

CENTRE FOR SOCIAL POLICY INITIATIVES
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M **onitoring**

THE RIGHT
OF
THE CHILD
TO EXPRESS
HIS/HER
OWN VIEWS
FREELY



Project

The right of
the child to express
his/her own views
freely in the divorce
procedure

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Monitoring the right of the child to express his/her own views freely

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Introductory remarks

Aleksandra Selak-Žuković, M.A.
Centre for the Rights of the Child

Article 12, UN Convention on the Rights of the Child *The child's opinion*

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity of the child.
 2. For this purpose, 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.
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One of the basic principles of the Convention on the Rights of the child (besides the non-discrimination principle, principle of the best interests of the child, and the principle on the right to life, survival and development) is also the principle on respect for the child's views. This principle can be implemented only if the child is given the opportunity TO BE HEARD. The principle regarding the respect for the child's opinion/ views is clearly elaborated in Article 12 of the Convention on the Rights of the Child.

The Centre for the Rights of the Child is paying due attention to this right of the child, as a basic human right. In order to develop a methodology for monitoring the implementation of children's rights and the Convention on the Rights of the Child, the strategy of applied research may significantly contribute to the presentation of the contemporary situation of children's rights in Croatia as well as to the development of an universal approach to monitoring children's rights.

Preamble

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THE RIGHT OF THE CHILD TO EXPRESS HIS/HER OWN VIEWS FREELY IN THE CONTEXT OF THE FAMILY LAW

One of the basic children's rights according to the Convention on the Rights of the Child is the child's right to express his or her opinion freely concerning matters that affect the child (Art. 12). Although the Convention on the Rights of the Child recognises the right of the child to live with his or her parents (Art. 9), the Convention also respects the responsibilities, rights and duties of both parents for the upbringing of a child (Art. 18), but sometimes, especially in divorce procedures, it is necessary to bring a decision that as a consequence results with the separation of the child from one of the parents and a different residence address from that parent. Since this decision is of vital interest for the child, the Convention in Art. 9, item 2 gives the opportunity to all interested parties to participate in the proceedings and make their views known. Especially the child is guaranteed the right to express his or her views freely concerning matters affecting the child, in accordance with the age and maturity of the child. In the divorce procedure it is in the best interests of the child to express his or her opinion regarding the parent with whom the child wishes to live with and regarding the maintenance of contact with the separated parent in a way that is the least harmful for the child concerning the traumatising experience of the divorce of the child's parents.

The divorce procedure starts with the *divorce charge* when only one of the partners wishes to divorce or with a *joint request for divorce* when both partners want the divorce. (Art. 42. Item 1.)

The Family Law limits the husband in his right to file for divorce (one-sided wish for divorce) during the pregnancy of the wife or in the period of one year from the date of birth of the child (Art. 42. Item 2.). On the other hand, upon the wife's divorce charge or the joint request for divorce it is possible to obtain a divorce in the above mentioned period.

The essence of the divorce charge is to prove that the marital relationship is seriously and permanently damaged (Art. 43. item 1) or to prove that the marriage has been dissolved for longer than a year (Art. 43 item 2). In these cases the plaintiff must prove the circumstances on which the divorce charges have been based on. If the court establishes that the charges are justified the marriage will be divorced. In cases when both partners file a joint request for divorce, the court does not inquire

about the circumstances but the mutual will of the partners for a divorce is sufficient.

The divorce procedure is very formal and is carried out in accordance with the Law on Litigation Procedure and the Family Law.

The Family Law regulates a compulsory mediation process (centres for social welfare are in charge of this process) whenever the partners have children or if they have adopted children that are underage, or if they have children that need parental care even after reaching adulthood.

The Family Law does not explicitly provide a possibility for children to express their opinion on the matter concerning with whom they wish to live with and how they wish to maintain contacts with the separated parent. It would have been advisable for the legislator to have mentioned this right of the child in divorce cases.

The regulation which partly replaces this explicit authority of the court in this sense, is the legal authority of the court to give the minor, who is capable of understanding the meaning and legal consequences, the possibility to act in cases concerning his or her status.¹ But, the legal definition does not guarantee the child the right to express his or her opinion freely regarding a very important part of his or her life after the divorce of the child's parents.

On the contrary, in other situations when the court has to bring the decision concerning parental care, the family legislation represents the concept and contains regulations concerning the necessity of enabling the child to find out the important issues about the case under inquiry in an appropriate way, to receive advice, to express his or her opinion and to be informed about the possible consequences that the respect of his or her opinion will have (Art. 107). The views of the child will be given due weight in accordance with the age and maturity of the child. This means that the centres for social welfare will have to individualise every case concerning parental care, focus on the best interests of the child and the child's wishes and to include the child as an active participant in the decision making procedure concerning joint custody.

Therefore, the Family Law needs to be amended in the sense that the courts should have a strict obligation to give the child the opportunity in procedures, such as the divorce procedure, to express his or her opinion in accordance with the child's age, maturity and interests. Besides, it would be necessary for a more painless and less stressful contact with the child, to establish a better co-ordination between the court and the social welfare centres which would be able through professional help to explain to the child his or her right to express his or her opinion in the court, if the child wishes so. By this the right of the child to express his or her own opinion and the right to participate in the court procedure, if the child wishes to, would be completely respected.

