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Ensuring fair examination of criminal cases for juvenile suspects:
assessment of rules and practices for pre-trial interrogation
of juveniles

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the contribution of the European Commission
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DOI:10.7404/GC.Un.Yer.MAHRD.20132014.04

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YEREVAN STATE UNIVERSITY



Center for European Studies

Master of Arts Thesis

Thesis Topic: Ensuring Fair Examination of Criminal Cases for Juvenile
Suspects: Assessment of Rules and Practices for Pre-trial Interrogation of Juveniles

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Submitted on ____/____/2014

Reviewed on ____/____/2014

Reviewed by _____

Allowed for Defence

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Thesis defended on ____/____/2014

Grade _____

Chair of state examination Board

Yerevan 2014

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1. INTRODUCTION

*'When one writes a novel about grown people,
he knows exactly where to stop- that is, with a marriage,
but when he writes of juveniles, he must stop where he best can.'*
Mark Twain

Juvenile Justice is a complex area in which to work, with juvenile justice systems across the world taking a variety of forms. The many differences and complexities of juvenile justice and the variations in practice have not always been easy to ascertain and reflect on. It is important not to consider this thesis as definitive but, rather, as an evolving guide, shaped by experience and a growing understanding of what works and what does not. Thus the thesis attempts to bring a wide range of regulations, rules and norms of international production and to scan them through the national framework of juvenile legal and systematic construct.

1.1 The Research Questions

The thesis concentrates on the juvenile justice system in contemporary Armenia with a certain focus on the international framework and vision of it. The study seeks to answer the following questions:

What is the international framework for the best protection of children in conflict with law? What are the pre-trial guarantees?

How are juveniles in conflict with criminal law approached in Armenia today? And, what characterizes juvenile justice as a policy in Armenia?

What are the most popular omissions and violations of juvenile suspects in criminal pre-trial proceedings? Which are the areas of consideration?

By answering these questions I also try to identify certain challenges that will have to be addressed in order for Armenia to be able to completely fulfil its obligations under international documents to which RA is a part of.

I will claim that since 1995, the legal framework is in accordance with international standards for juvenile justice, but that formal and informal institutions, treatment of children as a legacy from the Soviet Union system and treating a juvenile as an adult

constitute obstacles in the realization of existing frameworks. In the current juvenile justice system many issues have been observed. Despite the volume and areas of interest this thesis focuses on the interrogation framework and practices mainly in the pre-trial phase.

The ambivalent nature of the ratified international documents and the lack of corresponding domestic laws and national plans reflect the deficit of a coordinated holistic juvenile justice policy. After more than 20 years of its independence the juvenile justice reforms have been developed but still in practice they are either not areas for concern or those existing are not duly implemented.

Laws and policies, while not without significance, seldom determine what actually happens. Arguably more important than the official approach to children in conflict with the law, is how the juvenile justice system functions in practice. The question of the level of implementation is also tackled in this thesis.

State of Research

Observations as to the functioning of juvenile courts, hearings in juvenile cases, commissions and committees are traditionally seen from the Anglo-American approach among many scholars. However, the isolated consideration of the child in conflict with law, as a criterion for a juvenile justice system, does still not show the whole image of the current state of the situation. Consequently provisions of jurisdiction in which child offenders are targeted should be studied and comply with the system as a whole. Armenia in comparison with many other states is underrepresented in the juvenile justice system as studies and researches are quite rare.

In general, Armenian juveniles in conflict with the law have gained very little attention from both researchers from Armenia as well as foreign observers. There is no need to even mention the deficit when observing the rights of juvenile suspects in criminal proceedings in particular. It seems that juvenile justice reforms were penetrated into national remedies only because of pressure from the UN Committee on the Rights of the Child to which Armenia (hereafter – ‘the Republic of Armenia’ or ‘RA’) as a state party submits periodic reports. The assistance for constructing the second chapter of the thesis are international non-governmental organizations such as the Civil Society Institute, which along with the Helsinki Committee in Armenia are the only institutions, local or international, who observe the rights of people in conflict with law.

1.2 Research Approach

In order to answer the research questions the thesis suggests a qualitative study of legislation, institutional set-up and policy development at a national level, as well as studies of local reform initiatives in RA. However, before an analysis at a national level the legal framework on juvenile justice is represented from both a behavioral and administrative approach. The study draws theories from age-focused and forensic psychology, sociology and criminology research, as well as the cultural background of the treatment of the child. The guarantees theoretically claimed are evidenced through the practice in Armenia. The practice itself is the confirmation of observation by international child focused organizations and committees through the outcome of the responses and comments of police staff and judges who deal with juvenile crimes.

1.2.1 Qualitative Studies: The main asset of these studies is the examination of the juvenile justice system at an internationally admissible level, followed by a consideration of how it compares with the domestic system in Armenia as well as the observation of legislative and practice reforms in the country. As findings and gaps may be a general feature in countries like post-Soviet countries, the research gives reference to the similarities with other countries. The best examples and leading developments are also included in Chapter III.

1.2.2 Qualitative Interviews: Along with the written sources such as national action plans, declarations, legal and statistical sources, an in-depth interview with inspectors of the police Investigation Department of Gegharkunik marz¹ is supplemented. All the informants were asked to give a description of how juvenile cases are handled specifically with a certain focus on the interrogation of juvenile suspects. Of course, the knowledge, values and experience of the inspector may also affect the result of the research or there may be other challenges, such as the inspector saying what the interviewer would like to hear. These challenges are overcome by the contribution of other research.

1.2.3 Interdisciplinary Approach: One of the main gaps both at a legal and practical level was the lack of an interdisciplinary approach into the examination of the cases concerning juvenile offenders. Judicial approaches to juvenile justice tend to concentrate on legal guidelines. A criminological approach may explain the relationship between assumption of the crime and the nature of the justice system. The sociological studies give us an inside look at the actors in the system and psychological perspective is drawn from the human

¹ The name of the administrative division of RA is 'marz' which is similar to province.

rights concepts concerning behavioral aspects of treating the child. The actual nature of the juvenile justice system depends on multiple factors: laws and legal procedures; underlying assumptions on crime and justice; professionalism of the staff of pre-trial and trial conductors; the existence of follow up and punitive measures in case of violations from state parties etc. All these factors need to be brought together in order to get a concise view of juvenile justice policies and practice.

1.2.4 Comparison: Another benefit of the work is the comparison between international safeguards and existing ones in Armenia. In Chapter I you can find a behavioral concept, the so called Theory of 3Ts (three ways of treating a child) which provides the minimal necessary background in child rights policies and which is actually a composition of human rights norms in the juvenile justice system. The latter is contrasted with some similar points, which are very few, in the Criminal Code and Code of Criminal Procedure in the Republic of Armenia. However, one of the risks of the thesis was the presentation of interviews conducted with police inspectors in one of the regions of Armenia- Gegharkunik, and since the development of marzes may vary; other studies with different location and scope were incorporated.

1.2.5 Translation: The need of translation presents a particular challenge for cross-cultural studies of laws, as the legal language also reveals the nature of peculiarities in jurisdiction. There is a risk of losing connotations in the translation of laws and legal provisions. Thus, important local legal documents are the official and unofficial variants of translations of codes and laws available on the official website of the Ministry of Justice of RA. All other translations are done by the author herself. The English language sometimes does not provide sufficient wording for describing such phenomena, which are not common in the Anglo-American legal culture.

1.3 Structure of Thesis

The work is a compilation of three chapters which cover the legal, practical and integral recommendations. With an holistic outlook these three elements, along with the scientific approach to the material, fulfill the initiatives and questions of the research.

The first chapter touches upon the general human rights principles and objectives of the rights of a child and relevant concepts for stating necessary behavioral approaches. Both behavioral and administrative principles are highlighted in the Convention on the Rights of

the Child², UN Guiding principles concerning every aspect of juvenile justice, International Covenant on Civil and Political Rights⁴ and the European Convention on Human Rights⁵ in general, but in the Commentary to the European Rules for juvenile offenders, subject to sanctions and measures, and in the preamble and the case-law of the European Court of Human Rights in particular.

To confront the wide range of juvenile justice components the thesis suggests the method of the 3Ts- three ways of treating a child in general, which are certain minimal requirements in respect of the child's rights in conflict with law. Thus, this idea is apt in expressing the goals of international child rights documents, the approaches, some historical and theoretical developments of certain concepts as well as challenges which the states encounter while having a mismatch of legal assumptions.

The 3Ts concept is

- treating a child as a human being, which highlights the basic human rights guarantees such as 'dignity', 'best interest of the child', 'protection from violence' or 'security of the child', 'non-discrimination' etc.;
- treating a child as an individual, which mainly highlights the necessity of dealing with the child in conflict with the law in an individual and complying manner;
- treating a child as a specific beneficiary of the law where certain legal needs of a child prove the need for establishing a separate juvenile justice system.

Consequently the chapter concentrates on administrative concepts of handling juvenile justice in pre-trial and pre-trial interrogation such as the first contact with the family as a means of assessing the well-being of the child, detention as a matter of last resort rather than a generally applicable measure, specialization within the police and other authorities to execute judicial power and other relevant administrative guarantees.

The work is succeeded by a legal and systematic description of the juvenile justice framework in Armenia with the due presentation of actual judicial, police and other institutional bodies and laws regulating juvenile's rights and the work of relevant authorities.

In particular, the procedure of criminal investigation of juvenile cases in the Republic of Armenia in the Criminal Code and the Code of Criminal Procedure is presented. The

² Hereafter CRC.

⁴ Hereafter ICCPR.

⁵ Hereafter ECHR.

chapter is concluded with partial legal suggestions on legislative amendments, which are completely represented in the final chapter.

Chapter II already provides the practice of mentioned laws and concentrates on the findings and concerns of research work, the keys sources are interviews conducted with inspectors of Gegharkunik Investigation Department, monitoring reports of juveniles' interrogation in trial by the Civil Society Institute and observation of Police Detention facilities by the Helsinki Committee of Armenia. General statistics and data have been sourced from the Annual Reports of the Ombudsman office and a child-focused representative of international organizations. Information is represented with an holistic view of the legal, habitual and cultural situation of the juvenile justice system and justice in Armenia in general. The main areas of consideration are the urgent need for specialization in police stations for implementation of legal norms, the participation of legal representatives, teachers, social/probation workers and other specialists, the absence of behavioral guidelines for state authorities on treating children in conflict with the law as well as the lack of monitoring and evaluation mechanisms on a state level.

The overall estimation and assessment of the juvenile justice framework in Armenia is qualified as a non-systematized sphere. With due respect to the existing facilities and regulation mechanisms, a regulation of human, financial and institutional resources for strengthening juvenile justice in RA is suggested. Along with these recommendations Chapter III suggests some leading examples of efficient juvenile justice practice throughout the world.

2. CHAPTER I

2.1 Terms Used in the Dissertation Research

Juvenile –a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner which is different from an adult.⁶ The thesis considers the rights of any person below 18 years of age.⁷

Fair examination or fair trial –is deemed to be an overall combination of official texts and institutions with their guiding principles and norms stated in international and national documents with corresponding policies to tackle youth crime. It is also a term, which relates to the substantive and procedural justice in a particular criminal case.

Juvenile offenders - a juvenile offender is a child or younger person who is alleged to have committed or who has been found to have committed an offense.

Suspect - a person detained on the suspicion of committing a crime (in some circumstances a provisional measure is adopted with respect to the suspect at the stage of the pre-trial investigation).⁸

Pre-trial interrogation: interrogation of the suspect – a preliminary stage of a criminal proceedings organized immediately after detention or the announcement of the decree, this is to aid in securing the appearance of the juvenile. The detained suspect is entitled to testify in the presence of a lawyer if the suspect can afford one, if not, the investigator must provide a competent lawyer within 24 hours of detention or arrest. Before the interrogation, the investigators advise the suspect of the nature of suspicion and explain his rights including the right to refuse to testify. The process is commenced with the suggestion to account for the alleged accusations and other details significant to the case. Furthermore, the interrogation should be guided by other rules and principles concerning the interrogation of an accused such as carrying out a daytime interrogation, and a separate interrogation without other offenders.

⁶ Beijing Rules Part I, Article 2, Rule 2.2.

⁷ Law of RA on the Rights of the Child, Article 2 – Legislation on the Rights of the Child (Law of RA on the Rights of the Child , 1996).

⁸ Code of Criminal Procedure of RA Chapter 8 Defendant Party Article 62 section1.1, 1,2.

2.2 Guiding Behavioral Principles in Dealing with Juvenile Offenders: 3T Approach

International legal framework compared to the domestic legal tool is quite flexible and leaves the choice of measures and approaches to the states who are party to international treaties, conventions and agreements. The obligations drawn from coherent documents may vary from country to country and from treaty to treaty, but the guiding principles are that the parameters must be the same in the general principles for treating the child in criminal proceedings. These principles are highlighted mainly in the CRC, the UN Guiding Principles concerning every aspect of juvenile justice, the ICCPR, and the ECHR in general, but in particular in the Commentary to the European Rules for juvenile offenders subject to sanctions and measures and in the preamble and the case law of the European Court of Human Rights. The guiding principles are constantly progressing in the General Comments of the Child Rights Committee in particular in the Recommendation CM/Rec (2009) 10 of the Committee of Ministers to member states on integrated national strategies for the protection of children from violence. (Ministers, 2009, 18 November)

The Committee of Ministers in the Council of Europe with a view to integrated national strategies advances the guidelines based on eight general principles (protection against violence, the right to life and maximum survival and development, non-discrimination, gender equality, child participation, a state's obligations, other actors obligations and participation, best interests of the child) and four operative principles (multidimensional nature of violence, inclusive approach, cooperation, involved target approach). (Committee of Ministers C. o., 2009)

Here a distinction between guiding principles in the administration of juvenile justice and behavioral principles are made. The two parts of the first chapter are based on these logics.

The essence of the guiding principles suggest the thesis of a 3-way treatment of the juvenile in conflict with the law. They are:

- ❖ **treating the child as a human being**
- ❖ **treating the child as an individual**
- ❖ **treating the child as a specific beneficiary of law**

2.2.1 Treatment of the Child as a Human Being

‘Dignity’, ‘best interest of the child’, ‘protection from violence’ or ‘security of the child’ and many aspects of the basic needs of a human being are mentioned in international and national guidelines for competent behavior with the child.

Dignity in some cases is considered a phenomenon supported by four compatible general principles which are non-discriminative, with a bold focus on gender equality issues, again the best interests of the child, the right to life from the scope of survival and further development and respect for the views of the child. (ECOSOC, 1997)

While examining the linkage between non-discrimination and dignity of the child we face the concept of equal treatment by a competent authority, in this particular case, the inspector, prosecutor, judge or any other person involved in the case proceedings. In the non-discriminative approach, gender based discrimination is outlined as one of the most frequently encountered types of discrimination, where male offenders can be treated in a harsher way than female juveniles or vice versa because of cultural heritage, depending on the state. Thus the main suggestion in the guidelines is a law-based orientation in the treatment of each person without considering any social or biological features as a matter of marginal behavior. Here non-discrimination is considered for the sake of the abolition of disparity.

