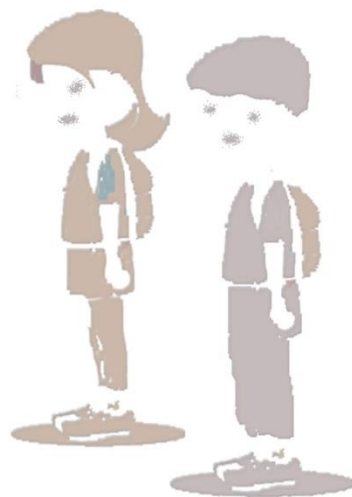


# Challenges in the Protection of the Rights of the Child



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## Human Rights Center



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## INTRODUCTION

Human Rights Center has been working on the promotion and protection of the children's rights for years. In the frame of the free legal aid program the lawyers observed social and legal problems in the defense of children's rights.

The below analytic document aims to summarize the systemic problems and challenges in the protection of children's rights based on the analysis of the cases processed by HRC, to compare the findings with the sources of the international law and to elaborate respective conclusions and recommendations.

The document reviews and classifies the forms of violence against children in different social circles based on the examples of the cases proceeded by the HRC: in the family, in the society and in school. Additionally, the respective judgments of the European Court of Human Rights are analyzed in relation with concrete cases. The document underlines miscarriages in the judiciary system identified based on the analysis of juvenile cases, which are related with the creation of irrelevant environment for minor witnesses, frequent cases of engaging juveniles in crimes, the practice of diversion and plea agreements, and more. Also, the analytic document evaluates the effectiveness of the response of the Social Service to the facts of children's rights violation.

As a conclusion, the analytic document summarizes the key findings from the analysis of the international and national legislation, case law of the ECtHR and practice of Human Rights Center. Additionally, the document lists recommendations how to solve some identified problems.

## VIOLENCE AGAINST CHILDREN AND FORMS OF VIOLENCE

It is important to clarify who is a *child* and what is the concept of *violence* in accordance with the Georgian legislation to discuss the violence against child and forms of violence.

In accordance with the Article 3 of the Code on the Rights of the Child of Georgia, a child is a minor under the age of 18<sup>1</sup>.

As for the violence, it has longer definition in the law and may be explained differently. For example, it may occur by negligence, coercion; physical, psychological, economic and sexual violence. The Law of Georgia on the Elimination of Violence against Women and/or Domestic Violence, Protection and Assistance of Violence Victims" determined various forms of violence:

negligence of legal interests of a minor is failure by a parent(s), another legal representative and/or another responsible person to satisfy physical and psychological needs of a minor,

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<sup>1</sup> The Code on the Rights of the Child of Georgia, Article 3 (a)

protect him/her from danger, restrict his/her right to basic education, or failure to perform actions necessary to use medical and other services, or other;

- coercion is compelling a person by using physical or psychological force to carry out or fail to carry out an act;
- sexual violence is a sexual act by violence or threat of violence, or by taking advantage of the victim's helplessness; sexual act or other acts of sexual nature or child sexual abuse;
- physical violence is beating, torture, damage to health, illegal deprivation of liberty or any other action that causes physical pain or suffering;
- psychological violence includes offence, blackmailing, humiliation, threats, or any other action that violates a person's honour and dignity;
- economic violence is an act, which causes restriction of the right to have food, dwelling and other conditions for normal development, to enjoy property and labor rights<sup>2</sup>.

Although the violence against children is prohibited by the international and national laws, it is one of the most common problems in the world. It occurs in every country, irrespective of people's geographical origin or social stratum. Albeit in different degrees, violence can deprive children of their well-being and the ability to learn and socialize normally, and it can have devastating effects on their adult-lives. Violence against children takes many forms, particularly in the so-called circles of trust<sup>3</sup>.

## **ANALYSIS OF THE FACTS OF VIOLENCE AGAINST CHILDREN BASED ON THE CASES PROCESSED BY HRC**

### **• Domestic Violence against Children**

The practice proved that children most frequently become victims of violence in their families. In accordance with the Criminal Code of Georgia, domestic crime is a crime liable under the Criminal Code of Georgia committed by one family member against another family member. The family member can be: mother, father, grandfather, grandmother, spouse, child (stepchild), stepparent, grandchild, etc.<sup>4</sup>

Human Rights Center worked on the case, where stepfather was physically and psychologically abusing minor stepchildren. The mother was working abroad and had left her three children in Georgia because of social problems in the family. There are multiple evidence in the case files; among them intimidating text messages of the stepfather to the children's mother, where he demands the woman to send money or otherwise he would punish her children accordingly. After another violent incident, the children reported to the police. The stepfather was arrested

