

PARENTAL ALIENATION, A FORM OF PSYCHOLOGICAL VIOLENCE

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ABSTRACT: *As a result of the amendment brought by Law no. 123/2024 for the amendment and completion of Law no. 272/2004 on the protection and promotion of the rights of the child was defined the notion of parental alienation as a form of psychological violence by which one of the parents or extended or substitute family members, was defined, intentionally, pursued or assumed and appropriated, generates, accepts or uses a situation in which the child becomes reluctant or hostile, unjustified or disproportionate to any of the parents.*

The new normative act is a welcome one, aiming to combat situations of parental alienation that unfortunately affect a growing number of children.

This study aims to analyse the current legal framework of parental alienation, the sanctions applicable in case of finding such situations and the impact of regulation in practice.

KEYWORDS: *parental alienation; parents; the minor; psychological violence.*

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1. PRELIMINARY CONSIDERATIONS

Law no. 123/2024 amending and supplementing Law no. 272/2004 on the protection and promotion of the rights of the child has proposed to regulate the notion of parental alienation, the legal modalities in which such a situation can be ascertained, the effects of finding a situation of parental alienation, as well as the solutions that the court can pronounce in such situations. The normative act meets the needs of society, in the sense that in the judicial practice there is a development of the phenomenon of parental alienation for which there is no adequate regulation.

It is about:

- The proliferation of the phenomenon of parental alienation;
- Increasing the number of legal disputes between parents on how to exercise parental authority, establishing the child's home, and, determining how each of the parents will contribute to the child's growth and education expenses . The phenomenon of parental

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alienation has been recognized in national legislation by the Provision no. 2/2016 for the recognition of the phenomenon of parental alienation and the provisions of the Protocol on the recognition of parental alienation, concluded between the Institute of Judicial Psychology and the Romanian Association for Joint Custody¹.

In Article 1, paragraph 1 of this provision, parental alienation is defined as a form of severe psychological (emotional) abuse of the child, consisting of the activity of systematic denigration of one parent by the other parent with the intention of alienation (estrangement) of the child by the other parent.

Even before the phenomenon of parental alienation was regulated, it had been recognized by the courts. The ECHR also noted cases of parental alienation. There is even a famous judgment of 2006 against Romania (Lafargue Case against Romania, Application no. 37284/02), in which it was held:

From a report without a date, provided by the Government and prepared by psychologists who attended the applicant's meetings with his child, it follows that the latter manifests a certain reluctance towards his father at the beginning of the meetings but, each time, with the help of games, the relationships improved. However, the child refuses to spend a whole week with his father. From another report drawn up by the same psychologists and submitted by the applicant, it follows that the child's reluctance attitude was the result of the influence of the mother who, indirectly, had at first specified it, that he is forbidden to enjoy his father's presence.

2.DEFINITION OF THE CONCEPT OF PARENTAL ALIENATION

Parental alienation is defined in article 4, letter h of Law no. 123/2024 as a form of psychological violence whereby one of the parents or persons in the extended or substitute family (extended family comprising the relatives of the child, up to grade III inclusive, with whom the child or his family has maintained personal relationships and direct contacts as well as substitute family - persons other than those belonging to the extended family, including affines up to grade III, with whom the child or his family has maintained personal relationships and direct contacts, as well as the person, family or foster care provider who provides child care, under the law) intentionally, pursued or assumed and appropriated, generates, accepts or uses a situation in which the child comes to show restraint or hostility, unjustified or disproportionate to any of the parents.

The behaviour of the parent/responsible alienating person must be intentional.

Also, a skill specific to the intention is given to designate both the intended and generated purpose, and, that is, the situation in which the alienating parent sets from the beginning his alienation goal and implements it, as well as the assumed and appropriated purpose and then used, that is, the situation in which the alienating parent knowingly takes

¹ Published in M.Of. 144 of 12 February 2016, repealed by Provision no. 31/2021 on the repeal of the provision of the Chairman of the Steering Committee of the College of Psychologists of Romania no. 2/2016 for the recognition of the phenomenon of parental alienation/parental and the provisions of the Protocol on the recognition of parental alienation, concluded between the Institute of Judicial Psychology and the Romanian Association for Joint Custody.

advantage of a situation which he did not initially generate, but which he decides to exploit to achieve alienation.

As regards the immediate effects required to be produced, it is determined that the minor must show restraint or hostility.

Detention is the restraint of the natural feelings of affection that the child feels towards the estranged parent, as well as the restraint of his desires to spend time with him, to communicate, etc.

In the doctrine (VISU, 2022), the term parental alienation has been used as an umbrella concept to refer to the situation where parental contact difficulties are the result of alienating parent behaviors. However, proponents of this phenomenon have used it with three different meanings: a belief system that claims that the preferred parent is the cause of rejection of the other parent, avoidance or rejection in itself and alleged alienating behaviors that drive the child away from a parent. Using the same term for all three of these contexts has often been confusing.