Criminalizing of behavioral problems of the child is another discriminative approach experienced by the states. There is a list of ‘crimes’, which are actually compulsory activities of children of a certain age, for which punitive and preventative measures are applied, however, the same ‘crimes’ committed by adults are not criminalized. Vagrancy, truancy, runaways and other ways of disobedience, generally referred to as Status Offenses, are another way of applying a discriminative approach based on the maturity of the child, albeit these offenses are thought to be abolished by the states. (Committee, 2007)

Humane and non-degrading treatment of each person is another element under the general term ‘dignity’ with the exception of being threatened or being the subject of any kind of violence. This term is generally articulated as ‘ill-treatment’ or ‘torture’ where the stress is put on the sustainable and harm inflicting behavior which causes both physical and mental suffering and pain. Within the context of juvenile investigation, torture is experienced as a tool used intentionally for obtaining information from the offender. (UN CAT, 1975) Freedom from torture is an exceptional human right (prohibition of torture is a

peremptory norm in international and European Human Rights law) with no excuses such as the instable situation in the country or any other sort of emergency⁹ and without any legal limitations in any of the international and national documents linked to freedom from torture. However, the criminal proceedings aren't conversations with psychologists neither are the prosecutors as patient and professional in child treatment as the pedagogues themselves. Thus, compassion and kind firmness should replace the harsh language and any methods including corporal punishments.¹⁰

The right to life from the scope of survival and within the frame of juvenile justice is considered to be studied from the *detention* aspect of the offender. The incarceration of the offender should be considered as a last resort and only in exceptional cases such as the necessity to protect the offender from possible risk. Here the administrative standards mentioned above reveal the essence and necessity in avoiding juvenile detention as a regularly applicable measure.¹¹

Out of all groups, children should be a priority because of the vulnerable group they belong to, hence there should be national and international tools to treat them with care and protection as the well-being of the child is underpinned by the protection itself. Children working and living on the streets or children permanently deprived of a family environment, children with disabilities, migrant, minority groups and indigenous children should benefit from the outlined regulations of domestic law. (ECOSOC, 1997)

In the prevention policy of the state the cultural and habitual treatment of the child should be considered in building a society free from stigmatic approaches to juvenile offenders. The complete socialization and upbringing of a child may lead to the reduction of child delinquency. The Committee of Ministers to the member states believe society has the duty to undertake the role of early psychological intervention in the prevention of criminality (Minsters, 6 October 2000). Considering the ongoing progress of the child, obstacles that arise in respect of socialization, personalization and care for specific needs can be

⁹ Article 2.2 of CAT.

¹⁰ Investigation and Prosecution which is the Part Two of Beijing Rules in 10.3 provides that the contact between the law enforcement agencies and a juvenile offender shall be managed in a way to respect the legal status of the juvenile while promoting his/her well-being and avoiding harm with the proper regard to the circumstances of the case. Furthermore, the guidelines concentrate both on the concept of torture in terms of corporal punishment, physical and severe psychological pressure and on ill-treatment where we observe the issue of using harsh language.

¹¹ See point two of administrative minimum standards named pre-trial detention considered as a last resort rather than regularly applicable measure. The certain provisions are considered for minimization of the period of detention for the shortest possible time.

detrimental to the full development of the child as a member of the society. However violation of the law may be considered as another way for the child to become socialized and recognized as an individual.

2.2.2 Treating the Child as an Individual

Universal Declaration of Human Rights and the International Covenant on Human Rights proclaimed the value of every person as a bearer of fundamental human rights irrespective to the distinctions of any sort such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth or other status. The preamble of the CRC recalls that childhood is entitled to special care and assistance meanwhile bearing in mind that a child, by reason of his physical and mental immaturity, needs special safeguarding and care including legal assistance and protection undertaken by the states parties to the convention. Despite the positive discrimination which is developed in conformity with age and social status based on biological maturity, a child should be treated as an individual with all the necessary possibilities to enjoy his or her inborn human rights.

As indicated in many aspects of the Child Rights Convention and related international documents, children are viewed as individuals by law bearers unlike in the past when children were considered the property of their parents or a target to invest certain resource for improving living conditions instead of considering them as a separate subject of law.

As active recipients of law, juveniles are respected on the views of a child and the assumptions in the criminal proceedings should be duly considered. The guiding principles linked to the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice adopt a child-oriented policy where the sense of dignity, the worth of the child as an individual and full respect in compliance with the age and stage of development is adjusted.¹² (ECOSOC, 1997)

Distribution of the relevant information concerning legal principles of the proceedings shows loyalty towards the offender from the state official on one side, and accelerates the sense of obligation for the juvenile on the other. This enhances the responsibility of the child and improves the quality of child participation. Without any evidence one can assume

¹² Part II Plans for the implementation of the Convention on the Rights of the Child, the pursuit of its goals and the use and application of the international standards and norms in juvenile justice, 11 (a).

that the bigger the interest and responsibility of the child, the greater the success for cooperation with the lawyer, prosecutors, police representatives and judges.

Finally, if the child is not treated as an individual, the concept of juvenile justice could cease to exist since the legal responsibility in its turn could be delegated to the legal representative of the child which in its turn would be considered a violation of the rights of the parent or guardian who is not directly in conflict with the law as an individual.

2.2.3 Treating the Child as a Specific Beneficiary of Law

A certain set of judicial institutions and legal regulations are usually established without consideration of the case and any other feature of certain instances. Juvenile justice is outlined as one of the spheres to be reviewed and refreshed in terms of an established and preliminary envisioned set of rules. International and national laws and the third generation of human rights are devoted to the rights of groups. Women, from the reproductive point, minorities within the terms of non-discriminative approach and many other specific groups have a targeted law focus with limitations and inclusive rights. Among special targets, juvenile justice can be considered the most flexible among all the group-rights recipients. The reason behind such an allegation is the concentration of international law through national remedy that tackles juvenile justice issues focusing on the individual rather than on the group highlighted with differentiating criteria. Children differ in their physical and psychological maturity and the specific needs in parental care, in general in their emotional needs and in state care, for instance in ensuring compulsory education, from a legal aspect, demands a multinational legal institution to deal with children in conflict with the law. Altogether qualified, the stem of the term 'best interest of the child', as it was mentioned above, is the basis for a separate system.

Flexibility, experimentation and researching abilities should describe the regimes used in juvenile justice establishments (Deputies, 30th April 1966).

From a strategic point of view, the work and policies employed to tackle juvenile cases should maximally correspond to the needs and circumstances of each case and juvenile and the intervention itself should be based on the scientific evidence of it (Committee of Ministers C. o., 24 September 2003). This is actually the perfect match of general principles and specific individual approaches which, in fact is an ideal model for states to aim for.

As stated in the above mentioned point, for the individual treatment of the juvenile offender, outsourcing professionals with non-legal background is needed to meet specific and arising psychological problems.

Treatment or more comprehensive behavior related principles and many areas covering administrative principles will be mentioned in the next part.

2.3 International Standards and Norms on Juvenile Justice; Administrative Standards in Pre-trial Interrogation and Detention

The international community has worked out quite effective and numerous norms and guarantees for juvenile justice and child rights protection in general. The Convention on Child Rights has been ratified by almost all the countries on the globe. Meanwhile the firm international legal system does not secure the implementation of all the norms and guarantees depicted in documents. Juvenile justice standards divided by areas can be specified in the following minimum guarantees for the outlined stages:

- Initial contact and pre-trial detention;
- Diversion;
- Adjudicatory process and sentencing;
- Standards of post-trial detention and serving a sentence;
- After care and reintegration.

The instant examination of the international documents shows the description of certain concepts that are overlapping. Thus the minimum guarantees that can be deemed from those documents are the following.

- Age of criminal liability;
- Presumption of innocence;
- Prohibition of retroactive prohibition of a conduct;
- Principle of non- discrimination;
- Abolition of status offenses;
- Competent, independent and impartial authority;
- Child's right to be heard in any judicial proceedings;

- Right to legal representation, right to an interpreter, presence of parents and other experts of sphere (social worker, psychologist);
- Right to privacy;
- Right to have the matter determined without delay;
- Right not to be compelled to give testimony or to confess or acknowledge guilt.

The focus should be on the pre-trial phase in proceedings. In fact the initial contact and pre-trial detention is guaranteed through these outlined areas. The bellow mentioned provisions are the general observations of the minimum rules for the Administration of Juvenile Justice and the choice of pre-trial caption is justified through the needs of the work.

- ***Contacts promote the well-being of the juvenile and avoid possible inflictions and harm. (UN GA, The Beijing Rules 10.3)***

As it is mentioned in the commentary itself, this kind of formulation provides vast room for interpretation. Terms such as 'well-being' and 'harm' include the main aspects and behavior on child protection issues in juvenile justice. In compliance with the best interests, social norms and traditions in treating the child, each state undertakes the responsibility for the well-being of the child and protection from harm where harsh language, physical violence and exposure hazard, as well as societal members developing a stigmatic approach to the young offender, can be considered or dismissed from the causes inflicting harm. Thus, each child should be treated individually which means the offenders displaying criminal behavior and disobeying the general procedure conducted lawfully would be treated in a harsher way, in a sober-minded manner, rather than those with a calmer attitude. One of the reasons for applying the differentiation method can be the category of the juvenile offender. Here the distinction should work not against but for the juvenile such as the witnesses should be contacted in a radically different way to suspects or victims. The international framework envisages a separate set of rules for juvenile witnesses and victims of the crime.¹³

The initial contact should be made with a legal representative of the child first of all. In the case of uncertainty the other parties involved in the apprehension of the juvenile suspect should be notified with only the necessary information and without allowing for

¹³ The main guiding principles adopted internationally on the protection of child Victims and Witnesses of crime are concluded in the ' Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20 of 22 July 2005.

the deterioration of the connection and quality of communication between the contacts and child. The array of specialists and people from different fields involved in the criminal proceedings are not limited as long as they guarantee action in the best interest of the child or of vital importance to the rapid development of the investigation and the conviction of guilt or innocence of the individual.

The immediate notification to the legal representative of the juvenile is the initial and legal approach consolidated in Beijing 10.1. Here it is provided: *'Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter'*. The main areas for consideration in this rule is the notification to the adult representatives of the child which in its turn means the legal and other assistance taken under the control of a guardian, and the second element of the rule is the short time frame for notifying parents or guardians of the apprehension of the juvenile.

The provision also drew links to the necessity of facilities for communication between the family members and friends of the untried prisoner exercising the right to a private life. From this view the restrictions should be considered in extreme cases when there is a threat to the security and proper order of the detention institute or the decision of visits may alter the 'interests of administration justice'. (UN, 1955)¹⁴

The presence of the parents, interpreter, teacher or a social worker in the process of investigation and interrogation of the juvenile is an area to be controlled by the state. The Peking Rules state the necessity of participation of legal representatives during the proceedings to secure the best interests of the juvenile.¹⁵

Article 441 of Code of Criminal Procedure of RA requires the participation of the legal representative of the under-aged person in the investigation of the case where the legal representative of the under-aged accused or the suspect participates in the investigation of cases concerning the crimes of the under-aged person. The legal representative of the accused juvenile can exercise his/her rights instead of the juvenile himself.¹⁶

¹⁴ The visit rule as well as the restriction of it is provided in Article 92 of Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611, annex I.E. S. C, res 663C, 24, UN ESCOR, Supp. (No 1) at 11, UN Doc. E/3048 (1957), amended E. S. C., res 2076, 62 UN ESCOR Supp. (No 1) at 35, UN Doc. E/5988 (1977).

¹⁵ Peking Rules, Rule 15.2.

¹⁶ Article 63 Part 7 and Article 65 Part 6 of Code of Criminal Procedure of RA.

The Code of Criminal Procedure of RA also states the targeted people who can perform the legal representation for victims, suspects and accused juveniles. They are the biological parents of the child, adopters, trustees or guardians who represent the interests of the juvenile during the proceedings of the criminal case.¹⁷

The RA is still developing a social worker institute and probation work is not developed in the state yet. However the legal assistance to the juvenile offenders should be accessible with the respect to the privacy and confidentiality among them during the communication. (GA, 1990, p. III/ 18(a))

- ***Pre-trial detention considered as a last resort rather than a regularly applicable measure. Certain provisions are considered for reducing the period of time for the detention to the shortest time possible.***

Detention with a more common formulation is a preventative measure that isolates the offender from society and the environment that the child is used to. As one of the commonly used preventative measures, again in more general terms, this can be considered as a punishment whereas in the preliminary phase of the proceedings – in a pre-trial, the guilt of the offender is not defined by the acting authority, thus the presumption of innocence should secure the milder and rare use of pre-trial detention.

However this emphasizes two basic minimum needs in consideration of detention- '*measure of last resort*' and if applied '*to the shortest appropriate period of time*'. Referring to the CRC, Article 37(b) underlines the lawfulness of detention with consideration of the age and other physical and social differences of young offenders in comparison with adult suspects while practicing detention. (CRC, 1989) Havana Rules I and II also emphasize the exceptional use of detention by a competent and authorized body. Commentary of Beijing Rule 13.1 and 13.2 encourages precluding alternative measures, instead of detention, which are in conformity with the dignity and best interests of the child.

The measure, in this case pre-trial detention, should approve the goals for application. Hence the reasoning for using pre-trial detention should not be to facilitate the investigation by having the suspect under control, neither should detention be used to obtain a confession, but merely to defend others from a possible risk if the suspect detained is of vital threat to society and the victim (Tokyo Rule 6.1).¹⁸

¹⁷ Code of Criminal Procedure, Article 76 para 1.

¹⁸ The alternative measure to pre-trial detentions for avoiding the subjective approach to pre-trial detention is followed in Rule 6.2.

- If pre-trial detention is used *the terms and conditions of detention should comply with the general principles to respect human dignity, secure protection and supply with necessary assistance – medical, psychological, legal and whatever may be needed.*¹⁹ The age and many other differences arising from the physical maturity of the offender should always be borne in mind when determining the conditions and domestic rules for detention conditions for juveniles. As in all pre-trial proceedings, detention conditions and custody rules should be radically different from those applied to adults. They can be differentiated if the places for detention are not the same. Hence, they should at least be separated from adults and not share the same conditions with adult offenders.²⁰ Almost all the psychological issues among juvenile offenders arise from the environment they live in and from each and every event they exercise in life. The threat, inhumane treatment that is defined for adults is too fragile for a youngster. The staff who leads the pre-trial proceedings is the main actor and undertakes the biggest responsibility in developing or seizing criminal behavior. Furthermore, juvenile cases that are still pending decision should be separated from those convicted.
- **Specialization within the police.** (Beijing Rules 10.1)
A child who is arrested or deprived of their liberty brought promptly before a judge or other officer authorized to exercise judicial power. (CRC 40 (2)(iii), ICCPR 9; Beijing 10.2) As previously mentioned, each child should be treated according to the presumption of innocence. The guiding principles for the treatment of children in criminal proceedings cease to exist if the inspectors or warders in custody misbehave irrespective to the behavior of the child. The authenticity of the accused is approved by a competent judge. All other specialists dealing with the case and the child should be competent within their service with respect to the guiding principles and regardless of the guilt of the juvenile. The lack of professionalism in the prescription of detention and many other minimal punishments without judgments, could lead to the violation of basic human rights and other general rules concerning a fair trial and miscellaneous.
 The states are responsible for the establishment of juvenile courts with primary jurisdiction over the juveniles in conflict with the law. The constant review of the court as an alternative judicial measure should be undertaken to omit possible recourse to the

¹⁹ Beijing Rules 13,4 and 13,5.