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<sup>2</sup> The Law of Georgia on the Elimination of Violence against Women and/or Domestic Violence, Protection and Assistance of Violence Victims, Paragraph 4

<sup>3</sup> [Violence against children](#), Council of Europe – Rights of the Child

<sup>4</sup> The Criminal Code of Georgia, Article 11<sup>1</sup>

but he left the custody under bail. Currently, the investigation is ongoing under the Article 126<sup>1</sup> of the Criminal Code of Georgia that refers to violence, regular insult, blackmail, humiliation by one family member of another family member. Nowadays, the children no longer live with the stepfather but they suffer with the post-traumatic stress that is demonstrated into various forms. For example, 13-years-old girl injured herself; she has difficulties of socialization. Based on the recommendation of the HRC lawyer, psychologist is working with the children.

Unfortunately, facts of sexual violence against minors in the families are also frequent. In one of the cases processed by Human Rights Center, stepfather was exercising psychological, physical and sexual harassment against a girl from the age of 16 in 2020-2021. His wife and his biological underage children were also subjects of physical and psychological violence. Currently, the case is being investigated.

Human Rights Center observed that negative impact of economic hardship on domestic violence is urgent problem. Often, mothers cannot afford to find alternative accommodation. There are not enough shelters for the victims of violence in the country. Therefore, the female victims of domestic violence, because of financial hardship, have to continue living together with the harasser and have children with them. It is important to mention the judgment of the European Court of Human Rights in relation with this issue. In one of the disputes, a woman lodged criminal lawsuit against a husband, who exercised violence against the woman and her children; among them, their daughter became victim of sexual violence. The domestic court did not satisfy the request of the wife to order the harasser man to leave the house because the judge stated the court could not restrict access to private property for the defendant unless the divorce procedures are over. As a result, the mother and the children had to change the house and school. ECtHR ruled that the State failed to protect the rights of the applicant and her children from the violence of the spouse that violated the Articles 3 and 8 of the European Convention on Human Rights that guarantees protection from inhuman and degrading treatment, respect for private and family life<sup>5</sup>.

HRC observed other domestic violence related problems too:

- Not-reporting investigative bodies about the domestic violence against children is problematic, because sometimes one of the parents try to cover the actions of the harasser parent;
- It is problematic to grant victim status to a minor, who cannot speak yet and parent/s hide the violence;
- Divorced parents often psychologically abuse a child when they try to identify the residence place for the child. For example, in one of the cases processed by HRC, mother psychologically abused a child for his good relationship with the father.

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<sup>5</sup> [E.S. and Others v. Slovakia](#), no. 8227/04, 2009, (ECtHR)

- Execution the alimony payment is also problematic when the parent does not have official income and state institutions do not possess effective mechanisms to compel the parent to pay the alimony. As a result, only one parent is responsible to take care of the children.

Georgia joined the Convention on the Rights of the Child adopted by the UN General Assembly in 1994. In accordance with the Article 19, the state parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse<sup>6</sup>.

The States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being. Also, it is essential that a child shall not be separated from his or her parents against their will, except when separation is necessary for the best interests of the child<sup>7</sup>.

- **Violence against Children in the Society**

A minor may often become subject of violence from the side of the society because of various innocuous reasons.

One of the cases processed by Human Rights Center was about the attempt to kill a juvenile because of mobile phone. The boy was subject of humiliation because of his Armenian origin. Additionally, he was target of physical violence from adult brothers, who beat him and injured his head with blunt object. The victim needed surgical operation. Currently, the investigation is ongoing into intentional attempt of murder of underage person; the defendants are wanted.

Children often live in stressful environment because of threats existing in the society. For example, HRC worked on the case, where a man witnessed how his neighbor killed a father. The man reported to the police that caused deep conflict between the neighbors. The neighbor was convicted and sent to imprisonment for killing his father by negligence as well as for unlawful purchase-possession of firearms. After leaving the prison, the convicted man had pathological drunkenness and used to be particularly aggressive towards the family of the man, who reported to the police. Minor member of the family was subject of his aggression too – he used various forms of violence against the family members, including the minor, like insulting, cursing, beating, etc. The case was problematic because the neighbor abused and threatened the parents of the child often in the presence of the minor. Sometimes, the child woke up at night when the harasser was hitting the iron door, cursing and threatening his family members shouting “I will kill you all like pigs!” HRC lawyer requested the investigation to separate the fact of intentional humiliation of a minor as a separate criminal case and based on the lawyer’s recommendation, psychologist was invited to work with the child. The juvenile member of the family received victim status.

