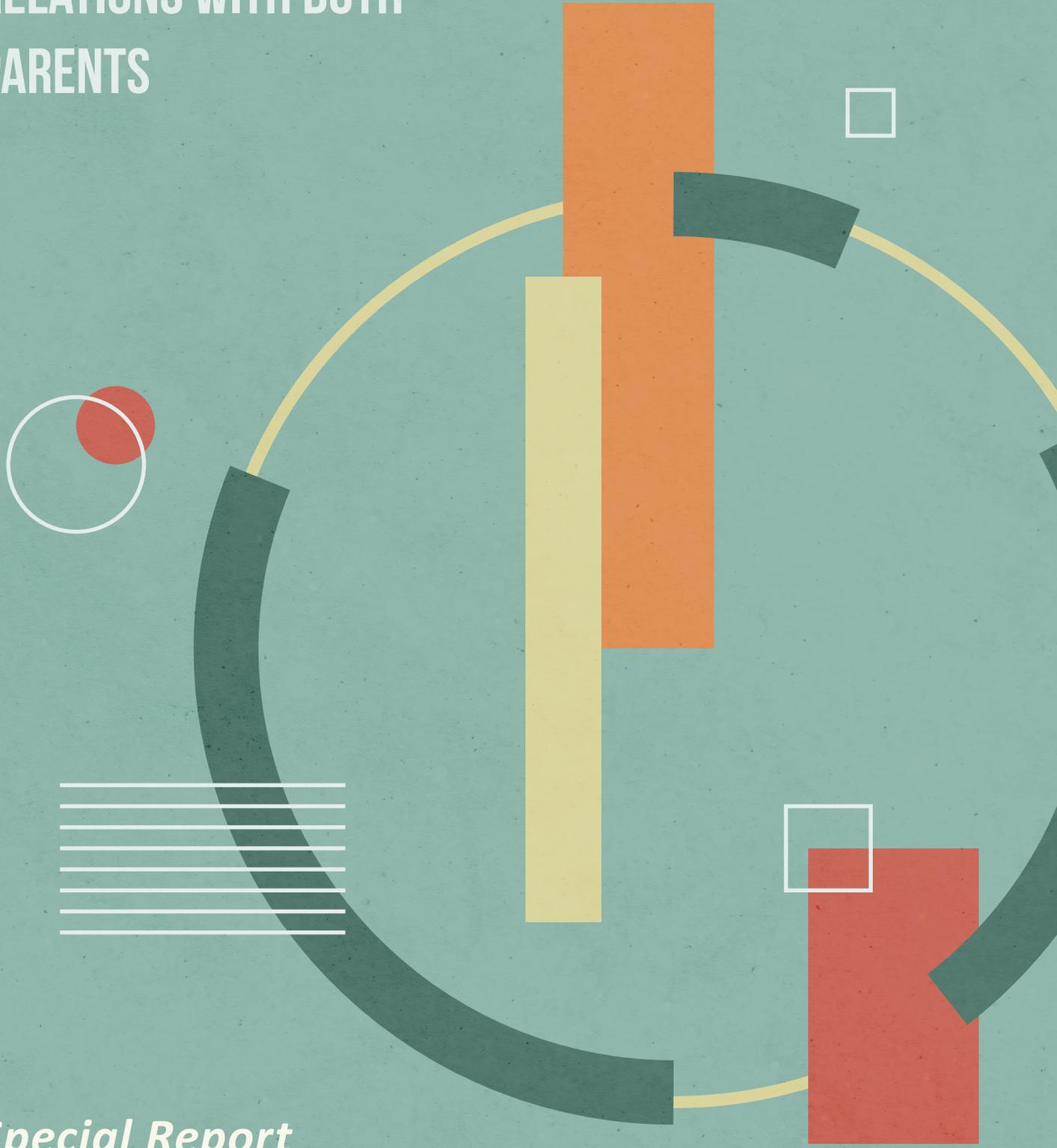


ADMINISTRATION OF JUSTICE ON THE
RIGHT OF THE CHILD TO MAINTAIN
RELATIONS WITH BOTH
PARENTS



Special Report



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M A N A G E M E N T
I N S T I T U T E

USAID სამართლის უზენაესობის პროგრამა
USAID RULE OF LAW PROGRAM



სამართლის
სახალხო დამცველი
PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

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**ADMINISTRATION OF JUSTICE ON THE RIGHT OF THE CHILD
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Special Report

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RESEARCHERS:

Ketevan Kukava

Maia Tsiramua

Lika Gvinjilia

RESEARCH METHODOLOGY BY:

Ketevan Kukava

Maia Tsiramua

ACRONYMS:

USAID – United States Agency for International Development

CRC – UN Committee on the Rights of the Child

ECtHR – European Court of Human Rights

LEPL – Legal entity of public law

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INTRODUCTION

The present document is a special report prepared based on a research conducted from July 2022 through November 2022 by the Public Defender's Office of Georgia, with support from the USAID Rule of Law Program and it reflects results of research and monitoring of the administration of justice on children's right to a relationship with both parents.

The Public Defender's Office (PDO) in the process of monitoring and reviewing cases, constantly researches and analyses parent-child relationships, separation of minors from their biological families and their reintegration with parents. Based on the results, the Public Defender in its parliamentary and special reports or individual proceedings, has been highlighting for years systemic challenges that exist in the country in that regard, in the national legislation and practice. Especially challenging issues with regards to cases of the child's relationship with both parents, especially in the process of enforcement of court decisions, include issues related to coordinated and timely interagency actions, lack of specialists with adequate training, support of parents and families, lack of services for development of parental skills, protection of psychoemotional state of minors and giving priority to best interests of the child.

Lack of qualified personnel is especially problematic. In particular, in 2020-2021, LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking („the State Care Agency“) was involved in a total of **1,893** court disputes involving relationship with children, while in **319** cases it ensured enforcement of court decisions. Only **135** social workers, **22** lawyers and **15** psychologies are working on all of these cases nationwide.¹ Mediation mechanisms for domestic disputes and lack of training on the child's relationship with both parents and child-friendly approaches, behavior modification services are also problematic. There is a notable lack/absence of child-friendly rooms in territorial units of the State Care Agency, which makes it harder for professionals to work with children and observe/evaluate the parent-child relationship.

The primary goal of the research was to study the legislation and the administration of justice related to the child's right to a relationship with both parents in 2020-2021 based on an interdisciplinary approach, determine its compliance with international standards and prepare recommendations based on shortcomings and challenges identified. Therefore, the research focused on examining every stage of parent-child relationship, relevant disputes and enforcement proceedings, including: coordination between agencies, taking of timely actions by them, use of child-friendly approaches and mechanisms supporting children, parents and families.

The research concentrated on systemic problems identified in the administration of justice, risks in the process of enforcement of court decisions, such as: psychological abuse of a child, deterioration of his/her emotional state, manipulating with a child, delays in enforcement. The research also looked at the extent to which persons involved in the administration of justice take appropriate measures to protect best interests of the child and to take into account the child's opinion, whether enforcement of court decisions is timely and effective. For the same goal, applications submitted to the PDO on the child's relationship with children, judgments made by common courts in 2020-2021, their enforcement and decisions on termination of investigations were also examined. Further, information was requested from relevant agencies involved in cases of the child's relationship with parents. Thematic interview and focus groups were also conducted with representatives of state agencies and NGOs.

The Public Defender's Office of Georgia expresses its gratitude to common courts of Georgia, every state agency, organization and relevant specialists for cooperation.

¹ Correspondence from the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking №07/5403, date: 30/06/2022.

METHODOLOGY

The present research on the administration of justice concerning the child's right to a relationship with both parents was conducted within the scope of authority prescribed by the organic law of Georgia „on The Public Defender of Georgia“.

Given the goals of this research, the administration of justice on the child's right to a relationship with both parents entails the parent-child relationship procedures, as well as issues of parent-child separation, child custody, termination of parental rights and enforcement of decisions of court/the State Care Agency. For the purposes of this research, a person under the age of 18 is considered a child, according to the Convention on the Rights of the Child and Georgian legislation. As an exception, a person under the age of 16 is considered a child for legal relationships related to return of wrongfully removed or retained children and rights of access.²

Within the research, rights of access are defined according to international and local legislation. It includes any communication with a child, including the right to take a child for a limited period of time to a place other than the child's habitual residence.³ This issue is also closely related to issues of child-parent separation and termination of parental rights.⁴

At the initial stage, research and monitoring methodology was designed based on the UN Convention on the Rights of the Child and its optional protocols,⁵ general comments of the UN Committee on the Rights of the Child,⁶ Council of Europe recommendations on child-friendly social services and other human rights instruments and standards provided in good practice guides. Questionnaires for specialists working on child-parent relationships, judges, representatives of law-enforcement authorities, social workers, psychologists, lawyers and representatives of the Ministry of Justice of Georgia and NGOs. **Also, at this stage of the research**, PDO communicated with all relevant state agencies and common courts. In particular, information was requested from: the Supreme Court of Georgia, appellate courts and all relevant first-instance court, the Office of the General Prosecutor of Georgia, the Ministry of Internal Affairs of Georgia, the Ministry of Justice of Georgia, the Mediators' Association of Georgia, LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking.

During the **second stage** of the research, judgments adopted by common courts in 2020-2021 were examined, alongside their enforcement materials and decisions on termination of investigation, in particular: **15 cases** involving child custody; **21 cases** involving termination of parental rights; **214 cases** of child-parent separation; **13 cases** of child-parent relationship; **15 decrees** of enforcement and **3 decrees** on termination of investigation. Further, using specially designed questionnaires, focus groups were held with **42 specialists** working on child-parent relationship. In particular, with judges, representatives of law enforcement authorities, the Ministry of Justice of Georgia, the Georgian Mediators' Association, social workers, psychologists, lawyers, NGO representatives.

Information obtained through research was analyzed by the PDO with participation of legal experts and expert-psychologist. As a result, findings of the research and PDO recommendations were prepared for improving legislation, policy and practice related to parent-child relationship.

² The Hague Convention, article 4; Civil Code of Georgia, Article 1305⁷(c).

³ Convention on the Civil Aspects of International Child Abduction, Article 5(b); the Code on the Rights of the Child, Article 26; the Civil Code of Georgia, Article 1305⁷ (f)

⁴ The Code on the Rights of the Child, 2019, Article 26.

⁵ The Convention was adopted in 1989. Georgia ratified it in 1994. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was adopted in 2000. Georgia ratified it in 2010. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was adopted in 2000. Georgia ratified it in 2005. A third Optional Protocol to the Convention on the Rights of the Child on Communication Procedure was adopted in 2011. Georgia ratified it in 2016.

⁶ UN CRC General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, prepared in 2013. UN CRC General Comment No. 13 on the right of the child to freedom from all forms of violence, prepared in 2011; UN CRC General Comment No. 12 on the right of the child to be heard, prepared in 2009.

