

Representation of Minors in Civil Proceedings: The Best Interests of the Child in Georgian Law and Practice

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[Doi:10.19044/esj.2026.v22n39p99](https://doi.org/10.19044/esj.2026.v22n39p99)

Submitted: 15 April 2026
Accepted: 08 June 2026
Published: 15 July 2026

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Cite As:

Saneblidze, M. (2026). *Representation of Minors in Civil Proceedings: The Best Interests of the Child in Georgian Law and Practice*. European Scientific Journal, ESJ, 22 (39), 99.
<https://doi.org/10.19044/esj.2026.v22n39p99>

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, the protection of human rights constitutes one of the fundamental obligations of the state, and within this framework particular importance is attached to the protection of the rights of minors. Due to their age, legal status, and vulnerability, minors require special legal safeguards and support mechanisms to ensure the effective protection of their rights and interests. Since minors do not possess full legal capacity, they are often unable to exercise and protect their rights independently. This makes legal representation one of the principal legal mechanisms through which their rights are protected, particularly in civil proceedings.

A central principle in this area is the principle of the best interests of the child, recognized in both international legal instruments and Georgian legislation. This principle requires that primary consideration be given to the child's best interests in all decisions concerning them. Its significance is particularly evident in civil proceedings, where judicial decisions may directly affect the child's personal, family, and property rights.

In civil proceedings, the child's participation is generally exercised through a legal representative acting on the child's behalf and in accordance with their interests. Accordingly, representation performs an important function in ensuring the child's procedural rights, communicating the child's views, and protecting the child's interests before the court. At the same time, practical challenges frequently arise regarding the effectiveness of representation, especially in situations involving conflicts of interest, inadequate protection of the child's interests, or the formal exercise of representative authority.

Although Georgian legislation establishes the legal basis for the representation of minors and provides important legal guarantees for the protection of children's rights, practical and procedural challenges remain. These challenges concern not only the role and effectiveness of the legal representative, but also the role of the court in assessing the child's best interests and ensuring meaningful participation of minors in civil proceedings.

The aim of this article is to examine the legal foundations and practical aspects of the representation of minors in civil proceedings, with particular focus on the principle of the best interests of the child. The article analyses Georgian legislation, relevant judicial practice, and comparative legal approaches in order to assess how the institution of representation functions in

practice and what challenges arise in ensuring effective protection of minors' rights.

The original contribution of this article lies in demonstrating that Georgian law and judicial practice are gradually moving from a traditional model of formal parental representation toward a more child-centred, controlled, and case-specific model of representation in civil proceedings. It argues that the representation of minors should be understood not merely as a procedural requirement, but as a substantive legal safeguard aimed at ensuring the effective protection of the child's rights and best interests.

Literature Review

The issue of the legal representation of minors in judicial proceedings has received increasing attention in contemporary legal scholarship, particularly in relation to children's rights, child-friendly justice, and the implementation of the principle of the best interests of the child. International legal research emphasizes that children should not be viewed solely as passive subjects of protection, but as rights-holders whose interests, views, and procedural participation must be effectively ensured throughout legal proceedings.

A significant body of scholarship addresses the relationship between the child's right to be heard and legal representation. In particular, Lundy (2007) argues that the child's voice should not be understood merely as the opportunity to express an opinion; rather, effective participation requires that the child's views are genuinely heard and given due consideration in decision-making processes. This understanding has become central to the interpretation of Article 12 of the United Nations Convention on the Rights of the Child and continues to influence both legal theory and judicial practice.

Recent studies also focus on the practical effectiveness of child representation. Haarberg (2024) notes that the formal appointment of a representative does not automatically guarantee meaningful participation or effective protection of the child's interests. The effectiveness of representation depends on the representative's professional competence, communication with the child, and the ability to accurately present the child's position before decision-making bodies. Similar concerns are reflected in the work of Reinders and Huijter (2024), who examine legal representation as an important procedural safeguard in proceedings affecting children and family life.

