

# EVALUATE THE IMPLEMENTATION OF THE JUVENILE JUSTICE CODE



DEMOCRACY RESEARCH INSTITUTE



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## INTRODUCTION

The Juvenile Justice Code (hereinafter referred to as the JJC or Code) was introduced in Georgia in 2016, which sets special standards for children, juvenile witnesses and victims in conflict with the law.

The objectives of the JJC are defined by the same normative act and protect the best interests of the juvenile in the justice process, the resocialization-rehabilitation of juveniles in conflict with the law and the protection of the rights of juvenile victims and juvenile witnesses.

Since the full implementation of the JJC in the country<sup>1</sup>, various agencies have been required by law to establish detailed procedures and practices for children in conflict with the law, including the period from the child's first contact with law enforcement - including court hearings. (As well as part of the execution of the sentence). These legal acts should regulate the process of effective implementation of the juvenile justice system<sup>2</sup>. The Juvenile Justice Legislation Reform Guidelines clarify that the juvenile justice system incorporates applicable laws, norms, standards, guidelines, policies, procedures, mechanisms, provisions, and regulations applicable to children in conflict with the law. Accordingly, the reform of legislation in the broadest sense envisages not only the adoption of a normative act, but also the implementation of a number of changes, such as: consideration of policy, budget and human resources; Assess the institutional capacity and communication system between institutions; Vocational training and professional practice; Planning-implementation of the law implementation process and measures to be taken in the transition phase<sup>3</sup>.

In Georgia, from July 1, 2008 to February 23, 2010, juveniles from the age of 12 were charged with a number of criminal offenses. Following a recommendation by the UN Committee on the Rights of the Child, the minimum threshold for criminal liability was raised to 14 years in 2010 through amendments to the law.

The enactment of the Code in 2016 was an important step forward in liberalizing the juvenile justice system and strengthening the principle of restorative justice, which established a new standard of justice not only for juveniles in conflict with the law, but also for juvenile victims and witnesses. Behavior in the best interests of the juvenile has significantly altered the past-oriented approach to punishment, which has repeatedly been the subject of positive evaluations by both international and local human rights organizations.<sup>4</sup>

Nevertheless, almost 4 years after the enactment of the Code, the problem of uniform interpretation of the provisions of the Code, the practical implementation of the standards guaranteed by the Code by the individual bodies involved in the justice process and the lack of a proper quality control mechanism are still relevant.

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<sup>1</sup> The Code came into force on January 1, 2016, and in part, on March 1 of the same year;

<sup>2</sup> "Juvenile Defendant's Rights in Criminal Procedure", Research Report, Authors: Anton Kelbakiani, Natalia Tsagareli, Giorgi Turazashvili;

<sup>3</sup> Juvenile Justice Legislation Reform Guidelines, 2011, p.12;

<sup>4</sup> Coalition for Independent and Transparent Justice Statement of 16 April 2015 on the JJC prepared by the Ministry of Justice. Link: <https://www.transparency.ge/ge/content/stub-727>.

## 1. THE PURPOSE OF THE STUDY

The purpose of the study is to review the changes provided by the JJC after its enactment and to evaluate its practical implementation. The focus will be on the international standards of juvenile justice and the compatibility of Georgian juvenile justice norms with it. The purpose of the study is also to develop recommendations for the relevant agencies based on the analysis of the practical gaps identified through monitoring and the analysis of the existing legal framework.

## 2. JUVENILE DELINQUENCY IN CONFLICT WITH THE LAW

Defining the concept of crime itself, which is reflected in the first part of Article 7 of the Criminal Code of Georgia, is crucial for the classification and categorization of crime. According to this norm, "a crime is an unlawful and culpable act under the Criminal Code."

The Georgian model of the notion of crime is derived from the German, three-element model of the notion of crime, the cumulative existence of which is crucial for the qualification of an act as a crime.

Georgian law does not provide a separate definition of juvenile delinquency and only refers to juveniles in conflict with the law. As for the definition of a juvenile, for the purposes of criminal liability, according to Georgian law, a minor is a person who has reached the age of 14 at the time of the commission of the crime, but has not reached 18 years of age.<sup>5</sup> Article 3 -2 2 of the JJC clarifies the definition of a juvenile in conflict with the law<sup>6</sup>.

We can say that **juvenile delinquency is an illegal and culpable act under the Criminal Code, which is committed by 14-17 years old adults.**

## 3. JUVENILE DELINQUENCY SPECIFICS AND STATISTICS

Crimes committed by minors are characterized by high latency. Latent criminal offense under the Criminal Code should be considered as a crime (crime) that has not been made known to law enforcement agencies, has not been detected and, therefore, has not been recorded in the police statistics.<sup>7</sup>

According to various studies<sup>8</sup>, the share of latent crimes committed by minors is the highest in the total number of latent crimes in the country<sup>9</sup>, although they (adults) make up only 16-18 percent of the country's population. Juvenile delinquency is a normal manifestation of society because of their biological and mental development<sup>10</sup>, that means, that all juve-

<sup>5</sup> See Criminal Procedure Code of Georgia, Article 3, Subparagraph "a" and Code of Juvenile Justice of Georgia, Article 3, Paragraph 1;

<sup>6</sup> See Article 3, Paragraph 2 of the JJC of Georgia;

<sup>7</sup> See Shushanashvili, A., 2000, p.155.

<sup>8</sup> See "Juvenile Justice (textbook)", second edition, Maurice Shalikashvili, Givi Mikanadze, Tbilisi, Freiburg, Strasbourg, 2016;

<sup>9</sup> Schneider, H.J., 1987. S. 603;

<sup>10</sup> Albrecht, P.-A., 2005. S. 4;

niles have violated the law at least once<sup>11</sup>. Consequently, the problem for the society is not all juveniles, but chronic juvenile delinquents, the so-called chronic offender. The goal of the state, first of all, should be to prevent such crimes.

In general, deviant behavior is any behavior that is contrary to the prevailing norms in society. Many theories try to explain deviant behavior, including sociological, biological or psychological, but there is no single formula for why a person makes such a notion. As for delinquent behavior, this concept refers to illegal or antisocial actions, which include violations of many different legal and social norms. Sociological analysis of delinquency focuses on the degree of criminal delinquency associated with male juveniles between the ages of 12 and 20 and includes high-profile criminal offenses<sup>12</sup>.

Studies devoted to juvenile delinquency over the past 20 years have given rise to a variety of theories on its origin and development. If the risk factors for juvenile delinquency are relatively well known, there is still insufficient theoretical agreement in science as to its origin. It is therefore difficult to talk about the unambiguous cause of delinquency as it is the result of a combination of risk factors such as hyperactivity, perinatal problems, peer influence, temperament, group rejection, unfavorable family environment and so on that interact with protective factors such as positive family environment and parental control.

Many sociological and psychological theories, when explaining delinquency, focus on the influence of variables such as social class and family composition. The close link between socioeconomic status and crime also seeks to highlight the hereditary implications of crime.<sup>13</sup>

As mentioned, different theories (psychoanalytic theory, teaching theory, cognitive development theory, behavioral disorder, hormones, group influence, personality traits, bullying, etc.) explain the causes of deviation differently, but the fact is that none of the theories is complex. And independently can not provide a complete explanation of the determinants of this phenomenon.

For the planning and implementation of a correct and effective criminal policy, special importance is attached to a properly conducted criminological research, one of the important methods of which is the analysis of criminal statistics. In turn, the available statistics are based only on the data reflected in the figures by law enforcement agencies, to which a legal response has taken place, insofar as the crime committed by a juvenile is not officially considered to exist until a legal response is made to it. However, since juvenile delinquency is highly latency, the actual numbers in official statistics are significantly different from each other.

