Chapter 2
Family Courts in Chile and the Evolution of Sociolegal Social Work

Sara Salum and Elena Salum

2.1 Childhood a Residual Figure: The Juvenile in an Irregular Situation

Concern for the welfare of children and the prevention of maltreatment have Anglo-Saxon origins. Social awareness of child abuse arose in the United States with the so-called movement for the welfare of children. In 1871, the Society for the Prevention of Cruelty to Children was founded in New York, followed by other associations with similar objectives in various parts of the United States and the United Kingdom, awakening public awareness of neglected children, about whom existed little information and who were rarely considered.

> The first action for the protection of children took the form of protection against animal abuse because children did not have the legal status of a person. By 1881, the British Society of Animal Welfare had extended its call for the protection of children, resulting in the founding of the National Society for the Prevention of Cruelty to Children in 1889. (Lachica, 2010, p. 55)

The reformers' movement, which caused the first rupture concerning children's policies, began with the birth of the first juvenile court in Illinois, in 1899, which proposed the consecration of a social/penal control model for minors different from that of the adult world. The living conditions in prisons where young offenders lived

S. Salum (✉)
Observatorio Desigualdades y Políticas Públicas Escuela de Trabajo Social, Universidad de Valparíso, Valparaíso, Región de Valparaíso, Chile
e-mail: sara.salum@uv.cl

E. Salum
Observatorio Desigualdades y Políticas Públicas Escuela de Trabajo Social, Universidad de Valparíso, Valparaíso, Región de Valparaíso, Chile
e-mail: elena.salum@uv.cl

with adults and the lack of specific regulations were causes of struggle for the reformers. This movement sought to differentiate the legal treatment of children from that of adults and sought specific places of internment for children (Acosta, 2016). With this movement arose the doctrine of irregular minority, characterized by

> the creation of a legal framework that legitimizes discretionary state intervention on this sort of residual product of the category of childhood, constituted by the world of minors. The indistinction between abandoned children and delinquents is the cornerstone of this legal magma. As a result, the extent to which the doctrine of irregular situation extends is inversely proportional to the extent and quality of basic social policies. (García Méndez, 1994, p. 79)

The doctrine of irregular minority posed a "residual" notion of the category of childhood; i.e., it differentiates children from minors, which is the basis for creating a legal framework that legitimizes state intervention on the basis of the institutional control of minors. This doctrine permeated the interventions of the state and propitiated the emergence of a scientific view of children in an irregular situation, of a justice system conducive to its intervention, and of judicial operators specialized in these matters, where social and sociolegal work arose thanks to judicial social visitors in the early twentieth century in a context of using crisis as a tool for state intervention on children, leaving behind charity as social action.

2.2 State Intervention: Sociolegal Social Work

The diversity of social problems that affected a large part of the population in Chile during the first two decades of the twentieth century demanded actions that would go beyond charity, and the state had to assume an active and decisive role in the face of the social demands that arose: This led the state to move from palliative-assistance responses in the beginning to technical responses based on a scientific investigation into the origins of social problems. In this way, several laws were enacted to establish the role of the state in these matters, which led to the emergence of sociolegal social work.

In 1911, Decree N° 2,140 was issued, which established the prison regulations for penitentiary facilities, Article 1 of which classified penitentiary establishments into penitentiaries, prisons, houses of correction for women, and correctional schools for minors, all of which were institutions for serving criminal sentences and in which adults and children were held without distinguishing on the basis of age.

In 1912, the first legal norm for the protection of children under the concept of underprivileged minorities was enacted, Law N° 2,675. It did not provide broad protection to all children, because its emphasis was on the role and obligations of their parents; it also focused on abandoned children, who were seen as dangers to society under the hygienist view of the time and its expression in irregular minorities. In this context, and in the absence of an institutional framework to take in unprotected children, women's correctional institutions and correctional schools

became the recipients of children in situations of their being abandoned, committing crimes, failing to comply with parental authority, or begging.

The dire social situation caused by misery and poverty, the severe conditions of the correctional institutions, and the rapid increase in the population of incarcerated children required science-based solutions, which led to the creation of the figure of social visitors. Social visitors exercised a social-control role over families and evaluated families' poverty situations and children's conditions in the most deprived classes. Their origins date back to the trip made by the physician Alejandro del Río to Europe, who contacted various schools of social service at the time and saw these professionals as efficient collaborators in the field of health under the auspices of the National Welfare Board, which later became known as the Chilean National Health Service (Quiroz, 1998).

