Child-centred justice in the light of European and Hungarian legislation

(PhD thesis' main statements)

Supervisor:

Prof. Dr. András Osztovits

university professor

Prepared by:

Napsugár Ágnes Orbánné dr. Szél

Károli Gáspár University of the Reformed Church in Hungary Postgraduate Doctoral School of Law and Political Sciences

Head of the Postgraduate Doctoral School: Prof. Dr. Éva Jakab university professor, CSc, MTA

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1. Background and purpose of the research

During the second half of the 20th century, the foundations of family relationships changed, with the disappearance of the extended family and the acceptance of other types of relationships in addition to marriage, the break-up of family relationships became more common.. This tendency has not disappeared thanks to the accelerated pace of life in the 21st century. On 28 March 2019, the HCSO published the Statistical Mirror summarising the results of a comprehensive study on the demographic characteristics of divorces between 1990 and 2017.
Overall, according to the available data, "divorces in 2017 had an impact on the future fate of around 15.5 thousand minor children in common, compared to around 24.5 thousand children ten years earlier."[1] In 2017, there were 18,495 divorces.[2] In 2017, there were 84 minor children per 100 divorces.[3] In other words, the vast majority of divorces involved a minor and only 16 out of 100 divorces did not involve a child under 18.
Despite a reduction of 10,000 children, the number of children affected is still high. Attention should also be paid to the fact that it is not only children affected by divorce who require a legal settlement, but also children affected by the break-up of cohabiting relationships or children born of loose partnerships can and do enter the justice system. The order of magnitude can be estimated if we assume that "the rate of out-of-wedlock births rose steadily in the decade after the turn of the millennium, and after a brief pause, it started to rise dynamically again, reaching its highest level ever in 2013, 46.2 percent."[4] The number of children entering the court system may increase further if, following a divorce or an initial court order, rapidly changing life circumstances make it necessary to reorder the fate of the children, whether in terms of changes to parental custody, contact or child support.
According to the latest available data, 18092 marriages will have ended in divorce in 2021[5] , a similar magnitude to 2017. It can be assumed that the number of children involved in divorce or other family law disputes has not decreased significantly, given unexpected circumstances such[6] , the war in Ukraine, the inflation crisis, all of which create an uncertain economic

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[1] Demographic characteristics of divorces Statistical Review 2019. p.7.
[2] https://www.ksh.hu/stadat_files/nep/hu/nep0021.html downloaded on 2023.01.26.
[3] Statistical Review 2019. pp. 7-8.
[4] Statistical Review: population movement 2013. p.3.
[5] https://www.ksh.hu/stadat_files/nep/hu/nep0021.html (accessed 26.01.2023)

[6] OSZTOVITS, András -TÓTH, András: *Civil procedural issues in times of emergency - temporary or permanent model change?* In.: Károli Gáspár Reformed University, Faculty of Law and Political Sciences, Budapest, 2021. p.235.The study also predicts that the civil justice system will be burdened by this type of litigation after the pandemic.

environment that is one of the greatest eroders of human relationships and thus a breeding ground for family law disputes. The number of children encountering the justice system in family law cases in our country is also extremely high. But the legal environment that children face in court proceedings and the courts and judges themselves have changed.

Over the last 10-12 years, child-centred justice has emerged as a specialised method of justice within the justice system. Its rules have been consciously incorporated into procedural law, through the Child Friendly Amendment,[7] child hearing rooms have been established nationwide, and training for judges has been provided, including mandatory modules, as well as optional national and local training.

The substantive legal background has also undergone changes. According to Tímea Barzó[8] "the interests of the child are more strongly asserted, which is also ensured by the more detailed and differentiated regulation of certain children's rights, in particular the right to express one's opinion (...) compared to previous family law provisions." But the development of a complex method of child-centred justice is far from complete. The most recent legislative provisions establishing a new practice in the area of the right to information of minors in particular entered into force in the second half of 2022. The case law on this is still evolving, but after less than a year the benefits and some of the drawbacks of the legislation can already be seen.

