



Representation of a Minor in Civil Proceedings

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Approved: 08 May 2026
Posted: 10 May 2026

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Cite As:

Saneblidze, M. (2026). *Representation of a Minor in Civil Proceedings*. ESI Preprints.
<https://doi.org/10.19044/esipreprint.5.2026.p383>

Abstract

This article examines the legal and practical aspects of the representation of minors in civil proceedings, with particular emphasis on the principle of the best interests of the child as a fundamental standard of child protection. Due to their limited legal capacity and vulnerability, minors require enhanced legal safeguards, primarily ensured through the institution of legal representation. The representative plays a crucial role in guaranteeing the effective exercise of the child's procedural rights and communicating the child's views within judicial proceedings. The study analyzes international and domestic legal frameworks, including the United Nations Convention on the Rights of the Child and Georgian legislation, and demonstrates how the principle of the best interests of the child functions as a guiding standard in decision-making processes. A comparative perspective highlights differences in the application of this principle across legal systems, particularly regarding discretion and predictability. The article identifies key practical challenges, including the formalistic nature of representation, insufficient qualifications of representatives, and conflicts of interest between minors and their legal representatives. It also emphasizes the role of courts in ensuring that representation is not merely procedural, but genuinely effective. The findings suggest that effective representation depends not only on the existence of legal norms, but also on their proper implementation. Strengthening institutional mechanisms, improving professional training, and ensuring child-centered justice are essential for the effective protection of minors' rights and the meaningful realization of the principle of the best interests of the child.

Keywords: Best interests of the child; Minor; Legal representation; Civil proceedings; Child rights

Introduction

In modern legal systems, ensuring the protection of human rights constitutes one of the primary obligations of the state, and within this framework, particular importance is attached to the protection of the rights of minors. Considering their age-related, psychological, and social characteristics, minors constitute a special category of legal subjects requiring specific legal protection and support from the state. The specific nature of the legal status of a minor is determined by the fact that, unlike adults, minors do not possess full legal capacity and therefore cannot independently ensure the full protection of their rights and interests. This circumstance underscores the importance of the institution of representation, which serves as one of the principal legal mechanisms for protecting the rights and interests of minors, especially in civil proceedings.

One of the fundamental principles in the field of the protection of minors' rights is the principle of the best interests of the child, which is recognized in both international legal instruments and national legislation. This principle implies that, in all decisions concerning a minor, primary consideration must be given to the child's best interests. It constitutes the foundation of child rights protection and imposes an obligation on the state, courts, administrative bodies, and other authorized persons to prioritize the interests of the child. Moreover, this principle acquires particular significance in civil proceedings, where judicial decisions may substantially affect the personal, family, and property rights of minors.

Participation of a minor in civil proceedings, given their legal status, is carried out through a representative who acts on behalf of the minor and in accordance with their interests. The representative is the person who ensures the realization of the minor's procedural rights, protects their interests before the court, and participates in judicial proceedings on behalf of, or together with, the minor in accordance with the law. Accordingly, the role of the representative becomes crucial in ensuring the effective protection of the best interests of the minor.

However, despite the fact that Georgian legislation establishes the legal basis for the representation of minors and defines the relevant procedural mechanisms, a number of issues frequently arise in practice regarding the full protection of minors' interests. These problems may relate both to the inadequate protection of the minor's interests by their legal representative and to the existence of conflicts of interest, where the representative's personal interests may not coincide with the best interests of the minor. In addition, a significant challenge lies in the effective exercise of

the court's role in protecting the minor's interests, as well as in the functioning of relevant institutional mechanisms.

It should be noted that the institution of the representation of minors is not merely a formal legal mechanism; rather, it constitutes a substantive and practical instrument for the protection of children's rights, the effective functioning of which significantly determines the realization of minors' rights and the protection of their best interests. Proper representation and the protection of the minor's interests by the representative constitute fundamental prerequisites for ensuring effective legal protection of the minor in civil proceedings.

The development of post-Soviet legal systems, including legal reforms in Georgia, has had a significant impact on the formation and development of mechanisms for the protection of minors' rights. Georgia's recognition of international legal standards and implementation of relevant legal reforms have contributed to strengthening the legal framework for the protection of minors' rights. Nevertheless, certain gaps and practical challenges still remain and require further legal and institutional improvement.

The aim of this article is to provide a comprehensive analysis of the legal foundations and practical aspects of ensuring the protection of the best interests of minors in the context of representation in civil proceedings. Within the framework of the article, the importance of the principle of the best interests of the child, the legal foundations of the representation of minors, as well as the principal problems and challenges existing in practice that affect the effective protection of minors' interests, will be examined. Particular attention will also be paid to the possibilities for improving legal and institutional mechanisms for protecting the interests of minors.

The research is based on an analysis of the current legislation of Georgia, international legal instruments, legal doctrine, and judicial practice. The study employs the principal methods of legal research, including normative analysis, which is used to examine existing legal regulations; comparative analysis, which allows for the assessment of compliance with international standards; and doctrinal research, based on the analysis of relevant legal literature and academic works.

The study of this issue is important from both theoretical and practical perspectives, as the effective protection of the best interests of minors constitutes one of the essential components of a rule-of-law state and ensures the full realization of minors' rights in civil proceedings.

Legal Foundations of the Principle of the Best Interests of the Child

The principle of protecting the best interests of the child constitutes one of the fundamental principles of modern law, determining the scope and content of the legal protection of minors. It is based on the legal and social reality that, given their age-related and psychological characteristics, minors require special legal protection. The limited legal capacity of minors and their vulnerability impose an obligation on the state to create legal mechanisms that ensure the effective protection of their rights and interests.

According to the United Nations Convention on the Rights of the Child, the essence of the principle of the best interests of the child lies in the requirement that, in all decisions concerning a minor, primary consideration must be given to their best interests.¹ This principle serves as the principal criterion for the protection of children's rights and obliges both state authorities and other authorized persons to act in accordance with the child's best interests when exercising their powers.² The importance of this principle becomes particularly evident in legal proceedings, where decisions may directly affect the personal, family, and property rights of minors.

In the context of legal proceedings, the principle of the best interests of the child is reflected in child-friendly justice, which refers to justice systems that ensure respect for and the effective implementation of children's rights, taking into account the child's maturity, level of understanding, and the circumstances of the case. In particular, this implies justice that is accessible, age-appropriate, prompt, diligent, adapted, and oriented toward the needs and rights of the child.³ It is through these criteria that the quality of regulation, the scope of discretion, and the level of predictability can be assessed.

The definition of the principle of the best interests of the child under the Convention on the Rights of the Child is relatively general; therefore, the discretion derived from it is broad. Depending on the type of discretion granted by signatory states to child protection authorities and courts, a spectrum emerges between strong and weak discretion, which determines the legal interpretation of the principle of the best interests of the child.⁴ In addition to discretion, the assessment also concerns legislative regulation, criteria, and predictability, which vary across legal systems. The effectiveness of implementing the principle largely depends on how a particular legal system regulates the decision-making process.

Comparative analysis demonstrates that different countries structure this principle in different ways, which affects both the scope of discretion

¹ (United Nations Convention on the Rights of the Child, 1989, art. 3)

² (United Nations Convention on the Rights of the Child, 1989, art. 3)

³ (Council of Europe, 2010, p. 17)

⁴ (Skivenes & Sørsdal, 2018, pp. 63–64)

exercised by decision-makers and the level of protection of children's rights. The Australian legislative model is distinguished by a detailed and procedurally well-structured system. Its specificity lies in the fact that the legislation does not rely solely on general formulations, but establishes specific criteria and guidelines, thereby significantly reducing the discretion of decision-makers.⁵ Australia belongs to systems characterized by weak discretion, meaning that decision-makers cannot act solely on the basis of their own judgment, but are bound by legally established criteria, ensuring the genuine consideration of the child's views.⁶ This approach promotes more objective and transparent decision-making and represents a successful example of a child-oriented legal system.⁷ Therefore, it can be concluded that, in Australia, regulation is detailed, discretion is limited, criteria are predefined, and predictability is high.