Dr. Del Río thus founded the first School of Social Service in Chile. In addition to establishing the professionalization of social services, this marked an important milestone in Chile and Latin America, as it led to the development of social work in several countries on the continent (Quiroz, 1998). State intervention in family–child relationships was the beginning of sociolegal social work.

According to Susan Turner (2002), the intervention of the state in the field of childhood can be classified into three chronological stages. The first stage was marked by the application of civil and penal codes (1857 and 1875, respectively) to underprivileged children from the mid-nineteenth century to the first two decades of the twentieth century for irregular minorities. The second stage started with Law N° 4447 of 1928, where the state created the juvenile justice system, giving rise to the judicial social *visitors*. Finally, the third stage started in 1967, with Law N° 16,618, which established the systems of care for children under the state and the emergence of judicial social *workers*.

In addition to the three stages defined by Turner (2002), this study identifies a fourth stage that arose with the creation of the family courts in 2005 with Law N° 19.968, which eliminated the figure of the judicial social worker and established the presence of a collegiate body called the technical council and the counselor technician, the latter replacing the historical figure of the judicial social worker.

2.3 First Stage State Intervention: Emergence of the Category of Irregular Minorities and the Shift from Charity to Welfare in State Intervention

By the end of the nineteenth century and the beginning of the twentieth century, the Chilean state's recent and progressive interest in childhood protection began to enter into force, adopting the doctrine of the irregular minority. At the same time, healthcare in the country needed a social component that would materialize into a new profession and that, for the public health system, could contribute to improving the quality of life of people suffering from specific health problems, which had

marginality, poverty, severe hygienic problems, and high illiteracy rates as a backdrop (Aylwin et al., 2004; Quiroz, 1998; Reyes, 2019; Salum & Salum, 2018). Thus,

> assistance and its female intermediation were developed in the early twentieth century following the charitable-liberal paradigm, mainly by civil institutions, which reached their best physiognomy in *the Patronato Nacional de la Infancia*, and its *Gotas de Leche*, scattered throughout the working-class neighborhoods. This new model of linkage between people and state through assistance and feminine mediation arises, thus, from an experience of power and civil government previously evaluated and that will penetrate inside and surround outside the new National Welfare State. (Illanes, 2008, p. 19)

Against this background, social workers' actions would be guided by the vision of hygiene, the doctrine of the irregular minor, and the search for socioenvironmental solutions without a methodological or disciplinary horizon and oriented by assistance, at least in the early development of the discipline in the first decades of the twentieth century. Thus, the practice of social visitors was developed mainly in welfare, hospital, asylum, and dispensary establishments—exercising functions aimed at solving socioeconomic problems, unhealthy housing, and family disintegration, due to abandonment, illegality, or parental incompetence and aimed at protecting vulnerable children (Reyes, 2019). At this point, the doctrine of irregular minority, which came from the United States and the United Kingdom, was installed.

2.4 Second Stage: Juvenile Guardianship System. From the Social Visitors to the Social Judicial Assistants and the Modernization of the Intervention of the State

In 1928, Law N° 4,447, on the protection of minors, established for the first time a model for the guardianship of minors, which was conceived as a social reaction to a complex set of diverse social situations that required the protection of underprivileged or abandoned children under the doctrine of irregular minors.

In this tutelary model, two opposing purposes are confronted. On the one hand, the objective was to protect these underprivileged children from the situations of moral and material danger in which they found themselves, and on the other hand, the objectives was to achieve greater social control, taking these children off the streets and placing them in juvenile centers to protect society in general from the growing number of delinquent children and youngsters. Both objectives and the measures adopted for them ended up violating the rights of these children (Fuenzalida, 2014).

Law N° 4,447 in Article 1 stated that the function of attending to the personal care and the moral, intellectual, and professional education of minors, which, in the cases contemplated by this law, falls to the state, will be exercised through the General Directorate for the Protection of Minors. Article 2 establishes that in all educational institutions, whether public or private, fundamental subjects such as morality and hygiene must be taught.

