



T-ES(2014)GEN-GE

LANZAROTE CONVENTION

Council of Europe Convention on the protection of children
against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

GEORGIA

Replies registered by the Secretariat on 24 March 2014

Question1. Definition of the “Child”

Pursuant to Article 12 of Civil Code of Georgia adult is a person who has attained age of 18. Early childhood shall be defined as the period below the age of 7 years. Child under the age of 7 is considered to have no active legal capacity. Person from the age of 7 to 18 years has limited active legal capacity. According to Article 1108 of the Code the age of marriage shall be defined as eighteen years. In exceptional cases marriage is allowed from the age of sixteen years, subject to the preliminary consent of the parents or other statutory representatives.

Criminal Procedure Code of Georgia (CPCG) defines the notion of “juvenile” for its purposes - according to Article 3, paragraph 1, juvenile is a person who has not reached the age of 18.

Question 2. Non-discrimination

According to Article 14 of the Constitution of Georgia (the Constitution) everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and status, place of residence. Article 38 of the Constitution states that citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging.

Government of Georgia has drafted antidiscrimination legislation - Law on Elimination of All Forms of Discrimination. Representatives of civil sector have been actively involved in its elaboration, among them were organizations working on human rights issues, gender equality, ethnic and religious minority representatives and etc. At the same time, the draft law went through international expertise: recommendations from ODIHR, ECRI, OHCHR and international experts have been received and reflected in the draft.

Purpose of the law shall be elimination of all forms of discrimination and ensure for every person equal enjoyment of rights prescribed by law irrespective of any ground. Any form of discrimination, being it direct, indirect or multiple, shall be prohibited in Georgia. Discrimination shall be prohibited in all spheres, both public and private, including, but not limited to: labour relations; social security and health care; pre-school education, education, access to education and learning process; culture and creative art; science; elections; civil and political activities; justice; state services; use of goods and services; housing; entrepreneurship and banking; usage of natural resources; etc. Elimination of discrimination and ensuring of equality shall be monitored and controlled by independent body.

Unfortunately, due to Russia’s occupation of Tskhinvali Region/South Ossetia and Abkhazia Georgia has been prevented from the opportunity to ensure protection of human rights, including children’s rights in that parts of the country. Serious facts of discriminations and human rights violations have been reported by numerous of reputable international organizations, committed predominantly against population with Georgian origin. On the ground of Georgian ethnicity people (children) have been deprived of fundamental rights, including right to fair trial; right to receive education, in particular in “mother tongue”; etc. Families who live in conflict zones are under constant pressure.

Question 3. Overview of the implementation

At present “Convention on the Protection of children against sexual exploitation and sexual abuse” is presented to the Parliament of Georgia for ratification. However, Georgia has amended relevant legislative acts to reflect its provisions and share its aims in domestic legislation.

Chapter XXII of Criminal Code of Georgia (CCG) contains crimes against Sexual Freedom and Inviolability. Among them are: Rape (Article 137); Sexual Abuse under Violence (Article 138); Coercion into Sexual Intercourse or Other Action of Sexual Character (Article 139); Sexual Intercourse or Other Action of Sexual Character with One under Sixteen (Article 140); Perversion (Article 141).

According to Article 137, paragraph 1, rape is sexual intercourse through violence, threat of violence or abusing the vulnerability of the victim. Paragraph 3(d) of the same Article aggravates liability for the crime if rape is committed against juvenile. Responsibility shall be harsher if the act is committed against person under 14 years, - as it is envisaged by paragraph 4(c).

Article 138, paragraph 1, states that sexual abuse under violence shall be sexual contact committed in distorted manner under violence, threat of violence or abusing the vulnerability of the victim. In accordance with paragraphs 3(d) and 4(c) - the same action committed against juvenile shall be aggravated crime and responsibility shall be more severe if the act is committed against person under 14 years.

Article 139, paragraph 1, criminalizes coercion into sexual intercourse or other contact of sexual character under the threat of disclosing defamatory information or damaging property or by using one’s material, official or other dependency. According to paragraph 2 of the Article aggravated circumstance shall be the commission of the act against juvenile.

