

A Child's Right to Be Heard and Be Represented in the Criminal Procedure: A Comparative Analysis of Estonian and Cambodian Law to CRC¹

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Abstract: *This paper analyses the legal and practical implementation of the right to be heard and be represented of children in criminal proceedings, both in the framework of the United Nations Convention on the Rights of the Child (CRC) and in the context of Estonian and Cambodian legal systems. Estonia has been chosen as a model state of EU by which also the EU principles are reflected. Particularly, this paper provides a comparative analysis of the implementation of a child's right to be heard and be represented in Estonia and Cambodia by examining the legal standards concerning children's right to be heard and be represented enshrined under the CRC together with the regulations and policies of each respective country, and, to a smaller extent, how the principles of the CRC are reflected in EU law and policies. Examples of actual practices in Estonia and Cambodia are discussed to understand whether both countries are compliant with the principles of the CRC. This paper suggests that Estonia and Cambodia both acknowledge their human rights obligations*

¹ This research has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement no. 734712.

regarding children's rights, and their legal regulations and policies are in accordance with the CRC principles. However, there remain gaps in the implementation of these policies and regulations in both countries. This view is justified by the analysis of the performance of judicial professionals, including judicial police, lawyers, prosecutors and judges. While critically analyzing the challenges, this article also suggests changes to address the problem.

Keywords: *Cambodia, child's rights, Estonia, EU law of child rights, juvenile justice, legal representation, right to be heard*

1. Introduction

Since the creation of the Convention on the Rights of the Child (CRC), children's rights have got a clearer protection worldwide. The CRC has been described as a milestone for international human rights legal instruments that guarantees the protection and respect of children rights (UN, 1989; Odala, 2012, p. 555). Based on the CRC, different regions have drafted and enforced their own legislation to support the protection of the rights provided by the Convention. Most of the international legal instruments, including those of the European Union (EU), refer to the CRC when regulating children's rights instead of repeating the rights provided by the CRC leaving by this the provisions of CRC applicable.

The CRC defines 'child' as every human being below the age of eighteen years unless under the law applicable to the child, maturity is attained earlier (UN, 1989). In EU law, the definition of child varies, depending on the regulatory context (FRA, 2015). However, when the concept 'child' is used, then in most cases it is within the meaning of the CRC.

The Council of Europe has adopted several treaties addressing the rights of children (See COE, 1975; 1996; 2003). Still, the main principles are based on the CRC and can be understood as the interpretation of the convention in more detail in certain states in Europe.

In the EU, since the entry into force of the Treaty of Lisbon in 2009, the protection of a child in specific child-related aspects was replaced by the protection of the child at the EU constitutional level. It is important to refer that by the Treaty, the protection of the rights of the child became as a general stated objective of the EU (Treaty on European Union, 2012, Art. 3(3)). Since then several policies regarding child have been adopted at the EU level (see Communication

COM(2011) 60 final; Commission Recommendation 2013/112/EU).

There is no doubt that a child belongs to the group of vulnerable people as far as court proceedings are concerned. Children come into contact with the justice system in many ways: as a victim, witness or defendant. Despite the role in a proceeding, the rights provided by the CRC are applicable to all children (UNODC, 2009, p. 3). It is a general understanding that the interests of children need special attention in a proceeding and should be treated fairly and in a child-friendly manner (UN, 1985; 1990a).

A child is considered to be a developing, learning human being who is open to positive socializing influences (PACE, 2014). Guidelines for child-friendly justice (hereinafter 'Guidelines') provide that justice for children should be

accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of a child, respectful of the rights of the child including the right to due process, to participate; and to understand the proceedings, to respect for private and family life and to integrity and dignity (COE, 2011, p. 17).

A large number of principles can cause different interpretations. It is understandable that the interpretation is impacted also by the regional values concerning the up-to-now position of the child in a family as well as in a society. However, the aim of the Guidelines is to create and spread uniform understandings and values for all regions of participating states of the CRC to guarantee the minimum standards a child needs to be protected and develop normally.