Decree N° 2,531 of 1928 created the Regulations of the Law for the Protection of Minors. Article 1 of the Regulations confers on the general management for the protection of minors an obligation to deal with the personal care and the moral, intellectual, and professional education of abandoned minors, delinquents, or those in moral or material danger. Article 11 establishes that the juvenile homes receive the minors who must appear before the juvenile and family judge, and Article 13 states that they must remain there for observation and until the resolution of the case. Article 14 established the first reference to the presence of the social report issued by the social visitors as part of the individual observation of the minor. In addition to other reports from doctors and teachers, this observation was monitored by the juvenile court. The technical view of the court social visitors arose, and they, through their social report, gave legal life to everyday social situations. Article 19 established the number of four social visitors per juvenile home and the collaboration of ad honorem social visitors. Article 24 of the law stated that the judge should consider the social report together with other reports in their decisions, establishing that the report of the social worker contain information on the living, financial, hygienic, and social conditions of the parents or guardians and on the personal background of the minor and their family, whether pathological or delinquent. Article 45 established the obligation of social visitors to immediately inform the juvenile judge of any unfavorable circumstance for the juvenile so that the judge may adopt a resolution.

With the entry into force of Law N° 4,447 of 1928, the doctrine of the "irregular situation" of minors was introduced—applicable in preference to the Civil Code of 1857—for minors in irregular situations—in other words, juveniles facing material or moral risk. This law does not apply to all children for whom family guardianship is still in force but rather applies only to those who find themselves in an exceptional situation lacking protection. Indeed, it is precisely this unprotected situation that makes state intervention through the civil courts possible. Consequently, at this stage, the national guardianship system approached a system of authority in which state intervention was justified. It emphasized the protection of society against these "problem minors" over children's rights. This view of childhood would last for decades (Turner, 2002).

In the 1940s, the Social Service Schools of the state of Chile began their activities because the profession had proven to be helpful in different fields of social reality, integrating men into the training in this profession. In 1948, these schools were annexed to the University of Chile and depended on the Faculty of Juridical and Social Sciences, approving the university degree on December 5, 1950, by the University Council (Quiroz, 1998). As a result, two significant changes in the profession were made possible: the title social visitor was changed to social worker, which implied a new professional identity, and the years of study were increased, incorporating social science subjects and methodologies specific to social work, such as casework and group work (Reyes, 2019).

Complex cases related to legal problems and rights violations involving direct intervention in social work with families were attended by a social worker from the National Health Service, appointed by the respective court. This situation lasted

until 1961, when the juvenile courts linked to family issues were created (Reyes, 2019).

The lack of primary source studies prevented the further development of the performance of social workers before the creation of juvenile courts. Until then, the intervention form was always subordinate to the judge, and from that perspective, social reports, social diagnoses, and specialized reports were developed, all of which had a significant weight in the family judge's sentence, even though they were still in the process of being professionalized.

Article 14 of Law N°14,550 of 1961 on juvenile courts established that the hiring of social assistants for these courts should be provided by the judge of a juvenile court after a competitive examination. Likewise, Article 17 of this law established that any information provided by the social workers to the court would have background information that the judge should evaluate according to the general rules of the law.

According to the legal culture imposed in these courts, the interview with the social worker, the home visit conducted by them, and the professional opinion they issued had preponderant weight in the sentence issued by the juvenile judge—so much so that they were feared because of the power they came to have. Thus, with time, the hegemonic power of the social workers in the juvenile courts was consolidated, establishing a tension between reality and social changes on one hand and on the other judicial decisions, most of which were based on the social worker's opinion.

During this period, social work progressed from the mere assistance that characterized it in the previous period to a period of professionalization. It coincided with social service as the state's response to child intervention in Chile. The transition from the former social visitors to modern social workers took place, which allowed the accumulation of expertise on social, family, economic, housing, and dangerous issues, establishing a privileged professional scenario with clearly established limits to other professions that tried to compete for the social sphere and expertise in the judicial system.

2.5 Third Stage: Professionalization of Justice System Social Workers and the Internment of Minors as State Intervention

In March 1967, Law No°16,618 was passed, which established a definitive text of the law for juveniles, but the tutelary model continued to prevail without alterations, giving power to the figure of the juvenile tutelary judge, who had a protective and educational role, differentiating it from the repressive function of the penal system for adults.

During this period, the guardianship system structured a single institutional framework to provide a social response to two diverse and not necessarily

interconnected problems: children and adolescents in violation of the law and those in need of protection and/or rehabilitation. "This social response assumes internment as an effective and efficient instrument to protect minors in an irregular situation, replacing in practice, in cases of "irregularity," the primary role that the family should play in the upbringing of children and adolescents" (Tello, 2004). At the same time, a significant role was given to social work—with a strong female presence—since the decision of the juvenile and family judge had to depend on the information in the reports issued by these professionals (Salum & Salum, 2018).