Adult’s sexual intercourse or other contact of sexual character as well as perversion without violence with one under 16 years is prohibited by Article 140 and Article 141 respectively.

Crimes against Public Health and Morality are envisaged by Chapter XXXII of CCG. Among them are: Engaging in Prostitution (Article 253), Illicit Production or Sale of Pornographic Piece or Other Object (Article 255), Engaging of Juvenile in Illicit Production or Sale of Pornographic Piece or Other Object (Article 255¹), Proposal of Meeting to a Person under Sixteen for Sexual Purposes (Article 255²).

According to Article 253, paragraph 1, engaging of someone in prostitution under violence, by threatening to use violence or destroy property, by blackmail or deception is prohibited. Paragraph 2 of the Article aggravates responsibility for such act if it is directed against juvenile. The same paragraph prohibits receiving of benefit from the engaging of juvenile in prostitution.

Article 255, paragraph 2 and paragraph 3, criminalize purchase, storage, proposal, proliferation, advertising, or making accessible of child pornographic piece or its usage, as well as its production or sale.

Article 255¹ prohibits engaging of juvenile in illegal production of pornographic piece or other object, as well as in proliferation or advertising of such item or receiving benefit from such activities.

Article 255² criminalizes proposal of a meeting to a person under sixteen through information and communication technologies for purpose of commission of crime stipulated by Article 140 or Article 255, paragraph 3, of CCG.

According to CCG not only perpetrator shall be responsible for the commission of crime, but also his/her accomplices. Article 23 states that complicity in the crime shall mean intentional joint participation of two or more persons in the perpetration of intentional crime. Article 24 defines types of complicity:

- organizer shall be the one who staged the crime or supervised its perpetration as well as the one who established the organized group or supervised it;
- instigator shall be the one who persuaded the other person to commit the offense;
- aider shall be the one who assisted perpetrator in the commission of the offence.

Article 376 of CCG criminalizes non-reporting of crime by the one who actually knows that any grave or especially grave crime, as well as crimes under Article 255, paragraphs 2 and 3, 255¹ or 255² is being prepared or has been committed.

Apart from above-mentioned crimes, Article 143² CCG criminalizes trafficking of juveniles, namely – purchase, sale, any other illegal transaction, as well as recruitment, transportation, transfer, harbouring or receipt of juveniles with the aim of exploitation. Article has number of aggravated circumstances, among them are: when crime has been committed repeatedly or against two or more victims; when crime has been committed by organized group or has caused death of juvenile or other grave result; etc.

CCG establishes liability for inchoate crimes. Article 19 gives definition of attempted crime and principle of liability: attempted crime shall be intentional act that was designed to perpetrate a crime but the crime was not completed. Criminal liability for attempted crime shall be determined under the relevant article of CCG which provides for liability for completed crimes, by giving reference to this article.

Besides, according to Article 18 of CCG preparation of crime is punishable act as well: preparation of crime shall be intentional creation of conditions for the perpetration of crime and criminal liability shall be imposed on person for the preparation of grave or especially grave crimes. Crime categories are given in Article 12 of CCG.¹

By Decree No. 591 of 13 December 2008 and with the support of the European Commission, the President of Georgia established a Criminal Justice Reform Inter-Agency Coordination Council in order to monitor the Criminal Justice Reform in line with the principles of the rule of law and human rights protection in Georgia.

¹ Grave intentional crime is crime that is punishable by imprisonment for term of 5 to 10 years; especially grave crime is intentional crime that is punishable by imprisonment more than 10 years or life imprisonment.

Inter-Agency Coordination Council has elaborated Criminal Justice Reform Strategy and the Action Plan (AP). AP represents a guiding policy document that was adopted by the Council through the active involvement of all relevant stakeholders and NGO sector.

Strategy underlines the challenges existing in criminal justice spheres and aims to develop comprehensive sectorial approach to such complex issues as **juvenile justice**, prison overcrowding, system of alternatives, development of linkage between penitentiary and probation, importance of the National Preventive Mechanism under OPCAT and proper implementation of the new Criminal Procedure Code of Georgia.

The New Criminal Justice Reform Strategy and its respective Action Plan comprises following chapters:

- Criminal Legislation
- Juvenile Justice
- Penal System Reform
- Probation
- Legal Aid Service
- Prosecution
- Police
- Judiciary
- Legal Education
- Office of the Public Defender.

