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Child-Friendly Justice in Europe: Participation and Restorative Justice: Online event – 12 May 2020

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Restorative justice – Georgian experience and remaining challenges

Greetings,

It is a big honor to present the Prosecution Service of Georgia at the Roundtable under the framework of the Georgian Presidency of the Committee of Ministers of the Council of Europe – “Child-friendly Justice: The Experience of Europe in Restorative Justice”.

Today, I will share with you our experience of how measures of restorative justice were implemented in Georgian legal space, how they were integrated with the traditional justice system and what the results are.

It is noteworthy that we started implementing restorative justice in the juvenile justice system. It was certainly a risk to bring a completely foreign mechanism to our legal sphere. However, having realized that the measures of restorative justice created the most effective mechanism for the re-socialization and rehabilitation of minors in conflict with the law, we accepted this challenge at the very beginning of the reforms of juvenile justice. Before this, there was no alternative approach in Georgia towards minors in conflict with the law. Criminal proceedings were conducted based on rules for adults, as well as juvenile offenders. The legislation did not provide for alternative measures of criminal prosecution and for the possibility to involve children in rehabilitative activities.

The Parliament of Georgia adopted the Juvenile Justice Code in 2015, which fully endorses European and international legal standards. By this, Georgia emphasized the particular importance of juvenile justice and expressed its clear preparedness to create a child-friendly justice system relying on children's best interests.

Juvenile justice is one of the priority areas for the Prosecution Service of Georgia. Our institution was actively involved in the drafting of the Juvenile Justice Code. It also works on a permanent basis for effective implementation of the relevant measures to ensure that legal proceedings towards minors are conducted in accordance with international standards and a child's individual characteristics. The Prosecution Service of Georgia also makes sure that during such proceedings, a child's opinion, safety, well-being, healthcare, education, development, re-socialization, rehabilitation and other interests are taken into account.

We have already mentioned that it was the Juvenile Justice Code that established restorative justice in the Georgian legal system as one of the most significant mechanisms for re-socialization and rehabilitation of minors. In this respect, the program of diversion and mediation has been initiated. Within the scope of this program, minors being in conflict with the law are provided with the opportunity to realize their responsibility for the committed acts, compensate the damage and/or reconcile with the victims. The Juvenile Justice Code has underlined that the program of diversion and mediation, as an alternative mechanism to criminal prosecution, aims to facilitate proper development of minors and their integration with the society, as well as to prevent new crimes. Georgian legislation has also clearly defined the basic principles of the program of diversion and mediation: maximum promotion of alternative measures, voluntariness, proportionality, confidentiality, Prevention of stigmatization and consideration of a minor's true interests. Such a precise legislative definition has created a solid legal framework for effective implementation of the program of diversion and mediation. The legislation has granted prosecutors with the authorization to decide upon the matter of including minors in the program at the investigative stage. A prosecutor examines and assesses each case against a minor individually and decides upon applying to the minor measures alternative to criminal prosecution. After this decision is made, a multi-sector group starts working on the criminal case, with the participation of a social worker and a mediator. The social worker evaluates a child individually. The protective and risk factors revealed by such evaluation enable a prosecutor to lead the ensuing processes correctly. The mediator works to ensure successful mediation between a minor in conflict with the law and a victim.

Being an unexplored element for the Georgian legal space, the program of diversion and mediation was being implemented stage by stage and it became fully functional in 2016. Since 2016, the Juvenile Justice Code enables not only minors (persons aged between 14 and 18), but also youngsters aged between 18 and 21 years of age to become involved in the program of diversion and mediation. Today, the program of diversion and mediation for minors is a solidly based legal institution. According to the data from 2010-2019, the program of diversion and mediation provided 4428 youngsters with the opportunity to be a part of different rehabilitation programs and use a single chance to start their lives with a clean slate. Out of these 4428 persons, 2910 are minors, while 1518 are aged between 18 and 21. The analysis of the statistical data makes it clear that the recent rate of diversion has been steadily increasing.

Article 8 of the Juvenile Justice Code highlights that in the first place, the possibility of diversion of a minor or the application of a restorative justice measure shall be considered, and it shall be evaluated whether such diversion or such measure will serve the goals of re-socialization and rehabilitation of the minor and the prevention of new crimes better than the imposition of criminal liability and sanction. In order to implement this principle effectively, a prosecutor always gives priority to the possibility of applying diversion to a person aged below 21. This is proven by not only an increasing rate of diversion, but also a high proportion of diversion in the total number of charged and diverted minors. Since 2016, the percentage of diverted minors has been much higher than 50% than that of charged minors, whereas the former was much lower than 50% before 2015. Following the data from 2019, the rate of diversion out of the total number of diverted and charged minors, who met the diversion criteria set by the law (had committed a less serious or serious crime, confessed to the committed crime, had no criminal record and had not been diverted before), reached 76%.