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<sup>6</sup> See: the UN Convention on the Rights of the Child, Article 19 (1)

<sup>7</sup> See: the UN Convention on the Rights of the Child, Articles 3, 9

Key duty of the state is to ensure safety of a child in the society. Therefore, the State made a step forward and adopted the Code of Georgia on the Rights of the Child in alignment with the UN Convention on the Rights of the Child, which aims to resolve the issues like: to ensure the welfare of the child by respecting his/her best interests, dignity, safety, right to life and health, education, development and realization of other interests development and other interests of the child, without exercising unequal treatment<sup>8</sup>. Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding<sup>9</sup>.

- **Violence against the Child in Schools**

In accordance with the Code of Georgia on the Rights of the Child, education of the child shall serve the following key goals: the complete development of personality, talent, critical thinking and capabilities of the child; as well as the development of respect for fundamental human rights and freedoms and the ability to communicate non-violently<sup>10</sup>. Nevertheless, often, children become subjects of violence in schools – in the major facilities, where children should get formal education.

Sometimes, teachers physically and psychologically abuse children. For example, in the case processed by HRC, 7-years-old child was victim of bullying from the side of his schoolmates and physical violence from the side of his teacher. The child stated that he had tense relationship with the classmates. They often humiliated and abused him and it often turned into a conflict between the children. The head teacher of the class, school administration and director were informed about the problem but they did not inform the Social Service Agency or invited psychologist to resolve the problem and eliminate further complication of the situation. Moreover, when another conflict happened between the children, the head teacher placed the 7-years-old boy in the front of the class and slapped him in the presence of his friends. Based on the parent's request, the disciplinary committee of the school gathered and held session, where the committee members tried to discredit the parent and it additionally stressed her. The Committee made decision to dismiss the teacher only from the position of the head teacher but she continued to be a teacher in the same class. Besides that, the teacher insulted and discredited the child in her interview with journalists that further humiliated the rights of the child.

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<sup>8</sup> See: the Code of Georgia on the Rights of the Child, Article 1 (1), (2)

<sup>9</sup> See: the UN Convention on the Rights of the Child, Preamble

<sup>10</sup> See the Code of Georgia on the Rights of the Child, Article 36 (1) (a), (b)



As a result of the HRC advocacy, the investigation started into the violence against the child from the side of the head teacher. HRC lawyer petitioned the Ministry of Education and Science, Human Rights Protection and Investigation Quality Monitoring Department of the Ministry of Internal Affairs, the Director of the National Center for Educational Quality Enhancement, the Ministry of IDPs from the Occupied Territories, Labor, Healthcare and Social Welfare and the Children's Rights Department of the Public Defender's Office to adequately respond to the violations identified in the ongoing criminal proceedings; the lawyer appealed to make official assessment of the violation of the child's rights, to bring charges against the responsible persons, to assess public insulting comments of the former head teacher against the child, etc.

It is essential that the applicable sectorial legislation clearly prohibits use of physical or other cruel and degrading forms of punishment in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, care-takers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment<sup>11</sup>.

In its judgment on the case about verbal insulting of a pupil by a Math teacher of the public school, the European Court of Human Rights declared the violation of the Article 8 of the European Convention on Human Rights that guarantees right to respect private and family life<sup>12</sup>. In this case, the Math teacher was calling *stupid* to the pupil for what the child felt psychological stress. The ECtHR ruled that by insulting the pupil in the presence of classmates, the teacher degraded him in front of others. Although, in this particular case, no cruel form of insulting was used neither the action had further consequences, the teacher shall be aware that any form of violence, among them verbal insulting, even if it is not cruel form, is unacceptable in the educational environment.

Social responsibility of a teacher is to interact with students with due respect for their dignity and moral integrity. When teacher, having authority and influence, calling a child words like "idiot", "stupid" or other, impacts the right of the child to privacy and personal dignity. It affected his psychological well-being, dignity and moral integrity. As a result, the Court underlined that all forms of violence, however light, is considered unacceptable<sup>13</sup>.