MAIN FINDINGS

Realization of a child's right to a relationship with his/her parent and timely, coordinated and effective response by state agencies is one of the most important challenges in the country. Lack of services oriented towards children and their parents is also problematic. Even though the state has ratified international instruments⁷ requiring protection of best interests of a child, promotion of child-parent relationship, many important challenges remain with regards to legal framework as well as lack of specialists that work on these cases and absence of a child-friendly environment. More specifically:

- ➔ The state has not ratified essential international documents on child-parent relationship, such as the Council of Europe Convention on Contact concerning Children and European Convention on the Exercise of Children's Rights;
- ➔ Considering the nature of child-parent relationship disputes, resolving them through rational and peaceful communication and therefore proactively and timely resorting to mediation is of a decisive importance;
- ➔ Procedures established based on non-compliance with a decision of an authority of guardianship and care is not effective and efficient, imposed sanctions are ineffective for ensuring timely restoration of child-parent relationship, while the rate of referring cases to law enforcement authorities is alarmingly low (**5 referrals in 2 years**)⁸;
- ➔ Social workers and psychologists of the State Care Agency lack pre-determined, uniform and consistent mechanisms for assessment and enforcement. In this process, psychologists mostly rely on their own experience and practice;
- ➔ There are especially dire challenges with regards to emotional impact of parents on minors, while given the lack of services and human resources, the state does not have effective mechanisms for prevention and timely identification of such circumstances and timely and effective work with parents based on an individual approach;
- ➔ There is an alarming imbalance between the existing needs and the number of specialists that work on disputes involving a child's relationship with both parents and enforcement. In particular, in 2020-2021 only 135 social workers, 22 lawyers and 15 psychologists were working on 2,212 cases nationwide;⁹
- ➔ Child-friendly rooms exist only in 5 territorial entities of the State Care Agency, where minors can meet their parents and speak with relevant specialists in a properly arranged, separate and peaceful environment, as appropriate;
- ➔ Specialists involved in child-parent relationship cases are not adequately and regularly trained, including on topics of a child's right to a relationship with both parents and child-parent separation;
- ➔ Social workers and lawyers working during assessment and enforcement stage of cases involving a child's relationship with both parents also have to act as a mediator for the parents, issue verbal instructions and recommendations, which further burdens their workload and responsibility;
- ➔ Services for empowering and supporting parents with disabilities are lacking and ineffective. They cannot ensure prevention of the child's removal from his/her biological family and empowerment of parents to allow them to raise their children themselves;

⁷ UN Convention on the Rights of the Child and its optional protocols.

⁸ Correspondence of the Ministry of Internal Affairs of Georgia MIA 5 22 01478394, date: 03/06/2022.

⁹ Correspondence of LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking №07/5403 – 30/06/2022; 1893 cases on the rights of access procedure and 319 cases of enforcement.

- ➔ Reintegration of minors with their biological parents is also problematic,¹⁰ which among other things, is related to ineffectiveness and lack of services oriented towards empowering and supporting families and improving parenting skills;
- ➔ Courts and the State Care Agency were not adequately prepared for the obligation established by Article 26 of the Code on the Rights of the Child – child-parent separation and its periodic revision, which resulted in wrong interpretation of the norm and inconsistent court practice;
- ➔ Despite prohibitions established by law, social and economic status of a family remains to be an important basis for placing a child in the state care, while the state does not have any effective mechanisms for empowering biological families, which would have ensured individual approach for timely elimination of economic and social challenges faced by parents, preventing them from raising their children;
- ➔ Stereotypical attitudes identified in opinions prepared by psychologists and discussing a child’s future without any empirical materials are alarming;
- ➔ Psychologists using the term „attachment“ to convey different meanings during assessment of a minor’s situation represents a challenge. Such use of the term is confusing and may serve as grounds for wrong perception of child-parent relationship.

¹⁰ Reintegration means returning a child placed in the state’s care to his/her biological family, for which the state should empower the biological family, including financially, provide assistance and reintegration allowance. Order №01-20/n of the Minister of Labor, Health and Social Protection of Georgia on determination of terms and procedures for granting, suspending, renewing and terminating reintegration allowance, and other relationships related to provision of such allowance, 2014.

LEGISLATION ON PARENT-CHILD RELATIONSHIP

1.1. International standards on parent-child relationship

Child's right to maintain contact with both parents

According to the convention on the Rights of the Child, States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.¹¹

According to the same Convention, State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.¹²

In addition, Article 24(3) of the EU Charter clearly recognizes the right of every child to maintain on a regular basis a personal relationship and direct contact with both his or her parents. Text of this norm clearly describes contents of this right and in particular, meaning of contact that should take place on a regular basis; allow for development of personal relationship and manifest in direct contact. However, a specific limitation still applies: every child has the right to maintain contact with both parents, unless this is contrary to the child's interests.¹³

Best interests of the child

UN Convention on the Rights of the Child establishes an obligation of the states to ensure protection of the child's best interests, the child's freedom to freely express his or her opinion on any issue. According to the Preamble, for the full and harmonious development of his or her personality, the child should grow up in a family environment, in an atmosphere of happiness, love and understanding.

According to the Convention, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.¹⁴

Council of Europe recommendations on child-friendly social services¹⁵ and the Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice¹⁶ underline the importance of giving priority to the child's best interests.

¹¹ The Convention on the Rights of the Child, Article 9(1).

¹² Ibid, Article 9(3)

¹³ EU Agency of Fundamental Rights and the Council of Europe, Handbook on European law relating to the rights of the child, 2015, p. 54. Available: <https://bit.ly/3TUoslr>

¹⁴ The Convention on the Rights of the Child, Article 3(1)

¹⁵ Council of Europe recommendations on child-friendly social services, III (A). This recommendations is based on the children's rights principles and aims to encourage member states to review domestic legislation, policies and practices, to improve their work and to eventually ensure best outcomes for children.

¹⁶ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice III (B). The Guidelines concern cases when children come in contact with competent agencies or services that are involved in enforcement of criminal, civil or administrative laws.

According to the latter, assessment of the child's best interests also entails use of multidisciplinary methods.¹⁷

According to the UN CRC General comment No. 14,¹⁸ the child's best interests entail the following three elements: a substantive right; a fundamental, interpretative legal principle; a rule of procedure. In addition, if a legal norm can be interpreted in different ways, it is important to choose the interpretation that will serve the child's best interests more effectively. Such assessment requires procedural safeguards. In addition, States parties should explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations. In addition, the child's best interests are a comprehensive concept that requires an assessment appropriate to the specific situation, context and needs, a specific set of circumstances.¹⁹ Further, reasons for making a decision that differs from the child's views should be explained clearly.²⁰ Assessment of the child's best interests should entail respecting his or her right to express views freely and due weight should be given to said views, in all decisions affecting the child. This is also clearly set out in the UN CRC General comment No. 12, which highlights the inextricable links between Article 3(1) and Article 12 of the Convention.²¹

The child's right to freely express his or her views

According to the Convention on the Rights of the Child, States Parties should ensure that children can express their views freely in all matters affecting them.²² The child, however has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. Nevertheless, States Parties have to ensure that the child receives all necessary information and advice to make a decision in favor of his/her best interests.²³

It should be noted that the following phrase in Article 12(1) of the Convention: „capable of forming his or her own views“ should not be viewed as a limitation but rather, an obligation of States to evaluate the capacity of the child to form his/her view independently. This means that States should not act based on a supposition that a child cannot express his or her views. To the contrary, they should act based on a presumption that a child has the ability to form his or her views and should ensure the child's right to express them. The child should not be required to prove that s/he is able to form his or her views.²⁴ Article 12 requires that a due weight be given to the child's views, in accordance with the age and maturity of the child. This clearly shows that importance of the child's views cannot be determined solely based on his/her age. The level of understanding of a situation by the child is not always related to their biological age but rather, various factors affect the child's ability to form his/her own opinions. Therefore, the child's views should be evaluated on a case-by-case basis.²⁵

The term „freely“ means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise his or her right to be heard. „Freely“ also means that the child must not be manipulated or subjected to undue influence of pressure. „Freely“ is further intrinsically related to the child's „own“ perspective: the child has the right to express his or her own views and not the views of the others.²⁶

¹⁷ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, Explanatory Note, III (B).

¹⁸ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, § 6.

¹⁹ Ibid, § 32.

²⁰ Ibid, § 97.

²¹ Ibid, § 43.

²² The Convention on the Rights of the Child, Article 12 (1).

²³ General Comment No. 12 (2009) on the right of the child to be heard, § 16.

²⁴ Ibid, § 20.

²⁵ Ibid, § 29.

²⁶ Ibid, § 22.

States parties must ensure conditions for expressing views that account for the child's individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.²⁷

The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child's clarified decisions.²⁸

During the administration of justice, the child's representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.²⁹ Representatives must know that they represent interests of the child only and they don't represent interests of other persons (persons, institutions or authorities).

International child abduction

It is the goal of the Convention on the Civil Aspects of International Child Abduction to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for the rights of access.

According to the Convention, the removal or the retention of a child is to be considered wrongful where: it is a breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.³⁰

According to the Hague Convention, wrongfully removed or retained children should be immediately returned to the country of their habitual residence.³¹ The Hague Convention is underpinned by the principle of the child's best interests. In the context of this Convention, the presumption is that the unlawful removal of a child is in itself harmful and that the status quo ante should be restored as soon as possible to avoid the legal consolidation of wrongful situations. Issues of custody and access should be determined by the courts that have the jurisdiction in the place of the child's habitual residence rather than those of the country to which the child has been wrongfully removed.³²

With regards to the return mechanism, there are several exceptions that are provided in the Hague Convention articles 12, 13 and 20. Article 12 concerns a case where a period of more than one year has elapsed from the date of the wrongful

²⁷ Ibid, § 23.

²⁸ Ibid, § 25.

²⁹ General Comment No. 12 (2009) on the right of the child to be heard, § 36.

³⁰ Convention on the Civil Aspects of International Child Abduction, Article 3.

³¹ Convention on the Civil Aspects of International Child Abduction, Article 11.

³² EU Agency of Fundamental Rights and the Council of Europe, Handbook on European law relating to the rights of the child, 2015, p. 61. Available: <https://bit.ly/3V9P7fD>

removal or retention and the child is now settled in its new environment. According to Article 13, a judicial or administrative authority is not bound to order the return of the child, if the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.³³ A judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.³⁴ A return of the child may also be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.³⁵

The PDO examines applications/complaints³⁶ concerning wrongful removal of a child, which illustrate challenges related to length of a court dispute as well as enforcement that are discussed in detail in subsequent chapters of this research. Problematic trends generally identified in the research and subsequent recommendations are directly proportional to the effective administration of justice in cases of wrongful removal of minors and protection of children's best interests in this process.

Family mediation

Family mediation is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement.³⁷ Family mediation has a potential to improve communication between members of family; reduce conflict between parties in dispute; produce amicable settlement, provide continuity of personal contacts between parents and children; lower the social and economic costs of separation and divorce for the parties themselves and states; reduce the length of time otherwise required to settle conflict.³⁸

Unlike the adjudicatory process, the emphasis in mediation is placed on establishing a workable solution, rather than on determining who is right and wrong. Decisions are made by the parties, not delegated to a judge. The mediation process helps reduce parties' hostility and children's trauma from the divorce process.³⁹

According to the Explanatory Report to the Convention on Contact concerning Children, when preparing this Convention, underlined the importance of promoting agreements between parties in particular in matters concerning children. For this purpose, they encouraged States to make greater use of family mediation according to the provisions of Recommendation (98) 1 of the Committee of Ministers to member States on family mediation. Therefore, mediated agreements confirmed by the competent judicial authority are also included in the notion of "contact order".⁴⁰ Therefore, the above provisions on contact order also extend to settlement achieved through mediation.

