

PARENTAL ALIENATION (~ESTRANGEMENT) BETWEEN SCYLLA AND CHARYBDIS OR HOW MY CHILD IS TAUGHT TO HATE ME

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Abstract

There are many custody (exercise of parental authority) contexts in which alienation issues arise and need to be investigated and properly understood in order to propose some appropriate legal and psychological remedies for the whole family. What is and what is not parental alienation/~estrangement? In fact, what did the Romanian legislator want to protect – or to punish maybe? – by adopting the Law no. 123/2024? The present study aims to indicate some issues regarding: descriptors; effects; emotional child abuse; civil, criminal, custody/parental authority and therapeutic/emotional responses to parental estrangement, in order to delimit her from parental alienation also. Between myth and reality, between a kind of Scylla and another kind of Charybdis, the child is often faced with a difficult choice: mother or father. The emotional pressure to which he is subjected, sometimes accompanied by violence (verbal or physical), is used as a shield; a defence of the rights that some believe they have, regardless of whether, to obtain them, they are willing (and do so!) to step over everything[...] over the souls and the bodies of their own children. So, are we face to face with some myths or fears related to parental alienation/~estrangement? If that is so, in order to understand them, can we confirm or dispel them?

Keywords: *parental estrangement (PE), parental alienation (PA), parental alienation syndrome (PAS), best interest of the child, alienated child, naïve alienation, active alienation, alienating/abusive parent (AP), victim/abused parent (VP), emotional child abuse, Law no. 272/2004 on the protection and promotion of the rights of the child (LPC).*

„Mother is the child's heaven [...]. Dad is his earthly God [...].”¹

1. Introduction

No one is allowed nor comfortable living and settling in a despotic state (and equally in any hostile space, wherever it may be). The intrinsic nature of the republic requires that those who „share justice” do so by keeping it close to the letter of the law² (that there is no law for one, and another law for the other) and that both, judges, and the legislator, are obliged to honor „the social” contract and „the spirit of the laws” (those concepts spoken of and believed by the leading representatives of the Enlightenment period – Jean-Jacques Rousseau and Charles-Louis de Secondat, Baron de Montesquieu), remaining separate powers but worthy of marking society as a whole³. The obviously sensitive area of family relations and relations between parents and children is also part of what needs to be protected or defended, especially if we take a look at the alarmingly large, growing casuistry in which parents, obviously, to the detriment of the interests/interest of children: either dispute the exercise of parental authority; or either establish at will the way to preserve the personal relations between the child and the parent to whom he does not live constantly; or even fail to bring to a common denominator the contribution of each to the expenses of raising and educating the child. A „mathematics” that

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¹ S. Baștovoi, *Antiparenting. Sensul pierdut al paternității*, Cathisma Publishing House, Bucharest, 2017, p. 120, 128.

² Let us not forget, for example, Paul Johann Anselm Feuerbach, a German criminal specialist (1775-1833), who basically laid this principle at the basis of both legislative and jurisdictional activity. Let us also remember that the principle of the legality of incrimination was enshrined at international and European level in art. 11 para. (2) of the Universal Declaration of Human Rights (1948), as well as in art. 7 ECHR (1950) and, at national level, was included in explicit provisions in the fundamental laws of 1866, 1923, 1938, 1991 and the revised Constitution of 2003, but also in the Criminal Codes of 1865, 1936 and 1969.

³ See C. Beccaria, *Despre infracțiuni și pedepse*, Științifică Publishing House, Bucharest, 1965, p. 13, apud C-tin Sima, *Principiul legalității – fundamentul dreptului penal modern*, in Pro Lege no. 1/2016, p. 14 et seq.

is still owed to rise from minus somewhere, without answers, as an equation with several unknowns, mainly due to a legislative vacuum, but also, in the secondary, to a social, economic imbalance and, why not, a weak investment, personally or at macro level, in the education of couples (from marriage or from outside marriage) who have children. These milestones have consistently weakened, on the one hand, the legal and social significance of marriage, perceived today as an increasingly thin, more dilute, more groundless construction, and, on the other hand, the role that parents have in the process of raising the child. Perhaps we should remember that we owe it to constantly and honestly, without detours, to the following: *What does our child want, not what we, the parents, want or what is more at hand to us? What would be more helpful to our child? What is the best interest of the child? How do we apply that principle and how do we protect our child? How do we keep our child safe from abuse, neglect, violence and we truly let his voice be heard? How far do we go with what we want?*

The legal void we mentioned above refers to the phenomenon of parental estrangement (PE) – confused in the psychological name of parental alienation (PA) – a possible, veritable „double-edged weapon” for the child-parent/s relationship, child who can be easily „thrown” into a false smiling tandem with the face of mother and father, between two dangers, Scylla and Charybdis, both harmful, as seen in the following. It seems that this loophole of Romanian legislation was filled by the recent amendments brought to the Law no. 272/2004⁴ (*hereinafter, LPC*) by Law no. 123/2024⁵, inadmissible late, after 20 years. In this study we aim to highlight some aspects, mainly related to: • *PA or child between Scylla and Charybdis – concept or syndrome?* • *Legislative and jurisprudential guidelines prior to the adoption of Law no. 123/2024 – anticipation of the need for regulation, intuition or legal common sense?* • *PROs and CONs about PE. Law no. 123/2024 – evolution or regress?* • *PE/PA and emotional/psychological implications – teaching our child how to hate the other parent (or both!) and treat him, according to our will, as we once did with Jesus, by sending him from Annas to Caiaphas?*

2. PA or child between Scylla and Charybdis⁶ – concept or syndrome?

The PA phenomenon, which falls exclusively within the psychology’s domain of interest, is not a new one; specialized literature recorded it in 1985⁷ under the form of Parental Alienation Syndrome (PAS), from which later formulations such as pathological alienation⁸, parental alienation⁹, unjustified rejection¹⁰, or parental denigration¹¹ emerged.

