WHAT DOES THE NEW CODE ON THE RIGHTS OF CHILD HAS TO OFFER?

საერთაშორისო გამჭვირვალობა - საქართველო
TRANSPARENCY INTERNATIONAL GEORGIA

The Parliament approved with I hearing the Code on the Rights of the Child and draft amendments in the accompanying laws.

The new Code aims at formulating state policy and systemic approach to the protection of children's rights. A single legislative act on child rights is established. The new code should be a guide to the work of all state bodies, physical and juridical persons.

DRAFT LAW, INITIATOR

Legislative Initiative: Code on the Rights of the Child and draft amendments in the accompanying laws

Initiator: Sopho Kiladze, Anri Okhanasvhili, Karlo Kopaliani, Irakli (Dachi) Beraia, Levan Bejanidze, Koba Lursmanashvili, Vano Zardiashvili, David Matikashvili, Rati Ionatamishvili, Merab Kvaraia, Irakli Mesurishvili, Giorgi Kakhiani, Tsotne Zurabiani, Akaki Zoidze, Dimitri Mkheidze, Goga Gulordava , Guram Macharashvili, Dimitri Khundadze, Makhir Darziev, Mirian Tsiklauri, Mamuka Mdinaradze.

Authors: Sopho Kiladze, Paata Turava – Professor of Ivane Javakhishvili Tbilisi State University

ESSENCE OF THE DRAFT LAW

The legislative amendments are based on the necessity of fulfillment of the obligations undertaken by the United Nations Convention on Human Rights by Georgia and the improvement of legislation.

According to the Code on the Rights of the Child:

- The competencies of different branches of government, as well as central and local government are separated in the field of child rights;
- The supervisory role of the Public Defender is increased in terms of assessing the rights of children;
- National Plan for Data Collection and Analysis and Impact Assessment Mechanism for Child's Rights is created;
- The obligation of the municipalities is defined to determine the development of social activity of the child, social integration of children, supporting volunteers, child care programs, child health support, child support programs;
- A child-friendly justice system is established, which implies free legal assistance, preparing specialized persons for working with a child;
- Additional sanctions are imposed in case of violation of the rules of the child's in public space;
- Religious confessions have the opportunity to engage in the decision-making process of the child's alternative care, as well as in the implementation of family support programs.

1. CONCEPT OF FAMILY

CURRENT VERSION	PROPOSED AMENDMENTS
Different laws explain who is considered to be a member of the family for the purposes of a particular law, however the concept of family is not defined.	For the purpose of law, the family is defined as the fundamental societal group and the natural environment of childcare, welfare and protection, which the child's parent or parents, guardian, caregiver, sister, brother and / or other person responsible for the upbringing of the child.

2. DEFINITION OF PROTECTION OF CHILDREN FROM HARMFUL INFLUENCE

CURRENT VERSION	PROPOSED AMENDMENTS
According to the Law of Georgia on Protecting Minors From Harmful Influences, harmful influence implies the influence exerted through the film screening, consumption and sale of print production, alcohol and tobacco, and through the participation in games of chance that may harm a minor's mental and/or physical health, and his/her moral or social development.	Protection from the negative social environment and the exposure to information containing elements of risk on the basis of the implementation of state and municipal programs and measures, as well as the establishment of a relevant legislative framework.

3. CLARIFYING RIGHTS TO THE CHILD IN EDUCATIONAL INSTITUTIONS

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist	There is a responsibility for educational institutions to provide information to children about their rights and their protection mechanisms.

4. TAKING THE OPINION OF THE CHILD INTO ACCOUNT

CURRENT VERSION	PROPOSED AMENDMENTS
In some cases, the opinion of the child is taken into account. For example, according to the Law on Civil Acts, the opinion of a child older than 10 years is taken into account in the decision to change his/her surname. However, the single principle of taking into account of the child's opinion is not established.	• It is the right of the child to be heard and his/her opinion taken into account on decisions that impacts or may impact in future his/her rights • This right cannot be restricted in any form According to the draft amendments in the Law on Civil Acts: For children up to 10 years of age, the court will be obliged to take his/her opinion into account, accordingly to his/her maturity. If the child is over 10 years of age, then his/her consent is required.

5. THE CHILD'S RIGHT TO PROPERTY

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	According to the draft amendments to the Law on Civil Acts, the sale of child's real estate or the sale of a property that is valued over 500 GEL is permitted by the parent or other legal representatives only in the best interests of the child and consent by the court.

6. CRITERIA FOR THE LEGAL REPRESENTATIVE OF THE CHILD UNDER ALTERNATIVE CARE

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	A person appointed as a legal representative of an alternative care should enjoy a high reputation, have a mandatory teaching experience and possess the knowledge and skills necessary to work with a child.

7. RESPONSIBILITIES OF THE BROADCASTERS

CURRENT VERSION	PROPOSED AMENDMENTS
The Code of Conduct for Broadcasters recognizes the principles of protection of juveniles and the requirements related to broadcasting. The Code of Conduct defines the age groups as well as appropriate programs and periodicity for their broadcasting grid, although this represents ethical norms and does not provide effective sanctions in case of violations.	According to the amendments proposed to the Law on Broadcasting, the protection of juveniles from harmful influence will be regulated at the level of law, as well as changes are envisaged by effective mechanisms: • Broadcasters are obliged to ensure the protection of juveniles from harmful influence and control over the protection of the age rules of programs spread through broadcasting means; • It is prohibited to broadcast a program or broadcast material in the program that may harm the physical, psychological, intellectual and spiritual development of minors.

8. THE INTERNET SPHERE IS REGULATED

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	• The Internet provider is obliged to elaborate such mechanisms that allow the user to block access to threatening information for a child; • The placement of threatening information on the Internet for children will also be regulated.

9. THE EFFECT OF LEGISLATIVE INITIATIVES ON THE RIGHTS OF THE CHILD

CURRENT VERSION	PROPOSED AMENDMENTS
The current Law on Normative Acts does not envisage such a stipulation.	According to the amendments to the Law on Normative Acts: • The Government shall be obliged to reflect the draft law's impact on the child's rights status in conjunction with other data in the explanatory note of the bill. • The same commitment will be imposed on municipal bodies in the case of drafting a normative act.

10. THE AUTHORITY OF THE PUBLIC DEFENDER IS INCREASED

CURRENT VERSION	PROPOSED AMENDMENTS
The Public Defender's mandate of protection of human rights includes the protection of the rights of the child, however the current Law on Public Defender doesn't explicitly define authority of the Public Defender over the rights of the child, except for the checking of child rights in children's home.	The Public Defender shall have the right to: • Request information from the persons implementing the child protection and support activities; • Identify cases of violation of child rights, to analyze and respond; • Discuss statements and complaints about alleged violations of child rights; In addition, the hot line will be activated to respond to child abuse cases.

11. RIGHT TO RECEIVE FREE LEGAL AID

CURRENT VERSION	PROPOSED AMENDMENTS
The Legal Aid Service does not have obligation to provide all juveniles in all categories of cases with full legal assistance.	The Legal Aid Service will be obliged to provide any juvenile with legal aid related to child's rights, regardless of their status and case.

12. REQUEST FOR COMPENSATION OF DAMAGES IN CASE OF CHILD ABUSE

CURRENT VERSION	PROPOSED AMENDMENTS
The statute of limitations in the Civil Code is common to all persons and does not provide for the peculiarities of the juveniles. In addition, the child victim has the right to demand compensation for damages only from the offender.	The statute of the limitations of the right to appeal to the court upon compensation for damages in case of sexual, economic, domestic violence or other forms of violence against the child shall be counted from the achievement of adulthood. • According to the Code of Child Rights, a child victim may have the opportunity to claim compensation from the state when it is impossible to get such compensation in fast a manner from the offender; • Short and long term programs for child rehabilitation victims are being created.

13. PERMANENT PARLIAMENTARY COUNCIL ON THE PROTECTION OF THE RIGHTS OF THE CHILD

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	The Permanent Parliamentary Council for the Protection of Child Rights is established in the Parliament for the purpose of ensuring systematic and coordinated work in the process of determining the state policy of child rights, legislative development, budgeting and parliamentary control.

14. RESPONSE MECHANISMS TO ACTS OF VIOLENCE AGAINST CHILDREN IN EDUCATIONAL INSTITUTIONS

CURRENT VERSION	PROPOSED AMENDMENTS
The current law does not envisage a hot line.	• Early and pre-school, general and vocational education institutions will act as a hotline for child abuse; • The educational institution defines the person responsible for child abuse issues, coordinator.

15. RULES OF HEARING OF CASES CONNECTED TO CHILDREN

CURRENT VERSION	PROPOSED AMENDMENTS
The law does not recognize the priority hearing of cases connected to cases. Moreover, the specialization on cases related to children are not recognized in all spheres of the judiciary.	Discussion of child affairs is prioritized in the system of general courts as well as in the administrative body. In addition, child-related affairs should be resolved in the best interest of the child. Any kind of violence against a child by an adult is not subject to court mediation and settlement. According to the Code of Child Rights, it was determined that: • General courts provide the introduction of information support services for supporting the full child participation in child-related cases and other measures. With the purpose of coordinating the juvenile justice system, the High Council of Justice will have the opportunity: • To develop appropriate proposals; • Ensure professional retraining of judges in the field of child rights and to establish the standard of specialization of judges.

16. SANCTIONS, FINES

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	According to the amendments to the Code of Administrative Violations: • Violation of the rules of access to the nightclubs and "internet clubs" and cafes will result in a fine of 1000 GEL and 3000 GEL for a repeat offense; • Violation of the rules for age notices and violation of determined broadcasting time will be subject to a fine of 1000 GEL, while a repeat offense will be subject to a 3000 GEL fine; • Inclusion and / or use of a juvenile for performing a job that hinders education or harms his / her health, physical, mental, emotional and / or social development - will result in a fine for a natural person in the amount of 1000 GEL and in case of a legal person - 2 000 GEL; • Violation of the rules of child's access to public movie screenings - will be subject to a fine of 1000 GEL. In case of a repeat offense - 5000 GEL.

17. SEX EDUCATION CLASSES

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	Sexual education can only be obtained in case of parental consent.

18. REPLACEMENT OF LARGE-SCALE RESIDENTIAL CARE HOMES

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist .	The Government develops and implements the Unified State Strategy for Deinstitutionalization and Action Plan on the gradual closure of children's large-scale residential institutions.

19. ROLE OF RELIGIOUS CONFESSIONS IN THE PROTECTION OF RIGHTS OF THE CHILD

CURRENT VERSION	PROPOSED AMENDMENTS
Doesn't exist.	In the case of the implementation of the family support program, family members may involve the representatives of the Orthodox Church or other religious confessions for the purpose of strengthening child care and counseling on family matters. Also, at the request of the family, the representative of the Orthodox Church or other religious confession should be involved in the decision-making related to the placement of the child in alternative care.

ASSESSMENT / RECOMMENDATION

The establishment of a single legislative act on the rights of the child should be welcomed, but effective mechanisms need to be in place to enforce the protection of children's rights as guaranteed by the law. The adoption of the Code of Convention on the Rights of the Child should not be an end to itself, but an effective instrument for the protection and support of child rights, and in the process of reviewing the law, the motivated remarks of experts and nongovernmental organizations should be taken into consideration.

The following should be assessed as positive, based on the presented amendments:

- The increase of the powers of local self-governments in the implementation of child protection and support system and creation of municipal services for child care by specialized individuals. However, it is necessary to explicitly separate the rights and obligations of central and local governments to prevent duplication of responsibilities. Cooperation between local and central governments will be fruitful if their powers are defined as thoroughly as possible;
- In accordance with the national plan of deinstitutionalization, large residency care homes will be gradually replaced with small houses, as experts agree that the ability to independently work with children in the small, family-type homes and entrepreneurship is more efficient;
- Provision of the obligation of preparation of specialized legal services for children, establishment of an independent mechanism of appeal in the institution of education, child-based justice, process, and administrative production systems.

It is noteworthy that some of the provisions of the draft law give the Code a declaratory character and complicate the achievement of aims by the law itself, as they often are not accompanied by relevant amendments in the law. For example:

- The Code recognizes that the State takes care the persons who have recently exited from alternate care and are in need of care in the transition period;
- The Code of the Rights of the Child protects the child from harmful influence on the internet. The regulation of the placement of information containing threats to the child is placed is made on the basis of a subordinate acts issued by the National Communications Commission. The transfer of such broad authority to the said body is not appropriate, as it concerns the restriction of freedom of information protected by Article 20 of the Constitution. Furthermore, since regulation of internet space is a novelty for Georgian legislation, there are no normative acts to regulate it, so it is recommended that the Parliament set up a guideline act for the Regulatory Commission.

The following amendments should be assessed as negative:

- **The conduct of sexual educations lessons with parental consent**, as such issues in the Georgian society are mostly taboo and most parents are against sexual education for their children. Therefore, there is a reasonable expectation that children will have hindered access to these classes due to their parents. Moreover, due to the taboo nature of such issues, children who attend such classes may become targets for bullying and mockery;
- **It is also unjustified to involve religious representatives in the issue of adolescents in the alternative care of the child**, as this issue goes beyond the scope of the religious confessions and is a serious interference in the social functions of the State, even if the persons are involved by parental consent;
- While it is true that the Code repeatedly states that violence against children is prohibited, there is no mention of bullying as one of the manifestations of violence between and against children.

The Code of Rights of the Child contains positive amendments as well a number of vague and in most cases unjustified restrictions on rights of the child. Due to this, it is unjustified for the Parliament to approve the Code in its current formulation and it necessary to continue discussions aimed at improving the shortcomings.

Sweden/შვედეთი
Sverige

This publication was prepared with the financial assistance of the Swedish International Development Cooperation Agency