Juvenile delinquency research in Georgia is mainly based on the number of accused/convicted juveniles. Thus, obviously, these data cannot be considered sufficient to define

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<sup>11</sup> Kaiser, G., 1985. S. 225-228;

<sup>12</sup> Juvenile delinquency: understanding the origins of individual differences; Quinsey, Vernon L. Skilling, Tracey A. Lalumiere, Martin L. Craig, Wendy M. 2004;

<sup>13</sup> According to this theory, individuals with low IQ and antisocial personality traits, such as aggression, negligence, dishonesty, carelessness, are expected to have lower socioeconomic status. To the extent that these traits are genetically influenced, there is a good chance that the genes that influence these personality traits will also be linked to socioeconomic status.

a broad and comprehensive prevention policy. However, it allows some conclusions to be drawn about juvenile delinquent crimes.

According to the official statistics for 2015-2019, in the last 5 years, the total number of convicted juveniles ranges from 146 to 292, which is 0.9-1% of the total number of convicts.

In 2015-2019, the number of convicted juveniles aged 14-15 ranged from 39 to 75, and the number of convicts aged 16-17 ranged from 107 to 223 juveniles.<sup>14</sup>

Analyzing the statistics, we can conclude that the majority of juvenile offenders are boys. Over the past five years, the share of boy convicts in the total number of juvenile convicts has ranged from 96.6 to 98.6%. The number of girls has increased from 2 to 10% in the last five years<sup>15</sup>.

According to the official data of the Supreme Court of Georgia, in 2015-2019, 118-252 juvenile convicts were neither studying nor working at the time of the crime. The percentage of such juveniles is very high and ranges from 80.8 to 86.9% in the last five years. Over the last three years, this figure has been constantly growing and reached the highest mark since 2013 in 2019. This once again highlights the special role of socio-economic factors in the commission of crime and, consequently, the need to plan and implement the right preventive measures.

The dynamics of the number of juvenile convicts by type of crime also indicates the need to take into account socio-economic factors when planning preventive measures. Analysis of statistics from the last 5 years shows that juveniles in conflict with the law mainly commit economic crimes, in which a special share falls on theft. The share of theft in the total number of crimes committed by juveniles in 2015-19 is 56.2%, and the total share of economic crimes (theft, robbery, fraud) is 72.3%.

The dynamics of the number of juvenile offenders by type of crime also shows that among the crimes committed by them, violent crimes occupy a small place and the crime scene of sexual crimes is minimal.

According to the statistics of 2015-19, in these years, a total of 1137 juveniles have been convicted. Of these, the court applied imprisonment to juveniles in conflict with law 296, which accounts for almost 26% of convicted juveniles.

## 4. INTERNATIONAL STANDARDS

The Convention on the Rights of the Child and the International Covenant on Civil and Political Rights are the most important international instruments in the field of juvenile justice. It is the Convention that sets out the instrumental safeguards and basic principles that the juvenile justice system must take into account.

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<sup>14</sup> Supreme Court of Georgia, Statistics of Criminal Cases, Part 3, p. 80 See <http://www.supremecourt.ge/files/upload-file/pdf/2019-weli-wigni-sixxli.pdf>;

<sup>15</sup> Right there.

Recognition of the child as an independent right holder dates back to the 20th century. Of particular importance in this regard was the beginning of the development of a set of juvenile justice rules by the international community in the 1980s, which should have fully covered the field of "juvenile justice" - from crime prevention to sentencing.

A number of important international instruments have been devoted to the international regulation of juvenile justice, both within the UN and the Council of Europe and other regional international organizations.

In addition to the conventions mentioned in the first paragraph, after the ratification of which the Contracting States are obliged to abide by their obligations under the Convention, there are four main minor juvenile justice instruments which, in their content, constitute internationally recognized minimum standards. These are: UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")<sup>16</sup>; UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Principles)<sup>17</sup>; UN Rules for the Protection of Juveniles Imprisoned (Havana Rules)<sup>18</sup>; And Guiding Principles for Action on Children in the Criminal Justice System (Vienna Principles).

In addition to these 4 internationally recognized documents, it is important to focus on regional instruments, one of which is the European Convention on Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), which is particularly relevant to Georgia;

## 5. JUVENILE JUSTICE REFORM IN GEORGIA

From 1999 to January 1, 2016, the issue of juvenile criminal liability was regulated in the Georgian legislation by the General Criminal Code of Georgia. According to the wording of the Code in force at that time, the legislator set the age of criminal responsibility for juveniles at 14-18 years.

The purpose of the sentence is given in Article 39 of the Criminal Code, which applied to juvenile convicts before 2016 along with adult convicts. In sentencing under Article 53 of the Criminal Code, the judge could have taken into account the age and specific circumstances of the child, but one of the purposes of restoring justice was to allow less maneuvering.

The amendments in 2007 reduced the age of responsibility for certain crimes to 12 years. There was negative feedback from both international (Committee on the Rights of the Child, UNICEF) and local organizations. As a result, this change was practically not implemented, but was later repealed and the age of responsibility for all crimes was again set at 14 years.

Georgia acceded to the Convention on the Rights of the Child in 1994, fulfilling its obligations under the Convention. Once acceded to the Convention, the Contracting States un-

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<sup>16</sup> See United Nations Standard Minimum Rules on Juvenile Justice ("Beijing Rules") <https://bit.ly/2Zcq408>;

<sup>17</sup> See UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Principles) <https://bit.ly/2FhZw6z>;

<sup>18</sup> UN Rules for the Protection of Juveniles Imprisoned (Havana Rules).



undertake to revise their national law in order to bring it into conformity with the Convention and to make every effort to facilitate the implementation of the Convention in that country.

One of the most progressive innovations recognized in the history of Georgian justice is the Juvenile Justice Code, which was adopted by the Parliament of Georgia on June 12, 2015. It was this Code that introduced the approach to the minor/best interests of the child in accordance with the Convention on the Rights of the Child of 20 November 1989.

In turn, the Convention is based on four basic principles that must be adhered to in order to achieve the objectives of the Convention: (1) Article 2 of the Convention prohibits all forms of discrimination and extends all its rights to all children, without distinction of any kind; (2) Article 3 strengthens the priority of protecting the best interests of the child in the conduct of any action against the child<sup>19</sup>; (3) Article 6 places special emphasis on the life and health of the child, and (4) Article 12 makes it mandatory to take into account the views of the child on any matter concerning him/her.

The fundamental rights protected by the Convention can be categorized into 4 main parts: **The right to life, development, protection and participation**<sup>20</sup>.

**Widespread recognition of child rights, like theoretical foundations, has practical leverage. Which is enshrined in the legal system of a particular country through various mechanisms at the legislative, judicial or executive levels.**

## 6. BASIC PRINCIPLES OF JUVENILE JUSTICE

### 6.1. PRIORITIZING THE BEST INTERESTS OF JUVENILES

According to Article 3 of the Convention on the Rights of the Child: **"In all actions against children, regardless of whether they are addressed by state or private institutions working on social security issues, courts, administrative or legislative bodies, the primary focus is on ensuring the best interests of the child."** "...The protection of the best interests of the child means that traditional goals of criminal justice, such as punishing the offender, for children who have committed crimes, must be replaced by the goals of rehabilitation and restorative justice. This can be achieved in parallel with the focus on public safety<sup>21</sup>".

To reinforce this principle, the priority of the right of the child in the Council of Europe Strategy on the Rights of the Child is an essential attribute of a child-friendly justice system. According to the strategy approved by the Ministerial of the Council of Europe, **"In all actions concerning children, and whether they are carried out by a public or private social welfare organization, court, administrative body or legislature, the best interests of the child shall always be a primary consideration."**<sup>22</sup>

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<sup>19</sup> *Note: In the old edition, the true interests of the child were indicated, which is synonymous with the best interests of the child;*

<sup>20</sup> Convention on the Rights of the Child 2007. P. 5;  
See <http://www.supremecourt.ge/files/upload-file/pdf/arasrw.martl3.pdf>.