⁴ Law on the protection and promotion of the rights of the child, republished in the Official Gazette of Romania no. 159/05.03.2014, with subsequent amendments and completions.

⁵ Published in the Official Gazette of Romania no. 414/07.05.2024.

⁶ Mentioned by Homer in the Odyssey, Scylla and Charybdis were, according to Greek mythology, sea monsters located on opposite sides of the Strait of Messina, between Sicily and the Italian mainland, so close to each other that no ship could avoid passing by one without encountering the other and thus being destroyed. As a result, these two monsters represented an inevitable threat for sailors trying to pass through (Homer says in the Odyssey, Book XII, that Ulysses would have confronted them as well). This is how these stories gave navigating between two dangers a proverbial sense, an expression that means „to be in a predicament, in a danger from which there is no way out” or „to choose between two evils” or, why not, the equivalent of the proverb „to jump from the frying pan into the fire”. Even Victor Hugo used the equivalent French expression („tomber de Charybde en Scylla”) in 1862, this time in a political context, as a metaphor for the organization of two rebel barricades during the peak of the Paris uprising, around which the final events of the novel „Les Misérables” culminate. No further than 1983, however, the expression is used again, but in the musical domain, in the lyrics of the song (single) by The Police, „Wrapped Around Your Finger”, the second verse using it as a metaphor for entering a dangerous relationship („caught between the Scylla and Charybdis” – which would not be far from the meaning of the child’s „entrapment” in a dangerous relationship with the alienating parent - AP), reinforced by a later mention of the similar expression „the devil and the deep blue sea”.

⁷ Apparently, PA was first described in 1976 as a „pathological alignment”. See J.N. Bow, J.W. Gould, J.R. Flens, *Examining Parental Alienation in Child Custody Cases: A Survey of Mental Health and Legal Professionals*, in American Journal of Family Therapy, 37(2), 2009, p. 127-145, at http://www.drjamesrflens.com/_Bow_et_al._2009__Examining_parental_alienation_in_child_custody_case.pdf, last consulted on 27.11.2024. See, also, R.A. Gardner, Recent trends in divorce and custody litigation, in Academy Forum no. 2/1985, vol. 29, p.3-7, apud A.I. Mocanu, *Duo conjugal versus duo parental*, in the volume coordinated by M. Avram, *Autoritatea părintească. Între măreție și decădere*, Solomon Publishing House, 2018, p. 302.

⁸ R.A. Warshak, *Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence*, in Family Law Quarterly, 37, 2003, p. 273-301, apud A.I. Mocanu, *op. cit.*, loc. cit., p. 303.

⁹ D.C. Darnall, *Beyond Divorce Casualties: Reunifying the Alienated Family*, Rowman & Littlefield Publishing Group, Lanham, Maryland, 2001, apud A.I. Mocanu, *op. cit.*, loc. cit., p. 303.

¹⁰ B.J. Fidler, N. Bala, M.A. Saini, *Children who resist post separation parental contact. A differential approach for legal and mental health professionals*, Oxford University Press, New York, 2013, apud A.I. Mocanu, *op. cit.*, loc. cit., p. 303.

¹¹ J. Rowen, R. Emery, *Examining parental denigration behaviors of co-parents as reported by young adults and their association with parent-child closeness*, in Couple and Family Psychology: Research and Practice, 3(3), 2014, p. 165-177, apud A.I. Mocanu, *op. cit.*, loc. cit., p. 303.

Who hasn't heard, at least once in their life, if not in their own life, then in that of the others (relatives, friends, or acquaintances), expressions like: „*She/he never wanted you!*”, „*I'm sure he/she will be late as usual!*”, „*I was/am your real parent!*” and so on. There are just a few examples of what an angry parent repeatedly expresses to the child and their effect is to break the child's confidence in and love for the other parent and to create an intolerable confusion and, worse, an emotional abuse of that child.

It is true that there has never been and there is no consensus on the concept of PA. The terms PA and PAS are most often used interchangeably, possibly due to the word syndrome, which leads to a set of **behaviours or beliefs attributed to the alienating/abusive parent (AP)**, such as, among others: • opposing the enforcement of court decisions regarding the establishment of visitation and the time the child spends with VP (victim/abused parent); • denigrating the VP in front of the child (reproaches, accusations – both verbal and non-verbal language – whether founded or not, which make VP a significant negative character (his personality and parenting flaws are exaggerated also in the child's presence); • the assurance (expressed unequivocally or suggested) that everything would be much better if the other parent disappeared; • his/her uncontrolled rage reflected (and) onto the child; • the scheduling of activities to be carried out together with the child, all in clear competition with those desired or even already established by the other parent; • the scheduling of a very large number of activities for the child precisely with the idea that these would interfere with the other parent's activity plan; • phone calls, messages, and/or letters often not passed on to the child; • all references to the VP are removed from the house, including pictures which might be torn apart even in front of the child) in order to exclude the VP; • keeping secrets or organizing secret meetings with the child, to the detriment of the VP; • „poisoning” the child with unfounded, unjustified reasons to fear the VP; sometimes, earlier disciplinary interactions involving angry or confrontative (but not abusive, non-violent) behaviors by the VP are repackaged and used as a weapon to confirm the VP's violence toward the child; • the refusal of access for the VP to the medical file or to the conduct of surgeries, medical tests, as well as to the school evaluations or the educational progress of the child; • the withdrawal from the circle of VP's acquaintances, cumulatively or not with the removal of any person who might have a different opinion about VP than that of AP.