Even though change is continuous, a 10-year perspective allows us to assess the achievements, difficulties, good practices and problems that still need to be addressed. My thesis sets out to present these.

2. Sources and methodology of the research

The thesis reviews the literature on the subject both in Hungary and abroad. It concludes that the studies and articles in the international literature on child-centred justice primarily examine the criminal law aspects of the method, while civil law aspects, including family law, are underrepresented. In the Hungarian legal literature, the picture of child-friendly justice is more favourable than in the international literature. From the very beginning, it has been studied by

[7] This is the apt name applied to Act LXII of 2012 amending certain Acts related to the implementation of child-friendly justice by Katalin Visontai -Szabó: *Hearing the child in court proceedings.* In.: GÖRÖG,Márta – HEGEDŰS, Andrea (eds.): Lege duce, comite familia: Festive Studies in Honour of Eszter Tóthné Fábián, 60th Anniversary of her Legal Career. Szeged, Iurisperitus Bt., 2017. p. 522.

[8] BARZÓ, Tímea: *The contradictions in the application of the principle of family law that strengthens the protection of the best interests of the child* In.: Opuscula Civilia 2016-2017. ed: Ádám Auer and János Dúl Dialóg Campus Kiadó Budapest, 2019. p. 48.

renowned experts on children's rights such as Szilvia Gyurkó, who examined all types of proceedings in general, Andrea Hegedűs and Orsolya Szeibert, who examined family law proceedings, and Katalin Visontai-Szabó, who combined the virtues of the family lawyer and the psychologist. However, it can be observed that the emphasis within child-friendly justice has mainly been on the most important element of the procedure, the hearing of children.

The thesis reviews the relevant international and Hungarian legislation in chronological order and pays particular attention to the development of the concept of child-centred justice.

It identifies the elements of child-centred justice mainly in Hungarian civil procedure law. Tracks changes in procedural law. It identifies the provisions that were in the best interests of children before the concept of child-centred justice was conceived, and then examines the impact of the child-friendly novella on old procedural and existing procedural rules.

Based on 105 proceedings cases and a total of 315 non-contentious proceeding cases, the paper examines the practice of hearing minors, the most critical aspect of child-centred justice.

In examining the procedural representation of children, it uses the method of legal comparison by comparing the Spanish fiscal and the Hungarian case guardian/guardian ad litem.

Through quantitative research, it seeks answers to general questions on the education of judges by means of an anonymous, online survey. It explores the trends in the hearing of minors and addresses the issue of the length of expert evidence as the most pressing problem of the moment.

In the first chapter of this thesis, I describe the key steps in the creation of children's rights. These later became the basis for child-centred justice.
The paper then summarises the first steps towards child-centred justice. It then describes the development and spread of the concept.
The next part of the thesis describes the initial steps of the domestic system. It aims to summarise the procedural tools that have been built in with the child-friendly novel and those that already exist and are regulated independently of the child-friendly novel.[9]
I compare the old and the current legislation. Highlighting the elements which are novel from a procedural point of view, in particular the hearing of minors. It also presents the substantial law resources of child-centred justice. It describes in detail the practice of hearing minors in

[9] Act LXII of 2012 amending certain acts related to the implementation of child-friendly justice.

proceedings and non- contentious proceedings and devotes a special section to the situation of a particularly vulnerable group of minors, namely minority children, in child-centred justice.
It describes both a working form of representation of minors and international practice through the institution of Spanish fiscal. The fiscal, as a quasi-civil prosecutor, in fact formally represents the public interest. However, it acts in the individual interest of the child in a particular family law case.
In my opinion, in the second decade of the 21st century, it is essential to examine the relationship between digitalisation and child-centred justice. It will review whether the achievements of digitalisation in procedural law, such as telehearing, e-filing, and evidence tools actively involving new community platforms, can be applied in proceedings involving children.[10]
The present topic requires the presentation of multidisciplinarity. The nature of proceedings involving children requires the use of relevant knowledge and findings from other disciplines in addition to legal knowledge, to make a well-founded decision that is in the best interests of the child. The most obvious example is that a family law judge has to interpret the opinion of a psychological expert.
In the final section, I analyse in detail the results of an anonymous online survey that sought to explore the practice and education of judges.
Finally, it summarises the achievements of child-centred justice so far and possible future directions and make concrete proposals to remedy the existing shortcomings.