The legal literature (MIHAILA, 2023) pointed out that not all situations of rejection of a parent after separation are parental alienation. Every situation, such as child behaviour, proximity to a parent, poorly justified arguments for refusal of contact, use of pre-determined phrases, well-founded complaints or statements of sexual abuse, it can be interpreted in different ways depending on the clinical context in which it is located. All behaviours must be contextualised, and a sound clinical experience is needed to understand and delineate these situations, the results of a study conducted in France show us:

- the criticism that the child makes to justify refusing to see a parent is changeable, sometimes too mild compared to the level of hostility of the child (the child is caught in a loyalty conflict - he may feel compelled to reject one parent to keep the love of the other; the rejected parent has a personality pathology and/or maladaptive or unsettling attitudes that the child perceives; the child may feel fear and reveal only irrelevant pieces of information - may be threatened by the rejected or abused parent; the child may project his own discomfort related to the separation of parents; the child suffers from separation anxiety);
- the child intentionally, sometimes absolutely, expresses support for a parent during a conflict (the child seeks to avoid the other parent when he is truly abusive or insufficiently available; less often, the child is under the control of the parent with whom he is allied and loses the ability to think for himself; the child is abused and threatened by a parent);
- the child uses adult-specific phrases without showing fear or sadness (the child is truly under the control of a parent whose speech is often paranoid and incoherent and the traumatized child may be in a state of posttraumatic psychological shock, which renders him unable to express any emotion; some children have high intellectual capacities, and, which allows them to speak clearly and use adult words; some children have had to repeat the story of their traumas several times, hence the devitalized and mechanical aspect of their discourse);
- the child denigrates not only the intended parent, but also the entire branch of the family;
- the child constantly complains about the failures or shortcomings of a parent (it is essential to consider in detail what personal reasons, unrelated to the possible influence of the other parent are, they may have a child or young person to refuse to go to a parent);

- the child or adolescent complains of serious physical or sexual abuse from a parent (the child is abused, the child makes false accusations against a parent).

The judicial practice² noted that parental alienation syndrome is the action of a parent on the child, which is emotionally abused through verbal or non-verbal thoughts, actions and manners, in order to induce him to believe that the other parent is an enemy or to suggest his hostility or inferiority. The other parent is being spoken of badly in front of the child by the alienator, child visits to the alienated parent are restricted or the alienator tries to control the activities that the child will do when he is with the other parent.

3. THE WAY OF ASCERTAINING THE EXISTENCE OF CASES OF PARENTAL ALIENATION

Any natural or legal person, as well as the child, can refer to the general direction of social assistance and child protection to take appropriate measures to protect it against any form of parental alienation. (art 89, paragraph 2 and 3 of Law no. 272/2004)

Employees of public or private institutions which, by the nature of the profession, contact the child and have suspicions about a possible case of parental alienation have the obligation to urgently notify the general direction of social assistance and child protection.

As regards the request addressed to the court for the finding of the existence of a situation of parental alienation, it can be promoted by one of the parents, by the prosecutor or by the general direction of social assistance and child protection.

The application may be made by main request or in any pending dispute, where measures are to be ordered in respect of the minor child other than cases concerning the establishment of special protection measures. Parental alienation can be ordered only by the court, according to article 43 of the Law no. 272/2004.

During the trial, the written declaration of the child relating to abuse, neglect, parental alienation, exploitation and any form of violence to which he has been subjected may be administered ex officio. The declaration of the child may be recorded, according to the law, by audio-video technical means. Records are mandatory with the assistance of a psychologist. The consent of the child is mandatory for the registration of his statement.

If the court deems it necessary, it may call the child before it to hear it. The hearing takes place only in the boardroom, in the presence of a psychologist and only after a prior preparation of the child in this regard. When there is suspicion of parental alienation or any other form of violence against the child and the court has been seised, the general directorates of social assistance and child protection are obliged to require it to carry out an expertise.

² Bucharest Court of Appeal, Third Section civil and for cases with minors and family, civil decision no. 595 of 12 July 2019, cited by (DRAGHICI, 2020).

4.THE LEGAL EFFECTS OF FINDING A SITUATION OF PARENTAL ALIENATION

Finding a situation of parental alienation is a criterion to consider: in the general analysis of the best interests of the child; in the exclusive exercise of parental authority; in the context of establishing the child's home at one of his parents; in the context of the way of establishing the child's personal relations with the parent to whom he does not live³.

Parental alienation creates the relative presumption that the exercise of parental authority by the alienating parent, as well as the establishment of the child's home at the home of that parent, is not in the best interests of the child.

If the child's home is established at the home of the alienating parent, the court will order:

- *preferential measures*

a) establishing in favour of the alienated parent a personal relations program with the child, which will necessarily include the modalities provided for in article 18 (1) letter c) and g), respectively the hosting of the child, for a fixed period, by the parent or by another person to whom the child does not normally live, with or without supervision of how personal relationships are maintained, depending on the best interests of the child; meetings of the child with the parent or with another person to whom the child has developed attachments in a neutral place in relation to the child or, with or without supervision of how personal relationships are maintained, depending on the best interests of the child.

b) the psychological counseling of the child and both parents by the general direction of social assistance and child protection. (art. 1401, paragraph 3 of Law no. 272/2004). Thus, it can be found that the role of psychologists in cases of parental alienation is moved from the stage of judicial research to the area of remediation of the consequences of these situations.