Additionally, the European Court of Human Rights found that the domestic authorities, while enjoying a margin of appreciation, had to put in place appropriate legislative, administrative, social and educational measures to prohibit unequivocally any form of violence or abuse against children at all times. The school had also failed to respond in any way to the applicant's

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<sup>11</sup> CRC General Comment #8, (2006) "Right of the Child to Be Protected from Corporal Punishment and Other Form of Cruel, Inhuman or Degrading Punishment or Treatment." / Access to Justice for Children, Gaps Analysis of the National Legislation of Georgia, [Study Report](#), UNICEF (2017), P. 62

<sup>12</sup> See: [European Convention on Human Rights](#), Article 8

<sup>13</sup> See: [F.O. v. Croatia](#) - 29555/13; (ECtHR) Judgment 22.4.2021 [Section I]

request to be removed to another class or to assign another math teacher to his class. The Ministry's education inspectorate failed to take any other measures within its competence, like providing specific training for the teacher to protect students. If needed, respective state institutions should have started legal proceedings about the case. The Court found that domestic authorities and respective state bodies had failed to respond with requisite diligence to the applicant's allegations of harassment at school. Therefore, the Court ordered the State to pay 7 500 EURO to the applicant in respect of non-pecuniary damage<sup>14</sup>.

Very often, physical and psychological violence, so called bullying is very common among students in schools. In similar cases, we face lack of competence of teachers to handle the situation. Mostly, the school administrations try to resolve the problems within their competence and avoid involving social service, psychologist or police officers in the situation.

Information collected as a result of free legal counseling of beneficiaries, HRC observed that pupils often have knives in school. In similar cases, some resource officers only give "friendly suggestions" to students that is not enough to prevent possible incidents. The case law of the ECtHR is very important in this regard. Namely, in the case where 15-years-old adolescent was stabbed by a school-student in front of the school, the responsibility was imposed on the State. In accordance with the ECtHR ruling, the domestic authorities failed to exercise adequate supervision over the school<sup>15</sup>.

Thus, in schools, any child may become a subject of violence. Therefore, it is essential that the authorities had right approach to the problem and elaborated respective mechanisms to ensure elimination of all challenges in schools. As for the violent incidents, the teachers, parents and the state bear primary responsibility to prevent and eliminate them.

## JUDICIAL MISCARRIAGES IDENTIFIED BASED ON THE ANALYSIS OF CASES OF MINORS

- **Child Witnesses**

It is a huge challenge to interrogate children as witnesses during criminal proceedings. Often, investigators do not have adequate skills to communicate with children. Additionally, sometimes, during the procedural and investigative activities where children participate in the process, there is no adequate environment to meet the needs of the child.

For example, HRC defended legal interests of brothers aged 9 and 8, who were victims of systemic domestic violence. The father physically and psychologically abused the wife too. The process of granting victim status to the children was dragged out and it became possible only after HRC got involved in the process. Besides that, the HRC lawyer participated in the

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<sup>14</sup> [F.O. v. Croatia](#) - 29555/13; (ECtHR) Judgment 22.4.2021 [Section I]

<sup>15</sup> [Kayak v. Turkey](#); (60444/08); (ECHR); 2012

interrogation of the children in the investigation body. Although the psychologist and social worker also attended the interrogation, the process was prolonged that exhausted children. Besides that, the children were questioned in the working room of a chief police officer that is violation of international standards as it is necessary to have special space for the interrogation of minors.

Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice pays particular attention to the interrogation process of child witnesses. The CoE calls on the member states shall take all measures to ensure comfortable and child-friendly environment where children may give testimonies. In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have<sup>16</sup>. Additionally, US National Institute of Child Health and Human Development (NICHD) has developed a protocol, which elaborated the standard interrogation method based on the scientific surveys. The Protocol states that a child has the capacity to remember what happens around them; how reliable and complete the information given by the child is depends on the professionalism of the questioner, etc.<sup>17</sup>

Additional challenge is declaring the testimonies of child witnesses as insufficient in the court. In one of the cases processed by the HRC, where children were victims of sexual harassment from the side of their music teacher in the school, the Court found the testimonies of the children as well as the conclusion of the psychologist insufficient. It is worth to mention that in 2022, the Center Offering Psychological and Social Services to Child Victims of Violence was opened within the Agency on State Care. During 8 months, the Center provided service to 80 child victims of sexual harassment in Tbilisi<sup>18</sup>. These facts demonstrate that statistics of sexual harassment against children is alarming but it is also evident that the number of harassers convicted for the sexual harassment is not equal to the frequency of committed crimes.