<sup>21</sup> See Committee on the Rights of the Child, General Comment No. 10 (2007), paragraph 10;

<sup>22</sup> See. Council of Europe Strategy on the Rights of the Child (2016-2021), p.14 [https://www.moh.gov.ge/uploads/files/oldMoh/01\\_GEO/socialuri\\_dacva/Bavshvta-STRA/GE1.pdf](https://www.moh.gov.ge/uploads/files/oldMoh/01_GEO/socialuri_dacva/Bavshvta-STRA/GE1.pdf);

Juvenile justice is part of a humane and result-oriented policy towards juveniles. The juvenile itself is the center of the process without which juvenile justice does not exist. The purpose of preventive measures is to avoid the juvenile justice system, but if these measures do not work, the state creates special guarantees, different from the general criminal policy, which reflect the special interests of the juveniles in special justice.

The very first article of the JJC clarifies that the purpose of the Code is to protect the best interests of the juvenile in the process and to resocialize and rehabilitate a juvenile in conflict with the law. In addition, the purpose of the Code is to protect the rights of juvenile victims and juvenile witnesses, to prevent secondary victimization of juvenile victims and juvenile witnesses and to commit new crimes, and to maintain law and order.<sup>23</sup>

According to this record, the legislator prioritizes the protection of the best interests of the juvenile and the resocialization-rehabilitation of the juvenile in conflict with the law among the goals of the Code. For the purposes of this Code, it indicates the preference of the juvenile over the public interest. Clearly, this should be the case, because unlike adults, criminal sanctions against juveniles have an educational function. While, with the resocialization of the purposes of punishment for adults, justice is also restored and general prevention.

The best interests of the juvenile are defined in Article 344 of the AMC, according to which, "The best interests of the juvenile are the interests of the juvenile's safety, well-being, health, education, development, resocialization-rehabilitation and other interests, which are determined in accordance with international standards and the individual characteristics of the juvenile, as well as his/her opinion." Therefore, in the specific case in practice, it should be decided individually what is the best interest of the juvenile and the state resource should be directed towards the implementation of this interest.

Implementing such an approach in the context of a conflict of rights involves prioritizing the best interests of the child, ensuring that the juvenile justice process is in the best interests of the juveniles, and using the best interests as a guiding principle in defining certain norms. One of the purposes of juvenile justice is to protect the best interests of the juvenile, which, in turn, is essential in sentencing a juvenile.

According to international standards, the best interests of the juvenile should be given priority in all decisions when administering juvenile justice.<sup>24</sup> Minors differ from adults in their level of physical and mental development, emotional state and educational needs. It is these differences that form the basis of a different juvenile justice system and require different attitudes towards juveniles.<sup>25</sup>

The legal literature expresses the opinion on the problem of incompatibility of certain norms of the Code with the best interests of children<sup>26</sup>. In this regard, it is noteworthy that Articles 35 and 36 of the JJC do not allow juveniles, if they change their behavior for the better, return to society with dignity and start a new life, to be exempt from criminal liability and serving a sentence before the expiry of the statute of limitations.

<sup>23</sup> Juvenile Justice Code, Article 1.

<sup>24</sup> Explanatory Card on the Draft Law of Georgia on Juvenile Justice, p. 60;

<sup>25</sup> Right there, P. 60;

<sup>26</sup> Shalikashvili M., Mikanadze G., Juvenile Justice, Second Edition, Tbilisi, Freiburg, Strasbourg 2016, p. 74;

The best interests of the juvenile must be treated equally in all articles of the Code, as the prioritization of interests and the individual approach are the cornerstone of the Convention, which is imperatively established in the juvenile justice process.

At the same time, according to the current situation, juvenile justice is administered in accordance with the adversarial process provided by the Georgian Criminal Code. This procedural principle restricts the trial judge from asking questions and obtaining evidence by agreement of the parties. The application of this principle in juvenile justice should be considered as an impediment to the best interests of the child. The decision of the court is based, on the one hand, on the examination of the evidence presented, but the judge at all stages of the hearing, as well as all the actors in the process, should be guided by the best interests of the child. Consequently, the involvement of the judge in this process has further increased the standard of protection of the best interests of the child at the trial stage.

In addition, the institute of plea bargaining in Georgian criminal law also operates in juvenile justice, which is essentially incompatible with the best interests of the juvenile.<sup>27</sup> Especially when the annual percentage of judgments against juveniles is quite high<sup>28</sup>.

## 6.2. INDIVIDUAL APPROACH ACCORDING TO THE JUVENILE JUSTICE CODE

According to Article 8 of the Convention on the “Rights of the Child”, **States undertake to respect the right of the child to maintain his or her individuality**<sup>29</sup>. And if a child unlawfully loses part or all of his or her individuality, States Parties shall provide him or her with the assistance and protection necessary for the recovery of his or her individuality as soon as possible<sup>30</sup>.

In accordance with the spirit of the Convention, Article 14 of the Code of Juvenile Justice of Georgia establishes and reinforces the need for individual treatment. Individual treatment is a general principle and its restriction in any form, for example - due to the accused/convict, conviction and any other circumstances, is inadmissible. The judgment of the Criminal Chamber of the Supreme Court of Georgia of October 20, 2016 states: "If a juvenile has not been convicted (he or she has had his or her conviction revoked or overturned), a past conviction against him or her should not be taken into account." The Court of Cassation, in the best interests of the juvenile, correctly interpreted the provision of Article 73 of the Juvenile Justice Code.

According to Article 14 of the Juvenile Justice Code, at any stage of the juvenile justice process, the person conducting the proceedings must pay special attention to the juvenile

<sup>27</sup> See JJC of Georgia (for example, Article 71 -2 2) allows a plea agreement to be reached in juvenile justice;

<sup>28</sup> 34.2% of the 291 juveniles convicted in 2019 were sentenced on the basis of a plea agreement. Out of 181 juveniles convicted in 2018, the verdict was based on a plea agreement in 53% of cases.

<sup>29</sup> Convention on the Rights of the Child, 20 November 1989, Article 8, Part I;

<sup>30</sup> Right there. Article 8, Part II;

and the individual characteristics of the juvenile must be taken into account when making a decision.<sup>31</sup>

Individual characteristics of a juvenile are considered to be his/her age, level of development, living, upbringing and developmental conditions, education, health status, family situation and other circumstances that enable the assessment of the juvenile's character and behavior and his/her needs<sup>32</sup>.

An individual approach is one of the guiding principles in the juvenile system. The requirement of an individual approach is reinforced by the Additional Protocol to the Convention on the Rights of the Child, UN Guidelines and other international instruments.<sup>33</sup>

The individual approach is closely related to the best interests of the juvenile and implies that the best interests of the juvenile should be determined on a case-by-case basis, taking into account his or her specific characteristics, needs, experience, marital status.<sup>34</sup>

### 6.3. DIVERSION/MEDIATION AS AN ALTERNATIVE MECHANISM FOR PROSECUTION

The idea of resolving juvenile cases without trial and its mechanisms are firmly embedded in international juvenile justice instruments.

An international standard requires states to develop procedures that enable child cases to be heard and resolved without recourse to litigation or litigation ("diversion"), where appropriate and desirable, with full respect for human rights and legal guarantees.<sup>35</sup>

When responding to juvenile delinquency, countries are required by international standards to implement a "step-by-step" system of non-response measures, warning children, diverting them to trial and, in extreme cases, litigation<sup>36</sup>.

Article 8 of the Juvenile Justice Code, in accordance with international standards, gives priority to the juvenile justice process of Georgia, the Criminal Procedure Code of Georgia, the Code of Administrative Offenses, the Code of Imprisonment for juveniles and the juveniles themselves. Article 8 of the JJC imperatively establishes the assessment of the validity of the application of diversionary and restorative justice measures to juveniles, in

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<sup>31</sup> See Juvenile Justice Code, Article 14, Part 2;

<sup>32</sup> Right there. Article 14, Part 1;

<sup>33</sup> Additional Protocol to the UN Convention on the Rights of the Child, Article 8.1 (a); UN Guidelines, paragraphs: 10, 11, 14, 16; Lanzarote Convention, Article 31.1. See Explanatory Card of the Law of Georgia on the Draft Code of Juvenile Justice, p. 61;

<sup>34</sup> See Explanatory Card of the Law of Georgia on the Draft Code of Juvenile Justice, p. 61.