- *establishing severe financial penalties, related to the monthly net income of the person obliged to pay it.* Thus, a person who refuses to implement or comply with the provisions relating to the establishment of a child's home or the maintenance programme of a child's personal relationship may be penalised with a penalty per day of delay which it can be established between 10% and 15% of the net monthly income of the person obliged to pay it, but not less than 300 lei. If the court finds the existence of a situation of parental alienation, the establishment of the penalty is mandatory and the minimum and maximum limits of the penalty are doubled;

We point out that when the court is sworn in with a request for a presidential ordinance in which measures are to be ordered regarding the child, other than those provided in art. 133 of Law no. 272/2004, the maximum term of settlement is 30 days from the date of the filing of the summons application.

As to the causes which lead the alienator to act in such a manner in doctrine (BARBUR, 2016) it has been pointed out that most of the time the parent wants to take revenge on his former life partner, "to make him suffer as he suffered". Unresolved conflicts, according to the alienating parent, come to occupy an essential place, and the

³ See (Blaj, 2022).

child's relationship with the other parent, the need for closeness between the two, passes in the background or even disappears.

5. PARENTAL ALIENATION IN NATIONAL JURISPRUDENCE

In a case decision outlined in the doctrine⁴, for the purposes of the judges, the phenomenon of parental alienation represents a "negative interference in the development of specific parent-child relationships, caused by that parent to whom the child actually lives, according to the statement, for the purpose of alienating the child by his or her parent, in order to prevent the construction and maintenance of "normal relationships".

In another decision, by presidential order, the court⁵, although he found from the evidence administered that there was a conflicting relationship between the applicant and his son, he nevertheless held that "the safeguarding of the relationship between the two requires the establishment of a visiting programme in favour of the applicant, which is, but only in the presence of the defendant, because the minor must not be subjected to additional pressure, caused by the state of uncertainty and open conflicts between the parents. Thus, in order to avoid the risk of a possible traumatization of the child, but also of an alienation from his father, the court considered that, until the settlement of the dispute between the parties according to the common law procedure, the court it is necessary to establish regular visits in favour of the applicant, but for limited periods of time and only in the presence of the defendant, with whom the minor is obviously more comfortable".

The judicial practice⁶ it also made the difference between the notion of induced and natural parental alienation. Thus, it was emphasized that natural parental alienation occurs naturally, through the simple process of conflicting separation of parents, children remain with a parent and borrow from his feelings, regardless of the conduct of the parent, being a natural consequence of the fact that minors remain with this parent.

6. PARENTAL ALIENATION IN COMPARATIVE LAW

By regulating the phenomenon of parental alienation, Romania becomes one of the few states in the world that regulate this phenomenon. Thus, parental alienation is regulated only in Brazil, as well as in certain areas of Mexico and is unregulated but often used in case law in the Nordic countries, England, Germany, New Zealand, etc, Australia and the USA (in particular New York and California).

Thus, Brazil regulates parental alienation as follows (MIHAILA , 2023): " It is considered the act of parental alienation the intervention in the psychological training of the child or adolescent promoted or induced by one of the parents, is considered, by grandparents or by those who have the child or adolescent under the authority of their guardianship or supervision to induce the child or adolescent to reject the parent or to prejudice the establishment or maintenance of ties with the parent "art 2 of Law no. 12.318/2010b.

⁴ Hunedoara Court, civil section I, decision no. 125/A of 4 February 2016 cited by (NICOLAE, 2016).

⁵ Medias Court, civil sentence no. 334 of 29 February 2016 cited by (NICOLAE, 2016).

⁶ The decision of the Buzau Court no. 935/2017.

There are no federal or provincial laws in Canada that regulate parental alienation, but some courts recognize parental alienation as a serious problem, with potential long-term effects and serious harm to the child. In March 2021, the C-78 bill introduced the first significant changes to the child-rearing provisions of the Canadian divorce law, with reference to shared parenting. Article 16 of the Canadian law on divorce provides that: in order to determine the best interests of the child, the court takes into account all factors related to the circumstances of the child, including: "[...] (c) the willingness of each spouse to support the development and maintenance of the child's relationship with the other spouse; [...] (i) the capacity and desire of each person in respect of which the order to communicate and cooperate, in particular with each other, with regard to matters concerning the child" would apply" (MIHAILA , 2023).

7.CONCLUSIONS

We appreciate that the regulation of parental alienation is a welcome one and will hopefully lead to a reduction in cases of parental alienation from practice. Thus, parental alienation can have serious consequences for children in the sense of causing severe trauma, with the consequence of the impossibility of normal development in adulthood.

The effects of a situation of parental alienation on adults who in childhood were subjected to a process of parental alienation are considered to be lack of confidence, low self-esteem, and, high chances of depression, alcohol abuse, high divorce rate, absence from the process of raising their own children.

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