However, it is important to consider the practical implications of legislation that is not characterized by detailed and predefined regulations. For example, under Norwegian law, the best interests of the child constitute a central principle,⁸ but the principle is formulated in general terms, leaving room for interpretation. Decision-makers possess considerable discretion⁹ and in the absence of detailed criteria, decisions vary in practice.¹⁰ Consequently, Norway has frequently been criticized in the case law of the European Court of Human Rights. The issue becomes particularly apparent in balancing the child's interests with the parents' right to family life, thus demonstrating the risks inherent in legal decision-making.¹¹ On the one hand, detailed criteria reduce discretion and enhance predictability, on the other hand, general regulation increases the freedom of decision-makers while creating risks of subjectivity and inconsistent practice.

The Georgian legal model occupies an intermediate position between these two approaches. On the one hand, it recognizes the primacy of the best interests of the child and establishes certain evaluation criteria; on the other hand, it maintains a broad scope for assessment, which results in a significant role for discretion. This model ensures flexibility, but also creates challenges in ensuring predictability and consistency in practice.

According to Article 5 of the Code on the Rights of the Child of Georgia, a child has the right that, in all decisions concerning them, primary

⁵ (Mol, 2019, p. 66)

⁶ (Family Law Act 1975 (Cth), ss 60CA, 60CC, 60CD)

⁷ (Mol, 2019, pp. 66–67)

⁸ (Child Welfare Act, 1992)

⁹ (Children Act 1981, ss. 31, 48)

¹⁰ (Mol, 2019, pp. 66–67)

¹¹ (Luhamaa, Krutzinna, & Skivenes, 2022)

consideration be given to their best interests.¹² These interests are determined individually and are based on Georgian legislation, the Constitution, the Convention on the Rights of the Child, and international treaties. In determining the best interests of the child, particular attention is paid to their development within a family environment, their social and cultural characteristics, their ability to exercise their rights independently, and their views.¹³ This provision represents one of the fundamental norms establishing the principle of the primacy of the best interests of the child. The norm is principled in nature, yet it contains both general and specific elements. On the one hand, it is general, as it does not establish exhaustive and strictly formalized criteria, thus granting broad discretion; on the other hand, it defines key criteria, including consideration of the child's views, protection of fundamental rights, and the necessity of multidisciplinary assessment.

In light of the above, there is a risk that the interpretation of the child's best interests may depend on the professional experience, perspectives, and subjective assessment of a particular individual, which may undermine consistency in practice. On the one hand, this approach is necessary in order to take into account the individual circumstances of each child; on the other hand, it increases the role of the representative in the process. The representative becomes a critical figure responsible for ensuring that the child's voice is heard and for maintaining balance within the process.

Representation of a Minor in Civil Proceedings

The practical implementation of the principle of the best interests of the minor largely depends on the subjects participating in the decision-making process. In this context, particular importance is attached to the institution of the minor's representative, which constitutes one of the principal mechanisms for protecting the rights and interests of the child in legal proceedings. Considering the age-related and psychological characteristics of the minor, they often fail to fully exercise their rights and independently protect their interests. Therefore, the representative performs the role of an intermediary between the child and the legal system, ensuring the proper formulation of the child's position and its presentation before the relevant authorities.

According to Article 12 of the United Nations Convention on the Rights of the Child, particular importance is attached to the child's right to freely express their views and to be heard on matters concerning them. The child must have the opportunity to express their opinion on all matters that affect them, and such opinion must be given due weight in accordance with

¹² (Code on the Rights of the Child of Georgia, 2019)

¹³ (Code on the Rights of the Child of Georgia, 2019)

their age and level of development.¹⁴ At the same time, in the course of legal proceedings, the child may be heard either directly or through a representative or the relevant authority.¹⁵ This once again emphasizes the importance of the role of the representative. Accordingly, the child's right to be heard and the institution of representation are closely interconnected mechanisms, which together constitute an important guarantee for the protection of the best interests of the child in legal proceedings.

It should be noted that, when children directly participate in legal proceedings, the quality of decisions increases, as do the child's satisfaction and the perception of fairness of the process.¹⁶ However, studies show that individuals who represent their own interests often find themselves in a less favorable position, as they do not possess sufficient legal knowledge and skills.¹⁷ Accordingly, in practice, there are frequent instances where the child's voice is conveyed through a representative. Particular attention should be paid to situations in which, within the framework of broad discretion, the role of the representative becomes increasingly significant, while their merely formal presence gives rise to risks of inadequate or unjust legal decision-making.

The participation of the child should not be merely a formal procedure; it must become a mechanism capable of exerting real influence.¹⁸ In many cases, the legal representative participates in the process only formally, merely to comply with a legal requirement, and does not actively and effectively protect the interests of the minor. This is particularly evident in situations where the representative lacks the relevant legal knowledge or adequate awareness of the legal proceedings. As a result, the representative fails to carry out the procedural actions necessary to ensure the full protection of the minor's interests, which ultimately has a negative impact on the minor's legal position. Therefore, the existence of a representative must ensure that the child's views are not only expressed, but also have a real influence on the decision.¹⁹ However, in practice, the representation of children gives rise to complex dilemmas for which legal practitioners are often unprepared.²⁰ The mere appointment of a representative is not sufficient; in many cases, representation assumes a merely formal character and fails to ensure the child's meaningful participation.²¹ Representation

¹⁴ (United Nations Convention on the Rights of the Child, 1989, art. 12)

¹⁵ (United Nations Convention on the Rights of the Child, 1989, art. 12)

¹⁶ (Haarberg, 2024, pp. 2–3)

¹⁷ (Assy, 2011, pp. 267–282)

¹⁸ (Haarberg, 2024, pp. 8–9)

¹⁹ (Haarberg, 2024, pp. 4–5)

²⁰ (University of Pretoria, 2016)

²¹ (Haarberg, 2024, p. 5)

should be appropriate to the child's age and level of development, easily understandable, and communication-oriented. The primary function of the child's representative is to act as the child's "voice" and to ensure the accurate communication of the child's views before the court.²²

The representation of a child in civil proceedings is not characterized by a unified model and depends both on the child's abilities and on the specific features of the case. In this context, three principal roles are distinguished: a friend of the court, a guardian of the child's best interests, and the child's legal representative.²³ Particular importance is attached to the child's ability to form and express their own views, as this determines the form of representation. At the same time, there are frequent instances where the child's wishes do not coincide with their best interests, which creates additional challenges in the work of the lawyer and requires a careful professional balance.²⁴ Moreover, the representation of a minor constitutes not only a right, but also a legal responsibility, which entails the good-faith and effective protection of the minor's interests. The representative is obliged to act in accordance with the best interests of the minor and must refrain from any actions that may prove harmful to the minor. This obligation derives from the principles governing the protection of minors' rights and constitutes an essential element of the institution of representation.

One of the central issues is whether the representative should represent the child's will or their best interests. This creates a theoretical and practical dilemma within the framework of representation. The existence of this issue indicates the need for the further legal and institutional development of the institution of representation, which constitutes one of the key prerequisites for ensuring the effective protection of the rights of minors.

The principal challenges hindering the effective implementation of the representation of minors include limited time for legal practitioners, excessive workloads, and a lack of specialized training.²⁵ In addition, particular emphasis should be placed on the degree of discretion, regulation, and predictability, which, in turn, enhances the role of the representative in civil proceedings.

The Constitution of Georgia recognizes the principle of the protection of human rights and freedoms and ensures their realization.²⁶ At the same time, Georgian legislation contains specific norms aimed at ensuring the protection of the rights and interests of minors. These norms define the legal

²² (University of Pretoria, 2016)

²³ (Bala, 2015, p. 848)

²⁴ (Bala, 2015, pp. 856-857)

²⁵ (Haarberg, 2024, pp. 7–8)

²⁶ (Constitution of Georgia, 1995)

status of the minor, the grounds for their representation, and the mechanisms for the protection of their rights.

The issue of the representation of minors in Georgian law cannot be regarded as a uniform or merely formal institution. Although the Civil Code of Georgia recognizes parents as the legal representatives of their minor children and grants them the authority, without special authorization, to protect the rights and interests of the child in relations with third parties, including before the court, the modern legal approach no longer treats this rule as absolute. On the contrary, a systematic analysis of the Code on the Rights of the Child, the Civil Code, and the Civil Procedure Code demonstrates that representation must be assessed in light of the nature of the specific case, the potential impact on the child's interests, and the risk of a conflict of interest between the representative and the child.²⁷

This distinction becomes particularly evident in cases involving the disposal of a minor's property. Historically, parental representative authority was often considered sufficient to allow a parent to conclude transactions on behalf of the child. However, Georgian legal doctrine and practice have recognized that such a formal approach endangered the genuine protection of the child's property interests, as a parent's actions cannot automatically be presumed to correspond to the child's best interests. For this reason, following the enactment of the Code on the Rights of the Child, a strict mechanism of judicial control was introduced with respect to the disposal of a minor's property: the disposal of immovable property owned by a child by a parent or another legal representative is permissible only in accordance with the child's best interests and on the basis of prior court approval.²⁸

In such cases, the function of the court differs from ordinary supervision of representative relationships. The court does not merely verify whether the parent is the legal representative of the child; rather, it examines whether the specific transaction corresponds to the child's best interests. This includes assessing the purpose, necessity, and consequences of the disposal, the potential improvement or deterioration of the child's property status, the expected benefits, and the child's material and non-material needs.

The practice of the Supreme Court of Georgia has developed in the same direction. In one case²⁹ concerning consent for the disposal of immovable property co-owned by a minor, the Court explained that the purpose of mandatory judicial control is to protect the child's property from

²⁷ (Civil Code of Georgia, 1997, arts. 1198, 1200, 1201; Civil Procedure Code of Georgia, 1997, arts. 81, 81¹, 251¹; Code on the Rights of the Child of Georgia, 2019, arts. 5, 8, 19, 24, 72)

²⁸ (Civil Code of Georgia, 1997, art. 183; Code on the Rights of the Child of Georgia, 2019, art. 19)

²⁹ (Supreme Court of Georgia, Decision No. AS-1639-2023, March 7, 2024)

dishonest parents or other legal representatives. The Court emphasized that, when disposing of property, it is necessary to assess the reasons, objectives, and possible consequences of the transaction, as well as whether there is a risk that the minor may be left without property. In the same decision, the Court noted that, in cases involving the disposal of a child's property, the involvement of the guardianship and custodianship authority, the representative of the minor, and the Legal Aid Service is important, as their positions assist the court in properly determining the child's best interests.

Based on this decision, it may be concluded that, in cases involving the disposal of property, the model of representation is one of "controlled representation." Formally, the parent remains the child's legal representative; however, the parent's will alone is insufficient to produce legal consequences. Judicial approval functions as a protective barrier, verifying whether the decision of the parent or another representative is connected to personal, economic, or family interests that may conflict with the interests of the child. In this respect, property-related cases clearly demonstrate that, in Georgian law, the representation of the child is no longer viewed merely as an extension of parental authority; rather, it has evolved into an institution oriented toward the child's best interests.

A fundamentally different procedural framework emerges in disputes concerning the determination of a child's place of residence and upbringing. In such disputes, parents are generally in legal conflict with one another, while the outcome directly affects the child's daily life, emotional stability, family relationships, and developmental environment. For this reason, the Civil Code provides that, where parents fail to reach an agreement, the dispute shall be resolved by the court with due regard to the child's interests, and, in relation to such proceedings, the parent's right to act as the child's representative is suspended.³⁰ The child's representative is appointed by the guardianship and custodianship authority. These provisions substantially alter the traditional model of representation: whereas, in property disposal cases, parental representation is subject to judicial approval, in disputes concerning residence and upbringing, parental representation is excluded altogether, since the parent is personally a party to the dispute and their interests may conflict with those of the child.

The Supreme Court has approached this issue with particular rigor. The Court clarified that, in disputes concerning a child's upbringing and place of residence, the parent's representative authority is suspended in relation to the judicial proceedings, and the representation of the child's interests is entrusted to the guardianship and custodianship authority.

³⁰ (Civil Code of Georgia, arts. 1200, 1201)

However, the Court also emphasized that the participation of the guardianship and custodianship authority cannot be passive or merely formal. It is obliged to actively assist the court in determining what constitutes the child's best interests. In this process, representation must not be limited to describing living conditions or conducting a one-time interview with the parties. Rather, it requires genuine, professional, and responsible work aimed at assessing the child's psycho-emotional condition, attachment, wishes, and security.³¹

This approach is of particular significance when assessing the quality of child representation. If the guardianship and custodianship authority participates in the proceedings only formally, it fails to fulfil the actual function of representing the child. In such cases, the purpose of representation is not merely to present a position before the court on behalf of the child. Its essence lies in identifying the child's genuine interests, accurately communicating the child's voice, and providing the court with information capable of ensuring that the decision is individualized and child-oriented.

Judicial practice demonstrates that, in determining a child's place of residence, decisive importance is attached not only to the legal status of the parent, but also to the child's actual condition. The court examines the psychologist's report, the social worker's assessment, the child's behaviour, emotional ties with the parents, daily routine, adaptation, and the stability of the environment. In one case, the Supreme Court upheld an approach according to which the decisive factor in determining the child's place of residence was the cumulative assessment of evidence, including the psychologist's report, the social worker's assessment, the child's behaviour, and the child's own position. The Court further noted that an interim order, through which the relationship between the child and the parent was practically tested, proved to be an effective means of reaching a final decision, since it was precisely during the implementation of that order that an improvement in the child's psycho-emotional condition became evident.³²

Accordingly, in disputes concerning the determination of a child's place of residence, representation is closely linked to the quality of evidentiary assessment. The child's representative, the guardianship and custodianship authority, the psychologist, and the social worker must provide the court not with abstract, but with concrete information concerning the child's needs. It is precisely in this context that the significance of Article 72 of the Code on the Rights of the Child becomes apparent. According to this provision, a multidisciplinary approach must be applied in civil and

³¹ (Supreme Court of Georgia, Decision No. AS-716-2021, June 23, 2022)

³² (Supreme Court of Georgia, Decision No. AS-716-2021, June 23, 2022)

administrative proceedings involving children or concerning children, for the purpose of assessing the child's psychological, social, emotional, and physical well-being and determining the child's best interests.³³

The effective implementation of the Code on the Rights of the Child requires not only the existence of legal norms, but also the specialization of professionals, institutional coordination, and a multidisciplinary approach. The state must establish a system in which every authority and individual involved in matters concerning children ensures that priority is given to the best interests of the child. Within such a system, coordination and specialization are of particular importance, since, in their absence, the child's best interests cannot be adequately taken into consideration.³⁴ The determination of the child's best interests should not be regarded as the subjective assessment of a single authority or representative, but rather as an institutionally organized process. This means that representation must be linked to the coordinated actions of the court, social services, psychologists, lawyers, and, where necessary, other specialists. Such an approach is particularly necessary where determining the child's best interests requires the assessment not only of legal factors, but also of emotional, social, and developmental needs.

In this context, particular importance is attached to the child's right to be heard. Even in cases concerning the disposal of property, where the subject matter of the dispute may appear, at first glance, to be purely proprietary in nature, the child's opinion may constitute an important factor, since the disposal of property may affect the child's living environment, stability of life, or future opportunities. The child's right to be heard becomes even more significant in disputes concerning place of residence, change of surname, contact with a parent, or the appointment of a representative. The Supreme Court clarified that the child's right to be heard cannot depend solely on biological age. The child's maturity, level of awareness, experience, environment, and understanding of the consequences of their position must also be assessed. The Court further stated that a child's refusal to undergo repeated questioning before the court does not eliminate the legal significance of the child's previously expressed position, since expressing an opinion is the child's right and not an obligation.³⁵ In the same decision, the Court provided an important clarification regarding the child's procedural representative. According to the Court's assessment, the guardianship and custodianship authority cannot automatically be equated with the child's procedural representative. It constitutes an authority involved within the framework of the state's positive obligations, capable of assessing the child's

³³ (Code on the Rights of the Child of Georgia, 2019, art. 72)

³⁴ (Kiladze & Turava, 2021)

³⁵ (Supreme Court of Georgia, Decision No. AS-733-2020, March 29, 2022)

interests and presenting its position before the court; however, this does not exclude the child's right, particularly in situations involving conflicts of interest, to have an independent representative. The Court noted that the will of the minor must also be taken into account during the selection of the representative. Furthermore, where parental representation of the child is excluded and the child lacks trust in the guardianship and custodianship authority, refusal to appoint an independent representative may constitute a violation of the child's procedural rights.

The foregoing is directly connected to the interpretation of Articles 81 and 81¹ of the Civil Procedure Code. Article 81 defines civil procedural capacity, while Article 81¹ grants minors, from a certain age, the opportunity to apply to the court independently for the protection of their rights and legitimate interests. However, the practice of the Supreme Court demonstrates that the protection of a child's procedural rights should not be interpreted narrowly solely on the basis of an age threshold. Where a case concerns the substantive rights of the child and a conflict of interest exists, the court must be guided by the standards established by the Convention on the Rights of the Child and constitutional protection, according to which the child must have a genuine opportunity to have their position heard, either directly or through a representative.

In other categories of cases,³⁶ such as disputes concerning the restriction of parental representative authority and consent for a child's travel abroad, the Court has developed another important standard: the prioritization of the child's best interests does not imply the automatic restriction of parental rights. The Supreme Court clarified that the restriction of a parent's representative authority is permissible only where the claimant proves the necessity of such restriction, the abuse of parental authority by the parent, or the existence of a real risk of harm to the child's interests. A conflict between parents or general mistrust does not constitute a sufficient basis for restricting parental representative authority.

Through this approach, the Court establishes an important model of balance. On the one hand, the best interests of the child constitute the central criterion for decision-making; on the other hand, interference with parental rights must be necessary, proportionate, and supported by evidence. This approach is important in order to ensure that the principle of the best interests of the child does not become an abstract formula through which parental rights may be restricted in every case. On the contrary, the Court requires specific evidence, an examination of the child's individual circumstances, and proportionate reasoning for the decision.

³⁶ (Supreme Court of Georgia, Decision No. AS-997-2024, October 11, 2024; Supreme Court of Georgia, Decision No. AS-85-81-2017, October 27, 2017)

From the perspective of procedural law, these issues are unified by Article 251¹ of the Civil Procedure Code, according to which, when making and substantiating a decision in a case concerning the rights of a minor, the court gives priority to the minor's best interests (Civil Procedure Code of Georgia, Article 251¹). This provision is important not only in terms of the outcome, but also with regard to the standard of reasoning. The court must demonstrate how it examined the child's best interests, which evidence it relied upon, what significance it attached to the child's opinion, how it assessed the parents' rights, and why it chose a particular solution.

It is also important to strengthen the role of professional legal assistance in the process of protecting the interests of minors. The representation of a minor requires appropriate legal knowledge and professional experience, which ensures the effective protection of the minor's rights. In this context, it is advisable to ensure the involvement of a qualified lawyer for the purpose of protecting the minor's interests, especially in cases involving significant rights and interests of the minor. The provision of professional legal assistance will contribute to a more effective protection of the minor's interests and reduce the risk of violation of their rights. However, representatives should necessarily be specially trained lawyers who have practice focused on children's rights, an interdisciplinary approach, and appropriate practical skills in the field of child psychology.³⁷

At present, the existing legislation clearly defines what constitutes qualification in the field of the protection of children's rights; however, under the framework of the Georgian Bar Association, a lawyer who holds a license in civil or general law may, after completing several hours of training and passing an examination, be granted an additional qualification in the field of children's rights. However, it is evident that only a few hours of practical or theoretical training cannot contribute to the formation of a specialist in the field, nor can it ensure a qualitative improvement in the standard of representation. In this regard, a more comprehensive approach needs to be developed, involving long-term and in-depth training programmes that encompass not only legal knowledge but also equip practicing lawyers with an understanding of child psychology.

Accordingly, the function of the representative is not limited solely to procedural representation, but also encompasses the active identification of the child's interests, their reasoned advocacy, and ensuring their meaningful influence in the decision-making process..³⁸ The child's right "to be heard" and "to have a representative" are closely interconnected; these two rights

³⁷ (Haarberg, 2024, p. 9)

³⁸ (Reinder & Huijer, 2024, pp. 40–53)

should not be considered separately: representation is the mechanism, while hearing is the objective.³⁹

Although Georgian legislation establishes significant guarantees for the protection of minors' rights, practice demonstrates that the institution of representation still requires further development. In certain cases, representation retains a formal character and fails to ensure the genuine protection of the child's interests. The timely identification of conflicts of interest remains particularly problematic, especially in property-related, family, and residence disputes, where the personal interests of the parent may not coincide with the child's best interests.

Another continuing challenge concerns the level of specialization of representatives and the effective involvement of the guardianship and custodianship authority. Cases involving minors require not only general legal knowledge, but also specialized skills in child-friendly justice, psychology, and communication. Furthermore, it is necessary to establish clearer procedural standards for the appointment of independent representatives and to provide more detailed reasoning in judicial decisions concerning the assessment of the child's best interests.

Accordingly, in order to ensure the effectiveness of the institution of representation, it is necessary to move from a formal model toward a child-oriented and genuinely effective system, which would ensure the full protection of minors' rights in civil proceedings.

Conclusion

Ensuring the protection of the best interests of the child constitutes a fundamental objective of contemporary legal systems, grounded in both international legal standards and the core principles of domestic law. Owing to their legal status and limited legal capacity, minors require enhanced legal protection, which is particularly significant in civil proceedings, where decisions directly affect their rights and legitimate interests. In this context, the institution of legal representation of minors serves as a key mechanism for safeguarding their rights and interests.

The research demonstrates that the principle of the best interests of the child functions as the primary normative framework guiding all decisions and legal actions concerning minors. This principle imposes an obligation on representatives, courts, and other relevant actors to ensure that the child's best interests are treated as a primary consideration in the exercise of their functions. The representative of a minor, as a guardian of the child's rights and interests, plays a central role in the effective realization of the child's

³⁹ (Sloth-Nielsen, 2008, pp. 497–498)

procedural rights and operates as a crucial legal mechanism through which such protection is implemented in civil proceedings.

At the same time, the study reveals that, in practice, the implementation of representation in relation to minors is accompanied by a number of significant challenges that undermine the effective protection of the child's best interests. These include the formalistic nature of representation, the risk of conflicts of interest, the inadequate protection of the child's interests by representatives, as well as the insufficiently effective use of protective mechanisms by courts and other relevant institutions. These findings suggest that the mere existence of the institution of representation is insufficient; rather, its effectiveness depends on the quality of its practical implementation.

Furthermore, the research highlights the need for the further development of both legal and institutional frameworks to ensure the effective protection of the child's best interests. Particular emphasis should be placed on strengthening the proactive role of the judiciary in safeguarding children's interests, ensuring appropriate legal responses in situations involving conflicts of interest, and enhancing access to qualified legal assistance for minors. Such measures are essential for improving the overall standard of protection and for mitigating the risk of violations of children's rights.

The effective functioning of the system of representation constitutes a necessary precondition for the genuine protection of children's rights and ensures the substantive realization of their best interests within civil proceedings. Accordingly, further refinement of both the normative framework and its practical application is required in order to enhance the consistency and effectiveness of child protection mechanisms.

In conclusion, the effective protection of the best interests of the child in the context of legal representation requires not only the existence of formal legal norms, but also their rigorous and high-quality implementation in practice. Ultimately, it is this practical dimension that determines whether children's rights are protected in a meaningful and substantive manner, rather than merely on a formal level.

Conflict of Interest: The author reported no conflict of interest.

Data Availability: All data are included in the content of the paper.

Funding Statement: The author did not obtain any funding for this research.

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