The examples could go on and are practically infinite. What do all these lead to? To the emergence of the *alienated child*¹². Maybe, in other words, it is about the same phenomena that the recent doctrine stated about¹³: „Even greater attention must be given when the child comes into contact with the authorities during a complicated moment in their life, namely in the context of their parents' divorce (*or the separation of unmarried parents, s.n.*). *For the child, both their inner world and outer world are often encompassed between the two poles described by their parents. Everything and everyone relate to this world, from emotions and feelings to life rules and the space of life. When, however, the relationship of his parents shifts from the eternal project into the dissolutive concrete, his world is shaken to its core.*” Thus, the *parents „often crush what they have built most precious: their own child”*. What should be noted as common to all these true manipulation techniques (or even violent manifestations) is the AP's intention (conscious or not) to strengthen the relationship with the child at any cost, to the detriment of the VP.

On the other hand, we must underline also **some VP's behaviors, which contribute to a child alienation**: • his/her passivity and withdrawal in situations of high conflict (VP cease attempts to call or communicate with the child, give up attempts to reconcile with the child in therapy, his/her lack of financial resources and/or feelings of helplessness about what to do to restore the parent-child relationship); • counter-rejection of the alienated child (VP feels that he/she is being abusively treated by an alienated child who is also refusing all efforts to reconnect and VP can become increasingly offended by the absence of respect and gratitude he/she

¹² See J.B. Kelly, J.R. Johnston, *The Alienated Child. A Reformulation of Parental Alienation Syndrome*, in Family Court Review no. 3/2001, vol. 39, p. 251-254, at <https://jkseminars.com/pdf/AlienatedChildArt.pdf>, last consulted on 27.11.2024. The aforementioned authors proposed a scale (from positive to negative) as follows: (a) the healthiest point of the relationship – the child establishing positive relationships with both parents; (b) the child's affinity with one parent, a situation that does not prevent the child from expressing interest in maintaining a connection with the other parent; (c) the allied child – caught in the conflict between parents prior to their divorce or separation, manifesting between disdain and/or indignation and recognition of love for the parent who caused the divorce or the separation; (d) the estranged child – exposed to violence or even a victim of abuse or neglect by one of the parents, both before and after the divorce or the separation; often, they can only feel safe enough to reject the violent or abusive parent after the separation/divorce; (e) the alienated child – situated at the negative extreme of the scale [opposite the positive extreme of (a)], this is the child who clearly refuses to maintain any contact with one of the parents, manifesting anger, hatred, rejection, and/or fear towards that parent, feelings significantly disproportionate to the current (real) experience with that parent.

¹³ See I.I. Neamț, *I see you. Sau despre ascultarea copilului în procedurile administrative și judiciare care-l privesc, cu un accent pe procedura divorțului*, in Revista de Dreptul Familiei no. 1/2024, Universul Juridic Publishing House, Bucharest, p. 200-201.

receives from the alienated child); • a harsh and rigid VP (also *prior* the separation/divorce); • a self-centered and immature VP – he/she puts his/her needs ahead of the child's during the marriage (e.g.: going fishing/shopping with friends rather than attending the child's soccer game/ballet performance); • a critical and demanding VP during the marriage – always asking for perfection in studying/in athletic, musical performance; unwise and angry criticism of their children's appearance and/or their friends; • a VP with a diminished empathy for the child – VP believes that the child does not really feel this way at all and is only the mouthpiece for the angry accusations and denigration of the AP, but, in his/her anger toward AP for creating the child's alienation, VP has no empathic connection with the child and cannot be emotionally available to his/her child even when he/she raises legitimate complaints.

Moreover, there are **other reasons related to both parents (VP and AP) or factors/situations external to their marriage/family or unrelated to the VP or to the AP, which might lead to a PA situation**, such as: • the nature of the separation/divorce process which encourages hostile, polarized, black-and-white manner of thinking; • prior to separation/divorce, both parents use their children in the marital conflict and this hostile dynamic involving the child may continue into the divorce process and after that; • both parents experienced separation/divorce as a deeply humiliating, as a complete abandonment which might result in vengeful behaviours, vindictiveness, and a complete blurring of boundaries between parent and child („he/she doesn't love *us*, otherwise he/she wouldn't have left *us*!” seems familiar? – in that case, it is a great probability that a VP convert to an AP and *vice versa*¹⁴); • the existence of new partners for both, AP, and VP, particularly those perceived to be „responsible” for the breakup/the dissolution of the marriage – this situation can make children feel betrayed by the parent; • religious beliefs and practices in order to condemn one of the parents (usually the VP) who is seeking divorce for his/her „immoral behaviour and ungodly choices” (the leading role in this situation is played by the other parent, by someone from the extended family, or even by an entire religious community); • the role of the professionals (family law attorneys, minor's counsels, custody evaluators, individual therapists for parents and children) who tend to become polarized themselves and take absolute, rigid points of view in supporting their „clients”.

However, it is imperative to make a distinction between an *alienated child, who persistently refuses and rejects visitation due to unreasonable negative feelings and views*, and *other children who also resist contact with a parent after separation for a variety of normal, realistic, and developmentally expected reasons*¹⁵. Nevertheless, there is a tendency for all young people resisting visits with a parent to be incorrectly labelled as „alienated”. Conversely, parents who express reservations about the value of visitation in these situations are often labelled „alienating parents”, despite the absence of any concrete evidence or research to support such a claim.