The Republic of Estonia is a participating state of the CRC since 1991 and a Member State of the EU from 2004. EU law is a part of Estonian law. In general, Estonian legal acts and policies follow the principles provided by the CRC, other conventions, and to some extent also by EU law.

As a member of the Association of Southeast Asian Nations (ASEAN), the Kingdom of Cambodia has been involved in various discussions, policy development and initiatives pertaining to the development of children. Though not legally binding, since 1983 there have been various official policy documents, declarations, and action plans mentioning children and youth (see ASEAN, 1993; 1998; 2001; 2004a; 2004b; 2007). However, not all of these specifically deal with children's issues. The first document that addresses children's issues is the Resolution on the ASEAN Plan of Action for Children adopted in Manila in 1993 (Mahidol University & Save the Children, 2016, p. 9; see UN, 1990b).

The Plan of Action closely reflects the substance of the CRC particularly on three areas—child survival, child protection, and child development (Mahidol University & Save the Children, 2016, pp. 9, 12). However, the terms such as children rights cannot be found in the document, and the principles of child participation and best interest of the child are not referred to (Mahidol University & Save the Children, 2016).

Cambodia has been a contracting state of the CRC since 1992 (UNTC, 2019). The provisions enshrined under the CRC are applicable in Cambodia as provided under Article 31 of the 1993 Constitution of Cambodia providing that the state “shall recognize and respect the Universal Declaration of Human Rights, and other international human rights conventions related to human rights, women’s rights and children’s rights”. The CRC is considered as a source of law in the courts of Cambodia (CC, 2007; IBAHRI, 2015, p. 23). In the article, ASEAN’s initiatives, policies and regulations have been studied based on CRC and the experiences and lessons drawn from the EU (Axel, 2005, pp. 5–17).

This article focuses on the child’s right to be heard and effective participation in the criminal procedure. As rights of the child are closely connected to each other, this article discusses and reflects, to a smaller extent, other rights children are entitled to. Estonia is chosen as a model EU Member State which should reflect the implementation of the principles of CRC in practice as an EU experience. Cambodia is a Southeast Asian state which is in the path of developing the protection of the children and wants to learn from the EU practice.

The analysis entails empirical and qualitative research. Legal acts, case-law, and legal literature have been used to study, discuss, and explain the rights of children in the criminal procedure.² Estonian and Cambodian legal regulations and practices have been compared to the CRC principles to analyze whether the regulations and implementations of the CRC in these states are in accordance with the principles provided by the CRC and what should be learned or changed in the law or legal practice of the two states.

² The analysis is based on sources published before 2017.

2. The right to be heard and represented

Article 12 of the CRC guarantees the respect of children's right to be heard: children must be able to "express their views freely in all matters affecting them" (UN, 1989, Art. 12) and their views expressed should be given serious consideration by the states "in accordance with the age and maturity of the child." (UN, 1989, Art. 12; see UNICEF, 2007, p. 149; OHCHR & IBA, 2003, p. 407; Husain, 2010, pp. 248–249). The CRC further emphasizes that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." (UN, 1989, Art. 12). Such guarantees should be afforded to children at all stages of the criminal justice process (CRC, 2007, para 12; UNICEF, 2007, p. 170). Krappmann states that the Convention asks not just to listen to the child but consider the views of the child, which means that the "expectations and interests" should "be included in the decisions affecting a child" (Krappmann, 2010, p. 502). To ensure the best interests of the child and the efficient defense for children who are deprived of liberty, Article 37(d) of the CRC grants children the "right to prompt access to legal and other appropriate assistance," specifically in cases of detention. Children are entitled to at least the same and equal rights as adults at all relevant stages of the criminal proceedings (OHCHR & IBA, 2003, p. 411; CRC, 1999, para. 247), but they have also specific rights because of being a child.