The European Court of Human Rights published a very interesting judgment with regard to the issue on the case against Bulgaria. 14-years-old girl claimed that two persons had raped her but the domestic authorities did not find her statements as sufficient evidence and stated that there were no traces of violence on the girl's body. The Court found that similar standard of evidence hindered the Bulgarian Authorities to implement its positive obligations that is prohibition of torture, violation of the right to private and family life<sup>19</sup>. In accordance with the international agreement ratified by Georgia – Lanzarot Convention, each member state shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against

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<sup>16</sup> [Guidelines on child friendly justice](#); (2010) Council of Europe, Committee of Ministers; p. 29, 30

<sup>17</sup> „Interrogation/Interviewing a child witness or victim: how to get an accurate testimony without further traumatizing the child“, Public Health Foundation of Georgia. (last seen: 25.05.2023)

<sup>18</sup> “You do not know what he does with me when I stay alone with him,” the sisters sued the uncle for sexual harassment, Nino Tarkhishvili (10.03.2023); (last seen: 20.05.2023)

<sup>19</sup> M.C. v. Bulgaria; (application no. 39272/98); 2003; (ECtHR)

sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities<sup>20</sup>. Such coordination plays key role in the protection of other rights of the child too.

- **Involvement of Juveniles in Crimes**

In the recent period, HRC observed facts where adults used minors as instruments of crimes. The reason is that in accordance with the Criminal Code of Georgia, a person who has not attained the age of 14 at the time of the commission of an unlawful act provided for by this Code shall be considered to act without guilt<sup>21</sup>. In this light, juveniles are often compelled or persuaded to commit a crime.

In one of the cases processed by the HRC, charges about group robbery and unlawful purchase-possession of firearms were brought against a juvenile. In accordance with the case files, the adult person planned the group robbery of a grocery together with the juvenile. It is important to mention that the adult offender had past criminal record while the juvenile had no criminal experience and the victim (grocery owner) also solicited to impose light charge on him. Nevertheless, the juvenile defendant was sent to prison for 4 years and 6 months.

In accordance with the European Convention on Human Rights, everybody has right to liberty and restriction of liberty shall be an ultimate measure<sup>22</sup>. In accordance with the recommendations of the Parliamentary Assembly of the Council of Europe, the member states shall restrict liberty of minors only for shortest possible period and only when deprivation of liberty is a measure of last resort.<sup>23</sup> For example, when the offence is relatively serious but is committed under oppression, it is important to apply methods of diversion and non-custodial punishments<sup>24</sup>.

- **Practice of Diversion and Plea Agreement**

A plea bargain is an agreement under which the accused pleads guilty and agrees with the prosecutor to a sentence, to mitigation or to partial removal of charges<sup>25</sup>. As for diversion, it is the right of a prosecutor not to initiate or terminate a criminal prosecution against a person (a subject of diversion) in the case of a less serious or serious crime, provided that person (subject of diversion) meets one or several of the determined conditions<sup>26</sup>.

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<sup>20</sup> International Treaty and Agreement of Georgia; "Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse", Article 10

<sup>21</sup> See: the Criminal Code of Georgia, Article 33

<sup>22</sup> See: the European Convention on Human Rights, Article 5

<sup>23</sup> See: Resolution 2010, "[Child-friendly juvenile justice: from rhetoric to reality](#)"; (2014), PACE, Para. 6

<sup>24</sup> [UN Standard Minimum Rules for the Administration of Juvenile Justice](#), 40/33; (1985, )UN, Parliamentary Assembly, Para. 11

<sup>25</sup> See: the Criminal Procedure Code of Georgia, Article 209

<sup>26</sup> The Criminal Procedure Code of Georgia, Article 168<sup>1</sup>

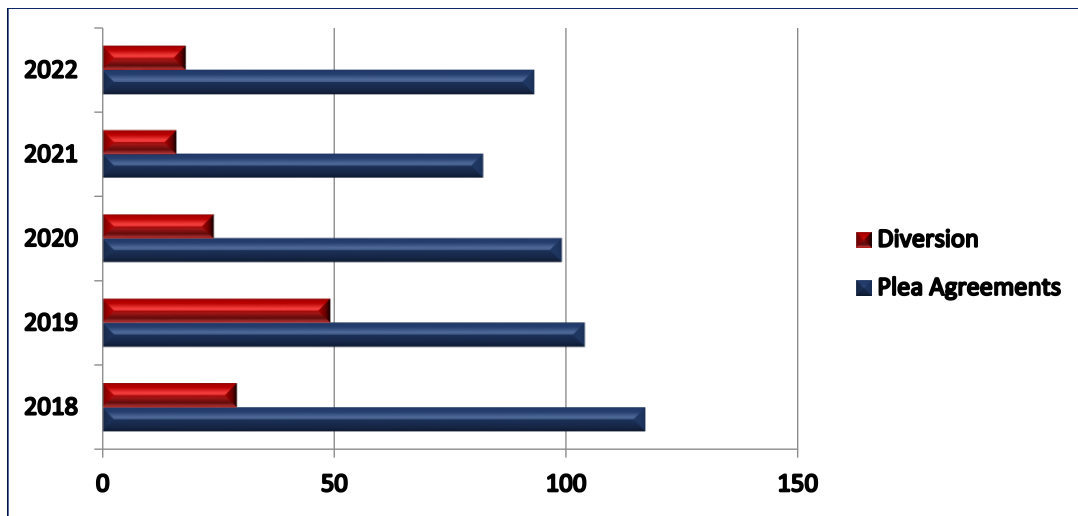
Diversion-mediation program for juveniles was introduced into the Georgian legislation in 2010. It enables a person under the age of 21, who commits less grave and grave crime, but does not have criminal record, or was not diverted from criminal liability before and pleads his/her guilt, to be diverted from criminal liability<sup>27</sup>.