In the specialized literature¹⁶, another distinction has been made between: • **naïve PA** (considered to have the lowest risk for the child; AP recognizes the value of the relationship between VP and the child, both before and after separation or divorce; he sincerely tries to maintain this strong relationship, but from time to time, he does or says something that suggests VP's „fault” – in expressions like: „you have exactly your father's/mother's temperament”; „your mother is not helpless, she can find out about your school situation herself”; „we won't be able to afford to eat out until I receive the child support; if I don't receive it on time, we have no choice but to eat at home” and so on; it seems that, in this category, AP is the least „harmful” because he/she learn from his/her mistakes and does his/her best to correct them); • **active PA** (this kind of AP struggles with unresolved issues that give rise to various, intense, emotional reactions; he is the one who „lives” and „feeds himself” with the memories of the „WHYS” of their separation/divorce, but even so, he is classified in a moderate risk category); • **pathological PA** (the most severe and serious form of PA, in which the PA behaviour is absurd, irrational, arbitrary, discretionary, and out of control – especially regarding the emotional aspect –, sometimes even leading to violent situations, aggressive manifestations – verbal and/or physical).

¹⁴ It may occur a combination or interference of VP's features and AP's features, potentially resulting in a „disturbing” identity, as illustrated below: one possibility is that an AP may act in a manner similar to a VP, but also in a manner similar to himself (an AP); similarly, a VP may act in a manner similar to an AP, but also in a manner similar to himself (a VP); this could occur sequentially, at a precise time, or concurrently, resulting in the interchangeability of the roles and the gradual merging of one role into another; this scenario is likely to render considerably more complex the process of ascertaining the primary contributor to a PA situation.

¹⁵ E.g.: normal separation anxieties in the very young child, fear of leaving the custodial parent alone, behaviours of the parent or stepparent that affect willingness to visit, fear or inability to manage the high-conflict transition (as a result of a high-conflict marriage and divorce/separation).

¹⁶ See D.C. Darnall, *op. cit.*, apud A.I. Mocanu, *op. cit.*, *loc. cit.*, p. 303.

The concepts of PA/PAS, proposed by Gardner, have not gone without echo and have not been sheltered from **criticism**, subsequent studies¹⁷ noting that: • PA is seen as a non-existent phenomenon, without adequate confirmation in clinical and judicial reality, or, in a more moderate version, PA/PAS actually exists but represents a rare and marginal phenomenon in *custody* disputes (the equivalent of the institution of *parental authority* exercise in the Romanian law); • Gardner views PA/PAS as having an attitude that minimizes child abuse, especially paedophilic abuse; • PA/PAS particularly opposes feminist movements, considering them detrimental to the abilities of divorced/separated mothers to care for the child; that is because, in Gardner's early works, AP, the „guilty” party in the smear campaign against the other parent (VP), was mainly identified with the mother, a clear consequence since, for many decades, the „rule” was that, after separation/divorce, the child (especially the very young one) was most often entrusted to the mother or had their residence established with her, with occasional visits to the father or such visits made by the father at the mother's residence, sometimes even only under her supervision; • another danger, recognized as such even by the supporters of PA/PAS, is that the abuse of this diagnosis could turn (prove) into a real weapon for AP to defend against abuse allegations and could lead to AP obtaining *custody/exclusive exercise of parental authority* of the abused child.

However, the indiscriminate employment of PAS terminology has engendered a general confusion and misinterpretation within judicial, legal, and psychological areas. In USA, some jurisdictions have begun to reject expert witness testimony on PAS, citing the higher standards for admissibility of evidence set out in *Daubert v. Merrell Dow Pharmaceuticals* (1993)¹⁸. In the broader community, the notion of PAS has given rise to its own set of gender politics: father's rights groups and women's rights advocates, for instance, have either embraced, utilised, or vehemently rejected Gardner's formulation. The media has entered the debate, conducting extensive stories and investigations, some of which adopt a balanced, journalistic approach, while others are sensationalised and one-sided. Given the absence of empirical support for PAS as a diagnostic unit, the exclusion of evidence about PAS in some courtrooms, the oversimplified concentration on the brainwashing parent as the primary aetiological agent, and the frequent improper application of Gardner's PAS theory to many different phenomena in child custody litigations, there is an urgent need to reshape a more useful terminology than PAS. Certainly, there are many custody contexts in which alienation issues arise and need to be investigated and properly understood in order to propose appropriate legal and psychological remedies for the family.

3. A few legislative and jurisprudential guidelines prior to the adoption of Law no. 123/2024 – anticipation of the need for regulation, intuition or legal common sense?

In this fruitful context of interpretations and meanings regarding PA (as originally defined and/or maintained as a concept), in the **national law**, until the adoption of Law no. 123/2024, the phenomenon of PA was recognized and defined¹⁹, in the medical domain, as „a form of serious psychological (emotional) abuse of the child, consisting in the activity of systematic denigration of one parent by the other parent, with the intention of alienating the child towards the other parent”. We note that, at that time (2016), it was considered that only the parent could have the „honor” to fall into the category of the abuser, not other people.

