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Psychologist's Institute in the Context of a Multidisciplinary Approach to Juvenile Justice

The article is devoted to presenting the role and importance of the psychologist's institute as a guarantor of a child's rights protection in the implementation of a child's right to justice in civil proceedings and offers recommendations in terms of strengthening and increasing the efficiency of the said institution.

Keywords: *psychologist, juvenile justice, child-friendly justice, multidisciplinary approach, umbrella rights of a child.*

1. Introduction

The field of juvenile justice is quite broad and at the same time very delicate. Since the rights of minors are often violated during the administration of justice, juvenile justice systems should strive to reduce and prevent the risks of violations of the rights of minors. In many states, juvenile justice effectively replaces the protection and welfare systems for disadvantaged, impoverished, orphaned, or abandoned children.¹ For these reasons, during the last decades, the international community has drafted and continues to draft legal documents for the juvenile justice system.

The road to European integration poses an array of challenges for Georgian legislation and judicial practice. One of them is the harmonization of Georgian legislation and judicial practice in the field of juvenile justice with the international and, therefore, European standards recognized by the European Union. The founder of the latter is the Convention on the Rights of the Child², although it cannot establish the exact procedural requirements for ensuring a specific right. The Convention establishes a standard to be shared by national laws.

Until 2019, the Georgian legislation did not reflect the basic elements of child-friendly justice in the areas governed by civil and administrative law. This gap was filled significantly in 2019 with the adoption of the Code of Children's Rights (hereinafter – CCR).³ It recognized that programs for the

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¹ *Sahovic N. V., Doek E. I., Zermatten J.*, The Rights of the Child in International Law (Rights of the Child in a Nutshell and in Context: all about Children's Rights), Bern, 2012, ed. Translated by *Aleksidze L., Khutsishvili, K.*, Tbilisi, 2015, XIX, 341-342 (In Georgian).

² UN Convention on the Rights of the Child of November 20, 1989, Legislative Herald of Georgia, <<https://matsne.gov.ge/ka/document/view/1399901?publication=0>> [29.01.2024], ratified by Georgia in 1994, effective since 02/07/1994 (In Georgian).

³ Law of Georgia “Code of Children's Rights”, Legislative Herald of Georgia, 5004-I, 20/09/2019, <<https://matsne.gov.ge/ka/document/view/4613854?publication=4>> [29.01.2024] (In Georgian).

protection and support of children's rights should be implemented by the principle of prioritizing the best interests of the child, and imposed an obligation on state bodies, individuals, and legal entities to determine the best interests of the child and carry out their mandatory assessment in compliance with the basic criteria established by the CCR. **One of these criteria and the most important one is the assessment and consideration of the child's psychological and physical well-being, and legal, social, and economic interests by specialized persons with a multidisciplinary approach.**⁴ Achieving the mentioned goal is hardly conceivable without the work of a specialized, strong, and well-organized institution of psychology. Judges or others involved in the process cannot be expected to “know it all”, hence, people who have acquired specialized knowledge through education and experience, who are often called upon to share opinions in court or before legislatures, are welcome.⁵

The purpose of this work is to present the role and importance of the institution of psychologists as the guarantor of the basic rights of a child and to promote the strengthening and effectiveness of this institution.

2. The Main Legal Source of the European Standard of Juvenile Justice. International Instruments

“The 20th century left an indelible mark in the history of mankind. Finally, children were recognized as subject to rights that should be treated with dignity and respect”⁶ and history, with the adoption of the Convention on the Rights of the Child⁷ under the auspices of the United Nations, was divided into pre-1989 and post-1989 eras. With a new perception, a child was presented as a worthy, capable person, who is endowed with the ability to protect their own rights.

The 1989 Convention on the Rights of the Child is the fruit of a consensus reached through a process aimed at establishing high standards. It is the primary European standard for the rights of minors and has been ratified by 195 states⁸. It explained and recognized the basic rights of children –

⁴ Law of Georgia “Code of Children's Rights”, Legislative Herald of Georgia, 5004-I, 20/09/2019, <<https://matsne.gov.ge/ka/document/view/4613854?publication=4>> [29.01.2024]. Article 5 (5, 7) (In Georgian).

⁵ Okoye, J. U., Oraegbunam, I. K., Some pathways for psychology's influence on legal system. African Journal of Law and Human Rights, 3(1), 2019, 46.

⁶ Sahovic N. V., Doek E. I., Zermatten J., The Rights of the Child in International Law (Rights of the Child in a Nutshell and in Context: all about Children's Rights), Bern, 2012, ed. Translation by Aleksidze L., Khutsishvili K., Tbilisi, 2015, XV, evaluation of Dr. Jan Gehl, Chairman of the UN Committee on the Rights of the Child, in the foreword of the publication. (In Georgian).

⁷ UN Convention on the Rights of the Child of November 20, 1989, Legislative Herald of Georgia, <<https://matsne.gov.ge/ka/document/view/1399901?publication=0>> [29.01.2024], ratified by Georgia in 1994, entry into force 02/07/1994. (In Georgian).

⁸ 196 states have signed the UN Convention on the Rights of the Child; however, the United States of America has not yet ratified it. Three additional acts were adopted to supplement the Convention: The Optional Protocol to the Convention on the Rights of the Child “On Child Trafficking, Child Prostitution and Child Pornography” (2000), the Optional Protocol to the Convention on the Rights of the Child “On the Participation of Children in Armed Conflict” (2000) and the Rights of the Child Optional Protocol of the Convention “On Communication Procedures” (2011). <<https://www.unicef.org/child-rights-convention/frequently-asked-questions>> [29.01.2024].

persons under the age of 18. Since then, a number of legal acts have been adopted by the international community, which directly relate to children's rights and access to justice in the context of civil and administrative legislation: the UN “Convention on Persons with Disabilities” (2008)⁹; **General comments of the UN Committee (guidelines):** General Comment of the Committee on the Rights of the Child No. 5¹⁰ (2003) “General Measures for the Implementation of the Convention on the Rights of the Child (Articles 4, 42 and 44 (6)); General Comment of the Committee on the Rights of the Child No.12¹¹ (2009) “The right of the child to be heard”; General Comment No.14¹² of the Committee on the Rights of the Child (2013) “The right of the child to have his or her best interests taken into account”; General Comment No. 6¹³ (2005) of the Committee on the Rights of the Child “Regarding unaccompanied and separated children” Treatment outside the country of origin”; Council of Europe Guidelines on the Protection of Individuals with Automatic Processing of Personal Data¹⁴; Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children¹⁵; Child-Friendly Justice Guidelines of the Council of Europe¹⁶, etc.

3. The Main Legal Source of Juvenile Justice in Civil Disputes as per Georgian Legislation

After the Constitution of Georgia, the UN Convention on the Rights of the Child stands hierarchically higher than all the laws and organic laws of Georgia¹⁷. The Constitution of Georgia defines provisions on “physical education of children and youth and their involvement in sports”, “right to education” and “protected recognition of the rights of mothers and children” (Articles 5, 27,

⁹ UN Convention on Persons with Disabilities (2008), ratified by Georgia in 2013. <<https://matsne.gov.ge/ka/document/view/2334289?publication=0>> [29.01.2024] (In Georgian).

¹⁰ General Comment No. 5 of the Committee on the Rights of the Child (2003) “General Measures for the Implementation of the Convention on the Rights of the Child” (Articles 4, 42 and 44 (6)) <<https://digitallibrary.un.org/record/513415?ln=en>> [29.01.2024].

¹¹ General Comment No. 12 of the Committee on the Rights of the Child (2009) “The right of the child to have his views heard” <<https://digitallibrary.un.org/record/671444?ln=en>> [29.01.2024].

¹² General Comment No. 14 of the Committee on the Rights of the Child (2013) “The right of the child to have his or her best interests taken into account” <<https://digitallibrary.un.org/record/778523>> [29.01.2024].

¹³ General Comment No. 6 of the Committee on the Rights of the Child (2005) “Treatment of Unaccompanied and Separated Children Outside the Country of Origin” <<https://digitallibrary.un.org/record/566055?ln=en>> [29.01.2024].

¹⁴ Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data <<https://matsne.gov.ge/ka/document/view/1244845?publication=0>> [29.01.2024]. Entered into force 01.10.1985; Ratified by Georgia 14.12.2005; (In Georgian)

¹⁵ Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence <<https://rm.coe.int/168046d3a0>> [29.01.2024].

¹⁶ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice <<https://rm.coe.int/16804b2cf3>> [29.01.2024] – Adopted by the Committee of Ministers of the Council of Europe on November 17, 2010.

¹⁷ Organic Law of Georgia “On Normative Acts” Legislative Herald of Georgia, 1876, 09/11/2009, <<https://matsne.gov.ge/ka/document/view/90052?publication=37>> [29.01.2024] (Article 7(3)) (In Georgian).

30). However, not only do these specified norms create solid constitutional guarantees for the protection of the rights of the child as an independent subject bearing rights.¹⁸

The development of a child-friendly justice system in Georgia began in 2009 with the adoption of the Juvenile Justice System Reform Strategy, which is an annually updated document¹⁹. In 2015, the Code of Juvenile Justice was adopted²⁰, which established guarantees for the protection of the best interests of minors in contact with the criminal justice system and took into account: professionals' mandatory specialization, multidisciplinary approach, and consideration of individual needs when making decisions.

In 2019, the CCR clearly and unambiguously recognized a child's right to justice without age restrictions (Art. 13.1): a child has the right to apply to the court and/or relevant administrative body for the protection of their rights and to benefit from a justice system that is for the child: accessible, age-appropriate, easily understandable for a child, fast, fair, consistent, adapted to their rights and needs, showing respect for the child's dignity and private life.

CCR (Art. 3, Art. 69) defined a child-friendly justice system as a system that ensures respect and effective realization of all the rights of the child based on the principles of the child's participation, prioritizing their best interests, respecting the dignity of the child, inadmissibility of unequal treatment, and the rule of law. It is implemented by specialized professionals and is accessible to the child, appropriate for their age, easy for them to understand, fast, fair, coherent, and adapted to their rights and needs.

The right to a fair trial recognized by the Convention on Human Rights and Fundamental Freedoms (Article 6) and guaranteed by the Constitution of Georgia (Article 31) applies, naturally, to minors as well. However, it, in turn, requires detailed procedural guarantees. The Civil Procedure Code is also the main legal source of juvenile justice in civil disputes²¹. However, a number of issues on how to realize the rights of the child in civil and administrative justice are not procedurally provided for in the procedural codes of the respective areas. Thus, a set of issues depends on the court's opinion and established practice. While it is true that such an approach might better take account of the peculiarities of a specific child and individual case, it also makes the justice process unclear for the interested parties. Establishing clear and unambiguous procedural rules is especially important for minors so that they can even independently defend their rights and interests in court without obstacles.

¹⁸ It is desirable to strengthen the basic principles of protection of children's rights in the Constitution of Georgia so as to foster the accountability of the state and create a constitutional guarantee of effective protection of rights.

¹⁹ Criminal Justice System Reform Strategy of the Interagency Coordinating Council for the Reform of the Criminal Justice System, 2015, Ministry of Justice of Georgia, <<https://justice.gov.ge/files/ZZVEkJ2awXHd.docx1>> [29.01.2024], 71 (In Georgian).

²⁰ Law of Georgia "Juvenile Justice Code", 3708-IIIb, 24/06/2015 (In Georgian). <<https://matsne.gov.ge/ka/document/view/2877281?publication=22>> [29.01.2024].

²¹ Law of Georgia "Civil Procedure Code of Georgia", Legislative Herald of Georgia, 1106, 14/11/1997, <<https://matsne.gov.ge/ka/document/view/29962?publication=149>> [29.01.2024] (In Georgian).

4. Principles of Child-friendly Justice. Umbrella Rights

The UN Committee on the Rights of the Child has recognized some of the rights of the child, due to their importance, as principles for dealing with issues related to the child, without the protection of which any other child's rights cannot be fully realized: when the Committee on the Rights of the Child was establishing guidelines for the submission of its initial report, it created a cluster called “General Principles” and combined Four rights recognized by the 1989 Convention: Prohibition of discrimination – Article 2 of the Convention; The right to respect the true interests of the child – Art. 3; Right to life, survival and development – Art. 6; The right to respect the child's views – Art. 12. For the exercise of any right provided for by the Convention, it is important to determine, at the same time, whether the mentioned principles are respected. This also applies to the implementation of justice. They are substantive and procedural rights and are referred to as umbrella provisions²².

CCR recognized the umbrella provisions declared by the Convention as basic principles of justice. As principles of proceedings, it fostered the following: participation of the child (Art. 78); giving preference to the best interests of the child (Art. 75, 81); respecting the dignity of the child; inadmissibility of unequal treatment (Art. 74); multidisciplinary approach and participation of specialized professionals (also Art. 72, 73); respect for personal life – protection of confidentiality (Art. 71); priority consideration of cases related to the child's interests (Art. 76); Access to information for children (Art. 70); the child's right to legal assistance (Art. 79, 70, 74); the child's right to representation (Art. 80).

5. Multidisciplinary Approach and the Principle of Specialized Professionals’ Participation

Civil litigation with a multidisciplinary approach serves to ensure the right to justice in the context of umbrella rights. This is determined by the content of the umbrella rights – principles. As mentioned above, all the rights of the child are considered “under the cover” of the umbrella principles. Accordingly, it is important to protect basic rights through the imminence of the psychologist's involvement and the use of the psychologist's special knowledge. The specialization of a psychologist is mandatory for the protection of all these four rights.

Regardless of whether or not a specific norm on civil proceedings provides for a multidisciplinary approach in resolving the issue, Art. 69²³, Art. 72²⁴ and Art. 73²⁵ apply to them as well (for instance, the Civil Code provides for the involvement of social services when deciding on the place of residence of children and their support (Art. 1128), but there is no reference to social services, for example, in the norm of limiting parental rights and duties (Art. 1205), Also in the norm of

²² Committee on the Rights of the Child General Comment No. 12 (2009) “The Right of the Child to Have Their Views Heard”, <<https://digitallibrary.un.org/record/671444?ln=en>> [29.01.2024].

²³ Basic principles of child-friendly justice.

²⁴ A multidisciplinary approach.

²⁵ Specialization of professionals.

deprivation of parental rights and duties (Art. 1206), however, the requirements of Art. 69 and Art. 72 of the Civil Code must be observed.

a. Content of the Multidisciplinary Approach

The multidisciplinary approach includes the assessment of the child's psychological, social, emotional, and physical health.

b. Purpose of the Multidisciplinary Approach

The purpose of the multidisciplinary approach is to conduct legal proceedings taking account of the child's age and maturity (an easy-to-understand, consistent process for the child), to avoid repeated questioning and re-victimization of children, and to determine their best interests.

c. Participants in the Multidisciplinary Approach

Social workers, experts, medical experts, psychologists, pediatricians, police officers, prosecutors, and lawyers participate in the application of the multidisciplinary method (Art. 72 of the CCR).

d. Procedural Guarantee and Substantive Legal Basis of Multidisciplinary Approach

A number of provisions in procedural legislation create procedural guarantees for a multidisciplinary approach. For example, Art. of the Code of Civil Procedure. 204 – Invitation of a specialist, Art. 162 – appointment of expertise; Art. 354 – Determining the circumstances of the case at the initiative of the court.²⁶

The legal basis for using a multidisciplinary approach is also provided in a number of norms of the Civil Code of Georgia²⁷. E.g., Art. 1128. Deciding the children's place of residence and their maintenance – 1. If the spouses have not agreed on the place of residence of their children and on the funds to be paid for their maintenance after the divorce, the court shall be obligated, when granting the divorce, to determine which parent is to be awarded custody of the child, as well as the amount of the maintenance (alimony) and the parent responsible for its payment. 2. In the cases provided for in this article, if necessary, a guardianship and custodianship authority shall be involved in the proceedings. Art. 1198¹. The right of a minor to protection – 1. A minor shall have the right to be protected from their parent/legal representative who abuses the minor's rights. When a minor's rights and legitimate interests are breached, including when both or one of the parents fails to fulfill or improperly fulfills the duties related to the upbringing and education of the child, or abuses a parental right, the minor may independently apply to guardianship and custodianship authorities. Art. 1200. Raising children by mutual agreement of parents – 1. Parents shall decide all matters relating to the upbringing of children by mutual agreement. 2. When parents are in disagreement, a court shall settle the disagreement with the participation of the parents. In that case, the right of a parent to be a representative of the child in a legal dispute shall be suspended. A guardianship and custodianship authority shall appoint a child's representative who is to represent the child's interests in court

²⁶ Law of Georgia “Civil Code of Georgia”, Legislative Herald of Georgia, 1106, 14/11/1997, <<https://matsne.gov.ge/ka/document/view/29962?publication=149>> [29.01.2024] (In Georgian).

²⁷ Law of Georgia “Civil Code of Georgia”, Legislative Herald of Georgia, 786, 24/07/1997, <<https://matsne.gov.ge/ka/document/view/31702?publication=117>> [29.01.2024] (In Georgian).

proceedings. Art. 1201. Place of residence of a minor child in case of divorce of the parents – 1. When parents live apart due to divorce or for any other reason, they shall agree on who will have the right to decide with whom the minor child is to live. 2. When parents disagree, the dispute over the custody of the minor shall be resolved by a court, taking account of the child’s interests. In that case, the right of a parent to be a representative of the child in a legal dispute shall be suspended. A guardianship and custodianship authority shall appoint a child’s representative who is to represent the child’s interests in court proceedings. Art. 1242. Deciding on adoption – based on an adoptive parent’s application, a decision on adoption shall be made by a court according to the place of residence of the adoptive parent or the prospective adoptee after the guardianship and custodianship authority provide its report.

e. Determining Factors of Specialization of Professionals Participating in the Process

The following factors determine the need for specialization of professionals participating in the litigation process: provision of litigation by persons with special knowledge; the need to have personal and professional compliance with the obligations imposed by the participants; the need to avoid risks and dangers of any form of child abuse in the relevant field; Ensuring the use of a multidisciplinary approach method.

f. Participants of The Institutional System of Specialization

The institutional system of specialization includes persons working with children and working on children's issues: lawyers, prosecutors, police officers, judges, mediators, social workers, psychologists, and other specialists.

g. The Principle of Multidisciplinary Approach and International Practice

Legislations in almost 16 European countries reinforce the obligation to comprehensively study the situation of the child participating in civil and administrative court proceedings. For this purpose, the child's condition is assessed from the legal, psychological, social, emotional, physical health, and cognitive perspectives. This multidisciplinary approach functions as a formal collaboration procedure between the court and professionals from various state agencies working on children's issues²⁸.

For instance, the Austrian Civil Code recognizes a multidisciplinary approach as one of the means of determining the best interests of the child. It establishes that the “welfare of the child” should be the guiding principle of decision-making and establishes the main evaluation criteria for the judge: physical and psychological protection and safety of the child; respect and acceptance of the child by the parents; promoting the child's skills, interests and development; child's opinions; In case of enforcement of the decision against the will of the child, to prevent the expected harm to the child; Avoiding any kind of violence, abuse and danger to the child; Ensuring that the child maintains contact with both parents; The conflict between the senses of loyalty and guilt in the child should be avoided; respecting the interests and rights of the child, their parents and the environment; Multidisciplinary approach to child witnesses and victims²⁹.

²⁸ See the report “Child-friendly Justice. Study of Legislation” developed within the framework of the joint project of EU and UNICEF – “Improving Access to Justice and Developing a Child-Friendly Justice System in Georgia” <<https://www.unicef.org/georgia/media/1481/file/Legislative%20Analysis%20GEO.pdf>> [10.01.2024] (In Georgian).

²⁹ Ibid.

environment and, on the other hand, separation from the mother. In addition, in order to determine the child's place of residence, it is necessary to study such criteria as the child's attachment to one of the parents, the child's age, the parents' moral and other personal qualities, the child's relationship with both parents, the capability of creating appropriate conditions for the upbringing and development of the child, the family situation of the parents living separately.”... “Thus, taking into account the above-mentioned criteria, the child's attachment to one of the parents shall be under focus. The court should examine according to the psycho-pedagogical expertise, towards which parent the child feels more sympathy and staying with whom would be more beneficial for their mental development. Undoubtedly, the child's relationship with the parent is not decisive, yet the mentioned criterion, together with other criteria, requires a relevant observation.” (see decision of the Supreme Court of Georgia №1062-996-2012, 22.01.2013).³⁵

*“According to the first paragraph of Article 3 of the Convention on the Rights of the Child of November 20, 1989, in all actions against children, regardless of whether they are addressed by state or private institutions working on social security issues, courts, administrative or legislative bodies, attention is primarily paid to ensuring the best interests of the child... In the Chamber of Cassation's opinion, when it comes to determining a minor's place of residence and regulating relations with parents who live separately, the conclusions made by persons working on minors' cases or relevant specialists (psychologists) require special caution. In this context, the Court of Cassation will focus on the **case materials**.” ... “There is no relevant conclusion of a specialist that would describe and analyze the situation and emotional feelings of A, who was left alone, which would have allowed us to judge the best interests of the children. From this point of view, the Chamber of Cassation also considers the fact that from the explanations given by the psychologist to the district court, it is not clear at all what psychological problems the other child may cause by assigning one of the children to the father; The psychologist recommends parents to take responsibility for the formation and restoration of children's relationship with their parents, to avoid the intervention of third parties, which will bring negative consequences, and at the same time, to eliminate possible negative effects expected from adaptation process to the environment, the psychologist deems it important that the environment itself is not violent.”³⁶*

*“In the decision of the court of the second instance, there are a set of procedural flaws, a clear example of which is that there is no recommendation from the social service, as well as a **psychologist's report** on to what extent it would be appropriate for the minor to stay with the father at night if the interruptions in the relationship between father and son continue in the future.”³⁷*

In the cases above, reference to the application of Article 354 of the Civil Procedure Code in the context of using a multidisciplinary approach in the litigation is noteworthy: Unlike other categories of

³⁵ Decision №1449-1369-2017 of April 20, 2018, of the Civil Affairs Chamber of the Supreme Court of Georgia. (In Georgian).

³⁶ Decision №53-51-2016 of July 6, 2016, of the Civil Affairs Chamber of the Supreme Court of Georgia. (In Georgian).

³⁷ Decision №434-2021 of July 30, 2021, of the Civil Affairs Chamber of the Supreme Court of Georgia. (In Georgian).

civil cases, family legal disputes are saturated with inquisitorial elements, therefore, as per Article 354 of the Civil Procedure Code, the legislator allows for the circumstances of the case to be determined at the court's initiative.³⁸

Emphasis on the need for a higher degree of psychologist involvement in the context of a multidisciplinary approach can be inferred from the decision of the European Court of Human Rights "G.S. v. Georgia" (Complaint N2361/13. July 21, 2015)³⁹, where the Strasbourg Court focuses on the assessment of the child's medical report, psychological and social services reports by the national courts: §59. *As for the evaluation of the reasoning of the national courts in the light of Article 8 of the Convention, "the court ignored the risks identified in the same report (meaning medical, psychological and social service reports) should the boy have remained in Georgia." It should be noted that according to the medical report of January 12, 2011, the boy was diagnosed with adjustment disorder (see § 12). Then, the social workers concluded in the report of 12 April 2011 that the boy had a lack of relationship problem with his parents (see § 17). The psychologist went further and noted in the report of May 3, 2011, that, in addition to the problem of insufficient relationship with his parents, L. had gotten psychological trauma "due to the current difficult and uncertain situation" (see § 19). The Supreme Court has indeed recognized the lack of contact problem with parents (see § 26). However, in determining the boy's best interests, ignored the said findings. Such an approach is difficult to correspond with the requirement of a detailed investigation of the child's situation, which is enshrined in the Hague Convention and also in Article 8 of the Convention (see Karrer, cited above, §§ 46-48 and İlker Ensar Uyanık v. Turkey, no. 60328/09, §61 -62, 3 May 2012). "There was no expert opinion in the case indicating that the boy's return to Ukraine would exacerbate the boy's psychological trauma (compare Neulinger and Shuruk, §143, and X. V. Latvia, § 116, both cited above). Unfortunately for the court, none of the reports offered an analysis of the probable consequences of L.'s return to Ukraine; There was neither the examination of possible related risks (see Karrer v. Romania, no. 16965/10, § 46, 21 February 2012, and Blaga v. Romania, no. 54443/10, §82, 1 July 2014). The psychologist's report only mentioned that the boy suffered psychological trauma and needed help (see § 19)," (§55) "The court considers that the above-mentioned shortcomings, expert examinations and other evidence of the case could not lead the Supreme Court to a sufficient and appropriate to justification in its decision. In addition, the latter failed to correctly determine L.'s best interests based on the specific circumstances of the case. It failed to establish a fair balance between the conflicting interests of the parties as well. (§62)⁴⁰.*

³⁸ Regarding the reasoning for using this norm for determining the best interests of minors, see the decision of the European Court of Human Rights of February 2, 2016, N. Ts. and others v. Georgia. <<https://www.matsne.gov.ge/ka/document/view/3295053?publication=0>> [29.01.2024] (In Georgian).

³⁹ The decision of the European Court of Human Rights "G.S. v. Georgia", complaint N2361/13. July 21, 2015 <<https://matsne.gov.ge/ka/document/view/3276261?publication=0>> [29.01.2024] (In Georgian).

⁴⁰ See Also §57, 58 of the decision: "57. Based on the above, as well as taking account of the facts that no examination was conducted on the consequences of L.'s father's separation from his family, as well as the fact that the boy's future living conditions in Ukraine were not considered, the court determines that the government's argument on possible psychological trauma should L. had been separated from his father and his father's family was wrong. 58. Thus, it appears that there was no direct and convincing evidence in the case to assume a "serious risk" of the child's return to Ukraine. Given these circumstances, it is not

The importance of a multidisciplinary approach in terms of the exercise of the child's right to be heard, the evaluation of the child's development and best interests, and the violation of “procedural justice” by the national courts in this direction is indicated in the Strasbourg court decision on *N. Ts. and others v. Georgia*: §81. *“The enjoyment of parent and child being together is a fundamental element of family life, and it is in the best interests of children to be provided with the means to develop in a perfect and harmonious environment.”* However, in the assessment of their best interests, the local courts failed to pay adequate attention to one important fact: the boys did not want to return to their father. §82. *In this regard, the Court refers to several reports that establish that the maternal family's negative attitude towards G.B. was a factor in shaping the boys' relationship with their father. But however manipulative the mother's family may have been, the evidence presented to national courts regarding the children's hostility towards their father was unequivocal. The latest report of the social workers of January 4, 2012, mentions the particularly severe degree of alienation of the children from their father (see § 27-28).* §83. *In addition, the court deems the reports of various psychologists crucial, as they point out the potential danger to the boys' mental health in the event of their forcible return to G.B. (see § 14-15, 29). Under these circumstances, taking such a drastic measure without considering appropriate transition and preparatory measures to help rebuild the relationship between the boys and their estranged father appears to be against the children's best interests.”*⁴¹

7. The Qualification of the Specialists and the Standards of Ethics

According to the tenth chapter of the CCR and Civil Procedure Code (Articles 5¹, 162, 204), a psychologist can become a participant in the process based on the court's reasoned ruling, at the court's initiative, and/or at a party's request. Such a ruling cannot be appealed separately, and as per Art. 377 of the Civil Procedure Code shall be appealed together with the final decision. A psychologist may be involved by the guardianship and custodianship body while investigating the issue within their authority to make the relevant (to be submitted to the court) conclusion. The court is entitled to invite this psychologist to the courtroom as a specialist.

By legislation, the “State Care and Assistance Agency for Victims of Trafficking” is considered the successor of the legal entity under public law (LEPL) “Social Service Agency” in terms of guardianship and care, as well as international adoption, within the limits of the powers granted to it by Georgian legislation.

The agency shall ensure the functions of the central and local guardianship and custodianship authority provided by the legislation on the territory of Georgia, as well as – the function of the central guardianship and custodianship authority for adoption in another state, implement the state policy in guardianship, care, support, adoption and foster care, carry out and coordinate the processes of

entirely clear why, on what specific grounds, the national courts relied on and concluded that there was a serious risk of psychological or physical trauma, or even unbearable conditions, if the boy was returned to Ukraine (compare Maumousseau and Washington, cited above, §§ 63 and 74)”.

⁴¹ The decision of the European Court of Human Rights of February 2, 2016, *N. Ts. and others v. Georgia*. <<https://www.matsne.gov.ge/ka/document/view/3295053?publication=0>> [29.01.2024] (In Georgian).

guardianship, care, support, adoption and foster care, as well as implement the functions assigned by the legislation on family disputes; ensure the functions of the central and local guardianship and custodianship authority provided for by the legislation on the territory of Georgia, as well as ensure the function of the central guardianship and custodianship authority for the purposes of adoption in another state; legal (if necessary, legal protection of interests) and/or psychological-social assistance/rehabilitation and/or organization/reception of medical services within the framework of a shelter and/or crisis center and/or other similar services for victims of human trafficking, violence against women and/or domestic violence, and/or sexual violence (with their dependents); promotion of reintegration into family and society, provision of interpreter and/or other services; in the case of round-the-clock services, provision of temporary safe accommodation, food, hygiene and other means of primary use and, if necessary, clothing; Organization/receipt of legal (if necessary, protection of legal interests) and/or psychological-social assistance and/or medical assistance within the services of the crisis center for alleged victims of human trafficking (trafficking), violence against women and/or domestic violence, sexual violence, together with their dependents, provision of interpreter and/or other services, as well as in the case of round-the-clock services, provision of temporary safe accommodation, food, hygiene and other means of primary use and, if necessary, clothing⁴². **Thus, in certain cases**, the agency, as per the needs of court proceedings, ensures the participation of its staffer psychologist in them. However, specifically, neither the role and functions of psychologists nor their specialization are established here. Accordingly, the challenges related to the psychologist's institution are uniform, regardless of whether the court invites them at its initiative or the initiative of a participant in the process.

a. Qualification

Despite the importance of the psychologist's participation in juvenile justice and their evaluation, the minimum qualification requirements for psychologists involved in legal proceedings in the context of a multidisciplinary approach have not been established. There is neither professional training nor a control body for psychologists adapted to court needs. In addition, the small number of psychologists involved in juvenile proceedings is particularly concerning⁴³. At the same time, within the framework of continuing education of candidate judges and current judges, attention should be

⁴² 21. Regulation of LEPL State Care and Assistance Agency for Victims of Trafficking <https://atipfund.moh.gov.ge/res/docs/saagentos_debuleba_2020.pdf> [29.01.2024].

⁴³ It is worth thinking about whether it would be justified, at least until this problem is solved systematically, to share the practice of some countries, where in some cases, a psychologist-consultant with appropriate specialization appears in the role of a court employee and helps the court in conducting communication with the participant of the juvenile process, or answers the questions of the judge/assistant immediately if necessary... This approach can be used predominantly in the courts of first instance. Obviously, in this regard, it would be interesting to hear the opinions of both the judges and the corps of psychologists. In addition, see Bartol, C.R. and Bartol, A.M. (2008). *Introduction to Forensic Psychology. Research and Application*. (2nd edition). Barnes & Nobles, NY; Veera Raghavan, Vimala (2009). *Handbook of Forensic Psychology*. Select Scientific Publishers, New Delhi.

paid to developing the knowledge and skills that will help them become critical “users” of psychologists' evaluations.⁴⁴ In this regard, the use of the interdisciplinary teaching model is justified.

The need to enhance the use of social science by the legal system is recognized in modern doctrine: One way to increase the use of social science by the legal system is through education. Exposure to social science is likely to make lawyers and judges more receptive to social science research and psychologists' testimony. Moreover, judges and lawyers are likely to become more critical of evidence that lacks a weak or solid scientific basis. Legal training for psychologists is likely to have beneficial effects. Psychologists with a sophisticated understanding of the law are better equipped to ask questions and find answers that benefit the legal system. They may be able to communicate their findings more clearly to lawyers.⁴⁵

b. Specialization

International standards give special importance to the specialization of persons working with children in the field of justice, as well as to the standard of determining their qualifications⁴⁶.

The Council of Europe recommends that member states create a system of judges and lawyers specialized in children's cases and develop courts that take into account a combination of legal and social elements for the benefit of children and their families. The Council of Europe guidelines explain that all professionals working with children should receive the necessary interdisciplinary training on children's rights, different age needs, and child-friendly processes. They should also be trained in communication methods with children of any age and development, especially concerning children in vulnerable situations.⁴⁷

CCR establishes the specialization of persons producing the multidisciplinary process and explains that the juvenile justice process is carried out only by persons specialized in it (Art. 73).

Specialization of professionals is also required by the Civil Procedure Code:

In the process related to the protection of the rights of minors, a judge, a lawyer, a social worker, and/or another appropriate invited expert based on the needs of minors who are specialized in the methodology of the relationship with minors and other related matters shall be involved- Art. 5¹; A

⁴⁴ *Okoye, J. U., Oraegbunam, I. K.*, Some pathways for psychology's influence on legal system. *African Journal of Law and Human Rights*, 3(1), 2019, 51, "...in the United States, new efforts are underway to educate judges on scientific reasoning and to train them to be critical consumers of scientific research. In response to the US Supreme Court decision, the US Federal Judicial Center (a research branch of the US federal courts) has established several training programs to help judges responsibly fulfil their expanded gatekeeping role..."

⁴⁵ *Okoye, J. U., Oraegbunam, I. K.*, Some pathways for psychology's influence on legal system. *African Journal of Law and Human Rights*, 3(1), 2019, 51.

⁴⁶ Already in the previous century, the “Beijing Rules” explained: “Staff should be given such training that will enable them to effectively carry out their assigned responsibilities, in particular, training in child psychology, child welfare and international standards and norms of human rights and children's rights.” Interrogation of children should be carried out by specially trained professionals. See A/RES/40/33 30. United Nations Standard Minimum Rules for the Administration of Juvenile Justice. “Beijing Rules” – <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/477/40/PDF/NR047740.pdf?OpenElement>> [29.01.2024].

⁴⁷ European Council Guidelines on Child-friendly Justice, directive 2012/29/EU, Art. 23 (2) (b); Guidelines on Child-friendly Justice Art. 64.

minor shall have the right to apply to the court for protecting their rights and legal interests. In that case, a court shall assign a procedural representative and hear the case. A minor plaintiff shall have the right to disagree with his/her procedural representative and defend himself/herself on his/her own. The court shall engage guardianship and custodianship authorities in such a case. – Art. 81¹. When reviewing the cases related to the recognition of a person as a recipient of support, as well as the return of an unlawfully displaced or unlawfully detained child or the exercise of the right to a relationship with the child, specialized persons participate in the case – Chapter XLII² and XLIV¹.

Having the specialization is obligatory by law for different professionals as well as for psychologists participating in the justice process. However, despite the requirements of the Code, the agency responsible for the psychologists' training is not defined, and there is no qualification requirement/criterion, training module, or other instruction for psychologists participating involved in the process of studying minors or other related issues. This will not contribute to the effective participation of a psychologist in the juvenile justice process.

In juvenile cases, the court needs to be assured that the psychologist involved in the case has special expertise in the matter which they are called on to testify or prepare an evaluation and on which the court is to make its findings.⁴⁸

c. Ethics

The presence of ethical norms/codes would help ensure the appropriate role of the psychology institute in the justice process. An example of this is the ethical norms of the American Psychological Association. The association's guidelines⁴⁹, stipulate that psychologists generally do not conduct psychological evaluations in child protection matters in which they currently have or have ever been

⁴⁸ Okoye, J. U., Oraegbunam, I. K., Some pathways for psychology's influence on legal system. *African Journal of Law and Human Rights*, 3(1), 2019, 50.

⁴⁹ Interestingly, for example, according to the American Psychological Association guidelines, psychologists receive specialized knowledge. In the development of this guideline – the Code of Ethics for Psychologists, the questions that psychologists are often asked to answer as evaluators of child protection cases are taken into account. These are: what kind of violence is committed against a child; If so, how badly did it affect the child's mental well-being? What therapeutic interventions would be recommended to help the child? Whether the parent(s) can successfully treat the child to prevent future harm; If yes, how? If not, why? What will be the psychological effect on the child if they are returned to the parent(s)? What will be the psychological impact of separation from the parent(s) or termination of parental rights? and others.

The guidelines, the Code of Ethics for Psychologists, has also been developed taking account of issues such as psychologists' attempt to gather information about family history, assess relevant personality functioning, assess the child's developmental needs, examine the nature and quality of the parent-child relationship, and assess evidence of trauma; Psychologists analyze specific risk factors such as substance abuse or chemical dependency, domestic violence, health status of family members, and the overall family context; Psychologists consider information from other sources, including assessments of cultural, educational, religious, and social factors.

The guidelines are a revised version of the 1999 Child Welfare Psychological Assessment Guidelines (APA, 1999). These guidelines are based on the Ethical Principles of Psychologists and the American Psychological Association (APA) Code of Conduct („Ethics Code”) (APA, 2002a, 2010). Guidelines for Psychological Evaluations in Child Protection Matters. <<https://www.apa.org/practice/guidelines/childprotection?fbclid=IwAR0rb98EmoPRV3UXZUEo>> [29.01.2024].

involved in a therapeutic role for the child or immediate family, which could compromise their objectivity. However, this does not prevent psychologists from giving testimonies as facts regarding the therapy treatment of children, parents, or families. Additionally, during psychological evaluations in child protection, psychologists do not treat any of the evaluation participants as therapy clients.⁵⁰

In an article on expert witnesses, Sacks described three roles that can be assigned to expert psychologist witnesses. The first role is that of the “behavioral educator” who seeks to present a complete and accurate picture of the current state of psychological knowledge.⁵¹ In the second role, the “philosopher-lawyer,” the expert makes concessions to the adversarial climate of the courtroom and allows personal values to shape the testimony. He might say, “There's a greater good at stake in this case, and that's, for example, desegregating schools, making sure this kid goes to the right home, etc.” ... This, of course, means giving evidence that involves clever editing, selective, overshadowing, exaggerating or obfuscating.⁵² The third role is the “hired gun”: here the expert essentially “sells out” and capitulates to the conflicting demands of the courtroom. A “hired gun” intentionally frames testimony to help the hiring attorney. Many commentators have criticized experts who are willing to play the role of “guns for hire”.⁵³ Obviously, such action is unjustified from an ethical point of view, however, there are no rules of ethics specifically regulating the professional behavior of forensic psychologists. Nor is the body for disciplinary proceedings of representatives of this profession defined. It should be noted that it is extremely rare for an expert witness who misrepresents research findings to be prosecuted for these actions. Perjury requires lying about verifiable facts. Experts are invited to offer expert opinions, and as opinions are neither true nor false, even highly unusual opinions cannot be described as lies. An expert may be biased unaware of relevant research, or incompetent, but that does not equate to lying.⁵⁴ Ideally, expert witnesses summarize research findings in a clear, unbiased manner. One of the ethical dilemmas that expert testimony raises is that psychologists can all too easily get caught up in the flow of the person who hired them.⁵⁵

Psychologists should primarily be committed to their discipline. This is especially important in proceedings involving minors or the protection of their rights. It is the prioritization of the children's best interests that in their cases determines the need for high qualification, specialization, and strict

⁵⁰ *Ibid.*

⁵¹ Okoye J. U., Oraegbunam I. K., Some pathways for psychology's influence on legal system. African Journal of Law and Human Rights, 3(1), 2019, 48.

⁵² *Ibid.*

⁵³ Okoye J. U., Oraegbunam I. K., Some pathways for psychology's influence on legal system. African Journal of Law and Human Rights, 3(1), 2019, 48-49. Margaret Hagen, an experimental psychologist, wrote a scathing indictment of clinical psychologists and other mental health professionals who testified in court as experts. In her book *The Whores of Court*, Hagan cites several cases where psychotherapists, social workers, and psychiatrists made sweeping claims that have no research support, such as being able to tell whether a specific young child is lying or having a particular memory. Or if someone is experiencing traumatic stress syndrome. She claims that these “magicians” and “self-proclaimed psycho-experts” are often motivated by the money they receive for their testimony, or are missionaries, with a desire to promote a particular cause.

⁵⁴ Okoye J. U., Oraegbunam I. K., Some pathways for psychology's influence on legal system. African Journal of Law and Human Rights, 3(1), 2019, 49.

⁵⁵ *Ibid.*, 48.

adherence to ethical norms of participating psychologists. At the same time, an adequate understanding and analysis of social scientific methods by the court is important, because ultimately it is the judges who must play the role of an effective gatekeeper, they must take responsibility for the study of scientific methods as well.⁵⁶ This is a two-way process, on the one hand, psychologists must be able to provide the court with qualified conclusions/testimony relevant to their specialization in juvenile cases, and on the other hand, judges, at the time of making the final decision, must be able to become critical evaluators of the service provided in conjunction with other evidence presented in the case, based on their inner beliefs and the law.

The influence and relevance of psychology to law is enormous, even though psychology is descriptive, law is prescriptive. Whereas psychology tells us how people behave, law tells us how people must behave... Law is achieved through the accumulation of court decisions, psychology progresses through the accumulation of data produced by scientific methods.⁵⁷

8. Conclusion

The important role of the psychologist in terms of effective implementation of the child's right to justice requires the provision of training for relevant specialists by the state agencies (so that they know the peculiarities of working with children, communication and survey methodology, with the help of which the child's trauma will be minimized and obtaining the most objective and exhaustive information, etc.). Although the specialization of psychologists is mandatory according to the CCR, the agency responsible for the training of these persons is not defined, it is unclear how the psychologist's specialization should be assessed by the judges.

It is noteworthy that the general norms regarding the involvement of a specialist and the appointment of an expert are established in the legislation (Articles 204, and 162 of the Civil Procedure Code). The prerequisites for the psychologist's involvement cannot be exhaustively determined by the law, and as such prerequisites, we should consider the necessity of assessing the child's needs and psychological support, the need to study the child's general psycho-emotional state, evaluate and consider their opinion, etc. The inclusion of a psychologist in the case is a rather broad discretionary power of the court, however, it would be appropriate to single out certain issues, in the study of which the involvement of a psychologist would be recommended, if not in a normative manner, at least by a uniform judicial practice.

It is important to determine the agency responsible for the training/retraining of psychologists in juvenile justice specialization and the development of a quality control system. The role of higher education institutions is also essential. In this regard, steps should be taken both at the internal systemic level of higher education and state agencies in terms of creating the specialization standard and determining the agency responsible for retraining.

⁵⁶ Ibid.

⁵⁷ Okoye J. U., Oraegbunam I. K., Some pathways for psychology's influence on legal system. African Journal of Law and Human Rights, 3(1), 2019, 46.

The right to a fair trial recognized by the 1950 Convention on Human Rights and Fundamental Freedoms (Article 6) and guaranteed by the Constitution of Georgia (Article 31) requires ensuring detailed procedural guarantees in the legislation.

To provide a high standard of justice for the child, in the context of a multidisciplinary approach, the need to involve a psychologist as a specialist/expert in the litigation process is indisputable. Therefore, to protect the true interests of the child, it is important to improve the legislation in this direction and introduce a uniform practice through the definitions of the applicable norms.

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