In accordance with the Juvenile Justice Code of Georgia, in relation with child offenders, in the first place, the possibility of diversion of a minor or the application of a restorative justice measure shall be considered<sup>28</sup>, as the juvenile shall have a chance, in exchange of satisfying concrete conditions, continue life without criminal record or punishment and start life to successful future in respect to the law<sup>29</sup>.

Nevertheless, observation of the cases processed by the HRC showed that when juveniles commit a crime for the first time and prosecutor's office may prioritize diversion, often they choose plea bargain in relation with juvenile offenders. Additionally, the consultations with the beneficiaries revealed that they had not received information about the diversion-mediation program and investigative bodies offer them only plea agreements while there are other forms of diversion from the criminal liability.

HRC requested public information from the Supreme Court of Georgia on the statistic data of diversion and plea-agreement with juvenile offenders in the district (city) courts of Georgia in 2018-2022. Unfortunately, the Supreme Court does not provide separate data about the juveniles who committed crimes first time; the Court provided general statistics about diversion and plea agreements.

**Diagram 1. Statistics of diversion of juvenile offenders and plea-agreements with juvenile offenders in district (city) courts in Georgia in 2018-2022**



<sup>27</sup> [Analysis of the Juvenile Offenders Diversion-Mediation Program, Prosecutor General's Office of Georgia](#), (2020) p. 3 available only in Georgian

<sup>28</sup> The Juvenile Justice Code of Georgia, Article 8(2)

<sup>29</sup> [Analysis of the Juvenile Offenders Diversion-Mediation Program, Prosecutor General's Office of Georgia](#), (2020) p. 3 available only in Georgian

In 2018-2022, plea agreements were signed with 495 juveniles while diversion was used only in relation with 136 juveniles.

In 2022, only 18 juveniles were diverted from criminal liability while plea agreements were signed with 93 children.

Based on the analyzed cases, statistics and consultations with beneficiaries, Human Rights Center believes that the prosecutor's office shall apply to the diversion practice more often in relation with those juvenile offenders, who committed less grave crimes for the first time and are not under the criminal influence.

## **EFFECTIVENESS OF THE SOCIAL SERVICE IN THE PROTECTION OF CHILDREN'S RIGHTS**

The Law of Georgia determines the basic principles of the social work<sup>30</sup>, which states that a social worker is a person who performs social work, namely promotes the free development and integration of individuals into society, and which serves to improve the welfare of society through supporting individuals. The social worker has received academic or other education provided for by this law<sup>31</sup> and one of the main functions of a social worker shall be to carry out preventive social work<sup>32</sup>.

Social work in the field of child care and family care includes: supporting a child, protecting the best interests of the child, participating in the process of child adoption; taking measures to protect a child from violence and neglect; assisting mothers and children in using shelter services<sup>33</sup>, etc.

A child must not be separated from the parent, except the cases when it is necessary to separate him/her to protect best interests of the child. Social worker makes decision on the separation of a child from the parent in accordance with the law; he/she submits solicitation to the judge of the respective court. The judge makes decision to separate the child from the parent or not within 24 hours.