Additionally, there are several important obligations for the states. They are bound to respect the right to a fair trial of children in criminal proceedings,³ which includes their right to legal representation, legal assistance and free legal aid (UN, 1989, Art. 40) but also that a child should be "treated in a manner consistent with the promotion of child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society." It is a comprehensive provision that elaborates on states' obligation to guarantee the fair trial rights of children in proceedings through the access to legal representation, legal assistance, and fairness in the criminal justice system (UN, 1989, Art. 40; OHCHR & IBA, 2003, p. 415; UNICEF, 2007,

³ Children's rights concerned the judicial proceedings can be divided into two categories: children, accused of, prosecuted for or sentenced for having committed criminal offences, and children who participate in justice or related proceedings as victims or witnesses.

pp. 170, 565, 613–614). This provision further refers to the states' obligations to uphold children's reintegration and roles in the society by providing minimum procedural guarantees for a fair and quick resolution of judicial proceedings, and establishing alternative sentences for offenders of "the best interests of the child" (UN, 1989; UNICEF, 2007, pp. 613–620; UNICEF, 1998, p. 4).

Article 6 of the European Convention of Human Rights (ECHR) provides access to justice and the right to a fair trial, including the right to be heard, to be informed, to legal defense and to be represented. ECHR's Article 6(1) provides also the right to a fair public hearing or pronouncement; the right to a trial within reasonable time and the right to a trial by an independent and impartial tribunal established by the law. The European Court of Human Rights (ECtHR) has developed a number of guarantees including effective participation and the access to a lawyer (FRA, 2015, p. 204; *Salduz v. Turkey* [2008], para. 51; *Panovits v. Cyprus* [2008]). ECHR's Article 6(3) provides the right "to be informed promptly, in a language which he/she understands", and "if he or she has no sufficient means to pay for legal assistance, to be given it free when the interests of justice so require". All these principles are applicable also in the juvenile procedure.

The European Convention on the Exercise of Children's Rights⁴ also provides children the right to be informed and to express their views in the proceedings and apply for the appointment of a special representative⁵ in the proceeding before a judicial authority affecting her or him meaning that a child should receive all relevant information, be connected and express his or her views and be informed of the possible consequences of compliance with the views and the possible consequences of any decision (COE, 1996, Art. 3 & 4).

From the EU law one should bring out the Article 24(1) of the Charter of Fundamental Rights of the EU (CFREU) providing that children have the right to express their views freely and that such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. Effective participation means that in a procedure, child's age, level of maturity and emotional capacities should be taken into account (FRA, 2015, p. 204).

There are several directives in EU law providing the rules related to children's rights in a court procedure, e.g., the Right to Information Directive (2012/13/EU), a Lawyer Directive (2013/48/EU) and Victims' Directive (2012/29/EU).

⁴ Estonia has not ratified this convention.

⁵ A state can appoint a separate representation instead of persons holding the parental responsibilities (COE, 1996, Art. 9, 10).

Among other principles recognized by the CFREU, the Lawyer Directive promotes how to inform the parents of a child about the procedure and how to communicate with the third party.

Concluding the general provisions regulating the children's rights to be heard and effective participation in the criminal procedure one can see that the principles are similar on the international and the EU level. CRC and other international legal instruments reflect the same understandings and values, and EU law has transferred these principles in its law.

3. Analyses and challenges in Estonia

In 2015, the number of registered crimes committed by adolescents in Estonia was 428. Most of the decisions made by the court were termination of criminal procedure; only 24% was sent to the court. The majority of crimes committed by adolescents were those against property. Crimes against individuals were mainly mistreatment (hitting another child or school bullying). About 60% of misdemeanors consist of alcohol consumption, smoking and small-scale thefts. Compared to children in other European states, Estonian children are more often the victims of assault and more seldom the victims of robbery or theft. Currently, domestic violence is a topical issue, involving also adolescents in the court procedure. In 2015, 500 sexual offences were registered, including buying sex from adolescents, rape, sex with the offspring, and the preparation and enabling of child pornography (MoJ, 2015a, p. 44).

Crimes against family and children have increased. Compared to the number of crimes of 331 in 2014, there were 508 crimes in 2015; thus one can notice the rise of 53%. In 2015, the police exposed 651 adolescent suspected criminals⁶; 624 of them were 14–17 years old and 27 of them were under 13 years of age. Compared to 2014, there were 50% less of suspects of age 14–17. However, in general, in ten years the number of suspects has decreased.