According to the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be

³³ Convention on the Civil Aspects of International Child Abduction, Article 13.

³⁴ Ibid.

³⁵ Ibid, Article 20.

³⁶ 4 cases.

³⁷ Association of Family and Conciliation Courts, *Model Standards of Practice for Family and Divorce Mediation*, 2000. available at: <https://bit.ly/3EQ7ujC>

³⁸ CoE Committee of Ministers Recommendation № (98) 1 on domestic mediation, preamble, § 7.

³⁹ Alison Gerencser, *Family Mediation: Screening for Domestic Abuse*, 23 Florida State University Law Review, (1995). p. 50. <https://bit.ly/3OmvGNQ>

⁴⁰ Explanatory Report to the Convention on Contact concerning Children, § 28.

guaranteed to the same extent in both in-court and out-of-court proceedings,⁴¹ including mediation.

According to Article 12(2) of the Convention on the Rights of the Child, a child should be provided with an opportunity to be heard in any judicial and administrative proceedings affecting the child. CRC General Comment N12 explains that both types of proceedings may entail alternative dispute resolution mechanisms, such as mediation and arbitration.⁴²

1.2. Georgian Legislation on Child-Parent Relationship

The procedure of child-parent relationship

When there is a disagreement between parents on the rights of access, the issue is decided by court, within the scope of authority established by the Civil Code of Georgia and the Civil Procedure Code of Georgia. Timeframe of civil proceeding does not comply with requirements established by the Civil Procedure Code⁴³ and often such proceedings go on for years. However, Article 69 of the Code on the Rights of the Child establishes an obligation to administer a child-friendly justice, which also extends to family disputes.

If parties fail to enforce voluntarily a judicial decision on the child's place of residence or relationship procedure, one or both of the parties apply to the State Care Agency for enforcement of the decision. Enforcement proceedings mean a set of measures to be implemented to enforce a court decision that has entered into force in cases related to transfer of the child and/or access rights of another parent or other family member, which are initiated based on a writ of execution issued by court to enforce a decision that has entered into force.⁴⁴ A writ of execution is usually presented by a party, however a territorial entity may initiate enforcement proceedings based on its own initiative, if the court decision on transfer of the child from the opposing side has been made based on its petition as a authority of guardianship and care.⁴⁵ Within no later than 10 business days, a territorial entity presents (or sends) to the obligated party a written demand on terms of voluntary enforcement of the decision.⁴⁶ Voluntary enforcement period should be determined individually in such demand but it may not exceed 7 working days.⁴⁷ Failure to fulfill the demand of the agency of guardianship and care will result in imposition of responsibility provided for by Article 173¹³ of the Code of Administrative Offences of Georgia. Such decision may be appealed in a higher authority⁴⁸ or in court.

In addition, failure to comply with a court decision on a child's relationship with both parents or interference with enforcement of such decision, as well as failure to comply with the decision of the agency of guardianship and care⁴⁹ will lead to imposition of a criminal liability, under Articles 381 and 381² of the Criminal Code.

⁴¹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, IV (B).

⁴² General Comment No. 12 (2009) on the right of the child to be heard, § 32.

⁴³ Civil Procedure Code of Georgia, Article 59.

⁴⁴ Order of the Minister of labor, health and social affairs N01-16/5, on the approval of the procedure for enforcement of cases involving transfer of a child and/or exercise of the right of access of the other parent or another family member to the child.

⁴⁵ Ibid, Article 7(3).

⁴⁶ Ibid, Article 7(5).

⁴⁷ Ibid, Article 7(6).

⁴⁸ Order of the Minister of labor, health and social affairs on the approval of the procedure for enforcement of cases involving transfer of a child and/or exercise of the right of access of the other parent or another family member to the child, 2011.

⁴⁹ If committed under Article 73¹³ of the Code of Administrative Offences of Georgia, by a person subjected to an administrative sanction for such action.

Child-parent separation

Article 26 of the Code on the Rights of the Child regulates issues of child-parent separation and establishes the state's obligation to hear and take into account the minor's opinion in decision-making, except when separation of the child from his or her family is necessary in view of the child's best interests. According to the same article, removal of a minor from his/her biological family due to financial status of his/her family or living conditions is not allowed. Where the life, health or safety of the child is under an immediate and direct threat, a social worker should be authorized to make an immediate decision on the separation of the child from his/her parent and should submit a relevant motion to court to obtain consent within 24 hours. A decision made by court within 24 hours on child-parent separation must be subject to a periodic review. A social worker's motion must include the necessary justification for the immediate separation of the child from his/her parent. A police officer must participate in the assessment of the threat and his/her positive or negative opinion must be recorded in a corresponding report. Issues of child-parent separation are handled by an administrative court. Such issues are also regulated by Article 21¹² of the Administrative Procedure Code. Its paragraph 12 can be used for determining the deadline for appealing, based on the analogy of legal act.

Mediation

Pursuant to Article 187¹ of the Civil Procedure Code of Georgia, after a claim has been filed with the court, a case subject to judicial mediation may be transferred to a mediator to conclude the dispute by a settlement between the parties. Pursuant to Article 187³ of the same Code, family legal disputes are among disputes that are subject to court-mandated mediation.⁵⁰ Further, in such case, the judge should preliminarily examine circumstances of the case in question and make the decision to refer the dispute case to a mediator without the parties' consent, or with the parties' consent if the opportunity to apply private mediation was used in relation to the same dispute and it ended without result.⁵¹

The Civil Procedure Code of Georgia prescribes a 45-day term for mediation process. Within this period, at least 2 meetings should be conducted. In addition, the 45-day term can be extended for another 45 days based on a consent of the parties,⁵² while pursuant to Article 187⁷, if an agreement is not reached within mediation, the plaintiff may, within the period of 10 working days, apply to court with a request to renew the court dispute. If the plaintiff does not petition to court about renewing the dispute, the court will render a decision not to examine the claim.

According to Article 3 of the Law of Georgia on Mediation, mediation is based on the principles of voluntariness (except for the cases provided for by law), self-determination, good faith and equality of parties, confidentiality, and independence and impartiality of a mediator. However, currently mediators of the Mediators' Association of Georgia (MAG) are only available in territorial units of Tbilisi, Gori, Mtskheta and Adjara. Notably, MAG accreditation also envisages specialization of mediators in the field of protection of minors' rights. In particular, mediators attend a 14-hour training on international and national standards about children's rights, on specificities of communicating with a child of any age and development, specificities of development of children, role of attachment, issues of psychosocial and moral development, as well as psychological aspects of civil cases, psychological difficulties related to parent-child/children relationships, psychological specificities of child victims/witnesses of domestic violence, working tools and assessment principles for social workers, family empowerment services.⁵³

⁵⁰ A judicial mediation applies to family disputes, except for disputes related to adoption, annulment of adoption, revocation of adoption, restriction of parental rights, deprivation of parental rights, and violence against women and/or domestic violence.

⁵¹ Civil Procedure Code of Georgia, Article 187³(3)

⁵² Civil Procedure Code of Georgia, Article 187⁵.

⁵³ Information is available on the official website of the Mediators' Association of Georgia and also confirmed based on information received during a meeting with MAG representatives. Source: <https://mediators.ge/ka/association> [last seen: 09/12/2022].

II. ISSUES OF ADMINISTRATION OF JUSTICE ON CASES OF CHILD-PARENT RELATIONSHIP

2.1. Child-parent relationship and challenges of enforcement

2.1.1. International standards

Pursuant to the Council of Europe Convention on Contact concerning Children⁵⁴, when resolving disputes concerning contact, the judicial authorities should ensure that both parents are informed on the importance for their child and for both of them of establishing and maintaining regular contact with their child; encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for solving disputes; before taking a decision, to ensure that they have sufficient information at their disposal, in order to take a decision in the best interests of the child.⁵⁵

Pursuant to the Council of Europe Convention on Contact concerning Children, where the circumstances of the case so require, judicial authorities may, at any time, make a contact order⁵⁶ subject to any safeguards and guarantees for ensuring that the order is carried into effect and that the child is returned at the end of the period of contact to the place where he or she usually lives or that he or she is not improperly removed. Safeguards and guarantees for ensuring that the order is carried into effect, may in particular include: supervision of contact; the obligation for a person to provide for the travel and accommodation expenses of the child and, as may be appropriate, of any other person accompanying the child; a security to be deposited by the person with whom the child is usually living to ensure that the person seeking contact with the child is not prevented from having such contact; a fine to be imposed on the person with whom the child is usually living, should this person refuse to comply with the contact order.⁵⁷

ECtHR case law has made it clear that the state has an obligation to implement adequate, prompt and sufficient measures to ensure effective child-parent contact.⁵⁸

2.2. Existing practice

Positive relation of a child with both of his/her parents, as noted in previous chapters of this research, are necessary for his/her welfare, except when this is against the child's best interests. However, enforcement of a judicial decision in such cases is related to a number of challenges and usually continues for months, even years, which is essentially against the child's best interests and contributes to the child's alienation from his/her parent.

In 2021, PDO examined nearly 300 cases involving separation of a minor from his/her biological parent⁵⁹ and has found a

⁵⁴ The Convention has not been ratified by Georgia, however it contains important provisions on the protection of children's rights during adjudication and represents a valuable tool for interpreting corresponding principles.

⁵⁵ CoE Convention on Contact concerning Children, Article 7.

⁵⁶ For purposes of the Convention, "contact order" means a decision of a judicial authority concerning contact, including an agreement concerning contact which has been confirmed by a competent judicial authority or which has been formally drawn up or registered as an authentic instrument and is enforceable. CoE Convention on Contact concerning Children, Article 2(b).

⁵⁷ CoE Convention on Contact concerning Children, Article 10.

⁵⁸ Right to respect for private and domestic life and the state's obligations, overview of the ECtHR practice and the Constitutional Court of Georgia practice, 2017, p. 144, available: <https://bit.ly/3AOFpXz>

⁵⁹ According to 2021 data, the PDO was examining 74 cases involving a child's relationship with the parent. Within the research, 214 orders on parent-child separation were studied.

number of systemic challenges, including years-long court disputes on the procedure for child-parent relationship;⁶⁰ ineffective and delayed response from relevant entities; cases where involvement of a psychologist was not ensured for months or for an entire year even,⁶¹ while a party and a social worker of the Agency referred to possible facts of psychological influence on the children. Another challenge is timely initiation of judicial proceedings over failure of a party to implement a decision of the authority of guardianship and care and referring cases to law enforcement authorities. Further, as noted in the relevant chapter of this research, even if a person is recognized as an offender for failure to comply with a decision of the agency of guardianship and care, often sanctions, fines or warnings are not result-oriented and fail to ensure timely enforcement of the decision.

Notably, Annex⁶² of the special report provides an overview of many cases examined by the Public Defender of Georgia, illustrating the above systematic challenges.

