



Cultural Contexts of Health and Well-being

Stakeholder narratives
No. 1

Principal author
Jessica Frances Marais

Co-authors
Olga Kazakova,
Dzmitry Krupchanka,
Orest Suvalo, Felicity Thomas

Understanding and building resilience to early life trauma in Belarus and Ukraine



**World Health
Organization**

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ABSTRACT

In 2018 and early 2019, the WHO Regional Office for Europe's cultural contexts of health and well-being project worked alongside the University of Exeter's WHO Collaborating Centre on Culture and Health, the Minsk Regional Centre for Psychiatry and Addiction, and the Institute of Mental Health of the Ukrainian Catholic University to engage researchers, practitioners, health-care workers and other relevant stakeholders in a series of workshops on the cultural contexts of early life trauma in Belarus and Ukraine. The initiative built on previous collaborative work to support the development of culturally informed mental health care in central and eastern Europe. This report reflects the content of the workshops through a collection of participant essays highlighting key cultural contexts and opportunities for fostering more protective and health-enhancing environments for young people in Belarus and Ukraine. It highlights the important role of subjective forms of evidence within culturally nuanced approaches to health and well-being enhancement, and aims to open up further interest in and opportunities for collaboration to address this under-researched area of mental health in the WHO European Region.

KEYWORDS

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BACKGROUND

This essay collection was developed through the WHO Regional Office for Europe. The evidence for health and well-being in context team of the Division of Information, Evidence, Research and Innovation, including Nils Fietje (Research Officer) and Andrea Scheel (Consultant), was responsible for and coordinated its development.

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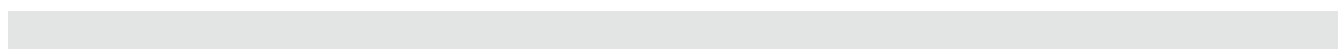
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The main factor that influences early life trauma management in the legal sphere is the legislative framework. A large number of legal provisions in Ukraine date back to the Soviet era, and new legal provisions are in one way or another influenced by the principles of Soviet law. This negative trend is on the decline, but has not yet disappeared completely.

4.6 Protecting the rights of children in the legal system

By **Stanislav Borisov**, Lawyer in Kharkiv, Ukraine; and **Benedetta Ubertazzi**, Attorney in Milan, Italy; Aggregate Professor in the School of Law, University of Milano-Bicocca, Italy; Facilitator and Evaluator for Intangible Cultural Heritage, United Nations Educational, Scientific and Cultural Organization

People encounter early life trauma in the legal sphere mainly during trials or pre-trial investigations by law enforcement authorities. A significant number of cases considered in the courts of Ukraine (civil and criminal) in one sense or another concern a child or somehow negatively affect a child's life. Children may have been victims or witnesses of a crime, or be negatively impacted by the lawsuit itself, such as in alimony civil cases or cases to determine their place of residence or parental visitation rights.

Current legislation in Ukraine provides specific conditions and procedures to protect children during pre-trial investigations and during trials. In general, most officials of public and law enforcement authorities have sufficient knowledge and skills to work effectively with children. However, some issues have no legislative regulation, and when officials lack clear protocols for difficult situations, they may fail to take initiative to look for a solution on their own.

The main factor that influences early life trauma management in the legal sphere is the legislative framework. A large number of legal provisions in Ukraine date back to the Soviet era, and new legal provisions are in one way or another influenced by the principles of Soviet law. This negative trend is on the decline, but has not yet disappeared completely. At the same time, Ukraine's more recent legislation has been developed under the influence of applicable international laws and regulations. This can lead to legal conflicts when the provisions of international and national legislation do not concur.

Public and law enforcement officials have a strong tradition of working with children in a particular way. Most commonly, this involves giving priority to the opinions of parents or other authorized adults rather than to those of children. Article 160 of the Family Code of Ukraine, for example, dictates that the place of residence of children aged 10 years or older is determined by the consent of the parents

To better protect children in Ukraine, national legislation must be brought in line with the provisions of international and European legislation, and standard procedures must be developed for specific situations. It is also necessary to train lawyers, judges and civil servants in basic methods for working with children in line with international and European standards, and in the peculiarities of procedures and processes.

and of the child – this means that officials may not even consider the opinion of a child under the age of 10. Yet with the assistance of qualified professionals such as child psychologists, it is entirely possible to learn the preferences of a younger child and to take these into account while deciding a case to their benefit. In the legal sphere, this type of collaboration functions very well.