According to the observation of HRC, in some cases, social workers are low-qualified considering their decisions to separate children from the parents<sup>34</sup>. For example, in one of the cases processed by HRC, a social worker took 8-years old child from the biological family and gave to a foster family. This fact had emotional impact on the child. They called the parent to inform that the child had nervous breakdown. Arriving at school, the parent found that

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<sup>30</sup> See: the Law of Georgia on Social Work, Article 1

<sup>31</sup> See: the Law of Georgia on Social Work, Article 2 (i)

<sup>32</sup> See: the Law of Georgia on Social Work, Article 15 (1)

<sup>33</sup> See: the Law of Georgia on Social Work, Article 16 (1)

<sup>34</sup> See the Code on the Rights of the Child, Article 26 (1), (2)

ambulance, police and social workers were gathered on the place. After the child was separated from the parent, the Social Service Agency appealed the Mtskheta district court to legalize the decision of sending the child to a foster family. However, the court did not satisfy the appeal and the child was sent back to the biological parents next day. The Agency appealed the court decision in the Appellate Court but the latter upheld the decision of the district court. Consequently, based on the court decision, the child stayed with his biological family.

In this particular case the social workers demonstrated low qualification that worsened the psychological state of the child. In reality, there was no sufficient grounds to take the child from the family. The social worker shall implement and monitor preventive measures to keep a child within his/her biological family<sup>35</sup>. It is noteworthy that in accordance with the Convention on the Rights of the Child, a 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<sup>36</sup>. Besides that, although in accordance with the Code of Georgia on the Rights of the Child, where the life, health or safety of the child is under immediate and direct threat, a social worker shall be authorized to make an immediate decision on the separation of the child from his/her parent<sup>37</sup>, similar threats were not identified in the mentioned case. Therefore, the HRC lawyer prepared administrative lawsuit against the Social Agency to claim reimbursement of moral damage in the amount of 20 000 GEL. Nowadays, the family is waiting for the court proceedings to start.

The European Court of Human Rights noted in its judgment against Finland that the State had violated its positive duty to take measures to facilitate family reunification<sup>38</sup>. Hence, the ECtHR has established quite a high standard with regard to the separation of a child from the family. For example, in one of the cases, based on the decision of the domestic court, children were sent to alternative care. Both parents were blind, unemployed and lived in extreme poverty. The domestic court concluded that the situation in the family threatened the lives and health of the children. The ECtHR stated that there were not sufficient evidence in the case files and also found that the domestic authorities failed to implement its positive duties to support the family to have access to social programs. Additionally, in the domestic courts, the children did not have opportunity to express their views during proceedings. Thus, the evidence in the case files were relevant but insufficient to interfere in the family unity. Consequently, the ECtHR declared the violation of the Article 8 of the European Convention on Human Rights that protects right to private and family life<sup>39</sup>. The Court found the same violation in the case, where the mother had paranoid schizophrenia and children were placed in the facility of alternative care so that the court examined the state of the children only twice before they attained the legal age, and

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<sup>35</sup> See: the Law of Georgia on Social Work, Article 16 (1) f

<sup>36</sup> See: the Convention on the Rights of the Child, Article 12

<sup>37</sup> See: the Code of Georgia on the Rights of the Child, Article 26 (3)

<sup>38</sup> See: *K.A. v. Finland*; 27751/95; (2003); (ECtHR)

<sup>39</sup> *Savin v. Ukraine*; (2008); (ECtHR)

there was no regular contact between the applicant and the social workers. Hence, the ECtHR found that the domestic authority failed to adequately protect the rights of the parent and violated the Article 8 of the Convention<sup>40</sup>.

On the other hand, there are cases in the practice, when one of the parents has negative influence on the child but social worker does not actively interfere in the situation to defend the best interests of the child. For example, in one of the cases processed by HRC, a man physically and psychologically abused stepchildren and psychologically abused his biological son. Nevertheless, his son lived with the father but the mother was not allowed to meet the child. Regardless several visits of the social service agent in the family, where the child lives, there were no actual measures taken to protect the child. HRC lawyer lodged a lawsuit to the court to request determination of the place of residence of the child.

HRC worked on another case about the same issue. A child, who lived with the mother, grandmother and father, witnessed systematic physical and psychological violence. The father was physically abusing the mother and grandmother in the presence of 2-years-old child. There are audio-recordings in the case, which prove physical violence against the mother and psychological state of the child. Although the child had victim status and the harasser was defendant, he could see the child without any obstacles and communicate him until the HRC lawyer requested the restraining order against the man.

It is important to acknowledge that systematic domestic violence in the presence of the child significantly harms the mental health of the minor and sometimes the harm is irreparable. When child systematically hears shouting, conflict and violent speech, he automatically becomes victim of psychological violence. Hence, it is important that the social service examined the general attitude of the parent not only towards his/her biological children, but towards his/her stepchildren, spouse or other family members. The Article 17 of the European Social Charter obliges the member states to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support<sup>41</sup>.