²⁰ Beijing 13.4.

criminal justice. The ECOSOC resolution of July 27, 1997 states the necessity of education and training for all those in contact with the child within criminal justice.²¹

The contact with the police station is highlighted as it constitutes the initial stage when a non-discriminatory attitude should be developed in this field. The states obligation in particular is to ensure professionalism among police officers concerning the treatment of the child, cultural context, values and standards within the society. An adequate method and manner of informing should be correctly used without a discriminative approach regardless of the child's relation to an ethnic, cultural or minority group. (Committee of Ministers C. o., 18 April 1988)²²

The general rules provided in international law and human rights documents are inclusive and allow for the flexibility of states. Criminal code along with the criminal procedural code and the general principles of other domestic tools regulating the sphere should comply with the general norms, and whatever course and culture of treatment with juvenile offenders is taken, the monitoring and improvement criteria must be included in the general procedure in order to secure the sustainability of the justified methods.

2.4 Juvenile Justice Framework in Armenia

RA joined the UN Convention on Children's Rights on 23 June 1993. The Committee on the Rights of the Child demands that countries party to the convention develop and implement a comprehensive juvenile justice policy, emphasizing elements on the prevention of juvenile delinquency and instilling alternative punishments, which will allow them to deal with juvenile cases without judicial procedures and fulfil the exercise of Articles 37 and 40 of the CRC. Other international documents such as the International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights (ECHR), International Covenant on Economic, Social and Cultural Rights (ICESCR) are also ratified and applicable and contain provisions on juvenile justice.

²¹ Resolution 1997/30 Part II, Article 24 provides a non-exhausted list of specialists to be retrained to deal with juvenile offenders, specialists such as enforcement officials; judges and magistrates; prison officers and other professionals employed at the child detention institutions; health staff, social workers and peacekeepers and other people in concern with the juvenile justice.

²² Recommendation No R. (87) 20 of the Committee on Ministers to Member States draws attention to the rights and interests of the juveniles from minor groups. (Committee of Ministers C. o., Council of Europe Committee on Ministers Recommendation No. R (87) 20 of the Committee of Ministers to member states on Social Reactions to Juvenile Delinquency, 17 September 1987).

There is no relevant law on juvenile justice in Armenia; the juvenile Justice in Armenia is conducted through the Criminal Code of RA, Criminal Procedure Code of RA, Penal Code of RA and other legal acts.

In 2003 Armenia adopted the National Action Plan on Protection of Children's Rights (National Program of 2003), which is to be implemented in 2004-2015. Chapter VII of the national plan refers to young offenders in the context of issues such as vagrant children, victims of human trafficking and children of sexual exploitation. In 2005 the National Committee on Child Protection was created, which is the responsible body for implementation of the national plan 2003. The body is competent in analyzing issues concerning child rights as well as to prompt cooperation among child rights and the advocacy of state bodies, civil, political, and scientific and other institutions. According to the government decision No 1039 of 2008 the crime prevention national program was confirmed (State Action Plan 2008), which defines the most significant areas for development and a certain timetable of events. Initiatives concerning the juvenile justice system were the establishment of restorative institutions in the biggest three cities of Armenia in 2008-2010. The state action plan of 2008 also sustains that there is no comprehensive state policy in juvenile delinquency prevention. It also mentions the low productivity of social programs on juvenile crime prevention.

Judicial system: There are no specified courts or judges for juvenile cases in Armenia. There is general practice of professional courts were prosecutors undertake to deal with juvenile cases. This information has not been proved according to the interviews given by four prosecutors (find below). In the public prosecutor's office there is no specialized department to inspect juvenile offenders thus all those committed or related to any crime under age of 18 are interrogated by the inspectors of adults. Services, which are free of charge, are provided by the public defender office.

Police department: There is a service dealing with juvenile cases under the responsibility of police points, which mainly limit their work to the registration of children at risk to the community. The registration is conducted due to the order of order No 633 of 08.08.1998 of the Minister of Inner Affairs. Though the order was to be precluded for temporary use it is still in power. The decision contains many statements which contradict the obligations undertaken by international documents ratified by RA as well as national legislation. According to that decision the database of children at risk include groups of children released from custody, conditionally discharged juveniles, juveniles that are not detained but stand accused, juveniles who have committed a crime but have been released from

criminal charge due to the influence of administrative and public mechanisms, former stakeholders of specialized educative institutions, vagrants, beggars and other juveniles of asocial behavior.

The names of registered children are kept on the police database for at least a year, but only until they are of adolescent age. The police department mainly implements preventative actions such as monitoring their behavior and monitoring the environment they live in or other preventative measures according to the court decision. Activities are implemented based on the individual plan of the child.

2.5 Legal Overview of Domestic Laws

The Criminal Code of RA provides a separate chapter on the Criminal Responsibility of Juveniles and Punishment Peculiarities which defines fundamental principles of juvenile justice.

Though the course of the examination of juvenile justice is supposed to be focused on pre-trial interrogation, this part mainly reveals the contrast of guiding principles and rules in criminal laws in RA in securing juvenile justice. As previously stated, provisions either in the Criminal Code or Criminal Procedural Code or other coherent laws of RA do not cover juvenile protection sufficiently. Thus four main principles are drawn from existing legal documents, some of which concern both the pre-trial and adjudicatory process and others, to certain aspects of ensuring fair examination during the trial itself. As mentioned above, there is no specific law on the way of settlement of crimes committed by juveniles. Chapter 50 of the Code of Criminal Procedure is the only part of the code concerning under-aged offenders. However, only the first article of it, Article 439, states that the provisions of this chapter are applied in relation to the crimes of those persons who were under 16 years of age at the moment of commitment of the crime and the rest of the procedure of proceedings concerning the cases of the under-aged is governed by the general rules of the code and by articles of the chapter.

2.5.1 Involvement of a Legal Representative and Pedagogue: The prior mentioned Peking Rules deliver the requirement of adult participation in criminal procedure when examining an offense committed by a juvenile.

According to Article 441 of the Code of Criminal Procedure of RA the legal representative of the suspect and accused juvenile is authorized to participate in criminal procedure of the cases. The rights of accused juveniles are delegated to his/her legal representative.

A juvenile victim or witness up to sixteen years of age is interrogated in the presence of a pedagogue. This right is also applicable for the parent/legal representative of the juvenile victim or witness.

The rights and obligations of the legitimate representative of the injured party, civil plaintiff, suspect or accused are articulated in Article 77 of Code of Criminal Procedure of RA. Among these obligations the legal representative is authorized,

- to know the essence of the suspicion, to know about the summons of the participant of the trial whom he/she is representing to the body, conducting the criminal trial and to accompany him/her there;

- to participate in the investigatory and other procedural actions conducted by the criminal prosecution bodies upon the suggestion of the named body; to give explanations, to present materials for the inclusion into the criminal case and for examination; to declare challenges; declare motions; to object against actions of the bodies of criminal prosecution and to demand the inclusion of his/her objections into the protocol of investigatory or other procedural actions, in which the legal representative of the juvenile offender or juvenile participant of the trial participated or was present;

- to issue remarks with respect to the correctness and fullness of the records in the protocol of the investigatory action or other procedural actions; to demand, during the participation in the investigatory and other procedural actions, court records on the circumstances, which, in his/her opinion should be mentioned;

- to get acquainted with the protocols of a court session and to give remarks on it if there are any; to study all materials of the case after the end of the preliminary investigation, make copies and write out any amount of information; to receive a copy of the indictment; to participate in the court session in the first instance and appellate court, to participate in the examination of the materials of the case taking place in the court session, and to address the court with a speech and a remark in the absence of the representative of the defense attorney of the civil plaintiff and the accused represented by oneself, a juvenile;

- to receive, free of charge and upon request, copies of the decisions which the legitimate representative has a right to receive according to the code; to submit appeals on the actions and decisions of the body of inquiry, the investigator, the prosecutor, the court

including the appeal of the court verdict and other final decisions of the court; to recall any appeal submitted by the representative;

- to make objections on the appeals of other participants of the trial relating the interests of the participant of the trial who is represented in communication with the suspect, conducting the criminal trial or known to him/her following other circumstances;

- to express at the court session an opinion regarding the motions and proposals of other participants of the trial; to protest against unlawful actions of other parties; to object against the actions of the presiding person:

- to invite the person represented by him/her a defense attorney and a representative, respectively, and to terminate the powers of the defense attorney and the representative invited by him/her;

- finally, to demand and retrieve the property taken by the body of criminal proceedings as material evidence or the property taken on other grounds, as well as original official documents which belong to the accused. (RA, Code of Criminal Procedure, 1998)

The obligations and authorized activities of the legal representatives are not limited by those enumerated and he/ she is entitled to enjoy other rights and obey the limitations prescribed by the code. The rest of the points of the articles expressing the regulations of the legal representative are in line with the general principles described in the international documents. Those are the basic demands of conduct by an individual to follow the order during the court sessions.

The practical part of this work will come to prove the deficit in the enumerated rights such as the uncertainty in the procedure of asking questions to the court or other aspects of productive participation in the court proceedings. However, the above-mentioned rights are prescribed by the code for the trial period of the case and pre-trial interrogation rights are still missing both from the Code of Criminal Procedure and the rest of laws. The same concerns the legal terms concerning the participation of a psychologist or social worker in the interrogation and trial. Article 207 of the Code of Criminal Procedure of RA states that 'until 14 years-old and, by discretion of the investigator, until 16 years-old, the witness is interrogated in the presence of the legal representative.' School teachers themselves are often recognized as 'legal representatives'. However, those teaching the juvenile at school could be a hindrance and make the child feel embarrassed to talk, this is why there should be additional regulations or a list of people eligible to participate in the interrogation of the person under age.

Article 439 of the same document envisions peculiarities of proceedings on cases concerning the under-aged. Although it defines the relation of the chapter to those less than 16 years of age at the moment of commitment of the crime, it doesn't specify any guiding rules but rather links the procedure to the general rules of the code. Furthermore, there are no special provisions for those aged 16-18 since according to the notion of child given in the Law of RA on the Child Rights, a child is a person below 18 years of age. This is another deficit in the domestic laws regarding juvenile justice.

2.5.2 Initial Contact: The witness, the injured person, the suspect, the accused are summoned to the investigator by a notice which is handed over to them with their signature, and in the case of their absence, to one of their legal-age family members, neighbors, the apartment maintenance office or through the administration of their work or study place. The means of summoning mentioned in the code also include telegram, telephone message or fax.²³ This is a general rule for recipient parties of the criminal cases for all ages. While considering the range of people authorized to have access to the notification from the police station we see a confrontation to the 'best interest' principle. The second paragraph of the article provides the content of the notification which includes the name of the addressee, the sort of procedural capacity and the date of appearance to the competent authority. On one hand the content of the notification is harmless and gives little information of the offense the juvenile is suspected of committing, but on the other hand the notification itself received by a neighbor or any service provider will leave room for suspicion concerning the crime the juvenile is suspected of committing.

2.5.3 Providing Legal Assistance: Legal assistance and concealing is another strong aspect of ensuring the fair trial of a juvenile. The Code of Criminal Procedure of RA provides the compulsory participation of the lawyer in the criminal proceedings when, at the moment of committing the crime, the offender is under-age.²⁴ The participation of the attorney in the proceedings of a criminal case is obligatory from the moment the suspect or the accused requests a defense attorney. If the suspect is not able to hire a lawyer, an impartial, competent and specialized lawyer should be provided by the state. In Armenia the state legal assistance, which is free of charge, is provided by the public prosecutor office.

The Code of Criminal Procedure defines provision of legal assistance to the juvenile victims and witness if they express such a wish. Article 10 of the Code secures legal concealing to any individual. Moreover this right should be fulfilled by the office leading

²³ Code of Criminal Procedure of RA, Chapter 28 Interrogation and Confrontation, Article 205.

²⁴ Code of Criminal Procedure of RA, Article 69, Article 1.5.

the criminal proceedings, and, besides, nobody is entitled to prohibit the participation of an attorney invited by the victim or witness. Article 86 of the same code ensures the witness presents himself to prosecutor with his/her attorney. However, legislation does not secure provision for a preferred attorney free of charge, even in special cases like the protection of juvenile victims of sexual abuse or witnesses.

Law in RA on Advocacy specifies cases where free legal assistance is provided to certain target groups such as children without parental care and people from similar categories. In fact the law does not provide for legal assistance, except in the latter case, for under-aged victims and witnesses and does so only in the cases of suspected and accused juveniles.

The interrogation of the suspect itself is conducted immediately after detention or announcement of the decree to use measures to secure the appearance. The detained suspect is entitled to testify in the presence of a lawyer. Again, if it is not impossible to immediately provide a lawyer, the investigator must provide a lawyer within 24 hours of detention or arrest.²⁵ The interrogation begins with a proposal to the suspect to testify about the suspicion and all other aspects, which in his opinion can be significant for the case. Other specifics of interrogation are linked to the general principles of the code. The notification of his rights must always be emphasized, especially the suspects right to not testify against himself/herself, which is not indicated. Furthermore, the proposal at the beginning of the interrogation leaves a lot of room for the juvenile, who is persuaded with leading questions, to testify against himself/herself.

Article 69 of the Code of Criminal Procedure of the Republic of Armenia states that the participation of a defense attorney in the proceedings of a criminal case is obligatory in nine cases and the 5th point states that if the suspect or accused was under age at the time of the incident and their involvement was incriminating, there should be a defense attorney present.

In the pre-trial stage the defense of the juvenile should be performed by a competent attorney. To secure the right to efficient and effective defense there should be professionals in possession of specific qualities and knowledge of international standards on juvenile justice.

As a general rule the attorneys mainly preclude legal knowledge without applying other psychological and social qualities, which are necessary for communication with juveniles. This is mainly dependent on the personal qualities and assumptions of the advocate. There

²⁵ Article 211 of the Code of Criminal Procedure of RA.

are no legal initiatives to provide such qualitative changes in the psychological and social approaches of attorneys as well as the personnel working with young offenders.

The overall evaluation of legal acts and orders in child protection in Armenia displays the diversity in child protection policies that mainly concern specific vulnerable groups such as children without caregivers, former and present stakeholders of orphanages and children homes and children adopted by foreign citizens. An attempt to make improvements to the system, concerning juveniles under investigation for a criminal offense, is yet to be seen (see full list of legal acts concerning child protection in Armenia attached in Annex I).

The decision N 835 of the Prime Minister of RA (28 Oct. 2005) established National Committees along with its charter and staff. Subsequently, in 2006 the triple level of child protection was established by the committee. The idea was to establish local, regional and national level protection where the committee was to reveal and follow child protection cases, and transfer and analyze child protection issues at a national level for policy changes. An established social worker institute is still one of the pending policies to be implemented in Armenia, which suggests that probation workers would be an effective investment in securing fair trial for juveniles.

As for the trial phase, Article 328, the Code of Criminal Procedure, anticipates clarification and explanation of the rights that the accused juvenile possesses in court and his/her rights should any sanctions be imposed.²⁶ Article 328 doesn't delegate the judge to consider the age and peculiarities of the accused in the case of a juvenile offender, however, the juvenile should be treated individually once explained his rights in the trial. Proper explanation, as was already mentioned, takes into consideration the age of the child, degree of maturity and perception abilities, possible miscommunication difficulties and other factors.

As for state institutions providing legal assistance to a juvenile there is a Support Centre for Juvenile Offenders, a state-run, non-commercial organization working under the surveillance of the Ministry of Justice of RA. However, official sources do not provide the nature of the activities carried out at the center and according to non-official sources, and the media, the center has ceased to operate as a result of the absence of international resource support.