¹⁷ See, among others: C.L. Wood, *The parental alienation syndrome: a dangerous aura of reliability*, in Loyola of Los Angeles Law Review 29, 1994, p. 1367-1415; K.C. Faller, *The parental alienation syndrome: What is it and what data support it?*, in Child Maltreatment, 3(2), 1998, p. 100-115; C.S. Bruch, *Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases*, in Family Law Quarterly, 35(3), 2001, p. 527-552; R.E. Emery, *Parental Alienation Syndrome: Proponents bear the burden of proof*, in Family Court Review, 43(1), 2005, p. 8-13; J.A. Houlst, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy*, in Children's Legal Rights Journal, 26(1), 2006, p. 1-61; S. Vaccaro, P.C. Barea, *El pretendido Síndrome de Alienación Parental. Un instrumento que perpetúa el maltrato y la violencia*, Bilbao, Desclee de Brouwer, 2009; J.S. Meier, *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation*, in Journal of Child Custody, 6, 2009, p. 232-257. Conversely, for supporters of Gardner's ideas, see W. Bernet, W. von Boch-Galhau, A.J.L. Baker, S.L. Morrison, *Parental Alienation, DSM-V, and ICD-11*, in American Journal of Family Therapy, 38(2), 2010, p. 76-187 (information available at https://it.cathopedia.org/wiki/Alienazione_parentale, last consulted on 27.11.2024).

¹⁸ See J.B. Kelly, J.R. Johnston, *op. cit.*, p. 250 and also <https://supreme.justia.com/cases/federal/us/509/579/>, last consulted on 31.03.2025.

¹⁹ See art. 1 para. (1) of the Disposition no. 2/2016 on the recognition of the phenomenon of parental alienation and the provisions of the Protocol on the recognition of parental alienation, issued by the College of Psychologists of Romania, published in the Official Gazette of Romania no. 144/25.02.2016. The aforementioned regulation was subsequently abrogated by another act of the same organism (Disposition no. 31/2021), published in the Official Gazette of Romania no. 1030/28.10.2021, the latter act leaving nothing in place to somehow replace or at least outline some new guidelines concerning PA.

After the repeal, in 2021, of the disposition containing the above definition and until the adoption of Law no. 123/2024, there was an unjustified silence²⁰ in the Romanian law, a legal vacuum that the courts have tried to fill, as far as possible, by applying the CC provisions related to: • the determination of the child's place of residence to one of the parents [when it appears, obviously, the separation between the child and the parent with whom the child does not actually live – although there is (or should be) no such thing as a „primary, important, superior, privileged” parent (the one the child lives with) and a „secondary, less important, inferior” parent]; • the exercise of parental authority (usually jointly²¹, by both parents²²); • how to maintain the personal ties between the parent who is separated from his or her child (with whom he or she does not live); • how to determine the contribution of both parents to the expenses of the child's raising, education, teaching and professional training.

In applying the principle of „rendering to Caesar what is Caesar's”, it has been noted²³ that, when discussing matters related to psychology, it would be ideal to refer to the term PA and, when moving to the field of law (family law), it would be preferable to keep the expression currently provided for in Law no. 123/2024, namely PE. Between us, however, the terminological battle between PA and PE does not make life easier for the alienated child, and in fact, in our opinion, represents a false problem that could go unnoticed.

We note that national or European jurisprudence, prior to the adoption of Law no. 123/2024, played an important role in recognising the PA phenomenon. Regarding **the Romanian courts' jurisprudence**, although this „syndrome” was and is less known than at the European/international level, there were still some court decisions in which PA was mentioned. Thus, it has been stated²⁴ that the mother's constant opposition to the existence of personal relations between the father and the minor is a typical PAS behaviour. However, as this characterization is a specialized one, the Court could not judge it without a psychological evaluation; all it could do was to note that, based on the evidence presented, it was found that the defendant (the mother) manifested such behaviour. In another national decision²⁵, the Court ruled that the 7 and 9 year old minors should be returned to their father, based on the evidence that the decision of the first instance was not based on an objective basis, as it was decided solely on the assumption that „the girls needed the care that only a mother can give to children”, and on the observation that „the way in which the mother has managed the situation is fundamentally contrary to the best interests of the child and has contributed to aggravating the separation of the two girls from their father, with the risk of making this separation irreversible”. In other words, the Court identified the PA phenomenon caused by the mother's actions and manipulations towards the girls.

At the European level, we highlight two important Resolutions of the Parliamentary Assembly of the Council of Europe, which: on the one hand²⁶, required the authorities of the Member States to respect *the right of fathers to exercise (joint) custody*²⁷, ensuring that family law provides the possibility of joint custody of children in the event of separation or divorce, in their best interests, based on mutual agreement and not imposed; on the other hand²⁸, proposed measures to promote *equality between men and women in the exercise of joint custody*, including in cases of separation and/or divorce.

²⁰ Besides the „fragile” provision from art. 4 para. (1) letter (f) of the Law no. 217/2003 to prevent and combat domestic violence (republished in the Official Gazette of Romania no. 948/15.10.2020), which effectively recognizes the PA phenomenon by including, in the definition of *social violence*, of the so-called „imposed isolation of the person (*the child also, s.n.*) from her family [...]”.

²¹ The importance of the joint exercise of parental authority has been noted in recent judicial Romanian jurisprudence (see, inter alia, the Bucharest Court, District 1, civ. s., civ. sent. no. 5220/2016, case no. 102468/299/2015, unpublished).

²² The exercise of parental authority by only one parent is and must remain an exceptional situation for which there must be well-founded reasons based primarily on the application of the principle of the best interests of the child, e.g.: an alcoholic parent or one suffering from a serious mental illness, an abusive or violent parent.

²³ See D.I. Olac, *Alienare parentală vs. Instrăinare părintească*, 23.01.2024, at <https://www.juridice.ro/722012/alienare-parentala-vs-instrainare-parinteasca.html>, last consulted on 18.03.2025.

²⁴ Braşov Court, civ. s., civ. sent. no. 2969/21.03.2008, case no. 9267/197/2006, unpublished.

²⁵ Trib. Bucharest, civ. 4th s., civ. dec. no. 1181/A/08.11.2010, case no. 6698/94/2009, unpublished.

