

SPECIFIC DEONTOLOGICAL/ETHICAL REGULATIONS CONCERNING THE INVOLVEMENT, DUTIES AND THE ACTIVE ROLE OF CERTAIN CATEGORIES OF CIVIL SERVANTS REGARDING THE PROTECTION OF FAMILY RELATIONSHIP AGAINST PARENTAL ALIENATION SYNDROME

Assistant professor **Andreea Elena MATIC**¹
Assistant professor **Ștefania Cristina MIRICĂ**²

Abstract

The present paper aims to analyze the manner in which the parental alienation syndrome (acknowledged as a form of severe psychological abuse against children by the Directive No. 2/2016 for recognition of parental alienation phenomenon) is identified, prevented and treated and by Romanian state authorities. The parental alienation syndrome emerged and started to spread in Romanian society due to the increasing rate of divorce and the larger number of single parent families. According to the definition found in the first article of the Directive no. 2/2016, this form of abuse consists of the "systematic denigration work of one parent by the other parent, with the intention of alienating the child from the other parent." In the article, we will analyze the legal and deontological duties of officials from the Child Welfare and Protection which operates locally and, also, how the civil courts exercise their active role in solving the cases in which is claimed the existence of this form of severe psychological abuse. We will also describe specific cases. From our point of view, the formal recognition of the parental alienation is a progress in the actual achievement of the welfare and best interests of children in Romanian society. This matter must be treated seriously as the emotional abuse committed against minors impede their harmonious and balanced development, with dramatic effects on medium and long term.

Keywords: parental alienation syndrome, deontological rules, ethical rules, judge, social assistant, child welfare.

JEL Classification: K36

1. Parental alienation syndrome. Legal framework and definition

Protection of family and children, sanctioning and stopping abuses against them are elements that target legal and moral aspects of the activity of public servants having powers in this area (social assistants, psychologists, judges, etc.) and we will analyze them below, both theoretically and practically.

The international rules in the field of child protection³ and domestic laws of the States sanction physical and emotional abuse committed against minors. On this line, we mention, as an example, the provisions of Article 19 par. 1 of the UN Convention concerning the rights of the child, according to which "the States Parties shall take all appropriate legislative, administrative, social and educational measures in order to protect the child against all forms of violence, injury or abuse, physically or mentally, abandonment or negligent treatment, maltreatment or exploitation, including sexual abuse, while the child is in the care of parents or of one of them, of his/her legal representative or representatives or of any other person to whom was entrusted."⁴ Furthermore, the states have the obligation to establish effective legal procedures and social programs which would support minors and their parents or guardians. In cases where prevention is not working and psychological or physical abuses are committed against children, measures will be taken for their cessation, getting children out

¹ Andreea Elena Matic - Faculty of Juridical, Social and Political Sciences, "Dunărea de Jos" University from Galați, amiricass@yahoo.co.uk,

² Ștefania Cristina Mirică - Faculty of Juridical, Social and Political Sciences, "Dunărea de Jos" University from Galați, cmirica@ugal.ro.

³ First of all we mention the *UN Convention on the Rights of the Child* (republished in the Official Gazette No. 314 of 13 June 2001) adopted by the UN General Assembly on 20 November 1989. Prior to this convention the *Universal Declaration of Human Rights* which includes ten articles dedicated to children, but it was considered that the latter, having specific needs, should benefit from a special protection.

⁴ Convention on the rights of children adopted by the United Nations General Assembly on 20 November 1989, republished in the Official Gazette no. 314 dated 13 June 2001.

of the dangerous situations and punishing the guilty persons. The sanctions have different degrees of severity, the lawmakers trying to preserve proportionality in relation to the seriousness of abuse or negligence, but having as ultimate end the child's best interests.

The Romanian law defines abuse in Article 94 par. (1) of Law no. 272/2004 on the protection and furtherance of children's rights as subsequently amended and supplemented: "any deliberate action of a person who is in a relation of responsibility, trust or authority towards this, through which there are jeopardized the life, physical, mental, spiritual, moral or social development, bodily integrity, mental or physical health of the child." Depending on the actual manner in which abuse is committed and social value is injured or endangered we talk about a physical, emotional, psychological, sexual or economic abuse.

The emotional abuse committed against the child within the family "causes mental disorders, affects physical and emotional development, self-esteem and quality of social interactions"⁵. The consequences of emotional abuse on child can be materialized by: anxiety, depression, suicidal thoughts, emotional instability, excess of substance, eating disorders, behavioral disorders, etc.

Parental alienation syndrome is considered by specialists in the field (psychologists) a form of severe emotional abuse that is committed against children. More specifically, according to the definition specified in Article. 1 para. (1) of the Directive No. 2/2016, this form of abuse represents the "activity of systematic denigration of one parent by the other parent, with the intention of the child's alienation by the other parent".

2016 started with the formal recognition and legal consecration of this form of emotional abuse committed even within the family (single parent or extended) where the child is raised and educated. The social context of this legal recognition reflects a very high rate of divorce in Romania over the last two decades, an increasing number of persons (usually women) who raise their minor children without a partner, without the other parent. The truth is that the lack of an adequate level of civilization, does not enable many of these individuals who break up to continue to be parents, amicably, even though they no longer form a couple.

Before we move further, it is necessary to also perform an etymological analysis of the term of parental alienation. Alienation refers to estranging the minor from the parent with whom does not live, carried out unreasonably, by denigration, consciously or unconsciously by the other parent and, in some cases, together with the originating family of the latter.

Parental alienation is not the same with the alienation that occurs between parent and child as a result of the parent's abandonment or neglect. These situations are also, clearly, improper and objectionable behaviors, but are criminalized and punished differently. For example, in the Criminal Code, Article 378 provides *family abandonment*⁶ which consists of non-paying the alimony, leaving minors without help, their abandoning or ejection, then Article 197⁷ *maltreatments of a minor*, etc. Article 94 par. (2) from Law No. 272/2004 on the protection and furtherance of children's rights as subsequently amended and supplemented defines also the term of child neglect, which can be committed involuntarily and voluntarily⁸.

2. Powers of the General Directorate of Social Assistance and Child Protection in combating and preventing parental alienation

The General Directorate of Social Assistance and Child Protection (a public institution with legal personality, being subordinated to the County Council) works at the county level and has as

⁵ Luca, Cătălin, *Psychological expertise of the abused/neglected child*, Hamangiu Publishing House, Bucharest, 2014, p. 25.

⁶ Criminal Code and Code of Criminal Procedure, Hamangiu Publishing House, Eighth Edition, Bucharest, 2016, p. 164.

⁷ Criminal Code and Code of Criminal Procedure, Hamangiu Publishing House, Eighth Edition, Bucharest, 2016, p.94.

⁸ Article. 94 par (2) of Law No. 272/2004 on the protection and furtherance of children's rights "a child neglect means the omission, voluntarily or involuntarily, of a person who has the responsibility of raising, taking care, educating the child care or taking any measure that involves fulfilling this responsibility, that endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, mental or physical health of the child and may take many forms: food, clothing, hygiene neglect, medical neglect, educational neglect, emotional neglect or leaving the child /family abandonment, which is the most serious form of neglect.

main responsibilities coordination of social assistance and child protection. Virtually, it is the institution to which any person can address, according to the provisions from Article 89 par. (2) of Law No. 272/2004 when he/she finds about committing any form of abuse or neglect against a minor. For the persons who due to their profession or occupation comes into contact with children (teachers, educators, etc.) it is mandatory to refer to the General Directorate of Social Assistance and Child Protection or the Public Service of Social Assistance (operating in each locality, within the town hall) in case they have "suspicions related to a situation of child abuse or neglect" (Article 96 par. (1) from Law No. 272/2004). Given the importance of protected social values, the law establishes the obligation of being available a special telephone line ("child's telephone") where abuses can be reported.

The provisions of Articles 89 par. (2) and 96 of Law no. 272/2004 include, naturally, the possibility of sending complaints to the mentioned institutions in order to fight and eliminate parental alienation. These complaints are quite frequent and are usually made by a parent who is unjustly estranged from his minor child, through lowering his/her value in front of the child and destroying his/her parent image.

For checking and settling of complaints, the directorates are entitled, by skilled employees, to go to the minors' domicile (in which case they can be also supported by the police). Usually, in the cases of parental alienation, the parents and the minor are convened at the institution headquarters so as to be checked the trustworthiness of the statements from the complaint.

The child's right to have a personal relationship with the parent with whom the child does not live is undeniable and cannot be limited but in exceptional circumstances, provided by law, circumstances that are likely to endanger the physical or psychological integrity of the child. Pursuant to Article 19 par. (2) of Law No. 272/2004 the court may restrict the parent's relationship with the child in the case when this is in the best interests of the child. Moreover, with a view to continuing or maintaining the child's relationship with the parent and achieving the visit program, the court may establish, when necessary, a series of ensuring measures or warranties (fine in the situation when bringing the child is delayed - Article 20 par. (2) a) of Law No. 272/2004, lodging a real or personal guarantee by the parent who is to take the child - Article 20 par. (2) a) of Law No. 272/2004 or leaving the passport or identity document - Article 20 par. (2) a) of Law No. 272/2004).

From all these legal provisions can be concluded that the personal connection of a parent with his/her child may be restricted only if, objectively, that parent's behavior or actions are a danger to the emotional balance or physical safety of the child. