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ADHERENCE TO MENDEZ'S PRINCIPLES IN PRE-TRIAL INTERVIEWING OF THE CHILD IN LITHUANIA

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Abstract. *Psychologically coercive questioning methods have been found to be ineffective and tend to produce false confessions. Leading or suggestive questions can have a negative impact on the accuracy of the interviewee's memory and the information they provide. Children are more vulnerable to coercive and suggestive questioning and may be swayed by interrogation methods, deception, and manipulation. To spread such effective interviewing practices worldwide, Principles on Effective Interviewing for Investigations and Information Gathering, known as Mendez's Principles, have been developed and released in 2021. Mendez's Principles consist of five principles covering legal foundation, legal practice, vulnerability assessment, training of law professionals, accountability mechanism, and implementation areas. This article aims to determine if Lithuanian legal acts, applicable during pre-trial investigations involving a child, comply with international human rights law principles and standards, which are the basis for implementing Mendez's principles. This is the first study that examines the compliance of the Lithuanian pretrial investigation legal framework with Mendez principles. This paper provides a brief overview of Mendez's principles and then focuses on the first element – the importance of embedding requirements for effective interviewing with legal safeguards in law.*

Keywords: *Mendez's principles, effective interviewing, pretrial investigation*

Introduction

Research conducted by professionals and practitioners from various disciplines, such as psychology, criminology, sociology, neuroscience, and medicine, shows that coercion during interviews can have negative consequences. It can lead to the interviewee resisting more and ultimately providing false information or even a false confession.[1]

Psychologically coercive questioning methods have been found to be ineffective and tend to produce false confessions. These methods involve manipulating the interviewee's culpability perception and the consequences of a confession. For instance, presenting false evidence, downplaying, exaggerating the effects associated with conviction of the alleged crime, implying leniency, or offering moral justifications are some ways that coercive questioning can be used. These methods have been shown to produce incorrect information and increase the rate of false confessions.[2]

Leading or suggestive questions can have a negative impact on the accuracy of the interviewee's memory and the information they provide. In the case of suspects, these manipulative methods reduce the reliability of information and increase the likelihood of false confessions and wrongful convictions.[3] Therefore, it is essential to avoid such practices during the interview process to maintain the integrity of the information obtained.

[1] Principles on Effective Interviewing for Investigations and Information Gathering, May 2021. Retrieved from: www.interviewingprinciples.com, (Mendez's Principles) para 21.
[2] Mendez's Principles, para 24.
[3] Mendez's Principles, para 25.

Children are more vulnerable to coercive and suggestive questioning and may be swayed by interrogation methods, deception, and manipulation. Studies have consistently shown that false confessions are more common among children.[4]

Legal experts and practitioners worldwide emphasise the importance of ethical interviewing methods, prioritising obtaining accurate and reliable information without coercion. It is worth noting that such a movement has resulted in changes in legal practices and policies in certain jurisdictions.[5] Courts and legal systems increasingly acknowledge the significance of ensuring that information obtained through interviews is trustworthy and free from coercion to uphold the principles of justice.

To spread such effective interviewing practices worldwide, Principles on Effective Interviewing for Investigations and Information Gathering, known as Mendez's Principles, have been developed and released by a group of more than 110 experts from over 40 countries. These experts come from various fields, such as law enforcement, criminal investigations, national security, military, psychology, intelligence, criminology, and human rights.[6] The principles were released in May 2021 and are expected to have a significant impact on improving the quality of investigations and information gathering worldwide.

Following this, the question arises to what extent Lithuanian legislation of the pre-trial investigation supports the implementation of Mendez's principles. However, Mendez's Principles consist of five principles covering legal foundation, legal practice, vulnerability assessment, training of law professionals, accountability mechanism, and implementation areas. It is impossible to examine all the elements of the Mendez principle in one article due to scope requirements. For this reason, this article focuses only on the first element – the legal foundation.

This article aims to determine *if Lithuanian legal acts, applicable during pre-trial investigations involving a child, comply with international human rights law principles and standards, which are the basis for implementing Mendez's principles.*

This article compares international law and the EU Charter of Fundamental Rights provisions with Lithuanian legislation regulating pretrial investigation proceedings.

This is the first study that examines the compliance of the Lithuanian pretrial investigation legal framework with Mendez principles. This paper provides a brief overview of Mendez's principles and then focuses on the first element – the importance of embedding requirements for effective interviewing with legal safeguards in law. Conclusions and suggestions are presented at the end of the paper.

Principles on Effective Interviewing for Investigations and Information Gathering (Mendez's Principles)

Principles on Effective Interviewing for Investigations and Information Gathering, known as Mendez's Principles, require changing how law enforcement and other officials conduct questioning. Instead of relying on accusatory, coercive, manipulative and confession-driven practices, they must build rapport with the interviewee. This includes applying legal and procedural safeguards throughout the interview process to reduce the risk of ill-treatment, obtain more reliable information, and ensure a lawful outcome of the investigation or intelligence operation.[7]

[4] Mendez's Principles, para 27.
[5] For example, Norway.
[6] Mendez's Principles, p. i-viii.
[7] Mendez's Principles, paras 4 and 5 (d).

Mendez's Principles consist of five principles covering legal foundation, legal practice, vulnerability assessment, training of law professionals, accountability mechanism, and implementation areas.

At the foundation level, the principles require effective interviewing requirements together with legal safeguards to be embedded in science, law, and ethics. At the legal practice level, it is essential to establish a comprehensive process of gathering accurate and reliable information while implementing legal safeguards. At the vulnerability assessment level, it is crucial to identify and address the needs of interviewees in situations of vulnerability. The principles require specific training to be established for legal professionals involved in the interviewing, providing, or supervising it. The accountability level requires ensuring transparency and accountability of the institutions by implementing specific measures. Lastly, implementing robust national standards is necessary to sustain effective interviewing practices at the implementation level.

In criminal proceedings, it is crucial to apply these principles during interviews with suspects, witnesses, victims, or other individuals of interest, regardless of their designation.[8] These principles should be in effect from the first contact of public authorities with the potential interviewee until the completion of all interviews. [9] The consistency in the application of these principles should be maintained. The principles should be applied to all forms of interviews conducted by information-gathering officials, such as police, intelligence, military, administrative authorities, or any other person acting in an official capacity.[10]

Effective Interviewing with Requirements for Safeguards in International and National Law

The principles and standards of international human rights law embed the requirements for conducting interviews using effective interviewing methods and ensuring safeguards in criminal proceedings. International agreements, such as the Universal Declaration of Human Rights (from now on - UDHR),[11] the International Covenant on Civil and Political Rights (from now on -ICCPR),[12] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (from now on - CAT),[13] the Convention on the Rights of the Child (from now on -CRC), **[14]** the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (from now on - OPRCh),[15] the European Convention on Human Rights (from now on - ECHR) and[16] Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (from now on -

[8] Mendez's Principles, para 10.
[9] Mendez's Principles, para 11.
[10] Mendez's Principles, para 8.
[11] The Universal Declaration of Human Rights (UDHR), General Assembly resolution 217 A (III) of 10 December 1948, Date of Admission in UN: 17-09-1991.
[12] The International Covenant on Civil and Political Rights (ICCPR), General Assembly Resolution 2200 A (XXI) of 16 December 1966, Ratification/Accession: 1991.
[13] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), General Assembly resolution 39/46 of 10 December 1984, Ratification/Accession: 1996.
[14] Convention on the Rights of the Child (CRC), General Assembly resolution 44/25 of 20 November 1989, Ratification/Accession: 1992.
[15] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPRCh), General Assembly resolution A/RES/54/263 of 25 May 2000, Ratification/Accession: 2004.
[16] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Council of Europe, 4 November 1950.

Protocol to ECHR),[17] as well as resolutions of international organisations like the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),[18] the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)[19] and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules),[20] establish the necessity for effective interviewing in criminal proceedings following Mendez's principles and implementing safeguards.

By joining international agreements, Lithuania has taken some necessary steps, following its constitutional processes and with the provisions of the international agreements, to adopt such laws or other measures as may be required to effect the obligations outlined in those documents. In addition, as a member of the EU, Lithuania must not only fulfil international agreements but also implement EU laws. The EU's main document defining protected human rights is the EU Charter of Fundamental Rights.[21] In addition, to ensure the rights of suspects, accused or sentenced persons, victims and witnesses in criminal proceedings, EU institutions issue directives, the objectives of which must be implemented by EU member states by adopting national legislation.

International agreements and EU law primarily seek to guarantee the right to a fair trial for all individuals, including children. A child refers to a person under the age of eighteen years, except when, under the law applicable to the child, a majority is achieved earlier.[22]

Right to a Fair Trial

International law obliges states to guarantee all persons the right to a fair trial. Articles 37 and 40 of the CRC clearly show that each state must ensure the right to a fair trial for each child, regardless of their legal standing in the criminal proceeding. Meanwhile, Article 6 of ECHR and Article 47 of the EU Charter of Fundamental Rights emphasise everyone's right to a fair trial.

The legal principles in Lithuania are in line with international treaties, as they aim to uphold the rights of individuals to a fair trial. According to Article 31(3) of the Lithuanian Constitution,[23] any person accused of a crime has the right to a public and fair hearing of their case by an independent and impartial court. Additionally, Article 31(1) of the Constitution ensures that anyone whose constitutional rights or freedoms are violated has the right to seek legal recourse. Furthermore, Article 31(5) states that individuals can only be penalised for acts that are considered unlawful under the law.

[17] Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol to ECHR), Council of Europe, 4 November 2000.
[18] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), General Assembly resolution A/RES/40/33 of 29 November 1985.
[19] United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), General Assembly resolution 45/112 of 14 December 1990.
[20] United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), General Assembly resolution 45/113 of 14 December 1990.
[21] Charter of Fundamental Rights of the European Union, Official Journal of the European Union 2012/C 326/02 (EU Charter of Fundamental Rights).
[22] CRC, Article 1.
[23] Constitution of the Republic of Lithuania, adopted by citizens of the Republic of Lithuania in the referendum of 25 October 1992, available in English at: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21892.

The Criminal Procedure Code (from now on - CPC) [24] specifies the right to fair criminal proceedings in Article 1, which defines the purpose of these proceedings. The CPC states that the main purpose of the criminal proceedings is *to protect the rights and freedoms of the person and the citizen, safeguard the interests of the society and the state, quickly and thoroughly reveal the criminal acts, and apply the law properly so that the person who committed the crime is justly punished while ensuring that no innocent person is convicted*.

Additionally, Article 21 (4) of the CPC stipulates that the suspect, while exercising the right to a fair trial, has the right to testify, to submit documents and items relevant to the investigation, to submit requests, to request suspensions, to appeal the actions and decisions of the pre-trial investigation officer, prosecutor, or pre-trial investigation judge and other.
A fair criminal proceeding for children means a child-friendly justice system which ensures the child's best interests.

Best Interests of the Child in Criminal Proceedings

When discussing the requirements of international agreements regarding children in criminal proceedings, it should be noted that, first, all criminal proceedings should focus on ensuring the child's best interests. UDHR states that every person has the right to life, liberty, and security of person.[25] CRC require that in all actions involving children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interests of the child should be the primary consideration.[26] Article 24 of the EU Charter of Fundamental Rights states that children have the right to such protection and care as is necessary for their well-being. In all actions relating to children, whether taken by public authorities or private institutions, the best interests of the child must be a primary consideration.

The requirement to give priority to the protection of the best interests of the child must be applied both to the protection of the rights of child victims or witnesses and to the protection of the interests of children who have committed a crime. Article 8 of OPRCh states that child victims' views, needs, and concerns must be considered in proceedings that affect their interests. Throughout the entire legal process, the child's best interests must be given primary consideration. Meanwhile, the Beijing Rules, which provide requirements for treating children or young persons who have committed an offence,[27] require that the juvenile's well-being be prioritised when considering their case.[28]

The Riyadh Guidelines recommend that governments establish specific laws and procedures to promote and safeguard the rights and welfare of all young people.[29] It is essential to enact and enforce legislation that prevents victimisation, abuse, exploitation, and criminal activities among children and young people.[30]

Article 39 (3) of the Lithuanian Constitution emphasises that the law protects children. Following the Lithuanian Constitution, the Law on the Fundamentals of Protection of the Rights

[24] Seimas of the Republic of Lithuania. *Law on the Approval, Entry into Force and Implementation of the Code of Criminal Procedure of the Republic of Lithuania. (Criminal Procedure Code)*, No. IX-785, 14 March 2002, last amendment No. XIV-2188, 10 October 2023, *Valstybės žinios, 2002-04-09, Nr. 37-1341*.
[25] UDHR, Article 3.
[26] CRC, Article 3.
[27] The Beijing Rules, Article 2.2 (a).
[28] The Beijing Rules, Article 17.1.
[29] The Riyadh Guidelines, para 52.
[30] The Riyadh Guidelines, para 53.

of the Child[31] defines general responsibility principles for child rights violations. The law reiterates the principle enshrined in international treaties and EU legislation that the best interests of the child must be paramount when deciding any issue related to children, including the rights of the child in criminal proceedings. However, the CPC, which establishes the rules of criminal proceedings to be followed by the pre-trial investigation officer, the prosecutor, and the court, does not indicate such an approach, which is stressed in the Law on the Fundamentals of Protection of the Rights of the Child. The CPC does not specify that the child's best interest should be considered during the criminal proceeding.

It is also important to note that there is no separate criminal procedure for children in Lithuania, and they are subject to the same legislation as adults. Nonetheless, some child-friendly justice elements exist in the Lithuanian criminal legal system, as the Lithuanian CPC provides certain safeguards to protect the interests of children in criminal proceedings.

Firstly, the CPC, following Article 40 (3)(a) of the CRC, defines the minimal age at which a child can be held criminally liable. Article 3 of the CPC establishes that criminal liability cannot be applied when the child, at the time of committing the criminal act, was not yet at the age of fourteen. For less severe crimes, criminal liability can arise just from the year of sixteen.

Secondly, the CPC establishes the child suspect's individual assessment. Assessment results are considered when selecting pre-trial coercive measures, deciding on termination or continuity of the pre-trial investigation, organising procedures, and others. Individual assessment of a child is a summary of information about the child's personality, environment and needs in protection, education, and social integration.[32] It is carried out after the first questioning. After interviewing a child suspect for the first time, the pre-trial investigation officer or prosecutor conducting the pre-trial investigation immediately applies to the State Child Rights Protection and Adoption Service with a request to perform an individual assessment of the child.[33] The Service makes the individual assessment and submits the results to the pretrial investigation authority.[34]

Finally, in ensuring fair trials for children, other safeguards for protecting their rights are foreseen in CPC and other legal acts, following international and EU law requirements. Some of these safeguards are dedicated to protecting children and adults, while others are specifically dedicated to meeting the needs of children or have been adjusted accordingly. It is important to assess how these safeguards comply with international and EU law requirements.

To fulfil minimum requirements for effective interviewing, all range of safeguards must be ensured throughout the suspect's interview process. In international and EU law, such safeguards as the presumption of innocence and the right to remain silent, the right not to be tried or punished twice, the prohibition of discrimination, the prohibition of torture and other cruel, inhuman, or degrading treatment, the right to safe and respectful arrest conditions, the right to child-friendly interviewing in the criminal proceeding, the right to the effective defence and representation by a lawyer, the right to assistance of parents or another legal representative, the right to interpretation and translation, the right to be informed, evidence are admissible which obtained without coercion and the right to an effective remedy can be found. Accordingly, this article examines the specific requirements that need to be followed while

[31] Seimas of the Republic of Lithuania. *Law on Fundamentals of Protection of the Rights of the Child*, No. I-1234, 14 March 1996, last amendment No. XIV-1512, 10 November 2022, Valstybės *žinios, 1996-04-12, Nr. 33-807*, Articles 48-50.
[32] CPC, Article 27^2
[33] CPC, Article 189^1 (1).
[34] CPC, Article 27^2

applying these safeguards to children and to what extent Lithuanian legal acts fulfil these requirements.

Presumption of Innocence and the Right to Remain Silent

The right to be presumed innocent until proven guilty is a fundamental human right established by Article 11 of the Universal Declaration of Human Rights (UDHR). It states that every person charged with a criminal offence must be presumed innocent until proven guilty in a public trial, with all the necessary guarantees for their defence. This right is further protected under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR). Article 14 of ICCPR states that every person accused of a criminal offence has the right to be presumed innocent until proven guilty according to the law. Article 6 of ECHR specifies that anyone charged with a criminal offence must be presumed innocent until proven guilty according to the law. Article 48 of the EU Charter of Fundamental Rights also recognises the presumption of innocence.

It is important to remember that the presumption of innocence applies to both adults and children. Article 40 of CRC guarantees the right to be presumed innocent until proven guilty for every child accused of breaking the law. Article 7.1 of the Beijing Rules states that the fundamental procedural safeguard - the presumption of innocence - must be upheld at all stages of proceedings. Furthermore, the Havana Rules also require that juveniles detained under arrest or awaiting trial be presumed innocent and treated as such. [35]

Legal experts think the presumption of innocence comes with the right to remain silent and be protected against forced self-incrimination. This right ensures that individuals interviewed by authorities can abstain from commenting or answering questions to avoid self-incrimination or for any other reason. [36]

International law, along with the presumption of innocence, requires ensuring the right of a person (child) who has committed a criminal act to remain silent. According to Article 14 of ICCPR and Article 40 of CRC, no one shall be forced to testify against themselves or confess guilt. Every child charged with a criminal offence has the right to remain silent.[37]

Lithuanian law meets the requirements of international and EU law. Lithuanian law establishes the presumption of innocence and the right to remain silent. Article 31 (2) of the Constitution stresses that in criminal proceedings, a person shall be *presumed innocent until proven guilty according to the procedure established by law and declared guilty by an effective court judgment*. It is prohibited to compel anyone to give evidence against themself, their family members, or close relatives.[38] Article 44 (6) of CPC stipulates that every person suspected or accused of committing a criminal act is considered innocent until proven guilty and recognised by a valid court verdict. Article 21 (4) of the CPC states that each suspect has the right to remain silent and to refuse to testify about their possible crimes.

Right Not to be Tried or Punished Twice

Article 3 of the CPC and Article 50 of the EU Charter of Fundamental Rights indicate that a child cannot be tried or punished twice in criminal proceedings for the same criminal offence.

[35] The Havana Rules, para 17.
[36] Mendez's Principles, para 46.
[37] Beijing Rules, Article 7.1.
[38] Constitution of Lithuania, Article 31 (4).

Lithuanian law follows the requirements of international and EU law. Article 31 (6) of the Lithuanian Constitution indicates that no one may be punished twice for the same crime.[39] Article 3 (1)(6) of CPC notes that a criminal proceeding is inadmissible against a person who has had a court verdict on the same charge, court order, or prosecutor's order terminating the proceedings on the same grounds.

Prohibition of Discrimination

It is mandatory to ensure that discrimination is prohibited in criminal proceedings as per international law. Article 7 of UDHR requires equal protection under the law to all without any discrimination. Article 3 of ICCPR also requires states to ensure equal rights for both men and women to enjoy all the civil and political rights outlined in the ICCPR. Article 14 of ECHR and Article 1 of the Protocol to ECHR strictly prohibit any form of discrimination. The Protocol also specifies that no public authority can discriminate against anyone under any circumstances.

International documents solely dedicated to protecting the interests of children also prohibit discrimination. The CRC require all States to respect and protect children's rights without any form of discrimination.[40] Additionally, the Beijing Rules require that any regulations concerning the treatment of children or young persons who have committed an offence[41] be applied impartially and free from any discriminatory actions.[42]

EU law also prohibits discrimination. Article 20 of the EU Charter of Fundamental Rights indicates that everyone must be treated equally before the law. Article 21 of the Charter specifies that discrimination must be prohibited on any ground, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Article 29 (1) of the Charter addresses persons in criminal proceedings. It states that all persons are *equal before the law, the court, and other State institutions and officials*.

This means that states must guarantee the protection of the human rights of all interviewees without discriminating against anyone. Implementing this protection ensures that all interviewees are treated respectfully and equally before the law.

Regarding Lithuanian law, it should be said that discrimination during pre-trial investigations is prohibited per international and EU law. Article 6 (2) of the CPC prohibits discrimination based on origin, social and economic status, nationality, race, sex, education, language, religious or political opinions, type and nature of activity, place of residence and other circumstances.

When we compare international law with Lithuanian law, we can see that international law has a longer list of prohibited grounds of discrimination. Apart from the grounds specified by Lithuanian law, international conventions also forbid discrimination based on disability, age, or sexual orientation. It is understandable that the list of non-discriminatory grounds mentioned in Article 6(2) is not exhaustive and can include all the grounds outlined in international law. However, such regulation allows broad discretion for the decision makers to decide what grounds are foreseen in “other circumstances” and whether the disability, age and sexual orientation grounds are included. These grounds should be clearly foreseen in the list of grounds provided in Article 6 (2) of the CPC.

[39] Constitution of Lithuania, Article 31 (6).
[40] CRC, Article 2.
[41] The Beijing Rules, Article 2.2 (a).
[42] The Beijing Rules, Article 2.1.

Prohibition of Torture and other Cruel, Inhuman, or Degrading Treatment

International law prohibits any form of degrading treatment in criminal proceedings. Such rules must be applicable when enforcing criminal proceeding measures against adults and children.

The UDHR explicitly forbids any form of torture or inhuman treatment.[43] The ICCPR expands on this, declaring that no person shall be subjected to any kind of torture, cruel or degrading treatment or punishment.[44] Similarly, Article 3 of the ECHR reaffirms the UN documents requiring that everyone must be protected from being subject to torture, inhuman or degrading treatment, or punishment.

EU Charter of Fundamental Rights essentially repeats the provisions of the ECHR and expands them. Article 1 of the Charter emphasises the importance of the inviolability of human dignity. Article 1 says that *human dignity is inviolable. It must be respected and protected*. Article 4 prohibits torture and inhuman or degrading treatment or punishment. It emphasises that no one can be subjected to torture or inhuman or degrading treatment or punishment.

The CAT provides a definition of torture. Article 1 of the CAT explains that the *term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession <…>, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

Experts who specialise in torture issues state that using coercive interviewing techniques or any other actions that aim to humiliate, instil fear, obtain information, or force confessions from interviewees through coercion, threats, or any other means that impair an interviewee's capacity or decision-making ability can amount to torture or other forms of ill-treatment. [45]

Ill-treatment also includes arbitrary arrest. Article 9 of UDHR ensures that no individual shall be subject to arbitrary arrest, detention, or exile. Article 9 of ICCPR specifies that everyone has the right to liberty and security of person, and no one shall be arrested or detained arbitrarily.

International documents intended to protect the interests of children also pay special attention to the protection of children from their ill-treatment. According to Article 40 of the CRC, when a child is involved in criminal proceedings, they should be treated in a way that promotes their dignity and worth. Article 37 of the CRC clearly states that no child should ever be subjected to any form of torture, cruel or degrading treatment or punishment. Furthermore, no child should be deprived of their liberty unlawfully or arbitrarily. Arrest, detention, or imprisonment should only be used as a last resort and for the shortest possible time.

Article 10.3 of the Beijing Rules requires law enforcement agencies to handle contact with juvenile offenders in a way that respects their legal status, promotes their well-being, and avoids harm to them, with due regard to the case circumstances. Article 13 of the Beijing Rules repeats the CRC that the detention of juveniles pending trial should only be used as a last resort and for the shortest possible duration, and additionally provides that alternative measures such as close supervision, intensive care, or placement with a family or in an educational setting should be considered whenever possible.

[43] UDHR, Article 5.
[44] ICCPR, Article 7.
[45] Mendez's Principles, para 38.

The Riyadh Guidelines further state that it is unacceptable to subject any child or young person to harsh or degrading correction or punishment measures in any institution.[46] Law enforcement and other relevant personnel should be trained to respond to the special needs of young people. [47]

The Havana Rules require States to establish a juvenile justice system that safeguards the rights and safety of juveniles and promotes their physical and mental well-being.[48] Depriving a juvenile of their liberty should only be considered a last resort and for the shortest possible time, and only in exceptional cases.[49] Detention before trial should be avoided if possible and limited to exceptional circumstances. Therefore, every effort should be made to apply alternative measures.[50]

Analysis shows that each state has a responsibility to implement effective legislative, administrative, judicial or other measures to prevent acts of torture within any territory under its jurisdiction. Additionally, it is obligated to prevent any other actions of cruel, inhuman or degrading treatment, even if they do not amount to torture.[51]

Lithuania also has safeguards against torture and other and other cruel, inhuman, or degrading treatment. Article 18 of the Lithuanian Constitution guarantees that the rights and freedoms of every person in Lithuania are protected from birth. Article 21 emphasises that every person is untouchable; their dignity is protected by law. Specific safeguards are enshrined in the CPC.

Following the CPC, pretrial investigation authorities can take investigative actions and use coercion measures proportionate to the situation. The principle of proportionality must be considered while taking these actions and implementing measures. The coercion measures could only be applied when there is no other way to achieve the desired outcome in the criminal proceeding.[52] The measures may be imposed only to ensure the suspect's participation in the pre-trial proceeding, facilitate an unhindered pre-trial investigation, and prevent new crimes.[53]

In pretrial proceedings and when applying coercion measures, it is prohibited to use violence, threaten, or perform actions that degrade human dignity and harm health.[54] A suspect has the right to receive emergency medical assistance.[55] However, the physical force is not prohibited. Physical force is permitted when necessary to remove obstacles to the performance of the action in the proceeding.[56]

When deciding on the coercive measure, the gravity of the crime and other conditions, such as the suspect's personality, age, state of health, and others, must be considered. [57] The coercive measures can only be imposed if there is sufficient evidence to suspect that the suspect has committed a crime.[58] The arrest may be ordered only for crimes for which an expected sentence of imprisonment is more than one year.[59]

[46] The Riyadh Guidelines, para 54.
[47] The Riyadh Guidelines, para 58.
[48] The Havana Rules, para 1.
[49] The Havana Rules, para 2.
[50] The Havana Rules, para 17.
[51] CAT, Articles 2 and 16 (1).
[52] CPC, Article 11.
[53] CPC, Article 119.
[54] CPC, Article 11.
[55] CPC, Article 21 (4).
[56] CPC, Article 11.
[57] CPC, Article 121 (3).
[58] CPC, Article 121 (2).
[59] CPC, Article 122 (8).

Arrest, intensive supervision, house arrest or obligation not to approach the victim closer than the specified distance can only be ordered by the pre-trial investigation judge.[60] The person can be arrested only when a pre-trial investigation judge or a court has issued an arrest warrant.[61] The arrest warrant must be issued within forty-eight hours from the start of detention.[62] The warrant must specify the crime of which the person is suspected, the law under which arouses a criminal liability, data allowing to suspect that the person committed the crime, the arrest aim and conditions, the grounds and reasons for imposing arrest, and reasons why less severe coercive measures cannot be imposed.[63] The suspect must be informed about the arrest warrant by signing it. [64]

Although the CPC stipulates that arrest can be ordered only in cases where less severe coercive measures cannot achieve the aims - to ensure the suspect's participation in the pre-trial proceeding and unhindered pre-trial investigation (there are reasonable grounds to believe that the suspect will flee or/and hinder the process) as well as to prevent new crimes,[65] however, it should be noted that the assessment of the reasonableness of these threats is left to the prosecutor and the pre-trial judge. CPC does not clarify the proof level for the threats and the threat to be considered reasonable. This allows us to conclude that prosecutors and judges have wide discretion in their decisions. It means that the execution of human rights highly depends on the judge's opinion, partly determined by case law.

Finally, following the proportionality requirement, Article 11 of the CPC requires immediate termination of the coercive measures when they become unnecessary.

Right to Safe and Respectful Arrest Conditions

Not only the pretrial investigation actions in the criminal proceeding but also the conditions of the most severe coercive measure – arrest, itself can amount to torture or other cruel, inhuman, or degrading treatment.

International law requires states to ensure safe and respectful arrest conditions for children. Article 10 of the UDHR emphasises that all individuals deprived of their liberty must be treated with respect for their human dignity. The CRC requires that every detained child must be treated with respect and dignity, considering their age and needs.[66] The child's privacy should be fully respected at all stages of the proceedings.[67] Article 13 of the Beijing Rules states that juveniles must be separated from adults while in custody. In custody, juveniles should receive care, protection, and necessary assistance in social, educational, vocational, psychological, medical, and physical areas, considering their age, sex, and personality.

To fulfil international law requirements, the new version of the Law on the Enforcement of Arrest comes into force on January 1, 2023. The Law foresees safe conditions for the execution of arrests. Article 4 (3) specifies that during the arrest, it is forbidden to torture a person, treat a person cruelly or humiliate human dignity. Special attention is paid to the health care of minors. The law requires that the health of the arrested child must be thoroughly checked

[60] CPC, Article 121 (1).
[61] Seimas of the Republic of Lithuania. Law on Enforcement of Arrest, No. I-1175, 18 January 1996, last amendment No. XIV-1772, 23 December 2022, *Valstybės žinios, 1996-02-09, Nr. 12-313*, Article 6(1)(1).
[62] CPC, Article 123 (4).
[63] CPC, Articles 125 (2) and 122 (6).
[64] CPC, Article 125 (3).
[65] CPC, Articles 122 (1) and 122 (7).
[66] CRC, Article 37.
[67] CRC, Article 40.

upon arrival at a prison.[68] Arrested persons may be kept in the custody of the territorial police no longer as it is necessary to perform a particular action in the proceeding in case it cannot be performed while the person is in prison. In any case, the duration cannot exceed seven days when the person is brought from prison and 15 days when the person is newly arrested.[69]

Arrested children should be ensured to walk in the fresh air for at least 3 hours daily.[70] Children under the age of 16 must have access to education.[71] A disciplinary penalty of isolation for no longer than five days may be imposed on a child who has violated the prison rules.[72]

The Law on Enforcement of Arrest also foresees the arrestee's right to communicate with other people. Article 8 of the law states that arrestees have the right to send and receive an unlimited number of letters. According to the rules established in the Law, detainees have the right to meet with journalists (Article 9), see other persons (Article 13), make phone calls, or use internet telephony (Article 14).

The CPC and Law on Enforcement of Arrest aim to ensure a child's right to privacy.[73] Articles 27 (1) and 27 (3) of the Law require that children be kept in prisons separate from adults. Article 21 (4) of the CPC notes that the child has the right to privacy protection. However, the law does not provide more precise instructions on what is considered a child's privacy. As a result, it is impossible to accurately assess how much the child's right is protected during the pre-trial investigation. Some clarity could provide the analysis of the child's right to privacy during the execution of the arrest established by the Law on Enforcement of Arrest. The law stipulates that an arrested person can be searched, and their belongings can be checked only by officers of the same sex.

The Right to Child-Friendly Interviewing in Criminal Proceedings

Safeguarding a child's rights depends on providing safe and respectful arrest conditions and conducting interviews in a child-friendly manner during criminal proceedings. Certain types of interviews in criminal proceedings can be considered as degrading treatment.

International law mandates that child victims, witnesses, and suspects should be interviewed using child-friendly procedures. Article 40 of the CRC requires the child's age to be considered when involved in criminal proceedings. The ICCPR stipulates that if the accused is a juvenile, the procedure should be designed to consider their age and promote their rehabilitation.[74] Article 8 of the OPRCh states that it is the responsibility of states to implement adequate measures to protect the rights and interests of child victims throughout criminal proceedings. This includes recognising their vulnerability, adapting procedures to meet their needs, and providing support services.

Lithuanian legal norms provide safeguards for protecting children’s interests during the investigation interview in criminal proceedings.

According to the CPC, the child witnesses and victims are interviewed, applying a special child-friendly interview procedure. Article 186 of CPC defines a special procedure for interviewing child witnesses and victims, which aims to reduce the traumatic effect. A child witness or victim is interviewed during the pre-trial investigation in premises adapted for the

[68] Law on Enforcement of Arrest, Article 24 (2).
[69] Law on Enforcement of Arrest, Article 4 (4).
[70] Law on Enforcement of Arrest, Article 17 (1).
[71] Law on Enforcement of Arrest, Article 22 (1).
[72] Law on Enforcement of Arrest, Article 29.
[73] CPC, Article 21 (4).
[74] ICCPR, Article 14.

interviewing children, usually no more than once. In cases where repeated questioning of a child witness or victim is necessary during the pre-trial investigation, they are usually interviewed by the same person. Their interview must be video and audio recorded. A psychologist helps interview the child witness or victim when requested by the process participants, the pre-trial investigation officer, the prosecutor or the pre-trial investigation judge. The child rights specialist of the State Child Rights Protection and Adoption Service observes from another room whether the rights of a child witness or victim are not violated during the questioning. The child's legal representative can participate in the questioning if they do not influence the child.[75]

The Prosecutor's General Recommendations for interviewing a child witness and victim[76] explain how interviewing a child witness or victim should be performed. Article 3 of the Recommendations stipulates that actions involving a child should only proceed if other methods of determining relevant circumstances are not feasible or would incur high procedural costs. This is to prevent any traumatic effects on the child. The Recommendations also state that when clarifying the circumstances of the reported crime, it is recommended to avoid informal conversations with the child in detail before the pre-trial investigation has started or during the investigation in a manner not established by the CPC. Article 17 of the Recommendations suggests the pre-trial investigation officer or prosecutor specialising in juvenile justice should interview the child. Article 21 of the Recommendations states that when a pre-trial investigation officer or prosecutor decides to interview the child themselves, before questioning, they must consult with a psychologist about interview tactics, the most suitable formulation of questions and the order of the questions.

It is worth noting that Lithuania does not have a specialisation of pre-trial investigation officers, prosecutors and judges provided for in the laws. The specialisation of prosecutors and judges who work with children is established in the legislation implementing the laws. The specialisation of prosecutors is foreseen in the General Prosecutor's Recommendations on the specialisation of prosecutors in criminal proceedings.[77] The document provides that part of the prosecutors must be specialised in working in juvenile justice cases where the suspects and victims of physical and mental violence are children. The specialisation of judges in juvenile criminal cases is foreseen in the Description of the procedure for determining the specialisation of judges to consider specific categories of cases approved by the Council of Judges.[78] However, it should be noted that the specialisation of pretrial investigation officers in children's cases is not provided for in any legal act.

Safeguard measures for interviewing a child suspect are significantly lower compared to the protections provided for interviewing child witnesses and victims. The CPC foresees just some safeguards for interviewing child suspects in criminal proceedings. In particular, a psychologist assists in interviewing a child suspect at the initiative of a pre-trial investigation

[75] CPC, Article 186 (3).
[76] Prosecutor General of the Republic of Lithuania. Order Regarding the approval of the Recommendations regarding the interview of a child witness and the victim, No I-126, 16 September 2009, available at https://www.prokuraturos.lt/lt/teisine-informacija/prokuraturos-teises-aktai/generalinio-prokuroro-rekomendacijos/74
[77] Prosecutor General of the Republic of Lithuania. Order Regarding the approval of the Recommendations on the specialisation of prosecutors in criminal proceedings, No I-318, 30 October 2012, available at https://www.prokuraturos.lt/lt/teisine-informacija/prokuraturos-teises-aktai/generalinio-prokuroro-rekomendacijos/74
[78] Council of Judges. Resolution Regarding the approval of the description of the procedure for determining the specialisation of judges to hear certain categories of cases, No 13P-202-(7.1.2), 13 November 2008, last amendment No. 13P-88-(7.1.2), 31 May 2019, *TAR, 2017-05-24, Nr. 8634.*

officer or prosecutor or at the request of a child suspect or his defender or legal representative. The child rights specialist of the State Child Rights Protection and Adoption Service monitors whether the rights of a minor suspect are not violated during the questioning.[79] An audio and video recording of the interview may take place. The obligation to do audio and video recordings of the interview with the child suspect is just in cases where the child suspect is arrested or detained.[80] There is no requirement to interview in a child-friendly environment. They are interviewed as adults. Opinions are often heard that child rights specialists only formally monitor whether the child's rights are not violated during the execution of a procedural action. The child's best interests are not considered about child suspects. The entire pre-trial investigation proceeding is not child-friendly. There is no juvenile criminal justice system in Lithuania.

Right to the Effective Defence and Representation by a Lawyer

Child-friendly interviewing in criminal proceedings is impossible without effective defence or representation by a lawyer.

According to Article 40 of the CRC, all children involved in criminal proceedings must be provided with legal or other suitable assistance to prepare and present their defence. This assistance must be made available without delay.[81] The Beijing Rules, in Article 7.1, emphasise that the right to legal counsel and representation is a fundamental procedural safeguard that must be upheld at all stages of the proceedings. Additionally, the Havana Rules state that minors in detention must have the right to legal counsel and the ability to communicate regularly with their legal advisers. Privacy and confidentiality must be maintained for such communications.[82]

The ECHR and EU Charter of Fundamental Rights provisions align with the abovementioned documents. According to Article 6 of the ECHR, anyone charged with a criminal offence must have adequate time and facilities to prepare their defence and defend themselves either in person or through legal assistance. Article 48 of the EU Charter of Fundamental Rights repeats each suspect's or accused's right to defence.

These documents also provide for the right to legal aid. However, the way it's guaranteed differs among them. UN documents require countries to ensure legal aid in places where it's available. Article 15 of the Beijing Rules specifies that juveniles have the right to access free legal aid where available. Similarly, the Havana Rules state that juveniles in detention should be able to apply for free legal aid if available.[83]

Legal aid is more strongly guaranteed in Europe. Article 6 of the ECHR guarantees the right to a legal aid lawyer when suspects do not have sufficient means to pay, but the interests of justice require the lawyer's defence. The EU Charter of Fundamental Rights, in Article 47, emphasises the right to legal aid to everyone who lacks sufficient resources. It stipulates that legal aid must be guaranteed because it is necessary to ensure effective access to justice.

In Lithuania, the law guarantees that the child suspects have the right to defence and free communication with the lawyer. Under Article 31 (7) of the Lithuanian Constitution, every suspect, including a child, must be guaranteed access to a lawyer, and their right to defence must be ensured from the moment of their detention or first questioning. Following the

[79] CPC, Article 188 (5).
[80] CPC, Article 188 (5).
[81] CPC, Article 37.
[82] The Havana Rules, para 18.
[83] The Havana Rules, para 18.

Constitution, Article 21 (4) of the CPC guarantees a suspect's right, including a child, to have a lawyer present from the moment of their arrest or first questioning.

Considering the CPC, pretrial investigation authorities must appoint a defence lawyer immediately from the moment of detention or the first interview.[84] If the child suspect does not have a private lawyer,[85] the duty lawyer is appointed free of charge regardless of their property and income.[86] The duty lawyer is appointed irrespective of the defendant's wishes to have a specific lawyer.[87] Although the CPC provides suspects the right to refuse an appointed duty lawyer or waive their right to defence, the pre-trial investigation officer, the prosecutor, and the court are not obliged to consider the child's refusal.[88] The CPC prohibits controlling the suspect's communication with the defence counsel - meetings, correspondence, telephone conversations or otherwise.[89] The Law on Enforcement of Arrest specifies that arrested persons have the right to meet, correspond with and call their defence lawyer without hindrance following the procedure established by the Minister of Justice. The number and duration of meetings, calls, and letters are unlimited. The Law ensures the confidentiality of their communication.[90]

However, speaking about the right to defence, it should be noted that the law only guarantees the right to have a lawyer but does not guarantee continuity of the defence and quality. The law does not provide that the same defender should participate in all procedural actions. When a duty lawyer defends the suspect, it is not uncommon for a new duty lawyer to be assigned to the suspect in cases where he cannot be at the procedural actions. When the dates of further actions are not agreed upon with the duty lawyer, and if he cannot participate in further actions, another duty lawyer is appointed. In practice, there are cases when, during criminal proceedings, the suspect or accused is defended by four or more defenders who participate in different procedural actions without coordinating their actions. In some cases, lawyers cannot coordinate their actions since they are appointed to defend shortly before the actions are carried out.

It should also be noted that it is extremely important to ensure the consistent defence of the suspect by one lawyer during the pre-trial investigation since the complete pre-trial investigation material is accessible only after the pre-trial investigation has been completed. Until then, access to part of the pre-trial investigation material depends on the prosecutor's will. The prosecutor has the right to prevent access to all or part of the pre-trial investigation data and to prevent making copies or extracts of the pre-trial investigation material if such access, in the prosecutor's opinion, could harm the success of the pre-trial investigation.[91] When different defenders participate in different procedural steps, not only may some information important to the defence be lost, but also the quality of the defence is not guaranteed. If a person's defence is of poor quality, there is no way to determine which defender is to blame.

The CPC requires states to ensure the suspects have sufficient time and conditions to prepare their defence.[92] However, it should be noted that the CPC and other legal acts do not clarify what it means to "have sufficient time and conditions." When the private lawyer cannot

[84] CPC, Articles 10 and 51 (1) (1).
[85] CPC, Article 50 (2).
[86] Seimas of the Republic of Lithuania. Law on State-guaranteed Legal Aid, No.VIII - 1591, 28 March 2000, last amendment No. XIV – 2103, 29 June 2023, *Valstybės žinios, 2000-04-12, Nr. 30-827*, Article 12.
[87] CPC, Article 50 (5).
[88] CPC, Article 52 (2).
[89] CPC, Article 44 (8).
[90] Law on Enforcement of Arrest, Article 7 (1) and 7 (2).
[91] CPC, Article 181.
[92] CPC, Article 44 (7).

arrive at the first questioning within six hours or cannot participate in the decision on arrest, [93] the pre-trial investigation officer, the prosecutor or the court assigns a defence lawyer selected by a coordinator of the State-guaranteed legal aid service to the suspect.[94] It is not uncommon for the State-guaranteed legal aid service to receive a request to choose a defence lawyer several hours before the execution of an action in the proceeding. Such regulation and practice raise doubts about whether the defender is given enough time to prepare for the defence. There are cases when the defence lawyer arrives to defend the suspect unprepared, asks for a break to familiarise himself with the issue, and meets with the defendant only during the performance of the action in the criminal proceeding. The law should determine how long before the execution of the pre-trial investigation actions the defender should be appointed and informed about that.

The CPC ensures the child victim's right to a lawyer as an authorised representative.[95] In criminal proceedings, every child who is a victim of offence against their health, freedom, sexual self-determination and integrity, or they were kidnapped, exchanged, bought, sold, abandoned, involved in crimes, drug use, drinking, pornography, involved in prostitution, were used for prostitution, biomedical tests were performed on them, or their parents or other legal representatives abuse the rights or do not fulfil their duties, or in other criminal proceedings when pre-trial investigation officer or prosecutor or court ruling recognises that participation of authorised representative is necessary has the right to receive state-guaranteed legal aid free of charge regardless of property and income they or their legal representatives have.[96] The necessity for an authorised representative can be recognised when the child is in institutional guardianship (curatorship), in a Social Family (Foster Care-Based Households) or in a children's socialisation centre, when the legal representative is not allowed to participate in the proceeding, or when a legal representative of the child victim cannot adequately protect their rights.[97] In other criminal cases, the eligibility for legal aid depends on the child and their legal representative wealth. Legal aid includes preparing procedural documents by a lawyer and representation in the criminal proceeding.[98]

Right to Assistance of Parents or another Legal Representative

An adequate representation of child rights requires the participation of parents or legal representatives in criminal proceedings.

Article 9 of the CRC requires that parents or legal representatives be informed of any State actions that may result in the child's deprivation of liberty. According to Article 7.1 of the Beijing Rules, upholding the right to have a parent or guardian present throughout the entire legal process is essential. Article 15 specifies that parents or guardians must be entitled to participate in the proceedings unless there is a compelling reason to exclude them in the interest of the juvenile. Furthermore, Article 10.1 of the Beijing Rules mandates that parents or guardians of a juvenile must be immediately notified upon the apprehension of the juvenile. If this is not possible, they should be informed as soon as possible.

In Lithuania, the CPC allows child assistance by a parent or another legal representative. The legal representative can accompany a child suspect or witness when the pre-trial

[93] CPC, Article 50 (5).
[94] CPC, Article 51.
[95] CPC, Article 55.
[96] Law on State-guaranteed Legal Aid, Article 12 (1)(12).
[97] Recommendations regarding the interview of a child witness and the victim, Article 11.
[98] Law on State-guaranteed Legal Aid, Article 2 (1).

investigation officer, prosecutor, or court grants permission during the pretrial proceeding. The permission would not be granted if this conflicts with the child's interests or hinders the criminal proceeding. When such permission cannot be granted, or when the legal representative cannot be found out, or their identity is unknown, another suitable person would be appointed as the child's legal representative. The child can choose who should be the legal representative.[99] The legal representative can get information, accompany the child during the entire criminal proceeding, and help them exercise their rights.[100]

If the arrested person is a child, the prosecutor must immediately notify the child's parents or other legal representatives. When such notification would be against the interests of the arrested child, they should inform another appropriate adult person.[101] In addition, the arrested child suspect must be immediately allowed to contact one of those persons and the arrest of the child suspect must be immediately reported to the State Child Rights Protection and Adoption Service.[102] The law does not specify how quickly the relevant institutions and people should be informed that would be considered "immediate". Such unclarity creates many uncertainties in practice. Institutions sign inter-institutional agreements to increase clarity. However, it should be noted that these agreements express a different understanding of the word "immediate". In particular, the Cooperation Agreement of 28/06/2018, which established closer inter-institutional cooperation among the General Prosecutor's Office, the Police Department, the Ministry of Social Security and Labour, the Office of the Ombudsperson of Child's Rights and the State Child Rights Protection and Adoption Service, the word “immediate” means five days (the prosecutor's office and the police undertake to inform the State Child Rights Protection and Adoption Service about the fact that a minor has been declared a suspect in five days).[103] In contrast, in the Amendment of this Cooperation Agreement, signed on 21/07/2023, the word “immediate” means two working days.[104] The obligation to inform is more clearly regulated when there is an arrest. Article 6 (5) of the Law on Enforcement of Arrest foresees that legal representatives or other appropriate persons must be notified about the arrestee's arrival at the prison no later than the next day after the arrestee's arrival.

Right to Interpretation and Translation

Article 40 of the CRC ensures the child's right to the free assistance of an interpreter, including a sign language interpreter, if they cannot understand or speak the language used in criminal proceedings. Similarly, Article 6 of the ECHR states that anyone accused of a criminal offence has the right to be informed in a language they understand, and they are entitled to a free interpreter if they cannot understand or speak the language used in the criminal proceeding.

[99] CPC, Articles 21 (4), 22(3), 53.
[100] CPC, Article 54 (1).
[101] CPC, Article 128 (1).
[102] CPC, Article 128 (1).
[103] Prosecutor General‘s Office, Police Department under the Ministry of Interior, Ministry of Social Security and Labour, Office of the Ombudsperson for Child's rights, State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour, Cooperation agreement, No 9.11-17/BS-1, 28 June 2018, available at https://vaikoteises.lrv.lt/lt/teisine-informacija/bendradarbiavimo-susitarimai-ir-sutartys
[104] Prosecutor General‘s Office, Police Department under the Ministry of Interior, Ministry of Social Security and Labour, Office of the Ombudsperson for Child's Rights, State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour, Agreement No1, Regarding the amendment of the cooperation agreement of June 28, 2018 No. 9.11-17/BS-1, No BS-8, 21 July 2023, available at https://vaikoteises.lrv.lt/lt/teisine-informacija/bendradarbiavimo-susitarimai-ir-sutartys

In Lithuania, the CPC ensures the right to interpretation and translation in the pre-trial investigation.[105] Article 8 of the CPC allows non-Lithuanian-speaking participants in criminal proceedings to make statements, give testimony and explanations, submit requests and complaints, and speak in court in their native language or another language they understand. Case documents that are provided to the participants in the proceeding must be translated into their native language or another language that they know. Translation of other case documents for the suspect is ensured only when translated documents are necessary for the proper suspect defence or to understand the ongoing criminal proceedings. Translation of such papers is provided for the victim only if it is needed for active participation in criminal proceedings. Victims can make complaints regarding the crime in their native language or in another language they know or can use the services of an interpreter when making a complaint orally. The defence lawyer must communicate with a suspect in a language they understand; if this is not possible, an oral translation of their communication must be ensured. Interpreter services are provided free of charge for each suspect.[106]

Right to be Informed

To ensure the effective defence and representation of children's rights, it is necessary to fulfil their right to be informed. International law recognises this and provides certain procedural safeguards. In particular, Article 40 of the CRC guarantees that every child accused of breaking the law has the right to be informed promptly and directly of the charges against them. The Beijing Rules and Article 6 of the ECHR reaffirm this commitment. Article 7.1 of the Beijing Rules foresees that every suspect has the right to be informed of the charges. Meanwhile, Article 6 of the ECHR establishes that anyone charged with a criminal offence has the right to be informed promptly, in a language they understand and in detail, about the nature and cause of the accusation against them. Furthermore, Article 9 of the UDHR requires that anyone arrested be informed about the reasons for their arrest and any charges against them. Article 5(2) ECHR also stipulates that anyone arrested must be informed promptly, in a language they understand, of the reasons for their arrest and any charges against them.

The right to information is guaranteed not only to the offender but also to the victim. Article 8 of the OPRCh states that it is the responsibility of states to implement adequate measures to safeguard the rights and interests of child victims throughout the criminal proceeding. This includes informing them of their rights, roles, and the progress of the proceedings.

In Lithuania, the CPC and the Law on Enforcement of Arrest guarantee the right to information for the participants in the criminal proceeding. The judge, prosecutor, and pre-trial investigation officer must explain their procedural rights to the participants in the criminal proceeding and make conditions for their use.[107] They must inform all suspects promptly and thoroughly in a language they understand of the nature and basis of the accusation against them. Every detainee or arrestee must be immediately informed in a language they understand of the reasons for their detention or arrest, the longest possible period - how many hours (days) their freedom may be restricted until the case is heard in court. The arrested person must be introduced to the arrest procedure, their rights, duties, and prohibitions in a language they understand no later than the day following their arrival at the prison.[108] In addition, the detainee

[105] CPC, Article 21 (4).
[106] CPC, Article 44 (7).
[107] CPC, Article 45.
[108] Law on Enforcement of Arrest, Article 6 (4).

or arrestee must be informed about their right to appeal the detention or arrest decision to the court.[109]

Admissible Evidence Obtained Without Coercion

Article 15 of the CAT prohibits the use of any statement obtained through torture as evidence in legal proceedings. As already mentioned above, the using coercive interviewing techniques or any other actions that aim to humiliate, instil fear, or force confessions from interviewees through coercion, threats, or other means that impair an interviewee's capacity or decision-making ability can amount to torture or other forms of ill-treatment.[110] Therefore, any evidence obtained through such coercive methods should not be admissible in criminal proceedings.

According to the CPC, the evidence to be admissible in Lithuania must be obtained lawfully. Articles 20 (1) and 20 (4) of the CPC stipulate that evidence in criminal proceedings can only be data obtained lawfully per the procedure established by law. However, the CPC does not clearly state that data obtained through coercive means cannot be considered as evidence. The judge or court can decide whether the data can be considered evidence.[111] Judges evaluate the evidence based on their inner conviction, grounded on a thorough and impartial examination of the case's circumstances and following the law.[112]

Right to an Effective Remedy

To ensure the implementation of safeguards provided for in international law, national legislation must provide for an effective remedy if these safeguards are violated. Accordingly, Article 2 (3)(a) of the ICCPR stipulates that if any person's rights or freedoms recognised in the ICCPR are violated, they should be entitled to an effective remedy, irrespective of whether the violation was committed by persons acting in an official capacity. Similarly, Article 47 of the EU Charter of Fundamental Rights also emphasises the right to an effective remedy.

In Lithuania, the remedy is clearly foreseen for wrongful detention or arrest. According to the CPC, anyone wrongfully detained or arrested has the right to compensation.[113]

However, the question of liability or responsibility for other actions is not so clear. For example, Article 100^3 (1) of the Criminal Code provides punishment for torture.[114] However, Article 100^3 (2) of the Criminal Code also notes that pain or suffering caused by coercive measures or sanctions authorised by the state is not considered torture.

In addition, Article 30 of the Criminal Code states that a person will not be held liable for any damage caused while carrying out their professional duties as long as they have not overstepped their legal powers. If the person does exceed their legal powers, they may be held criminally liable; however, this liability can be reduced. [115]

Such regulation raises doubts about whether Lithuania has an effective remedy for violating suspect or witness rights in criminal proceedings.

[109] CPC, Articles 44 (1) – 44 (4).
[110] Mendez's Principles, para 38.
[111] CPC, Article 20 (2).
[112] CPC, Article 20 (5).
[113] CPC, Articles 44 (1) – 44 (4) and 6 (3).
[114] Seimas of the Republic of Lithuania. Criminal Code of the Republic of Lithuania approved by the Law on the Approval and Entry into Force of the Criminal Code of the Republic of Lithuania, No VIII-1968, 26 September 2000, last amendment No XIV-2187, 10 October 2023, *Valstybės žinios, 2000-10-25, Nr. 89-2741*, Article 100^3.
[115] Criminal Code, Article 59 (1)(8).

Conclusions and Recommendations

By comparing the provisions of international law and Lithuanian legislation defining the safeguards for the child during the pre-trial investigation, the following conclusions and suggestions can be made:

The provisions of the Lithuanian law regulating pre-trial investigations involving children, along with the measures taken to protect their rights, mostly align with international obligations and serve as the foundation for implementing the Mendez principles. The law defines the minimal age at which a child can be held criminally liable, establishes the presumption of innocence and the right to remain silent, prohibits discrimination in the pre-trial investigation, ensures the right to interpretation and translation in the pre-trial investigation, ensures the child suspect's right to defence and free communication with the lawyer, ensures the child victim's right to an authorised representative, allows lawfully obtained evidence, allows child assistance by a legal representative, requires ensuring that the suspects have sufficient time and conditions to prepare their defence, requires proportionate investigative actions and allows just proportionate coercion measures, allows arrest when less severe coercive measures cannot achieve the aims, guarantee the right to information for the participants in the criminal proceeding, foresee the right of child witnesses and victims to a special procedure for interviewing, foresee some safeguards for interviewing child suspects in the criminal proceeding, the child suspect individual assessment is established, foresees the arrestee's right to communicate with other people, foresees safe conditions for the execution of arrests, ensures a child's right to privacy and other protective measure.

Not all obligations Lithuania undertake in international agreements have been fully implemented in national legal acts. The grounds on which discrimination is forbidden should include forbidding on disability, age, or sexual orientation. The law regulating criminal proceedings only guarantees the right to have a lawyer but does not ensure continuity of defence and quality of defence. The law should clearly state that data obtained coercively cannot be considered evidence. The law should determine how long before the execution of the pre-trial investigation actions the defender should be appointed and informed about that. The law on arrest should contain clarifications on the expectation level for the threats and the threat to be considered reasonable. In the law providing for the notification of the relevant people or institution, instead of the word "immediate", a specific period in days or hours should be indicated. The law should clearly provide an effective remedy for violating suspect or witness rights in criminal proceedings.

In Lithuanian legal acts, the focus is on ensuring the safety of the child witnesses and victims and preventing their victimisation. Meanwhile, ensuring the rights of child suspects in most cases is only formal.

To ensure the best interests of the child suspect, additional measures for protecting the child's rights should be provided for in the legal acts regulating the pre-trial investigation. The juvenile justice system should be established in Lithuania, where the best interest of the child or juvenile's well-being would be the main priority in criminal proceedings.

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