Academic discussion further highlights the complexity of the representative's role in child-related proceedings. Bala (2015) identifies different models of child representation, including representation based on the child's expressed wishes, representation based on the child's best interests, and mixed approaches combining both perspectives. This demonstrates that

one of the key challenges in practice lies in balancing the child's autonomous voice with the legal obligation to protect the child's welfare and best interests.

Comparative scholarship also shows that the implementation of the best interests principle varies across legal systems depending on legal culture, procedural safeguards, and the scope of judicial discretion. Scholars emphasize that effective child representation requires not only legal norms, but also institutional coordination, professional specialization, and child-centred procedural mechanisms capable of ensuring the child's meaningful involvement in proceedings.

Despite the growing international scholarship on children's participation and legal representation, this issue remains relatively underexplored in Georgian legal doctrine, particularly in the context of civil proceedings. Existing research in Georgia primarily focuses on substantive child rights protection, while less attention has been paid to procedural representation, conflicts of interest, judicial control over representation, and the practical implementation of the best interests principle in civil justice.

Accordingly, this article contributes to the existing discussion by examining the representation of minors specifically within Georgian civil proceedings through the combined perspective of the best interests of the child, legal representation, and procedural protection. By analysing Georgian legislation, relevant case law of the Supreme Court of Georgia, and comparative legal approaches, the article seeks to address this gap and further develop academic discussion on child-centred justice in Georgian legal practice.

Methodology

This article employs a doctrinal legal research methodology to examine the legal and practical aspects of the representation of minors in civil proceedings, with particular focus on the principle of the best interests of the child.

The research is primarily based on normative analysis of the Georgian legal framework regulating the rights and representation of minors, including the Constitution of Georgia, the Civil Code of Georgia, the Civil Procedure Code of Georgia, and the Code on the Rights of the Child of Georgia. These legal sources are analysed in order to assess the legal basis of child representation and the procedural safeguards available for the protection of minors' rights in civil proceedings.

The study further applies comparative legal analysis by examining selected foreign legal approaches, particularly the legal frameworks of Australia and Norway. Comparative analysis is used to identify different legislative and procedural models concerning the implementation of the best

interests principle, child participation, and legal representation in proceedings involving minors.

In addition, the research includes analysis of selected decisions of the Supreme Court of Georgia concerning child representation, conflicts of interest, property-related disputes involving minors, residence and upbringing disputes, and the child's right to be heard. Case-law analysis is used to evaluate how legal norms are interpreted and applied in practice by the courts.

The methodological approach combines normative, comparative, and case-law analysis in order to assess both the legal framework and the practical implementation of mechanisms aimed at protecting the best interests of the child in Georgian civil proceedings.

Results and Discussion

1. 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.

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)

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 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

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

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)

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 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.

2. Representation of Minors in Civil Proceedings and the Child's Right to Be Heard

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

¹¹ (Luhamaa, Krutzinna, & Skivenes, 2022)

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

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

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 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. The child's right to be heard is not limited to the opportunity to express a view. It also requires that the child's views are genuinely heard and given due consideration in the decision-making process. Meaningful participation therefore depends on the child having a real opportunity to influence proceedings in accordance with their age and maturity.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹ In many

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 (Lundy, 2007)

¹⁷ (Haarberg, 2024, pp. 2–3)

¹⁸ (Assy, 2011, pp. 267–282)

¹⁹ (Haarberg, 2024, pp. 8–9)

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.²⁰ However, in practice, the representation of children gives rise to complex dilemmas for which legal practitioners are often unprepared.²¹ 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.²² Representation 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.²³

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.²⁴ 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.²⁵ 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

²⁰ (Haarberg, 2024, pp. 4-5)

²¹ (University of Pretoria, 2016)

²² (Haarberg, 2024, p. 5)

²³ (University of Pretoria, 2016)

²⁴ (Bala, 2015, p. 848)

²⁵ (Bala, 2015, pp. 856-857)

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.²⁶ 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.²⁷ 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 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.²⁸

Accordingly, the representation of minors in Georgian civil proceedings is case-specific and depends on the nature of the dispute and the child's interests. This becomes particularly evident in several key categories of cases.