3. Conclusions, summary of the scientific results

Examining the international and domestic development of child-centred justice, with particular emphasis on the practical application of the provisions of the Code of Civil Procedure. There was no doubt that in the field of civil justice, both legislators and practitioners faced a more difficult task. The difficulty arose from the fact that the absolute majority of civil proceedings and non-contentious proceedings involving minors relate to the breakdown of family ties, the settlement or modification of parental custody, the enforcement right of contact, and proceedings for a preventive restraining order for violence between relatives. The minor was not automatically a party to these proceedings. In this area of life, the professional approach

[10] By this mean Facebook, Messenger, TikTok, because their role in the evidentiary process has increased over the last decade. In addition, thanks to smart devices, audio, and video recordings, often in the category of personal infringement, are often presented on flash drives.

was also adapted to the general social perception. The child concerned was not considered as a real participant in the proceedings. The professional approach was also in line with the general social perception that the child concerned was not considered a real participant in the proceedings. Ultimately, the child's life was not decided with him or her, but over his or her head. This perception has become institutionalised, since, as we have seen, even in the late 1990s and early 2000s, there was an AB decision,[11] which, on the basis of clear judicial discretion, considered the hearing of a child unnecessary for the protection of the minor. Nor has judicial practice considered minors as full participants in the proceedings, but rather as objects. There was a paternalistic attitude towards children. Their involvement in the proceedings - unlike in criminal proceedings, where their participation is mandatory,[12] whether as victims, witnesses or perpetrators - was entirely optional, depending on the discretion of the judge and the motions of the parties, and their fate could often be decided without their will being expressed in any form.

Child-centred justice - based on the will of children to be in contact with the direct decision-maker, while protecting the best interests of children - has taken on the task of changing this fossilised system. T This reform, which started more than a decade ago, has been achieved both through amendments to procedural law in line with EU provisions and through appropriate training of practitioners, as called for by the European Union and its general commentary on Article 12 of the New York Convention. The training courses have served and continue to serve not only to improve the relevant legal knowledge but also to shape attitudes.

My primary hypothesis was that the regulation does not cover every field of the child centred justice. In terms of legal provisions, it is confirmed that before the emergence of child-centred justice in procedural law, there were provisions to protect the procedural interests of children. The provisions, which are clearly in the interests of children, are entirely due to the child-friendly novel. The analysis of the legislation confirms that the system is far from complete at procedural level.

It has been confirmed that the legal provisions on the independent representation of minors throughout the procedure and on the right to information are deficient. The regulation of

[11] AB Decision No 1143/B/1998.

[12] The necessary presence of children in criminal proceedings did not mean that criminal proceedings involving minors were child-friendly as opposed to civil proceedings, but at least in these proceedings children were in some way involved in the proceedings that concerned them and had the opportunity to make their voices heard, if not in a child-friendly framework. Of course, there have also been significant changes in criminal procedure. Furhermore it is in juvenile criminal law that the seeds of child-centred justice have been sown.

representation is still in its infancy, compared to the institution of the Spanish fiscal, while neither the Civil Code nor the latest amendment to the Civil Procedure Code has been able to fully remedy the shortcoming of the right to information. Moreover, the latest amendment to the Civil Code has clearly created a legal vacuum in the field of procedural law in relation to the notification of the child, which has led to anomalies in practice.

With regard to the second hypothesis, I found that child-friendly justice is actually more than just hearing the minor. Numerous other provisions serve the best interests of children. For example, rules on the exclusion of the public, taking into account the specific situation of the child, the maintenance of order, summoning, or general rules on the use of languages in the case of minority children. However, the recent amendment to the Civil Code unfortunately restricts children's right to express their views by not allowing indirect declarations. It therefore makes the making of a statement or the request to make a statement, and thus the direct hearing of the minor, a central element of child-centred justice in cases where it could be replaced by other means that are in the best interests of the child. There is a risk that the notification and thus the hearing of the child will be reduced to a purely administrative step instead of effective protection and rights enforcement. The law also intervenes administratively in family relationships where the interests of the parents and children are already in harmony, and this is even indicated to the court in the statement of claim initiating the proceedings, in accordance with the Civil Code. 4:148.

There is a risk that the child's right under Article 12 of UNCRC will be eroded, since there is no procedural legal basis or uniform judicial practice for the handling and use of sensitive information obtained from the child, i.e., information intended solely for the judge's ears.

Children who are heard have no independent, objective feedback on the evaluation of their statements in court, so they fall outside the framework of child-centred justice after the hearing. The most appropriate person to provide feedback would be the independent representative who has represented the child throughout the proceedings. There is also no feedback to the professionals involved on their work. There is no feedback on how children experience their participation in the trial, the actual conduct of the proceedings, the tone, the questions, the decision itself. The feedback would be a valuable starting point for refining professional activities - by this I mean making them more child-friendly. Child-friendly justice is what children themselves perceive it to be, which is why this type of feedback would be important.

The lack of such monitoring was already noted by the Ombudsman in his report AJB-3070/2012 and has not changed since then.[13]

My third hypothesis, that the judges are well trained, but that it will take a long time to change their attitudes, is confirmed by the fact that they still prefer indirect hearings despite their training. In this respect, I consider the regular multidisciplinary education of judges, consisting of partly compulsory and partly optional modules that build on each other and include both contemplative and practical exercises, to be crucial. Continuing good practice is a prerequisite for further progress, for maintaining the momentum and for lasting change. It cannot be ignored that changing widespread practices that have evolved over decades is a time-consuming process. Social perceptions, in which professional ones are rooted, do not magically change, they take time and commitment. Therefore, the focus in this area should be on awareness-raising. Given that without understanding and adopting a child-centred approach, the provisions of the legislation cannot come to life. Another reason for the continuity of training is that dynamically changing human relations and social circumstances constantly present new challenges for legal practitioners, and new legal institutions are emerging.[14] Developing a common practical application also requires regular dialogue. This professional dialogue is a specific feature of judicial training.

4. Proposals to solve the problem

Reviewing the related provisions of child-friendly justice in the Code of Civil Procedure and the Civil Code, clarification is certainly necessary, both in procedural law and substantive law. First, I would like to draw attention to the need to amend the substantive rules.

In my firm opinion, the Civil Code Article 4:171(4) is a clear narrowing of the scope of Article 21(2) of the Brussels IIb Regulation and Article 12 of UNCRC.

Looking at the provisions of child-centred justice in the Code of Civil Procedure and the closely related Civil Code, I believe that clarification is certainly needed, partly in procedural law and partly in substantive law.

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[13] Report of the Commissioner for Fundamental Rights in case AJB-3070/2012: "I conclude that the absence of a system to monitor the implementation of child-friendly justice violates the best interests of the child and the right to protection, care and a fair trial."

[14] There is a legal instrument such as the notification of a minor, which is now just 11 months old in August 2023.

First, I would like to draw attention to the need to amend the substantive rules. As in the Netherlands, in minor cases, it would be necessary to ensure that the views of the child can be communicated indirectly.[15] Listening directly to the child at all costs is not always in the child's best interests. Article 4:171 (4) of the Civil Code is not suitable for the full detection of parental abuse, and the best interests of the child could be fully protected by an independent representative.

In addition, it is also necessary to explicitly state in the Civil Code that the court is also obliged to give due weight to the declaration of the child of full legal capacity in its decision.