2.2.1. Preparedness of parties and children on the issue of having a relationship with a parent

Circumstances related to one or both of the parties influencing, manipulating with minors, identified proceedings, represents a systematic challenge.⁶³ As a result, often the child refuses to communicate not only with another parent or a family member but also with relevant specialists, social worker and psychologist. Delays in court disputes and enforcement proceedings essentially harm psycho-emotional state of children. There have been cases when children said that they were „tired“ of talking to psychologists, communicating with social workers.⁶⁴ There was one case where a minor directly said that he didn't want to have his relationship with his parent be regulated through court or with involvement of specialists.⁶⁵ In one of the cases it was noted that a parent's family member categorically refused to have a relationship with the children's parent and she did not even allow social workers to interview the children separately but instead, she was answering questions on the children's behalf.⁶⁶ In view of the minors' best interests and to protect their emotional well-being, state agencies attribute a special importance to effective involvement with parents. During an interview, a social worker noted that a court decision that had already entered into force had not been executed: *„There was a case where the mother was given custody of her child, the child was in the father's family and I went there with the police but a child who is 12-13 years old was categorically refusing to leave. Neither the police nor I could have forced him to leave. We spoke with the child and the father. The father said that he would say nothing, the child should have decided himself. The child's decision was that he didn't want to go with us, so we could not enforce the decision.“*

In this regard, interpretation of an obligation of a party to ensure meeting/relationship of a child with another parent is especially noteworthy. In particular, in one of the cases,⁶⁷ a social worker's findings noted that facilitation of meetings of the children with another parent/family member entails preparing them physically (dressing them) and psychologically (creating mood). Notably, a parent said that she would *„dress [the children] and ask them to wait by the door but if they refused to leave, she wouldn't let them go.“* In another case, a psychologist indicated that it is not sufficient for the mother to „not prohibit“ the child from seeing her mother; she should also speak to the child to encourage her to meet with her father. The psychologist also noted that *„belief that „the child does not need another parent, she already has everything“*

⁶⁰ See case №2, Annex №1.

⁶¹ A psychiatrist had not been involved as of March 25, 2022. See case N1, Annex N1; also, case N2, case N4.

⁶² See Annex №1.

⁶³ See Annex №1.

⁶⁴ See Annex №1.

⁶⁵ Tbilisi City Court, case №2/17738-20.

⁶⁶ See case №5, Annex №1.

⁶⁷ See case №1, Annex №1.

will increase the distance between the child and the father“. The psychologist explained that parents should understand the importance of separating their relationship from parent-child relationship, however by finding a common language, parents will encourage the child to follow their example and make it easier for him to have a relationship with both parents. According to the psychologist’s opinion, positive change of the mother’s attitude towards the father had a positive impact on the child’s behavior.⁶⁸

The environment that the parties often create when the child is meeting his/her parents is often repressive and stressful. For example, presence of many lawyers, relatives, video recording of the process and constantly walking behind them during a contact with the child and another parent/family member.⁶⁹ A party’s preparedness to inform in a timely manner the other party and the State Care Agency about not being able to meet on a specific day, including due to objective reasons, is also problematic.

All findings of the State Care Agency’s psychologists note that one parent’s mood has a positive impact on the minor’s preparedness to have a relationship with the other parent. Therefore, only the technical definition of the term „ensuring“ creates an obstacle for a child’s relationship with both parents and harms best interests of the child.

Due to its gravity, this issue calls for a systematic approach and comprehensive work on parenting skills and positive parenting. In particular, cases that have been examined revealed that the State Care Agency’s social worker and psychologist systematically provide recommendations for both parents and provide consultation for them. However, often full consideration of the child’s relationship with the other parent by one or both parents is a problem. Among other things, this is related to a tension between the parents, a conflict that makes it impossible for them to prioritize the child’s best interests.

2.2.2. Challenges related to proceedings at the State Care Agency

According to the ECtHR case law, the right to respect for family life is violated if it is impossible to transfer the child to the parent with whom the national court has decided the child should reside with.⁷⁰ However, obligation of the national authorities to take measures to facilitate reunion is not absolute, since the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case but the understanding and cooperation of all concerned will always be an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention.⁷¹

Challenges that exist in the country in that regard are illustrated by circumstances discussed in the previous subchapter, as well as information received from the State Care Agency.⁷² More specifically, in 2020-2021, based on a petition from a disputing party, 319 enforcement proceedings were ongoing at the Agency, including 60 cases in regards to which the Agency received a petition in 2020-2021. Therefore, the process of enforcement of child-parent relationship may be delayed not only for months but for years,⁷³ which according to the State Care Agency is largely caused by **tension between**

⁶⁸ See case №9, Annex №1.

⁶⁹ See case №1, Annex №1.

⁷⁰ Right to respect for private and domestic life and the state’s obligations, overview of the ECtHR practice and the Constitutional Court of Georgia practice, 2017, p.142-143. Available: shorturl.at/flxY7 [last seen: 28/11/2022]. Also, see *Hokkanen v. Finland*, №19823/92, 23 September 1994. § 58.

⁷¹ ECtHR, *Hokkanen v. Finland* №19823/92, 23 September 1994. § 58.

⁷² Correspondence from the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking №07/5403, date: 30/06/2022.

⁷³ See Annex №1.

parents, which is further exacerbated when criminal proceedings are initiated against one of the parents, based on mutual accusations; in the process of administration of criminal justice or when there is an ongoing property dispute between the parties, under the civil procedure. One of the reasons of such delay also include **a parent intentionally inspiring the child** to refuse to have a relationship with the other parent, while in some cases the reason **is the child's refusal as a result of the parents' behavior**.

Relationship of a child with both parents and the process of enforcement is further hindered by insufficient number of specialists. In particular, the number of cases handled by the State Care Agency involving child-parent relationship and enforcement is quite disproportionate, compared with the number of specialists involved. In particular, in 2022, only 135 social workers, 22 lawyers and 15 psychologists of the State Care Agency were working on 2,212 cases involving a child's relationship with both parents and enforcement⁷⁴ (see Table N1, N2). In addition, child-parent relationship hours and days are mostly scheduled during non-working periods, based on the child's interests. Therefore, social workers, psychologists and lawyers may have to dedicate their non-working days to this process.⁷⁵ Additionally, according to the State Care Agency, the procedure related to having a relationship with a child entails obligations that the parties must fulfill on a periodic bases. Therefore, during a lengthy and varying enforcement process, one or both sides may fail to fulfill their obligations on a periodic bases and many times.

In 2020-2021, in cases concerning a procedure related to having a relationship with a child, number of opinions prepared by the authority of guardianship and care for submission to court **is equal to or greater than** the number of cases provided in the table below (1893). In particular, given the length and complexity of court proceedings, sometimes repeat findings of the authority of guardianship and care are ordered by court or findings of a psychologist, which the Agency does not record. Social workers may be handling about 10-12 ongoing cases at once, concerning child-parent relationship. This number is considerably lower in the case of NGOs that were interviewed within this research. At such organizations, a specialist may be handling 4 cases at the same time. Notably, specialists of the state agency are not working only on parent-child relationship or separation issues but rather, scope of their work is far larger. Assessment of each case usually requires 5-6 visits and meetings.⁷⁶ Notably, according to one of the orders concerning child-parent separation, a psychologist from the State Care Agency did not appear at the court hearing, even though under the regional court's ruling, a psychologist from the authority of guardianship and care had been invited. Lack of appropriate resources was the reason for the psychologist's absence from the hearing.⁷⁷

It is therefore clear that employees of the State Care Agency have a high workload. Their number is substantially below the number that would have more or less protected them from risks of professional exhaustion associated with irregular work schedule, high responsibility, work on sensitive issues like violence, a child's traumatic experience, etc. There is a high risk of exhaustion,⁷⁸ which clearly negatively affects quality of service, increases chances of professionals making a mistake or contributes to attrition of employees.

⁷⁴ Correspondence from the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking №07/5403 – 30/06/2022; 1893 cases concerning the procedure for having a relationship with the child and 319 cases of enforcement.

⁷⁵ Identified within focus groups with relevant specialists.

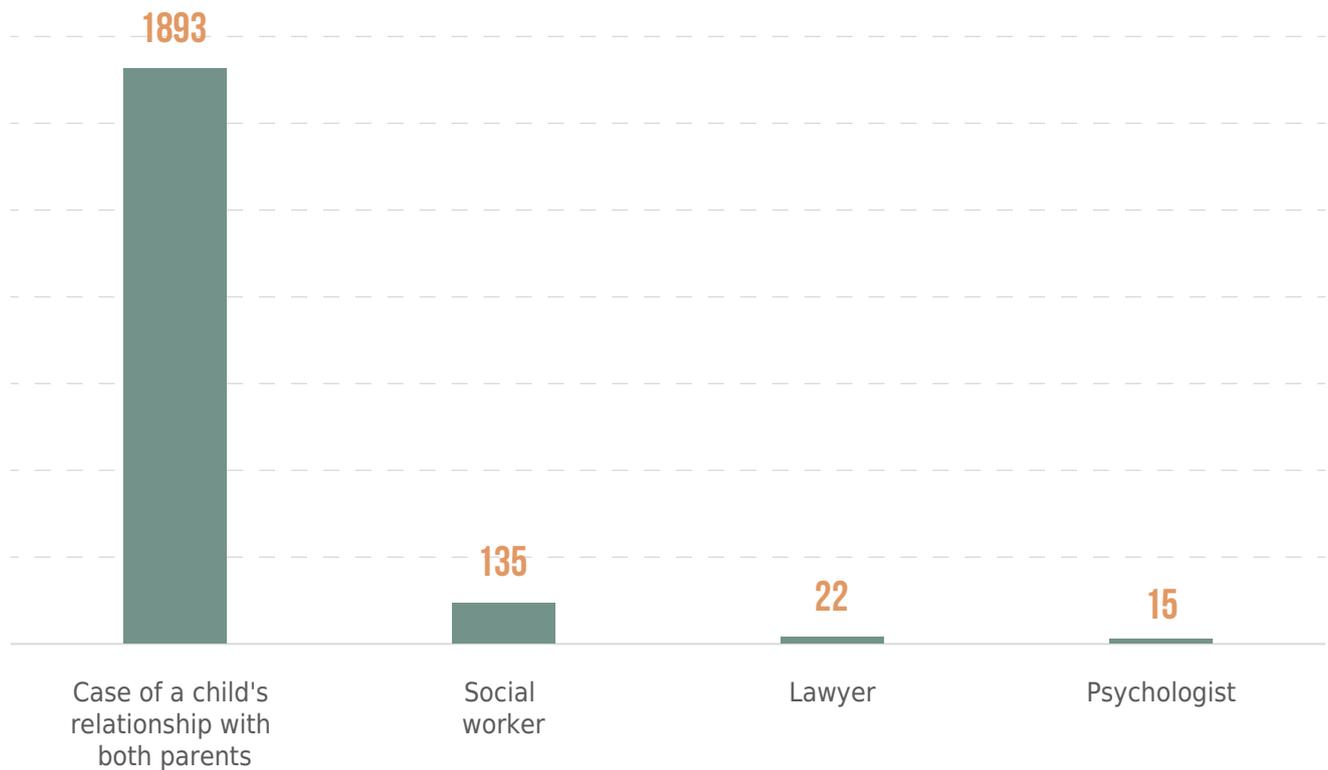
⁷⁶ Identified within focus groups with relevant specialists.

⁷⁷ Sachkhre Regional Court, order on refusal to grant a motion requesting parent-child separation, case №3/57-2021.

