

Psychological Evaluation of Minors in Civil and Criminal Cases Using Projective Techniques

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Abstract

In the protection of children's rights, courts hold a pivotal responsibility in ensuring and upholding these rights, particularly regarding personal identity, family life, safeguarding against violence, and guaranteeing their full realization. Legal and psychological professionals recognize the pressing need to revive dialogue among specialists—magistrates/judges, prosecutors, and psychologists—since courts often represent an alien and authoritative space for children. Employing a multidisciplinary approach can help deliver justice that truly meets children's needs and can encourage courts and prosecutors to explore alternative ways of resolving such cases. This article emphasizes the crucial role of psychological assessment in guiding magistrates' decisions, always prioritizing the best interest of the minor. Because children often experience courts as intimidating and unfamiliar, effective collaboration between magistrates, psychologists, social workers, counselors, and medical personnel is essential to achieve a tailored, high-quality act of justice that accounts for the specific needs of each child.

Keywords: Projective techniques, Court, Parental authority, Psychological expertise

Introduction

The increasing number of divorce cases in Romania has highlighted the necessity for thorough psychological evaluations, including interviews with minors conducted in the presence of a psychologist. The conclusions of these assessments must then be integrated with all other evidence presented in family law proceedings.

Family relationships are built upon deep psychological bonds, which translate into specific legal obligations and rights. Consequently, cases involving the dissolution of

marriage where minor children are involved often present complex psychological and legal challenges.

As stated in articles 483 and 484, "Parental authority is the set of rights and duties that concern both the person and the property of the child and belong equally to both parents, who exercise it until the child acquires full exercise capacity" [1].

Although parental authority is not a new concept in Romanian civil law, it represents a modernized designation for an institution whose primary purpose is to ensure that parents safeguard the child's welfare [2].

Within this framework, courts are tasked with evaluating cases concerning the "exercising of parental authority," deciding whether authority should be allocated to one parent, the other, or jointly, always guided by the best interests of the child.

For married parents, parental authority is exercised jointly and equally, meaning both parents share responsibility for the full range of rights and duties

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associated with their minor children. According to article 483 para. (3), "both parents are responsible for the upbringing of their minor children," with exceptions arising only when one parent is granted sole authority [1]. Parental authority covers rights related to the child's personal care, upbringing, education, maintenance of relationships, and general welfare, as well as rights over the child's property, including legal representation and management of assets.

Article 397 of the Civil Code stipulates that, following a divorce, parental authority generally remains joint, unless the court decides otherwise [1, 3]. Exercising this exception requires evidence that joint authority would negatively affect the child's well-being.

In divorce proceedings, parental authority is applied according to regulations governing parent-child interactions post-divorce. Generally, both parents retain equal and joint authority, whether married or divorced (art. 503 para. (1) with art. 505 para. (1) of the new Civil Code), as also reflected in art. 31 of Law no. 272/2004 and art. 98 para. (1) of the former Family Code.

Only in exceptional cases may the court, as the protector of minors' rights and interests, grant parental authority to a single parent if it serves the child's best interest (art. 398 with art. 507 of the new Civil Code; see also art. 98 para. (2) of the former Family Code).

Thus, while joint parental authority is the default presumption established by the Civil Code, it may be overturned only by highly compelling circumstances.

Art. 507 of the Civil Code identifies truly exceptional circumstances, which are meant to be interpreted restrictively. These occur when a parent is unable to express their will—for example, in cases of a parent's death, a court-declared death, placement under prohibition, lapses in the exercise of parental rights, or any other situation preventing them from making decisions. In such instances, the remaining parent assumes full responsibility for exercising parental authority and safeguarding the minor.

The legislation, however, does not explicitly cover cases in which a court might determine that parental authority should be exercised solely by one parent based on the motivations of the parties. In these situations, it is up to the judge to evaluate whether the reasons provided meet the criteria necessary to justify granting sole parental authority.

Although the Civil Code does not list all circumstances that could render a parent incapable of expressing their will, legal doctrine and case law have recognized

examples such as: a parent's disappearance, deprivation of liberty, permanent abandonment of the minor, or severe health conditions that prevent the parent from providing consent regarding the child's situation.

The new Civil Code's rules on the effects of divorce on parent-child relationships are aligned with the child's rights as defined by Law no. 272/2004 on the protection and promotion of children's rights [4], the Convention on the Rights of the Child of November 20, 1990 [5], the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), and other relevant international treaties.