Regarding procedural rules, the analysis has led to the conviction that it would be essential to lay down the procedural basis of the right to information of the child to facilitate the unification of judicial practice. It would be necessary to clarify at the legislative level at which stage of the proceedings, i.e., during the commencement of proceedings (preparatory stage) or during the substantive phase of the proceedings, information should be provided, with special reference to cases where an amicable settlement, i.e. a settlement of the dispute, seems more than likely. In the area of conciliation, the case of summons for attempted conciliation cannot be ignored, bearing in mind that the lion's share of these cases is aimed at settling parental custody. Therefore, the issue cannot be left unresolved even in the case of a settlement summons, since the short procedural deadlines - 15 and 30 days - do not allow for an extension of the deadline in this context, as this would jeopardise the declared purpose and the main virtue of the procedure, namely its speed.

The procedural rules should also clarify who should be directly notified; both parents, even if one is not the legal representative, or only the legal representative. It would be useful to specify in which cases the child should be notified directly.

However, even if these provisions are adopted, there is still no guarantee that the child who has been indirectly notified will actually be informed of the court's information. There is also no guarantee that the obligation according to Article 4:148 of the Civil Code will be fulfilled. The legislator envisages an ideal society, with law-abiding mothers and fathers. In the heightened emotional climate of family law litigation, the parties are not always law-abiding. Manipulation or influence is common. In these situations, the child becomes a mouthpiece for one of the parents.

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[15] Orsolya SZEIBERT: *Listening to the Child in the Settlement of Parental Custody - Dutch and Scandinavian Regulations and Experiences*. Family Law, No. 4, 2017. 37.o.

The optimal solution would be to provide the child with an independent representative throughout the procedure. The representative would act in the best interests of the child, in consultation with the child. It would be partly similar to the Spanish fiscal and partly different, as it would not act in the public interest, but specifically to safeguard the best interests of the child.

However, the procedural regulation of the right to information cannot be limited to a single stage of the proceedings but must continue until the end of the proceedings if the child has already been involved in the proceedings.

In any case, the legal loophole where a child wishes to disclose information that has a bearing on his or her future fate only to the judge also requires legislative resolution. The Code of Procedure only regulates the situation where a declaration may be refused in whole or in part. This does not include the case where the child confides in the judge and provides relevant information but does not wish to share it with the parents involved in the proceedings for entirely understandable reason. The issue requires an immediate solution in the case of e.g., abuse signals, ongoing influence, pressure, etc. The child must not return to the abusive environment. And if he or she is honest about one parent, for example, preferring to be placed with the other parent because of the parent's new emotionally abusive partnership, he or she has reason to fear that his or her openness will not go unheeded by the offending parent. A partial solution may be to keep the child's performance in a closed session. Closed data management precludes the court from basing a finding of fact on it, so the judge can only make a decision if the allegations are supported by other evidence.

The child should be given a right of appeal, or at least the right to be informed throughout the procedure, given that the child has been placed in a position of other interested person, but after making a statement he/she does not "see" the procedure at all. If the child is lucky, he or she will be informed about the decision, the reasons and the evaluation of his or her statement by the parents, in bad cases he or she will only be confronted with the final result, without any justification.

In my view, it is necessary to have a definition of the concept of child-centred justice in procedural law, for example: In proceedings involving a minor child, the court shall ensure the effective exercise of his rights, taking into account his particular circumstances and case. And placing the principle of child friendly justice within the principles of the procedure.

Despite the issues that need to be addressed in the future, the Hungarian judiciary has come a long way in the last decade towards achieving child centred justice. This is partly due to training and partly due to changing legislation. It is clear that further fine-tuning is needed in a number of areas, both by judges and legislators, to achieve a complete and fully balanced system.

5. Own contributions concerning the dissertation

Publications in Hungarian

1. *The principle of good faith in civil procedure*. In: MISKOLCZI BODNÁR, Péter (ed.): 12nd National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, 2017. pp. 422-429.

2. The *practice of hearing a minor in preventive restraint.* In: MISKOLCZI BODNÁR, Péter (ed.): 13th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law 2018. pp. 255-260.