The program of diversion and mediation of minors, as a form of restorative justice, aims at considering minors' interests as much as possible, along with caring for their best interests. The Prosecution Service of Georgia pays particular attention to increasing the involvement of victims in the process of mediation. The mediators of LEPL (National Agency for Crime Prevention, Enforcement of Non-Custodial Sentences and Probation), which is a body under the Ministry of Justice of Georgia, have the central role for mediation between minors and victims. The analysis of practice in place throughout the existence of the program of diversion and mediation has shown how important it is to conduct the process of diversion with mediation. After mediation between the parties is complete, the diverted persons realize the committed criminal act much better and the victims' interests are taken into consideration as much as possible during the process. In this regard, the system underwent certain changes. In the beginning, a victim's first refusal to become involved in the process of mediation was deemed as final, a mediator was not assigned to the case and the diversion of a minor went on without mediation. Today, a prosecutor addresses the Crime Prevention Center of the Ministry of Justice of Georgia with the request to assign a mediator to the case regardless of the victim's position. Increasing the inclusion of specialists enabled us to raise the number of successful mediations. The rate of mediations was 39% in 2016-2017, and 41% in 2018, whereas this figure grew to 54% in 2019. Hence, the encountered challenge – to increase the involvement of victims in the process of diversion - was overcome by cooperation between the Prosecution Service and the Ministry of Justice of Georgia. In order to achieve appropriate goals, a prosecutor and a mediator make concrete decisions in every case based on collaboration. Although it is not mandatory for a prosecutor to attend a mediation conference, there are cases when a prosecutor does attend such conferences considering the difficulty of the case, the nature of the conflict and the interests of the parties. A prosecutor and a mediator decide upon this together, taking account of the minor's best interests.

We realize that the effectiveness of the program of diversion and mediation is ensured by correctly imposing relevant conditions on the diverted persons and offering them necessary services. An important challenge that we are facing in this respect is to define the right conditions and the validity term of the diversion agreement. It is our goal to change the consciousness of minors and give their deviant behavior a correct direction, which will result in fulfilling the assigned obligations and working with different professionals. The measures selected, based on the joint decision of social workers, mediators and prosecutors, the decision

which relies on considering the needs demonstrated by individual assessments, risks and protective factors, help diverted persons to understand the committed crime, cope with behavioral problems and acquire certain skills, which facilitates their adaptation to the society.

The services offered to diverted persons can be divided into several groups: educational services, social and psychological rehabilitation and community work.

Educational measures might include: enrollment on computer or foreign language courses; imposing the obligation to increase academic performance; free classes of various sports. Considering the nature of the crime committed by a minor, he or she may be obligated to look up information about the crime and write an essay, which will be reviewed together with a social worker and a psychologist. For psychological and social rehabilitation, the children being in conflict with the law join the following training courses: "Market Management", "Understanding Crime", "Risks and Needs in Life", "A Healthy Lifestyle". The diverted persons are referred to a psychologist and they receive individual consultations or psychological therapy to overcome their stressful experiences, cope with the addiction to gambling and to break free of other types of destructive behavior. As for community work, the diverted persons clean various public places and plant greenery. They also participate in the activities planned at the houses for socially vulnerable children and elderly daycare centers.

As we can see, the program of diversion and mediation is definitely not a process of releasing children in conflict with the law from liability. It is an alternative form of liability, which, by applying the measures of restorative justice, attempts to ensure that diverted persons develop a sense of social responsibility.

We can certainly say today that the program of diversion and mediation is successful. This is unequivocally reflected by the low rate of repeated crime committed by diverted juveniles: the rate of repeated crime committed within the validity term of the diversion agreement is only 3%. The Prosecution Service of Georgia also studied repeated crime committed by all the minors diverted in 2010-2018. The findings of the study revealed that the rate of repeated crime is only 9%. These results enable us to say boldly that it is possible to achieve goals by sensible application of restorative justice measures and the mechanisms alternative to criminal prosecution, along with traditional justice. We have specific examples when minors, who could not find their place in the society because of numerous factors and thus expressed their protest and found themselves in conflict with the law, re-invented the right way to live and became self-realized people as a result of smart criminal policy carried out towards them.

We had to take a difficult road to achieve these outcomes – creating relevant legislative basis; coming up with and implementing intra-institutional recommendations; training professionals and creating relevant specializations that would have a permanent and a continuous nature; and, due to the multi-sector nature of juvenile justice, creating local multidiscipline groups, the members of which will openly and honestly share both positive and negative experiences with each other.

We are definitely proud of the results, but this is only the beginning of the road. We understand that we have chosen a correct direction, but there are many other challenges ahead. It is our main goal today to overcome them successfully. In order to avert the process becoming formal, we are thinking of searching for and creating a base of services, which will make it easier to include minor-friendly obligations in the agreements when using diversion

as a measure of restorative justice. We still have more to do in terms of public awareness so that we can further increase the involvement of victims in the process. We are working on and broadening the concept of a child-friendly environment.

The Prosecution Service of Georgia has put in place a system of monitoring to ensure the process runs smoothly. Within the scope of the monitoring system, the criminal cases involving diversion are controlled regularly, and prompt and substantiated decision-making by prosecutors is also overseen. If concrete lapses emerge, we react immediately and we also prepare recommendations for eradicating systemic problems. Smooth inter-institutional coordination and constant information exchange considerably facilitate the effectiveness of juvenile justice.

This is the experience of Georgia with restorative justice, which allows us not to be afraid of the future and to move forward.

Thank you for *attention*.