Article 400 para. (1) of the Civil Code provides that if parents cannot reach an agreement, or if an agreement is not in the child's best interest, the guardianship court determines the minor's permanent residence with one parent after the divorce. Paragraph (2) further clarifies that if the child previously resided with both parents, the court will decide which parent the child will live with, always prioritizing the child's best interests [1].

As defined in Art. 2 of Law no. 272/2004 [4]:

(2) "The child's entitlement to a typical family life, socio-affective balance, and physical and moral growth are the only things that fall under the purview of the best interests of the child."

(3) "The best interest of the child is the guiding concept that governs the rights and responsibilities of the kid's parents, any legal representatives, and everyone else to whom the child was lawfully entrusted."

(4) "The best interest of the child will always come first in all decisions and actions pertaining to children made by authorized private organizations, governmental agencies, and courts."

In essence, the best interest of the child represents a set of principles, norms, and standards that shape a minor's life in accordance with ethics, morals, culture, and social balance. Parents are expected to nurture and maintain this framework in the child's life, influencing both conscious and subconscious development.

Art. 2 para. (6) of Law no. 272/2004 illustrates, as examples, the criteria to be considered when assessing the best interest of the child:

- a. "the needs of physical, psychological, education and health development, security and stability and belonging to a family;
- b. the child's viewpoint, based on their age and level of maturity;
- c. the kid's past, including specifically any instances of abuse, neglect, exploitation, or other violence against the

child, as well as any possible risk circumstances that might arise in the future;

d. the capacity of the child's parents or other caregivers to meet his unique demands and provide for his upbringing;

e. maintaining personal relationships with people with whom the child has developed attachment relationships" [4].

These and similar factors guide the guardianship court in determining the solution most appropriate for exercising parental authority.

In proceedings of this nature, the evidence must fulfill multiple requirements simultaneously. The parent bringing the claim must demonstrate that the child, under joint parental authority, experiences harm. This involves establishing a causal link between the minor's suffering and joint authority, as well as showing that transferring parental authority solely to one parent represents the most appropriate remedy.

Judges have the authority to request psychological expertise under Art. 330 of the Civil Procedure Code whenever the case involves facts or circumstances that exceed the judge's ability to evaluate from a psychological perspective. Collaboration with qualified psychologists is therefore essential to uncover the truth and determine the measures that best serve the child.

A magistrate's role in such cases requires specialized psychological knowledge and methods, including approaches for working with children who are victims of sexual abuse or parental alienation. It is critical that the court and parties define clear objectives for the psychological expert, focusing on assessments of all individuals involved, including minors and parents, in cases of parental alienation.

Psychological expertise can identify whether a minor is suffering emotional abuse from one or both parents, outline the profile of a child affected by parental alienation, and specify the methods and tests used to detect such abuse. These expert reports play a crucial role in suggesting interventions to stop abusive or alienating behaviors, and in proposing preventive measures to limit further harm.

For the presiding judge, these reports also provide guidance on the child's optimal residence and practical steps to alleviate and counteract the effects of parental alienation.

In accordance with Art. 2 of Decision no. 36/2021, which approves the Standards for the activity of psychological expertise [6], and the Registration Procedure in the

Register of Psychological Experts [7], psychologists may serve as experts appointed by judicial bodies or as party-appointed experts/counselors, provided they consent, upon request by the parties or their legal representatives. A distinction exists between judicial and extrajudicial psychological expertise: when requested or sanctioned by a judicial body, it constitutes judicial psychological expertise; when requested directly by the parties or through legal counsel, it is considered extrajudicial expertise, as outlined in Art. 2 of Decision no. 32/2021 [6].

The procedures of assigning minors and determining the visitation schedule often become contentious, with parents clashing against one another, leaving the children with the unfortunate and unfair role of a "weapon." In judicial proceedings, the child's best interest is paramount; therefore, it must be assessed by a competent and certified specialist who employs methods and techniques specific to the evaluation of parental authority, forming the basis of expert opinions within the psychological expertise report.

Psychological expertise represents an essential step in supporting the panel of judges in forming an intimate conviction, upon which they can make a well-considered and responsibly assumed decision. This technical assessment, conducted in the civil process, possesses an analytical and scientific nature and entails a comprehensive approach in which standardized tests serve as instruments to reveal elements of psychopathology, while projective tests uncover drives or experiences repressed due to fear or fear of punishment [8].

