal representation of minors and adults with disabilities, prompt and effective response to crimes, planning and proper conduct of the process of interviewing and interrogation of persons with disabilities. The recommendation focuses on the role of a witness and victim coordinator, his/her proactive involvement in the investigation of cases involving persons with disabilities.

In 2018-2019, a total of 83 prosecutors, investigators of the Prosecutor General's Office, managers, and witness and victim coordinators were trained within the framework of the training programme concerning communication with persons with disabilities.²³⁷

The case materials includes only one case where the victim had the status of a person with disabilities, although this has not become a barrier during the trial, nor in terms of the credibility of the testimony. In particular, the credibility of the testimony of the victim with autism was disputed by the defence. According to the case materials, the juvenile underwent a psychological examination and was interviewed in accordance with the NICHD protocol. The judge explained that *"The court does not share the defence's assessment of T.E.'s testimony, as the victim's interview revealed that her age or autism did not impede her ability to convey information under conditions of appropriate communication."*²³⁸ The court hearing was held at the residence place of the juvenile.

It should be noted that the case involved a 13-year-old child with autism spectrum disorder and

²³⁵ Correspondence MIA 4 20 02909322 of the Ministry of Internal Affairs of Georgia, date: 15/12/2020.

²³⁶ Correspondence NN^o13/70869 of the Prosecutor General's Office of Georgia, 23/12/2020.

²³⁷ Ibid.

²³⁸ Tbilisi City Court Session, case N1/2215-19.

the defendant was charged under Article 138 (3 (c)) of the Criminal Code (other action of a sexual nature knowingly committed against a minor under 14 years with violence, threat of violence or by abusing victim's vulnerability). However, the judge did not consider the age of the juvenile or the autistic spectrum disorder to be sufficient evidence to qualify the case under Article 138 and the case was re-qualified under Article 141 of the Criminal Code. It was noted that no violent action had taken place.²³⁹ It is interesting to see how crucial role could be played by the psychologist's reasoning about the possibility of children, especially children in this condition, to resist sexual violence. However, according to the case materials, no attention was paid to the above.²⁴⁰

²³⁹ It was mentioned in the case materials that the perpetrator promised the child to buy chips for her and in return he committed a perverted action.

²⁴⁰ Tbilisi City Court Session, case N1/2215-19.

VI. CHALLENGES RELATING TO THE REHABILITATION OF CHILD VICTIMS OF SEXUAL ABUSE

The involvement of social workers and psychologists is essential for the assessment of individual needs of victims of sexual abuse and implementation of appropriate rehabilitation, support-oriented measures. According to the information received from the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia,²⁴¹ in 2018 and 2019, the agency identified a total of 431 cases of sexual abuse of children. 48 victims were boys and 383 were girls. During the reporting period, a total of 158 cases of sexual abuse of minors were referred to the agency. 119 of them were referred from the Ministry of Internal Affairs of Georgia, 39 cases were referred by the Social Service Agency to the Ministry of Internal Affairs. Out of these, social workers were representatives of minor victims of sexual abuse in 91 cases.

Proper training of professionals is necessary for timely identification of risks and needs when working on cases of sexual abuse of minors. Nevertheless, social workers and psychologists have not been trained on sexual abuse of children so far. At the same time, Resolution No. 668 of the Government of Georgia of 30 December 2015 “On the Approval of the Standard of Specialization for Persons Participating in and Administering Justice on Cases Involving Juveniles” does not specify which agency should be tasked with providing trainings for social workers. Therefore, at this stage, social workers and psychologists manage cases only on the basis of the existing guidelines on social work and psychological rehabilitation of victims of violence, which are not tailored to the specifics of cases of sexual abuse or the needs of child victims.

The agency intervenes with juvenile victims of sexual abuse through various specialists. Child victims of violence often need the involvement of a psychologist, although it is not clear in what case psychologists may be involved and how this need should be assessed. It should be noted that LEPL Agency for State Care and Assistance of Victims of Trafficking employs a total of 13 psychologists, 2 in Tbilisi, 2 in the Imereti region and 1 in each of the rest 9 regions,²⁴² despite the fact that in 2018-2019, investigations were launched into 611 cases of sexual abuse of children and 317 juveniles received victim’s status. In terms of psychological support and rehabilitation, juvenile victims of sexual violence are also referred to shelters and crisis centers operating under the Agency, which provide the psychologist’s service, although the facilities are not specifically tailored to the needs of child victims of violence.

In 2018 and 2019, a total of 9 juveniles were placed in the structural units operating under the Agency. At the same time, a total of 8 child victims of sexual abuse were placed in state care during the reporting period, 4 of them in small group homes, 2 in shelters for homeless children and 2 in the state foster care programme.²⁴³

LEPL Psychological Service Center of Educational Institutions is also focused on the rehabilitation of child victims of sexual abuse. The center currently employs 38 psychologists across the country. However, a total of 30 child victims of sexual abuse²⁴⁴ were referred to the Psychological Service Center in 2018 and 2019. Out of them, services were provided to only 16 students. In 14 cases, juveniles and/or their parents/legal representatives did not cooperate with the Center, which is often related to the problem of geographical accessibility.

²⁴¹ Correspondence of LEPL *State Agency for the Protection and Assistance of Victims of Human Trafficking*: N07/4360, 30/06/2020, № 07/8673, 20/12/2020; N07/3713, 06/05/2021;

²⁴² Ibid.