During this time, social work emerged as a mechanism of social control given that social work was linked to the social controls of poor and marginalized families, establishing a model to follow centered on strongly rooted the social norms and patriarchal family models of the time (Salum & Salum, 2018). In the 1970s, there was a trend in the profession toward paternalistic intervention that emphasized the social pathology associated with poverty and marginality, giving way to the institutionalization of juveniles in an irregular situation.

As a result, juvenile internment measures in state protection institutions were often applied by the juvenile judge, supported by reports and social diagnoses prepared by justice system social workers. Many of these measures involved the uprooting of families and the institutionalization of children in the system because of structural situations such as poverty rather than because of rights violations, which translates into a double violation of rights. In this way, justice system social workers were effective instruments of applying the tutelary model of juvenile justice, neither stressing the system nor seeking explanations for social problems that went beyond the linear causality of the issues.

These factors combined with the existence of a markedly traditional and patriarchal view of the concept of family, which was reinforced by the predominance of women who held the position of juvenile judge and the predominance of women who occupied positions as social workers, thus creating a female hegemony in this judicial system, with a marked emphasis on the "traditional family." Thus, the figure of the family judge and the social worker appeared as subordinate and complimentary figures who functioned as social-control devices in matters of childhood and family.

From 1973, at the beginning of the military dictatorship, until the beginning of the year 2000, there was a radical change in public social policy, promoting a subsidiary role for the state and privileging the market as the primary decision-making body for the allocation of resources and provision of services. The main characteristics of this change were as follows: the subordination of social policy objectives to the requirements of economic policy; the drastic reduction of public social spending in the areas of housing, health, and education; the transfer of functions and responsibilities to the municipalities and the private sector; and the introduction of demand-side subsidies. In childhood, this change implied a system of subsidies administered by the Servicio Nacional de Menores (SENAME), the privatization of SENAME centers to private institutions (reducing their functions), and a focusing of resources on juveniles who were indeed in irregular situations (Tello, 2004).

Thus, during this period in sociolegal social work, there was no appropriation of methodologies that influenced the development of their methodologies and intervention instruments beyond the judicial social report, home visits, and technical reports were elaborated, which played significant roles in judge's' decisions.

Even though in juvenile courts, there was predominantly casuistic professional attention, case and family attention and group and community attention were almost nonexistent. In the casework of sociolegal social workers, one of the main methods of practice was subordinated to the function of the judiciary, in which the social worker became an auxiliary of justice and a disciplinary device of social control, fulfilling within their practice a role of inspection, surveillance, and police investigator—translated into the phrase the "eyes and ears of the judge" (Salum & Salum, 2018).

During this time, justice system social workers did not adopt the Anglo-Saxon trend of applying casework associated with systemic theories, instead moving away from the therapeutic conception of family problems. Thus, the methodological option adopted developed social diagnoses that were based on linear causal relationships, discarding the systemic view of explaining social and family phenomena. For decades, one of the main functions of justice system social workers was to conduct social diagnoses, instruments with which they explained to the judge the social situations of the individuals to whom the law was to be applied. This extensive experience was not catalyzed by the construction of specialized judicial diagnostic instruments, justice system social evaluation scales, or a scientific body of knowledge that would systematize the expertise and position it as an essential element in the development of the function of the juvenile justice system.

As a result, the extensive knowledge, experience, and expertise that accumulated over decades did not translate into new scientific knowledge or into demonstrable or refutable scientific evidence, and they were not passed on to new generations of social workers, so these social workers were relegated to one small area of the justice system.

At this stage, there was no place for judicial social workers in the new system of family and juvenile courts established in 2004 with Law N° 19,968 on family and juvenile courts, which did away with judicial social workers and replaced them with a collegiate body called a technical council. According to its functions and nature, this council allowed the family judge to take a holistic approach to the problems to be solved.