To better protect children in Ukraine, national legislation must be brought in line with the provisions of international and European legislation, and standard procedures must be developed for specific situations. It is also necessary to train lawyers, judges and civil servants in basic methods for working with children in line with international and European standards, and in the peculiarities of procedures and processes. Finally, we must ensure that information on how to involve relevant experts such as psychologists is readily available, including their contact details.

Case study 8

In a civil case, I was representing the interests of a psychiatrist who provided consultative assistance to a child at the mother's request. Following a divorce, the child resided with the mother, though the parents were engaged in a legal case regarding parental and visitation rights. One day, the father used physical force to take the child from the mother; this terrified the child, and as a result the child began suffering from panic attacks, incontinence, sleep disturbances and so forth.

Based on the consultation with the child, the psychiatrist provided recommendations that the father was not satisfied with. The father filed a legal claim deeming the psychiatrist's actions and conclusions illegal. The Ukrainian courts settled the father's claim and deemed the psychiatrist's actions and conclusions illegal because the consultation with the child had been conducted without the father's consent. Although international regulatory documents allow for the delivery of children's health services at the request of one parent, national legislation requires the consent of both.

Such a court judgement sets a dangerous precedent that can paralyse the delivery of psychiatric help to children if only one parent is seeking assistance. Discrepancies between national and international legislation provisions can also lead to the abuse of parents' rights and to numerous lawsuits.

Case study 9

As described above, some situations involving children are not regulated by law, leaving civil servants and law enforcement officers without clear instructions or protocols. An example of such a situation is the adoption of a 16-year-old boy living in one of the orphanages of Ukraine by a family of foreigners. Through our participation in this case, we came to understand that the adoption process in Ukraine is very complex and contains many unnecessary bureaucratic elements. In addition, the country's adoption procedures are inconsistent with international legal documents, namely those that safeguard the fundamental right of a child to be heard.

In this case, such inconsistencies created particular difficulties when the boy's biological parents and relatives repeatedly asked the administration of the orphanage to share information about him and to arrange visitation sessions. These demands were contrary to the will of the boy, who expressly stated that he wished to have no contact with his biological family. Despite the clear expression of his wishes, the administration did not know how to respond. This confusion stemmed from a lack of clear guidelines for establishing boundaries between the boy and his biological family in line with international procedures for handling such difficult situations.

For instance, Article 4 of the United Nations Convention on the Rights of the Child stipulates that certain procedures for hearing the child and recognizing their wishes must be established and must prioritize the interests of the child (15). A conflict of interest between the wishes of the child and those of the parents necessitates a special representative in proceedings before a judicial authority (48). Such procedural guarantees are also established by Article 12 of the Convention, which details the proper methodology for hearing the views of children and their inclusion in all matters affecting them (15). The European Court of Human Rights (49) and the Charter of Fundamental Rights of the European Union (50) affirm these rights, stipulating:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (48).

In this case, the lack of guidelines negatively affected all parties: the boy because he did not want to talk with his biological parents and relatives, the adopters because they did not want to disseminate information about themselves and the boy, and the administration because their actions (or lack thereof) could have led to the violation of the lawful rights of others involved in this case.

The 16-year-old boy, whose views were based on his own negative experiences with his biological family and the environment they provided for him, and who was fully capable of forming his own opinion, clearly met the criteria set by international legal precedent for the recognition of a child's voice and interests (15,49). To defend his right to be heard, his representatives collaborated with a lawyer who explained to the administration of the orphanage what they could and could not do according to the legislation of Ukraine. In addition, the lawyer was able to assert, with reference to the legislation of Ukraine, that the demands of the biological parents and relatives were illegal and could violate the aforementioned interests of the boy and his adopters.

As a compliment to the Ukrainian legislation, it should be noted that the interests and desires of the child are taken into account by the court. In this case, the boy participated in court sessions and had his opinion repeatedly heard by the court. The most important question to which he responded in court was that of his personal consent to his adoption by this family, which he affirmed. Without the legal help of the lawyer, however, the interests of the boy and the adopters could have been violated. Thus, it was wise of the adopters to seek the legal help of a Ukrainian lawyer.