¹Article 273 of the Family Law regulates: "Concerning the status issues the court may allow the parties that do not have business liability, if the parties are capable of understanding the meaning and legal consequences of their action, to act in some parts of the procedure for the purpose of realising one's rights."

Introduction

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IMPLEMENTATION OF THE RIGHT OF THE CHILD TO EXPRESS HIS/HER OWN VIEWS FREELY IN THE DIVORCE PROCEDURE

The CSPI Centre for the Rights of the Child from Zagreb in co-operation with UNICEF Office for Croatia is carrying out the research *"The right of the child to express his or her views freely in the divorce procedure of parents"* as a part of the broader project **"Monitoring the right of the child to express his or her views freely"**. Croatia has ratified the UN Convention on the Rights of the Child and is obliged to provide regular reports to the UN concerning the implementation of children's rights in different fields of social life: family, school, culture, courts, social welfare, health care. Thereby the main goals of the project have been established as follows:

1. Developing a methodology for monitoring the practice of the social institutions in charge and with the responsibility to enable the implementation of children's rights - the right to express his or her opinion freely.
2. Establishing the level of implementation of this right through the analyses of the professional practice in certain social fields that in different ways support and enable a child's development.
3. A study of the perception of a child concerning the importance and the possibility for the implementation of the right to express one's own opinion in different fields of children's lives.

One of the most important systems that is supposed to enable the implementation of children's rights in the society is the judicial system. For the purpose of carrying out the mentioned project goals (1 and 2), the divorce procedure has been recognised and extracted as a specially sensitive, demanding and important segment of the implementation of children's rights in the judicial system. The reason for this lies in the fact that the child's right to express his or her opinion (Art. 12 of the UN Convention on the Rights of the Child, see appendix 3) is directly included in the legal text regulating divorce (Family Law, Art. 107, see appendix 3). The implementation of this right is in the psychological sense important for the child's integrity and the development of a positive self-image (i.e. Juul, 1996. 1995, Dacey and Kenny, 1994.), because the child ceases to be a passive participant of the important situa-

tions in his/her life, and by having the possibility to express one's opinion the child becomes "visible", recognised and real to the parents as well as to the society and to the child him/herself. By participating in the decision making process the child develops personal and social competence that represents the basis for a healthy individual development.

Research aim

The research aim was dual:

1. To establish the scope and the manner of implementation of the child's right to express his or her view freely in the court procedure in divorce cases after coming into force of the new Family Law (December 1998.)
2. To study (investigate) the opinion and the views of the judges and social welfare professionals in the current circumstances concerning the child's right to express his/her opinion in the divorce procedures, namely the possibilities to improve these conditions.

Methodology

The nature of the research is descriptive and a combination of qualitative and quantitative methods has been used. The quantitative method has been used when analysing the content of court files (*Fraenkel and Wallen*, 1993), while the qualitative method has been used as an addition to the first method, the analyses of the content of interviews with professionals (*Krueger*, 1994).

Sample

The initial research unit was the divorce case with children under the age of 18. ALL files (N=250) were taken into account that were proceeded in accordance with the new Family Law. The sample was by its nature suitable and they were all Zagreb Municipality Court files. Some three-hundred-fifty-six children were included by this suitable sample.

Seventy-three judges were in charge of these divorce cases. Some basic data on the judges have been summed up in tables 1 and 2.

The work experience span ranges from 1 to 22 years of experience, but the dominant value is 4 years.

Table 1: *Gender of judges*

	Frequency
Male	20
Female	53
Total	73

Table 2: *Work experience*

Yrs of experience	Frequency
Less than 4 yrs.	12
From 4 to 8 yrs.	49
More than 8 yrs.	12
Total	73

Besides the data on judges, some basic data on parents have been collected and presented in table 3 and 4. It should be mentioned that some parents occur twice, because the data on children have been extracted from the files separately.

Table 3: *Father's education level*

	Frequency
<i>Primary education</i>	24
<i>Secondary educ.</i>	186
<i>Higher educ.</i>	19
<i>University educ.</i>	93
<i>No data</i>	34
Total	356

Table 4: *Mother's education level*

	Frequency
<i>Primary education</i>	17
<i>Secondary educ.</i>	190
<i>Higher educ.</i>	8
<i>University educ.</i>	121
<i>No data</i>	20
Total	356

At the end of the sample description it is important to mention some characteristics of the children, whose right to express their own opinion interested us. These data concern the child's gender and age, and are presented in tables 5 and 6.

Table 5: *Child's gender*

	Frequency	Percentage
<i>Male</i>	190	53.2
<i>Female</i>	166	46.8
Total	356	100.0

Table 6: *The age of the child at the time of divorce*

	Frequency	Percentage
<i>1-6 years</i>	140	39.3
<i>7-14 years</i>	169	47.5
<i>15-17 years</i>	47	13.2
Total	356	100.0

Instruments

Three instruments have been used for data collection during this research: *Questionnaire concerning the respect for the right of the child to express his or her opinion in court*, *Model the interview with judges* and *the Model the interview with professionals from the centres for social welfare*. These instruments have been developed for this research and are attached as appendix 2.

Data collection procedure

Two sources of information were needed for the accomplishment of the planned aims. One source of information were court files and the other source were professionals (experts) from the courts and social welfare centres. In the period September-November 2000 specially trained law students and assistant professors collected data from the court files with the *Questionnaire concerning the respect for the right of the child to express his or her opinion in court*. The authors of this report interviewed the experts (*the focus group technique*) in accordance with the mentioned protocols. The interviews lasted 90 minutes. Three female judges from the Zagreb Municipality Court took part in the focus group and at the focus group for experts three (3) psychologists and two (social) workers from five different marriage and family teams from 4 different Zagreb municipalities took part. The participants of the interviews were chosen because of their expertise in the field of divorce. In the introductory part of the interview they were acquainted with the goals and principles of conducting the interview. They were assured of the confidentiality of data and anonymity of the expressed opinions, and they gave their informed approval to participate in the interview.

Results and discourse

Analyses of the content of court files

The following tables present the results of the analyses of the content of court files based on the *Questionnaire concerning the respect for the right of the child to express his or her opinion in court*. The tables were named in accordance with the questions from the Questionnaire..

Table 7: *Was the child asked with whom he or she would like to live with?*

	Frequency	Percentage
YES	22	6.2
NO	329	92.3
OTHER*	5	1.5
Total	356	100.0

* The child was not asked explicitly for his/her opinion, but the professionals talked to the child for support.

Table 8: *Was the child asked how he/she would like to maintain contact with the other parent?*

	Frequency	Percentage
YES	4	1.1
NO	352	98.9
Total	356	100.0

Table 9: *Was the child asked for his/her opinion in a manner appropriate for the child's age and maturity?*

Age of the child	Was the child asked with whom he/she would like to live with?		
	YES	NO	Total
1-6 years	3	137	140
7-14 years	9	160	169
15-17 years	10	37	47
Total	22	334	356

$$\chi^2 = 22,624 \text{ (df=2, } p < 0.01)$$

The data presented in tables 7, 8 and 9 reflect that the child is only exceptionally asked for his/her opinion and that the frequency of requesting the child's opinion increases with the age of the child.

Further on follows the analyses of cases when the child was asked for his/her opinion (N=22). The court files reflect that the child was usually interviewed only once (18 cases). In all 22 cases the child was interviewed in the centre for social welfare. The files reflect that in the majority of cases the child was interviewed by a social worker (14 cases), and in 7 cases by a psychologist. In 11 cases two persons were present during the interview. The child's reactions were very infrequently recorded in the court files.

Table 10:
Were the child's reactions during the interview recorded in detail?

	Frequency
YES	5
NO	17
Total	22

Table 11:
The child's preferences concerning the parent with whom he/she wishes to live with

	Frequency
Father	7
Mother	10
Other	5
Total	22

Table 12: *The final decision of the judge concerning the parent with whom the child will live with*

	Frequency
The child will live with the mother	21
The child will live with the father	1
Total	22

Table 13: *The child's preference concerning the manner of maintaining contact with the other parent*

	Frequency
As arranged	4
Fixed schedule	1
No answer	17
Total	22

Table 14: *The final decision of the judge concerning the contact*

	Frequency
<i>As arranged</i>	8
<i>Fixed schedule + arrangements</i>	13
<i>Fixed schedule</i>	1
Total	22

From the above presented data it is obvious that in the cases when the child was asked for opinion the decision of the judge did not necessary correspond to the child's wishes. This correspondence is not compulsory since the child's opinion is only one of the elements that is taken in consideration for the final decision of the court. But, the fact which surprises and disturbs is that it is not visible from the court files whether the judge or some other professional explained to the child the final decision of the court. We are of the opinion that this is especially important in cases when the child explicitly expressed his/her opinion and the final court decision had been different. When the issue is the mode of maintaining contact with the other parent in the majority of cases where the child's opinion was requested, the child's response was not recorded so we do not know whether the child was asked at all.

For the purpose of monitoring children's right to express his/her opinion freely in divorce cases it would be necessary to standardise the recording procedure in all phases of the implementation of Art.107 of the Family Law

Presentation of the focus group interviews

For the purpose of receiving a more detailed insight into the situation of the respect for the right of the child to express his/her opinion freely in the divorce procedure we decided to use the method of standardised interview with two groups of experienced and specialised professionals. These interviews enabled us to receive an insight into the dynamics of compliance and implementation of Art. 107 of the Family Law and Art.12 of the UN Convention on the Rights of the Child and to amend the qualitative data with interpretations of the key participants of this process, instead of interpreting them from our own perspective. The information gathered by interviews are presented in the textual tables No. 15 and 16.

Table 15: *Presentation of the interview with the judges*

Date:	11th January 2001, from 13:30 to 15:00
Location:	Municipality Court Zagreb, Ulica grada Vukovara 84
Focus group:	Court
No. of participants:	Three judges
Moderator:	Prof. Vlasta Vizek Vidović, Ph.D.
Assistant moderator:	Prof. Antonija Žižak, Ph.D.
Questions and summarised answers:	Citations/Examples:
<p><i>1. Which part of the working hours is dedicated to the divorce cases?</i></p> <p>All judges are occupied with miscellaneous cases. The divorce cases are assigned to experienced judges, but also judges that besides experience have an affinity to work on such cases.</p>	
<p><i>2. Does Art. 107 of the Family Law contain any novelties in comparison with the previous regulations?</i></p> <p><i>3. Did this article induce some changes in your practice?</i></p> <p>This article of the Family Law did not significantly influence the judicial practice. The centres for social welfare continue to work on the necessary preparations and provides an assessment regarding with whom the child should live with after divorce. Until the court decision comes into force and in the renewed procedure (if circumstances have changed) the centres for social welfare come with a decision beforehand, namely without a renewed court procedure.</p>	
<p><i>4. According to your opinion, who decides whether the child will be asked with whom he/she wishes to live with after the divorce of the parents?</i></p> <p>It depends whether there is a conflict of interests between parents. The centres for social welfare decide whether the child should be asked in each individual</p>	<p>"When the Law is read (Art. 107) - it is a possibility and not an obligation."</p>

<p>case, namely when assessed whether there is a conflict of interests or not. The Court can always, at any time during the procedure, call in the centre for social welfare to hear the child out on his/her wishes. The decision of the Court can be changed upon the child's request.</p>	
<p>5. How do you find out whether the child was interviewed?</p> <p>We find out about the interview from the report of the centres for social welfare that reflects who interviewed the child, where, when and how the child reacted.</p>	<p><i>Example:</i></p> <p>"The child ran away from home every time somebody from the centre for social welfare appeared there. I was considering to call the child to Court, but the mother was so loud (she cried a lot) during the procedure so I gave up this idea."</p>
<p>6. Are there cases when the child is interviewed by the judge at the court?</p> <p>The basic reason for not calling a child to court is that it is a very traumatising experience for the child. This trauma is to be avoided except when it is necessary, namely when not asking the child would be harmful for the child. Most often there are ways to find out the child's opinion without calling the child to court. During the mediation procedure at the social welfare centres the parents usually come to an agreement concerning child custody. In such cases the parties are not called to be heard at court because there is no dispute - what is not disputable is not being assessed. In the majority of divorce cases there is an agreement between parents concerning with whom the child will live with.</p>	<p>"We avoid to expose the child to the stress of coming to the court and expressing his/her opinion in front of unknown people."</p> <p>"I called a child of 11 to express his/her own opinion in front of the court without the presence of the parents only once. I respected the child's opinion in my decision."</p>
<p>7. What is your general impression concerning how often the child is asked for his/her opinion during the divorce procedure?</p> <p>Participants of the focus group were of the opinion that the opinion of the child is asked for in 10% (one judge) to 20% (2 judges) of divorce cases. This is the percentage of cases where the parents have not reached an agreement on important issues.</p>	

<p>8. <i>Do you perceive some difficulties/obstacles in conducting these procedures?</i></p> <p>It happens that the parents complain about the work of social welfare centres. During the divorce procedure it often happens that the parents "lead a war about the child" because of the unsolved emotional relationship between them. The centres are sometimes powerless because of the aggressiveness of their clients. The procedure of taking away the child is especially unpleasant.</p>	<p>"They complain that the professionals take sides."</p>
<p>9. <i>What could improve this procedure?</i></p> <p>It would be of great help if the same professional from the social welfare centre would conduct a case during the complete divorce procedure. The situation now is that during a divorce procedure several professionals take part in a case so that the court and the clients are confused.</p>	
<p>10. <i>Are you satisfied with the co-operation with the centres for social welfare?</i></p> <p>The co-operation is in general good. It is expected that the centres provide services during the court procedure.</p>	
<p>11. <i>When you compare all types of cases that you conduct try to assess the stressfulness of the divorce cases on a scale between 1 to 10?</i></p> <p>This is best described by the black and white technique. The divorce case is either easy and then the stress grade is 1 (when the parties agree on important issues in advance and there is no conflict of interests), or the case is very complicated and then the stress grade is 9 or 10 and then all parties of the procedure are under great stress.</p>	
<p>12. <i>What is in your opinion most important?</i></p> <p>For this job it is not enough to be a judge - it is very important to have "a feeling for other people". Experience, work experience is needed, but sometimes it is more important to make a "psychological" assessment whether some point of the procedure it is needed to stop the lawsuit</p>	<p>"We try to reach an agreement because an agreement between the parties is a much better solution than a court decision."</p> <p>"Sometimes the attitude of the judge influences the parties."</p>

<p>because in two weeks the situation could change and the parties could come to an agreement. Since the majority of judges are women, even in divorce cases and the majority of professionals at the centres for social welfare are women too, a man in such a procedure may feel disadvantaged. Therefore, the communication of the judges with the parties of the case is very important.</p>	<p>"If we receive a message with the request that the judge be of a certain gender, we try to respect the request."</p>
<p><i>13. Besides expertise and experience which psychological characteristics of the judge are important for the divorce procedure?</i></p> <p>a) impartiality</p> <p>b) calmness</p> <p>c) patience</p> <p>d) a feeling for other peoples problems (empathy)</p> <p>e) a lot of energy</p>	<p>a) "it is important to keep order in the court room and not to express personal emotions";</p> <p>b) "by staying calm you give the impression of objectivity";</p> <p>c) "to hear everybody out and to have everything recorded";</p> <p>d) "to be aware what we induce by our decision";</p> <p>e) "effort and preparations are needed for these cases - it is a very complex matter because the pressure is great - these cases we usually experience as the hardest because you have three sides: mother - father - child "; "It is not pleasant, it is a pressure, and you must not allow the things that bother you to influence your behaviour and decision".</p>
<p><i>14. Do you wish to add something?</i></p> <p>The general opinion is that it is enough to enable the child to express his/her opinion, but this should not be an obligation because the decision can always be changed, even on the child's request. Sometimes it is hard to bring a decision and in difficult cases the judges usually consult each other. Such cases are considered to be urgent according to law and the judges give them a priority.</p>	<p>"I do not see a way to improve more the protection of the child, since this is a good way of protecting the child's interests."</p> <p>"When the tensions are great then there is a wish to get rid of it as soon as possible."</p>
<p><i>15. In your opinion do children know that they have this right, that the Law enables it?</i></p> <p>The children should be educated about their rights in schools and other appropriate places. This education should be preventive and should include different life situations.</p>	<p>"This is another matter. It is not a court issue."</p>

bold italic=unplanned questions

Table 16: ***Presentation of the interview with the group of professionals from the social welfare centres***

Date:	23rd January 2001, from 14:30 to 16:00
Location:	Centre for the Rights of the Child Zagreb, Berislavićeva 4/II
Focus group:	Centres for social welfare of Zagreb
No. of participants:	three psychologists and two social workers
Moderator:	Prof. Antonija Žižak, Ph.D.
Assistant moderator:	Prof. Vlasta Vizek Vidović, Ph.D.
Questions and summarised answers:	Citations/Examples:
<p><i>1. Which part of the working hours is dedicated to divorce cases?</i></p> <p>All participants work in the centres for social welfare in the teams for marriage and family. Approximately 50% of the working hours is dedicated to mediations in divorce cases.</p>	
<p><i>2. How were they introduced to the new Family Law?</i></p> <p>The majority at the seminar in Brezovica, namely by the colleagues that took part at the Seminar.</p>	<p>"Each member of the Team has a copy of the Law which they consult if needed."</p>
<p><i>3. Does Art. 107 of the Family Law contain any new regulations in comparison with the previous Law?</i></p> <p><i>4. Did this article introduce any changes in your practice?</i></p> <p>This article of the Family Law did not significantly influence changes in the practice of the centres for social welfare. The centres for social welfare continue to provide the necessary preparations and assessments concerning the parent that should receive the custody of the child after divorce.</p> <p>The majority is of the opinion that now it is easier since the new Law is more obligatory than the old one (but the situation is more complicated, because the child can be interviewed</p>	<p>"According to the previous Law it was interpreted that the child "may" be interviewed, now the Law is interpreted that the child "must" be interviewed, which enables an easier approach."</p> <p>"Previously the limit of 10 years of age did not allow us to interview younger children."</p>

<p>only with the parent's approval). Until the court decision comes into effect and in the renewed procedure (if the circumstances change) the centres for social welfare decide previously, namely without repeating the process at court. A change can be requested already 6 months after the first court decision. The media has greatly influenced the change of opinion of parents, since they are better informed about children's rights as well as the children, especially those over 12 years of age, and this enables an easier approach and contact with the child.</p>	<p>"Art. 88 of the old Law is missing, according to which the child could have been interviewed outside the home or centre for social welfare without the parent's approval, if it has been assessed that it is in the child's best interests."</p>
<p><i>5. According to your opinion, what influences the decision whether the child will be interviewed concerning the child's wishes with whom the child wants to live with after their parent's divorce?</i></p> <p>Depending whether there is a conflict of interests between parents. The centre for social welfare makes an assessment for each case individually whether the child should be interviewed, namely after assessing whether there is a conflict of interests or not. Parents in conflict often take care more about their own interests than the child's, although on a declarative level they have respect for the rights of the child. The final recommendation to the court is the result of team work.</p>	
<p><i>6. Who interviews the child?</i></p> <p>The psychologists interview the child. During the phase of parent counselling the team focuses on establishing a contact between them in order to enable them to come to mutual decisions, so that the child does not have to come for an interview. All professionals are of the opinion that this interview is additionally traumatising for the child, and they try to avoid it. They are of the opinion that it is better to do it in the family, the parents should explain their mutual decision to the child. Therefore special efforts are put in the parent counselling procedure.</p>	<p>"It is very important and demanding to counsel the parents on how to talk to their children."</p> <p>"Children older than 12 years of age are usually informed on the rights of children through media or schools."</p> <p>"A child often goes through an emotional crises because of the conflict caused by the demand to choose between parents."</p> <p>"It is important to give the child the possibility and to explain the possibility of choosing to express his/her opinion, or to refuse to express it."</p>

<p>7. <i>What is your general impression on how often the children are asked for their opinion in a divorce procedure?</i></p> <p>Participants of the focus group think that in approx. 20% of divorce cases the opinion of the child is requested. This is the percentage of cases where the parties have not come to an agreement previously concerning important issues. It is interesting that their first assessment was much higher (30-40%), but when they remembered the statistical data analyses they realised that the number of such cases is much lower.</p>	<p>"It seems that there are more such cases because they are so exhausting and time consuming."</p>
<p>8. <i>Do you perceive some difficulties/obstacles in conducting these procedures?</i></p> <p>The divorce cases where the parents "lead their war for the child" are especially difficult because of the parents' unsolved emotional relationships. The parents can be aggressive, threatening with physical violence and intimidating towards the child.</p> <p>The professionals assess that in such cases they are in principle in the situation of "role conflict". Because they are supposed to be "helpers" to parents and they try to act therapeutically, but at the end of the procedure they are supposed to be "court experts" and the court decision might depend on their expertise. The parents that confided in them sometimes feel deceived. The difficulty presents also the fact that after "difficult" divorces they will have to come in contact with the parents again since their conflicts continue and they will again find themselves in "role conflict".</p>	<p>"The parents are more occupied with their own problems than with the child's problems."</p> <p>"A special problem presents the expectations of the parents concerning the child's "loyalty" to one side."</p> <p>"In the situation of emotional excitement parents do not have the «capacity» to think about the children's needs."</p>
<p>9. <i>What could improve this procedure?</i></p> <p>There were several suggestions.:</p> <p>1. The main suggestion was to separate the role of counsellor "helper" from the role of "court expert". It would be beneficial to have special marriage</p>	

<p>counselling centres where the parents could have an opportunity to reduce their frustrations and emotional tension, in order to be able to think more clearly about the child's interests.</p> <p>2. To try to sensitise the parents' attorneys to the impact of divorce on children, since they sometimes endanger the children's interests.</p> <p>3. To introduce the institute of "children's attorneys". The possibility of team supervision for team members, especially when they have to deal with several "difficult" divorces at the same time.</p> <p>4. The possibility of counselling with other experts outside the social welfare centres, without being obliged to start the formal expertise process.</p> <p>5. A number of free of charge family counselling centres where the urgency of the situation would be considered.</p> <p>6. The change of attitude of health services where only "voluntary" requests for assistance are acceptable.</p> <p>7. It is important to enable the follow-up of the family before a change of decision (after the court decision).</p> <p>8. To add a regulation that would allow an interview with the child when it is in the child's best interests even when the parents do not approve of that.</p>	<p>"It would be good if the parents could come to an agreement about child custody after the acute phase of emotional crises has been survived."</p> <p>"If the parents have a right to an attorney, why shouldn't the children have that right too."</p>
<p><i>10. Are you satisfied with your co-operation with the court? How often is a change of the court decision asked for?</i></p> <p>In principle our co-operation is good. The centres for social welfare provide services to the court procedure by providing a detailed assessment that is an important element for coming up with the final decision. In 99% of cases the assessments of the centres for social welfare are respected. In principles the decisions concerning</p>	<p>"The judges expect us to come more often to court, but because of the work overload we are not in the position to, since some cases last sometimes several years."</p> <p>"The divorce procedures last a long period of time and the children suffer, they are often retraumatised."</p>

<p>child custody are not changed so often, the decisions concerning con-tacts with children change more often. The request for the change of these decisions are always submitted by unsatisfied parents.</p>	<p>"The children do not request for a change of decision directly, but we come to conclusions indirectly by their behaviour, i.e. they run away and stay with the other parent."</p>
<p><i>11. When you compare all types of cases that you work on, try to assess the stressfulness of the divorce cases on a scale between 1 to 10?</i></p> <p>If there is no conflict of interests between parents then it is 1, but if the parents are in conflict then it is between 7 and 8. (Cases of serious neglect and child maltreatment are the hardest for experiencing.)</p>	
<p><i>12. Personally what do you consider to be most important?</i></p> <p>It would be beneficial if we could work long enough and appropriately with the parents so that they come to a mutual agreement that would protect the child's best interests.</p> <p>It is important for the children too understand that they HAVE the right to express their opinion, and this includes their right not to express it.</p> <p>To sensitise parents that children's rights concern their children too, that their child also has children's rights.</p>	
<p><i>13. Do you think that the children know that they have rights, that the Law enables them to implement them?</i></p> <p>The older children (over 10 years of age) are quite well informed by media and through schools on a general level, but sometimes they are not aware what this means for them and their situation.</p>	
<p><i>14. Do you want to add something?</i></p> <p>No answer.</p>	<p>"No, all important issues have been mentioned."</p>

bold italic=unplanned questions

Final discourse

Based on the answers recorded during the interviews with the focus groups we have received elaborated interpretations of quantitative data that were gathered by the analyses of the contents of court files through the *Questionnaire on the respect of the child's right to express his/her opinion freely in court*. As described we have interviewed two groups of professionals that have in a larger part expressed congruent observations and opinions concerning the respect for the right of the child to express his/her opinion in the divorce procedure of their parents. Both groups interpret in the same way the implementation of Art. 107 of the Family Law. Both groups are of the opinion that this article did not introduce anything new that is important for their praxis, which is similar to their praxis in the previous period. In general the children are asked for their opinion only under specific circumstances when the parents are unable to come to a mutual agreement about child custody. Although these cases do not occur often, both groups consider them to be difficult and demanding for the family, and often very traumatising for the child. Such divorce cases are often the source of strong professional stress for all professionals participating in these procedures.

Professionals in courts and social services co-operate closely and are in principle satisfied with the co-operation modes. The mediation process during which the child is interviewed, in principle takes place in the centres for social welfare. The court accepts the expertise of the social welfare professionals and correspondingly brings a decision on child custody. The professionals are of the opinion that in divorce cases with mutual consent, calling the child for an interview would only cause tensions in the family and additional stress for the child. They are of the opinion that parents that have managed to come to an agreement between themselves are the most appropriate persons to inform their child of their agreement and that they are able to act in the best interests of their child.

During the divorce procedure the child is interviewed at the social welfare centre therefore the observations and suggestions of professionals concerning the improvement of praxis are especially interesting. We are of the opinion that special attention should be focused to the following:

- reducing the "role conflict" of psychologists and social workers that are both helpers and court experts in the divorce procedure, because such a dual role always causes frustrations, confuses and causes lack of confidence of the clients;
- the possibility that the child during a difficult divorce procedure may get a legal representative;
- the possibility for the professionals to be supervised and to receive external consultations in cases of "difficult divorces".

Concerning the perception of the child in the divorce procedure, both groups of professionals have expressed a specially protective attitude towards the child. Their

attitude reflects empathy for the difficult internal conflict that a child has to go through when in the situation of choosing between two parents. Therefore it is especially important to inform the child in an adequate way of his/her rights to express his/her own views freely, which also comprehends the right of the child not to make preferences. The professionals are of the opinion that most of the children are quite well informed through schools and media about children's rights on a general level, but it is unclear to them how they can implement some of these rights in everyday life. They think that it would be appropriate to teach and prepare children in schools about how to implement children's rights in a protected environment (i.e. school), before they experience some crises situations where their rights are being endangered.

Conclusion

We believe that this research has fulfilled its purpose and tasks. The applied methodology, that combines the quantitative and qualitative approach may be useful for the purpose of investigating the monitoring of the practice of implementing children's rights in the judicial system. On one hand we have received an insight into the prevailing usage of a certain practice, and on the other hand it seems that we have managed to penetrate into the depth of these subtle issues from the perspective of the key participants in this process. The methodology could be appended by investigating the perceptions and views of the other key participants (parents and children). We feel that one of the advantages of the applied methodology is that the qualitative research was done by professionals outside the judicial and social welfare system, and this enabled an open and rich dialogue.

We think that the experience in the combined application of qualitative and quantitative methods concerning Art. 12 of the UN Convention on the Rights of the Child may serve as a useful and efficient model for monitoring the implementation of other children's rights too.

On the level of fulfilling the specified tasks concerning monitoring the implementation of Art. 12 of the UN Convention on the Rights of the Child we think that the professionals from different sectors have a highly developed sensibility on the importance of protection of children's rights. But, we have the impression that in this context prevails the protective paradigm that could partly be connected with the usual image of the child as a "not yet" person that has to be completely protected by adults (*Verhellen*, 1996). The consequence of this attitude is that relatively a small number of children have the opportunity to express their own views in the divorce procedure of their parents, as regulated by Art. 107 of the Family Law. Thereby, the second key paradigm was partly pushed aside that stands out clearly in Art. 12 of the UN Convention on the Rights of the Child, and concerns the possibility for children's participation in decisions and situations affecting their lives. In order for this right of the child to be more completely implemented it would be important to develop some general social pre-conditions as follows:

- Aimed education of professionals, parents and children on the rights of the child in the situation of divorce;
- A flexible approach to the implementation of this right (i.e. the opportunity to express his/her own views in an adequate surrounding for the child school, at relative's place, etc.);
- Appointing a legal representative for the child.

In this way a significant improvement could be achieved in the implementation of this children's right that would bring in accord both paradigms: protective and participatory.

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CENTRE FOR THE RIGHTS OF THE CHILD
CENTRE FOR SOCIAL POLICY INITIATIVES
Z A G R E B

QUESTIONNAIRE
 on respecting the right of the child
 to express his/her own view in court

1. General data for each court

Address:

Total annual number of divorce cases

No. of divorces involving 0 - 6 yrs
 children between the age 7 -12 yrs
 of: 12-18 yrs

No. of judges involved in divorce cases: M F

2. Model for the analyses of the content of the court file

Data on judge: a) gender M F
 b) work experience
 c) marital status

Data on parents: a) education of: father
 mother.....
 b) age of: father..... mother.....

Data on the child: a) gender M F
 b) age at the time of
 divorce

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Z A G R E B

QUESTIONNAIRE

on respecting the right of the child
to express his/her own view in court

**Data on implementation of the right of the child to express
his/her own view in court:**

1. Was the child asked with whom he/she wants to live with? YES NO
2. Was the child asked how he/she would like to contact the other parent? YES NO
3. How many times during the procedure was the child asked for opinion?
4. Professionals asking for the child's opinion (professional profile)?
5. Where was the child interviewed (court, social welfare centre)?
6. Who was present at the interview?
7. Were the child's reactions during the interview recorded in detail? YES NO
8. The child's preference concerning the parent with whom the child wants to live with:
9. The final court decision:
10. The child's preference concerning the way of maintaining contact with the other parent:
11. The final court decision:
12. Did the judge (or some other professional) explain the decision to the child? YES NO

FOCUS GROUP - Centres for social welfare

Interview model

INTRODUCTIONS

a. introducing interviewers

b. explaining the interview goals

("The interview is part of a wider research carried out by the CSPI - Centre for the Rights of the Child on the implementation of Art. 12 of the UN Convention on the Rights of the Child that determines that children should be asked for their opinion on issues affecting them in accordance with their age and maturity; one of the situations is the divorce of parents; they are invited to take part in the interview as professionals that have the best insight into this area. ")

c. introducing participants

(name, family name, job)

d. rules

("Before the beginning of the interview we will mention some rules to enable a smoother interview: - the questions will be asked in a determined order: approximately ten questions; - it will last approx.1.5 h; - each person answers individually; - there are no correct or incorrect answers; - the interview is anonymous; - we record the summarised answers; - in the report the interview will be described on the level of group interview.")

OPENING

A question for all participants:

How many working hours do you spend on divorce cases - assess on a scale from 1 to 10 where 1 means *that you do not have divorce cases*, and 10 means *that you work all the time on divorce cases* - please give a short assessment..

Introductory phase:

Article 12 of the UN Convention on the Rights of the Child has been integrated in Art. 107 of the Family Law (we read together the article). The Family Law is relatively recent and we would like to know:

1. How were you introduced to the new law, especially to Art. 107, did you receive a special interpretation or additional education concerning the new Law?
2. Does this article represent something new in comparison with the former regulations?
3. Did this article cause any changes in the practice of teams (*social worker, lawyer, psychologist*)? If yes, what changes?

Transitional phase

4. What does the decision depend on whether the child be asked about his/her wish concerning the parent with whom the child would like to live with after divorce?
5. Who usually talks with the child from the team?

Key questions

6. What is your general impression on how often the child is asked for his/her opinion in a divorce procedure:
 - hardly ever
 - sometimes
 - regularly
7. Do you perceive some difficulties/obstacles in the realisation of this interview with the child? Which?
8. What could be done to improve this procedure?
9. The final decision concerning the child is brought at the court. How are you satisfied with the co-operation with the courts? (on a scale between 1 and 5)

Final questions

10. From what we mentioned so far what is for you personally most important, namely is there anything controversial or dubious?
11. Do you wish to add something concerning this issue that we forgot to ask?

FOCUS GROUP - Municipality Court

Interview model

INTRODUCTIONS

a. introducing interviewers

b. explaining the interview goals

("The interview is part of a wider research carried out by the CSPI - Centre for the Rights of the Child on the implementation of Art. 12 of the UN Convention on the Rights of the Child that determines that children should be asked for their opinion on issues affecting them in accordance with their age and maturity; one of the situations is the divorce of parents; they are invited to take part in the interview as professionals that have the best insight into this area.")

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(name, family name, job)

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Introductory phase:

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1. How were you introduced to the new law, especially to Art. 107, did you receive a special interpretation or additional education concerning the new Law?
2. Does this article represent something new in comparison with the former regulations?

Transitional phase

3. On what does the decision depend whether the child be asked about his/her wish concerning the parent with whom the child would like to live with after divorce?
4. Does the judge in court talk to the child in some cases concerning the mentioned issue?

Key questions

5. What is your general impression on how often the child is asked for his/her opinion in a divorce procedure:
 - hardly ever
 - sometimes
 - regularly
6. Do you perceive some difficulties/obstacles in the realisation of this interview with the child? Which?
7. What could be done to improve this procedure?
8. The final decision concerning the child is brought at the court. How are you satisfied with the co-operation with the social welfare centres? (on a scale between 1 and 5)

Final questions

9. From what we mentioned so far what is for you personally most important, namely is there anything controversial or dubious?
10. Do you wish to add something concerning this issue that we forgot to ask?

Article 12, UN Convention on the Rights of the Child

The child's opinion

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity of the child.
 2. For this purpose, 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.
-

Article 107, The Family Law

1. In the procedure ruled by articles 98-106 of this Law the child will have the opportunity to find out in an adequate way the important circumstances of the case, to receive advice and to express his or her own views and to be informed of the consequences of his/her respected views. The opinion of the child will be given due weight in accordance with the age, maturity and the best interests of the child.
 2. The provisions of article 298, 343, 344, 345, 346, 348 and 349 of the Family Law will be implemented adequately in the procedure by which the centre for social welfare decides about the parent that will receive child custody, and about the realisation of other parental duties, as well as about the implementation of the decisions.
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