²⁶ Article 328 of the Code of Criminal Procedure envisages the obligations of the judge, Article 65 of the Code states the rights of the accused.

2.5.4 Detention and Arrest: The principle of applying detention in extreme cases is reflected in the Code of Criminal Procedure which states, '*application of the arrest to an under-aged suspect or accused is allowed only when medium, severe and especially severe crimes are incriminated to him.*' In addition, the subsequent article, Article 443 of Chapter 50, contains the court's concluding verdict on the under-aged person which states that he/she can be corrected without using criminal punishment but instead by applying disciplinary enforcement measures. Therefore, with the exception of particularly severe crimes, the code encourages the use of milder punishment rather than imprisonment and other harsh preventative measures. The practice described in the second part claims the opposite - detention and not the arrest of the juvenile, however, is generally used as a preventative measure among juvenile offenders too.

Article 85 of the code states 'the juvenile that has committed a crime could be awarded a punishment or coercive measures of an educative nature'. Article 86 provides the list of punishments handed down to juveniles:

- a fine
- community service
- detention
- arrest with a certain time limit

This list of penalties for juvenile offenders who have committed minor crimes – a conclusion brought from inapplicable measures to the needs and differences of juveniles. For instance the fine as a preventative measure is not very effective with juvenile offenders since the Labor Code of RA comes with a list of limitations. The criminal code states the fine is imposed if the juvenile has a personal income or owns a property which could be confiscated. In practice, however, the parents of the offender usually pay the fine, which violates the principle of personal responsibility defined by the Legal Code.

Community service in turn is limited by Article 17 of the Labour Code. The code states that a person aged between 14-16 is allowed to be included in temporary labour which will not inflict health, security, educative and moral damage (according to Article 101, Article 140 1.1, Article 155 of the Labor Code). In this case the state is responsible for handing down harmless community service as this kind of punishment could also be imposed on those aged 16-18.

The Havana Rules in particular and many other international documents concerning main principles and standards of detention to be considered in case of juvenile justice do not correspond with the domestic legal documents undertaking these responsibilities.

With regards to detention and arrest, the Havana Rules state that the deprivation of liberty should be effected only as a last resort. These principles as well as many others provided in the legal analysis of international documents are not often observed in Armenia and juveniles are often detained without justifiable grounds for it. The consequences of inappropriate detention may inflict greater harm on the juvenile, which can also provoke criminal behavior.

2.6 Needed Amendments to the Legislation of RA

The general overview of legal documents and national plans of RA give a bigger picture of the protection of the rights of juvenile offenders in criminal proceedings. As mentioned above, police stations have separate departments for preventative programs, but the lack of the professional retraining courses, national plan activities, monitoring and general reviews can lead to an unfair trial for juveniles. After taking a look at the perspectives of the Criminal and Penal Code of RA, as well as Legislation and Constitution of RA we could claim:

- Juveniles are not deemed as separate entities thus the general procedure for a fair trial are very similar to those envisioned for adults. In contrast with the third principle concerning the treatment of the child, this behavioral principle is not precluded.
- During pre-trial proceedings the measures used are very limited compared to other countries where community service, educative projects, family consultations and other means of restorative justice are used.
- Legal representation is mainly delegated to the parents, however, national legislation itself requires the participation of a pedagogue, psychiatrist, psychologists, social worker etc., in the criminal proceedings, and in some cases their presence and participation is obligatory, however, legal documents within RA do not provide guidance or even the limitations for third person participation. The extent of involvement in the best interest of the child is still undefined in the relevant codes of RA.

- Within the context of RA Legislation, reconciliation between the victim and accused should result in the release from criminal responsibility without applying alternative measures. In fact, the reconciliation between the victim and the accused will lead to a formal cause of discharge. Nevertheless if the accused displays distinct criminal behavior then the reconciliation will not automatically clear the cause and conditions of the crime committed.
- The biggest gap is the sufficient mechanism and rules for pre-trial interrogation. The only regulation for it is Article 207 of the Code of Criminal Behavior which secures the presence of the parent/legal representative, the suspect's rights on asking questions or commenting by the permission of the inspector and nothing else. The guiding principles from international documents state some basic needs such as usage of an-age-coherent language, personal, social, behavioral and that the psychological factors of the juvenile suspect should be taken into consideration, but there are no subordinate rules for the treatment of juveniles in criminal proceedings, and no room for expecting any rules on the interrogation of an under-age suspect.
- None of the state action plans or government decisions anticipate any retraining courses for the inspector, prosecutor, police officer or anyone who communicates with the child in the investigation of the case. As mentioned, the lack of skills in treating children may have irresolvable consequences on the psychology of the child which in its turn may lead to complications in the investigation and further developments of the case.

3. CHAPTER II

JUVENILE JUSTICE PRACTICE IN THE REPUBLIC OF ARMENIA

3.1 Overview of Juvenile Delinquency in the Republic of Armenia

This section gives an understanding of the practice of the juvenile justice system with a focus on pre-trial interrogation and treatment of juvenile suspects in police stations. Many past researches, both from international and Armenian non-governmental organizations, focus on the detention facilities, ill-treatment and other behavioral issues in police custody and actually there is no monitoring or research based on the pre-trial interrogation of juveniles. Interviews with Gegharkunik marz district Investigation department officers, as well as an overview of observations of the Committee of the Rights of the Child, UNICEF Armenia, one of the biggest human rights concentrated NGO- Civil Society Institute, Helsinki Committee in Armenia and many other institutes, were carried out in order to ascertain the actual situation of juvenile pre-trial treatment and interrogation.

Out of all the formal phases of trial, pre-trial centers and police stations are typically the most difficult to gain access to, and information on people held in pre-trial detention is often limited or nonexistent. In many cases, authorities do not record data about populations detained or interrogated in pre-trial, and in other cases authorities fail to accurately track pre-trial processes and detainees. This lack of transparency leads to the lack of follow up, a problem which in its turn perpetuates ill-treatment, torture that continues to occur with impunity in many states throughout the world. As former Special Rapporteur on Torture Sir Nigel Rodley stated:

There needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards referred to are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing the pervasive darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures will be the exception, having to be justified as such; the rule will be openness. (Rapporteur, 2001)

The RA joined the OSCE in 1992 and the Council of Europe in 2001. As it was already mentioned, it became party to the European Convention on Human Rights in 2002.

The European Union Armenia Partnership and Cooperation Agreement (PCA) entered into force on 1 July 1999. (RA, Commission of the European Communities, Annex to: European Neighbourhood Policy (ENP), Country Report Armenia, 2005) The European Union Armenia Action Plan calls for judicial reform, prison reform and police reform, but does not specifically call for any measures concerning juvenile justice.

As previously mentioned, Armenia acceded to the Convention on the Rights of the Child in 1992. Article 6 of the constitution provides that duly ratified treaties are part of the national law and, in case of conflict, prevail over legislation.

As Chapter I provides, the National Plan of Action for the Protection of the Rights of the Child has been adopted, covering the years 2004-2015. The National Commission for Child Protection, established in 2005, undertakes the responsibility of leading the implementation of the Plan, observes and considers issues on rights of the child and strengthens the network between interested and child oriented state and non-state actors. There are exclusively high-ranking government officials in the Commission with the Minister of Labor and Social Issues at the head. The juvenile justice system was quite weak at the time of joining the Convention on the Rights of the Child. No specialized courts existed at that time, though assigning juvenile cases to the chief judge of the court was used as an informal practice. At that time, there was only a Juvenile Police Division which worked mainly on prevention and supervision of juveniles of any risk to the community. There was one special facility for juveniles serving sentences and another, within the same complex, for juveniles detained pending trial. Cases of younger children involved in criminal activity and children of any age involved in antisocial behavior were handled by the Commission of Minors, who had the power to place them in a closed ‘special school’ where conditions were poor and repressive. Corporal punishment and physical abuse in correctional and detention facilities were practiced. There was no special legislation on juvenile justice.

Compared to the Soviet period criminal offenses committed by juveniles were lower before the independence. Armenia’s initial report to the Committee on the Rights of the Child provides, ‘the number of juvenile offenses in 1989 was the lowest of any of the 15 republics of the USSR’. (RA, 1995)

The second report to the committee indicated the statistics provided by the Department for the Enforcement of Criminal Penalties, that 243 offenses were committed by juveniles in 1989 while in 1990 the number increased to 256. Data on offenses for the first two years after proclaiming independence is not available. The number of offenses committed by juveniles decreased from 1993 to 1995, peaked in 1997, then decreased abruptly in 1998 and remained low for the rest of the decade. (UNICEF, 2001) The number of the offenses committed by a juvenile in recent years is even lower. (RA, 2003) From 2002 to 2005 the number of juveniles convicted was constant in comparison with adults' convictions which fell.

The number of juveniles detained prior to trial along with those serving custodial sentences has declined during the last decade. In 1998, there were 82 juveniles serving sentences in the juvenile 'colony' and 45 in the pre-trial detention facility, in addition to four adolescent girls detained in the women's prison. In 2005, there were 31 juveniles serving sentences and 18 in pre-trial detention. (UNICEF, 1998)

In the 2013 Annual Report, Human Rights Defender Karen Andreasyan considered the right to a fair trial as one of the most inadequately protected and violated areas in RA. In consideration of juvenile justice it was specified that this system has not yet been implemented in Armenia. In a number of cases the Ombudsman receives complaints about the mistreatment of juveniles at the police station, apprehending of juveniles without the knowledge of their parents, and interrogating juveniles. (Defender, 2014)

During the meeting with the journalists, the Deputy of Chief at the Third Department of Criminal Investigation Colonel Artur Vardanyan reported that the number of criminal offenses of juveniles in 2013 increased by 4, whereas in 2012 there were 414 cases. (Aravot, 2013) Out of the total number of the crimes, 2,2% were committed by juveniles, compared to 2,6% in 2012. The most common types of crimes among juveniles are theft and street attacks; there were no murder cases. Most of the cases were registered in the capital, Yerevan, recorded by Aragatsotn and Armavir marzes. According to the colonel, the number of school inspectors in Vanadzor and Gyumri has increased with 15 new staff members. As for social conditions and states of the children, the Deputy of Chief mentioned that children both from socially vulnerable and self-supportive families have committed crimes. On assessment of social factors prior to a juvenile committing a crime, he outlined the influence of the environment and the way a child is brought up. He highlighted that parents should pay better attention to the behavior of their children to monitor their conduct both at home and at school in order to prevent suspicious activity

from escalating into a serious crime. He addressed juveniles and requested that they ask for adult advice before getting involved in something.

As for the administration of the Juvenile Justice System, the Committee of the Rights of the Child in its concluding observations on the combined third and fourth periodic report of RA expressed its concerns on the weaknesses of this sphere in Armenia. (CRC C. o., 2013) While noticing that every court in the state party has a judge, specialized in dealing with cases of children and issues of children in conflict with the law are regulated in the criminal legislation, the Committee remains concerned that:

- a) There is no holistic juvenile justice system, including juvenile courts and comprehensive laws on juvenile justice, with provision of diversion mechanisms and efficient alternatives to the formal justice system.
- b) Children are detained during the pre-trial investigation for a lengthy period.
- c) Children may be subjected to solitary confinement as a punishment.
- d) The Abovyan penitentiary institution where children are detained has very poor facilities (lack of hygienic supplies, beddings and no access to proper education).
- e) There are no rehabilitation and reintegration programs for children who leave penitentiary institutions.

3.2 Pre-trial Interrogation Practice in the Republic of Armenia

3.2.1 Specialization within the Police

The possible sources to find out the current infringements and guarantees occurring in the pre-trial interrogation were interviews with inspectors who play a vital role in the process. Interviews with juvenile offenders were not conducted for several reasons, the most important of them being to not make them relive the emotions and memories of the pre-trial interrogation without understanding the extent of the possible harm it may have on the child.

The aim of the interviews was to find out the existing normative and habitual approaches during the preliminary investigation of juveniles, existing methods in pre-trial interrogation as well as to get a general idea of the practice and implementation of national legislation and adopted international legal norms. The target group chosen for this study were the

inspectors dealing with juvenile cases.²⁷ Through various studies carried out we can observe some statistics in child delinquency. The subsequent part of this work takes into consideration the fair trial of juveniles already at the adjudication process, and examines the interrogation procedure of juveniles at the trial.

As previously mentioned, there are separate departments that deal with the prevention of juvenile delinquency in each police station of marzes in RA. Officially the regional representative body dealing with juveniles is called the Juvenile Division. The area of its work is limited to the prevention of crime among minors and the actual investigation of crimes committed by under-aged people is the responsibility of the investigation department. Moreover, the division does not secure the proper preparedness of any of the investigators to deal with juvenile offenders. As Head of the Juvenile Division of Gegharkunik Marz, Sergey Lazyan stated, the Juvenile Division and Investigation Department are not interconnected and each of these bodies has certain tasks which do not coincide nor contradict each other. According to the same official, the investigation department usually requests information on a certain juvenile suspected or accused of a certain crime, and since the Juvenile Division runs a database listing minors who have exhibited certain criminal or suspicious behavior, they provide the inspector with the necessary information.

There are five inspectors in the Investigation Department of Gavar Police station. Since there is no specialized and retrained inspector to deal with juvenile offenders, four inspectors out of the five have dealt with such cases. One of the interviewed inspectors was the Deputy of Chief of Gegharkunik Marz Investigation Department.

All the interviewed inspectors had a higher legal education background and most of them have had 3-5 years of experience, while the deputy of the department was more experienced in this field. According to the latter juvenile cases are not that frequent and the number of suspected and accused juvenile cases does not exceed twenty per year. The concept of juvenile treatment and the culture of dealing with cases of minors are somehow shaped by the inspectors. None of the inspectors have ever participated in a retraining course on juvenile matters nor have they ever been asked to take a course.

²⁷ In Annex II you can find the corresponding interview format attached with the supportive questions addressed to four inspectors of the Investigation Department of Gegharkunik Marz of RA.

3.2.2 Consultation with a pedagogue has never been conducted either. However, one of the inspectors mentioned that the opinion of the headmaster of the school, and the teachers familiar with the suspect was vital for getting an idea of the suspect's behavior. As mentioned, the pedagogue is always present during the interrogation. The Code of Criminal Behavior provides the possibility for school teachers working with the juvenile to be present at the interrogation of the juvenile. Very few pedagogues agree to show up for this procedure, especially when the location for the interrogation of the juvenile suspect is a compulsorily state police building. One of the inspectors mentioned that in each school they have a pedagogue who agrees to be present, and when asked what would happen if the teacher didn't know the student well enough, they replied there was nothing else they could do to ensure the presence of a pedagogue.

Before switching to reveal the descriptive questions on the procedure of the pre-trial interrogation, the interviewers presented the overall phases of starting and conducting a pre-trial investigation with juveniles, with a special focus on juvenile suspects. According to the main answers, the investigation of a juvenile starts with the notification addressed to the suspect and if there is no detailed information about the age of the person the notification is directed to the juvenile offender himself. The juvenile gives his/her personal details too. If the legal representatives who come to the investigation office, as well as the juvenile, confirm his/her satisfactory health conditions and there no reason for suspicion during an inspection, health issues will not even not be considered. The adult representatives undertake all obligations when providing personal data of the juvenile as the minor himself might be lying or concealing some information for gaining the trust or for avoiding preconceived opinions from the inspectors. The interrogation of under-age individuals is carried out using separate interrogation forms for witnesses, victims, suspects and accused. Since the survey mainly concentrates on juvenile suspects, in Annex III you can find a non-official translation of the interrogation form provided by the Investigation Department of Gavar Police Station.