²⁶ *Resolution 1921 (2013) on Gender equality, reconciliation of private and working life and co-responsibility*, at <https://pace.coe.int/en/files/19478/html>, last consulted on 27.11.2024.

²⁷ Romanian national law does not use/does not recognize the term „custody”, but rather „parental authority”, and, in reality, the two terms do not benefit from a strict identity, and the confusion between the two notions is „due” to the manner in which this institution was transposed from the Civil Code of Québec. For developments in this area, see A.R. Motica, *Alienarea parentală sau cum să creşti un copil nefericit*, in M. Avram (coord.), *op. cit.*, p. 356.

²⁸ *Resolution 2079 (2015) on Equality and shared parental responsibility: the role of fathers*, at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22220>, last consulted on 27.11.2024.

ECtHR has also pronounced about PA/PAS in several cases, e.g.: • Case *R.I. and children v. Romania* (app. no. 57077/16)²⁹ – ECtHR recognise the PA concept („the first applicant contacted the Bucharest child protection authority again and explained that the behaviour exhibited by the children during their recent encounter made her fear that they were suffering from *parental alienation syndrome* because of their father’s influence over them”); • Case *Bianchi v. Switzerland* (app. no. 7548/04)³⁰ – the „passive attitude had caused the complete break-off in contact between father and son, which had lasted almost two years and which, given the very young age of the child, was liable to result in *growing alienation* between them which could not be said to be in the child’s best interests. Accordingly, the Court could not consider that the applicant’s right to respect for his family life had been protected in an effective manner as required by the Convention. There had therefore been a violation of Article 8”; • Case *Döring v. Germany* (app. no. 40014/05)³¹ – Recalling that, under art. 1684 § 1 of the (*German, s.n.*) Civil Code, each parent had the right and the duty to have access to his or her child, the applicant emphasised that the purpose of access rights was to enable the parent not vested with parental authority to follow the development of his or her child, to maintain an emotional bond with him or her and thus to prevent *alienation* between the child and the parent concerned. It added that a child needs contact with both parents for healthy personality development. The Court also recalled that the decisive criterion for any decision was the child’s well-being, as set out in art. 1697a of the (*German, s.n.*) Civil Code.

4. PROs and CONs about PE. Law no. 123/2024 – evolution or regress?

From the analysis of the explanatory reasons³² of the legislative proposal to amend and supplement LPC, it can be seen that the initiators of this normative project sought to eliminate (from a legal as well from a moral point of view) the effects of the PE, considered as a violation of the child’s recognised rights, resulting in severe trauma and the impossibility of normal development into adulthood. We are about to highlight in the following **a few PROs and CONs regarding PE, with references to LPC (amended by the Law no. 123/2024).**

PROs:

- **the legal definition of PE** [art. 4 letter h) LPC] *as a form of psychological violence by which one of the parents or persons referred to in letter c) and d) (from the extended family or from the substitutive family), intentionally, pursued or assumed and appropriated, generates, accepts or uses a situation in which the child becomes apprehensive or hostile, unjustified or disproportionate to any of the parents; we note that the Law no. 123/2024 delimit somehow PE from the domain of social violence, as it was once stated in art. 4 para. (1) letter f)³³ from Law no. 217/2003 on domestic violence;*
- **the manner in which PE occurs** (*intention* - with a specific qualification to mean both the pursued and generated purpose, as well as the assumed and appropriated, and then used purpose) – art. 4 letter h) LPC;
- **the determination of the methods by which PE can be established** [exclusively by the court at the request of one of the parents, the prosecutor, the General Direction of Social Assistance and Child Protection (DGASPC), in the main proceedings or in any pending litigation where measures concerning the child are to be ordered, other than those provided for in art. 133 LPC] – art. 140¹ para. (1) LPC;
- **the legal consequences of establishing a case of PE**, with implications for: the analysis of the principle of the best interests of the child; the establishment of the exclusive exercise of parental authority; the child’s residence; the child’s personal relations with the parent with whom it does not live;
- **the creation of a rebuttable presumption** that it is in the best interests of the child for parental authority to be exercised exclusively by VP, as a result of the psychological violence to which the child has hypothetically been subjected by AP) [art. 140¹ para. (2) LPC];
- **the presence of a psychologist** in all cases where the judge „interrogates” the child (in reality, it cannot be a hearing/an interrogation, but at most a listening to the minor), his opinion having the probative value of a rebuttable presumption);
- **the step-by-step implications of PE in the deprivation of parental rights**, following the next path: a) identifying signs of PE; b) the mandatory and urgent notification of DGASPC by the public social assistance service

²⁹ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-187931%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187931%22]}), last consulted on 10.03.2025.

³⁰ [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22003-1714296-1797156%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-1714296-1797156%22]}), last consulted on 10.03.2025.

³¹ [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-99804%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-99804%22]}), last consulted on 10.03.2025.

³² See <https://cdep.ro/proiecte/2022/600/90/8/em843.pdf>, last consulted on 27.11.2024.

³³ See *supra*, footnote 20.

within 24 hours of identifying the signs; c) the mandatory notification, this time without a specified deadline established by the legislator, but we believe that the condition of urgency should be maintained or, at least, related to the requirement provided in art. 263 para. (4) CC („procedures concerning children must be conducted within a reasonable time, so that the best interest of the child and family relationships are not affected”), by DGASPC if it considers that the conditions for deprivation are met; d) the pronouncement of a solution by the court.