Strategy and action plan on Juvenile Justice envisages chapter on “Child-Friendly environment”.

Juvenile justice related issues have been given primary consideration in Criminal Procedure Code of Georgia (CPCG). Therefore, it contains a number of safeguards and guarantees for fair trial, ensuring that juveniles in conflict with the law are tried in accordance to their age, needs and maturity.

Question 4: Child Participation

Principle of respect for the view of children and their participation in matters affecting them in some types of legal relations are envisaged by Georgian legislation. One of the most significant spheres in this regard is family and related relations. For instance, as an exceptional measure, the deprivation of parental rights may be effected only by a court decision upon the initiative of a child who has attained age of 14². Parental rights may be restored only by court decision upon the initiative of the child.³ At the same time, in other cases of its restoration a court shall take into account the child’s preference, as well, who has attained age of 10⁴. According to Law of Georgia on Adoption and Foster Care, it is prohibited to adopt children aged 10 or above without their consent,⁵ if the adoptee is 10 or above 10 years of age reversal of the decision on adoption is admissible only with consent of

² Article 1206.1, Civil Code of Georgia (1997)

³ Article 1209.1, Civil Code of Georgia (1997)

⁴ Article 1209.3, Civil Code of Georgia (1997)

⁵ Article 16.1, Law of Georgia on Adoption and Foster Care (2009)

the adoptee,⁶ foster care of children who have reached the age of 10 years is possible only with their consent,⁷ etc.

Another important sphere is the determination of child's citizenship. In the case of change in citizenship of parents citizenship of children up to the age of 14 shall be changed accordingly. Citizenship of children from the age of 14 to 18 shall be changed only with their consent.⁸ Consent of a child in the age from 14 to 18 shall be also indispensable in case of change in citizenship of one of the parents, in case of adoption when adopters have different citizenship, etc.⁹

Question 5: Specialized bodies/mechanism

Question 6: National or local coordination, cooperation and partnership

Ministry of Labour, Health and Social Affairs, Ministry of Education and Science and Ministry of Internal Affairs have elaborated Child Referral Mechanism by the joint Order N152/N-N496-N45. This mechanism provides effective tool for protection of children from all forms of violence and referring them to relevant community and state services. Aforementioned mechanism integrates the work of multiple stakeholders in coordinated manner: police officers, social service agency, schools, child institutions, day-care centers, small group homes and medical facilities.

By Decree No. 591 of 13 December 2008 and with the support of the European Commission, the President of Georgia established a Criminal Justice Reform Inter-Agency Coordination Council that has been entrusted with the elaboration and implementation of the reforms in line with the international standards, as well as with the coordination of inter-agency activities in criminal justice sphere. The members of the Council are representatives of governmental agencies, NGOs, international organizations and independent experts. Membership of the Council and its functions are prescribed by the Statute of the Council.

Objective of the Council are:

- To elaborate relevant recommendations regarding the Criminal Justice Reform in line with the principles of the rule of law and human rights protection in Georgia;
- To review and periodically revise Criminal Justice Reform Strategy;
- To coordinate intergovernmental activities in course of the elaboration of the Criminal Justice Reform Strategy;
- To elaborate proposals and recommendations regarding the issues related to penal reform, probation, juvenile justice and legal aid;
- The Sessions of the Criminal Justice Reform Inter-Agency Coordination Council takes place minimum once in every six months. Since its establishment, the nine Council sessions has been held.

⁶ Article 27.4, Law of Georgia on Adoption and Foster Care (2009)

⁷ Article 31.2(d), Law of Georgia on Adoption and Foster Care (2009)

⁸ Article 16, Organic Law on Citizenship of Georgia (1993)

⁹ Article 22¹, Organic Law on Citizenship of Georgia (1993)

The overall objective of Criminal Justice Reform (CJR) is an initiative aimed at strengthening the rule of law and developing secure environment for the community as a whole by:

- reducing the incidence of crime and delivering justice for all in line with the international human rights standards;
- increasing access to justice and assistance to victims of the crime;
- ensuring fair, speedy and equal procedure for persons charged with the crime;
- punishing guilty, while preventing them from re-offending;
- reducing prison overcrowding through use of pre and post-trial alternatives;
- addressing the causes of the crime and providing appropriate community supervision, rehabilitation and reintegration of persons who committed the crime;

Question 7: International cooperation

Question 8: Education, awareness raising and training

Sexual abuse is taught in the context of trafficking. Violence, trafficking, family violence etc. and the ways of fighting with them have a considerable reflection in social sciences subject programs – Civil Education (IX and X grades) and History (including “Our Georgia” (V-VI grades, as well as VII, VIII and XII grades’ history subject program) of the National Curriculum 2011-2016. These topics are reflected in the textbooks written in compliance with the abovementioned programs. These textbooks cover the topics such as: the rights of children, essence of a person, free will and decisions, human rights and responsibilities; Separate Chapter is dedicated to trafficking – various forms of trafficking, including sexual exploitation; factual information as well as situational examples and group assignments are given in the textbook. International and national legal documents related to the topic are discussed, information on preventive measures are also included.

CPCG provides the rule that proceedings on juvenile cases shall be conducted only by a judge, prosecutor and investigator, who received special training in psychology and teaching and has certificate on the successful graduation of the course. In order to fulfil the requirement, each state agency ensures preparation of law enforcers and re training on the subject psychology and pedagogy.

Within the Ministry of Internal Affairs, Police Academy is the structure, responsible for training of candidates to be required by police as well as retraining of acting police officers.

Each individual, undergoing basic training course in the Academy has to get acquainted with the following subjects as a part of the basic training curriculum:

- Human rights and code of police ethics;
- Main aspects of CRC and relevant international legislation;
- Local legislation concerning juveniles;
- Skills of child interviewing;
- Technique of identification of abused juvenile.

The Training Centre of Justice of the Ministry of Justice of Georgia (TCJ) is marking the topic as highly important and is mostly interested in raising its own capacity in the field. The TCJ has trained its own trainers (psychologists), namely:

- Training on how to use the Investigative Interview Protocol (IIP) of the National Institute of Child and Human Development (NICHD) for obtaining accurate information from child victim of sexual abuse and witnesses of crime. TCJ trainer has gained the right to provide initial training programmes in Investigative Interview Protocol (IIP) of the NICHD for relevant practitioners.
- TCJ trainer participated in the full programme of Master Class in ‘Child Abuse Multidisciplinary Case Management’. The programme was conducted in the frame of South Caucasus Regional Conference ‘Working together to stop child abuse’

Question 8: Recruitment and screening

Georgian Law on Public service defines prohibitions of recruitment of the person including the restriction for persons who does not have revoked criminal record on grave crime.

Order of the Minister of the Internal Affairs of Georgia #955 (2013) on “approving the rules of serving in the Ministry of Internal Affairs of Georgia”. Defines list of restrictions on recruitment including injections for the person who has criminal record or has negative medical profile including mental disorder.

Question 10: Preventive intervention programs or measures

Question 11: Participation of the private sector, the media and civil society

Question 12: Effectiveness of preventive measures and programs

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

Article 376 of Criminal Code of Georgia criminalizes non-reporting of crime by the one who actually knows that any grave or especially grave crime, as well as crimes under Article 255, paragraphs 2 and 3, 255¹ or 255² is being prepared or has been committed. (see answer on Question 3, pg 3).

Question 14: Helplines

Ministry of Internal Affairs of Georgia ensures functioning of 24/7 hotline of Emergency call center 112 throughout of Georgia.

112 unifies three different services in Georgia, in particular, these services are: patrol police, fire/rescue and medical services. 112 Emergency Response Center ensures processing of received calls and transferring them to the relevant services. 112 is the unique number instead of different numbers intended for three different services.

Ministry of Labour, Health and Social care operates a hotline, which is free of charge and available to every interested person. The hotline operator:

- provides consultation to callers;
- protects callers' private or/and professional confidential information;
- provides the available information completely and accurately;
- forwards/refers callers to the competent entity/organization and provides them with available contact information completely, if the required information exceeds the operator's competence;
- protects information related to callers and their anonymity confidential.