Tape or video recordings of conclusions or concerns mentioned by the lawyers or defenders and general comments, are not made. Therefore there is no way to ensure best interest practice prevails, and whether dignity and respect is shown toward the interviewed juvenile. Desk monitoring was impossible to conduct within the police station as, according to standard procedure, the interrogation form, facts and documents are passed to the judicial body for the further trial proceedings, and the documents of canceled or closed

cases are passed on to the central archive under the responsibility of the Ministry of Justice of the Republic of Armenia. Access to the archive is strictly prohibited.

The results from the answers of interviewed police inspectors, classified according to the professional attitude of the inspectors, general disparity of practice and rights and obligations for both juvenile suspects and police officers as well as some other facts, highlight the necessity for the implementation of comprehensive guidelines for police employers dealing with juveniles.

Apart from one inspector, the rest never mentioned and have never actually used any practical manual for juvenile interrogation. However, the latest to graduate out of the inspectors mentioned a book on criminalistics which contains a thorough study of codes of behavior and conduct while interrogating and dealing with juvenile offenders in general. The book, published at Yerevan State University, is said to be the most highly regarded and recommended among law students in almost every higher educational institution²⁸. The inspector mentioned the source, which is actually his manual in juvenile interrogation, was known only to him. In his interview the Deputy of Chief of Marz Investigation Department mentioned that any kind of manuals, handbooks, guidelines suggested for inspectors is only seen as another obstacle for implementing and mastering in their profession, since the inspector should be free and flexible in choosing his technics in any investigative process. Each inspector defines his own code of conduct in pre-trial investigation.

The social conditions, social behavior, former criminal behavior and criminal offenses of the juvenile are mentioned in the interrogation and are taken into consideration by the inspectors. According to the Deputy of Chief this is the strongest area for consideration and, logically, in such a procedure a child who has never committed any crime before would acknowledge his/her guilt quicker and easier than those who already have a criminal record. In his opinion, once a juvenile has been detained, he is condemned to commit a crime in the future. He described very few cases where juveniles, especially those without parental care or former stakeholders of child care institutions, try to get put in jail at the hand of people who they serve while imprisoned. They feel as if they are 'heroes of their times' and are provided with everything they need in jail, unlike in their life of freedom.

Another inspector mentioned that it's quite important for an inspector to work out his own approach with the juvenile. Most of the time when they are unaware of his/her character and criminal characteristics they can be fooled themselves, as the juvenile who has been

²⁸ V. G. Yengibaryan, Student Handbook on Theory of Forensic Examinations, Yerevan States University.

interrogated before, already possesses the skills to avoid giving the right answers and lying in a mastered manner. The rest of the inspectors all agreed that in juvenile cases they've dealt with at Gavar Police Station, as well as other cases they've worked on around Armenia, those that have previously committed a crime are easily recognized by people who have been associated with them. During the investigation process, along with the identification of the suspect, this information is randomly provided.

In terms of introducing an alternative, milder approach, taking into consideration the vulnerable characteristics of the child, the general opinion was that the juvenile justice system is rather mild in RA and most of the children committing any sort of crime come from socially unsupportive families. If they, the inspectors, treat and classify juveniles according to their difficult living conditions, the investigation, specifically the interrogation process, should be conducted by psychologists, not inspectors. However, the principle of proportionality - the treatment of the child being appropriate and proportionate to the offense - is maintained during the interrogation process.²⁹

3.2.3 When asked if they are present during the *communication between the juvenile and his lawyer*, the inspectors replied positively, which is a breach of juvenile's right to have an private conversation with his defender. One of the inspectors made it clear that most of the times the lawyer is provided by the state and all the public defenders and state hired lawyers are in collaboration with them, and therefore it is not necessary to leave them alone as everything would be reported afterwards to the inspector by the lawyer anyway.

To the following questions concerning the *first communication* and start of the interrogation, each inspector spoke of a different approach. What was generally claimed was an individual approach is adopted for each juvenile. Thus the motivation to accelerate the conversation comes from the common understanding of the interrogator. In most of the cases, children are not talkative at the beginning, and almost always juveniles need to be presented with the facts concerning the case. Along with the facts known from the previous phases of investigation, inspectors inform the suspect about facts and testimonies from witnesses and other interrogated parties in the criminal case. All the inspectors denied using any machines, tools of abuse, beatings or any other methods for inflicting physical harm on the juvenile as there is usually no need for this and no cases where information needed to be obtained under constrain. As for the methods that can influence the psychology of the child, items such as photos of the murdered person, material evidence,

²⁹ Beijing 5.1.

knives, guns, gloves etc., can be used when necessary. The emotional condition and vulnerability of the juvenile is taken into consideration.

3.2.4 Among *undesirable methods* used to deal with children, infliction of physical abuse, threats and even harsh language were the main methods given. However, the most experienced inspector believes there was no limitation when dealing with a juvenile offender in specific cases like multi-adjudicated juvenile criminals. As an argument for such treatment, presumption of innocence was mentioned; but again he denies this theory as well, for the benefit of revealing and maintaining justice in a shorter period of time.

Most of the answers and comments provided in the statements could be considered as similar in approach, mentality, consideration of rights and obligations of the juvenile suspect. Some of the legal aspects of interrogation provided by the Code of Criminal Procedure of RA, which are actually very few in juvenile cases, are infringed. None of the inspectors mentioned the envisaged time set for interrogation. Among the answers there was the mention of *uninterrupted interrogations* for three or four hours and the most popular attitude is to carry out conversation as long as it may require and a break is only given if the inspector deems it necessary to interrupt the interrogation due to health conditions or tiredness of either of the parties of the interrogation. In comparison with this adopted practice, the code provides the uninterrupted interrogation for the under aged to take no more than two hours, which should be followed by at least an hour break. Conclusions for ongoing interrogations can vary, therefore, in order to avoid uncertainty a few factors should be taken into consideration including the child's physical immaturity, possible psychological infliction on the child when put under pressure, relentless questions and the volume of provided and required information that may lead to confusion, rejection and isolation of the juvenile.

3.2.5 Detention as a preventative method or a means to isolate and receive information from the juvenile offender was not widely applied. Among many of the mentioned cases there was only one detention of juvenile mentioned. The reason for detention was to prevent the juvenile from not turning up for the interrogation the following day. Although this specific case regards an accused juvenile who hadn't yet been found guilty by a competent authority, the reason for such a detention was not justified as a method of last resort.³⁰

³⁰ In Chapter I the international and national framework of detention as a method of last resort is provided.

To conclude the overall observation, one can claim an existing gap in monitoring and in improving the juvenile justice system in Armenia, specifically in the pre-trial proceedings i.e. interrogation of the juvenile. All the issues raised in the interviews with the inspectors, are the result of non-practical use and scarcity in juvenile delinquency. On the one hand it is an encouraging point for RA to have a low rate of juvenile crime, although further statistics would prove the opposite, .However, on the other hand if there are even a few juvenile cases, those few under-aged offenders are ill-treated due to the existing gap in the legislation, the practical implementation of it and the lack of professionalism within the police. Il-treatment of a juvenile suspect may occur in correspondence with the gravity of the offense and the degree of criminalization of former adjudicated juveniles. For the rest of the cases, compassion and kind firmness is shown by the inspectors. Some basic procedural safeguards are also followed. The notification of the interrogation including the date the accused must attend, is addressed to the juvenile and a legal representative is secured after finding out the identity of the charged person.

The right of the juvenile to be interrogated in the presence of the parent or legal representative as well as pedagogue and lawyer is upheld and their participation in the interrogation is also provided and not prohibited. According to one of the inspectors in a few recent cases the child has admitted to the crime under parental pressure. Although the criteria of proportionality have been met, a preconceived opinion and attitude towards the juvenile still exists among the police officers. This may actually become another hindrance in the abuse of juvenile rights. During the conversation, one of the inspectors mentioned a case where a juvenile was accused of beating his teacher because of being offended by him during the lesson. In the inspector's opinion, this juvenile needed a more severe, harsher approach than those suspected in milder offenses. The latter, however, is strictly based on individual opinion and cannot be regarded as another fact for proving the proportionality issue, but it still shows that those concerned with juvenile offenses can have various reactions, depending on the personal assumptions of the inspector safeguarding the right of the juvenile to a fair trial.

Another area for further consideration is the use of a tape recorder for securing the due interrogation process. The description given by the inspectors can be doubtful as the rules and practice itself are based on individual intuition, which may vary from case to case. The legal approaches during the interrogation of the juvenile, the use of evidence materials, use of harsh language and threats depends merely on the individuality and standard practice of the inspector. However, above all the presumption of innocence is the foremost right of

any criminal offender and especially in juvenile cases, no offender should be denied this right. The interview confirmed the breach of the right of a juvenile to have a private consultation and supervision with a competent lawyer. Even though a lawyer is provided by the state, free of charge, by relaying information to the inspectors this legal representative takes an untrustworthy approach to the case. In this case, most of the time this manner of providing legal assistance would be denied, and if the juvenile is self-supportive due to his/her financial situation and does not wish to be deceived by his lawyer to the inspectors, the juvenile's right to legal assistance would be infringed.

As previously mentioned, the treatment of juvenile offenders in many cases are not different to what the adults experience. The Armenian Helsinki Committee is one of the other observers of the rights of detained and criminal offenders. (Armenia, 2013)

Although, there was no study conducted with the special concern of juvenile rights, the facts and evidence from people detained at the police station can tell a lot about the general way of treating criminal offenders. Only 30 out of 80 inmates in pre-trial detention agreed to be interviewed. The rest of the detainees replied that they have no complaints or that nothing would change even if they did complain. A general observation of monitoring shows that all the respondents were subjected to physical violence or psychological pressure in police stations or in the department of investigation. Particularly in terms of physical abuse, the detainees said that policemen inflicted blows with a book to detainee's backs and with truncheons under the soles of their feet. Blows were inflicted with truncheons and parquet boards. The police used electroshock devices on detainees. They beat detainees with truncheons and handgun handles, and kicked and punched them, threw them to the ground and beat them. The interviewers have observed the traces of injuries on the detainees during the survey since they were visible enough. As for psychological pressure, the interviewees stated: 'They warned me that if I didn't confess and implicate myself, they would frame my father and my brothers.' 'They said that unless he confesses to the crime he would be sentenced to imprisonment for 'failure to testify, which would make his situation worse'.' The beatings were accompanied by verbal abuse and threats. During the conversations many inmates contended that they had been framed by the prosecution. Though there is no evidence to prove that juveniles have been abused and threatened in the way that the adults are, nor are there are grounds to prove the contrary .

Interviews were held also with judges, prosecutors, investigators and policemen to ascertain their views on reasons and forms of torture in police departments. In one of the conversations, the judge of the Appellate Court of Armenia, when asked why criminal case

is not instituted based on the statement of the accused, he replied; '80% of the accused state that they testified because they were beaten and threatened; so which one of those statements should we look into?'. In the words of an investigator, torture is primarily carried out by police operatives. When a detainee is brought to an investigator, he has usually been 'handled'. As a rule, investigators do not use torture themselves. One of the methods is inflicting blows to the detainee's soles of the feet without removing his shoes so that no traces are left. Another method is forcibly putting a gas mask on a detainee and then closing the gas mask hose and forcing the person to move abruptly which lead to asphyxia without causing visible bodily injuries.

One of the investigators pointed out that often they are forced to resort to a remand in custody as a measure of restraint, even though they feel that there are no grounds for that measure. They are concerned, though, that if they do not opt to apply for a remand in custody the prosecutor's office may have suspicions that they are somehow interested in the outcome of the case. That's the reason for resorting to a remand.

Another reason why detention in custody is used as a measure of restraint is that the investigators believe that when in custody, a person is more inclined to give a testimony. If we consider this point, for the adult offenders it might be still doubtful, but for under-aged suspects and accused, remand would mean isolation from the environment he is used to, and even in the case of a person who is 17-18 of age, the detention will have a psychological effect and in this case can be considered not as a matter of restraint but as a method of psychological pressure.

This fact of having evidence to prove the person is guilty works on the patience of the investigator and in one of the talks an inspector confessed; 'How can we not beat them, if there is all the evidence and they do not confess.' One of them stated the following; 'Unless violence is used, the case won't be detected. It is due to that violence that you can sleep peacefully.'

The issue of a lack of professionalism among the police officers was ascertained by one of the prosecutors. He indicated an inadequate level of professional competence of investigators and policemen; 'We have to present cases in court prepared by competent investigators.' Among other reasons for using violence was the lack of time and sufficient equipment and materials to go into the details of the case and certainly it's easier to obtain and resolve the crime with application of abuse and violence.'

In the words of a former policeman; 'An experienced police officer will not beat up a man for nothing. An experienced policeman is also a psychologist. He looks into the eyes of the offender and realizes whether this person is guilty or not. If a detainee does not confess, you hit his head a couple of times and he confesses.'

Except for the attestation of personal abilities in the interviews, the inspectors were given the opportunity to suggest a list of desirable changes in the juvenile justice system in Armenia, none of them suggested any amendments; they considered this system sufficient in complying with the needs and demands of the juvenile delinquency situation in Armenia. That is to say, in terms of their professionalism inspectors actually need to make some changes. However, the inspectors do not feel this is necessary due to their traditional background as well as the lack of pre-trial monitoring which is rare in police departments in particular. In fact states do not have any special regulations and auditing bodies to implement and make suggestions for improvements in pre-trial proceedings not only for juveniles but for offenders in general. On the other hand, and in certain instances the court requires rather competent and legally perceptible evidence which has been thoroughly investigated in the pre-trial stage, and if practical difficulties arise in pre-trial interrogation, fact finding mission and confession of guilt, they are not displayed. This proves that even if the monitoring mechanisms were created and implemented to improve and fulfill the rights of the juvenile in the pre-trial stage of the interrogation, the mission wouldn't tackle all existing and issues raised in each case. In this case the best suggestion to the state could be the application of comprehensive methods including professional retraining courses among investigating inspectors and other police staff, expanding competency in the Juvenile Division to undertake the monitoring mission and ensuring fair pre-trial for juveniles as well as outsourcing of other professionals such as pedagogues, psychologists, social probation workers etc.³¹

Although this part mainly covers the specific focus of the thesis on pre-trial interrogation rules and practice, the interviews with inspectors provides a description of only one of the guarantees for ensuring fair trial for juveniles in Armenia.

³¹ More suggestions are included under Recommendations.

3.3 Interrogation practice of juveniles in the course of trial

To have an overall image of the juvenile justice system and related proceedings, we should assess what the negative progression is of pre-trial gaps in the trial proceedings. Therefore, this part mainly covers the understanding of trial interrogation by a competent professional. Moreover, the accusation of the juvenile in studied cases can be a result of the violation of his pre-trial rights when conducting the interrogation and presenting of evidence.