2.6 Fourth Stage: Integral Protection Doctrine and the Elimination of Justice System Social Workers in the Family Courts

In 1990, Chile ratified the Convention of the Rights of the Child, which led to a change in the role of the state regarding children and adolescents, transforming it from a tutelary state into a state that guarantees rights, requiring that domestic

legislation be based on the principles and rights of this convention. As a result, a new conception of childhood and children as subjects of rights, known as the Doctrine of the Integral Protection of Minors (Beloff, 2009; Turner, 2002), established the concept of vulnerability and created a new institutional framework, generating changes in public policy.

In 2004, Chile reformed the juvenile and family judicial system in force in 1928 in response to the need to establish new judicial processes that were based on oral proceedings, which led to the creation of the current family courts, with the enactment of Law N° 19,968.

Therefore, there was a drastic change in the family procedure, moving from a rigid system to a modern oral procedural system, with the influence of technology and involving the presence of new judicial operators. Under this law, the justice system social workers of the old system were replaced by a new figure: the technical council. Its introduction was based on the need for the judge to be advised from an interdisciplinary point of view, overcoming the linear perspective of the former professional social worker. In this way, the arguments for this elimination struck an irreparable blow to Chilean sociolegal social work and were reflected in the discussion of its draft law.

2.7 The Emergence of the Technical Council and Its Rationale in the Discussion of the Family Courts Law Project

The Family Commission of the Chamber of Deputies in 1999 invited various people to present their points of view and observations on the initiative in the context of the reform of the family procedural system when the bill on the civil procedure on children and families was being discussed. In the debate, which gave rise to this new law, on the need for a specialized professional to accompany the judge in understanding social and family situations, judicial social workers did not appear as transcendental figures who should have had places in their own right in the new system, even though they were in the system for longer than seven decades. On the contrary, the argumentation was trivial, revolving around the number of positions and the functions to be performed, taking for granted their transfer into the new system. However, this never happened. Lawmakers didn't realize that the new psychosocial doctrine questioned the position of judicial social workers and devalued their contribution to the development of the judicial function in family courts. Finally, this led the law to create a new figure that would guarantee an interdisciplinary perspective to provide better advice to the new family judges.

In this debate, the participation of academia—which defended the role of the discipline—was minimal, with representatives of two private universities attending. The contribution of the state universities that had trained the justice system social workers for decades was not reflected. In terms of trade unions, only the

participation of representatives of the National Association of Social Workers of the Judiciary was noted, thanks to the participation of representatives from the National Association of Social Workers of Judicial Administration (*Cámara de Diputados, Boletín Número* 2118-18, 1999).

We should highlight how, in the discussion of legislation of such importance to the field of childhood, there was a notable absence of social work school representatives from state universities, social worker association representatives, and social worker experts in the field of childhood who could have made exhaustive reflections and disciplinary contributions that would have supported the role that the justice system social worker played for decades.

The contributions of the representatives of the Association of Social Workers of Judicial Administration focused on (a) the number of social workers that would integrate into the technical councils; (b) the criteria to establish the number of social workers because at that time, there were between three and five professionals in each juvenile court; and (c) the role of the social workers in this new system (*Cámara de Diputados, Boletín Número* 2118-18, 1999, pp. 86–87).

In this logic, the concern of the social workers of the Judicial Administration took for granted the continuity of social work in the new family courts, without making a disciplinary argument as to the need for these figures to remain. Their interest focused on the staffing of the new judiciary, which was a secondary design element in a project of the magnitude of a new family judiciary.

Regarding the role of social workers, they pointed out the following:

> Many of the functions they perform today are not recognized in the law since Article 457 of the Organic Code of Courts limits their work to inform the courts about the social, economic, and environmental aspects required of them concerning the parties in litigation. Despite this, they perform functions of reception (general information), diagnosis; coordination with institutions and support networks outside the courts, orientation, support, control, and follow-up of cases, all of which should be included in the project, which also extends this work to advising the family judge in understanding the facts and situations that have caused the conflict or the irregular conduct of the individual. (*Cámara de Diputados, Boletín Número* 2118-18, 1999, p. 87)

In the second constitutional procedure of the bill in the Senate of the republic, the Constitution Commission Report of June 9, 2003, states that the Chilean Association of Social Assistants expressed its opinion, valuing the creation of the new courts and recognizing the contribution of mediation as a procedure for the extrajudicial resolution of conflicts. The contribution to the law project was based on the following factors:

1. The need to define the functions of the social workers who would integrate into the technical council and a resolution of the binding nature of the opinions of these professionals in the resolution of cases, because in Chile, 268 social workers were working in the juvenile, civil and civil courts or were attached to the courts, and in addition to their professional work, they were recognized as judicial experts and ministers of faith.