<sup>35</sup> Article 40 3 3 (b) of the Convention on the Rights of the Child; See also Rules 6 and 11 of the Beijing Rules.

<sup>36</sup> According to paragraph 27 of General Comment No. 10 (2007) prepared by the Committee on the Rights of the Child, the law should contain special provisions specifying in which cases diversion is permissible, and regulate the police, the prosecutor's office and/or other relevant decision-making power of agencies, in particular to protect the child from discrimination;

particular, in relation to the achievement of the objectives of the sentence. At the same time, the legislator considers the protection of the best interests of the child as a determinant of the use of an alternative measure in court proceedings.

Thus, it can be said that the aim of achieving justice for juveniles is to use the lightest measure of punishment and the use of alternative measures.<sup>37</sup>

A detailed list of diversion measures is provided in Articles 42 and 45 of the JJC. Article 45 of the JJC makes a special reservation, which makes it possible to instruct a minor: "Another duty that will help his resocialization-rehabilitation and prevention of new crimes". Thus, the legislator reserves the right to conclude a diversion, based on the individual characteristics of the juvenile and their best interests, to impose on him/her other obligations that will be useful for him/her and avoid the juvenile from coming to court.

The authorized decision-making body on diversion is the prosecutor and also the judge, in accordance with the law. Under current law, when a case is heard in court, the judge returns the case to the prosecutor for the purpose of diversion. In this part, the legislator puts the protection of the best interests of the child above the principle of adversarial proceedings, which is fully justified and is in line with the principles and spirit of juvenile justice.

The defense party has the right, at the pre-trial hearing stage, to file a substantiated motion with the Prosecutor's Office or - the court, after the pre-trial hearing. After making a decision on diversion, the prosecutor is authorized to enter into a contract with the juvenile on diversion and/or diversion and mediation, the validity of which, according to the AMC, does not exceed 1 year.

Article 40 of the AMC sets out the mandatory preconditions for diversion, according to which, when using diversion against a juvenile, there must be a standard of reasonable presumption that the juvenile has committed a serious or less serious crime, he must not be convicted, he must not be involved in a diversion program, etc. Only in the case of cumulative existence of all circumstances is it possible to apply diversion to a minor.

Diversion and mediation are not the only alternatives to prosecution. Moreover, the use of diversion should be preceded by the use of alternative, less painful, mechanisms such as: No interference, advance notice, use of care and social security procedures. The diversion clearance must be connected using these mechanisms. With the ineffectiveness of achieving the desired goal, taking into account the best interests of the juvenile.

**It is essential that the state respond to the use of alternative methods of dispute, as it does in sentencing and diversion.**

As for the statistics related to the diversion, the analysis of the annual reports submitted to the Parliament of Georgia by the General Prosecutor's Office of Georgia in accordance with the legislation shows that the tendency to use the diversion is mainly increasing after

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<sup>37</sup> **Note: If the case is still subject to court hearing, the JJC will determine the ranking of juvenile punishment in the following order:** Fines, house arrest, restriction of liberty and term of imprisonment; See: Juvenile Justice Code, Article 66.

the entry into force (2016) of the JJC<sup>38</sup>. The growing number of cases completed by the prosecutor's office for diversion of juveniles each year, and the decrease in the number of cases returned by the court to the prosecutor's office for diversion, indicates a positive trend in the practical implementation of its norms after the enactment of the Code. In 2019, this figure is slightly reduced. In particular, in 2019 - the percentage of diversion is 57% of the rate of initiation of criminal proceedings against juveniles. The same figure in 2018 was 59%. At the same time, in 2019, compared to last year, the number of crimes committed by persons aged 14 to 18 has been reduced by 81 units. If in 2018 the total number of juveniles deported and persecuted was 848, the same figure in 2017 is 767.

From 437 juveniles deported in 2019, 34 cases were returned by the court for diversion purposes. In 2018, out of 497 cases, the court returned 29 cases to the prosecutor's office.

It is true that the data for 2019 have increased compared to 2018, but taking into account various factors, the comparison of data from the last 2 years does not allow to say that the trend has clearly deteriorated. In 2019, as in 2018, the number of violators of the diversion agreement due to recidivism remains unchanged and still stands at 2%. However, if in 2018 there were 38 facts of the diversion agreement, the same figure is 17 in 2019, which should be positively assessed.

Violation of the terms of the diversion agreement and the rate of recidivism is one of the most important catalysts for evaluating the effectiveness of the diversion-mediation program. The Department of Supervision and Strategic Development of the Prosecutor General's Office of Georgia conducted a re-investigation of juvenile delinquency in 2010-2019, the results of which are reflected in the 2019 Parliamentary Report. According to the study, the recidivism rate is as follows: out of 2473 juveniles diverted in 2010-2018, 328 (13%) committed recidivism.

Based on the data of 2019, by analyzing the same data of 2010-2019, 345 out of 2910 juveniles committed recidivism, which is 11.85%. Consequently, the trend in this direction is positive, which once again confirms the result of the liberal juvenile justice and diversion/mediation liberal program in the country. However, the problem should be the small, child-friendly list of alternative services that the state should provide to the child to understand the crime. Otherwise, the impression is created that we are counting only the data, according to which the subject of a positive assessment becomes a larger number of children involved in the diversion mechanism, which is clearly incorrect.

In 2019, compared to 2018, the general rate of diversion is reduced in both minors and people aged 18 to 21 years. In 2019, 437 juveniles and 360 persons aged 18 to 21 were diverted. And in 2018 - 497 minors and 400 people aged 18 to 21<sup>39</sup>.

According to the official statistics of the General Prosecutor's Office of Georgia, as of 2019, the mediation rate for crimes committed by minors and persons aged 18-21 is 54%

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<sup>38</sup> "Report on the Activities of the Prosecutor's Office of Georgia for 2019", 15/05/2020 See [http://www.parliament.ge/ge/ajax/downloadFile/136661/1-6475\\_prokuratura\\_angarishi](http://www.parliament.ge/ge/ajax/downloadFile/136661/1-6475_prokuratura_angarishi) And "Report on the Activities of the Prosecutor's Office of Georgia in 2018" 14/05/2019 See [http://www.parliament.ge/ge/ajax/downloadFile/117914/1-9440\\_%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%90%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%90](http://www.parliament.ge/ge/ajax/downloadFile/117914/1-9440_%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%90%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%90).

<sup>39</sup> General Prosecutor's Office of Georgia, "Analysis of the Juvenile Diversion Mediation Program", P. 56, 2020. See <http://pog.gov.ge/uploads/429f65a7-ganrideba-2019-weli-converted.pdf>;

of the total number of cases in which the victim was involved. The mediation rate for individual juveniles and persons aged 18 to 21 is as follows: Out of 437 diverted juveniles, 419 juvenile cases were affected, and mediation led to the diversion of 254 juveniles. Thus, the mediation rate for juveniles in 2019 is 61360 From a diversified person aged 18 to 21, 337 cases were affected, and mediation led to the diversion of 154 persons. Thus, the diversion rate for people aged 18 to 21 is 46%. It should be noted that the mediation process was disrupted in 9 cases by the mistake of the prosecutor - Despite the presence of a victim in the case, the case was not referred to the Crime Prevention Center for mediation.<sup>40</sup>

Analyzing this and other data, it is clear that the state still has problems in planning and conducting preventive measures, taking into account the social, economic, cultural or mental health status of minors. **Therefore, taking into account similar and other relevant data, it is necessary to plan various social and rehabilitation measures, preventive activities for children in conflict with the law, which is crucial not only for reducing the number of relapses, but also for early prevention.**

### 6.3.1. OPTIONAL INTERVENTION

According to Rule 5.1 of the Tokyo Rules<sup>41</sup>, **"Where appropriate and compatible with the legal system, the police, the prosecution or other agencies involved in criminal matters should be given the right to prosecute (terminate the case) if they believe that public protection, crime prevention, respect for the law and It is not necessary to continue the proceedings to promote the protection of the rights of victims."** The same is reinforced by Rule 11 of the Beijing Rules<sup>42</sup>, which prohibits all interference if the offense is not serious and if a proper and constructive response has already been or is likely to be taken by the family, school or other informal institution of public control.