Question 15: Assistance to victims

LEPL - State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking consists of 13 branches, including: one infant house, two child houses in liquidation process, two houses for the children with disabilities, two child day-care centres in liquidation process, one child crisis centre and five structural units, among which three are shelters for victims of domestic violence and two for victims of human trafficking. The fund is under the state control of the Ministry of Labour, Health and Social Affairs of Georgia.

The fund also provides service for the juvenile victims of the human trafficking, domestic violence and sexual abuse.

The fund offers the following services:

- a) medical assistance;
- b) legal assistance, including court representation;
- c) psychological assistance, including rehabilitation-reintegration programs;
- d) providing one time compensation in the amount of 1000 GEL to individuals with the status of victims of human trafficking;
- e) providing shelter;
- f) hotline.

For the accounting period, there operates two shelters for victims of human trafficking (Tbilisi and Batumi) and three shelters for victims of domestic violence (Tbilisi, Gori, Kutaisi). Juvenile beneficiaries in the shelters are provided with the services tailored to their particular needs. An individual service plan is made upon the evaluation of a juvenile beneficiary's needs.

The personnel of the shelters are trained at least twice per year, for the purpose of developing their qualifications and skills.

In 2011 “Tbilisi Children Crisis Centre” - a 24-hour childcare specialized institution was opened which provides social service to the found children aged 6-18, the children living and/or working in the street; the victims of violence, human trafficking, labour and other types of exploitation; lacking safe and adequate living conditions for development. Beneficiaries of the Crisis Centre (as well as the child houses) are provided with the service tailored to their particular needs, in accordance with the Childcare Standards adopted by the Minister of Labour, Health and Social Affairs. An individual service plan is made upon the evaluation of a juvenile beneficiary’s needs.

The main purpose of Tbilisi Children Crisis Centre is:

- a) creating home-like conditions that promotes beneficiaries’ mental, emotional and physical development;
- b) providing transitive services to the beneficiaries for the purpose of their stabilization, evaluation, social-cultural integration and rehabilitation in order to ensure urgent assistance, as well as long-term support to enable the beneficiaries to return to their families, move to other alternative childcare services or lead independent lives after reaching the age of adolescence (the term of transitive service is determined up to one year in accordance with the beneficiary’s individual needs);
- c) promoting beneficiary’s health and social protection, medical, pedagogical rehabilitation and social integration;
- d) offering childcare programs, educating beneficiaries and raising individuals taking into consideration society’s and state’s interests;
- e) protecting beneficiaries’ rights and interests;
- f) creating adequate environment encouraging beneficiaries’ talents, abilities and potential.

Main function of “Tbilisi Children Crisis Centre”, as well as shelters for victims of domestic violence and human trafficking, is providing 24 hour services to the beneficiaries which include:

- a) providing 24-hour services;
- b) feeding minimum four times a day, one of which should be a three course meal;
- c) providing beneficiaries with clothes and personal hygiene products, in accordance with age, sex and season;
- d) protection of personal hygiene;
- e) educational activities (informal education) – eliminating poor academic performance of the beneficiaries and promoting their involvement in the schooling process by managing their individual educational processes, taking into consideration the capabilities of the beneficiaries;
- f) Recreational activities – art therapy, drama classes, music therapy, excursions, interactive games, discussions, literary reading, acting games and etc.;
- g) professional skills development – promoting their skills by involving into computer, language, and handicraft classes;
- h) Teaching healthy lifestyle and developing living skills;
- i) Developing the necessary skills to lead an independent life;
- j) Involvement in cultural-sport activities;
- k) providing urgent medical assistance and medical-rehabilitative procedures; organizing ambulatory and stationary medical service, in case of necessity;
- l) providing psychological assistance;

- m) carrying out activities established by the individual service plans;
- n) All the other activities that promote beneficiaries' complete development.

Psychological services at the shelters as well as at Tbilisi children Crisis Centre include working individually with each beneficiary in order to develop their skills. In addition, the psychology uses various psychological methods and instruments necessary for individual consultations and group work.

One of the purposes of the Questionnaire on the implementation of the Lanzarote Convention is to determine whether the legislation allows the victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside to make a complaint before the competent authorities of their state of residence.

