

ENSURING THE BEST INTERESTS OF THE CHILD IN PARENTS' CONFLICT: EXPERIENCES OF DIVORCING FAMILIES

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Abstract. *Divorce causes structural family changes, which require specific decisions to be made. While making any decision that might have any impact on ones' children welfare it is necessary to consider what is best for the children, thus children should be involved in the decision-making process. This article aims to investigate what sort of challenges parents under the divorce process face while they seek to ensure that children interests would be met.*

In order to conduct such an investigation, a qualitative methodology is employed. For data collection, analysis utilizes the semi-structured interview method, for the analysis of data the method of qualitative content analysis is being used. The research analysed seven couples of parents, all these couples are undergoing the divorce process and has children under 18 years of age.

Research's data reveals that it is important for parents to meet the needs of a child, to protect the child from negative effects of the divorce, to keep the child in touch with both parents, to involve the child in the changes that are caused by the divorce. However, parents have different evaluations of children needs, on one hand, some parents do consider a child's opinion as of utmost importance, on the other hand, some parents believe that child's opinion is irrelevant. It is also has been noticed that while parents aim to ensure that child keeps in touch with both of the separated parents, conflict occurs between the parents and the child and among the parents themselves. Parents usually fight with the child over a couple of issues. Firstly, children find it inappropriate to have restricted conditions for interaction with separately living parents. Secondly, it is usually unacceptable for a child to live in a household without his father or mother. Conflicts among divorced parents occur due to different approaches to childcare as well as disputes during collaboration agreement implementation.

Keywords: *best interests of the child, divorce, divorcing parents, Lithuania, right to be heard.*

Introduction

Many countries in the world have ratified the United Nations Convention on the Rights of the Child (United Nations, 1989) (hereafter – Convention), by doing so, all these countries have obliged to respect and to guarantee all the rights, which are listed in the Convention, to be met for every child. Within the Convention, family is acknowledged not only as a cornerstone for society but also as the main influencer of the formation of a child's identity, social role and worldview. The family develops children's norms and values, which are necessary in order to live within modern society (Danilevičienė, 2014; Rajewska de Mezer, 2020). Thus, parents obtain a responsibility to assure that child's rights and interests are met.

Family is considered the most suitable environment for a child to grow and develop. Therefore, a child's right and interest is to be grown by its parents. In the modern world, not only is there a diversity of family forms, but transformations are taking place as well. As the family goes through the divorce, radical relationships change occurs among the family members, although parental rights and responsibilities remain, the manner or such responsibilities implementation changes substantially. It has been noted that parents' divorce has an impact on many minor children. According to the official data, in 2020, there were 15299 marriages in Lithuania, (2019 – 19502; 2018 – 19734), on the contrary, there were 7732 divorces in Lithuania in 2021 (2020 – 7544; 2019 – 8643; 2018 – 8640). Lastly, in Lithuania, the number of children aged 0–17 who after divorce stayed with one of the parents in 2020 was 6118 (2019 – 6659; 2018 – 6640) (Lietuvos statistika, 2022).

Regardless of the reasons for the divorce, in essence, divorce is a conflict between parents that breaks down the original family structure. However, the conflict is not just about the parents, it affects all members of the family, especially the children (Amato, 2000; Oren & Hadomi, 2020; Çaksen, 2021). Thus, it is up to the parents alone to determine how much the child will be involved in the decision-making related to the divorce and how much the best interests of the child will be taken into consideration. With this in mind, it is important to investigate how parents ensure the best interests of the child during the divorce process. The study aims to investigate what sort of challenges parents under the divorce process face while they seek to ensure that children interests would be met.

The ensuring of the best interests of the child

Children, undoubtedly, are important actors in public relations with undisputed autonomy. However, according to Dromantienė and Šalasevičiūtė (2006), children are the group of society whose well-being is and will be the most vulnerable, therefore it is a must to see children not only as a group involved in allocating social resources, but also to see a child as an individual - a recipient of social and legal services. The successful development of a child is possible only when his rights and interests are appropriately taken into account, as parents make any decision concerning the child.