It is important that any interference by police officers is in the best interests of the child. Therefore, in order to increase the effectiveness of selective interference, it is necessary to increase communication between police officers, families, schools or other informal institutions that have the ability to respond to juvenile behavior without the response of law enforcement agencies.

### 6.3.2. ADVANCE WARNING

The police department has the option of using "advance notice" as an alternative form of punishment. In such cases, the use of verbal or written warnings by police officers may be crucial in the process of raising a particular child.

"Precautionary warning" is, on the one hand, an alternative measure of punishment, which avoids the juvenile's contact with law enforcement agencies and the court, but at the same time the warning itself has an educational function, which can also be defined as a preventive measure.

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<sup>40</sup> Right there, P. 56-57;

<sup>41</sup> Tokyo Rules;

<sup>42</sup> Beijing Rules Rule 11, comment.

It is necessary to increase the use of early warning by law enforcement in order to maximally exclude the interaction between a minor and law enforcement or the court in the event that the child, school and family or other informal actors achieve the goal.

It is necessary to establish both formal and informal "pre-warning" systems and increase its practical use as an alternative measure of punishment.

## 7. PRE-TRIAL HEARING

In accordance with Georgia's international legal obligations, the rights of minors must be protected both at the stage of investigation and during the trial, and a lawful, reasoned and fair verdict must be rendered. Based on these requirements, the JJC provides for a different procedure for juvenile cases, one of the essential conditions of which is the good knowledge of juvenile nature by the case management and its maximum consideration during the proceedings to protect the best interests of juveniles. In addition, the JJC defines the circle of persons who must participate in the justice process on a mandatory basis.

The hearing of a juvenile case in court is regulated by Article 17 of the JJC<sup>43</sup>. In a district (city) court, the case of a juvenile in conflict with the law is heard by a judge specializing in juvenile justice, and if the case is considered collegially, a judicial panel with at least two members, including the presiding judge, a juvenile justice judge. The case of a juvenile in conflict with the law shall be considered by the Court of Appeals and the Supreme Court of Georgia, with at least two members, including the President of the Chamber, a judge specializing in juvenile justice. In addition, the court is obliged to create a favorable environment for the juvenile during the hearing of the case, which, first of all, implies the creation of an adapted environment. For example, a judge should not wear a mantle; The child sits next to a parent or other appropriate parent, and so on<sup>44</sup>.

According to the first part of Article 55 of the Juvenile Justice Code, a juvenile accused can be known as a defendant for not more than 6 months before the pre-trial hearing due to 1 case of crime<sup>45</sup>. However, in practice such cases are rare and usually a pre-trial hearing is scheduled within 40 days. The appointment of a pre-trial hearing for a short period of time and the timely conduct of the case are in the best interests of the juvenile in court. If the juvenile accused is a prisoner, the total period of his detention prior to the pre-trial hearing shall not exceed 40 days after his detention. After this period, the juvenile defendant must be released from custody. If the pre-trial hearing is not held within the mentioned period, it shall be held in accordance with the rules established by the Criminal Procedure Code of Georgia.<sup>46</sup>

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<sup>43</sup> See Article 17 of the Juvenile Justice Code. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>;

<sup>44</sup> See "Juvenile Justice (textbook)", second edition, Maurice Shalikashvili, Givi Mikanadze, Tbilisi, Freiburg, Strasbourg, 2016;

<sup>45</sup> See Article 55 1 1 of the Juvenile Justice Code. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>;

<sup>46</sup> See Article 64 -2 2 of the Juvenile Justice Code. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>;



If the juvenile defendant has been remanded in custody, the judge is obliged to consider on his/her own initiative at the very first pre-trial hearing whether the party has filed a motion to change or revoke the detention.<sup>47</sup>

As for diversion, it can also be used after the case is taken to court. The court has the power to issue a reasoned decision on its own initiative or on the basis of a reasoned motion by a party to a pre-trial hearing or a hearing in a court of first instance and return the case to the prosecutor, who will offer the juvenile defendant a motion to dismiss. The court also hears the position of the other party before making this decision<sup>48</sup>.

## 8. MONITORING THE LEGAL STATUS OF CONVICTED/ACCUSED JUVENILES

### 8.1. METHODOLOGY

In August 2020, representatives of the Human Rights Center (HRC) and International Prison Reform (PRI), along with representatives of the National Mechanism for the Prevention of the Public Defender of Georgia, conducted monitoring visits to N8 Penitentiary Establishment. The monitoring included monitoring of the legal status of convicted and accused juveniles in Establishment N8. The lawyer of the Human Rights Center, together with an employee of the National Mechanism for Prevention Department of the Public Defender, visited the juvenile department of the penitentiary institution. In the monitoring process, the survey was conducted with questionnaires developed in conjunction with the National Mechanism for the Prevention of the Public Defender. The visit took place without prior notice from the administration. The monitors interviewed the accused and convicted persons placed in the juvenile department and the staff working with them. As part of the monitoring, the group also reviewed the relevant documentation.

During the monitoring, the safe cells and de-escalation rooms in Penitentiary Establishment N8 were inspected; Journal of de-escalation and persons in safe cells checked (as of 2020); In addition, an interview was held with the staff of the institution. For monitoring purposes, 15 juveniles were interviewed using a special tool.

To avoid the risk of COVID-19 spread, monitors were allowed to enter the facility in full protective gear after undergoing appropriate inspection procedures.<sup>49</sup>

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<sup>47</sup> See Article 64 3 3 of the Juvenile Justice Code. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>.

<sup>48</sup> See Article 39 -2 2 of the Juvenile Justice Code. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>;

<sup>49</sup> The monitoring was carried out within the framework of the EU-funded project - "Monitoring and Promotion of Government Obligations with the Involvement of Civil Society in the Field of Penitentiary and Probation" and the project funded by the Georgian Open Society Fund - "Monitoring of Penitentiary Institutions in Georgia". The Human Rights Center and International Prison Reform are fully responsible for the content of the problems, findings and trends identified as a result of the monitoring. Accordingly, the views expressed in this report can in no way be taken to reflect the position of donor organizations or the Office of the Public Defender.

## 8.2. JUVENILE PRISONERS

### 8.2.1. ADMISSION – ACCOMMODATION

During the monitoring it was found out that the accused and convicted juveniles are placed together.

According to the Nelson Mandela Rules, in order to facilitate social rehabilitation, prisoners should be placed in a facility close to their homes<sup>50</sup>. As far as possible, prisoners should be consulted about their place of initial placement, as well as when moving from one facility to another. According to European Prison Rules, when deciding whether to place a prisoner in a particular prison or ward, due regard should be paid to: A) to place pre-trial detainees separately from convicts<sup>51</sup>. The same principle is stated in Part 2 of Article 9 of the Detention Code of Georgia<sup>52</sup>. Nevertheless, in facility N8, defendants and convicts are placed together in cells. In addition, the procedures for admitting an accused/convict must not only meet the requirements of Georgian law, but also provide for adequate protection of human dignity, which in this case is not in line with international standards.

**Recommendation:** In order to ensure protection and proper individual treatment, it is necessary to place certain groups in a penitentiary institution separately from each other. This applies to both defendants and convicts, as well as juvenile and adult prisoners.

