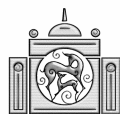




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**Tatia Kvrivishvili\***

## **Privacy Protection of Juvenile in Conflict with the Law at the Trial**

*The present article refers to the issue of privacy of the juvenile in conflict with the law, in particular the rule of examination of the case in closed court hearings and the issue of restriction of attendees at the trial; What are the international standards in this regard, the practice of foreign countries and legislative regulation in Georgia. There is a separate chapter on the controversy surrounding two competitive rights: the right to a privacy of the juvenile and the right to a public hearing, reviewing case-law of the European Court of Human Rights and the Courts of Foreign Countries.*

*As the juvenile justice code of Georgia has strictly defined the procedure of considering the juvenile case behind closed doors without any exception and restricted by the list of attendees, it will be analyzed on the basis of international practice research, whether this provision is always in the best interest of the juvenile and protects the juveniles' rights.*

**Keywords:** *Juvenile justice, juvenile in conflict with the law, right to a privacy, considering the case behind closed doors, right to a public hearing, attendees of juvenile's trial.*

### **1. Introduction**

Children are holders of rights, rather than just objects of protection. They are beneficiaries of all human/fundamental rights and subjects of special regulations, given their specific characteristics.<sup>1</sup> The CRC was created bearing in mind that children, in contrast to adult human beings, are in need of special children's rights. This implies a distinction between the child and the adult, and a different legal position for both.<sup>2</sup>

The most notable aspect of the treatment of youths who offend in Western countries is that every country appears to have laws or policies reflecting the belief that youths should be treated differently from adult offenders.<sup>3</sup> Because of the relative immaturity of juveniles, due process protection of juveniles' "new" rights required special considerations which had not been typical in adult criminal procedures. Ways of assuring due process could not merely be borrowed from criminal court procedure, but must be modified to take into consideration the inherent social, emotional, and psychological characteristics of juveniles.<sup>4</sup>

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<sup>1</sup> European Union Agency for Fundamental Rights and Council of Europe, Handbook on European law relating to the rights of the child, Luxembourg, 2015, 17.

<sup>2</sup> Hopman M. J., (Why) Should Children Have Rights? A philosophical Perspective, The United Nations Convention on the Rights of the Child (taking stock after 25 years and looking ahead), 2016, 272.

<sup>3</sup> Doob A. N., Tonry M., Varieties of Youth Justice, Crime and Justice, Vol. 31, Youth Crime and Youth Justice: Comparative and Cross-National Perspectives, Crime and Justice, The University of Chicago Press Journals, 2004, 3.

<sup>4</sup> In re Gault, Supreme Court of U.S., No. 116, 1 (1967). Ibid, Grisso T., Juveniles' Waiver of Rights, Legal and Psychological Competence, New York, 1981, 2.

Under international standards, children, unlike adults, have a right to have their privacy respected at all stages of the proceedings.<sup>5</sup> "Confidentiality" is an important distinguishing factor between juvenile courts and traditional adjudicatory hearings.<sup>6</sup>

The aforementioned norm-principle is also reflected in Article 13 (1) of the Juvenile Justice Code of Georgia,<sup>7</sup> according to it, the right to a privacy of juvenile is guaranteed at any stage of the proceedings. And Article 26 of the same Code imperatively states that the case of a juvenile who is in conflict with the law shall be heard in closed hearing. The same article restricts the number of persons present at the sitting.

The purpose of this paper is to research the issue of the protection of the right to privacy in juvenile justice. Since the right to privacy of a minor includes many components and protection of the right is mandatory at all stages of the proceedings, from the initial contact with law enforcement up until the announcement of a final decision by the court, the present work concerns only a part of the protection of a juvenile's private life related to the examination of the case of the juvenile in conflict with the law in court.

## **2. Historical Development of Children's Rights**

At the end of the 19th century the first juvenile justice system in the world was set up in Illinois, the United States of America [USA] and thereby the first juvenile court was established. The Illinois Juvenile Court Act (1899) is recognised as the first example of legislation that established a separate justice system for juvenile offenders (Sloth-Nielsen, 2001).<sup>8</sup> When America's first juvenile court was enacted in Chicago, it was open to the public and the press.<sup>9</sup>

Following in the footsteps of the USA many countries established separate legislation for juvenile offenders with separate juvenile courts, sentences and institutions.<sup>10</sup>

In 1908, Frankfurt became the first German city to establish a special court department for juvenile offenders, in 1923 according to the Youth Court Law .... prohibited public juvenile trials.<sup>11</sup> It served as a model for other countries.<sup>12</sup>

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<sup>5</sup> *Hamilton C.*, Guidance for Legislative Reform on Juvenile Justice, Tbilisi, 2015, 88 (in Georgian).

<sup>6</sup> *Greenebaum S. S.*, Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?, *Journal of Urban and Contemporary Law*, Vol. 44, 1993, 136.

<sup>7</sup> Juvenile Justice Code of Georgia, 12/06/2015.

<sup>8</sup> *Rap S.*, The Participation of Juvenile Defendants in the Youth Court A Comparative Study of Juvenile Justice Procedures in Europe, Utrecht, 2013, 37.

<sup>9</sup> *American Bar Association (ABA) Division for Public Education*, The History of Juvenile Justice, Dialogue on Youth and Justice, 2007, 2, <<https://www.americanbar.org/content/dam/aba/migrated/publiced/features/-DYJpart1.authcheckdam.pdf>>, [04.11.2019].

<sup>10</sup> *Rap S.*, The Participation of Juvenile Defendants in the Youth Court A Comparative Study of Juvenile Justice Procedures in Europe, Utrecht, 2013, 37.

<sup>11</sup> *Albrecht H.*, Youth Justice in Germany, *Crime and Justice*, Vol. 31, Youth Crime and Youth Justice: Comparative and Cross-National Perspectives, The University of Chicago Press Journals, 2004, 445.

At the beginning of the 20th century international law on the rights of the child started to develop. This development occurred in tandem with the development of international human rights law.<sup>13</sup>

For a long time in human history, the legal status of the child was not the focus of attention by the state, government, international organisations and even family itself. The child was not treated as an independent holder of rights but rather as a more or less subordinate object of rights of the parents or guardians. More attention began to be paid to children and their position just after the First World War, when, thanks to the efforts and commitments of two sisters, Eglantyne Jebb and Dorothy Buxton, the first Declaration of the Rights of the Child (1924) was adopted.<sup>14</sup>

Since then, many international acts and treaties on child rights have been adopted. These include the UN International Covenant on Civil and Political Rights (1966), the UN Standard Minimum Rules on the Administration of Juvenile Criminal Justice (the Beijing Rules, 1985), the UN Convention on the Rights of the Child (1989), the UN Rules on the Protection of Juveniles (Havana Rules, 1990), etc.

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. Notably, Article 3(3) of the Treaty on European Union today explicitly requires the EU to promote the protection of the rights of the child. The rights of the child are furthermore enshrined in the Charter of Fundamental Rights of the European Union.<sup>15</sup>

In the last 20 years, youth justice systems in Europe have undergone considerable changes, particularly in the former socialist countries of Central and Eastern Europe.<sup>16</sup>

As for Georgia, juvenile justice issues prior to 2015 were governed by the substantive criminal and procedural codes, which contained separate chapters devoted to the specific provisions applied only to juvenile proceedings. With regard to the protection of a privacy, it is noteworthy that the whole or part of a case was still heard in private with the request of a party accordance to the Article 16, paragraph 4 of the old Criminal Procedure Code, in order not to disclose intimate or confidential information of the person involved in the case when it was necessary for security protection of one of the party or his/her family members or close relatives. According to Section 7 of the same Article, the decision was made public in all cases, whether it was the case of a juvenile or an adult.<sup>17</sup> As for the new Criminal Procedure Code, before 2015, according to Article 317 §1, the trial attended by the juvenile defendant was closed.<sup>18</sup> The rule of pronouncing the judgment was adjusted in the same manner.

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<sup>12</sup> *Palmer E.*, Germany: Children's Rights: International and National Laws and Practice, Law Library of Congress, 2007, 94, <<https://www.loc.gov/law/help/child-rights/pdfs/ChildrensRights-Germany.pdf>>, [04.11.2019].

<sup>13</sup> *Rap S.*, The Participation of Juvenile Defendants in the Youth Court A Comparative Study of Juvenile Justice Procedures in Europe, Utrecht, 2013, 38.

<sup>14</sup> *Jancic O. C.*, The Rights of the Child in a Changing World, 25 years after the UN Convention on the Rights of the Child, International Academy of Comparative Law, 2016, preface.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Agenda for the Rights of the Child, 2011, 3.

<sup>16</sup> *Dünkel F.*, Juvenile Justice Systems in Europe – Reform developments between justice, welfare and 'new punitiveness', *Kriminologijos Studijos*, Vol. 1, 2004, 32.

<sup>17</sup> Criminal Procedure Code of Georgia, 20/02/1998 (Annulled 01/10/2010).

<sup>18</sup> Criminal Procedure Code of Georgia, 9/10/2009 (consolidated version 12/06/2015).

The issue of separation of juvenile justice has become a pressing issue in the Georgian legislative field since the agenda of the Association Agreement with the EU has been defined to improve the juvenile justice legislation and to bring it into line with international standards. The Act stated that there was a need to reform the juvenile justice system in order to protect the rights of children.<sup>19</sup> On June 12, 2015, the Parliament of Georgia adopted the Juvenile Justice Code and Georgian legislation has mostly approximated international standards in this regard. However, I think a number of issues still need refinement and more in-depth study. Among them, the issue of protection of the juvenile's privacy which is one of the core principle.

### **3. The Scope of the Privacy Protection in Juvenile Court Proceedings**

The protection of the right to privacy of a juvenile at all stages of the proceedings is one of the most important components of the rights of juveniles and one of the minimum guarantees of the right to a fair trial enshrined in Article 40 of the Convention on the Rights of the Child. Adults and minors have many common guarantees of the right to a fair trial, but there are some components that only characterize juvenile justice, including the protection of the right to privacy at all stages of the proceedings. According to the article 13 of the Juvenile Justice Code of Georgia guarantees the protection of the private life of the juvenile at any stage of the juvenile justice process. For the same purpose, the Code specifies the list of persons attending the trial. However, informations on previous conviction of juvenile and previous administrative liability are not public. Disclosure and publication of a minor's personal data shall not be permitted except as provided for by the Law of Georgia on Personal Data Protection. The personal data of minors may not be disclosed or published, except as provided for by the Law of Georgia on Personal Data Protection.

It is interesting to see how imperative are international acts and practices of foreign countries related to closed juvenile hearings and limitation of attendees at the trial, whether there are any exceptions to this rule, and whether Georgia's legislation is in line with international standards.

#### **3.1. International Standards**

The right to a public hearing is considered by international human rights treaties as one of the essential elements of the concept of a fair trial. The right to a public hearing means that the hearing should, as a rule, be conducted orally and publicly, and judgments should be made

public. However, the public should be excluded from all stages of the proceedings and the judgment should not be made public if the case is against a juvenile offender.<sup>20</sup>

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<sup>19</sup> Georgia-EU Association Agenda 2014-2016, 2014, 5, <[https://eeas.europa.eu/archives/delegations/georgia/-documents/eap\\_aa/associationagenda\\_2014\\_ka.pdf](https://eeas.europa.eu/archives/delegations/georgia/-documents/eap_aa/associationagenda_2014_ka.pdf)>, [04.11.2019].

<sup>20</sup> *Manco E.*, Protecting the Child's Right to Participate in Criminal Justice Proceedings (Commentary), Amsterdam Law Forum, Vol. 8, Amsterdam, 2016, 67.

As mentioned above, Article 40 (II), (b), (VII) of the Convention on the Rights of the Child, which deals with the right to a fair trial, provides as one of the safeguards for the protection of the right to privacy of a minor at all stages of the proceedings. “All stages of the proceedings” includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling.<sup>21</sup> The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law.<sup>22</sup> In order to protect the privacy of the child, most States parties have as a rule – sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.<sup>23</sup>

Another facet of the right to privacy is highlighted by the Beijing Rules, which recommend in principle that information leading to the identification of a juvenile offender should not be published. Such information would include, but is not limited to, the name. This protects the child’s right to privacy and serves to prevent children from being identified or labelled as delinquents as criminological research has shown such labelling has had detrimental effects on children.<sup>24</sup>

As for the European Convention on Human Rights, one of the grounds for excluding public from the hearing is the interests of the juvenile. In particular, pursuant to Article 6, §1, “the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice“.<sup>25</sup>

In May 2016 the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter Directive on procedural safeguards for children or the Directive) has been adopted by the European parliament and the Council of the European Union. The Directive is legally binding for EU Member States and it should be implemented in national laws and regulations by June 2019, with the exception of the UK, Ireland and Denmark which are not taking part in the adoption of the Directive and are not bound by it or subject to its application.<sup>26</sup> Member

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<sup>21</sup> UN Committee on the Rights of the Child (CRC), General comment No. 10: Children's Rights in Juvenile Justice, Geneva, 2007, §64.

<sup>22</sup> Ibid, § 66.

<sup>23</sup> Ibid, § 65.

<sup>24</sup> *Van Bueren G.*, A Commentary on the United Nations Convention on the Rights of the Child, Article 40 Child Criminal Justice, Leiden, Boston, 2006, 22.

<sup>25</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6 (1), 1950.

<sup>26</sup> *International Juvenile Justice Observatory*, White Paper on the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Key aspects, priorities and challenges for implementation in the EU Member States, 7.

States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.<sup>27</sup> In relation to the draft of this article, the NGOs have submitted joint opinions, according: “Children should be judged in the absence of the public in order to protect their privacy and to facilitate their reintegration into society. Only in exceptional cases and when it is consistent with the best interests of the child should the court be allowed, to hold a hearing in public.”<sup>28</sup>

As it seems, under international law, confidentiality is essential to protect juvenile's right to a privacy in juvenile justice, and the trial should usually be closed, though almost all acts state exception from this rule, if it is in the best interests of the child. This is clearly reflected in the practice of foreign countries.

### **3.2. The Practice of Foreign Countries**

In Germany the issues of juvenile justice is regulated by Youth Courts Law. Article 48 of the above mentioned law applies to the protection of the privacy of a juvenile at the trial. Specifically, according to section 1, the deliberations before the decision-taking court, including the announcing of its decisions, shall not be open to the public. And according to Section 2 of the same article, besides the participants to the proceedings, the aggrieved person, his parent or guardian and his legal representative, and, where the defendant is subject to the supervision and guidance of a probation officer or the care and supervision of a care assistant or if a social worker has been assigned to him, the probation officer, care assistant and the social worker are permitted to be present. The same shall apply to the head of institution in cases in which the youth receives supervisory assistance in a residential home or comparable institution. The judge may admit other persons for special reasons, id est. for training purposes.<sup>29</sup>

It is noteworthy that in Germany the right to attend juvenile proceedings may be granted to other persons. For instance, according to the section §175 (3) of Courts Constitution Acts of Germany, “Exclusion of the public shall not constitute an obstacle to the presence of the judicial administration officials responsible for supervision of service at the hearings before the adjudicating court.”<sup>30</sup> Other persons may also be allowed to attend the trial if there is a reasonable basis, for example if the person is: Law student, referee, social worker, police officer. ... Each person must be personally permitted to attend the trial ... The decision on the admissibility of persons at a hearing shall be decided by the

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<sup>27</sup> Procedural safeguards for children who are suspects or accused persons in criminal proceedings, The European Parliament and the Council of the European Union, Directive (EU) 2016/800, Article 14 (2).

<sup>28</sup> Joint civil society position on the draft report of Caterina Chinnici on the proposal for a directive on procedural safeguards for children suspected or accused in criminal proceedings, 2014, 7.

<sup>29</sup> Jugendgerichtsgesetz (JGG), Bundesgesetz, Jugendgerichtsgesetz in der Fassung der Bekanntmachung vom 11. Dezember 1974 (BGBl. I S. 3427), das zuletzt durch Artikel 4 des Gesetzes vom 27. August 2017 (BGBl. I S. 3295) geändert worden ist.

<sup>30</sup> Gerichtsverfassungsgesetz, GVG, 9 May 1975, <<https://germanlawarchive.iuscomp.org/?p=771#175>>, [04.11.2019].



Chairman of the sitting only.<sup>31</sup> However, it should also be noted that the large number of people attending the trial should not frighten the youth, which is one of the grounds for appeal.<sup>32</sup>

At the youth court of Germany, “only part of the proceedings may be closed, as the closure of a trial depends on a particular case, since publicly announcing the decision may not necessarily contradict the latter. When the decision is announced, the process may also be closed.”<sup>33</sup>

It seems that the court proceedings in youth courts of Germany are usually closed, but in exceptional cases, the judge has the right not only to allow persons to attend the hearing for educational purposes, but also to the court staff who supervise the administration. However, it may be possible for a judge to close only a part of the proceedings in exceptional cases.

As for the USA, “juvenile courts traditionally have been closed to the public”.<sup>34</sup> As a policy matter, it was believed that youthful offenders should not be stigmatized forever because of one mistake. Another justification for secrecy was promoting rehabilitation of the youthful offender. For example, the Vermont Supreme Court upheld a statute closing juvenile proceedings to the public, holding that publication of information about youthful offenders could impair the rehabilitative goals of the juvenile system.<sup>35</sup>

In the United States, many courts believe that publicity is an interference with the rehabilitation of juvenile defendants. An open hearing of the case may create negative publicity and deprive the system of an informal atmosphere. In addition, courts have the responsibility to protect minors and their families from any emotional or physical harm. If a minor commits a serious crime, the publicity may endanger any opportunity for a fair trial.<sup>36</sup>

But high profile crimes involving minors, such as the March 1998 schoolyard shooting tragedy in Jonesboro, Ark., have led to changes in public attitudes about the juvenile justice system and a youthful offender’s right to privacy.<sup>37</sup> The rise in juvenile crime rates, coupled with widespread media coverage of violent crimes committed by juveniles, has created a public perception that the nation is under attack. This perception has not only driven many states to prosecute more juveniles as adults, but also open more juvenile proceedings and records to the public and to impose heavier sentences on juveniles. This recent increase in violent crimes committed by juveniles has caused a shift from goals of rehabilitation to those of retribution and deterrence. Many states have opened juvenile proceedings to the public when a minor is charged with a violent crime that incites community outrage.<sup>38</sup>

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<sup>31</sup> Brunner R., Dölling D., Jugendgerichtsgesetz, Kommentar, 12. neu bearbeitete Aufl., 2011, 313.

<sup>32</sup> Ibid, 310.

<sup>33</sup> Ibid, 314.

<sup>34</sup> *The Reporters Committee for Freedom of the Press*, Access to Juvenile Courts, A reporters guide to proceedings & documents, 1999, 2.

<sup>35</sup> Ibid.

<sup>36</sup> Greenebaum S. S., Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution? *Journal of Urban and Contemporary Law*, Vol. 44, 1993, 143.

<sup>37</sup> *The Reporters Committee for Freedom of the Press*, Access to Juvenile Courts, A reporters guide to proceedings & documents, 1999, 2.

<sup>38</sup> *The Reporters Committee for Freedom of the Press*, Access to Juvenile Courts, A reporters guide to proceedings & documents, 1999, 2.

There was a discussion in the United States at the end of the 20th century about whether juvenile court hearings should be closed. One of the most interesting work on this issue is Jan Trasen's article, which was first asked in 1995: „Do closed Hearings Protect the Child or the System?“<sup>39</sup> In one case, for example, a juvenile's trial was held for five years, during which time the child was transferred from shelter to shelter, which could have a severe impact on her. Her grandmother argued over the negative side of the confidentiality of the process, that in case of openness „a healthy dose of media attention might have raised some public concern about the plight of her granddaughter during the five-year period in which S.E. was shuffled around the bureaucracy of the child welfare system.“<sup>40</sup>

Some scientists in the US believed that "decisions that have profound implications for the lives of children and their families should be open to public discussion."<sup>41</sup> According to the opinion of Geraldine Van Bueren, "This is a forceful argument which child advocates have to confront. Any exception to the principle of open justice can only be sustained by reliance upon the best interests of the child. With open proceedings, the chances of the child being stigmatized would increase and the informality would decrease. However, there is a danger that in human rights cases, violations may go unnoticed in proceedings not open to the public."<sup>42</sup>

Some juvenile court critics argue that "juvenile offenders are criminally responsible for their misconduct, and that by their actions they thereby waive their rights to privacy and anonymity ... that public access to juvenile courts can only improve a system shrouded in secrecy and plagued by inconsistency, error, and limited resources."<sup>43</sup>

It should be noted that the issue of access to juvenile trials in the United States varies from state to state. "The vast majority of states have statutes within their juvenile codes that grant the juvenile court judge the discretion to admit or exclude the public from juvenile proceedings. These proceedings are typically closed unless a third party can show a "direct" or "proper" interest in the case.<sup>109</sup> A crucial element in many states is whether opening the proceedings to the public is in the best interest of the child.<sup>110</sup> In these states, if the court finds that publicity may have an adverse effect on the juvenile, the judge may grant a court closure order, although these orders are highly scrutinized.<sup>44</sup> A few states determine access to juvenile proceedings based on the seriousness of the charge, under the theory that a juvenile charged with "adult crimes" such as murder and rape should be subject to any adult treatment the press and public wish to render."<sup>45</sup>

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<sup>39</sup> *Trasen J. T.*, Privacy v. Public Access to Juvenile Court Proceedings: Do closed Hearings Protect the Child or the System?, Boston College Third World Law Journal, Vol. 15, Issue 2, 1995., 359.

<sup>40</sup> *Ibid*, 378.

<sup>41</sup> *Nijnatten C.*, Behind Closed Door: Juvenile Hearings in the Netherlands, International Journal of Law and the Family, Vol. 3, Issue 2, 1989, 177.

<sup>42</sup> *Van Bueren G.*, A Commentary on the United Nations Convention on the Rights of the Child, Article 40 Child Criminal Justice, Leiden, Boston, 2006, 22.

<sup>43</sup> *Trasen J. L.*, Privacy v. Public Access To Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?, Boston College Third World Law Journal, Vol. 15, Issue 2, 1995, 372.

<sup>44</sup> *Ibid*, 373.