The above data shows that an adolescent in a criminal procedure is not a rare phenomenon. The state deals with it seriously. Many Estonian policies focus on children's interests such as the Violence Prevention Strategy 2015–2020 (MoJ, 2015b), Children and Families Plan 2012–2020 (MoSA, 2011), and the Criminal Policy Development (MoJ, 2010). In 2016, a new Child Protection Act was enforced. Several Estonian legal acts provide for the best interests of the child,

⁶ Estonian population is 1.3 million.

including the Child Protection Act (para. 3), the Family Law Act (para. 123) and the Code of Criminal Procedure (CCP). When a child is in a criminal procedure, then the following legal acts can also be implemented: the Victim Support Act, the Family Law Act, the Obligation Law Act, etc.

Since 2003, training sessions have been organized for child protection officials, teachers, judges, prosecutors, and police officers. Specific competitions are organized to develop the knowledge of schoolchildren (CRC, 2015, pp. 25–26). However, in 2015, the Chancellor of Justice still claimed in her report that state should more effectively inform the police, judges, public prosecutors, attorneys, teachers, doctors and other specialists dealing with children, and also the public about the CRC and its principles. Current communication work is insufficient and non-systematic. The Chancellor of Justice also mentioned that the assessment of the situation of children based on their rights and wellbeing is defective in Estonia (Chancellor of Justice, 2015, p. 10).

In Estonia, a child is a person under 18 years old. Criminal liability begins at the age of 14. However, when deciding a case, taking into account the moral and mental development of a child of 14 to 18 years of age, the court may release the person from punishment and impose the following sanctions: admonition; subjection to supervision of conduct; placement in a youth home; placement in a school for pupils who need special treatment due to behavioral problems, and referral to social programmes (Penal Code, para. 87). Therefore, the aim is not to punish, but rather to raise a child. Punishment is acceptable only in cases when alternative punishment is not applicable. All the aforementioned tools to raise a child need cooperation between the institutions. Also, time plays an important role. It is essential to notice the problems of a child as soon as possible. Even though Estonian police have special juvenile police officers conducting proceedings in crimes committed by minors (CRC, 2015, pp. 48–50) and every district prosecutor's office has prosecutors specialized on minors (CRC, 2015, p. 94), there is a lack of officials, including officials with specific knowledge about children. Inappropriate cooperation between officials and insufficient data exchange between the institutions means that when one institution finishes its work and lets a child go, another institution does not know that there is a child who needs special attention. Law and guidelines can provide several useful requirements; nonetheless, when local governments do not have enough staff, it is impossible to fulfill those requirements (National Audit Office, 2012). Political intent is not enough, policies need appropriate tools, including officials with specific training.

Paragraph 70 of CCP provides that a body conducting proceedings may (if a body conducting the proceedings has not received appropriate training) and in some cases, e.g., domestic violence, sexual abuse, etc., it is obligatory to involve a child protection official, social worker, teacher or psychologist in the hearing of a witness who is a minor.

In general, a child receives information about the proceeding from the officials named above. There is also a brochure explaining a child, in a way he or she can understand, what a criminal procedure is and how things are organized in a court (MoJ, n.d.).

Minor witnesses and victims are heard in a hearing room (a witness under the age of 14 will not be cross-examined in court) which must be decorated for a child. Rooms must have appropriate recording equipment because, if necessary, the hearing of minors is video-recorded. Even more, such a video can be used as evidence in court proceedings when hearing of a minor directly in a court is impossible due to his or her age or mental state (CCP, para. 70 and para 290(1)), or to protect minors from being heard several times (*Criminal proceedings against Maria Pupino* [2005]). The anonymity of minors should be ensured, e.g., not even minor criminals can be identifiable for the public. This also means that public access to the court session can be restricted (CCP, para. 12(1)(2) (3)). (The Estonian Supreme Court has referred in its decision 3-2-1-142-06 of 22 February 2007 to paragraph 12 of the CRC concerning the obligation to hear the child and to give a due weight to the views of the child. This means not just following the procedural deed—hearing a child, but also taking into consideration what a child actually said. From practice, examples of the view of children that have not been collected according to the CRC include: a parent being present at the hearing interfered into the process by helping a child by guiding the answers of the child; a specialist trying to specify what a child had said instead of imparting one-on-one what a child has said; or, a translator changing the questions asked from the child (Kask, 2015, p. 2). Even though these are rare cases, to protect the rights of the child it is important to decide who can participate in the hearing and when a body conducting the hearing makes mistakes talking to a child, an expert has to interrupt the procedure immediately (Kask, 2015, p. 2). It is important to specify the role of the body involved as an expert in the hearing because the participation only does not ensure the rights of the child. Knowledge in theory does not always mean that a person can use this knowledge in practice. Kask suggests in his analysis that there is a need for practice interviews to teach the persons dealing with children in a criminal procedure. He also emphasizes that more guidelines should be compiled, and training should be continuous. (Kask, 2015, p. 2)

As already mentioned above, a body conducting proceedings may involve a child protection official, a social worker, a teacher or a psychologist in the hearing of a witness who is a minor. However, this can be a problem since there is a lack of specialists, especially with specific knowledge concerned the criminal offences (UT, 2013). Also, the principle is that the same specialist follows a child in a whole procedure as the child is already used to this person, which is not always possible since every institution has its own expert.

Persons under 18 years of age have limited active legal capacity. This means that a child is represented by his or her parent(s). Parents have to represent his or her child considering the best interests of the child. However, there can be cases when the interests of the child and the parent are in conflict. In such cases, a separate independent representative has been appointed to represent the rights of the child. So, the child will be represented in all cases.

In principle, Estonian regulation accords to the CRC and EU law reflecting the principles of CRC: child can express his/her views freely, the age and maturity of the child has been considered in the procedure, child has always a representative, child rights are protected despite the fact whether a child is a victim or in detention, judges, prosecutors and other officials in the procedure have obligation for training etc.

In practice, every institution dealing with a child has specific guidelines to facilitate the implementation of the principles provided by the CRC. Training for officials have been organized several times. State policies include the principles ensuring the rights of the child in the CRC. However, the analysis of the practice shows that there are still the problems in this question. The main reason seems to be an inability to apply the theoretical knowledge in practice. Being equally qualified in law and psychology can be also complicated because both specialties need dedication and time to learn. However, the situation can be improved when theoretical training is followed by more effective practical trainings and when both local trainers and foreign experts involve in the trainings. Also, the data exchange and involvement of same specialist in different procedures should be solved.

4. Analyses and challenges in Cambodia

More than 30% of Cambodian total population⁷ are children under the age of 18 since 2012 (Mahidol University & Save the Children, 2016, p. 7; Nicholson, 2012, p. 4). As of October 2015, there were 590 children imprisoned in the twenty-five prisons of Cambodia (Verstraeten, 2016, p. 8), a slight decrease compared to the number of 730 children in 2011 (Reimer, 2015, p. 41) and 700 children in 2010 (GDP, 2010; Travers, 2011, p. 2). However, the number of crimes involving children either as defendants and victims has been on the rise and the percentage of children being held in pre-trial detention for a lengthy period increases overtime (Verstraeten, 2016, p. 8; Fritsch, 2008, pp. 142–143; UNICEF, 2003, pp. 6–7). Particularly, while approximately 30% of 730 children held in prisons were put in pre-trial detention in 2010 (GDP, 2010; Travers, 2011, p. 2), there were about 87% of child suspects held in pre-trial detention in 2014 (CCHR, 2014, p. 5). Unfortunately, no empirical or official data from the government concerning the number of children as detainees, defendants, victims or witnesses is available or accessible to the public (Reimer, 2015, p. 46). The lack of such data and number poses a great challenge to the effort to implement the right to be heard and legal representation for children in Cambodia.