According to Article 13, paragraph 1, of the Constitution, citizens of Georgia regardless of their whereabouts are protected by the State. Moreover, Article 1 of the European Convention on Human Rights provides that states must guarantee to everyone within their jurisdiction the rights and freedoms set out in the convention.

Georgia can exercise passive personality jurisdiction with regard to offences against sexual freedom and/or against public health and morality, where the victim of an offence is a national of the state.¹⁰

Question 16: Criminal offences

Chapter XXII of Criminal Code of Georgia (CCG) contains crimes against Sexual Freedom and Inviolability. Among them are: Rape (Article 137); Sexual Abuse under Violence (Article 138); Coercion into Sexual Intercourse or Other Action of Sexual Character (Article 139); Sexual Intercourse or Other Action of Sexual Character with One under Sixteen (Article 140); Perversion (Article 141). (see the answer on question 3 and question 19).

Question 17: Corporate liability

Corporate liability has been introduced to CCG since 2006. Principles of responsibility of legal persons are given in Article 107¹ of CCG. Legal person (commercial/non-commercial) may be held liable for criminal offence if it is committed by responsible person on behalf of the legal person, through the legal person or for the benefit of the legal person. Responsible person is person who is authorized to manage or represent the legal person, take decision on behalf of the legal person or member of its supervising or controlling bodies. The legal person shall be held liable if responsible person's failure to exercise effective supervision/control has made possible the commission of the crime for the benefit of the legal person by the natural person under its authority. Liability of the legal person shall be without prejudice to the criminal responsibility of the natural persons who have committed the offence. According to Article 107² legal person may be held criminally liable if such responsibility is envisaged by the relevant articles of CCG. In terms of crimes referred to in section III legal persons may be held criminally responsible for the commission of crimes under Article 143², Article 253, Article 255 and Article 255¹ of CCG.

¹⁰ Jurisdictional aspects are considered in section VIII

Question 18: Sanctions and Measures

CCG establishes following sanctions for the commission of crimes referred to in section III:

- Article 137, paragraph 3(d): imprisonment for term of 10 to 13 years;
- Article 137, paragraph 4(c): imprisonment for term of 15 to 20 years;
- Article 138, paragraph 3(d): imprisonment for term of 10 to 13 years;
- Article 138, paragraph 4(c): imprisonment for term of 15 to 20 years;
- Article 139, paragraph 2: imprisonment for term of 5 to 7 years;
- Article 140: imprisonment for term of 7 to 9 years;
- Article 141: imprisonment for term of 5 to 7 years;
- Article 143²: imprisonment from 8 years up to life imprisonment;
- Article 253, paragraph 2: imprisonment for term of 5 to 7 years;
- Article 255, paragraph 2: fine, correctional work for term not exceeding 2 years or imprisonment for term of up to 3 years;
- Article 255, paragraph 3: imprisonment for term of 3 to 5 years;
- Article 255¹: imprisonment for term of 2 to 5 years;
- Article 255²: jail for term of up to 3 years or imprisonment for term of 1 to 3 years;

As it was said above in section IV legal persons may be held criminally responsible for the commission of crimes envisaged by Article 143², Article 253, Article 255 and Article 255¹ of CCG. All three articles stipulate following types of punishments: fine, deprivation of right to pursue activity or liquidation.

Question 19: Jurisdiction

Article 4 of CCG regulates aspects of exercise of criminal jurisdiction on crimes committed on the territory of Georgia: person who has perpetrated a crime on the territory of Georgia shall bear criminal liability in accordance with relevant provisions of CCG. Crime shall be considered to be perpetrated on the territory of Georgia if it began, continued, terminated or ended on the territory of Georgia. The same rule applies to crime committed on or against the vessel authorized to use the national flag or identification mark of Georgia unless otherwise is prescribed by the international treaty of Georgia.

Legal issues regarding jurisdiction over crimes committed abroad are envisaged by Article 5 of CCG. As it states: citizen of Georgia as well as the stateless person who has committed crime under CCG that is regarded as crime under the legislation of the state in which it was committed shall bear criminal liability under the relevant provisions of CCG. In case when illegal act is not considered as crime in the state of its commission Georgian citizen or stateless person shall be liable under CCG if it is grave or especially grave crime directed against interests of Georgia or if responsibility for such crime is envisaged by international treaty of Georgia.

In addition, according to Article 5, paragraph 3, citizen of a foreign state as well as the stateless person who has committed illegal act stipulated in CCG shall bear criminal liability under relevant provisions of CCG if it is a grave or especially grave offense

directed against interests of Georgia¹¹ or if the criminal liability for this offense is provided by the international treaty of Georgia.

It is noteworthy to mention that Article 5 of CCG stipulates extension of Georgian jurisdiction over *some* criminal offences committed by Georgian citizens or stateless persons, as well as foreign nationals/stateless persons exercising delegated state authority, abroad even if that acts are not criminalized in the country of the commission.

Question 20: Aggravating circumstances

General principles that govern sentencing are envisaged by Article 53 of CCG. According to it: when awarding a sentence, court shall take into consideration the extenuating and aggravating circumstances of the crime, in particular, the motive and purpose of the crime, illegal will demonstrated in the action, character and extent of breach of obligations, manner of implementing the action, method employed and illegal consequence, past life of the criminal, his/her personal and economic conditions, behaviour after the action, especially willingness to effect restitution, reconcile with victim. If article of CCG provides for aggravating circumstances as elements of crime, the same circumstance shall not be taken into consideration when awarding a sentence.

Question 21: Measures of protection for the child victim

Guiding Principles for the Investigative Authorities of Georgia on the Investigation and Prosecution of the Crime of Trafficking and Treatment of the Victims of Trafficking (Guiding Principles) requires the investigative authorities to ensure that the protection extends to the child victims of the crime of trafficking. This guideline deals not only with the peculiarities of the crime of trafficking, but it adopts the principles for the treatment of the victims of the trafficking-related crimes, such as Engaging in Prostitution (Art.253 CCG) and Engaging Minor in Activity Against Public Order (Art.171 CCG), where actions committed against the juvenile are considered aggravating factors in determining the sanction. Therefore, the Guiding principles partially cover the protective measures and conduct of the investigative authorities with respect to crimes of child sexual abuse. The Guiding Principles establish protective measures in accordance with the best interests of child victims to ensure protection of their privacy, identity and physical safety.

The Requirement of the Guiding Principles is to ensure implementation of the following measures given that child victims are particularly vulnerable:

- The measures of protecting the privacy and identity of child victims to be taken, including publication of the specific information, such as details that could permit identification of the victim.
- In case of doubt, the person should be treated as though they are under 18 and should enjoy all the rights guaranteed by law for juvenile victims, unless there is sufficient evidence to the contrary.

¹¹ According to commentators of CCG crimes committed against interest of Georgia shall include crimes committed against citizens of Georgia as well.

- Consider any protective measure that may require removing the child victim from his/her family environment, where cohabitation with the child's family is impossible or does not serve to the best interests of the child and placing him/her at a state funded shelter for the protection and assistance of the victim, where victim can receive adequate service.
- When a child victim's physical and mental state allows, child has to be given the opportunity to express his/her own view regarding his/her removal from the family environment and/or placing at the shelter for the victim's protection. State authorities have to give due consideration to the observations expressed by the child.
- During criminal proceedings when it is impossible to ensure the presence of a child's parents or trustee, a representative of the state funded shelter for the protection and assistance to the victims shall step in.

Question 22: Investigations and criminal measures to protect the child victim

Rules regarding initiation, proceeding or termination of investigations, as well as other procedural aspects are regulated by Criminal Procedures Code of Georgia (CPCG).

PCG contains special Chapter XVIII regulating Criminal Proceedings on Crimes Committed by Juveniles. The criminal procedure for the juvenile cases shall apply to the person who was under 18 at the moment of commencement of prosecution against him/her. The criminal procedure against the defendant having reached 18 year shall continue in line with general rules.¹² CPCG provides for protection of juvenile's dignity, guaranteeing juvenile's special treatment at any stage of the proceedings - special attention shall be paid to the juvenile at all stages of the proceedings. His/her age, the special public interest in re-socialization, as well as necessity of assistance for his/her renewed mentoring, shall be taken into account. While processing the criminal case against the juvenile, full observance of the international guarantees on the rights of the child shall be mandatory.¹³

According to Article 100 of CPCG when an investigator or prosecutor receives information about a crime he/she shall be required to initiate investigation. Article 101 states that the grounds for the initiation of investigation shall be the information about a crime that is provided to an investigator or prosecutor, is revealed during the criminal proceedings, or is obtained through media. Investigator is authorized to initiate investigation based on the anonymous notification, but no prosecution shall take place only upon such notification.