The Convention is the first international instrument to define a child as a person with inherited rights. The implementation of the concept of the Convention led to the beginning of a change in the attitude of our society towards the child - the child was recognized as an independent legal entity, whose rights were defined separately from the family, thus creating an autonomous recognition of the child's needs and interests (Kairienė, 2012). The rights of the child can only be implemented through the rights and responsibilities of others, in particular the child's parents. Thus, the welfare and best interests of the child depend primarily on the parents, whose rights and responsibilities are linked to their responsibility for the well-being of their children. However, as parents exercise their right to divorce, they, in a sense, violate the child's right to be raised by both parents, which often contradicts the child's interest in growing up in the best environment for his growth and development – in a family (Kairienė & Jekaitytė, 2010).

Divorce causes many changes in the lives of family members. Such changes require appropriate decisions to be made. Decisions concerning the child must be made considering the best interests of the child, which must be identified, and to do so the child must be involved in the decision-making process. The child shall not be deprived of his right to be heard. On the contrary, much attention must be paid to the child's views, and the context in which the child exercises his right to be heard must be enabling and encouraging to ensure that the responsible adult is prepared to listen and take the child's views seriously (Committee on the rights of the child, 2009).

The requirement in Article 3 of the Convention states that it is a must to take into consideration the best interests of the child, i.e. the principle of the interests of the child. This principle is a legal cornerstone of a child, according to which other principles of the Convention are implemented (Todres & King, 2020). This principle is quite controversial because it is a tremendous challenge to assess what is best for a child. There is often a lot of "space" left for parents to decide for their child without considering the child's opinions and views. Besides, due to the variety of children's

age groups and needs, it is plausible to claim that what might suit one child may not be suitable for another (Daly, 2018).

The best interests of a child is a varying concept, therefore each assessment of a child's interests requires a certain level of individuality. The identification of the best interests of the child lies in a field of highly subjective interpretations. It is not always clear which interests of a child are best for each particular case, and what criteria are used to decide what is best for a child (Dehghan, 2011; Heinemann, Helén, Lemke, Naue, & Weiss, 2015). When determining the best interests of a child, it is important to evaluate two factors - the child's present and future. The decision must be relevant to the child's present life, favourable to his growth and, thus, favourable to his future.

Methodology

The aim of the study is to identify the challenges faced by divorcing parents in ensuring the best interests of the child. A qualitative research approach was chosen, and a semi-structured interview data collection method was used while asking open questions (Gaižauskaitė & Valavičienė, 2016). The study was conducted on February-March in 2021. The study covers three aspects: parents' understanding of the best interests of the child in divorce; the involvement of the child in child-related decision-making; assurance of the best interests of the child regarding the child's relationship with the separated parent. The obtained data were analysed by the method of qualitative content analysis, which allows the researcher to summarize a large amount of information and accordingly to the content to sort the research data into subcategories, categories and so on. Besides, this method allows one to study certain semantic units in the text of a document, to study the connections of various text elements both with each other and with the entire scope of information as well (Žydžiūnaitė & Sabaliauskas, 2017).

The study involved 7 respondents - divorced parents with minor children. The size of the survey was determined by the fulfilment of the information - it was not appropriate to add new survey participants once the information started to recur. 7 women participated in the study, whose age varied from 27 to 45 years; 5 out of 7 study respondents have a university degree; 2 study respondents have a higher college degree. Respondents experience the different duration of the divorce proceedings as well: for 1 respondent, the divorce proceedings lasted for 1 year; for 5 respondents - less than 1 year. The longest duration of a divorce proceeding among the respondents was 2 years and 6 months, which was experienced by one respondent. The number of minor children in the family also varies. 3 out of 7

respondents are raising 1 child; 2 respondents - 2 children; 1 respondent - 3, 1 respondent – 5 children.

This research was done in accordance with the ethical principles of qualitative research - participants were introduced to the purpose of the research, their questions were answered, identities of all respondents were hidden (all names were changed and coded (1, ... 7), all respondents were taking part in the research voluntarily – they were left with an option to withdraw from the study at any time.

The limitation of the study was determined by the fact that only women (mothers) participated in the study, therefore it would be pragmatic and valuable to disclose the personal experiences of men (fathers) in answering the questions relevant to the study. However, this did not prevent the study from the discovery and identification of the challenges that parents face, as they aim to ensure the best interests of the child during divorce.

Results

1. The notion of the best interests of the child

In order to determine how parents identify the best interests of the child during a divorce, parents were asked how they comprehend the best interests of the child. After analysing the qualitative data survey, 4 categories were formed under the topic *How parents understand what is the notion of the best interests of the child during the divorce proceedings* (Table 1).

Table 1 The perception of the best interests of the child (created by the authors)

Categories	Subcategories	Illustrations
Meeting the needs of the child	Affirmation of all the needs of the child to be met	“The best interests of the child shall be ... things which meet the needs of the child“ (3), „meet his present needs and long-term needs“ (4), “ <...> opportunities for healthy growth” (7)
	Meeting the physical needs of the child	“To meet all their needs <...> and their physical needs” (1) “needs are age-related which must be taken into account <...> to meet the child's physical needs <...> sleep needs” (5)
	Assurance of emotional needs	“<...> creating a happy state for a child“ (3), “<...>security needs, emotional needs. To safely integrate a child from one environment to a new environment <...> (5)
	Assurance of the need for self-expression	“<...> would have their own environment, self-expression, so they can express themselves, do what they like” (4) “opportunities to learn, <...> to unleash their potential” (7).

Prevention of the harmful effects of divorce	Maintaining the emotional stability of the child	“<...>that parents would not convey their pain, negative emotions to a child” (3), “<...> I do not speak poorly about the father to my child” (6), “I try to avoid the creation of additional stressful situations” (7)
	Maintaining the stability of daily activities of a child	“In order to prevent any disruptions of education <...> the children spend one week with their father, and the next one with me. The most important thing is to make life as stable as possible” (1), “<...> so that child's routine would be altered as least as possible” (7).
Keeping in touch with both parents	Maintaining the contact	“That both parents <...> would maintain the relationship with children (1),”<...> that the bond with the child would exist” (4).
	The participation of both parents in the rearing	“That both parents would be involved in the child-rearing and child’s education (1), raised <...> by both parents” (7).
Involving the child in upcoming changes	Informing the child about the change of state	“In the event of divorce, it is essential to explain to the children <...> what is happening and why” (2), “<...> it is essential to talk to the child, to explain <...>” (6)
	Hearing the child’s opinion	“In divorce proceedings, I believe that it is essential to give the child an opportunity to make his opinion be heard as well as to allow him to make his own decisions <...>” (4)

During the divorce, it is of the utmost importance for parents to ensure all the child's needs to be met, including the child’s physical, emotional and self-expressional needs. Under the category labelled as *Prevention of the harmful effects of divorce*, two subcategories were distinguished: *maintaining the emotional stability of the child* and *maintaining the stability of daily activities of a child*. Therefore, it is plausible to claim that parents understand the potential risks of divorce for children, thus they believe that it is important to give the child emotional protection as well as to ensure a normal routine.

The category *Keeping in touch with both parents* includes the following subcategories: *maintaining the contact* and *the participation of both parents in the rearing of the child*. With a fundamental change in parents’ relationship, it is important for a child to maintain contact with both parents so that both parents can be involved in the rearing of their child.

The category *Involving the child in upcoming changes caused by divorce* contains two subcategories: *informing the child about the change of state* and *hearing the child’s opinion*. Parents believe that children should also be informed about the upcoming changes caused by the divorce as well as be keen on expressing their views and thoughts.

2. Parents' attitudes towards the child's opinion on determining child's best interests

In order to determine the best interests of the child, it is necessary to enable the child to express his views. Parents were asked how the child's opinion was considered while making divorce decisions related to the child. After the analysis of the qualitative data research, 2 categories were formed under the topic of *Whether parents do consider a child's views when making decisions related to him* (Table 2).

Table 2 *Attitudes towards consideration of the child's views* (created by the authors)

Categories	Subcategories	Illustrations
The child's opinion is important in making a decision about the child	The child's views are taken into consideration	"<...> children's opinion is important. At the moment, <...> the children see the father only on the weekends, so I fully understand that children need to see him more often and I do not have anything against it". (2)
	The child's opinion is important, although the final decision rests with the parents	"The opinion of the child is very important. The child may express an opinion or a wish of something, whatsoever; it does not mean that the expressed desire will be safe for him. He is still a little child, so no decisive power should be given to him" (5). "I try to consider child's opinion whenever I can <...> If the child says that he wants to see Daddy very much I would see no issue to take him to see his father"(6)
The child's opinion is irrelevant	The child is lacking competence	"We didn't really talk much to the children, we had this discussion only between us <...> but can they say anything about this?" (1).
	Avoidance of manipulation	"... if I say something that children do not want to hear, they go to their father and start to complain about me, so then the father, without knowing the whole situation starts to believe that I am some kind of villain <...> children then start to see me as a villain too <...> then the atmosphere changes, there is no solidarity, and .. is room to manipulate the children" (2).

Under the category *The child's opinion is important in making a decision about the child*, two subcategories were distinguished. Divorcing parents listen and consider their child's opinions. On the other hand, there are parents who value the child's opinion, however, the child's opinion is not decisive.

The following subcategories were formed under the category *The child's opinion is irrelevant: the child is lacking competence and the emergence of a dispute – possibilities for manipulation*. Parents consider the child's opinion to be insignificant because the child is incompetent to speak objectively on divorce issues due to of the possibility of parents' manipulation of a child.

3. Ensuring the best interests of a child regarding the child's relationship with the separated parent

In the event of a divorce where there are minor children in the family, the court must resolve the matters relating to the child by establishing procedures regarding the separately living parent's access to the child.

Parents were asked how they manage to implement the collaboration agreement in relation to the best interests of a child. 2 categories were formed (Table 3).

Table 3 Emerging challenges while aiming to ensure the best interests of the child (created by the authors)

Categories	Subcategories	Illustrations
Conflict with a child regarding the access rights	The child does not want to follow the established procedure	"<...> the child did not want to visit or see his father, now it seems that their relationship had improved, yet he still does not want to stay with his father for a long time. My daughter does go to visit her father <...> (1). " <...> I sometimes feel that the child is so stressed, as he has to go to his father. <...> he needs to deal with on regular basis" (2).
	The child finds it difficult to follow the established procedure: he wants to spend more time with his father	"<...>after a longer stay with her dad, my daughter would become miserable and saying goodbye to her father would become harder each time, even worse than the end of the world. When she returns home, she still would demand to see her father, I call it a "father's phase" <...>. She can see her dad only occasionally. If there is an emotional need for dad, I cannot satisfy it in any way. The child must accept the current situation" (6).
The dispute regarding the collaboration agreement implementation	Different parental approaches to childcare and child-rearing	"The father does not have a child seat in his car, he leaves his tools all over the place, so they are easily accessible to the children, there is also a pond next to his house, which is not surrounded by a fence, he takes children to see a wild horse, often leaves them on their own, etc." (5)
	Deviation from the set terms of the collaboration agreement	"<...> it is often the case that my ex-husband does not return the children on time due to various reasons" (2). "My ex-husband used to appear spontaneously without any notice. Such act would negatively impact my relationship with my son and brought chaos" (3).

Under the category *Conflict with a child regarding the access rights* the following subcategories have been identified: *the child finds the access rights to be unacceptable* and *the child finds it unacceptable to live separated from one of the parents*. During the implementation of the established access rights to the child,

conflicts arise with the child as the child sorrows from living separately from one of the parents.

Under the *Dispute among parents regarding the collaboration agreement implementation*, two subcategories were formed. Parents disagree with each other over the terms of the rights of access to the child as they do not share the same notion of childcare. Additionally, parents dispute over the implementation of the collaboration agreement.

Discussion

The research revealed parents' attitudes in determining the best interests of the child during the divorce period. During the divorce, it is important for parents to meet the needs of the child and to protect the child by maintaining his emotional stability and guaranteeing daily activities, which also is related to meeting the child's needs. Whatsoever needs should be taken to be the same as interests. Therefore, in order to identify the best interests of the child, it is not enough only to enable and help the child to express his views, it is also necessary to make the child heard. It turned out that some parents do not consider the child's opinion to be important at all and take child-related decisions without the child's involvement.

The child cannot control the divorce process, but he must be involved regardless of his age. The child has an expectation that his views will be heard, thus, he will be able to influence decisions crucial for his present and future. Adults control children's level of involvement, as it is up to them to determine whether a child will be able to be involved. This shows unequal power relations, as adults often "act on behalf of children" indicating that they act in the "best interests" of the child (Malone & Hartung 2010). The reason why children are not included in the decision-making process lies in the attitude of adults, some adults cast doubt on the child's competence and ability to be objective in decision-making on issues directly related to a child (Malone & Hartung, 2010; Banham, Guilfoyle, Napolitano-Lincoln & Cavazzi, 2011; Kairienė, 2012). One research respondent noted that "<...> but can they say anything about this?" Such a point of view towards the children causes a social norm of not giving children rights to actively participate in systems that may have an effect on them (Banham et al., 2011).

The observations of the study revealed the content of conflicts arising from the implementation of the collaboration agreement between divorced parents. Conflicts with the child arise due to the restricted separately living parent's access rights to the child, as children usually find them unacceptable. The problem is that once the court has established a procedure regarding the access rights to the child, a parent that the child stood with has a responsibility to allow the child to interact with a separated

parent. However, if a child expresses a reluctance regarding the court established access rights, his opinion becomes irrelevant in the context of the parental dispute. As one respondent said: "If my son refuses to go to his father, I encourage him a little, but how much can I encourage a fourteen-year-old? I cannot force him to go to his father's, as hysteria begins. This then causes a conflict with the ex-husband". Other conflicts arise from the fact that a child has to live separated from one of his parents, due to this, children experience emotional drawbacks caused by only occasional interactions with the separated parent. Divorce is a parental decision. And while the child must be given the opportunity to express his views, the child's views are not taken into account because the decision on divorce rests solely with the parents. Perhaps the opinion of the majority of children going through parents' divorce could be illustrated by the following quote, which was made by one of the respondents: "the child wants us both to be in the same place, so he would not have to go anywhere and leave his father."

It must be acknowledged that in cases where family life does not endanger the child, i.e. the child feels good living with both parents, parents' divorce threatens the child's right to be raised by both parents and thus is against the best interests of the child. During or even after a divorce, it is natural for the child to identify himself with the family in which he was born, this is where the child's inherent right to grow up with both of his parents under the same roof comes from.

However, the existence of the family structure is determined by its' main elements – its' members. From a child's perspective as soon as parents start to live separately, the whole family structure collapse, hence, the child does not belong to the family in which he was born. In addition, the child's social integrity is violated, as soon as parents start to live apart – the child experiences confusion, pain, uncertainty, which leads to his normal life being disrupted. Sometimes children also need to deal with the possible loss of relationships or a decline in the intensity of relationships with family members in the broader family, and often with a significant diversion that takes their lives off course (Oren & Hadomi, 2020). The end of their parent's marriage is a complete loss, turning children's lives upside down and reactions vary with age, but across the board, children experience feelings of confusion and betrayal as they watch their family fall apart and feel neglected while their parents struggle with their own problems. Children just wish their parents would get back together and shape up (Clarke-Stewart & Brentano, 2006). As in the case of other groups of children, those of parental divorce or separation are at particular risk of myriad developmental problems, compared with those living with both biological parents (Kwame Owusu-Bempah, 2014).

Fulfilling a child's legal right to have contact with their parent and to have the other parent influence the educational process (as long as it does not pose a threat to

their life and health, of course) is a means to protect their wellbeing and makes it possible for the child to develop socially and psychologically in a correct way (Rajewska de Mezer, 2020), but only if the intended rights of access to the child are appropriate and acceptable to the child himself, i.e. meets his best interests.

This research allows inferring that conflicts between parents arise due to different approaches to child care and child-rearing as well as due to the disputes over the collaboration agreement implementation. Different and inconsistent, parental attitudes towards the child puts diverse demands on the child, disrupts the child's normal routine and create room for manipulative attempts. Therefore, the failure to provide safe care for the child contradicts the child's best interests. The child might suffer from a decrease in parenting quality from one or both parents if the latter are too overwhelmed by the divorce experience (Grant, 2016). During the divorce, parents are usually highly conflicted, not all issues are settled peacefully, due to this child's interests do not receive appropriate significance (Gal & Duramy, 2015). When two people choose to have children together, they actually declare their irreversible commitment toward their offspring, with the intention that it will be the most significant libidinal investment in their lives (Oren & Hadomi, 2020). Any subsequent events that alter the relationship between the partners should not affect their parental responsibility to pursue parenthood that is in the best interests of the child.

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