2.1 Representation in Property-Related Cases

In Georgian civil proceedings, the representation of minors acquires particular practical significance where decisions directly affect the child's legal or material interests. In such cases, representation extends beyond formal procedural participation and becomes a legal mechanism aimed at ensuring

²⁶ (Haarberg, 2024, pp. 7–8)

²⁷ (Constitution of Georgia, 1995)

²⁸ (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)

that the child's rights and best interests are effectively protected. This is especially evident in disputes where the representative acts on behalf of the child in matters requiring legal decision-making with potentially significant consequences for the child's welfare or property.

The practical significance of this approach is particularly evident in cases involving the management and 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.²⁹

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 case³⁰ 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 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;

²⁹ (Civil Code of Georgia, 1997, art. 183; Code on the Rights of the Child of Georgia, 2019, art. 19)

³⁰ (Supreme Court of Georgia, Decision No. AS-1639-2023, March 7, 2024)

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.

2.2 Representation in Residence and Upbringing Disputes and Conflicts of Interest

A distinct procedural framework applies to disputes concerning the determination of a child's place of residence and upbringing. In such cases, parents are typically in legal conflict with one another, while the outcome directly affects the child's everyday 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.³¹ 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. 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.³²

³¹ (Civil Code of Georgia, arts. 1200, 1201)

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

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.³³ The determination of the child's best interests requires an individualized assessment of the child's specific circumstances, needs, and relationships. In family-related proceedings, this assessment becomes particularly complex, as the court is often required to balance the interests of the child with those of the parents. In such cases, a child-centred approach is essential to ensure that the child's welfare remains the primary consideration throughout the decision-making process.³⁴

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. In this context, representation gains practical value only where the child's interests are clearly identified and effectively communicated before the court.³⁵ 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

³³ (Supreme Court of Georgia, Decision No. AS-716-2021, June 23, 2022)

³⁴ (Barafi et al., 2025)

³⁵ (Assy, 2011, pp. 267–282)

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.³⁶ Effective child representation in family-related proceedings requires not only formal legal participation, but also genuine procedural involvement that enables the child's interests to be meaningfully considered throughout the decision-making process. This is particularly important in disputes affecting family life, where procedural safeguards directly influence the quality of protection afforded to the child.³⁷ These considerations demonstrate that the effective protection of the child's interests in such disputes requires not only appropriate representation, but also the coordinated functioning of all actors involved in the decision-making process.

2.3 Role of the Court and Guardianship Authority in Protecting the Best Interests of the Child

The effective protection of the child's best interests depends not only on representation, but also on institutional coordination and the active involvement of the competent authorities. A child-friendly approach to justice requires that proceedings be adapted to the child's age, understanding, and individual circumstances, ensuring that the child can participate meaningfully and that their best interests remain a primary consideration throughout the process.³⁸ 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.³⁹ 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. Research increasingly shows that the effectiveness of child representation depends not only on the formal appointment of a representative, but also on the quality of the child's actual access to that representation. Meaningful representation requires communication, trust, and regular contact between the child and the

³⁶ (Code on the Rights of the Child of Georgia, 2019, art. 72)

³⁷ (Reinders & Huijjer, 2024, pp. 40–53)

³⁸ (Child Friendly Justice European Network, 2023, p. 24)

³⁹ (Kiladze & Turava, 2021)

representative, since without such engagement the child's views and interests may remain insufficiently reflected in the decision-making process.⁴⁰ Recent legal scholarship also emphasizes that legal representation should be understood as an essential procedural safeguard connected to the child's right to be heard, enabling the child to participate meaningfully in proceedings affecting their rights and interests. 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. Recent scholarship further highlights that one of the central challenges in child-related decision-making is balancing the child's right to participate with the obligation to ensure protection. The child's views should be meaningfully considered throughout proceedings, while safeguarding the child's well-being and safety remains a primary consideration.⁴¹

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. Recent comparative scholarship likewise emphasizes that the child's right to be heard has become a central element of judicial decision-making in proceedings concerning parental responsibility.⁴² 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.⁴³ 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 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

⁴⁰ (Haarberg, 2024)

⁴¹ (Gresdahl et al., 2025)

⁴² (Szeibert, 2023)

⁴³ (Supreme Court of Georgia, Decision No. AS-733-2020, March 29, 2022)

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,⁴⁴ 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.

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

⁴⁴ (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)

court gives priority to the minor's best interests (Civil Procedure Code of Georgia, Article 251⁴⁵). 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.⁴⁵ 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..⁴⁶ The child's right "to be heard" and "to have a representative" are closely interconnected; these two rights should not be considered separately: representation is the mechanism, while hearing is the objective.⁴⁷

Although Georgian legislation establishes significant guarantees for the protection of minors' rights, practice demonstrates that the institution of

⁴⁵ (Haarberg, 2024, p. 9)

⁴⁶ (Reinder & Huijer, 2024, pp. 40–53)

⁴⁷ (Sloth-Nielsen, 2008, pp. 497–498)

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 and is firmly reflected in both international legal standards and Georgian legislation. In civil proceedings, where decisions directly affect the rights and legitimate interests of minors, the institution of legal representation serves as one of the principal mechanisms for safeguarding children's rights and ensuring their effective participation in the legal process.

The research demonstrates that the principle of the best interests of the child functions as the central legal standard governing the representation of minors in civil proceedings. It further shows that the representation of minors should not be understood merely as a formal procedural institution, but as a substantive legal guarantee aimed at protecting the child's rights, ensuring meaningful participation, and securing an individualized assessment of the child's interests in each specific case.

The analysis confirms that Georgian legislation is largely harmonized with international legal standards, particularly the United Nations Convention on the Rights of the Child and the principles of child-friendly justice. Georgian law recognizes the primacy of the child's best interests, the child's right to be heard, and the need for special legal protection in proceedings involving minors. At the same time, the study reveals that the principal challenges arise in practice, especially with regard to the formalistic nature of representation, the timely identification of conflicts of interest, the level of professional

specialization, and the effective coordination of institutions involved in child-related proceedings.

Further development of the institution of representation of minors in Georgia should therefore focus on several practical legal and institutional directions. In particular, it is important to establish clearer procedural standards for the appointment of independent representatives; strengthen specialized training for lawyers representing children; enhance the active role of guardianship and custodianship authorities in child-related proceedings; ensure more detailed judicial reasoning regarding the assessment of the child's best interests; and promote wider use of multidisciplinary child-centred mechanisms in civil proceedings.

Strengthening these legal and institutional guarantees would contribute to a more effective, consistent, and child-centred system for the protection of minors' rights within Georgian civil justice.

Limitations

This study is limited to doctrinal legal research based on the analysis of Georgian legislation, relevant academic literature, comparative legal sources, and selected case law. It does not include empirical research methods such as interviews or surveys and therefore does not directly examine the practical experiences of children or professionals involved in civil proceedings. Future research may further develop this topic through empirical analysis of the practical implementation of child representation mechanisms in Georgia.

AI Use Statement

During the preparation of this manuscript, the author used ChatGPT (OpenAI) solely for language editing, grammar correction, and improving the clarity of expression. The AI tool was not used for legal analysis, interpretation of legal sources, development of arguments, or drafting substantive academic content. All legal reasoning, conclusions, and the final content of the manuscript were independently developed and reviewed by the author, who takes full responsibility for the article.

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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