⁷⁸ American Psychological Association, APA dictionary of psychology, "Burnout", available at: <https://dictionary.apa.org/burnout> [last retrieved: 20/11/2022].

Table №1

Proportion of cases compared to the number of specialists



In view of the foregoing, the research has identified cases where, despite a possible psychological impact on the child, willful incompliance/obstruction of compliance with the decision by a party was not responded with timely and coordinated actions. For example, in one of the cases⁷⁹ a psychologist was not involved and a corresponding opinion was not prepared for over a year, even though the other parent and the State Care Agency itself pointed to the possible impact that it had on the children, and the court decision was essentially not complied with, except for a few meetings held.

Problems related to incompliance/obstruction of compliance with the decision is related to delays in involving corresponding specialists. In particular, in one of the cases studied within this research, a parent took his children to a village for vacationing but later, they moved to live there. As a result, a psychologist could not be involved in the case for over a year. The State Care Agency informed us in writing that a psychologist could not determine whether the children were subjected or not to their father's influence and therefore, interference obstruction of compliance with the court's decision by a certain individual or individuals was not found.⁸⁰

Notably, currently administrative proceedings under Article 173¹³ of the Administrative Code of Georgia have been initiated only in **12% of enforcement cases** currently handled by the Agency,⁸¹ concerning failure to comply with the requirement of the authority of guardianship and care, and only **5 cases** were referred to the Ministry of Internal Affairs of Georgia.

⁷⁹ See case №1, Annex №1.

⁸⁰ Correspondence from the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking №07-01/45981, date: 14/12/2021, also, №07-01/12089, date: 12/04/2021; №07-01/21950 – 23/06/2021; №07-01/29656 – 09/08/2021; №07-01/38760 – 25/10/2021; №07-01/45981 – 14/12/2021; №07-01/11904 – 25/03/2022.

⁸¹ Article 173¹³ of the Code of Administrative Offences of Georgia, Non-compliance by a parent defined by the court decision with the demand of a guardianship and custodianship authority in relation to the case regarding the transfer of a minor child to the other parent, and, on the basis of the court decision, regarding the exercise of a right of the other parent, another legal representative or another family member to communicate with a minor child, or the unlawful international movement/arrest of a child, – shall carry a fine in the amount of GEL 500.

According to the information provided by the Ministry of Internal Affairs of Georgia,⁸² in 2020-2021, investigation over failure to comply with the demand of a authority of guardianship and care (Article 381²) was initiated in **7 cases**, while the Office of the General Prosecutor informed us in writing⁸³ that during the same period, none of the investigations initiated under Article 381² were terminated, however criminal prosecution was not launched in any of the cases and none of the minors were not recognized as victims.

Table №2



Termination of enforcement proceedings was mostly due to the party going abroad, a case being referred to law enforcement authorities, an application of an interested party.

Notably, enforcement proceedings due to their complexity should often be administered under the supervision of a social worker, psychologist and/or lawyer. Therefore, meeting with the other parent often takes place at territorial units of the Agency. However, only 5 of them - Imereti, Shida Kartli, Samtskhe-Javakheti, Mtskheta-Mtianeti, Kakheti regional centers - have a **child-friendly room**. In other cases, a psychologist’s office space is used instead.

Proceedings concerning child-parent relationship have certain specificities, with regards to communication with the minor and his/her parent. In that regard, it is important to constantly empower social workers, psychologists and lawyers and to train them on relevant issues. However, in 2020-2021, only a few specialists were trained and topics of training included communication with children, including with child victims of violence (see Table N3).

In addition, according to the information obtained by researching this matter, frequently parents agree to terms of enforcement after they speak and consult with a social worker. However, the process often becomes complicated after involvement of a lawyer. It should also be noted that often social workers and lawyers have to take on functions of a mediator, because as noted earlier, relationship between the parents plays a decisive role in the process of enforcing the procedure for child-parent relationship. According to respondents interviewed within the research, flaws in evaluation of children are predominantly due to the lack of standardized, evidence-based tools and practice, as opposed to any lack of specialists’ professional competencies.

⁸² Correspondence from the Interior Ministry, MIA 5 22 01478394 – 03/06/2022.

⁸³ Correspondence from the General Prosecution Service, №13/33283 – 01/06/2022.

Table №3

Number of specialists trained, as compared with their total number in 2020-2021



After reviewing case materials and communicating with specialists, it was found that sanctions for incompliance with the State Care Agency’s decision are not results-oriented. In particular, according to parents, they will simply pay a fine and it is not an obstacle for them. In addition, the period for exhausting internal and judicial mechanisms for recognizing a person as a perpetrator and appealing is quite lengthy. All of this contributes to alienation of a minor from his/her parent and makes him or her even more susceptible to the other parent’s influence.

Lack of adequate positive parenting services in our country remains a problem. In that regard, we must note one of the cases examined within this research, where the court ordered a party to attend a mandatory course for correction of violent attitudes and behavior and to receive services of a psychologist to that end. However, since a state agency does not deliver such services, the parties were referred to an NGO but it turned out that in order to involve a person in such service, it is essential for him/her to **understand during evaluation stage** that his/her actions were against the will of the victim. According to a specialist of the organization, working with individuals specified in a protective order may not be results-oriented if they refuse to recognize that they acted against the will of a minor. This requirement somewhat contradicts the grounds that the court’s decision is based on. The court addressed the parties’ attitudes towards the issue, as well as the situation of a minor and in consideration of the child’s best interests, it made a decision to issue a protective order with certain terms. These terms include involving certain individuals in services of an organization. Further, during decision-making process court takes into account all circumstances related to the case, including the parties’ resistant attitudes, as naturally court’s decision may not be acceptable for everyone. Nevertheless, the obligated party was not able to get involved in services envisaged by the protective order, due to the fact that the state itself did not offer psychological services focused on correction of behavior specifically for cases involving a child’s relationship with both parents.

2.2.3. Challenges related to assessment

To determine the procedure for a child’s relationship with both parents and make a decision about separating a child from his/her family, it is essential to not only listen to the child but also to examine his or her physical and emotional environment, psychoemotional state, determine the type of the child’s attitude towards his/her parents and identify risks of emotional or physical pressure, which may be affecting the child’s behavior. In that regard, guidelines, procedures and assessment methodology, strategy that relevant agencies or specialists are using, are of a decisive importance.

Based on document review and information obtained from interviews with representatives of governmental entities and non-governmental organizations it has been found that at the institutional level, social workers, psychologists don't have a pre-determined protocol, guidelines, procedures that they can rely on while working on sensitive issues like a child's attitude towards his/her parents, determining risks of violence or pressure from a parent and signs of safety. With regards to opinions of social workers, it has been found that they are quite general and often fail to answer questions that are important in the process of considering a case.

Analysis of psychologists' opinions shows that specialists of the State Care Agency are not using a standardized approach. Assessment criteria, methodology or even terminology are inconsistent. In their opinions/assessments, psychologists demonstrate different competencies. Based on a review of their opinions, it has been found that they use an important scientific term, „attachment“ to denote and indicate different things, which may be confusing and may create incorrect impressions about the type of child-parent relationship. For example, the following phrases are used – „excessive attachment“, „special attachment“, „high level of attachment with the mother“. Notably, scientific literature does not recognize any such forms of attachment.⁸⁴

As noted earlier, psychologists demonstrate different professional competencies in their opinions/assessments. Analysis of documents has revealed positive examples, as well as problems. For example, a specialist stated the following in her opinion – *„The child is demonstrative excessive attachment, which is caused by fears coming from the mother“*. However, it is unclear what objective information the assessment is based on. Further, a psychologist expresses certain assumptions about future, however it is unclear what empirical material or data she relied on for making such assumptions. Given these circumstances, the following reasoning is clearly problematic – *„which in turn creates the risk of manifesting in future relationship with a partner and he may choose a „bad“ partner or be a „bad“ spouse, just like his parents. Clearly, this issue will influence his self-esteem.“*⁸⁵

The same opinion demonstrates a psychologist's mentor-like, moralistic reasoning, which clearly represents a challenge from professional-ethical perspective – *„It is therefore crucial for the adults to act like adults and prioritize their minor child's interests, instead of hiding themselves behind pseudo best interests of the child.“* Part of the psychologist's reasoning sounds more like a **prediction** – *„As to the child's ways of solving problems, he will rely on the model of an incomplete family and will try to address problems, conflicts that need to be resolved, the way his mother and father are acting...“*

In all of the documents examined, a psychologist's recommendation envisages possibilities for having a relationship with both parents, a clear position that the parties need to agree to take into account the child's best interests, attend relevant „courses“, etc. However, in order to do that, appropriate services need to be introduced and this cannot be a responsibility of the State Care Agency's psychologist, who gets involved with the parties during consideration of the case or enforcement, issues recommendations and naturally, s/he cannot go beyond the „scope of his/her professional authority/framework“.

2.3. Importance of mediation in child-parent relationship disputes

According to the European Convention on the Exercise of Children's Rights,⁸⁶ in order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties must encourage the provision of mediation or other processes to resolve disputes.⁸⁷ Pursuant to the Explanatory report to the Convention, mediation should be possible independently of any intervention by a judicial authority, before and during proceedings, or even afterwards if a conflict arises

⁸⁴ <https://bit.ly/3BAXfhh> [last accessed:14/12/22].

⁸⁵ LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking, psychologist's opinion №07012414 – 20/04/2022.

⁸⁶ Georgia has not ratified the convention; however it is a valuable instrument for interpretation of relevant principles.

⁸⁷ European Convention on the Exercise of Children's Rights, Article 13.

while the decision taken by the judicial authority is being enforced.⁸⁸

Effective mediation requires that the family mediator be qualified and impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity; and most importantly, that the best interests of children be taken into account.⁸⁹ Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.⁹⁰ In addition, a mediator should have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect.⁹¹

In the process of implementation of family mediation, use of effective screening methods is particularly important to ensure that the process is fair, voluntary and victim of domestic abuse or children are not put at any risk. Such screening is necessary to identify domestic abuse and determine whether mediation is appropriate or not. The law should also require that mediators undergo training to be able to identify signs of domestic abuse.⁹²

In that regard, practice of European states should be noted. In particular, according to **Estonian** legislation, a petition on contact concerning a child filed in court should be accompanied with a **certificate of unsuccessful mediation or conciliation**. Mediation or conciliation proceedings are not required to be undertaken as a prerequisite for taking the case to court where one parent has used violence in respect of the child or the other parent, or where another valid reason is present. If the parties have not used the mediation mechanism and no reference is made to the exceptional circumstances, the court directs the parties to undertake the mediation and suspends proceedings on the petition until the end of the mediation procedure.⁹³ Estonian legislation also directly envisages expression of opinions by the child in the process of mediation, using a method that is appropriate for his/her age and level of development.⁹⁴ According to the **Norwegian** legislation, mediation is a prerequisite for taking the case to court if the case involves determination of a parental rights and obligations with respect to a child under the age of 16 or a move to live in a different country, guardianship or contact rights. Mediation is also mandatory for parents of a child under the age of 16, before filing in court for divorce.⁹⁵

2.3.1. Challenges in the national legislation and practice

As explained in the relevant chapter of this research, according to the Georgian legislation, court is authorized to address the case to mediation. At the same time, according to specialists who work on cases concerning a child's relationship with both parents, undertaking mediation is facilitating conflict resolution. It turned out that usually during a court dispute or even during enforcement, specialists of the State Care Agency take on the role of a mediator, to ensure an agreement between the parties and a timely resolution/enforcement to protect the child's best interests. It has also been found that in cases involving a child's relationship with both parents, a decision recognizing a person as an offender is not an effective mechanism for enforcement. Investigation may also be delayed, which negatively affects the process of restoring the child's relationship with his/her parent. In addition, issuing a reproof against one of the parties, imposing a fine or initiating an investigation at this time makes communication between the parties even more tense and makes it difficult to conduct enforcement based on a child-friendly, peaceful approach.