### 8.2.2. SO CALLED FULL CHECK

According to the information received as a result of the monitoring, when juveniles are initially admitted to a penitentiary institution, they are examined both by a doctor for medical purposes and by an employee of the institution for safety reasons. Also, after these checks, a juvenile scan is performed, but this is not a basic but an additional procedure. Checking juveniles for complete nudity remains a serious problem. According to the employee, the children also have to take off their underwear and make a jump. The problem is that, in most cases, the employee of the institution was present during the initial medical examination of the juvenile by a doctor.

According to Bangkok rules, aggressive (invasive) body searches should be replaced by alternative methods of testing, such as scanning, to avoid the harmful psychological and possible physical impact they receive<sup>53</sup>.

The Nelson Mandela Rules, which set out minimum standard rules for the treatment of prisoners, set out minimum standards for the effective management of prisons, including the protection of the rights of prisoners. It covers all aspects of prison management and

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<sup>50</sup> Mandela Rules, Rule 59. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules- E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules- E-ebook.pdf);

<sup>51</sup> See European Prison Rules, Rule 18.1. <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

<sup>52</sup> See Article 9, Part 2 of the Georgian Detention Code. <https://matsne.gov.ge/ka/document/view/91612?publication=34>;

<sup>53</sup> See UN General Assembly, Rules on the Treatment of Women Prisoners and Non-custodial Measures of Convicted Women (Bangkok Rules) Rule 19, 20, 6 October 2010, A/C.3/65/L.5;

sets minimum standards for the treatment of prisoners for both accused and convicted prisoners. These rules apply from the time a person is admitted to his or her release<sup>54</sup>.

Rule 1 of the Mandela Rules states that "the treatment of all prisoners shall be based on respect for their inherent dignity and worth as a human being"<sup>55</sup>. In addition, Mandela rules provide guidance on how to search and inspect prisoners and cells in such a way as to ensure proper order in the prison and, at the same time, to protect the dignity and privacy of these individuals. The rules also explain the role of medical staff in conducting an in-depth examination of the body<sup>56</sup>. The search must be conducted with respect for the object of the search, respect for human inviolability and privacy, observance of the principles of proportionality, lawfulness and necessity<sup>57</sup>.

According to CPT standards, a full examination should be conducted only on the basis of a specific suspicion<sup>58</sup>. A full personal search should only be carried out when there is a reasonable suspicion that the prisoner may be hiding items that would endanger himself or may be evidence of a crime, and such an inspection is necessary, as these items are unlikely to be found by ordinary search. Due to the invasive nature of body examination, a full examination can be depressing or demeaning to all detainees. Therefore, it is important that a full examination of a prisoner's body be performed only when it is strictly necessary to ensure the safety and order of prisoners and others in the facility.<sup>59</sup>

Part 4 of Article 75 of the Code of Detention of Georgia and the by-laws issued on its basis provide for personal examination of accused/convicts. The provisions of the penitentiary institutions specify that the personal examination of the accused/convict may be incomplete and complete. Incomplete personal examination of the accused is carried out before and after the presentation of the accused/convict to the photo- typist, doctor, investigator; Before and after meeting close relatives or other persons; When transferred to another cell; Also, in other cases based on the decision of the director or a person authorized by him/her. In addition, in accordance with the regulations of penitentiary institutions, by the decision of the director or a person authorized by him, a full inspection may be carried out in other cases as well.

**The above-mentioned legislative acts are of a blanket nature. The Human Rights Center considers that the legislation should not allow for a routine full screening and should be based solely on the principles of individual risk assessment, proportionality and necessity**

<sup>54</sup> See Mandela Rules, Rule 1. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>55</sup> See Mandela Rules, Rule 1. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>56</sup> See Mandela Rules, Rule 52. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

<sup>57</sup> See Mandela Rules, Rule 50. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>58</sup> See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Bulgaria, CPT/Inf (2004) 21, Strasbourg, Council of Europe, 2004, 119. <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-two-reports-on-bulgaria>;

<sup>59</sup> See Association for the Prevention of Torture (APT). [http://www.apr.ch/detention-focus/en/detention\\_issues/6/](http://www.apr.ch/detention-focus/en/detention_issues/6/); <sup>59</sup> See Nelson Mandela Rules, Rule 60(2). [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

**by the prisoner. At the same time, it is important that a full inspection be carried out in exceptional cases and only with appropriate written justification. This, in turn, is important to avoid unwarranted interference with a person's private life.**

As for the issue of naked examination of children, according to the rules of Nelson Mandela, full examination of the body should be avoided as much as possible in the case of visitors and it should not be used against children.<sup>60</sup>

**The Human Rights Center believes that body stripping and invasive examination procedures should be strictly regulated by law. There should be specific instructions, especially when searching for and examining child prisoners. In addition to the full inspection, the problem is the fact that the law does not separate the full inspection and the internal inspection and does not set out the procedures to be followed in the case of each use.**

## 8.3. INFORMING ABOUT RIGHTS AND RESPONSIBILITIES

### 8.3.1. REGIME IN THE INSTITUTION AND DISCIPLINARY PROCEEDINGS

The monitoring revealed that when entering juveniles in N8 facility, their rights and responsibilities are not explained. Also, children are not informed about the mechanism of writing a request-complaint in case of violation of their rights in the institution.

Rule 54 of the Nelson Mandela Rules provides a detailed list of information that should be provided immediately to any prisoner. The rules unequivocally recognize the need for any prisoner to provide relevant information upon admission to institutions, regardless of their legal status<sup>61</sup>. Accordingly, pre-trial detainees should receive the same information as convicted detainees. According to Rule 54, prisoners must also be informed of the so-called "Prison Law" and "Prison Rules". This includes all regulations relating to the rights and duties of prisoners, including, for example, the use of force and restraint by prison staff. Rule 55 clarifies the form of information provided to prisoners. Prison authorities are obliged to provide information to all prisoners in a language and format they understand<sup>62</sup>.

According to European Prison Rules, prisoners should be informed frequently, in writing and orally, of their rights, duties and rules governing prison discipline in a language they understand, upon admission and thereafter<sup>63</sup>. Prisoners should be allowed to own a written version of the information provided to them<sup>64</sup>.

In addition, according to the "Nelson Mandela Rules", the information provided should

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<sup>60</sup> See Nelson Mandela Rules, Rule 60(2). [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

<sup>61</sup> See Mandela Rules, rule 54. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>62</sup> See Mandela Rules, rule 55. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>63</sup> See European Prison Rules, Rule 30.1. <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>;

<sup>64</sup> See European Prison Rules, Rule 30.2. <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>;

include informing the prisoners about positive measures, which should be aimed at preventing possible problems.<sup>65</sup>

In addition to the above, according to the Detention Code of Georgia, the accused person/convict admitted to the institution should be immediately given the opportunity to obtain written information about his/her rights and responsibilities, including the rule of law on appeals.<sup>66</sup> Also, the illiterate accused/convict should be provided with information orally, about which the authorized person shall draw up a protocol, which shall be signed by the accused/convict.<sup>67</sup>

**Recommendation:** Upon receipt, any prisoner should be provided with the following written information immediately: (A) the Law on Prisons and the Rules of Procedure of the Prison; (B) its rights, legal means of obtaining information, access to legal aid, including free legal aid, and application or grievance procedures; (C) its obligations and disciplinary sanctions.