Crimes committed by children were often for economic and financial gains due to poverty and the lack of education (Travers, 2011, p. 2; NGOCRC, 2013, pp. 2–3; Fritsch, 2008, p. 145). These include theft, drug and other minor offences (UNICEF, 2016). Whereas common crimes against children include rape, indecent assault, sexual exploitation and human trafficking (LICADHO, 2000, p. 1; 2001, p. 3; 2004, pp. 1–3; APLE, 2016, p. 1). Among those crimes, rape is the most common recorded crime and the number of rapes against children rose by more than 10% in 2016 (see *Phnom Penh Post*, 2017). Particularly, 205 out of 269 cases against children investigated in 2016 were rape cases against child victims and, compared to 2015, 167 cases out of 244 cases were rape cases against children (*Phnom Penh Post*, 2017). Some rape cases also involved child victims aged as young as two (*Phnom Penh Post*, 2017), four or five years old (LICADHO, 2000, p. 1; 2001, p. 3; 2004, pp. 1–3).

Recognizing the vulnerability of children and the need for the proper administration of juvenile justice, Cambodia has shown its commitments and efforts in addressing the issue (UNICEF, 2014). Various Cambodian policies and mechanisms have been enacted and established to protect children, including the Cambodian National Council for Children (CNCC), the Commune Committee

⁷ The total population of Cambodia is 16 million.

for Women and Children (CCWC), the Policy on Alternative Care for Children (Policy), the Policy and Minimum Standard on the Protection of the Rights of Victims of Human Trafficking, National Plans Against Sexual Exploitation of Children, and the National Plan of Action on the Suppression of Human Trafficking and Sexual Exploitation (Mahidol University & Save the Children, 2016, p. 37). Additionally, various Cambodian laws are in place as measures to protect children in criminal proceedings, including the 2016 Law on Juvenile Justice (LJJ), the 2007 Criminal Procedure Code (CPC), and the 2009 Penal Code (PC).

National legislations in Cambodia also set out provisions relating to the education and training for judges, prosecutors and lawyers (Law on Judges and Prosecutors, Art. 19; Law on the Bar, Art. 8–17; IBAHRI, 2015, pp. 38–39). The Royal Academy of Judicial Professionals and the Lawyer Training Center have developed formal legal trainings on human rights knowledge and matters involving the administration of criminal justice for prosecutors, judges and lawyers (Reimer, 2015, pp. 35–36). However, this professional and legal education is more about trainings as the requirements before being accepted into the judicial professions rather than the continuous in-depth professional and legal trainings for the practicing judges, prosecutors and lawyers in performing their work in the administration of justice (Law on Judges and Prosecutors, Art. 19; Law on the Bar, Art. 8–17; IBAHRI, 2015, pp. 38–39; Reimer, 2015, p. 36). Reports have shown that knowledge, skills, and professionalism of those working in the justice system in Cambodia remain the concerns which make them unable to handle cases effectively, especially in the cases involving children (Reimer, 2015, pp. 19–20; IACPJJ, 2005, p. 35). Particularly, those who are practically working on children’s cases do not possess good knowledge and understanding of the laws, including the CRC and relevant domestic legal provisions, needless to mention the newly enacted LJJ (RWI, 2015, pp. 45–46; see Travers, 2011, p. 6). Consequently, though Cambodia’s child protection system has improved, the actual implementation of child’s rights in criminal proceedings remains critical and calls for further attention (APLE, 2016, p. 3).

In Cambodia, a child means any person below the age of 18 (LJJ, Art. 4). The age of criminal responsibility of children starts at the age of 18 and above (PC, Art. 38; LJJ, Art. 4). However, children from the age of 14 to 18 can also be held criminally responsible if “the circumstances of the offence or character” of the children justify it (PC, Art. 39; LJJ, Art. 7). With the strict exception allowing the imposition of criminal penalty on children aged 14 to 18, Cambodian law also offers protection for children in criminal proceedings by placing child suspects under “supervision, education, protection and assistance.” (PC, Art. 39–41; LJJ,

Art. 11, 65). Moreover, putting children in pre-trial detention shall be used as “a measure of last resort” (LJJ, Art. 5, 39) where alternative sentencing is not available. When in contact with the criminal justice system, children’s right to be heard and representation is also guaranteed in all stages of criminal process, ranging from the police custody, investigating stages and trial stages (CPC, Art. 98, 100, 143, 301; LJJ, Art. 6, 18, 26, 35, 50).

Unfortunately, during the investigating stage, it is rare for children to have access to legal representation, although the laws require them to be legally represented by a lawyer if they do not have one (CPC, Art. 143, 301). Studies have shown that it is common for children in Cambodia to be detained at the police station and put in custody without the access to their parents, legal guardians or lawyers (NGOCRC, 2013, p. 2). In many occasions, judicial police have failed to offer access to legal representation for children after 24 hours of the detention as required by the law (CPC, Art. 93, 100, 143; DANIDA, 2011, p. 9; Travers, 2011, pp. 4–5; CCHR, 2014, pp. 2–5). They failed to inform the children and their parents or legal guardians about their right to have access to legal representation and they also did not take action when there were the requests for lawyers from the child detainees (NGOCRC, 2013, pp. 2–5).

It has also been reported that the judicial police requested for “informal” payment from lawyers, parents or legal guardian of the child detainees to be able to meet the children who were held in the pre-trial detention (DANIDA, 2011, p. 26). Extra fees were also claimed by the law enforcement officials when certain inquiries are requested by the lawyers of the children, including for receiving a complaint or for taking matters to trial to speed up the trial (CHRAC, 2010, p. 14). There have been cases where children were subject to involuntary confessions, tortured, and tried without due process and legal representation (LAC, 2014, pp. 17–19; CRIN, 2013, p. 4; NGOCRC, 2013, pp. 2–3). It is not uncommon to see children being put in prison or detention for a long period of time for offences committed, even the law requires that pre-trial detention of juvenile shall be used as “a measure of last resort.” (Travers, 2011, p. 2; NGOCRC, 2013, pp. 2–3; Fritsch, 2008, pp. 142–143). This has been the case not only for child defendants but also child victims and witnesses (NGOCRC, 2013, p. 9). Similarly, children are informed and given the right to legal representation by the judges at later stages of the criminal proceedings, mostly during trial stages (NGOCRC, 2013, pp. 2–3).

In Cambodia, the guarantees provided for children in the 2007 CPC and the 2009 PC are insufficient given that most of those provisions are brief and ambiguous to serve as proper and effective guides for administering criminal justice for

children (CCHR, 2014, p. 5). The newly enacted LJJ, which aims to establish comprehensive procedural guarantees for children in the criminal justice system, designates experts to work for children, including specially-trained police, judges, prosecutors, social workers and related child-specialists to create child-friendly legal procedures during all stages of criminal proceedings. However, currently, there is no separate juvenile justice system for children involved in criminal proceedings. Particularly, there is no specialized court on children issues, child rehabilitation center, and judicial actors specializing in children cases (Verstraeten, 2016, pp. 21–23).

In practice, children are encouraged or instructed to process their cases in courts by their parents, guardians, village chiefs, police, or NGO staff (Reimer, 2015, p. 55). Reports show that children who have made appearance in court as victims and witnesses of a crime, faced varied experience during the investigation and reporting stages by the police. Some children felt that they were respected and protected, while others felt that their ideas and testimonies were not taken seriously and ignored, and that they were shouted and laughed at (Reimer, 2015, p. 58). Concerning children's experience with their lawyers, many children expressed that they did not have enough time for communication and discussion with their lawyers since they met their lawyers only several days before the actual hearing date (Reimer, 2015, p. 69).

Hearing of children's cases should not be held publicly, and children's anonymity should all be kept in the best interests of the child. Nonetheless, there is a lack of confidentiality in Cambodian courts as a minor victim or suspect's name, age, gender and crime charged are posted in the court schedules available publicly at the courts. Studies show that children were tried with the presence of the crowd of public and strangers, including the perpetrator and media. In some provincial courts, there are waiting rooms equipped with a bed, floor mats, pillows, toys and posters on the walls for children. (Reimer, 2015, pp. 74–76) However, not all children knew about the facilities or enjoyed the same treatment.

Children who are accused of criminal offences and child victims from poor families are able to have access to legal aid through the Legal Aid Department of the Bar Association of the Kingdom of Cambodia (BAKC) (IACPJJ, 2005, p. 35; UNICEF, 2003, p. 22). Despite the existing protections given by relevant legislation and mechanisms, currently there is no specific comprehensive law regulating legal aid in Cambodia. As the demand for legal aid services from the poor and children keeps increasing, the protection of children's right to legal representation provided by the BAKC is insufficient to address the needs (Sarygin, 2010, p. 8). To fill the gaps, legal aid non-governmental organizations

(NGOs) in Cambodia play significant roles in ensuring that children in criminal proceedings are protected in accordance with the principles of the CRC (IBAHRI, 2015, p. 47).

As a state party to the CRC, Cambodia has made efforts in realizing the rights of children to be heard and be represented in the criminal proceedings. Having children's rights protected under its Constitution, legislations and legal reform plans and strategies, Cambodia proves that children's right to be heard and be represented has been on its top agenda for reforms. In principle, Cambodian laws are in accordance with the principles enshrined under the CRC: the state should have to provide supervision, protection and assistance to the child, the child should be heard and represented in all stages of criminal process, the judges, prosecutors and other officials in the process have to participate specific trainings, etc. However, the analysis of practices shows that the implementation of the laws into the practice of Cambodia's juvenile justice system remains a matter of concern: not all children get access to legal representation, they are not treated respectfully and in a child-friendly manner in the hearings, common are "informal" payments to meet a child and extra fees for certain inquiries or to speed up the trial, instead of educating the children who are punished, there is no separate juvenile system for children involved in criminal proceedings, and legal aid for children is inadequate.

One of the main challenges is that key actors in the juvenile justice system, including legal and judicial professionals and social workers, who implement the child protection standards at the ground level, do not possess adequate child-specialized knowledge, skills and professionalism to address the special needs of children. To ensure that the protections of children are sound both in theory and practice, it is crucial that all judicial officials involved in children's cases are provided with compulsory and continuous in-depth trainings on children's rights and their special needs in the juvenile justice system.

5. Conclusion

The right to be heard and be represented in the criminal proceedings which is enshrined under the CRC has profound impacts on children who find themselves in the criminal justice system. It is a fundamental right and an essential aspect of the right to a fair trial and access to justice within a society based on the rule of law. CRC as the most important international legal instrument guaranteeing the protection of children's rights and other international legal instruments following

the principles provided by the CRC in the protection of the child provide a sufficient legal base for the protection of a child in the criminal procedure. Also EU law reflects these principles guaranteeing for a child in an EU Member State as if a double-protection.

The analysis of Estonian regulations and practice showed that it accords to the CRC very well: a child can freely express his/her views, the age and maturity of the child has been considered in the procedure, a child always has a representative, a child's rights are protected despite the fact whether the child is a victim, defendant or witness, judges, prosecutors and other officials in the procedure have obligation for training, etc. The only problem is related to the insufficient knowledge about child psychology by the officials dealing with a child in a criminal procedure. There are trainings but results could be better.

Cambodian legal regulations also follow the CRC, the policies consider seriously the protection of the child in the criminal procedure, being the top agenda for the reforms. However, in the practice there are many infringements. Not all children get access to legal representation, they are not treated respectfully and in a child-friendly manner in the hearings, common are "informal" payments to meet a child and extra fees for certain inquiries or to speed up the trial, instead of educating the children who are punished, there is no separate juvenile system for children involved in criminal proceedings, and legal aid for children is inadequate.

Both countries also face similar challenges in the lack of child-specific knowledge and skills of officials involved in children cases, including judicial police, prosecutors, judges and lawyers. Even though provisions exist in providing the obligation of certain knowledge and of organized training of individuals involved, this is not enough. There is a pressing need for more training to increase their capacity and ensure that they are well-trained with practical knowledge and skills in handling children's cases. This involves technical support of both local and international experts in the field.

Acknowledgments

The authors would like to thank Ms. Ella Dawn G. Paterno for comments on an earlier draft.

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