2. The number of assistants, which in the project was not proportionally related to the increase in the number of judges, which could affect the efficiency and effectiveness of the activity of the new judiciary.
3. The definition of the number of social workers that each court would require to deal with the number of families assigned to its court.
4. The placement of social workers on the professional salary scale because their level of professional responsibility should bring their salaries back to the equivalence they had with the salaries of court clerks.
5. The social intervention they perform ensuring the theoretical and practical quality of their training and ethical performance given that postgraduate training is desirable.
6. The need for social workers to have adequate knowledge of social research that would allow them to systematize and evaluate the professional action of court social workers.

However, these crucial aspects for the development of the discipline in the sociolegal field were not investigated into greater depth (*Cámara de Diputados, Boletín Número* 2118-18, 1999, pp. 823–825).

All the above show the lack of a disciplinary analysis focused on professional intervention in the sociolegal field. In addition to the lack of a disciplinary, theoretical, and methodological project that social work could have contributed to in the new law, thanks to the expertise of social workers that had been acquired over decades, social workers would now share their roles with other technical advisors: psychologists and family counselors.

2.8 The Concept of "Psychosocial"

Law N° 19,968 introduced the concept of the psychosocial to the family courts; the concept explains to the judge the problems to be solved and the characteristics of the parties and does so from an interdisciplinary and collegiate perspective, opening the judicial field to other professions, psychology among them.

With the incorporation of the psychosocial perspective in the family judiciary, "it is understood that these courts are, in particular, micro-social spaces where cases converge that must be attended and resolved under the objectives of the family jurisdiction, responding to the complexity of these problems. Accordingly, these instances are established as interdisciplinary spaces to generate a complex, multidimensional understanding, and a comprehensive resolution of the cases" (Miranda et al., 2022, p. 272). In this way, the law established that any social science professional might become a technical advisor, preferably a social worker, psychologist, or family counselor, which would impact the profession.

2.9 The Technical Council

The technical council is an auxiliary body of the administration of justice, and it is composed of a number of professionals within the requirements established by the law, where its principal function is to advise, individually or collectively, judges with competence in family matters in the analysis and better understanding of the matters submitted to their knowledge, in the field of their specialty.

Henríquez (2017) deepened this definition:

> A body, a structure composed of technical advisors, of a multidisciplinary nature, acting individually or jointly, as auxiliaries to the administration of justice, led by a coordinator, advising family judges, or managing the relationship with relevant actors of the network of intervention and psycho-socio-legal and health support in contact with the family court. (p. 135)

Article 457 of the Organic Code of Courts refers to the functions of the technical council, reiterating the tasks already established in Article 5 of Law N° 19,968, stating that "The technical councils are auxiliary bodies of the administration of justice, composed of professionals in the number and with the requirements established by law. Their function is to advise individually or collectively the judges with competence in family matters, in the analysis and better understanding of the matters submitted to their knowledge around their specialty."

By the provisions of the Organic Code of the Courts, Law N° 19,968, the judges' committee, and a work plan, this body regulates its operation and is headed by a coordinator who acts as an official liaison with the presiding judge, the court administrator, and the judges' committee. It is a space for reflection by the technical advisors when faced with complex cases or internal management problems. It is here that the collective action of the technical advisors is defined, and it consists of advising in the analysis and better understanding of the cases, based on the specialties of each of its members, acting in an multidisciplinary or interdisciplinary manner. Here, *multidisciplinary* refers to separately applying each discipline to the specific case, whereas *interdisciplinarity* refers to the joint and interrelated application of each discipline, in a complementary and harmonic manner, to the given case (Henríquez, 2017). The multidisciplinary characteristic of its composition is contained in the agreement act 93-2005, which in its third article indicates that the family courts must tend to the multidisciplinary integration of the technical councils, such that its conformation must include professionals from diverse disciplines.

The definition of the functions of the technical council, and therefore of technical advisors, has been ambiguous. For this reason, the Supreme Court of Chile has issued Agreed Orders that have been expanding these functions, such as the following:

- Agreement on the role and functions of the technical councils in the family courts, Act No. 93-2005.
- Agreement that regulates the follow-up of internment measures and visits to residential centers by the family courts in coordination with the National Service for Minors and the Ministry of Justice, Act N°37-2014.