Public Defender of Georgia stated that along with other social problems in the country, the situation of child's rights are further aggravated. The social worker carries the greatest responsibility in this direction. Consequently, it is important that the state takes all appropriate measures for reforming the social system<sup>42</sup>.

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<sup>40</sup> [B. v. Romania](#); 1285/03; (2013); (ECtHR)

<sup>41</sup> European Social Charter, Article 17 (1) (c)

<sup>42</sup> See: [Public Defender's Statement on Challenges in the Country's Social System](#), 12.02.2019 (last seen: 20.05.2023)



## CONCLUSION

Regardless the national and international legislation in Georgia to protect the rights of the child, the scope of violence against children is large in the country and mostly happen in the circles where children must feel safe. As a result, children often become victims of physical, psychological and sexual violence in the family, society and schools. In addition to that, there is poor social and economic state in the country. Juveniles suffer with post-traumatic stress and other psychological problems, but the government and society are not ready to cope with these problems.

The case law of the European Court of Human Rights shows that it is a positive obligation of the state to take all measures to ensure welfare of the children and protect them from violence in any space.

The analysis of the juvenile cases processed by HRC revealed miscarriages in the juvenile justice. Namely, in the cases, where it is important to interrogate minor witnesses, the investigative bodies fail to provide adequate environment and conduct relevant procedures in accordance with international standards.

In some instances, the testimonies of juveniles are considered insufficient.

Additional challenge of the justice is frequent instances of involvement of juveniles in crimes as their age excludes criminal liability of the offenders. The tendency of using diversion and plea-agreements in practice is also problematic. Namely, the diversion mechanisms for criminal liability of juveniles shall be prioritized in comparison with plea-agreements.

In accordance with the law, social service responds to the violation of the rights of the child but in practice, for example, in the decisions made with regard to the separation of the child from parents we observe the problems of qualification of social workers. In some cases, ineffective engagement of social workers in the cases where children are in unfriendly environment is also problematic.

It is essential that in practice, when courts and administrative bodies make decisions in relation with the rights of the child, the best interests of the child were the principle guidance for the decision-makers. It includes elimination of any form of violence against child, necessity of his/her physical and psychological protection; ability of the child to develop in harmony, to maintain contact with both parents, also elaboration of concrete measures to protect child from any harm, etc.

## RECOMMENDATIONS

### **To the Ministry of Internal Affairs:**

- To create universal database about the facts of violence against children so that respective institutions examined, responded and monitored the facts of violence timely and effectively;
- To conduct additional awareness-raising campaigns for the elimination of violence against children;
- To take measures to encourage society to report investigative bodies about the facts of violence so that all facts of domestic violence were identified;
- The investigative bodies shall introduce the NICHD protocol standards in their practice to interrogate/question minor witnesses without additional traumatization. It is important to allocate special comfortable spaces and make the interrogation process more flexible, quick and child-friendly;
- To train/improve qualification of the police officers about the rights of the child and improve communication skills with the children, who have contact with them;
- To better encourage diversion-mediation program for juveniles and raise awareness about this program in investigative bodies so that they give preference to diversion in comparison with plea-bargain when discussing the criminal liability of juveniles.

### **To the Ministry of Education and Science:**

- To prohibit physical or other degrading punishment of a child with the accurate formulation in the statute on child's caretakers/guardians/teachers;
- It is necessary to train teachers to prevent violence against children. In the cases of violence against children, to ensure timely reporting to respective bodies about the facts of child's rights violation;
- It is essential to raise awareness of parents and school personnel about the essence of psychological violence and its destructive effects on the child's development. It is also important to positively represent psychologists and reinforce the psychological support;
- To conduct campaigns for pupils and teachers in public and private schools about negative influence of the so-called bullying on children. Also, particular attention must be paid to the acceptance of diversity, inadmissibility of discrimination as well as issues related to equality in educational curricula;
- To conduct monitoring of teachers who were suspected or were under disciplinary punishment for psychological, physical or other forms of violence (including verbal insult) against children. It is essential that such teachers attended special trainings tailored on their needs;
- To train resource officers in identifying the facts of violence against children and effectively responding to the possession of cold weapon and to prevent future incidents.

**To the Ministry of IDPs from the Occupied Territories, Labor, Healthcare and Social Welfare:**

- It is important to train social workers and improve their qualification.

**To the Common Courts:**

- To inform the parents before getting divorced about the determination of the residence place for the child as well as about negative effects of psychological violence on the child from the side of the parent.

**To the Ministry of Justice:**

- To improve the mechanisms of the National Enforcement Bureau which will oblige the parent to pay the alimony when he/she tries to divert from the responsibility and hides income.