⁸⁸ Explanatory Note to the European Convention on the Exercise of Children's Rights, §§ 65-67.

⁸⁹ Association of Family and Conciliation Courts, *Model Standards of Practice for Family and Divorce Mediation*, 2000. Available: <https://bit.ly/3Aw40jX>

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Civil Procedure Code of Estonia, § 560¹. Available: <https://bit.ly/3AsTp9d>

⁹⁴ Act on State-Funded Family Mediation Services, § 10. Available: <https://bit.ly/3TUGVhR>

⁹⁵ Norway Act on Children and Parents, Article 51. Available: <https://bit.ly/3GuKGaA>

Therefore, effective and timely enforcement process is possible when the parties understand interests of the child and are acting in agreement. Use of mediation mechanism will help the parties resolve their issue peacefully, by reaching an agreement. Further, according to one of the specialists, use of mediation will also help the parties to fully understand the specific issues that they cannot agree on and where they can make concessions.⁹⁶

III. CHILD-PARENT SEPARATION

3.1. International standards and practice

Separating a child from his/her parent is one of the most serious risk-factors among the child's traumatic experiences⁹⁷, which leaves a deep and lasting impression on the child's physical and mental health, quality of life. According to the ECtHR case law,⁹⁸ „the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life.“ However, the Court has also emphasized that this right may be limited by the best interests of the child. This right is at the center of judicial decision-making about custody of and contact with children.⁹⁹

The Council of Europe Convention on preventing and combating violence against women and domestic violence, which aims to design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence, among other things also concerns custody, visitation rights and safety. More specifically, parties should take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.¹⁰⁰ Additionally, parties must take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children.¹⁰¹

According to the Council of Europe Convention on Contact concerning Children, a child and his/her parents have the right to obtain and maintain regular contact with each other. Such contact may be restricted or excluded only where necessary in the best interests of the child. Where it is not in the best interests of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact with this parent must be considered.¹⁰²

Accordingly, best interests of the child are the only criteria based on which contact with a parent can be limited or prohibited. According to the Explanatory Note to the said Convention, when making a decision about restricting or excluding contact, judicial authorities should take into account whether there is a less restrictive solution available. Additionally, the possible restriction or exclusion should be proportional and the necessity of the restriction or the exclusion should be duly

⁹⁶ Information is based on focus group findings.

⁹⁷ The national child traumatic stress network, Children with traumatic separation: Information for Professionals, available: <https://bit.ly/3EpsJaO> [last accessed: 20/11/2022].

⁹⁸ European Court of Human Rights, K. and T. v. Finland GC No. 25702/94, 12 July 2011, § 151.

⁹⁹ EU Agency of Fundamental Rights and the Council of Europe, Handbook on European law relating to the rights of the child, 2015, p. 57. Available: <https://bit.ly/3hTMwHH>

¹⁰⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 31(1).

¹⁰¹ Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 31(2).

¹⁰² Convention on Contact concerning Children, Article 4.

justified. The more the right of contact is to be restricted, the more serious the reasons for justifying such restriction must be. For instance, contact is against the best interests of the child where there is a physical or psychological danger for the child from the part of his or her parent. In those cases where a child having sufficient understanding is opposed to having contact with one parent, it is possible that such contact might adversely affect the child.¹⁰³

The Convention does not grant the child an absolute right to consent or to veto a planned decision concerning contact, because it is not always in the best interests of the child to grant him or her such a right. It is for the judicial authority to make the final decision taking into account the wishes and feelings of the child as well as all other circumstances.¹⁰⁴

In this regard, the ECtHR made an important interpretation in one of its cases – „In cases of this type the child’s interest must come before all other considerations. However, when properly analyzed, that interest is seen to comprise two limbs. On the one hand, the interest clearly entails ensuring that the child develops in a sound environment and that under no circumstances can a parent be entitled to have measures taken that would harm the child’s health and development. On the other hand, it is clear that it is equally in the child’s interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to „rebuild“ the family.¹⁰⁵ Additionally, the court noted that the ultimate aim of any „care order“ must be to „reunite the ... parent with his or her child.“ Interestingly, according to the Court state agencies are required to take measures that will make it possible to maintain family ties.

Article 26(5) of the Code on the Rights of the Child directly prohibits separating a child from his or her family on grounds that the parent does not have adequate living conditions or financial status. In such cases, the state is required to carry out measures for empowering the family and if it is still impossible to eliminate the challenge, a decision to separate the child from his/her family can be made. However, when regulating this issue formally in the legislation, it is important to consider if the existing services for economic or social empowerment of families are effective, tailored to needs of individual families and results-oriented.

Review of orders on child-parent separation and meeting with professionals has confirmed once again that despite the legal prohibition, essentially, a parent’s social and economic status and living environment is one of the most important basis for which minors are placed in the care of the state. Further, cases that have been examined confirm that a child may remain in the state’s care for years, because challenges with regards to his/her parent’s social and economic status and/or parenting skills have not changed. In that regard, the role of social workers that issue recommendations to parents is especially noteworthy. However, practice shows that recommendations of social workers, lawyers or psychologists in cases of a child’s relationship with both parents or child-parent separation are not sufficient for correcting behavior and for ensuring restoration of the child’s relationship with the parent. One of the judges noted during an interview: **„They provide a standard justification, while it is unclear if they’ve done anything to engage with the parent. [The assessment says that the parent] can’t provide anything to eat or drink, poor conditions, poverty. However, it is unclear what they did to help the parent find a job, to help the parent somehow or to work with him/her.“** When evaluating the child’s environment, they focus on poverty, as opposed to the relationship between the child and the parent, risks associated with parent-child separation, which is clearly a violation of the child’s best interest.

¹⁰³ Explanatory Report to the Convention on Contact concerning Children, § 41.

¹⁰⁴ Ibid, § 56.

¹⁰⁵ ECHR, Gnahoré v. France, № 40031/98, 19 September 2000.

Right to respect for private and domestic life and the state’s obligations, overview of the ECtHR practice and the Constitutional Court of Georgia practice, 2017. p. 150-151. Available: <https://bit.ly/3AOFpXz>, last accessed: 25/11/2022].

3.2.Challenges in legal interpretations about child-parent separation

Court practice clearly suggests that courts and the State Care Agency were not ready to solve issues of child-parent separation, the obligation provided in Article 26 of the Code on the Rights of the Child. In particular, interpretation of Article 26 of by courts was inconsistent with regards to extending the term of child-parent separation, while in several cases, based on a motion of the State Care Agency, the need to revise on periodic basis a decision on child-parent separation, also under Article 26 of the Code, was misinterpreted.

This is first and foremost suggested by an inconsistent judicial practice concerning refusal to grant the State Care Agency's petitions for extending the term of child-parent separation in cases where children have already been separated from their parents and have been placed in the care of the state.¹⁰⁶ In particular, some courts found that since the minor had already been separated from his/her biological parent, extending the term of separation was no longer a case that fell within the scope of Article 26 of the Code and it was not an issue that court decides. However, in its decision Kutaisi appellate court noted: *„The appellate court finds that in the case in question, although the procedures of child-parent separation were carried out within the scope of regulations that existed prior to enactment of the Code on the Rights of the Child, periodic review of the decision should be carried out by court, under Article 26 (7) of the Code on the Rights of the Child, because the special law – the Code on the Rights of the Child provides a different regulation for mechanisms of controlling child-parent separation and the period of separation.“*¹⁰⁷

Notably, in one case the Agency filed a request for extending the term of child-parent separation in court and indicated that the term should be extended until **grounds for reintegration are evident**, which essentially is in conflict with the requirement of periodic review of child-parent separation decision. Court reviewed this case and partially granted the request, it separated the child from his biological parent for another year.¹⁰⁸ In a similar case, court stated the following: *„As to the term of separation, the regional center of the State Care Agency should be guided by Article 26 (7) of the Code on the Rights of the Child. A decision on child-parent separation is subject to periodic review. After the reasons for child-parent separation are eliminated, return of the child to the family should be in the best interests of the child“.*¹⁰⁹

Further, the period of child-parent separation should not be in conflict with the requirement of **periodic review** of the decision, under Article 26 of the Code on the Rights of the Child. In particular, in many cases¹¹⁰ courts reduced the period of separation requested by the State Care Agency on grounds that such separation is subject to a periodic review. For example, in one of the cases court reduced the period of separation requested by the State Care Agency and noted the following: *„... Court believes that the child should be separated from the mother for two years, considering that facts of violence and neglect by the mother have been established. Notably, the social service is already working with the mother, which has not yet ensured a positive result. Therefore, Court believes that two years are sufficient for the social service to examine and establish whether or not the child should be separated from the mother for a longer period of time or is it possible to return the child to his biological family (the mother) earlier and if this is necessary for the child's well-being and harmonious devel-*

¹⁰⁶ Kutaisi City Court, case №3/183-21 – 18/05/2021; case №3/110-21 – 29/03/2021; case №3/106-21 – 23/03/2021; case №3/103-21 – 23/03/2021; case №3/97-21- 23/03/2021; Gurjaani Regional Court, case №3/106-21 – 13/08/2021; case №3/87-21 – 13/07/2021; case №3/86-21 – 13/07/2021; case №3/105-21 – 13/08/2021; case №3/88-21 – 16/07/2021; case №3/89-21 – 16/07/2021; Zestaponi Regional Court, case №3/25-2021 – 18/03/2021; case №3/30-2021 – 02/04/2021; case №3/56-2021 – 05/07/2021; case №3/7-2021 – 05/07/2021; case №3/26-2021 – 19/03/2021; case №3/59-2021 – 06/07/2021; case №3/47-2021 – 22/05/2021; case №3/58-2021 – 05/07/2021; case №3/27-2021 – 19/03/2021; case №3/60-2021 – 03/07/2021; Sachkhere Regional Court, case №3/36-2021 – 06/07/2021; case №3/28-2021 – 28/05/2021; Signaghi Regional Court, case №3/150-21 – 24/08/2021; case №3/151-21 – 24/08/2021; case №3/86-21 – 22/06/2021; case №3/88-21 – 22/06/2021; case №3/90-21 – 22/06/2021; case №3/91-21 – 22/06/2021; case №3/105-21 – 13/07/2021; case №3/111-21 – 15/07/2021; case №3/112-21 – 15/07/2021; case №3/115-21 – 16/07/2021.

¹⁰⁷ Kutaisi Appellate Court, case №3/8-119-20 – 08/04/2021.

¹⁰⁸ Kutaisi City Court, case №3/139 – 14/04/2021; case №3/148-21 – 16/04/2021.

¹⁰⁹ Kutaisi City Court, case №3/139 – 14/04/2021.

¹¹⁰ Kutaisi City Court, case №3/150-21 – 16/04/2021; case №3/12921 – 25/01/2021; Akhaltsikhe Regional Court, case 34611278-3/084-21 – 5/05/2021; Bolnisi Regional Court, case №3/162-21 – 9/11/2021.

opment, to protect the child's best interests."¹¹¹ In another case, court reduced a 16-month separation period to 6 months.

Misinterpretation of Article 26 of the Code on the Rights of the Child is also revealed by another case,¹¹² where the Agency filed a request in court for separating a child **with the status of a prospective adoptee** from the biological parent. The court rejected the request because a parent that the child should have been separated from did not exist. In particular, „*Having heard all the evidence and testimonies in the case, the court finds that there are no grounds for granting the request or for exercising judicial control in that regard, as there is no urgent necessity to separate the child from his parent under Article 26 of the Code on the Rights of the Child, as there is no imminent threat to the child's life, health and safety. The Court also notes that the case in question is radically different in that the parent gave up the child in the maternity home, the moment the child was born. Therefore, there are no legal mechanisms for imposing a judicial control on the child-parent separation term in case of absence of the parent (the mother gave up the child immediately after the child was born).*“

Accordingly, adoption of new legal regulations created certain challenges for child-parent separation cases, with regards to interpretation of the norm and formation of a consistent judicial practice, as well as with regards to contents of motions submitted to court and period of separation, which fell short of the requirement of periodic review of child-parent separation, as an „extreme“ mechanism and timely implementation of adequate measures for the child's reintegration. Providing justification for extending the separation period was also problematic, which eventually ended with partially granting the request. In view of the foregoing, such motions should especially highlight the steps that the State Care Agency is going to take for achieving reintegration in the period of separation. Requests for extending the separation period should also specify what the state did for reintegration and why it is currently impossible to return the child to the biological parent despite the actions taken by the state.

3.3. Grounds for child-parent separation or extending the period of separation

3.3.1. Social and economic status

Within the research, 214 orders on child-parent separation were reviewed. Separation of children from their parents is mostly based on parents willfully neglecting needs of their children and forms of abuse. Notably, in one case the child himself applied to court and requested separation from his biological family, due to neglect and abuse. The court granted his request.¹¹³ There were cases of early marriage/forced marriage, in which the court separated the minor from his/her parents/family members.

However, unfortunately, majority of cases confirm lack of family support services in the country and their ineffectiveness. The problem gets worse when one or both of the parents or the child is a person with a disability and needs a special support. In particular, in 20% of cases¹¹⁴ poverty of the parent was the basis for separating the child from his/her biological family/extending the period of separation, while in a larger share of cases the family's social and economic status was one of the important reasons as to why it was impossible for the child to return to his/her biological family and continues to

¹¹¹ Akhaltsikhe Regional Court, case №3/236-21 – 29/12/2021.

¹¹² Kutaisi City Court, case №3/137-21 – 14/04/2021.

¹¹³ Gurjaani Regional Court, case №3/19-21 – 17/03/2021.

¹¹⁴ Sachkhre Regional Court, case №3/28-2021 – 28/05/2021; case №3/15-2021 – 05/03/2021; case №357-2021 – 21/10/2021; case №3/45-

2021 – 29/07/2021; Ozurgeti Regional Court, 26/12/2022; 30/12/2021; 21/06/2021; 29/12/2021; 30/12/2021; 26/12/2021; Gurjaani Regional Court, case №3/169-21 – 09/12/2021; case №3/125-21 – 21/09/2021; case №3/180-21 – 15/12/2021; case №3/172-21 – 14/12/2021; case №3/173-21 – 14/12/2021; case №3/24-21 – 26/03/2021; case №3/67-21 – 10/06/2021; case №3/60-2021 – 03/07/2021; Kutaisi City Court, case №3/183-21 – 18/05/2021; Gurjaani Regional Court, case №3/124-21 – 21/09/2021; case №3/142-21 – 20/10/2021; case №3/157-21 – 17/11/2021; Signaghi Regional Court, case №3/197-21 – 24/11/2021; case №3/218-21 – 16/12/2021; case №3/33/-21 – 25/03/2021; case №3/5-2 – 26/03/2021; case №3/64-21 – 25/05/2021; case №3/158-21 – 14/09/2021; case №3/169-21 – 20/10/2021; case №3/174-21 – 28/10/2021; case №3/150-21 – 24/08/2021; case №3/91-21 – 22/06/2021; case №3/105-21 – 13/07/2021; case №3/111-21 – 15/07/2021; Akhaltsikhe Regional Court, case №3/235-21 – 27/12/2021; case №3/222-21 – 17/12/2021; case №3/223/21 - 17/12/2021; case №3/228/21 – 21/12/2021; case №3/221-21 – 15/12/2021; case №3/224-21 – 17/12/2021; Mtskheta-Mtianeti Regional Court, case №3/289-21 – 25/11/2021; case №3/317-21 – 21/12/2021.

live in the care of the state for years. For example, one of the decisions noted that *„It is impossible for the minor to stay in the biological family, because the mother is dead, the father is unemployed, experiencing financial hardships, health problems, while grandparents are too old. Therefore, the father will not be able to provide adequate care. Had the child remained in the biological family, his basic needs would not have been met and his safety would not have been protected.“* Reintegration is also impossible because *„At this stage, he (the father) cannot take care of his child because of financial and health problems.“*¹¹⁵ In another case, it was similarly stated that *„The mother’s social and economic hardships need to be resolved. Currently, she does not have any stable income, is in need of support and empowerment.“* In the same case, the child expressed his interest about the mother’s social and economic hardships, when he said the following in response to a question of what he wanted to become: *„I want to work and earn money to help my mother“*. The child had been separated from the family for more than a year. The State Care Agency requested separation of the child on November 1, 2021. Notably, the court granted the request for only six months, as such decisions are subject to a periodic review.¹¹⁶

In another case, a mother and her infant were placed in a shelter for victims of violence. Before leaving the institution, the mother requested herself that the child be placed in the state’s care. The mother said that *„after leaving the institution, she was going to work in a farm, she didn’t have a stable shelter, a network of support and she would not have been able to take care of the child after starting work.“* **Currently, she wants to take her child back but because of economic hardships, she is still unable to do so.**¹¹⁷

In another case, involving two children that have been placed in the care of the state for 7-8 years already, it was noted that *„The family lived under an extremely dire social and economic conditions. They didn’t have their own house and they had to live in a wooden shack, without any adequate living conditions. Because they moved frequently, the family often did not receive any social benefits, which made their everyday life even harder. In addition, the parents engaged in unhealthy behavior because of their mental retardation. ... The family did not have a network of support“*. It is still impossible to reintegrate the children, since *„low level of intellectual development prevents the mother from using adequate parenting methods for her children with disabilities and from taking adequate care of already six children. The father is working as a manual laborer and is unable to help her with parenting“*.¹¹⁸

Another case involved children in the state care for already 2-3 years, due to their family’s dire economic situation. In particular, *„Due to homelessness and unemployment, they were facing serious hardships. The children’s right to education and health were violated. ... They lived in a small room near a junkyard. ... The mother was unable to take responsibility for her children’s health. She was also unable to help them develop age-appropriate skills. Their mother’s lifestyle put them at a heightened risk of antisocial and violent actions.“* Currently both parents have new families, while the children remain in the state’s care.

The issue of placing a child in the state’s custody after one of the parent’s death is also a challenge. In one of the cases it was directly indicated that *„The child’s father is facing economic hardships, does not have a woman in the family who would take care of the child.“*¹¹⁹ Another case involves a child, who has been in the state’s custody for 7 years already, reintegration is impossible because *„According to the mother, she is experiencing social and economic hardships and is therefore unable to bring the child home.“*¹²⁰ In another case, the child was removed due to *„The mother and her three small children living in an abandoned building without a door or stairs. They got inside the building through the window. ... There was no electricity in the building. The children were sleeping on mattresses on the floor. There area was unsanitary.“*

¹¹⁵ Akhaltsikhe Regional Court, case №3/231-21 – 21/12/2021.

¹¹⁶ Akhaltsikhe Regional Court, case №3/203-21 – 11/11/2021.

¹¹⁷ Sighnaghi Regional Court, case №3/169-21 – 20/10/2021.

¹¹⁸ Gurjaani Regional Court, case №3/142-21 – 20/10/2021.

¹¹⁹ Gurjaani Regional Court, case №3/124-21 – 21/09/2021.

¹²⁰ Zestaponi Regional Court, case №3/25-2021 – 18/05/2021.

In a case involving a small child in the state's care, child-parent separation was based on the mother's financial distress. According to the case file, **it was painful for the child to separate from her mother.** According to the mother, **initially the child protested but then, he started acting very well, he was obedient and was trying to please her mother.** ... When speaking about this topic, the child becomes silent and turns the conversation to another topic. He does not express any position verbally. According to the case, *„The main reason why the mother asked for the child to be placed in the state's care is that she'll have absolutely no money if she doesn't work. Parents are not helping her. To the contrary, often they are acting out of spite and make her feel like she and her son are a burden.“*¹²¹ Similar circumstances were found in another case¹²² involving a child that has been separated from her mother for three years. In particular, it was noted in the motion that *„The reason for the child's placement in the state care is the mother's weak health, social and economic hardships, homelessness and inability to take care of the child. She does not have a support system to help her with raising her child. Labor skills are directed towards survival. She is unable to earn daily bread and take care of her small child at the same time.“*

In another case, three minors were placed in the state's care due to their mother's financial distress and homelessness. In particular, the woman has 5 children, she is a single mother and *„They didn't have a house to live. They lived illegally on a piece of land owned by the state, in a primitive state, in a small shack built from old cardboards and papers. In rainy weather, it rains inside the shack just like it does outside. Notably, the shack is close to a forest.“*¹²³

Despite changes in the legislation requiring the state to do everything to ensure that children are raised in their biological families, and prohibition of child-parent separation on economic grounds, justifications provided in court decisions, motions for child-parent separation or extension of separation period make it clear that the state cannot fully ensure the observance of the principle of unity of the child with the family.

3.3.2 Parenting skills

In addition to social and economic challenges, another important factor for child-parent separation is parenting skills. However, the process of evaluation of parental skills by the State Care Agency, lack of any specific methodology, consistent approach and assessment criteria are problematic, which negatively affects objectivity of the opinion. Another challenge is lack of specific and results oriented mechanisms for strengthening parental skills in the country.

One of the cases involves children that have been placed in the state's care for 6-7 years already. Reintegration is impossible because *„the mother does not have skills and ability to adequately care for the minor. The family is experiencing harsh economic problems. .. Lacks the ability to manage finances, which negatively impacts the family's situation. The issue of not having a house has been somewhat solved, however it is not appropriate for a child. Domestic furniture is insufficient and scarce.“*¹²⁴ However, it is important to consider if this is an appropriate justification for separating a child from his biological family for 6-7 years and what the state has done during this time to empower the parent, in order to return the child to his biological family.

In another case, involving children that have been placed in the state's care for 11 years, grounds for establishing that reintegration of the children are impossible have been provided in a rigid and insensitive manner: *„Harm and risk of harm in case of returning the children to their biological family will be entirely due to their parent's incompetence and inadequate behavior.“* In particular, although the father has a frequent contact, he has substance dependence and it is not appropriate for the children to be around him.¹²⁵ In another case, certain stereotypes have been found with regards to the fact that the

¹²¹ Gurjaani Regional Court, case №3/67-21 – 10/06/2021.

¹²² Gurjaani Regional Court, case №3/51-21 - 24/05/2021.

¹²³ Gurjaani Regional Court, case №3/88-21 – 16/07/2021.

¹²⁴ Gurjaani Regional Court, case №3/81-21 - 15/12/2021.

¹²⁵ Gurjaani Regional Court, case №3/152-21 – 11/12/2021.

mother grew up in a residential care facility. In particular, it was noted that „*The children’s mother grew up in an institutional setting. Her mother died young; her father was addicted to alcohol. It was easy for him to make a decision to place his children in the state care.*“¹²⁶

In one of the cases where the child has been in the state care for 5 years already, based on the mother’s request, justifications for the child’s placement focus on the mother’s unstable living environment and income. In addition, the following is stated in the motion: „*Since the mother has health problems, difficulties with regards to gender and sexual identity formation, does not have a permanent residence or workplace, based on her personal application...*“ *the child was placed in the state care. Reintegration is impossible because **the mother does not have a stable living arrangements, job and her emotional state is also unstable.***¹²⁷

3.3.3. Parents with disabilities

According to Article 23 of the UN Convention on the Rights of Persons with Disabilities (CRPD), States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.¹²⁸ However, the service of a personal assistant provided for by the Law of Georgia on the Rights of Persons with Disabilities will become operational beginning from 2025.

After looking into this issue, we have found that parent(s) disability and lack of an appropriate support person/system has become the basis for separating children from their parents in a number of cases. In a case involving children that were placed in the state care 4 years ago, it is noted that „*currently, the family is in a dire financial situation and for the last month, they have been using Chernovetsky Fund’s free diner. The children’s mother has health problems, she is undergoing a treatment course with a psychiatrist. A health certificate has been submitted, confirming that the mother is taking psychotropic medications. As a result, she is unable to adequately care for her children and wishes to place her children in the state care.*“¹²⁹

The issue of keeping children with disabilities or with challenging behavior in their biological families is also problematic. In particular, in one of the cases¹³⁰ it was noted that the mother requested placement of the child in the state care. The child had mental health issues; she had been placed in a mental health center several times to undergo an inpatient treatment. According to the motion, there is a special attachment between the mother and the child. The child has been in the state care for 6-7 years already. Her reintegration in the family has been impossible due to the family’s **dire social and economic situation**, while the mother has a status of a socially vulnerable person. She also has another child with a disability, who is taken care of by the father. Other children are involved in services of the day center. Another child is taken care of by her aunt. „*The mother is unable to adequately care for the child. She is registered in the database of socially vulnerable families... She receives financial assistance. The place where she lives has been provided by a municipal government in a social housing. Given these circumstances and the biological family’s disfunction, since the mother is unable to rationally distribute the existing finances/assistance, pension and to adequately take care of her children’s needs, currently the child’s reintegration is impossible.*“ In another case involving a child that has been in the state care for 7 years, it is stated about non-fulfilment of the recommendations that „*The family’s situation has worsened. The mother’s health has worsened (diag-*

¹²⁶ Gurjaani Regional Court, case №3/171-21 – 14/12/2021.

¹²⁷ Kutaisi City Court, case №3/103-21 – 23/03/2021.

¹²⁸ See: CCPR General comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, available: <https://bit.ly/3TYKtzs> [last accessed: 20/11/2022].

¹²⁹ Kutaisi City Court, case №3/97-21 - 23/06/2021.

¹³⁰ Kutaisi City Court, case №3/139 – 14/04/2021.

nosis: Behcet's¹³¹ syndrome), the need for a constant treatment with drugs, unstable income, small income, desire to travel abroad to continue treatment makes reintegration impossible."¹³²

In one case, the fact that „**both parents are persons with severe disabilities**, the father has been diagnosed with oligophrenia in the form of imbecility and the mother has been diagnosed with schizotypal personality disorder. None of them have the ability to take care of the child and take responsibility for the child. **They don't have a normal and stable living arrangements.**"¹³³

In another case, the child has been in the state care since 2012 and she has not been reintegrated because „*the child's mother has health problems, 4 small children that she cannot adequately take care of ...* **The mother is a person with severe disabilities.** Therefore, if the child is returned to the biological family, she will not be provided with appropriate items, hygiene and sanitation will not be maintained." ¹³⁴

In another similar case it was noted that „the parents have disabilities and they are unable to take care of the child. The child's biological mother is receiving support services." **The child can be returned to her biological parents only in the community organization where the parents are currently living. However, so far, the community organization does not offer any resources for a minor.** ¹³⁵

In another similar case it was noted that the mother „**is a person with severe disabilities, she has a supporter**", who currently has health problems and is bed-ridden.¹³⁶ Due to these reasons, it is impossible to return the child to her biological family.

There is another noteworthy case, involving a child who was placed in the state care when he was an infant, upon his grandmother's request, because her daughter was unable to take care of an infant. According to the motion, *[the mother] understands that because of her health (F.31/1 bipolar affective disorder) she is currently unable to remove the child from the state care and take care of her.* Due to her mental health problems, the mother undergoes periodic treatment at a psychiatric facility and has to stay there for certain periods of time. Often, she understands that her health is deteriorating and voluntarily checks in the clinic for treatment. **She wants to take her child back, however because of her health, she is unable to remove the child from the state care.** The child „**has a warm relationship with her biological mother and often speaks about her.**" Grandparents often visit and call the child, however due to the mother's health and the age of grandparents, currently reintegration of the child is impossible. The minor has been living in a foster family for **6 years** already and the period of her placement in the state care has been extended for 2 more years.¹³⁷

Lastly, it should be noted that even though this issue is regulated by the Code on the Rights of the Children, social and economic problems, lack of parenting skills and disabilities of parents or their poor health continue to be one of the most important grounds for removing a child from his/her biological environment. Therefore, the existing services or specialists are insufficient for the state to effectively ensure the kind of support for parents that will allow them to resolve circumstances that they are unable to resolve independently and to prevent these circumstances from becoming the basis for separating them from their children.

¹³¹ They probably mean „Behcet's syndrome“.

¹³² Kutaisi City Court, case №3/97-21 - 05/03/2021.

¹³³ Zestaponi Regional Court, case №3/7-2021 - 05/07/2021.

¹³⁴ Gurjaani Regional Court, case №3/39-21- 22/04/2021.

¹³⁵ Gurjaani Regional Court, case №3/120-21 – 14/09/2021.

¹³⁶ Gurjaani Regional Court, case №3/44-21 – 18/05/2021.

¹³⁷ Akhaltsikhe Regional Court: case №3/230-21 - 21/12/2021.

CONCLUSION

The research demonstrates that many challenges remain in the country with regards to realization of the child's right to have a relationship with both parents. This is related to the need to implement legislative changes, to introduce effective mechanisms that will support and empower children and their parents. In particular, based on cases examined within this research it has been found that delays in a civil dispute concerning child-parent relationship is especially problematic, which essentially has a negative impact on how the child feels about his/her parent(s). In addition, delaying processes that are already stressful worsens the child's emotional state, which also has a negative effect on the child's feelings and results in her refusal to have a communication with specialists or the other parent/other family members. It should also be noted that there are delays with regards to the administration of cases handled by the State Care Agency, measures to be implemented with regards to a party, preparing opinions of a psychologist. It should also be noted that a sanction for incompliance with the requirement of the State Care Agency, recognition as an offender and procedures for appealing are ineffective. There have been cases where even though a person was recognized as an offender several times, the court's decision was not enforced.

It should also be noted that there are no services for child-parent relationship, positive parenting, parental skills, correction of behavior, which would be available in similar disputes, based on the initiative of court, the State Care Agency's representative or a party himself/herself. Further, in the process of enforcement of the procedure for child-parent relationship, a positive relationship and constructive communication between parents, agreeing to protect the child's best interests is of essential importance, which once again highlights the need for conflict management and mediation before the parties initiate a dispute. Otherwise, social workers and lawyers will have to take on functions of mediators, to ensure that parties do not intentionally interfere with the process of enforcement.

Another challenge is elimination of the practice of removing a child from his/her biological family due to financial hardships or the parents' disability. Existing economic support services are not time-efficient or tailored for individual needs of families. In addition, after reviewing case files and interviewing specialists, it was found that following child-parent separation, adequate work for timely reintegration of the child is not carried out, which, among other things, is related to scarcity and ineffectiveness of mechanisms to improve parenting skills and economically empower parents.

Lack of specialists working on child-parent relationship cases is especially challenging. As a result, they are overwhelmed with work and quality of their performance is affected. The research has also found that during adjudication or enforcement, social workers and psychologists do not follow a pre-determined mechanism, a protocol for maintaining documents. Instead, they rely on their personal experience. Further, half of the State Care Agency's territorial entities, where often child-parent meetings take place under court decisions, lack a child-friendly room. Such room would have made it easier to administer a process that is stressful for a child.

Within the research it has been found that processes related to determination of child-parent relationship procedure, enforcement and child-parent separation are not tailored to best interests of the child. Among other things, the state is unable to ensure protection of their psychoemotional state in this process. In addition to challenges that exist in legislation and practice, this is also related to public views and lack of information.

Proposal:

For the Parliament of Georgia:

To consider the following based on a consultation with common courts, the Government of Georgia, the Ministry of IDPs from the occupied territories, labor, health and social affairs of Georgia, LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking and other stakeholders:

-  Amending the Code of Administrative Offences to tighten the measures provided for incompliance with requests of the State Care Agency;

RECOMMENDATIONS:

For Ministry of IDPs from the occupied territories, labor, health and social affairs of Georgia:

-  Create psychological support services focusing on positive parenting, communication with children, family and couple disputes;
-  Create professional standards to ensure appropriate qualifications, experience, compliance with professional standards and ethical principles in the process of involvement of psychologists in evaluation of a child.

For LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking:

-  Increase the number of social workers, lawyers and psychologists working on issues of child-parent relationship, in proportion to the existing workload;
-  Create annual plan and ensure relevant thematic training of at least half of social workers, lawyers and psychologists working on child-parent relationship issues;
-  Based on evidence and best practice, create a standardized methodology and guidelines for evaluating a child and his/her family in cases of child-parent relationship;
-  In all cases concerning child-parent relationship, where a party alleges any form of pressure, influence on the child by the other parent, immediately involve a psychologist and examine this matter;
-  To avoid any delays in enforcement, examine facts submitted by each party in a timely manner and take adequate further actions, including by preparing an offence report;
-  In motions for extension of child-parent separation period, clearly specify measures that the state implemented to promote the child's reintegration and provide justification as to why reintegration is not possible at this stage. In addition, such motions should provide justification for extending the separation for a specific period, explain why it is needed and indicate what measure the state is going to implement during the extended period;
-  All territorial units of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking should be provided with a child-friendly room;
-  To avoid separation of children from their biological families, services for financial assistance of families with children should be planned and improved in coordination with municipalities.