- **the regulation of a psychological counselling**, both for the child and their parents, at the level of DGASPC, is welcome, with the aim of restoring and maintaining the child's personal relationships, **as well as the stage of monitoring these personal relationships** – art. 18 para. (3¹) *et seq.* LPC;

- **the PE's recognition as a legitimate justification in order that the court decide that a single parent exercise parental authority** – art. 37 para. (7) LPC;

- **the widening of the environment in which PE can be shaped**, from family, educational institutions, medical facilities, sports environments, crime research environments, rehabilitation/detention environments, the internet, the media [art. 89 para. (1) LPC - to which we could add, why not, religious or spiritual communities], to any public or private institution whose employees, by the nature of their profession, come into contact with a child under suspicion of PE [art. 89 para. (3) LPC].

CONs:

- **the child's listening represents a court session?** *No, we believe*, especially since, in our opinion, a child already traumatized by their parents' divorce/separation is subjected to additional possible traumas, *e.g.*: the mere presence of the child in front of a judge, in a space considered unsafe; the court holds listening for children in the council chamber, as is stated in art. 226 CPC;

- **the psychologist's participation is mandatory**, we already saw that and it is a good thing, but what would be the consequences of their non-participation in the court session, given that, in relation to the number of disputes with possible PE implications, the number of psychologists strictly belonging to the DGASPC is much reduced; returning to the answer, *the psychologist's non-participation constituting a case of non-compliance with a procedural form, can only attract the sanction of relative nullity*;

- it is not clear to us **who appoints the psychologist** (the court, the DGASPC director?), since it is not clear whether there is mandatory for it to belong to DGASPC; thus:

- pursuant to art. 140¹ para. (3) letter b) LPC, „If the child's dwelling is established at the home of the alienating parent, the court shall order: (...) b) psychological counselling of the child and both parents *by DGASPC*.”;
- according to art. 101 para. (1) LPC: „In the process referred to in art. 100 para. (3) and (4) LPC (requesting the issuance of a *presidential ordinance for the emergency placement* of the child with a person, a family, a foster caregiver, or in a residential service, licensed in accordance with the law, *s.n.*) the written statement of the child regarding abuse, neglect, parental alienation, exploitation, and any form of violence to which he has been subjected can be administered as evidence *ex officio*. The child's statement can be recorded, according to the law, using audio-video technical means. The recordings are *mandatory to be made with the assistance of a psychologist*.”;
- according to art. 140³ para. (1) LPC: „In cases where measures regarding the minor child are to be taken, other than those provided for in art. 133 LPC, the court proceeds to listening the minor *only with the participation of a psychologist from DGASPC*.”;
- suitable to 140³ para. (3) LPC: „**If** the minor's listening was carried out with the participation of a psychologist from DGASPC, they will draft a report of findings, which must be submitted to the case file.” - **Well, aren't you, the legislator, the one imposing this condition in art. 140³ para. (1) LPC?** („only with ... ” doesn't mean that *only a psychologist from DGASPC* can do it?). However, a *per a contrario* interpretation of art. 140³ para. (3) LPC „**if** the... listening ... was carried out with the participation of a psychologist from DGASPC” can lead to the conclusion that, in the legislator's generosity, it is possible to have, in this case, since it is an imperative condition a psychologist to participate, the presence of a psychologist who is not affiliated to DGASPC;

- we reiterate the idea that **the child is not interrogated in any way by the judge**, as he hold not the status of a witness, status that could obviously generate an obligation for the latter to provide information; therefore, *the applicable institution will be that the child will be listening by the judge*, and the mandatory participation of the psychologist serves precisely to reinforce this solution, fully justifying the functions of the

hearing as an evidentiary procedure; moreover, the child is not obliged to declare anything, the focus being on the child, not the act of the listening itself; It is sad and unacceptable that, in the same article, a few words apart, the legislator is inconsistent [„Art. 140³ LPC: (1) In cases where measures regarding the (...) child are to be taken (...) the court proceeds to *listen to* the minor. (2) The provisions of art. 231 CPC (...) apply accordingly to the *hearing* of the child. (3) If the minor's *listening* was carried out with the participation of a psychologist from DGASPC (...). (...) (5) *Listening* to minors in the judicial procedure will be mandatory after the administration of the evidence in the file (...).”], not taking into account the provisions of art. 264 CC that speaks, in all 5 paragraphs, about *listening to the child*, nor those of art. 226 CPC which also refers to the *listening of minors*;

- the **report of findings, done by a psychologist from DGASPC**, must strictly contain the psychological findings resulting from what the child has declared in the council chamber; additionally, the provisions of art. 332 para. (1) and (3) CPC regarding recusal apply to this report (or we are actually talking about the recusal of the psychologist) and we do not believe that the para. (2) of art. 332 CPC would be applicable regarding the 5-day term in which the recusal must be requested because the psychologist is not appointed by the court, but designated by DGASPC;

- how do we apply to the psychologist the provisions of art. 334 CPC regarding the listening of the expert? We believe that the psychologist can express their opinion in court verbally as well;

- does the *psychologist's report constitute a genuine expert report*? we believe that the report done by a psychologist from DGASPC is a *sui generis* report, with a questionable evidentiary value;

- the **inconsistency of LPC in the alternative use of** the following terms: *minor/s* [art. 140³ para. (1), (3), (5), art. 5 para. (1) LPC], *child/children* [art. 140³ para. (2), (3), art. 140¹ para. (2), (3), art. 5 para. (1) LPC], *minor child* [art. 140³ para. (1), art. 140¹ para. (1), art. 140⁴ para. (1) LPC]; *a greater care for legal accuracy being necessary, taking into consideration also the child definition from both, art. 263 para. (5) CC and art. 4 letter a) LPC*;

- the provision of art. 18 para. (3¹) point b) LPC (the court *orders* that...) should be attenuated (the court *may order*), correlated with art. 396 CC (the court will decide taking into account: the best interests of the child, the psycho-social report and, if relevant, the agreement of the parents whom it listens to) and with art. 264 CC on listening to the child; art. 396 CC, even if it regulates the effects of divorce on relations between parents and children, being applicable, by analogy, also in the case of separation of unmarried parents;

- since non-compliance with these provisions results in the possibility of applying precautionary measures or daily penalties for delay, art. 20 para. (1) LPC („as well as compliance with the provisions regarding the establishment of the child's residence...”) does not specify which provisions are being referred to; additionally, the norm must establish which act is used to determine non-compliance with the provisions in question, an act that constitutes the basis for applying delay penalties; furthermore, the penalties provided in art. 20 para. (2) letter a) LPC must be correlated with art. 906 para. (2) and art. 910 para. (3) CPC;

- art. 140¹ para. (2) and (3) LPC create a differentiated regime between, on the one hand, the hypothesis in which the court has established through a judicial decision both the manner of exercising parental authority and the child's residence, and, on the other hand, the hypothesis in which such a decision has not yet been made, a differentiation that is not justified from the perspective of the child's best interest [art. 263 para. (1) CC];

- art. 140³ para. (1) LPC must be correlated with art. 264 para. (1) CC regarding the listening of a child who has reached the age of 10, in the sense of the obligation to listen them; remaining that, for a child who has not reached the age of 10, the listening shall remain at the discretion of the court only if it considers it is necessary for resolving the case;

- a situation may arise where a violent/abusive parent towards the child, following the invocation of PE, as a VP (at least presumed), could receive as a „gift” from the court the exclusive exercise of parental authority; which would result in the powerlessness and, in our view, injustice for an alleged AP; the judge will be obliged to order the relocation/transfer of the child's residence to this abusive parent (so called VP), depriving the so-called AP of her rights, who is in fact a VP.

5. PA/PE and emotional/psychological implications – teaching our child how to hate the other parent (or both!) and treat him, according to our will, as we once did with Jesus, by sending him from Annas to Caiaphas?

Once upon a time, Jesus, bound as a common criminal, was led first to Annas, the influential former high priest, then to his son-in-law Caiaphas. Afterwards, the Sanhedrin proclaimed: „He is liable to death!“. And this abusive, illegal behaviour occurs during a nighttime trial, a formal judgement based on the fear that the Old way comes to a New way of thinking and living. For a child, PE represents both, the Jesus trial, and the Jesus Golgotha, an imposed will of the others in order to a so-called defend of the best interest of the child. In fact, whether we talk about PE or PA, those have various implications, mostly emotional, by teaching a child to hate one parent, by throwing the love apart from his soul and by leaving him with huge, devastating traumas (e.g.: an impaired ability to establish and maintain future relationships; a lowering of the child's self-image; a loss of self-respect; the evolution of guilt, anxiety, and depression over their role in destroying their relationship with a previously loved parent; lack of impulse control – aggression can turn into delinquent behaviour, educational problems, disruptions in school.

Whether we talked about „mental harm“, „mental injury“, „emotional instability“, „emotional endangerment“, „emotional damage“, it is clear that emotional child abuse is a statutory crime. When one parent intentionally encourages the child to turn against the other parent, he or she is employing PA as a strategy. When this strategy is used by one parent in hopes of alienating the child against the other parent, it is tantamount to teaching the child how to hate, and according to a Canadian judge (John H. Gomery) all can be resumed as follows: *„Hatred is not an emotion that comes naturally to a child. It has to be taught.... Defendant has deliberately poisoned the minds of his children against the mother that they formerly loved and needed“*³⁴. Family law's innovations and reforms have become the showcase for therapeutic jurisprudence. PA cases provide an opportunity to demonstrate how the strategy of replacing the „punishment“ role of the courts with the therapeutic „fix-the-problem“ approach can advantage children. Evaluation and therapy are earmarks of the therapeutic response to PA.

6. Instead of Conclusions. Some tips

- there is no PA/PE when there is reasonable justification for the child to express negativity against one parent;
- PA/PE can be a strategy used by the custodial parent, the noncustodial parent, or by both parents;
- PA/PE is nearly impossible when the child is an infant; the beginning stage of PA/PE is difficult to begin in the child's late teen years;
- PA/PE can be operative on one sibling, while not operative on the other siblings;
- if PA/PE is suspected or alleged, it should be assessed by an evaluator experienced in the matter;
- extreme PA/PE should be considered emotional child abuse and referred criminally;
- often PA/PE can be reduced or eradicated by ordering more time between the child and the targeted parent; when a child spends frequent positive time (primary experience) with one parent, it is less likely that the other parent's PA/PE strategy will be successful;
- PA/PE case-law is growing; family court judges should become familiar with cases in their jurisdictions;
- the appliance of the *friendly parent* concept, which is used in Australia, where the courts, in granting custody/exercise of parental authority, give preference to the parent who does not denigrate the other parent;
- the need to implement mandatory mediation and parental education programs; in accordance with the Canadian model, separated or divorced parents must take classes on *healthy coparenting*; it would also be advantageous to set up monitoring organisations or centres to make sure visitation schedules are followed;
- the urgent need arises to identify mental health professionals in family court jurisdictions who have PA/PE expertise.

³⁴ See K. Lewis, *Parental Alienation Can Be Emotional Child Abuse*, at https://www.ncsc.org/__data/assets/pdf_file/0014/42152/parental_alienation_Lewis.pdf, last consulted on 27.02.2025.

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