3. *Review of Psychology and Psychopathology for Lawyers*. (Fekete Mária-Grád András: Psychology and Psychopathology for Lawyers (Budapest, HVG-ORAC, 2012, Second, expanded and revised edition 538. p.) KRE-DIt 2018.1. online

4. *Review Márta Nagy: The Rights of the Child in the Administration of Justice (Budapest, L'Harmattan, 2018, p.220)* KRE-DIt 2019/2. online

5. *Protection of the rights of minors in civil proceedings and in proceedings for preventive injunctions.* In DR. István KONCZ (ed.), Ilona SZOVA (ed.): PEME XIX: Presentations of the 16 Years of PEME XIX: PhD Conference (Budapest, 14 November 2019), Professors for European Hungary Association 2019. pp. 127-134.

6. *Child-centred justice in civil matters in the European Union.* In.SZE ÁJDI, Doctoral Law Working Paper,

7. The *frequency of hearing minors in judicial practice.* In: In: MISKOLCZI BODNÁR, Péter (ed.): 16th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law 2020. pp. 265-274.

8. *The concept of child-centred justice.* In: MISKOLCZI BODNÁR, Péter (ed.): 13th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law 2020. pp. 279-285.

9. Child-centred justice in the shadow of the crown virus through the eyes of a family lawyer. In: MISKOLCZI BODNÁR, Péter (ed.): 17th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law 2020. pp. 275-282.

10. *The right to information as the Achilles' heel of child-centred justice. In:,* MISKOLCZI BODNÁR *Péter (ed.):* 19th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law*, 2020.* pp. 307-314.

11. The *role of the capacity of the minor in child-centred justice in civil procedure.* In: KONCZ, István (ed.), SZOVA, Ilona (ed.): years in the service of scientific renewal and young researchers in European Hungary. Professors for European Hungary Association, 2020. pp. 78-86.

12. *Child-centred justice in proceedings for the enforcement of a contact order* MISKOLCZI BODNÁR Péter (ed.): 20th National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, 2021. pp. 113-120.

13. The *impact of Article 12 of the New York Convention on the Rights of the Child on the development of child-centred justice.* KRE-DIt 2021/2 online

14. *On the possibility of granting right of information in matrimonial proceedings involving minors - a spectacular individual gesture or effective legal protection?* KRE-DIt 2021/2 online

15. *Protection of minors of nationality as an element of child-centred justice in Act CXXX of 2016 on the Code of Civil Procedure.* Minority Protection, No. 2021.3. pp. 35-60.

16. *The procedural rights of minors as the most important element of child-centred justice and the issue of parental responsibility in the Hungarian Code of Civil Procedure - Congruence or conflict?* In: MISKOLCZI BODNÁR, Péter (ed.): 21st National Professional Meeting of Law PhD Students. Budapest, Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law, 2021. pp. 121-128.

17. *The importance of Article 12 of the Convention on the Rights of the Child, adopted in New York on 20 November 1989, in the child-centred justice system in civil procedure.* In RÓTH,

Erika (ed.): Studia Iurisprudentiae Doctorandorum Miskolciensium. University of Miskolc, Faculty of Law and Political Sciences, Deák Ferenc University, Doctoral School of Law and Political Sciences, 2021.1. pp. 199-211.

18. *Child-friendly justice in the EU strategy on the rights of the child.* In KONCZ István (ed.), SZOVA, Ilona (ed.): Eighteen years in the service of scientific renewal and young researchers in European Hungary. Professors for European Hungary Association, 2021. pp. 80-86.

19.*The role of the fiscal in Spanish civil proceedings - A Member State solution for the protection of the interests of minors in family law litigation*. European Law, 2021, no. 6. pp. 23-28.

20. *Multidisciplinarity and child-centred justice.* In ERDŐS, Csaba (ed.): SZE ÁJDI "Doctoral Workshop Studies 2021" Gondolat Publishing House, forthcoming, pp. 298-305.

Publication in English

21 *The impact of article 12 of the New York Convention on the development of child-centred justice in the Hungarian Civil Procedure Code. In:* Armenian Bulletin of Academy of Justice 2022. No.1. (7)