It is crucial that the psychological expert applies appropriate and rigorously justified psychological methods and techniques within the judicial context. Psychological expertise constitutes a specialized act tailored to the requirements of justice, analyzing psychological elements during hearings with the parties or witnesses involved in the case. It also aims to examine feigned or concealed behaviors, temperaments, attitudes, aptitudes, mental capacities, character traits, and judgment. Additionally, the expert must have the ability to engage with victims of sexual abuse and determine whether a parent is engaging in parental alienation, leading the child to refuse visitation with the other parent [6].

Case Study

Below, we present the results of a 13-year-old minor assessed through the Family Test. The psychological evaluation was conducted at the request of a legal authority in a civil case concerning the establishment of parental authority and determining the minor's domicile with the plaintiff's father. The purpose of the evaluation was to explore the relationships among family members, the minor's role within the family, and the identification of potential signs of abuse.



Figure 1. Family Drawing

During the assessment session, the Family Test [7] and the Child Abuse Assessment Questionnaires [9] were administered. According to Abraham, the position of the figure on the paper reflects introversion, whereas Kim Chi (1989) and Buck suggest that drawings located in the lower section of the graphic space indicate depressive tendencies. The placement of the drawing on the sheet can provide the subject with a sense of security against the tension and instability experienced within the family. Depicting the person with the greatest height is interpreted as reflecting feelings of power and dominance [7], while a more compressed drawing suggests an energetic and self-assured individual [7]. Areas of the sheet left blank may imply restrictions or a desire to maintain distance [7].

Aubin [7] notes that drawing the father figure in close proximity may indicate that the father provides a sense of security to the child. The use of red in depicting the subject's clothing is associated with intensity, passion, love, aggression, and dynamism. The mother's attire was rendered using purple (symbolizing mourning, sadness, mystery, and imaginative deviation) and to a lesser extent green (indicating renewal, hope, but also potential bitterness or anger) [7]. The father's clothing was drawn with black (associated with anxiety, mourning, and guilt) and brown (signifying restraint, inhibition, and

seriousness). Smiling expressions in the characters reflect the emotional state of the drawer [7].

The subject did not depict their own legs, unlike those of the parents, which, according to Machover, may indicate depressive or discouraging tendencies. Highlighting the character's gender through details such as bracelets, watches, or chains can be interpreted as signs of coquetry or narcissism [7]. Including elements such as a house and a tree alongside the family drawing suggests, according to Lafrance, a heightened social awareness or a need to secure one's environment. Populating the drawing with elements like houses, trees, the sun, or clouds may reflect fear of emptiness and isolation; after age 10, this could indicate insecurity and an overactive imagination. In Royer's view, a decorative environment may signal the need for security or the absence of a supportive paternal figure. Depicting one's character as the initial element in the picture may point to narcissistic tendencies related to difficulty in emotionally investing in parental figures.

Proximity to the father figure indicates stronger attachment and the perception of effective acceptance and support.

Concerning the Child Abuse Assessment Questionnaire, the minor's responses were recorded across emotional abuse, sexual abuse, physical abuse, and neglect. In terms of emotional abuse [9], the child reported frequent screaming and intimidation through physical threats from the mother. No indicators of sexual abuse were identified. Regarding physical abuse [9], the minor stated that she experienced slapping and hitting from her mother almost daily since the age of eight, with the most recent incident occurring 30 days prior to the assessment. No signs of neglect were reported [9], except for the child's claim that the mother did not provide a quiet environment conducive to completing schoolwork.

Regarding the child's psychological condition, no difficulties with concentration or loss of interest in usual activities were observed [10-14]. The minor did report feelings of sadness, reduced appetite, and occasional somatic complaints such as stomach aches and headaches [11-26]. Behavioral concerns included instances of running away from home.

Conclusion

The resolution issued by the panel responsible for adjudicating the case, after considering and corroborating all the evidence presented, determined that the minor's residence would be with the plaintiff's father, with joint

parental authority exercised. Courts play a crucial role as protectors of children's rights, ensuring respect for family life, privacy, and personal identity, safeguarding against violence, and promoting the fulfillment of minors' social, cultural, and economic rights.

From the viewpoint of children, courts can appear unfamiliar and intimidating, highlighting the need for coordinated collaboration among specialists—magistrates, psychologists, social workers, counselors, and medical personnel—to facilitate a precise and qualitative act of justice that addresses the unique circumstances of each child. Effective teamwork is essential for uncovering the truth and identifying the most appropriate solutions for minors, and adopting a multidisciplinary approach can serve as a guiding principle, potentially enabling judicial bodies to develop a new model for resolving such cases.

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