<sup>45</sup> *Ibid*, 374.

In the USA, Among the people and entities who may be given access to juvenile criminal records are: parents and legal guardians, juveniles' attorneys, school officials, law enforcement agencies, federal, state, and city attorneys, research organizations, and child protective agencies.<sup>46</sup>

It seems that in both of the above-mentioned countries, which represent different legal systems, confidentiality of juvenile justice is seen as an essential principle, although they do not exclude the possibility of exceptions. In particular, in Germany if it is in the best interests of the juvenile, and in most states of America, the right to a public hearing outweighs the juvenile's right to a privacy, if the juvenile commits a serious crime.

However, the list of attendees of the trial is not always limited to the participants in the process, and in the case of supervisory and educational purposes, the judge is authorized to allow other persons as well.

### 3.3. Georgian Legislation

As for the Georgian legislation, as mentioned above, the issue of the protection of the privacy of a juvenile is regulated by Article 13 of the Juvenile Justice Code of Georgia, which provides that “the privacy of juveniles shall be protected at all stages of juvenile justice procedure”.

“This article can be conditionally divided into two parts. "I - The state should not allow the dissemination of information on a child in conflict with the law that would lead to its identification;“<sup>47</sup> „II - Television reporting should not be able to identify appearance of adolescents, since integration into and reintegration of a "guilty person" into society will be impeded.“<sup>48</sup>

According to Article 29 (1) of the Juvenile Justice Code of Georgia, “cases of juveniles in conflict with the law shall be reviewed in closed court hearings.” The right to attend the trial under the same article is granted only to the following persons on various grounds: legal representative of the juvenile, his or her lawyer, psychologist, witness and victim coordinator; Section 6 of Article 3 of the same Code also lists the persons involved in the process: a judge, investigator, prosecutor, police officer, lawyer, social worker, mediator, probation officer, witness and victim coordinator, juvenile rehabilitation staff, and relevant prison staff. The Code does not provide for any other exceptions.

It is true, that when considering the case of a juvenile, the circle of persons present at the hearing must be strictly limited to safeguard the privacy of the juvenile and that is why the above-mentioned norm is imperative which does not allow for the exception; However, the question may also be asked: Is the closed court hearing always compatible with the best interests of the juvenile? Is it

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<sup>46</sup> Michon K., Juvenile Court: An Overview, Nolo Network – web library of consumer-friendly legal information, <<https://www.nolo.com/legal-encyclopedia/exceptions-confidentiality-juvenile-criminal-records.html>>, [04.11.2019].

<sup>47</sup> Shahovich N. W., Doek I. E., Cermaten J., Child's rights in International Law, Summary of Children's Rights and Context: All About Children's Rights, Tbilisi, 2015, 166 (in Georgian). See also: Shalikhashvili M., Mikanadze G., Juvenile Justice (Handbook), Tbilisi, 2016, 86 (in Georgian).

<sup>48</sup> Ibid, 87.

necessary for those with some monitoring function to be able to attend the trial in order to identify the challenges in the juvenile justice system and, ultimately, to improve the system through their efforts?

To summarize international standards and international practice, I think, in exceptional cases, the judge should have the right to allow the court to attend even those who periodically evaluate and conduct research in order to improve juvenile justice. This is also emphasized in the "Beijing Rules": „Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.“<sup>49</sup> It is also explained that „Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives. A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels.“<sup>50</sup>

German legislation also gives researchers and other persons the opportunity to attend the trial of the juvenile on the basis of educational objectives. Another argument of this view is the recommendation to the member states of the Committee on the Rights of the Child that "States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions“.<sup>51</sup>

#### **4. Case-law - Right to a Privacy v. Right to a Public Hearing**

It is an important question, in what circumstances, can be restricted the right to a public hearing by the right to a privacy of the juvenile and when does the right to a public hearing has a superiority to the right to a privacy of the juvenile? When comparing these two rights in a collision, is the right to the juvenile's privacy always prioritized?

Article 6 §1 of the European Convention on Human Rights clearly indicates the interests of juveniles as one of the grounds for restricting the publicity of judicial proceedings. "However, the interests of juveniles usually include the exception of "protection of the privacy of the parties". In addition, juvenile interests are often comprised into other categories, including, especially in the exception of protection of "morality". Therefore, a clear reference to juveniles can be understood as permitting a lower standard of use than in adult cases. This means that in order to safeguard the interests of juveniles, restricting publicity will be considered easier "strictly necessary".<sup>52</sup>

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<sup>49</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Beijing rules, 1985, Part six, 30.3.

<sup>50</sup> Ibid.