### 8.3.2. PLACEMENT IN A SAFE CELL AND DE-ESCALATION ROOM

Despite the goals of juvenile justice and the priority of protecting the best interests of the child, cases of placement of juveniles in safe cells were observed during the monitoring in Establishment N8. According to the administration, during the confrontation between the children, the employees of the institution try to calm the situation by talking or changing the cell for the juvenile. However, during the monitoring, the juvenile was placed in a safe cell, due to the fact that he had a conflict with his cellmate. In facility N8, on the ground floor, in the secure cells located between solitary confinement cells, juveniles are also placed separately from adult prisoners. The standards of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are in line with international standards and require that juveniles be placed in a facility specifically designed for them, but if placed in an adult facility, this should be done in a separate unit. However, appropriate measures should be taken to isolate them to avoid undesirable influences, dominance and humiliation among them.<sup>68</sup>

During the monitoring process, it was found out that a mattress was laid on a bed made of concrete in a safe cell. In addition to the unsatisfactory sanitary-hygienic condition in a safe cell for one prisoner, there is dampness. A window built into the cell, with invisible glass, cannot produce enough natural light. Natural ventilation of the cell does not occur and artificial ventilation is insufficient. Cell-mounted camcorder covers the entire cell area, including the toilet bowl. There is only one oxidized, damaged and contaminated anti-vandal toilet in the cell, with a washbasin on top.

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<sup>65</sup> See Mandela Rules, rule 54. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>66</sup> See Part 1 of Article 97 of the Detention Code of Georgia. <https://matsne.gov.ge/ka/document/view/91612?publication=34>.

<sup>67</sup> See Part 2 of Article 97 of the Detention Code of Georgia. <https://matsne.gov.ge/ka/document/view/91612?publication=34>;

<sup>68</sup> See Committee on the Prevention of Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 103;

The UN Standard Minimum Rules for the Treatment of Prisoners stipulate that the place used by prisoners, especially the bedroom, must fully meet sanitary requirements. However, due attention should be paid to climatic conditions, especially cubic volume of air, minimum area, lighting, heating and ventilation<sup>69</sup>. In all facilities where prisoners live and work: the windows should be large enough for prisoners to read and work in daylight and should be designed to provide a supply of fresh air, regardless of whether there is an artificial ventilation system; Artificial lighting should be sufficient for prisoners to be able to read and work without the risk of impaired vision<sup>70</sup>. Recommendation CM/REC (2008) 11 of the Committee of Ministers of the Member States on Juvenile Offenders Subject to Sanctions or Measures of European Rules sets out important standards for juveniles. In particular, according to this recommendation, minors should have unrestricted access to bathrooms and toilets that are hygienic and allow for isolation.<sup>71</sup> In addition, there should be an opportunity for the juvenile to take a climate-friendly bath or shower on a daily basis. Minors should maintain personal hygiene, keep their own clothes and bedroom clean, and management should teach them how to achieve this and provide them with the necessary facilities.<sup>72</sup>

**Recommendation:** It is necessary to create a safe environment in de-escalation rooms, including - by covering the walls and floors with soft materials; By placing a soft bed. In addition, in order to create minimum living conditions for prisoners, proper sanitary and hygienic conditions, lighting and ventilation should be provided in penitentiary institutions.

### 8.3.3. EDUCATION-REHABILITATION

According to the Juvenile Justice Code, a juvenile accused/convict must be able to receive a full general education. It is obligatory for the juvenile accused/convict to provide primary education and basic education<sup>73</sup>. In addition, certain standards for living conditions are set by the UN General Assembly Resolution 45/113 "Rules for the Protection of Imprisoned Juveniles" (Havana Rules)<sup>74</sup>. Juvenile institutions should be integrated into the social, economic and cultural environment of the community. Rehabilitation goals should be implemented in juvenile institutions, protection of juvenile privacy, relationship with peers, participation in sports, physical, leisure planning activities. According to the Mandela Rules, prisons must provide education, vocational training and employment, as well as any other assistance needed for rehabilitation, resocialization and reintegration. This serves the primary purpose of using detention - to protect the public and reduce recidi-

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<sup>69</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 13. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).

<sup>70</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 14. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>71</sup> See Recommendation CM/Rec (2008) 11 of the Committee of Ministers of the Council of Europe on juvenile offenders subject to sanctions or measures", Article 65. <https://www.refworld.org/pdfid/4a7058c02.pdf>;

<sup>72</sup> See Recommendation CM/Rec (2008) 11 of the Committee of Ministers of the Council of Europe on juvenile offenders subject to sanctions or measures", Article 24. <https://www.refworld.org/pdfid/4a7058c02.pdf>;

<sup>73</sup> See Juvenile Justice Code, Article 84. <https://matsne.gov.ge/ka/document/view/2877281?publication=16>;

<sup>74</sup> See UN General Assembly Resolution on the Protection of Juveniles Imprisoned (Havana Rules), Rule 28; [https://www.unodc.org/pdf/criminal\\_justice/United\\_Nations\\_Rules\\_for\\_the\\_Protection\\_of\\_Juveniles\\_Deprived\\_of\\_their\\_Liberty.pdf](https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf);

vism. For such programs to be successful, they need to be individually customized. The prison must recognize the important role played by its staff in the rehabilitation of prisoners<sup>75</sup>. All juvenile prisoners subject to compulsory education should have access to such education<sup>76</sup>.

There is no school in facility N8 that would be affiliated with one particular public school. The institution opens a special journal for the juvenile at the school where he/she was enrolled before the arrest and the teachers who teach the juveniles in the institution send the entries in the special journal according to the schools. According to the available statistics, in July 2020, 13 juveniles were enrolled in public school in facility N8, 5 of them had successfully completed the educational process, and 2 - had failed; Also, 1 entrant participated in national exams. However, during the monitoring period in early August, all types of educational and rehabilitation programs for juveniles were suspended in order to combat the spread of Covid 19 in Establishment N8. Also important is the fact that minors were not properly informed about educational processes and outcomes. In addition, the children did not know which school certificate they would receive if they graduated from the detention facility and whether their detention would be recorded.

**Recommendation:** It is essential to provide minors with all the necessary information regarding education. It is also necessary to restore the work of social workers and their involvement in order to increase the motivation of minors to study.

## 8.4. DETENTION CONDITIONS

Living conditions are governed by the UN Standard Minimum Rules for the Treatment of Prisoners (the so-called Mandela Rules). Both the Mandela Rules and the European Prison Rules indicate that they should be applied to all prisoners without discrimination in any form. The prison administration is obliged to adapt the living conditions and other aspects to the needs of persons with physical, mental or other disabilities in order to ensure their full, effective and equal access to prison life.<sup>77</sup> In addition, the services of the detention facility/detention facility where the juvenile accused/convict is housed must meet the requirements of his or her health and dignity<sup>78</sup>. Juveniles placed in pre-trial detention facilities should be placed separately from adult detainees, as well as in a special unit of the facility where adult detainees are held. Throughout the pre-trial detention period, the juvenile should be provided with care, protection and necessary individual assistance - social, psychological, medical, physical, as well as - assistance in the field of education and vocational training, which they may need according to age, sex and personality<sup>79</sup>.

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<sup>75</sup> Updated UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rules 4, 88, 89, 91-94, 96-108. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E- ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E- ebook.pdf);

<sup>76</sup> See Council of Europe Committee of Ministers Recommendation Rec (2006) 2-rev to Member States on European Prison Rules 35-2. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809ee581](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581).

<sup>77</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 5. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>78</sup> See Juvenile Justice Code, Article 79. [https://matsne.gov.ge/ka/document/view/2877281?publication=16](https://matsne.gov.ge/ka/document/view/2877281?publication=16;);

<sup>79</sup> See UN Standard Minimum Rules for Juvenile Justice ("Beijing Rules") Rule 13.3-13.4. <https://bit.ly/2GrYOEL>.

There are 9 living cells in the juvenile department of the N8 facility, each cell has four beds. In addition to the living cells, the juvenile department also has two walking areas, one classroom, a library, one exercise room, a doctor's office, two individual meeting rooms, of which one room is currently used for the staff of the institution. Play equipment is placed in the walking areas. The gym, which has three exercise machines, children can enter only on weekends, once a day.