The monitoring studied 72 cases where juveniles were enrolled as accused, out of which 39 people were juveniles, 10 were juveniles at the moment of committing the crime and became adult by the time of the trial and 23 of which were juveniles who had committed associated crimes. (CSI, 2013) The same statistics show that 29% were 16 year of age and only 8% were 14 years old. According to the Criminal Code of RA a juvenile is charged when he is 16 years old at the moment of committing the crime. Those who have turned 14 before committing the crime are subject to criminal liability in special cases prescribed by the code.³² Out of the 72 cases tackled 8% of them were 14 years old, 20% were 15 years old and the rest, 72%, were 16-18 years of age. This proves that the so-called mild approach to juveniles mainly refers to those under 14 years of age and even this doesn't apply to juveniles who have been accused for the crimes enumerated in Article 24 of Criminal Code. As for gender, out of most of the crimes studied, 98%, were committed by male juveniles. Inspectors' allegations that most of the juvenile offenders are those without parental care have been refuted too since only 4% of juveniles were from divorced families. Another aspect for consideration is the impressive statistics of juveniles who do not attend schools- 49% and 2% attended special school. According to the same monitoring 12% of juveniles in the studied cases were second offenders and only 6% of juveniles were registered before on the database of children of a certain risk. That is to say, the database run by the Juvenile Division does not embrace a big volume of juvenile offenders, nor is running such a database an efficient method for the prevention of juvenile delinquency.

³² Article 24 of the Criminal Code of RA provides that the persons who reaches the age of 14 before committing the crime are subject to criminal liability for murder (Articles 104-109), for inflicting willful severe or medium damage to health (Articles 112-116), for kidnapping people (Article 131), for rape (Article 138), for violent sexual actions (Article 139), for banditry (Article 179), for theft (Article 177), for robbery (Article 176), for extortion (Article 182), getting hold of a car or other means of transportation without the intention of appropriation (Article 183), for destruction or damage of property in aggravating circumstances (Article 185, parts 2 and 3), for theft or extortion of weapons, ammunition or explosives (Article 238), for theft or extortion of narcotic drugs or psychotropic substances (Article 269), for damaging the means of transportation or communication lines (Article 246), for hooliganism (Article 258).

The same monitoring proves that applying detention as a preventative measures is quite diffused despite international standards which envision it as a measure of last resort and opt for alternative measures. Even though detention is frequently used, the minimum term is not defined either.

The results of the monitoring prove that in 1/4 (25%) of the considered cases, detention was applied. In 6% of cases bail was deposited, and for the rest of the cases alternative measures were used. The monitoring of trial process displays the charge for 90% of the accused juveniles was imprisonment, meanwhile the educative and restorative activities were given to only 2% of the offenders. Only 47% out of 90% were released conditionally and 14% were granted amnesty.

The monitoring proves that the judges adjudicate and punish the juvenile instead of showing compassion and considering restorative measures, taking into account the emotional and physical immaturity of the juvenile offender.

3.3.1 Presumption of Innocence

The conducted survey also concentrated on observing the existence of preconceived opinion of the judges towards the juvenile and whether they were treated according to the presumption of innocence principle. The studies proved that the acknowledgment of guilt was even sometimes given under pressure and in many cases none of the judges considered the possible innocence of the juvenile. In some of the cases, observers noticed that the judges hinted at the guilt and crime committed by the juvenile before delivering the decision based on evidence. Some of the judges accused juveniles of certain faults, and even treated them as enemies.

This sort of treatment towards juveniles in courts pending their trial, according to the authors of the survey, infringes the rights of the juvenile, fails to respect his/her dignity and creates public distrust of the bodies implementing justice.

Disturbing examples include a judge that started shouting at the juvenile , screaming ‘Wasn’t there other situations when you were fighting with other guys... why you haven’t murdered any one of them before?’ In another example a judge addressed the accused juvenile and his legal representative who were late to the trial with following statements, ‘Two days ago I approved the application of detention for thieves like you. Why shouldn’t I? They are thieves, let’s detain them, then there won’t be any problem of them being late. They would be brought in and taken back from the detention center.’ In another instance, an accused juvenile was answering the question addressed by his father the judge said in a

loud voice, 'Do you think it's a free verse composition when you always say something different each day, this is the recreation of your crime.'

3.3.2 Language in the Court

In many cases, the judges authorized to try the juvenile offenders fail to consider the juvenile's mental immaturity, the level of language development, psychological state and many other physiological peculiarities, bear no significance in the trial yet result in a preliminary anticipation of the outcome. The judges are not able to manage the trial or to neutralize the aggressive behavior of the accused, victim, witness and other parties in the trial. In some case the judges even promote an escalation of tension, fuss and aggression. The absence of elementary knowledge of behavioral derivations, age-related psychology as well as crime related psychological derivations, becomes an obstacle to manage the emotions and behavior of those involved in the trial of the case. In many other cases judges themselves do not control their emotional states and reflect their inner tension through their speech and manner of leading the trial and addressing questions to the juvenile.

3.4 Preliminary Conversations with Accused Juveniles

Before starting the trial process the judges do not have any informal communication with the accused juveniles. Furthermore, they do not introduce the environment and surroundings to the juvenile so that he doesn't feel threatened afterwards. There is no introduction to the people employed for the trial process either. Within a very short period of time the judge should gain an overall impression of the juvenile by understanding the environment surrounding the juvenile. The description of the juvenile should include the level of his personal development, future social and socialization anticipations as well as the image of the reintegration methods and measures if the juvenile is sentenced. The complex of the described activities should be the basis of a fair trial and the resolution to the conflict between the juvenile and society in the future. The studies proved that the reconciliation process of the relationship between the juvenile offender and the judge does not occur. Only in 10% of cases did the judges have comprehensive communication with the juveniles before the trial.

3.5 Provocation of Aggressive Behavior of the Accused Juvenile: Neutralization and Prevention of Aggression in Court

In many cases the juveniles are irritated because of the blatant injustice, lies, shouts, crying, and the anger of the father or mother present in court. The professional task of the judge is not only to bring order to the court but also to paraphrase and edit the questions addressed to the accused juvenile so that they won't provoke any aggression. Often, there is a need to skip some questions and to consider them afterwards. As a rule, aggression is provoked by closed questions, which are supposed to be answered with a 'yes' or 'no' e.g. 'are you guilty' or 'do you admit your guilt'. The intonation is also of no less important and accusations and criticisms are not admissible such as 'are you a human after all', or 'what kind of a man are you then' or 'your parents are guilty not you' and so on. In the forensic psychology experience aggressive expressions are non-competent remarks and offenses or sharp expressions, which are addressed to the juvenile offender, to the lawyers or other parties of the trial process. As previously mentioned, preliminary talks with juveniles before the start of the proceedings, an understanding of their psychological and emotional condition, their ability of self-control and communication is a bilaterally important process for both the judge and the juvenile. In 16% of cases the judges neutralized the aggression during the trial and in 2.9% provoked aggression, for instance, the judge demonstrated aggressive behavior because of the absence of the defender or was provoking an aggressive environment in the court. Some other studied cases show that the judges display very offensive treatment towards the accused and his legal representatives, victims, witnesses and other participants of trial. Some examples from the monitoring carried out include:

Example 1

The judge learned that one of the accused juveniles presented himself to the victim with a nickname 'little cruel person' (dazhanik) and kept on calling the juvenile in this way for the rest of the trial.

Example 2

The judge apprehended the legal representative (mother) of the juvenile with incline to that the child was to be well-cared for and not involved in the situation he is in at the moment, in order not to ruin other families and their family too; the judge then turned to her with the demand to tell whatever she wants instead of telling it after the trial.

Example 3

While reading the testimony of the victim and noticing some contradicting facts with those brought during the trial, and afterwards listening to the arguments of the victim, where he

explained that he was scared and that's why he provided false testimony, the judge turned to him with a loud voice, saying: 'Stop scheming, be a man, stop it!'

3.6 Legal representatives of the juvenile offender

As mentioned in the first chapter, among the juvenile rights, the participation of the parent or legal caregiver is aggravated because of providing psychological and emotional support. It is quite important to have the first contact with the parent and notification of the child involvement in the trial as soon as possible, so that they can support and participate in the legal proceedings in an optimal way. In the cases where juveniles are accused in criminal offenses, the national legislation requires the compulsory participation of the defender as well as the enrollment of the juvenile suspect and accused in the investigation of the criminal case. There is no legal provision for ensuring the participation of a pedagogue and social worker in the interrogation and trial proceedings. The outcome of the monitoring showed that even these very few guarantees concerning the participation of other people in the interest of the juvenile offender are maintained and respected. There was no joint practice observed during the monitoring of juvenile accused at the trial. In one of the cases, a juvenile was initially interrogated as a witness, and his testimony was extorted from him without the presence of a legal representative, and afterwards he was enrolled in the process as a suspect. It is distinctive, that the request of the defender to the court to consider the testimony of the juvenile interrogated as a witness without a legal representative as imperceptible, was declined by the judge who argued that the Legislation of RA does not envisage the participation of a legal representative at the pre-trial interrogation. The court mentioned the Article 207 of the Code of Criminal Procedure of RA, where the law provides the participation of a legal representative of the juvenile witness in the interrogation when requested by the parents and since the file brings no asserting facts to this effect, the request of the defender was declined. Furthermore, there was no clarification of the situation and the judge didn't ask the legal representative whether he was informed of his right to be present at the interrogation or not. The results of the monitoring prove the inactive participation of the legal representatives in the process. From the studied cases, 13 legal representatives had no involvement in the process at all. They had no questions or clarifications and remained silent for the entire procedure. They didn't participate in the proceedings and answered only 'yes' or 'no' to the questions addressed to them, which didn't help the defender at all. Even in one of the cases, the legal representative was addressed by the judge to deliver a speech with regards to the legal disputes, the parent of the juvenile refused by declaring that he had nothing to

say. This and many examples display the passive involvement or the negative outcome of the whole process because of the neglected approach from the legal representatives of the juvenile offender. In some of the cases, the participation of the parent was minimalized by the judge, as if he had asked the legal representative to delegate the defender to address his questions and concerns to the court.

3.7 Corresponding Proceedings to the Age, Mental, Physical and Emotional Peculiarities of the Accused Juvenile

The results obtained from the monitoring support the argumentation that does not consider the age-related peculiarities and the levels of physical development of the juvenile accused which comprises 40-45% of the studied cases. The thing is that juveniles aged between 12 to 17-18 are going through a self-establishment process which is accompanied by aggressive, conflicting high emotional behavior. Taking these facts into consideration, the judges should be reasonable, perceptible and patient, and abstain from addressing the juvenile with certain prejudice by using rude sentences, offenses, acts that can provoke aggression and irrelevant remarks. In 40% of cases the court failed to consider the above-mentioned peculiarities. As previously mentioned, the treatment of the juvenile offenders by the judges in many cases is not different from the conduct with accused adults. In some of the studied cases, the judges even neglected the accused minors.

3.8 Violence and Pressures on Accused Juvenile and Victims

The pre-trial interrogation and its results should have a certain impact on the whole proceedings to be conducted in the trial afterwards. There should be the consideration of the facts for the applied detention, emotional and psychological state of the juvenile during the pre-trial interrogation, the age corresponding peculiarities, the duration of the interrogation, the participation of the legal representatives and other parts of the criminal case etc. Of course, the pre-trial proceedings mainly depend on the qualities and professional competency of the police officers and inspectors, the possession of these assets would prevent the application of mental and physical abuse, psychological pressure which in its turn leads to false evidence, wrong testimony and most of the time an acknowledgement of the crime which was not committed by the juvenile himself. These areas of consideration are drawn from the monitoring results where the judges have not considered the violations of certain rights and described norms at the pre-trial phase and no corresponding measures were applied, there was not even an accusation or demand from judges to prevent pressure and violence towards the juvenile offenders. In certain cases the

judges themselves put the victims and accused under pressure, threatening their right to a fair trial. This is a serious cause for concern and preventative measures need to be taken to ensure proper defense for juveniles in criminal proceedings as well as protection of victims and accused juveniles from intimidation, fear, oppression and prosecution in an unacceptable and reprehensive way of trial in Armenia.

In one of the cases, the pre-trial testimony of the accused was radically different from the testimony provided during the trial. During the pre-trial investigation the accused admitted his guilt, however, in court he declared himself not guilty. This demonstrates how the initial testimony given was false as the inspectors and police officers obtained the information by putting the accused under pressure. The defender also informed the court that the juvenile was brought from another city and remained in the company of the police officers. Afterwards he was detained in Arabkir police station for a day. Before the enrollment of the defender, the juvenile was interrogated three times, always at night. The legal representative was invited and allowed to meet the accused juvenile only after clarifications and signature. Afterwards this explanation was represented by the inspector as testimony and was attached to the file. The juvenile was released only after the interference of the human right defender.

This disturbing image of a fair trial in pre-trial proceedings can be prospected into the pre-trial interrogation of a juvenile. As previously mentioned, a distinction between juvenile and adult offenders is not often made, and in all the cases, the treatment of the child depends only on the individuality of the prosecutor, investigator, inspector, police officer and so on. Therefore, legal provisions need to be made to guarantee the rights of a child or any person, the general practical orientation, professional retraining courses and other means in order to develop the capacity of the people working in criminal proceedings.

In 2013 during the meetings with his colleagues, Police Chief Lieutenant-General Vladimir Gasparyan condemned the use of violence in police departments qualifying it as a savage act and non-professionalism. 'Ramping information and evidence through violence distorts the image of a policeman'. Despite the condemning and inspiring speeches of the Lieutenant the practical steps towards improving and eliminating ill-treatment and torture in police stations have not been taken. In 2013, inspectors and police investigators adjudicated by the court for several years of imprisonment were released due to the amnesty announced by the National Assembly of RA. Though in the European Convention amnesty is not granted to offenders sentenced for torture and since the crimes committed

by the four police officers were articulated as abuse of an official position, they were released. (hra.am, 2014)

The suppressing opinions from the actual monitoring groups coincide. This proves that no matter how many cases have ever been considered by a certain department of investigation or no matter who the interrogated person is, regardless of his/her age, mental maturity and other factors, there is a common practice among the authorities who have any part in resolving criminal cases. They are all inspectors and police officers dealing with an individual in pre-trial proceedings and judges who take on the mistakes made in the investigation phase, as an outcome of which the injustice, distrust, as well as sequence of the crimes of one person escalates.

As can be easily observed, all the researches, monitoring and studies presented were carried out by civil society representatives. Even the database and certain statistics on juvenile crimes is provided only through press releases and some of them from human rights defender's reports. The mechanisms of surveillance and monitoring in Armenia should be pursued at a national level. With the high understanding of the monitoring, which serves as a detection of certain systematic issues and follows up on the improvements of findings, they should be perceived by national government. Only with this mentality will these observations highlight and convey the need for legal and practical amendments in this sphere.

4. CHAPTER III

RECOMMENDATIONS AND LEADING INTERNATIONAL PRACTICE

Examples of Juvenile Justice Systems from rather developed countries can always be adopted and implemented on a national level, but the peculiarities of certain socioeconomic reasons for youth crimes vary from country to country. Though continental reviews should be conducted in order to find reasons behind existing issues, even in that case the risk of blending common practice with outrageous positive examples prevails, this part of the thesis will explore the existing bodies and policies in other countries, which would be beneficial for implementation, effused and filtered due to the desirable amendments, both legal and structural, and recommendations to RA. The comprehensive description and understanding of global practice in the rest of the world will be a guiding model and can be a significant contribution if complied with the reasons beyond juvenile crimes, cultural approaches and local issues of the juvenile justice system in Armenia. Some of the countries have the best developed juvenile justice systems such as the US, but because of state governance, comparisons have not been made. With the same reasoning the Russian Federation is dismissed too despite allegations of being the main leader during the Soviet Period.³³ Serious gang problems among youth are observed throughout the world but because of the juvenile delinquency rate in contemporary Armenia, the practice of the countries focused on prevention of this sort of delinquency has failed to be implemented. The point of including examples was to be reasonable with the structure and possible of implementation in Armenia of what is suggested from best practices.