<sup>51</sup> UN Committee on the Rights of the Child (CRC), General comment No. 10: Children's Rights in Juvenile Justice, Geneva, 2007, VII, 99.

<sup>52</sup> *Trechsel S.*, Human Rights in Criminal Proceedings, Tbilisi, 2009, 143 (in Georgian).

It is noteworthy that the guarantee of a public trial consists of two independent aspects. On the one hand, it is set out in Article 6 as the individual right of the accused. The public trial of a defendant may be in the interest of the defendant so that everyone, especially his or her friends and relatives, has the opportunity to monitor the trial and to complain about any inaccuracy by a State representative. However, at the same time, publicity may further aggravate the defendant's psychological situation. On the other hand, it is an institutional guarantee, in particular, the way of ensuring public oversight on the administration of justice and it promotes respect for the law and not only for the accused but also for witnesses, experts and other participants in the proceedings.<sup>53</sup>

“The public character of proceedings before the judicial bodies referred to in Article 6 para. 1 (art. 6-1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained.”<sup>54</sup>

Public scrutiny encourages the courts to take special care to uphold the rules of fairness.<sup>55</sup> In one of the high-profile cases heard by the European Court of Human Rights, these two rights contradicted each other: the right to a privacy of the juvenile and right to public hearing. In the case “T. and V. v. the United Kingdom”<sup>56</sup>, where two 10-year-old boys were convicted of killing a two-year-old child, the European Court of Human Rights has raised concerns about the level of publicity related to children. The court also noted “an international tendency in favor of the right to respect for the private life of juvenile offenders”. The Court found that allowing media to attend a trial contributes to a violation of Article 6 (right to a fair trial) of the European Convention.<sup>57</sup>

In the USA, the Supreme Court of Ohio made a determination related to this issue, that “a juvenile court may restrict public access to its protective proceedings if, after hearing evidence and argument on the issue, it finds 1) that public access reasonably could be found to harm the child or endanger the fairness of the proceeding, and 2) that the potential for harm outweighs the benefits of public access.”<sup>58</sup> It should be noted, however, that there are some useful considerations of open juvenile proceedings in US practice that „Arguments in favor of open dependency proceedings suggest that public access would achieve the following goals: to improve the system's fairness and effectiveness, to reduce judicial abuse and error, and to encourage improvement in the juvenile court system through greater public awareness and involvement.”<sup>59</sup>

In some cases in the US, records of crimes committed by juveniles may be made publicly available. As juvenile delinquency has grown and become more violent, policymakers have had to

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<sup>53</sup> Trechsel S., Human Rights in Criminal Proceedings, Tbilisi, 2009, 147 (in Georgian).

<sup>54</sup> Sutter v. Switzerland, ECHR, 8209/78, 1984, §26.

<sup>55</sup> Trechsel S., Human Rights in Criminal Proceedings, Tbilisi, 2009, 145 (in Georgian).

<sup>56</sup> T. & V. v. the United Kingdom, ECHR, 24888/94, 24724/94, 2000.

<sup>57</sup> Hamilton C., Guidance for Legislative Reform on Juvenile Justice, Tbilisi, 2015, 89 (in Georgian).

<sup>58</sup> Case T. R., The Supreme Court of Ohio, 1990, at 449, 451. See also: Trasen J. L., Privacy v. Public Access To Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?, Boston College Third World Law Journal, Vol. 15, Issue 2, 1995, 376.

<sup>59</sup> Trasen J. L., Privacy v. Public Access To Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?, Boston College Third World Law Journal, Vol.15, Issue 2, 1995, 377.

balance competing interests: public interests and juvenile privacy. Some courts grant public access to juvenile delinquency records when "the public's right to know and the strong interests of the victims outweigh any concern about stigmatizing L.M. or endangering his chances of rehabilitation"<sup>60</sup>. However, agencies may have to redact sensitive information about minors in such situations, including their names.<sup>61</sup>

In *Re JR38*,<sup>62</sup> the Court found that the fourteen-year-old child at the heart of the proceedings had no expectation of privacy over the publication by the police of photographs of the child involved in riots, as the public interest in identifying suspects alleged to have been involved in criminal acts outweighed any privacy considerations.<sup>63</sup>

One of the interesting case about this issue that was recently discussed was in Northern Ireland in 2015. According to the circumstances of the case, in 2010 two newspapers published a photo of a juvenile defendant who was only 14 years old at the time. These photos were published by newspapers at the request of the police. The publication of the photos was part of a police campaign aimed at resisting secret conspiracies. Appellant complained that the publication of the photographs was the violation of Article 8. The court did not find a violation of Article 8 and held that there was an interference with the right but the interference had been proportionate and justified.<sup>64</sup>