²⁴³ Correspondence of LEPL *State Agency for the Protection and Assistance of Victims of Human Trafficking*: N07/4360, 30/06/2020

²⁴⁴ Correspondence of the Psycho-Social Service Center of LEPL Office of Resource Officers of Educational Institutions, MES 0 20 0000992625, 16/10/2020

CONCLUSION

The study found that despite the development of the Juvenile Justice Code, Georgian legislation relating to crimes of sexual abuse and sexual exploitation of children, including prostitution against children, still does not comply with the mandatory human rights instruments ratified by Georgia. In addition, administration of justice on similar cases, including the existing standard of proof, is overly rigid, formalistic, restrictive (such as the requirement of at least two pieces of direct evidence) and does not adequately address the specifics or nature of the crime. When qualifying a crime and administering justice, the main focus is made on the identification of physical violence, while a number of circumstances that suppress the will of the child are not accurately identified, which in many cases might have served as basis for establishing rape.

An important problem at the stages of investigation, prosecution and trial is the lack of measures oriented to children and their protection from secondary victimization – in particular, the prevention of several interviews with children, with the exception of extreme necessity, ensuring the involvement of one and the same specialist in all investigative activities and prevention of communication with strangers. The law does not precisely define the issue of the participation of a psychologist in all cases of sexual abuse of children, which creates a risk in terms of protecting the best interests of the child in the administration of justice. Effective support to children by social workers and psychologists during administration of justice is problematic, and in some cases, their involvement is formal. The above is caused by the alarmingly low number of the relevant staff, as well as the lack of relevant guidelines that would clearly define their rights and responsibilities. Another problem is the lack of coordination between various agencies responsible for preventing and responding to sexual abuse of children.

With few exceptions, the lack of special interviewing and interrogation rooms tailored to the needs of children in the law enforcement agencies and court buildings creates a high risk of secondary victimization of children during the already uncomfortable process. The investigative experiments and the practice of examining the hymen, which has no scientific validity for establishing sexual intercourse or rape, also create a risk of secondary victimization. The case materials revealed a number of cases when children were traumatized, blamed and misled during interviews, especially by defence lawyers. This indicates the lack of qualifications of the professionals involved in the administration of justice and the neglect of the protection of the best interests of the child.

Part of the professionals involved in the administration of justice on crimes of sexual abuse and sexual exploitation of children is working without any training or support. Even when training is provided, it only partially addresses the specifics of offences of sexual abuse, does not provide necessary information to identify risks in similar cases and fails to help professionals develop relevant skills. This is especially important for the specialists tasked with assessing the child's needs when making decisions on the involvement of relevant professionals and children in investigative activities at various stages.

The State does not have services specifically focused on rehabilitation or provision of support to child victims of sexual abuse, which would allow relevant professionals to plan long-term work with both children and their families. The currently available state services are drastically incon-

sistent with the needs existing in the country. The alarming shortage of staff is further complicated by the geographical inaccessibility of services, which makes it virtually impossible to use these services.

Raising public awareness of sexual abuse of children is essential, especially among minors. The lack of reporting or late reporting of crimes to the law enforcement agencies is caused, *inter alia*, by the widespread stereotypes and stigma, as well as inadequate responses by the law enforcement and justice systems, forcing children and their parents to avoid talking about sexual abuse and contributing to the creation of an environment where rape goes unpunished.

RECOMMENDATIONS

To the Parliament of Georgia:

- ▶ In accordance with the requirements of the Istanbul Convention and other human rights instruments, change the definitions of crimes of sexual abuse in the Criminal Code and base them on free consent of the victim, which should be assessed by taking into account the existing circumstances. (This change will also affect the formulation of sexual offences against minors)
- ▶ In relation to juveniles, amend Articles 137 and 138 of the Criminal Code so that the penetration of a sexual nature into the body of a juvenile and other actions of a sexual nature, if committed by abusing trust, authority or influence, fall under the mentioned articles, independently of other factors, without the necessary preconditions of violence, threats of violence or vulnerability
- ▶ Repeal Article 139 of the Criminal Code and integrate it into the offences referred to in Articles 137 and 138 of the Criminal Code, as Article 139 pertains to a crime equal to rape and other actions of a sexual nature
- ▶ Criminalize “buying sex” from the child in the Criminal Code
- ▶ Abolish administrative liability provided for in the Administrative Offences Code in relation to minors engaged in prostitution (Article 172³).

To the Government of Georgia:

- ▶ Designate an agency responsible for continuous training and retraining of social workers;
- ▶ Approve a special training module for social workers, including on crimes of sexual abuse and sexual exploitation of children;
- ▶ Ensure that special departments working on cases involving juveniles are set up and relevant specialists are employed in all territorial units of the law enforcement agencies;
- ▶ Develop protocols and guidelines, procedures and evidence-based standardized methodology for psychological and psychiatric assessment of juvenile witnesses-victims. Ensure the specialization of expert psychologists and psychiatrists in this direction to authorize them to conduct the relevant examinations of minors;
- ▶ Develop a protocol for the psychological examination of minors as a guideline for specialists of the Psychiatric Examination Department of LEPL Levan Samkharauli National Forensics Bureau;
- ▶ Improve coordination between state agencies in order to ensure that violence against children is timely detected and effectively responded, while child victims are provided with the necessary services. Implement the concept of the psychological-social service center for child victims of violence (the so-called “Barnahus module”) in a timely and effective manner and establish a center for child victims of violence, which will protect the best interests of the child based on the principle of multidisciplinary and inter-agency coordinated cooperation.

To the Prosecutor General's Office of Georgia and to the Common Courts

- ▶ The violence provided for in Articles 137 and 138 of the Criminal Code should not be narrowly interpreted and should not be proved solely by evidence of genital mutilation or existence of the perpetrator's biological material. Violence should be defined as physical, psychological, economic violence and coercion, and no existence of physical traces should be required to prove it;
- ▶ An action committed against a minor in the manner described in Article 139 of the Criminal Code should be qualified as rape (Article 137 of the Criminal Code) or other action of a sexual nature (Article 138 of the Criminal Code);
- ▶ When penetration of a sexual nature into the body of a minor is committed in the context of physical violence, as well as psychological violence, economic violence, coercion or suppression of the victim's will, the action should be qualified as rape and not as consensual sexual intercourse (Article 140 of the Criminal Code);
- ▶ When sexual offences are committed within the alleged de facto marriage, the circumstances that are detrimental to the will of the minor should be accurately identified and the case should be qualified under the relevant article of the Criminal Code on the basis of the above;
- ▶ The standard frequently applied in practice, which requires the existence of at least two pieces of direct evidence to launch a criminal prosecution and to convict a defendant, should be changed;
- ▶ The absence of the victim's testimony should not be an impediment to criminal prosecution or conviction, when there is other evidence in the case.

To the Prosecutor General's Office of Georgia:

- ▶ Develop a training module on the specifics and characteristics of crimes of sexual abuse and sexual exploitation of children;
- ▶ Establish a system of continuous training for prosecutors relating to crimes of sexual abuse and sexual exploitation of children;
- ▶ Develop a sample decree on termination of criminal prosecution, by specifying what information should be included in it;
- ▶ Ensure obligatory involvement of a psychologist in the cases of sexual violence against children.
- ▶ Ensure that psychological and psychiatric assessments are used only when necessary and for the purpose of assessing the trauma experienced by the victim. Such examinations should not be used in practice, directly or indirectly, for the purpose of determining the credibility of the victim (as required by Article 51.3 of the Criminal Code);
- ▶ An investigative experiment, due to the high risk of secondary victimization, should be carried out only in exceptional cases, during which victims should be protected against traumatization;
- ▶ A forensic examination, due to its traumatic effect, should be conducted only when it is absolutely necessary and when the victim indicates penetration into his/her body (and not other actions);

- ▶ The practice of examining the condition of the hymen (the so-called “virginity testing”) for obtaining evidence of vaginal rape should be eliminated, as the above is a discriminatory procedure and does not provide reliable information about the fact whether a person had sexual intercourse or whether he/she was raped.

To the Ministry of Internal Affairs of Georgia:

- ▶ Ensure that when maintaining statistics on reports of alleged violence, LEPL Public Safety Management Center “112” separately counts crimes of sexual abuse of children;
- ▶ When maintaining statistics on the launch of investigations, the cases, where the disposition of articles provides for the commission of a crime against a juvenile together with other persons, should be grouped according to the status of victims instead of being categorized in one group;
- ▶ In case of re-qualification of a case, reflect the relevant change in the statistics on the launch of investigations;
- ▶ Maintain statistics on the referral of cases of violence against children;
- ▶ Develop a training module on the specifics and characteristics of crimes of sexual abuse and sexual exploitation of children;
- ▶ Ensure obligatory involvement of a psychologist in the cases of sexual violence against children.
- ▶ Arrange child-friendly rooms in all territorial units.

**To the Ministry of IDPs from the Occupied Territories,
Labour, Health and Social Affairs of Georgia:**

- ▶ Assess the needs of LEPL Agency for State Care and Assistance of Victims of Trafficking in terms of social workers and increase their number in accordance with the existing demand;
- ▶ Develop a training module for psychologists relating to crimes of sexual abuse and sexual exploitation of children;
- ▶ Develop a training module for social workers relating to crimes of sexual abuse and sexual exploitation of children;
- ▶ Devise a continuous training scheme for psychologists and social workers;
- ▶ Assess the need for psychologists and increase their number based on the above;
- ▶ Develop a protocol for the distribution of social workers and psychologists according to the specifics of the work;
- ▶ Ensure that only psychologists trained on juvenile justice participate in the investigations, prosecution and trials involving child victims of sexual abuse;

- ▶ On the basis of coordination with the relevant state agencies, precisely define the participation and responsibilities of the psychologist in the investigation, criminal prosecution and trial.

To the Ministry of Education and Science of Georgia

- ▶ Develop a training module for the staff of educational institutions relating to sexual abuse of children and gradually train them on the basis of this module, according to a specific plan;
- ▶ Develop a module of educational activities for students relating to sexual abuse of children, that will be gradually implemented in educational institutions on the basis of a specific plan.
- ▶ Equip the psychologists of the Psychological Service Center of the Office of Resource Officers with evidence-based rehabilitation approaches, in order ensure that they effectively work with child victims of violence.

To the High School of Justice:

- ▶ Develop a training module for judges relating to crimes of sexual abuse and sexual exploitation of children;
- ▶ Precisely determine the circumstances conditioning the involvement of the psychologist in the trial;
- ▶ Arrange special rooms for interviewing juveniles in all court buildings.

To LEPL Levan Samkharauli National Forensics Bureau:

- ▶ Assess the number of specialists employed in the Medical Examination Department of the National Forensics Bureau according to the workload and increase it on the basis of the above, in accordance with the geographical and gender needs;
- ▶ Assess the number of specialists employed in the Psychiatric Examination Department of the National Forensics Bureau according to the workload and increase it on the basis of the above, in accordance with the geographical and gender needs;
- ▶ Develop a training module on juvenile justice for specialists of the Medical Examination and Psychiatric Examination Departments of the National Forensics Bureau;
- ▶ Develop a training module on the specifics of sexual abuse of children for specialists of the Medical Examination and Psychiatric Examination Departments of the National Forensics Bureau;
- ▶ Train specialists of the Medical Examination and Psychiatric Examination Departments of the National Forensics Bureau on juvenile justice and sexual abuse of children.

To the Georgian Bar Association:

- ▶ Develop a training module for lawyers relating to the specifics and characteristics of crimes of sexual abuse and sexual exploitation of children;
- ▶ Train lawyers on the specifics and characteristics of crimes of sexual abuse and sexual exploitation of children on the basis of the training module.

To LEPL Legal Aid Service:

- ▶ Develop a monitoring mechanism to assess the quality of the staff of the Legal Aid Service.

APPENDIX: STATISTICAL INFORMATION ON CRIMES OF SEXUAL ABUSE OF CHILDREN

For the purposes of this research, the Public Defender's Office requested the 2018 and 2019 statistical data from the Ministry of Internal Affairs of Georgia, the Prosecutor General's Office of Georgia and the Supreme Court of Georgia relating to the reports of sexual abuse received by the law enforcement agencies, the measure taken in response and the results achieved.

All the data on cases of sexual abuse of children were requested by taking into account the ethnicity, sexual orientation, disability status and other characteristics of the affected and accused persons. However, the Ministry of Internal Affairs of Georgia and the Prosecutor General's Office do not produce statistics in this regard.²⁴⁵

In 2018-2019, investigations were launched into 611 cases of sexual abuse of minors, while criminal proceedings were launched against a total of 368 persons. In the mentioned period, common courts considered a total of 169 cases under the above-mentioned articles. Guilty verdicts were delivered in 157 cases, 3 persons were acquitted, 2 cases were re-qualified, 6 cases were terminated, 1 defendant was partially acquitted. A total of 36 cases were heard by the courts of appeal of Georgia and 10 criminal cases were heard by the Supreme Court, one of which resulted in a different verdict and 9 cases were declared inadmissible.

According to the information received from common courts, most of the verdicts were delivered in cases qualified under Articles 140 and 141 of the Criminal Code. In addition, most of the judgments (70) were delivered relating to domestic crimes, the vast majority of which were cases of early marriage, even though the majority of early marriage cases are qualified under Articles 11¹.140 (1) of the Criminal Code.

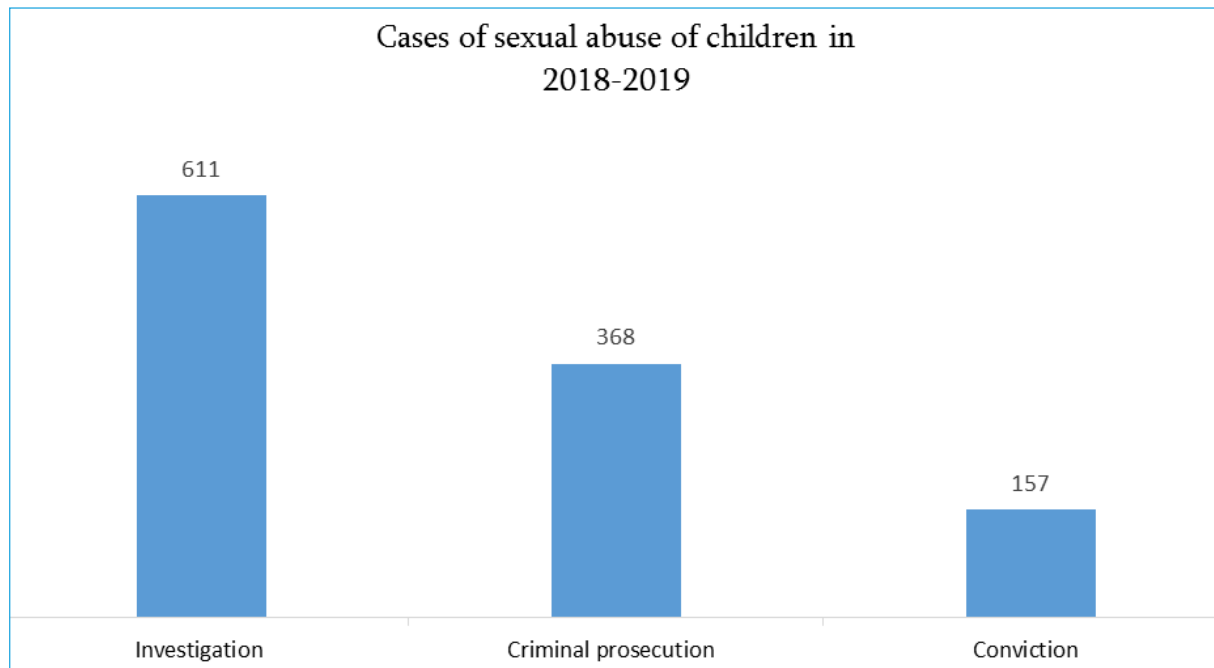
No judgment, investigation or prosecution could be searched relating to cases qualified under Articles 253-254 of the Criminal Code in 2018-2019. No juvenile has been granted the victim's status in relation to the cases qualified under the mentioned articles.²⁴⁶

Additionally, within the framework of the research, 2014-2020 statistics were requested from the Supreme Court of Georgia, the Ministry of Internal Affairs, the Prosecutor General's Office of Georgia and LEPL Agency for State Care and Assistance of Victims of Trafficking relating to investigations, prosecution, identification of victims and delivery of judgments on cases qualified under Articles 137-141, 255-255² and 253-254.

²⁴⁵ Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02699713, 18/11/2020, Correspondence of the Prosecutor General's Office of Georgia, N13/38462, 13/07/2020, N13/11725, 02/03/2021

²⁴⁶ Correspondence of the Supreme Court of Georgia N.os/838-20, 16/11/20; Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02909322, 15/12/2020; Correspondence of the Prosecutor General's Office of Georgia, N13/70869, 23/12/2020.

Table No.1



No accurate statistics on reports of alleged sexual abuse of minors are collected at this stage. In particular, LEPL Public Safety Management Center “112” divides reports of alleged abuse of minors only into two categories: “perverted action” and “abuse of the minor”. “Perverted action” implies the composition provided for in Article 141 of the Criminal Code, while “abuse of the minor” includes any form of violence that caused physical or mental suffering, as well as labour exploitation. This makes it impossible to determine exactly how many cases of sexual violence against minors were reported to LEPL Public Safety Management Center “112” in a specific period of time. In particular, in 2018-2019, “112” received 126 reports relating to “perverted actions” and 1003 reports relating to “abuse of the minor”, although it is impossible to determine how many cases of sexual abuse were reported.²⁴⁷

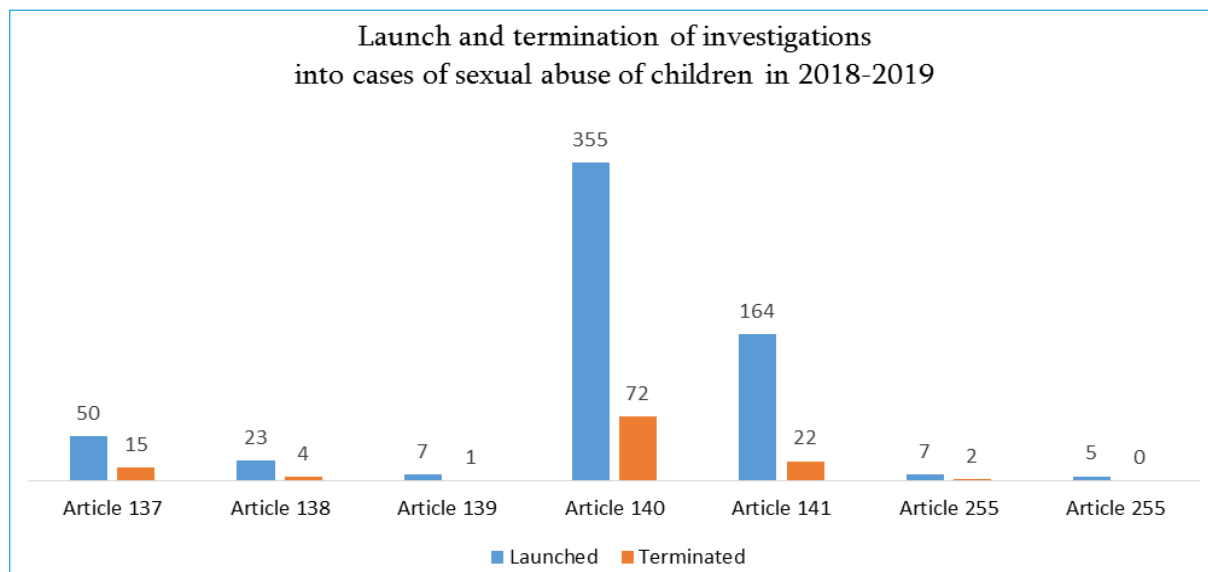
The statistics on applications and reports of sexual abuse of minors are maintained by the territorial units of the Ministry of Internal Affairs as well. In this case, such reports fall under one category: “sexual abuse of the minor.” In particular, a total of 601 reports/applications fell under this category in 2018-2019, with the highest rates in Tbilisi, Kvemo Kartli, Autonomous Republic of Adjara and Kakheti. Although these statistics are available, it is impossible to determine how many cases of sexual abuse of minors were reported to the law enforcement agency. It is also impossible to differentiate these data according to the articles of the Criminal Code. It should be noted that the Ministry of Internal Affairs does not maintain statistics²⁴⁸ on cases received from state agencies within the framework of the child abuse referral²⁴⁹ procedures.

²⁴⁷ Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02699713, 18/11/2020.

²⁴⁸ Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02699713, 18/11/2020.

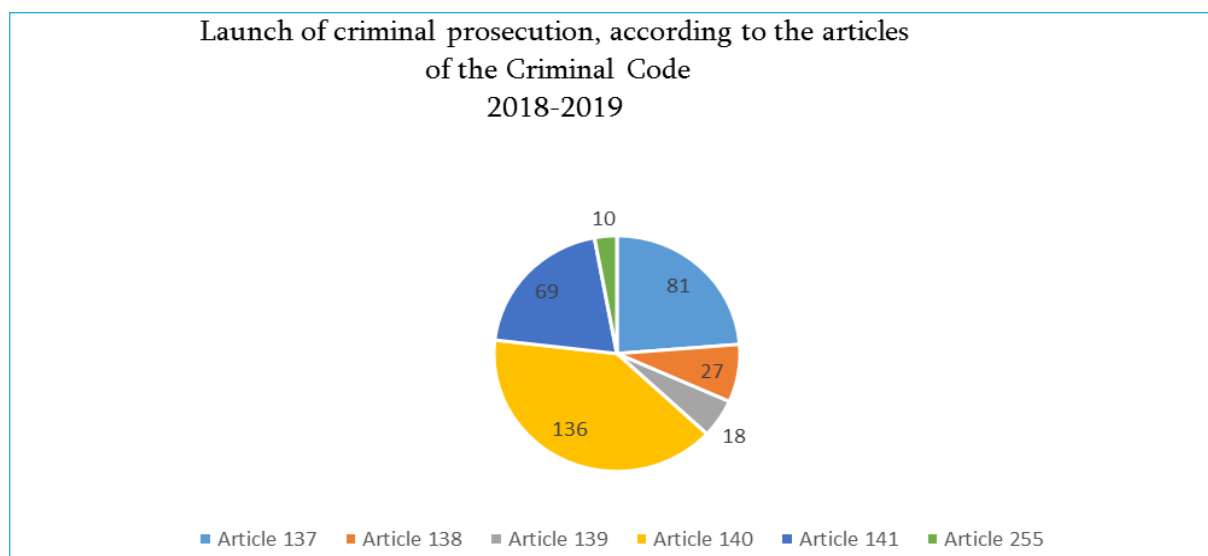
²⁴⁹ Decree of the Government of Georgia on the approval of child protection referral procedures N437, 12/09/2016.

Table No. 2



Despite the existence of these statistics, even in this case it is impossible to determine the number of cases of sexual abuse of minors, where investigations were launched in a particular period. In particular, no segregated data are collected on cases falling under an article pertaining to the commission of a crime against minors, pregnant women and persons with disabilities. In addition, the statistics of the Ministry of Internal Affairs include only the results of the initial qualifications. Consequently, cases that were subsequently re-qualified as cases of sexual abuse of minors are not included in these data.

Table No. 3



In 2018-2019, only 317 juveniles were granted victim’s status in cases of sexual abuse of children.

Table No. 4

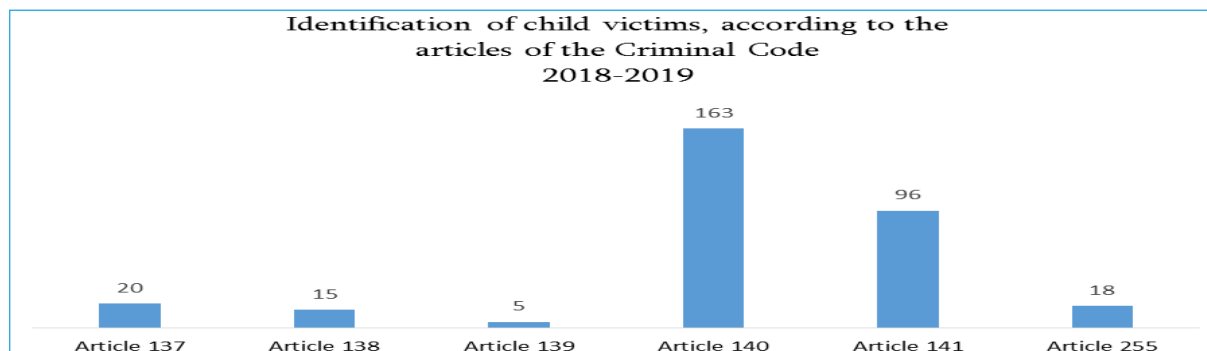
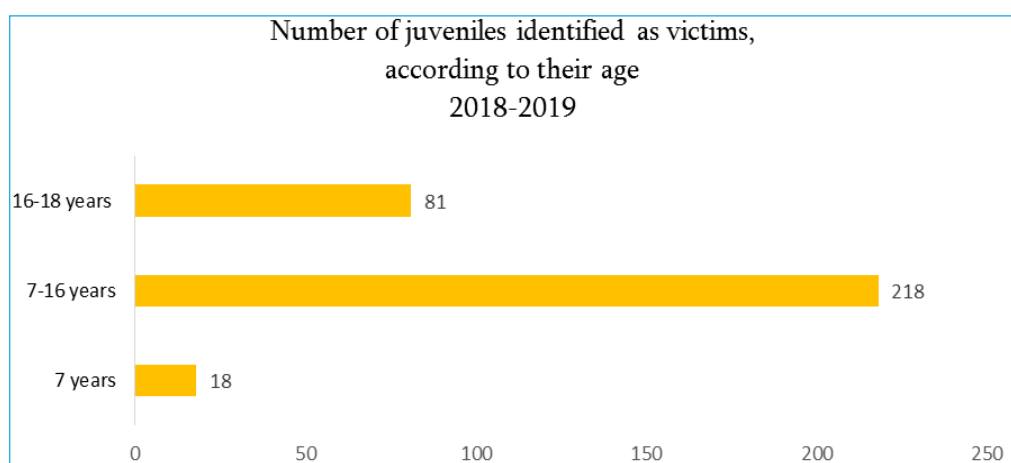
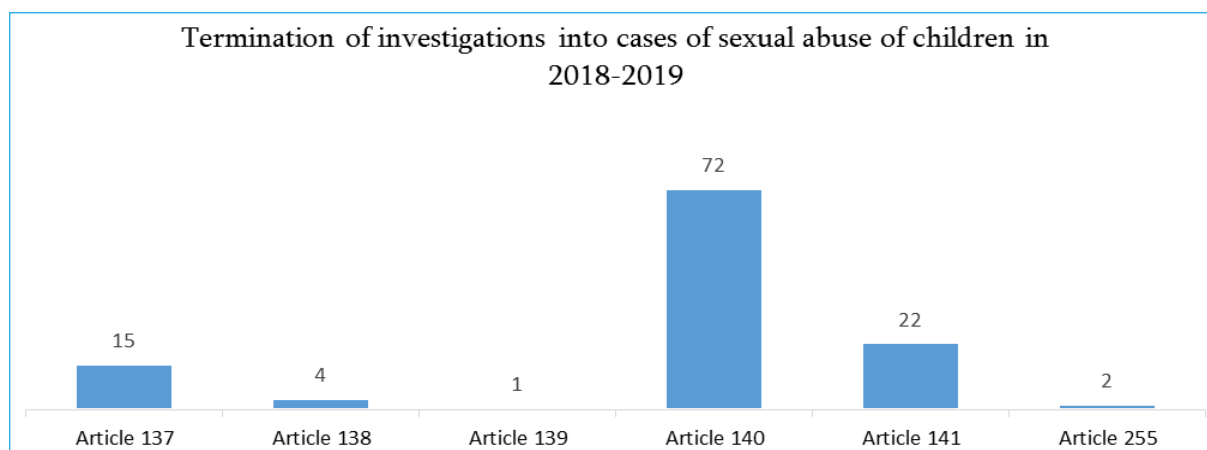


Table No. 5



According to the statistical information received from the Prosecutor General’s Office of Georgia, in 2018 and 2019, it was decided to terminate criminal prosecution into 3 cases, while investigations were terminated in 120 cases. At the same time, investigations were resumed in 4 out of these criminal cases. No prosecution or investigation was terminated into crimes committed against minors under Articles 253 and 254.²⁵⁰

Table No. 6

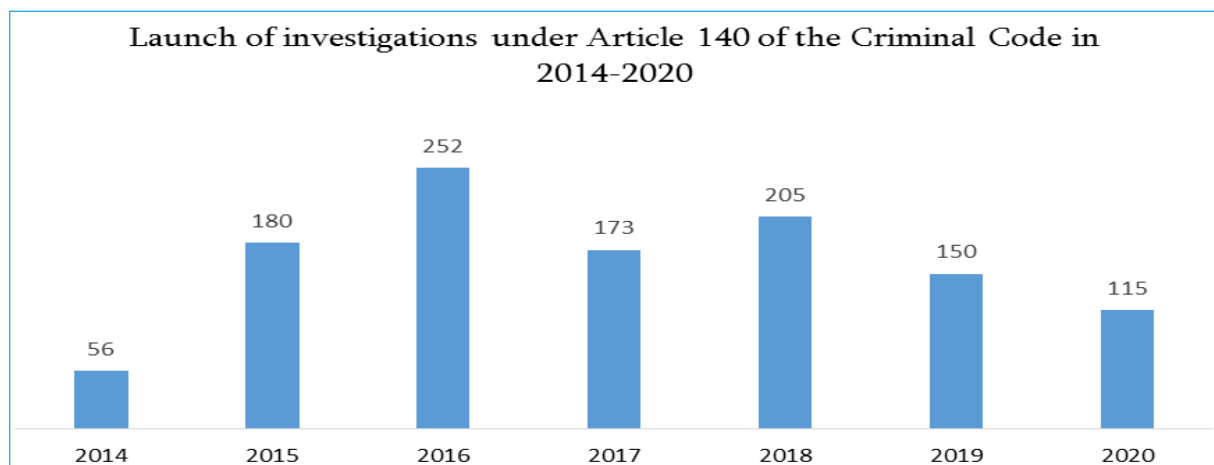


²⁵⁰ Correspondence of the Ministry of Internal Affairs of Georgia, MIA 4 20 02909322, 15/12/2020; Correspondence of the Prosecutor General’s Office of Georgia, N13/70869, 23/12/2020.

Most of the cases qualified under Article 140 of the Criminal Code (72 cases), namely 65 cases concerned early marriage. According to the decrees on termination of investigations, alleged cases of sexual abuse of juveniles are usually reported to the law enforcement agencies by medical facilities (22 cases), the Social Service Agency (14 cases), the Civil Registry (11 cases) and victims' families (21 cases). Medical facilities, the Social Service Agency and the Civil Registry mainly report cases of early marriage, while family members report cases of rape, other actions of a sexual nature and perverted actions.

According to the statistics requested from the Ministry of Internal Affairs, the Prosecutor General's Office and the Supreme Court, in 2014-2020, investigations were launched into 1743 crimes committed against juveniles under Articles 137-141, 255-255² and 253-254 of the Criminal Code,²⁵¹ criminal prosecution was launched in 1499 cases, judgments were delivered in 780 cases, of which 767 were guilty verdicts. Accordingly, the number of convictions is almost twice as less as the rate of the launch of criminal prosecution into cases of sexual abuse of children.²⁵²

Table No. 7



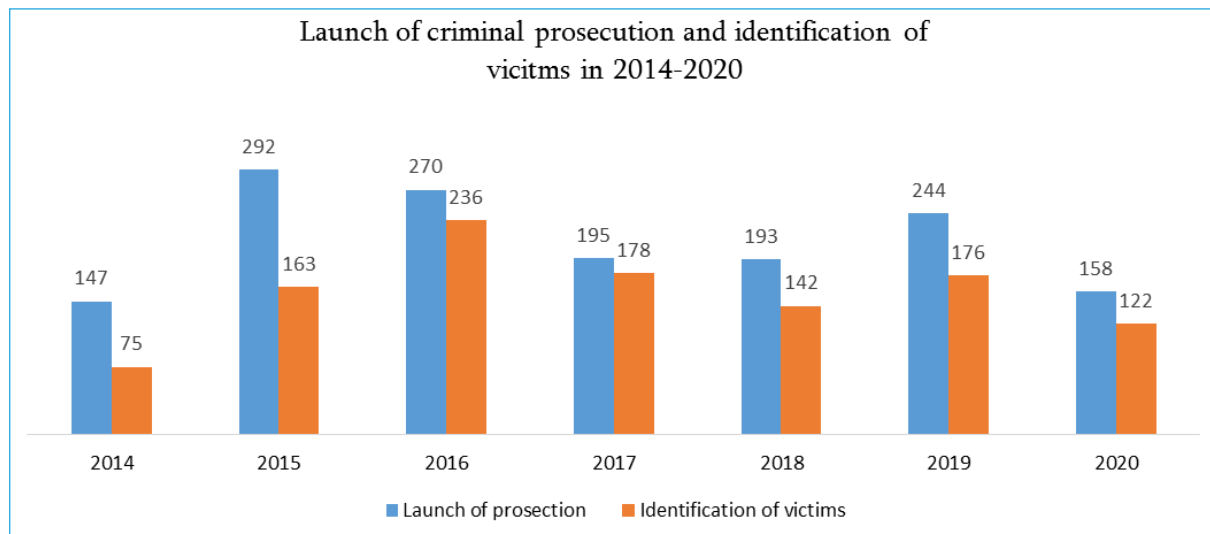
It should be noted that in 2014-2019, criminal prosecution was launched in a total of 1499 cases and 1092 juveniles were identified as victims.²⁵³

²⁵¹ This information is close to reality, but not accurate, due to the fact that the Ministry of Internal Affairs of Georgia provides statistics according to the articles and paragraphs of the Criminal Procedure Code, which may only reflect the crimes committed by juveniles. In addition, the statistics reflect only the initial qualifications and not re-qualifications.

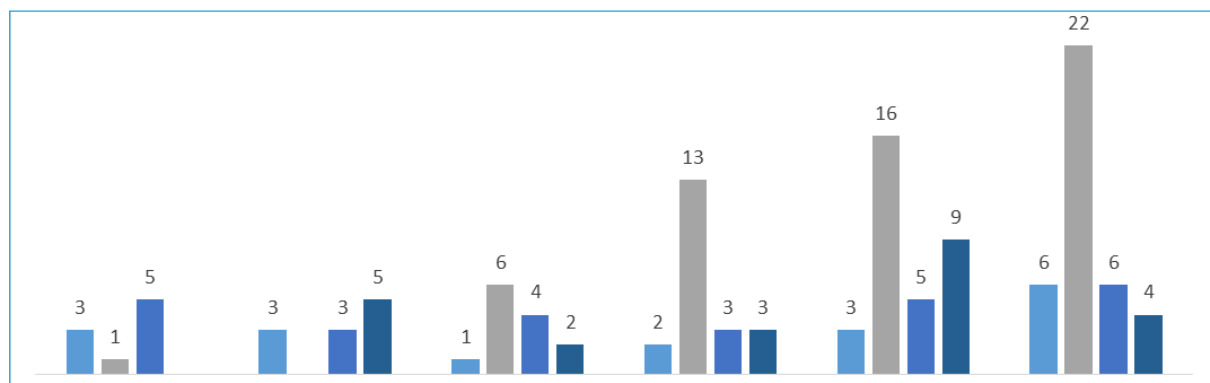
²⁵² Correspondence of the Prosecutor General's Office of Georgia, N13/16988, date: 25/03/2021; Correspondence of the Supreme Court of Georgia: P-161-21, date: 31/03/2021; Correspondence of the Ministry of Internal Affairs of Georgia, MIA 7 21 00736841, date: 26/03/2021.

²⁵³ Correspondence of the Prosecutor General's Office of Georgia, N13/16988, date: 25/03/2021; Correspondence of the Ministry of Internal Affairs of Georgia, MIA 7 21 00736841, date: 26/03/2021.

Table No. 8



According to the information received from LEPL Agency for State Care and Assistance of Victims of Trafficking,²⁵⁴ in 2014-2020, 831 juvenile victims of sexual abuse used the rehabilitation and child support services.



It is noteworthy that according to these data, 350 juveniles became victims of sexual violence in their biological families and 236 juveniles – in the newly created families resulting from early marriage.

²⁵⁴ Correspondence of LEPL State Agency for the Protection and Assistance of Victims of Human Trafficking: N07/3713, 06/05/2021