4.1 Legislative Reforms

Though some of the amendments and omissions to the local legislation are represented in the conclusion of the Chapter I,³⁴ there are far more gaps to be filled through the thorough studies of the cases and interviews mentioned in the practical part of the thesis, Chapter II. Due to the causal logic many aspects for legislative concern were circulated and presented in the main body of the work, but these recommendations mainly concentrate on the

³³ To many local monitoring groups Armenia has inherited the prison system of the former Soviet Union where certain gangs and 'personal leadership', use of threat and intimidation is still used. Even after 20 years of independence and normative reforms close to the European and International laws, the soviet mentality still keeps on prevailing at the institutional level. **Указан недопустимый источник.**

³⁴ The ibid provision can be found in Chapter I under the subtitle 'Needed Ammendments to the legislation of RA.

reforms to be made in the pre-trial phase. Legal reforms constitute the below mentioned statements.

4.1.1 Participation of a Legal Representative, Teacher, Lawyer and Social Worker in the Pre-trial Interrogation

The obligations of the possible participants in pre-trial proceedings are not specified in criminal codes and in general in the legislation of RA. Though incomplete, the rights and limitations of the legal representative were specified only for the trial proceedings³⁵. Thus the rights should reflect a need for the active participation of the legal representative starting from the moment of notification. The rights of the delegated adult should state:

- the degree of his/her participation: to be informed of the nature of the suspicion, to be informed of the notification of the invited juvenile offender to the pre-trial interrogation, to be informed of the identity and professional qualifications of the inspector in order to secure and monitor the quality of the pre-trial process;
- to participate in the investigation and other procedural actions conducted by the criminal prosecution bodies upon the suggestion of the named body; to give explanations, to present materials to be included in the criminal case and for examination; to declare challenges; declare motions; to object against actions of the bodies of criminal prosecution and to demand the inclusion of his/her objections into the protocol of investigatory or other procedural actions, in which the legal representative of the juvenile offender or juvenile participant of the trial participated or was present;
- to issues remarks with respect to the correctness and fullness of the records in the protocol of the investigatory action or other procedural actions; to demand the inclusion of his/her objections during the participation in the investigatory and other procedural actions;
- to receive copies of the final conclusion of the interrogation on request and free of charge, to submit appeals on the actions and decisions of the investigation body of inquiry; to recall any appeal submitted by others present at the interrogation such as school teacher, social worker, lawyer etc.;

³⁵ Article 441 of the Code of Criminal Procedure, while defining the rights and obligations of the legal representative in the trial, which are specified in Chapter I of the thesis, along with the mentioned cases with inert participation of representatives, proves the need of expanding and enlarging the tasks and rights of the adult in addressing questions, bringing clarifications both for the minor and the judge if there is such a need. This would add more flexibility in consideration of juvenile cases which in its turn would comply with the individual approach endeavored in international recommendatory documents.

- to invite any other person who can provide any significant and relevant evidence to the case;
- and finally, the representative is authorized to demand and retrieve the property taken by the body of criminal proceedings as material evidence or the property taken on other grounds, as well as the original official documents which belong to the juvenile suspect.

Children left without parental care, as well as for parents avoiding parental commitment or those condemning and deteriorating the psychological pressure towards the juvenile, should be treated with a certain precaution which can be articulated in the limitations to be fulfilled and promoted by the police department staff who deals with the case. Initially the limitation on the rights of the legal representatives should be applied for the benefit of the juvenile and the interrogation process as such. From the practice in trial interrogation mentioned in Chapter II, certain restrictions can be derived. For example, the interference of the legal representative in the interrogation process is encouraged unless their arguments constitute verbal or psychological pressure, for the juvenile.

The Guardianship and Trusteeship Council at each municipality and local government body should primarily encourage the proper care giver to act as the legal representative in the criminal proceedings, i.e., when the parents of the juvenile are mentally or physically unable to represent the interests of the child in a proper manner.

All the above suggested rights and limitations are sought to ensure integrative participation of legal representative in the pre-trial interrogation of the child in conflict with the law. As another guarantor of a fair trial, best interest, dignity, respect and all behavioral approaches are, imperatively and culturally, the responsibility and protection of the parent. Especially for a first-time juvenile offender in committal of the first crime, a humane and non-degrading approach is the first and foremost protection which may have not been implemented before the committal. Besides the legal representative/parent, the presence of a teacher and social worker is very vague in all the studied legal provisions.

Particularly, the social worker institute is a new developing profession and probation workers need some time to be considered as an integral part of criminal proceedings with child participation. However, the presence and interactive participation of the teacher is not indicated.

Under the Scottish system, allegations of a youth offense are referred to a Children's Reporter who then investigates the circumstances. In most instances, information is gathered from multiple agencies including social workers, police, schools as well as health

and voluntary organizations. A decision is made at the discretion of the children's reporter on whether a compulsory intervention should be ordered in which case the young person is referred to a hearing. (Alison, 2009)

4.1.2 Age-Related Legal Regulations

The international practice proves the defined lowest age of criminal responsibility is one of the widely spread gaps in many national legislations which in fact results in the most absurd situations³⁶. The relevant studies haven't stated the actual cases which demand the implementation of the minimum age, but it is still one of the pending issues.

There is a vital uncertainty observed in two legal documents declaring the child's rights. The Law on the Rights of the Child, the constitutional law declares the child as a person under 18 years of age. Meanwhile, Chapter 50 of the Code of Criminal Procedure prescribes rights and main legal guarantees for those less than 16 years of age. The age group 17-18 remains undefined. The basic human rights of the child and state obligations are stated in the above mentioned documents, however children in conflict with law are deprived of these rights if they belong to the 17-18 age group. Here the legislative gap should be blamed either for discriminating against the under-aged child offender involved in a criminal case or the lack of follow up to the laws produced by the state. This legal uncertainty needs to be improved on by raising the age limit in the Code of Criminal Procedure. The other way round would be impossible since it concerns firstly the constitutional rights of the child and secondly the age limit lower than 18, which is not encouraged by international documents.

The age of criminal responsibility varies from country to country, however the general practice starts at 15 years. This is the age of criminal responsibility in Scandinavian countries i.e. Denmark, Finland, Iceland, Norway and Sweden. There is no particular juvenile justice system in mentioned countries, but certain policies on prevention, diversion, incarceration and many others, exist separately.

The age of criminal responsibility in New Zealand is 10. The 'children' (under the age of 14) cannot be prosecuted except for the offenses of murder and manslaughter. Offenses of murder and manslaughter committed by any young person under 10 years of age or over are transferred by the Youth Court to the High Court. In other cases where children's offenses cause concern, they may be dealt with either by warning, police diversion or a

³⁶ The world was shocked with the accusation of a nine-month old Pakistani child in April 2014. Although it drew the highest criticism of the justice system in the country and the judge dismissed charges, however it remains one of the most vivid and latest examples of such a legislative gap. Besides, this is further international evidence of the possible consequence of how the wrongful acts of police lodging the case are of vital moral damage for a child in conflict with the law. **Указан недопустимый источник.**

Family Group Conference. Alternatively they may be referred to the Department of Child, Youth and Family Services, in need of care and protection.³⁷ The vast majority of offending by young people (83%) is now dealt with under the alternative youth justice procedures under the control of the Police. (Maxwell, 2002)

4.2 Institutional Reforms

4.2.1 Networking

From the described situation on juvenile justice in RA we can observe the scarcity of institutions tackling this issue. Pre-trial phase is one of the most untouched and dismissed levels in administrating the case. Though the codes cited provide some aspects of regulation, such as interrogation timing and representation of interests by the lawyer or parent (safeguard) very many other international practices concerning the treatment and administrative rules are not embraced. Particularly, the Juvenile Division within each police station undertakes the responsibility of minimizing the risk in juvenile delinquency which in its turn is limited only through running a specific database for not more than a year per a child. Further obligations are delegated to the general Investigation Department without any distinction to the peculiarities of juvenile cases. The preventative measures in Armenia are thus limited. The Juvenile Division should monitor the children with anti-social behavior not only from vulnerable families or care giving institutions, but should implement projects to monitor minors from younger ages involving school teachers and specialists from other related fields.. The Juvenile Division should also foster the networking of other governmental bodies such as Trusteeship Council from Municipalities, Family, Women and Children Marz Departments as well as institutions fulfilling government support of vulnerable families etc. This approach involving all parties, which provides community supervision of juvenile delinquency, can fulfill many other tasks for the Juvenile Division such as

³⁷ As we can observe there are several institutions handling certain aspects of juvenile offenders' issues. There are 32 Youth Offending Teams made up of Youth Justice, Health, Education and the Police to monitor offending within local communities. The teams are staffed by each agency and meet monthly to coordinate services for offenders within their area. For Armenia the implementation of such a systematic approach at the moment is financially impossible.

- expanding the area of surveillance of children through a cooperation network between school policemen, community social workers from state departments and staff members of social allowance departments;
- restructuring child rights departments and creating of a joint committee to consider preventative and integrative measures for minors in conflict as well as to follow up pre-trial and trial processes while ensuring juvenile legislative rights.

As an excuse for not implementing efficient mechanisms in juvenile justice monitoring, inspectors mainly mentioned the financial deficit in the state budget. However suggested points do not require increased funding and financial support from the state, moreover it can reduce the hiring for positions in different local authorities, for example one social worker could be recruited per police department instead of several in different state institutions or the specialization and enrollment of one investigator in juvenile justice issues instead of retraining all police officers on friendly juvenile justice.

Below are some experiences from other countries that prove the efficiency of using this model. Though the political and policy system on juvenile justice in some of the countries mentioned below is different, the areas of juvenile justice practice are of no contradiction to the current legal and institutional laws concerning juvenile justice in Armenia.

Research carried out in the United Kingdom and the United States concluded that prevention programs are most effective when targeted at children of 8-12 years of age. The Youth Justice Board of England showed that young people start committing crime, usually non-serious ones, and display anti-social behavior when they are between 10 and 12 years old and that the peak age for offense is 14 years old. (Blakeman, 2011) On average, children who have been excluded from school start to commit crimes a few years earlier than children attending schools. The United States study concluded that gang prevention and substance abuse prevention works better when children are slightly older (12 to 14 years old). (Child, 2011)

A national Crime Prevention Council (Det Kriminalpreventive Rad or DKR) was established in Denmark in 1971. This was the first such body in the world. The Council is made up of local crime prevention committees (SSPs), which bring together representatives of schools, the police and social services. The SSP system works in nearly every municipality in the country. Each SSP has a management committee comprised of the local heads of education, police and social services. (OSF, 2012)

In England and Wales, Youth Offending Teams (YOTs) are located in each local authority. The inter-disciplinary teams are made up of representatives from the police, probation service, social service, health, education, housing and drug and alcohol services. The multi-agency approach enables the YOT to identify a suitable program to address the needs of the young person with the intention of preventing further offending. The YOTs implement a range of targeted prevention programs for 'risk' groups ages 8 to 17 years. The programs include early intervention schemes, youth inclusion programs, safer school partnerships and parenting programs. (UK, 2013)

The Danish SSP-concept is another example of the effective multi-agency collaboration which is characteristic of Scandinavia's approach to juvenile justice. The SSP concept involves systematic collaboration between schools (S), local social welfare (S) and local police (P). As of 2005, SSP committees have been established in more than 90% of Danish municipalities for the purpose of educating school students, teachers and parents on the prevention of criminality as well as other sorts of dysfunctional behavior such as alcohol and drugs misuse. (Justice, 2005)

4.2.2 Competent Juvenile Inspectors and Judges

With the due coherence of the results and findings of monitoring and interviews, as well as the legislative basis for alleging the absence of juvenile courts and professionally retrained investigators to deal with juvenile cases, this can constitute as another recommendation for the state. As the guidelines for Action on Children in the Criminal Justice System indicate, states should establish juvenile courts with primary jurisdiction over juveniles who commit criminal offenses and a special procedure should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Considering the general practice in RA of vindicating juvenile in a pre-trial, the second variant, incorporation of juvenile courts, is the most relevant. However, this doesn't suggest that cases should be left out without special procedures envisioned by the guidelines. Wherever necessary, national legislation and other measures should be considered in accord with all the rights of and protection for the child prescribed by Convention on the Rights of the Child (Council, July 21 1997).

During the pre-trial phase the investigation and case management by a competent authority is quite important. Chapter I specifies why it is that important. In Armenia the introduction of a school policeman is the only innovation that proves the accomplishment of the focus

on child rights. However, the latter does not consider or play a part in criminal cases. The general practice of assigning a specialized inspector to juvenile cases should be implemented. Thus the need for professional retraining, the prosecution, filing, interrogation and any other related responsibilities should be managed by one specified inspector. The number of the vacancies in each police department is already regulated by the inner state policy in relation to the offenses in the region, population size, i. e. juveniles, etc.

4.2.3 Leading Guideline

Except for the violations of rights by the police staff, another large gap in conducting pre-trial interrogation is the absence of ethics in communication with the child. These codes of conduct concern the experience, values, perceptions and professionalism of the state representative dealing with the juvenile in the pre-trial. That is to say, even if an inspector was concerned that implementing any guidelines concerning the conduct of the child in conflict with the law would restrict the inspector's obligations, such a guideline should be suggested in order to avoid infringements of a child's basic human rights. The juvenile should be considered as an individual who is at a certain stage of development, with vulnerable physical and psychological needs, and therefore easily provoked into aggression and isolation.

Principles such as no abuse, no violence, no physical or psychological offense toward the juvenile in pre-trial interrogation; presumption of innocence, a high degree of understanding, kind firmness in interrogation and counselling with specialists from certain fields such as age-focused and forensic psychology, pedagogues, probation social workers; are supposed to be implemented through mechanisms such as generating Guidelines of Ethics for Interrogation of Under-Age Offenders which should be considered as a bible for the pre-trial interrogation of all juveniles, regardless of their status - witness, victim, suspect or accused. Moreover, this safeguard shouldn't be considered as another legal provision to be evaded or interpreted in the interests of the police officer. The principles in here should be in full compliance with international and regional legal provisions regarding terms such as torture, ill treatment, coercion and intimidation, best interest of the child, and respect of the child's dignity, and many others.

The risk of the guideline to invoke any certain behavior from the police staff should be minimized since the individual approach won't deviate from the general description of basic rights of the juvenile. Moreover, those without experienced in running investigations

with juveniles and those who have never studied any criminology literature on interrogating juveniles, can be self-educated and supervised by this initiative. The most positive outcome of the friendly juvenile system is the diversion. Diverting the child does not mean that the offending behavior of the child is simply not considered or ignored, instead it allows taking further steps in the prevention of juvenile delinquency through understanding the causes rooted in youth crimes. The CRC provides that diversionary measures include care, guidance and supervision orders, counselling, probation, foster care education and vocational training programs and other alternatives to institutional care.³⁸

Legislation should permit diversion at any point up to the time that the formal trial begins. In order for diversion to work effectively, the police, prosecutors and other agencies dealing with juvenile cases (including the court) need to be legally competent in disposing cases without resorting to a formal hearing before the court.³⁹ Hence, juvenile justice legislation should contain specific provisions indicating in which cases diversion can be applied.⁴⁰ It should also confirm the fact of no limitations in dealing with minor offenses⁴¹, nor first-time offenders⁴², and should be of general use while dealing with juvenile.