Legislation restricting access to the juvenile courts is often ambiguous and misleading.<sup>21</sup> As previously mentioned, the majority of statutes provide that persons with a direct or proper interest have a right of access to juvenile proceedings. Yet, how does the legislature define "direct" or "proper"? Does the press fall within this inclusion? In each state, juvenile courts have answered these questions differently. The courts' analyses generally focus on three basic criteria: maintaining the structure and confidentiality of the juvenile courts; analyzing the history of First Amendment access to courtrooms; and balancing the interests of the press and the minors involved.<sup>65</sup>

The right to privacy of child offenders may be said to have ramifications which extend beyond their childhood. In *Venables v News Group Newspapers*, the boys who killed James Bulger were granted lifelong anonymity. This decision reflected their status as children when they were sentenced, although the decision was primarily concerned with the extent of the threat to their lives if their identities were ever revealed.<sup>66</sup>

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<sup>60</sup> U.S. v. L.M., 425 F.Supp.2d 948 (N.D. Iowa 2006).

<sup>61</sup> *Michon K.*, Juvenile Court: An Overview, Nolo Network – web library of consumer-friendly legal information, <<https://www.nolo.com/legal-encyclopedia/exceptions-confidentiality-juvenile-criminal-records.html>>, [04.11.2019].

<sup>62</sup> *Re JR38* [2016] AC 1131.

<sup>63</sup> *Morris B., Davies M. M.*, Can Children's Privacy Rights be Adequately Protected through Press Regulation? What Press Regulation Can Learn from the Courts, *Journal of Media Law*, Vol. 10, Issue 1, 2018, 101.

<sup>64</sup> *JR 38*, RE Application for Judicial Review, Northern Ireland, 2015, <<https://swarb.co.uk/jr38-re-application-for-judicial-review-northern-ireland-sc-1-jul-2015/>>, [04.11.2019].

<sup>65</sup> *Greenebaum S. S.*, Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?, *Journal of Urban and Contemporary Law*, 1993, 140.

<sup>66</sup> *Van Bueren G.*, A Commentary on the United Nations Convention on the Rights of the Child, Article 40 Child Criminal Justice, Leiden, Boston, 2006, 24.

## **5. Conclusion**

In conclusion, it can be said that the protection of a privacy of juvenile, as a norm-principle, reflected in the juvenile justice code of Georgia, is a significant step forward in bringing Georgia's legislation closer to international standards. However, given the current reality, when the juvenile justice system is newly established in Georgia and the new juvenile justice code made the trial strictly confidential, I think, it is desirable for persons with supervisory functions to administer juvenile justice (this may be the High Council of Justice of Georgia) periodically, attend juvenile court hearings and conduct research in order to identify the challenges facing the juvenile justice system, which will ultimately lead to further improvement of the system.

However, I think the example of the practice of Germany deserves attention, and in exceptional cases, for research purposes, the court should have the opportunity to allow such persons to attend the trials of juvenile conflict with the law. By itself, such cases should be exceptional in order not to disturb the atmosphere in the juvenile court, which is such an essential attribute for juvenile justice. Summarizing international standards and international practice, this view will not be in conflict with any of them, but the recommendation of “Beijing Rules” will be taken into account: „Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.“ “Confidentiality does not mean secrecy. It is important for the public to understand how the juvenile court functions.”<sup>67</sup>

I would also like to refer to the imperative rule provided in Article 29.1 of Juvenile Justice Code of Georgia, related to the closed hearings without any exception. If we allow the possibility that in highly exceptional cases, the public hearing may be compatible with the best interests of the juvenile and there is a motion of parties requiring public hearing of one of the part of a trial, should the law give the judge authority in extremely cexceptional cases to open even one part of the session?

If we look through the international acts and the practice of foreign countries once again, no such provision would be in conflict with it, since here too, the guiding principle would be the best interest of the juvenile. In addition, the right to a public hearing is one of the fundamental elements of the right to a fair trial as enshrined in international law and the Constitution of Georgia and may not be regarded Article 29, as a rule which prohibits juvenile to use one of the essential constitutionally guarantees, even when publicity is in his/her best interest.

I would like to reiterate that such a case should be an extremely rare exception, given that „every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.”<sup>68</sup>

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<sup>67</sup> *Greenebaum S. S.*, Conditional Access to Juvenile Court Proceedings: A Prior Restraint or a Viable Solution?, *Journal of Urban and Contemporary Law*, 1993, 161.

<sup>68</sup> United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 22 July 2005), III.8.a and I.6.

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