Grounds for termination of investigation or criminal prosecution are envisaged by Article 105. It contains number of grounds for termination of investigation/prosecution. Withdrawal of victim's statement is not included in the list as one of such grounds.

According to Article 103 of CPCG investigation shall be conducted within a reasonable time, not to exceed the statutory limits for criminal prosecution set forth for a respective crime under CCG. As for statute of limitation envisaged by Article 71 of CCG the following should be briefly highlighted: person shall be released from criminal liability if (a) two years have passed since the perpetration of the crime for which the maximum sentence prescribed

¹² Article 315, Criminal Procedure Code of Georgia (2009)

¹³ Article 316, Criminal Procedure Code of Georgia (2009)

relevant Article does not exceed two years of imprisonment; (b) six years have passed since the perpetration of less grave crime; (c) ten years have passed since the perpetration of grave crime; (d) twenty five years have passed since the perpetration of especially grave crime.¹⁴

Special rule of examination of juvenile is determined by CPCG as well. A juvenile shall be examined in the presence of his/her legal representative, or psychologist.¹⁵ It shall only be allowed to examine a person under the age of 14 with the consent of and in the presence of the legal representative. He/she shall have the right to express his/her opinion and to clarify a question asked, with the permission of the court. A witness under the age of 14 years shall be told about his/her duty to tell only the truth, but shall not be warned about criminal liability for refusing to testify, giving false and substantially contradictory testimony.¹⁶

Government of Georgia considers protracted nature of Mutual Legal Assistance procedure as one of the main challenges in the process of combatting child online sexual abuse since it hinders the timely sharing of key investigative information in certain circumstances on international level. In December of 2012 Government of Georgia signed the declaration on Global Alliance against child sexual abuse online, initiated by EU and supported by USA state department of justice.

The policy target of the Global Alliance is to:

- *Enhancing efforts to identify victims, whose sexual abuse is depicted in child pornography, and ensuring that they receive the necessary assistance, support and protection;*
- *Enhancing efforts to investigate cases of child sexual abuse online and to identify and prosecute offenders;*
- *Increasing public awareness of the risks posed by children's activities online, including the self-production of images, in order to reduce the production of new child pornography; and*
- *Reducing the availability of child pornography online and the re-victimization of children.*

As a result of Alliance members' cooperation, one case of child pornography has been revealed and investigated by the law enforcement agencies of Georgia, Israel and US Federal Bureau of Investigation (FBI) in 2013.

Question 23: Child friendly interviewing and proceedings

According to Article 116 of CPCG juvenile shall be examined if he/she is able to provide information substantial for the case verbally or in any other manner. Examination shall take place in the presence of his/her legal representative or psychologist. If juvenile is victim of sexual exploitation or violence his/her examination may be video/audio recorded. Such recordings may be demonstrated during a court hearing. Examination of a person under 14

¹⁴ Information on categories of crimes is given in section V

¹⁵ Article 116.2, Criminal Procedure Code of Georgia (2009)

¹⁶ Article 116.3, Criminal Procedure Code of Georgia (2009)

shall be carried out with the consent and in the presence of legal representative. Examination of juvenile who is victim of sexual exploitation or violence shall be limited as far as possible and shall be determined by the necessity of achieving the goals of criminal procedure. Besides, as it is provided by Article 243, upon the motion of interested party court examines juvenile victim as witness remotely through the use of technical means.

Article 182 of CPCG states that as a rule court sessions are public. Though, upon the motion of a party or on its own initiative court may decide to close the session partially or fully, if it is aimed at the protection of interests of juvenile. At the same time, court may impose a requirement of nondisclosure of information discussed at a closed court session upon a person attending such session.