- Agreement on the operation of the family courts, Act N°104-2005 (expands the functions of the technical councils).
- Agreement on procedures in the courts that process with electronic files, Record N°91-2007 (admission of oral claims related to domestic violence and/or protection measures).
- Agreement on management and administration in family courts, Act N° 98-2009 (an annual work plan of each court).
- Procedures for Family Courts 2006 (the systematization of best practices of the family courts).

In the new family judiciary, there is a formal definition of the technical council understood as a body; however, there is no formal definition of the technical counselor understood as a member of that body. There should be given that the two are not the same. Article 34 of Agreement 98-2009 defines it similarly to how it is defined in Article 457 of the Organic Code of the Courts.

Henríquez (2017), though, developed a conceptualization of the technical advisor position:

> an assistant to the administration of justice, a professional social worker, family counselor or psychologist with accredited postgraduate training in child, adolescent and family matters, who performs advisory work for the family judge. This person is the public official who performs the individual function of technical advice and may act in a hearing or writing, issuing a professional opinion on a given matter and case. He/she is not an expert, since he/she does not develop expertise, nor does he/she make expert reports. She/he is not a party to the case since she/he assists the judge. She/he is not a judge either, since her/his opinions are not binding for the judge in the exercise of her/his jurisdiction. She/he is not a party, is not a judge, is not an expert, but her/his opinions may be considered by the judge. (Henríquez, 2017, p. 138)

According to the judicial branch, the technical advisor must carry out 16 functions: counseling, analysis, reviewing cases, evaluation, and coordination, among others (see Article 5 of Law N° 19,.968).

Under this new scenario, the technical advisor has an advisory function for the judge, given that council members have no connection with the evidentiary activity in the process. In other words, they no longer produce reports or social diagnoses that influence the judge's decision, as in the old model, because in this new model, the judge makes their decision on the basis of rational criticism. In this new scenario, the technical advisor can give their opinion in the hearings (preparatory hearing and trial hearing), can give their opinion outside the hearings, can recommend mediation or conciliation procedures, and plays the role of the coordinator and articulator of the social network in matters that might risk violating rights in cases involving children and adolescents.

Miranda et al. (2022) pointed out that, in short, the technical advisor is a support to the judge that allows the technical advisor to organize litigation and to contribute to the assessment of evidence, but this intervening role now comes with a psychosocial orientation that diminishes the efficiency of an overdemanding system.

In 2005, the nomenclature of the profession changed: the title of social worker would be used thanks to Law N° 20,054 of September 27, 2005, which restored the

academic quality of the profession, and from this date, the universities would confer the title of social worker and the corresponding degree.

2.10 The Social Worker and Their Role as a Technical Advisor

This collegiate instance of the technical advisor established in Law N° 19,968 of 2004 required the social worker to split to fulfill the role of technical advisor and their intervention criteria. This is fundamental to understand because, in this scenario, there is no social intervention in the form of social diagnoses, evaluations, or social reports produced within the court. As a result, the social intervention has been displaced to the social network, relying on social workers, especially in the health area, to make up for the absence of this figure in the court.

In addition, the social worker as a technical advisor can request evaluations of habitual abuse and imminent risk as established in the Family Violence Law N° 20,066 and suggest precautionary measures for the protection and reparation of violated rights. In practice, new functions not described in the family courts law took over. These included obligatory visits to residential centers accompanying the family judge; interviews with the party before the hearing in search of conciliatory agreements; the registration and updating of children and adolescents' admissions to residential centers; records of visits made by the judge; the preparation of files; and counseling. Even though these functions were not clearly described in the family courts law, this fact itself caused an overload of administrative work, resulting in a deterioration in the quality of the functions of the technical advisors and social workers. We can observe this in this new family judiciary—in how the specialized work and the professional hegémony that fundamentally consisted of the elaboration of diagnoses, evaluations, and social reports began to fade away.

The new role of the social worker as technical advisor marked a significant milestone in justice system social work, as the exclusivity and hegemony that the profession held for decades was lost, and the presence of the judicial social worker as a fundamental official in this new judiciary disappeared.

Thus, in 2005, the social worker disappeared as a relevant actor in the work of the courts. The disciplinary role was externally produced through the work of the social worker in charge of social expertise. In the new family courts, social expert opinions are similar to witness testimony and may be refuted by other expert opinions requested by the opposing party.