Discrimination based on any reasoning should be reflected not only on a constitutional level but should be highlighted in the work with juvenile offenders. The Law on the Rights of the Child forbids the use of violence, threats and other illicit actions against the child for the purpose of forcing the child to testify or plead guilty.⁴³

4.2.4 Enhance Monitoring and Follow Up Facilities at a State Level

A right-based approach and the way of treating the child in conflict with the law can be produced and be perfectly in accordance of general acknowledgement and appreciation. In fact, it won't necessarily mean the implementation is efficient too.

Starting from the notification, which according to the 2013 Ombudsmen Annual Report, most of the time, is sent after posing a series of questions to juveniles without informing parents. That is to say, the legislative guarantee of informing the child of his rights,

³⁸ Article 40 (4) of the CRC.

³⁹ Rule 11.2 of the Beijing Rules.

⁴⁰ Committee on the Rights of the Child General Comment No 10 (2007), para 27.

⁴¹ Rule 11, Commentary of Beijing Rule.

⁴² Committee on the Rights of the Child, General Comment No 10 (2007), para 25.

⁴³ Article 31, Protection of the Child's Right while Prosecuting the Latter, the Law of RA on the Child's Rights.

assigning a legal representative to the investigation process, participation of a pedagogue and many other consequent rights are violated with habitual practice.

In fact there is an actual need for using tape and video recorders during the pre-trial interrogation as the presence of someone, be it an inert teacher or parent, doesn't necessarily ensure the respect of the juvenile's rights in a pre-trial interrogation. The desk follow up, if it's made available, can register violations afterwards, however, this will be of no significance in the prevention of an abuse, violation or intimidation of the offender.

There is an urgent need to foster monitoring facilities at a state level, as the task of watchdog in the area is the responsibility of civil society representatives and the Ombudsmen office, which in its turn identify violations based on individual appeals.

Once a state has passed legislation bringing a juvenile justice system into being, and once all the professionals working in the system have been trained, issues of implementation may still remain. The Committee on the Rights of the Child recommends that states should undertake regular evaluation of their juvenile justice system, and particularly the effectiveness of measures taken, including those concerning discrimination, reintegration and recidivism. A useful resource in this respect is the Manual for the Measures of Juvenile Justice Indicators (UNICEF/UNODC, 2007).

A review of existing procedures should be undertaken, and where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offense. Appropriate measures should be taken to provide a broad range of alternative and educative measures at the pre-arrest, pre-trial as well as trial and post-trial stages, for better prevention from recidivism throughout the state. The guidelines draw particular attention to the following follow up points among them the review of existing and proposed juvenile justice laws and their impact on children by an independent expert or other types of panels. (Council, July 21 1997)⁴⁴

Above all, the state monitoring may be deemed as the self-assessment process. It means the state gather and manages accurate, understated data on the practice and administration of juvenile justice. This empowers the state to recognize juvenile offending trends and the effectiveness of existing measures and programs as well as enables the state to target resources, develop and define initiatives and handle gaps. All states should ensure that

⁴⁴ 14 (b) of the guideline.

their legislation requires national statistical bodies to collect and collate such data from the police, prosecutors and courts. (UNICEF/UNODC, 2007).

5. CONCLUSION

The overall evaluation of the legal and systematic framework of juvenile justice in Armenia allows room to allege that the biggest challenge here is the problem of systematization. A system in itself does not exist in RA, instead there are unregulated arrays of legal documents, the existence of certain agencies and divisions do not flow from the needs of existing child rights documents but are the outcome of certain orders. The Juvenile Justice Establishment plan is not interrelated with the civil society activities acting in the field and the promotion of networking should be one of the main objectives of the plan. The matter concerning the minimum criminal responsibility age, certain responsibilities and obligations and many other clarifications are minor but frequent within legislation. The latter comes with many obstacles, violations and failures in the implementation and process of the criminal procedure. The National Action Plan of RA emphasizes mostly activities and motions on juvenile crime prevention, but this phase also needs to be revised. However, the field as a whole needs to be reviewed from a systematic approach: implementation, management, monitoring and evaluation elements should be incorporated in the relevant human rights context.

The guarantees concerning both administrative and behavioral treatment of juveniles in conflict with the law touch upon the basic needs of children and the concepts of non-discrimination, ill-treatment, dignity issues and many others dealing with the value system.

The matter of individual approaches within police departments, the privilege of opinion in particular, conduct influenced by individual understanding and perceptions should be replaced with a law-based treatment. The laws, which are supposed to fulfil those values and needs are lacking very minimal requirements including some logical ones such as the minimum age of criminal responsibility and the requirement of specialization of police staff dealing with juveniles.

Among the reasons for having a less developed juvenile justice in RA were allegations such as not having many criminal cases committed by minors, no need of setting state guidelines on treating the child as the national and cultural heritage ensures it instead, the

lack of financial resources etc. As for the number of criminal cases committed by juveniles the statistics proved the contrary, showing juvenile crimes had doubled in recent years in comparison with post-Soviet times. Despite this dynamic expansion, the monitoring of juvenile justice is not properly conducted neither at legislative nor at implementation levels in Armenia. This is one of the root causes for not perceiving the emerging need of subsidiary legal and strategic programs on the field. Best interest principles concerning child treatment do exist in Armenia, however, the studies and interviews prove that while they exist, the principles are not adhered to in criminal proceedings.

In fact, human rights are perceived in many states as an international legal regulation imposing the domestic laws. However, a good understanding of human rights as a set of guarantees should be promoted, fulfilled and executed in Armenia. The more it complies with the needs the more it is reflected in the legal and normative background of the state. The assumption of having a family-centered and child cherishing culture in Armenia is part of an identity issue, which is deemed to be challenged if violations of the rights of the child in conflict with the law keep on occurring in RA.

The wide range of issues and successes in almost all the phases mentioned in the dissertation display the causal consequences of violations that have taken place in pre-trial proceedings. Starting from initial contact right through to the incarceration and treatment of the minor already at the trial is accompanied by psychological factors. Ill-treatment of juveniles- insults, harsh language, unprofessional attitude through impositions and threats - which is not guaranteed to lead to torture, is condemned by government officials, however, improvements require patience.

The 3T approach conceptually targets needs, most of which are changes to be made in juvenile justice proceedings. Considering the child as a vulnerable recipient of law would demystify the need for approaching a child with a kind firmness rather than abuse to touch his/her immunity. It also reveals the need to approach a child as an individual and as instant cases mentioned in trial such as calling juveniles weird nicknames or in the statement of inspectors when they claim that the juvenile respective to the crime committed is often treated as a criminal individuality. There should be an understanding of the subtle psychology of the child that corresponds with the age in scope of vulnerability in the development of the minor.

Though the first chapter highlights the legal side of juvenile justice in national jurisdiction, the mission of this dissertation is to prove the necessity of adopting human rights values at

both executive and legislative levels. Certainly it's not an easy task to fulfil in countries with a post-Soviet, historically rooted criminal system, but a step forward is taken too slow in comparison with the democratic, economic and other modern changes in temporary Armenia.

A change in mentality is to be concluded from the above discussion with regards to the facts and situation in the system. The opinions of specialists from different ages, region, investigation departments, educational backgrounds, positions and experiences have been considered, but most of the replies to the addressed questions were very similar, which helps us understand that the general atmosphere needs to be modified. If this does not happen the contrast between human rights education and general practice in pre-trial and trial proceedings will be a hindrance in the implementation of sustainable and flexible changes in the juvenile justice framework.

In conclusion, I can claim that in Armenia there is hope and the necessary facilities for improving and establishing an ascribed system for the fair examination of juvenile criminal cases in the course of pre-trial and trial phases. Justice, fairness and a perfect system are debateable concepts but basic psychological, mental, physical, age-corresponding needs are worked out and comprised in human rights values which are reviewed, refreshed and nourished year by year with international efforts. These efforts should be multiplied with each state, in particular in RA to ensure the well-being of its own citizens.

Finally, fair examination of criminal cases is a step towards preventing juvenile delinquency. The proper treatment with supportive laws is a specific tool in dealing with juvenile offenders at the early stages of their development. Garegin Nzhdeh, Armenian statesman and military strategist in one of the most difficult periods of Armenian history, once said that re-education is the last resort of people with an endangered future. If referred to juvenile offenders, the future of their criminal biography depends on the way they were treated while suspected or accused of a certain crime. Framing of the guilt, which was one of the common violations, would mean sentencing to the future at a stake.

As we can see, the challenges are extensive and only the will of the state and incorporated forces of involved societal and state bodies are able to make the necessary amendments. Hopefully one of the contributing factors to improving the juvenile justice system may be studies such as this dissertation.

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7. ANNEX 1

1. Convention on Child Rights (RA, ratified in 1992).
2. European Social Charter (reviewed) ratified in 2004.
3. Convention on the Minimum Age of the Child (Convention N 138 of International Labour Organization of 3 October 2005) ratified by RA on 27 January 2007.
4. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, Optional Protocol on the Rights of the Child in Armed Conflicts ratified by RA in 2004-2006.
5. Civil Code of RA (adopted by National Assembly of RA on 5 May 1998).
6. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (with additional protocols) ratified in 2007.
7. Family Code of RA, National Assembly of RA, November 9, 2004.
8. The Law of RA on the Child's Rights put into effect by National Assembly on May 29, 1996.
9. Law of RA on Social Protection of Disabled People (outlined articles 12-15) National Assembly of RA adopted on 24 April 1993.
10. Civil Code of RA, National Assembly of RA, May 5, 1998.
11. Law of RA on Civil Status Acts put into force by National Assembly of RA on 9 December, 2004).
12. Law of RA on Social Protection of Children Without Parental Care, National Assembly on March 5, 2005.
13. Code of Civil Procedure of RA (revised), National Assembly, July 7, 2005.
14. Decision No 1745 on confirmation of National Action Plan on Child' Rights Protection of 2004-2015, 29 December 2003
15. Decision No 983 of government of RA on Confirmation of Order to Provide Shelter for Children Without Parental Care, 23 July 2003.
16. Decision of government of RA No 917 on confirming the Regulation for Defining the Registration of Children without Parental Care and Children Considered as Without Parental Care and Amendment in the Decision No 111 of Government of RA on March 13, 2000.
17. 'State Support to Alumnus of Child Care Giving Institutions' project confirmed by RA government decision No 1419 of October 30, 2003.

18. 'The Authorization by the RA Government as a Governing Body and State Social Minimum Standards for the Care and Upbringing of children in Orphanages and Care Giving Institutions', decision No 1324 of government of Republic of Armenia, August 5, 2004.
19. Decision No 159-N of government of RA on 'A Lump Sum Aid to Graduates of the Orphanages (whatever their organizational and legal form is)', February 17, 2005.
20. Decision No 381 of government of RA on Confirmation of the List of Child Care Giving and Child Protection Institutions Types, and Additions and Amendments in Decision No 2179- N, Decision of Government of RA on 26 December, 2002, 24 March, 2005.
21. The decision N 835- N of prime minister of RA (28 Oct. 2005) on Establishment of National Committees, Charter of the Committee and Individual Staff.
22. RA Decision No 922 of June 8, 2006 on Confirmation of the Charter of Trusteeship and Guardians Bodies and Repeal of the RA government decision No 111-N of 13 March, 2000.
23. Decision No 1877 of Government of RA -N on Procedure of Providing day Care for Children, December 7, 2006.
24. Decision No 1735 on Procedure Confirmation of Accomodation Needs of Children in Child Care and Protection Institutions (orphanages, boarding schools) of government of RA on November 9, 2006.
25. Decision No 815- N of government of RA on Confirmation of Minimum Standards of Child Care and Services to the Children in Orphanages (irrespective to its legal organizational form), on May 31, 2007.
26. Strategic Plan of Reforms in 2006-2010 for Social Protection of Children in Difficult Life Situation and Pilot Program for Unloading the Vanadzor Orphanage, Orphanages For Orphans, Mentally Retarded Children and Children Deprived of Parental Care No 2 and No 3 of Vanadzor, Stepanavan Orphanage No 1 and Spitak Orphanage of Lori marz, decision No 206-N of government of RA on 12 January 2006.
27. Decision No 459- N on 'Regulation for Children Given to a Tutorial Family', ' The Order and Amount of Monthly Paid Sum to the Tutorial Family for Keeping Children and Sum for Care and Upbringing of the Child', 'Agreement Form for the Tutorial Family', government of RA on May 8, 2008.

8. ANNEX II

Blank interview form for Investigators of Gegharkunik Marz Investigation Department, RA

DATE: _____ / ____ / 2014

Personal Details

1. What is your education and how long have you been working as an inspector?

2. Have you participated in a special re-training course to deal with juvenile cases? If 'yes' when and who was the organizing party?

3. Have you ever turned to a pedagogue for a counsel regarding the treatment to the juvenile? If not, do you consider this method a productive one for dealing with a juvenile in certain cases?

4. Have you ever conducted any practice exchange visits with the colleagues from other marzes/ countries? If 'yes' when was the one?

Interrogation Procedure

1. Are there any manuals tackling interrogation rules, regarding the interrogation of juveniles specifically? If 'yes', which legal act regulates it?

2. How many detained people, both adult and juvenile, are there in your department at the moment? What is the detention practice among adults?

_____:

3. Do you consider the social conditions, social behavior, former criminal behavior and criminal offenses of the juvenile?

4. Who is present at the interrogation of the juvenile?

5. Are you present during the communication between the juvenile and his/her lawyer?

6. How do you gain the trust of the juvenile to start the interrogation?

7. What methods do you usually use to obtain information in a faster way?

8. Do you inform the juvenile about the evidence against him/her given by the witnesses?

9. What methods do you use to persuade the juvenile to acknowledge the guilt?

10. What is the duration of the interrogation, break times and break days?

_____:

11. In what cases do you apply to detention of the juvenile suspect?

12. Have there ever been cases when false information was provided to gain information during the interrogation? If 'yes' provide examples.

13. Which methods do you consider imperceptible to use during the interrogation?

14. Was there any need to use external tools, staff, documents, photos, records during the interrogation?

15. What changes would you like to see in juvenile justice system of the Republic of Armenia?

Other comments

9. ANNEX III

INTERROGATION OF JUVENILE SUSPECT

<< >> _____ 20__

Interrogation started at _____

End time _____

The inspector of the Investigation Department of Gegharkunik marz _____ /full name/ according to the criminal case No _____, preserving the requirements under Article 209 and 211 of Code of Criminal Procedure, at the administrative building of Investigation Department of Gegharkunik with participation of defender _____ /full name/, legal representative parent _____ /full name/, interrogated the following juvenile suspect.

1. First name, surname, father's name

2. Birthday

dd/mm/yy _____

3. Birth place

4. Nationality and citizenship

5. Education

6. Family

status _____

7. Employment

place _____

8. Occupation and position name _____

9. Place of residence and current address

10. Information on previous convictions

11. Characteristics _____

12. Health

status _____

According to Article 211 of the Code of Criminal Procedure, the juvenile suspect was informed about the suspicion under Article ____ Code of Criminal Procedure on committing a crime which is _____ and the rights and obligations of suspect explained at the Article 63 of Code of Criminal Procedure, including the means of defense not prohibited by law, the refusal of bringing testimony and the right of being interrogated in the presence of the advocate.

Upon the suspicion against which the suspect is opposed

_____ he/ she informed the following

