

# MECHANISMS OF PROTECTION OF MINORS' RIGHTS IN THE PROCESS OF ADMINISTRATION OF JUSTICE HAVE IMPROVED

## **i** DRAFT LAW, INITIATOR

**Draft law:** [On Amendments to the Juvenile Justice Code](#)

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## **i** ESSENCE OF THE DRAFT LAW

The amendments proposed by the draft law envisage guarantees of protection of the interests of minors during criminal proceedings. According to the [explanatory note](#), as a result of passing the amendments, the risks of inflicting harm on minors during expert examination in the process of administration of justice (secondary victimisation) is significantly reduced.<sup>1</sup> Specifically:

- The list of persons who are required to specialise in order to participate in juvenile justice is expanded to include an expert who has to communicate with a minor during expert examination.
- A new rule of interviewing a minor witness and a minor victim is envisaged during the process of an interview in the presence of a magistrate judge and during a crime re-enactment.

## 1. SPECIALISED EXPERT IN JUVENILE JUSTICE

### **i** CURRENT WORDING

[The Code] provides a list of persons<sup>2</sup> who are considered persons administering juvenile justice procedure/party to juvenile justice procedure and who should have corresponding specialisation.

### **i** PROPOSED AMENDMENT

If conducting an expert examination during juvenile justice procedure involves communication with a minor, only an **expert specialised in juvenile justice** has the right to participate as an expert.

If, in the process of expert examination, it is necessary to involve an expert who is not specialised in juvenile justice, **a psychologist or a coordinator of witnesses and victims** participates in the expert examination.

A psychologist is to immediately contact and provide psychological support to the minor.

## 2. MECHANISMS OF PROTECTION OF A MINOR DURING A CRIME RE-ENACTMENT

### **i** CURRENT WORDING

When a crime against sexual freedom and sexual inviolability is being investigated, there is no restriction on repeat interview of a minor witness or repeat interview in the presence of a magistrate judge after initial questioning.

### **i** PROPOSED AMENDMENT

- Repeat interview of a minor is only allowed **as an exception in order to acquire additional information** or if there is another objective reason, **with the prosecutor's preliminary consent**. At this time, a **risk of inflicting a possible harm on a minor must be evaluated and the best interests of a minor must be considered**.

- During a court hearing, in the event a repeat interview of a minor does not occur during the trial, a protocol of their questioning shall be published (pre-trial testimony). It is also inadmissible to base a guilty verdict solely on a pre-trial testimony **if it is not confirmed by other evidence proving a defendant's culpability**.

## ★ EVALUATION

The Parliament adopted the Juvenile Justice Code in 2015, which was a step forward for the system of justice.<sup>3</sup> Since the Code came into force, shortcomings have surfaced and need to be addressed by additional legislative amendments. The Public Defender mentioned this in a special report. The new developments merit a positive assessment, since they diminish a risk of inflicting harm on minors as a result of involvement in the juvenile justice procedure.

According to international standards, considering the best interest of minors, the participation of minors in investigations and criminal justice proceedings must be reduced to the minimum.<sup>4</sup>

The Public Defender's special [report](#), *The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children*, highlights the problematic aspects that exist with regard to the protection of the rights of minors in practice. Specifically, the report states 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."<sup>5</sup>

One of the recommendations made by the Public Defender says that **"an investigative experiment, due to the high risk of secondary victimisation, should be carried out only in exceptional cases, during which victims should be protected against traumatisation"**<sup>6</sup>, which is envisaged by the presented initiative. However, in the exceptional cases of repeat interviews with minors, it is expedient for a preliminary consent from the court rather than a prosecutor to be required, which would serve as a better guarantee of the protection of a minor's rights.

At the same time, in connection with the circumstance that the right of defence to cross-examine<sup>7</sup> witnesses will be restricted, the amendments contain a clause that a guilty verdict cannot be based solely on publishing testimony given during investigation (interview protocol/pre-trial testimony) as evidence unless it is confirmed by other evidence proving culpability.

Therefore, the presented amendments with regard to the protection of the rights of minors merit a positive assessment. Their proper implementation in practice will reduce the risks of inflicting harm on minors involved in juvenile justice proceedings.

1 Explanatory note on the Draft Law of Georgia on Amendments to the Juvenile Justice Code: <https://info.parliament.ge/file/1/BillReviewContent/282442>

2 Person administering juvenile justice procedure/party to juvenile justice procedure - a judge, investigator, prosecutor, police officer, lawyer, social worker, mediator, probation officer, coordinator of witnesses and victims, the staff of a juvenile rehabilitation facility or detention facility who are party to the juvenile justice procedure and who have completed special training in juvenile justice. Juvenile Justice Code, Article 3, part 6, <https://matsne.gov.ge/document/view/2877281?publication=19>

3 See Transparency International Georgia, Performance of the Parliament's 8th convocation, 22 February 2017, p. 9, <https://bit.ly/2ZgMYXK>; Coalition for Independent and Transparent Judiciary welcomes the introduction of the Code of Juvenile Justice, 16 April 2015, <https://bit.ly/30JFZY8>

4 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, The Economic and Social Council, <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

5 See Public Defender's special report: The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, Tbilisi, 2021, p. 56, <https://uni.cf/32o2emO>

6 See Public Defender's special report: The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, Tbilisi, 2021, p. 93, <https://uni.cf/32o2emO>

7 Cross-examination - questioning of a witness called by the other party during a case hearing (for example, prosecution questioning a defence witness), [https://court.ge/geo\\_dictionary](https://court.ge/geo_dictionary)