In the preceding paragraphs, we noted that the family courts aimed at a multidisciplinary integration of the technical councils. Nicolescu (1998, p. 39) pointed out that "disciplinarity, multidisciplinary, interdisciplinary, and transdisciplinary are the four arrows of the same bow: that of knowledge." Interdisciplinarity is an essential element in current scientific development. In this regard, Pérez and Setién (2008) stated that it is not feasible to conceive of an explanation of social problems from a scientific conception without the interaction of related disciplines. In this context, the design of family courts relies on interdisciplinarity.

In this new scenario, the technical advisor social worker does exercise their professional competencies to advise the family judge, because they have not been able to develop the functions of disciplinary social work. They have not been able to delineate their path and have not designed methods or instruments for measurement and validation, and as a result, the praxis of the judicial social worker remains heterogeneous and discretionary.

Finally, the reason for this lack of development is that, once again, the norm and the model of justice impose a route to be followed by sociolegal social work in the field of the court.

2.11 Conclusions

Chilean sociolegal social work has followed an evolutionary route that goes from the beginnings of beneficence, transitions toward assistance, and finally arrives at professionalization. This evolution has been indelibly marked by the legal norm and by the models of justice. The beneficence model remained in Chile until 1911; the welfare model prevailed between 1911 and 1928; the irregular minority justice model ruled the period 1928–1990; and finally, the vulnerability model, based on the rights of the child and the "psychosocial" concept, began in 1990 and remains today.

In the old system, social workers articulated the language of two worlds: the social world and the legal world, now that this field has been hegemonized by law. In this regard,

> the socio-legal field, its professional practices, and discourses are shaped from the legal norm, that is, from the Judiciary, from the professional agents of law and legal knowledge. The professional practice of social work in this field is predominantly demarcated, in terms of problems, occupied spaces, and theoretical and factual references, by the habitus of the legal field. That defines the forms of the professional approach to those same problems by social work. (Mitjavila et al., 2008, p. 156)

Although this is the place of sociolegal social work, the professionals of the former juvenile courts fail to recognize the importance of the intervention of court work.

Thus, there is little or no systematization of these experiences of social workers in the former family courts in disciplinary studies. This resulted in a stagnation of social work as a discipline: they could not transcend or install themselves in the new procedure as essential operators, losing all influence on the judge's resolution, while other disciplines set themselves up with batteries of instruments and protocols, such as in the case of psychology, but social work did not manage to do so. With the support of the interdisciplinary team, the new paradigm sought to include new approaches to integrate nonlegal dimensions into family decisions, including guidelines on how to resolve conflicts from a systemic perspective.

The approach to vulnerability in justice served to support the modernization of management at the procedural level. However, psychosocial action did not modify the supply of justice but instead restricted it to comply with management objectives. Therefore, interdisciplinarity is considered a practical term and not an interventive basis for a new social role of justice for citizens (Miranda et al., 2022). Social workers became part of this logic as operators of justice in the judicial system's efficient service, leaving behind their role as social intervenor, which was typical of the discipline's origins. In the family courts, there are no specific positions for social workers.

The intervention of the state in the field of childhood is fundamental to understanding the development of judicial social and legal social work. Paradoxically, although Chile ratified the Convention on the Rights of the Child, it took 25 years for the state to adapt its legislation and create family courts, and the violation of children's rights continued.

This could be one of the factors that contributed to the stagnation of the disciplinary practice of social work in the sociolegal field.

At the beginning of sociolegal social work, Mary Richmond pointed out the following:

> We would probably all agree that tradition and precedent weigh down and block day-to-day actions to a greater extent in the courts than in hospitals. Both institutions, however, are under the control of long-established professions, to the extent that they are highly organized and class-conscious professions, so the social worker acting in hospitals or courts is at a slight disadvantage. It is essential, therefore, that social workers entering hospitals and courtrooms have a solid knowledge of social work principles and techniques beforehand. (Richmond (as cited in Soto, 2019))

As of 1917, Mary Richmond had already pointed out the fundamental need for social workers entering hospitals and courts to have solid prior knowledge of social work principles and techniques. In 2022, we could consider, in addition to this requirement, the fundamental need to empower ourselves in this profession, rethink our praxis, and reflect on the meaning and value of the interdisciplinary intervention that social work currently performs in the sociolegal area and in the judicial field. This is the challenge that the profession must face in the coming years.

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