During the monitoring period, the living cells of N8 facility were hot, as the existing natural and artificial ventilation is insufficient. Also, cockroaches' nest in the cells, which causes great discomfort to children. Residential cells are disinfected only once a month. According to the facility's daily schedule, juveniles enjoy the right to walk for one hour during the day, and time is added for exercise and play. They can take a shower three times a week. They can also use the services of a barber. Juveniles in the facility are fed and serviced by adult inmates employed in the agricultural service. Juvenile detainees also have contact with adult detainees when they are transferred on a date or taken to court.

**Recommendation:** The UN Standard Minimum Rules for the Treatment of Prisoners provide that the general living conditions covered by these Rules, including lighting, ventilation, temperature, sanitation, food, drinking water, fresh air and exercise, personal hygiene, health and adequacy Rules must be followed in all prisons, without exception<sup>80</sup>. Therefore, the administration of the penitentiary institution should eliminate the existing problematic issues in the shortest possible time and bring it in compliance with international standards.

According to the rules of Nelson Mandela, the state is obliged to take care of the health of prisoners. Prisoners should enjoy the same standards of health care that are available to the general public. They should have access to medical care free of charge and without discrimination because of their legal status<sup>81</sup>. When a state deprives a person of his or her liberty, he or she undertakes to provide treatment and protection and to promote his or her physical and mental health and well-being. Therefore, the government should devote adequate resources to ensuring that the health care of the prisons is adequate, taking into account the number and needs of the prison contingent. Consequently, states have a special obligation to care for detainees, as prisoners have no choice but to depend on prison authorities to protect and promote their health. Prisoners, as human beings, retain the right to health as provided for in Article 12 of the ICCPR and Principle 9 of the Basic Principles for the Treatment of Prisoners. WHO and UNODC noted that "the management and coordination of all relevant agencies and resources to promote the health and well-being of prisoners is the full responsibility of the State, and that" Ministries of Health should provide health care in prisons and be accountable in this regard.

There is a doctor's office in the juvenile department of N8 institution, where the necessary medicines are also stored. A doctor is present on the spot during the day. At night, if necessary, the doctor on duty at the N8 facility comes to see the minors. Minors also have the opportunity to use the services of a dentist. The monitoring revealed that the vast majority of juveniles in detention are tobacco users. According to the juveniles, their administration distributes several cigarettes a day, which is intended for them. Minors also buy tobacco

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<sup>80</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 42. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>81</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 24. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);



at the facility store. It is noteworthy that no one works with minors on the harm of smoking and quitting smoking.

**Recommendation:** It is important to set up smoking cessation programs in juvenile detention facilities, to provide comprehensive information on the dangers of tobacco to juveniles through various means.

## 8.5. MEALS

Rule 42 of the Mandela Rules provides a list of living conditions that must be provided for all prisoners, without exception<sup>82</sup>. Prisoners should be provided with food of adequate nutritional value and quality, as well as water at all times. It is inadmissible to ban food and water as a disciplinary measure. They must be delivered without exception<sup>83</sup>.

According to the agenda of the facility N8, three meals are provided for minors (breakfast - 10:30 - 11:00, lunch 14:00 - 14:30, dinner - 17:30 - 18:00). According to children, the food distributed is, in many cases, tasteless and unacceptable to them. The fruit on the food menu is about once a week: one apple or nectarine per child. Children are mainly fed with food received in parcels and purchased at the institution store. In the 2019 parliamentary report, the Public Defender of Georgia addressed a recommendation to the Minister of Justice to ensure four-time healthy meals for juvenile prisoners<sup>84</sup>.

**Recommendation:** Prisoners should be provided with adequate nutritional value and quality food, as well as water, at all times.

## 8.6. CONTACT WITH THE OUTSIDE WORLD

Systematic contact with the outside world plays an important role in the process of rehabilitation and resocialization of prisoners. Accordingly, management should facilitate such contact as much as possible. Under Mandela Rule 43 3 3, disciplinary sanctions or restrictive measures should not include a ban on family contact. This means that restricting contact with the family is allowed only for a limited period and only if it is strictly required by the interests of safety and order.<sup>85</sup>

According to the second part of Article 87 of the Juvenile Justice Code, a juvenile defendant has the right to have no more than 4 short appointments per month. He also has the right, under the control of the institution, to have 3 telephone conversations at his own expense, each - not more than 15 minutes, and to receive letters and parcels without restriction. These rights may be restricted by order of an investigator or prosecutor or by a court decision, taking into account the best interests of the juvenile. In the initial period of

<sup>82</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 42. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>83</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rules 22, 35, 42, 43. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

<sup>84</sup> See the ombudsman's 2019 Parliamentary Report, p. <http://www.ombudsman.ge/res/docs/2020040215365449134.pdf>;

<sup>85</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 43. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf);

imprisonment or deprivation of liberty, when the psychological state of the juvenile is severe and he has to adapt to a closed space, it is very important for him to have contact with family members at this time. According to international standards, human relationships should be face-to-face and direct (without physical barriers) and more than fast-paced and casual, allowing for empathetic (compassionate) communication between people. Contact should not be limited to relationships established by prison rules or regulations, criminal proceedings or medical needs.<sup>86</sup>

During the monitoring period, 5 out of 20 juveniles had limited access to telephone conversations.

During the interview with the monitoring group, the juveniles talked about the desire and need for contact with family members. In N8 facility, short appointments are held in glass-enclosed booths, where minors have contact with family members by telephone and are not allowed physical contact.

**Recommendation:** It is important to promote enhanced contact with family members for juvenile offenders. Also, allow minors to have direct contact with family members during short appointments without a glass barrier.

## 9. SUMMARY RECOMMENDATIONS

- In order to ensure protection and proper individual treatment, it is necessary to place certain groups in a penitentiary institution separately from each other. This applies to both defendants and convicts, as well as juvenile and adult prisoners;
- Legislative changes should rule out the possibility of a full inspection on a routine basis and should be based solely on the principles of individual risk assessment, proportionality and necessity by the prisoner. At the same time, it is important that a full inspection be carried out in exceptional cases and only with appropriate written justification. Body stripping and invasive examination procedures should be strictly regulated by law. There should be specific instructions, especially when searching for and examining child prisoners;
- Legislation should distinguish between full inspection and internal inspection and should establish procedures for each use;
- Upon receipt, any prisoner must be provided with the following written information immediately: (A) Prison Law and Prison Rules; (B) its rights, legal means of obtaining information, access to legal aid, including through free legal aid, and application or grievance procedures; (C) its obligations and disciplinary sanctions;
- It is necessary to create a safe environment in the de-escalation rooms, including - through soft material walls and floors; By placing a soft bed. In addition, in order to create minimum living conditions for prisoners, proper sanitary and hygienic conditions, lighting and ventilation should be provided in penitentiary institutions;
- It is essential that minors be provided with all necessary information regarding access to education. It is also necessary to restore the work of social workers and their involvement in order to increase the motivation of minors to study;
- The UN Standard Minimum Rules for the Treatment of Prisoners provide that the gen-

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<sup>86</sup> See Essex Document 3, International Prison Reform, and University of Essex, op. cit, Note 4, p. 89. See <https://rm.coe.int/16806f6f50>.

eral living conditions covered by these rules, including lighting, ventilation, temperature, sanitation, food, drinking water, fresh air and exercise, personal hygiene, health care and adequate space Must be in every prison, without exception<sup>87</sup>. Therefore, the administration of the penitentiary institution should eliminate the existing problematic issues in the shortest possible time and bring it in compliance with international standards;

- It is important to set up smoking cessation programs in juvenile detention facilities, to provide comprehensive information on the dangers of tobacco to juveniles through various means;
- Prisoners should be provided with adequate nutritional value and quality food, as well as water, at all times;
- It is important to promote enhanced contact with family members for juvenile offenders. Also, allow minors to have direct contact with family members during short appointments without a glass barrier.

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<sup>87</sup> See UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rule 42. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf).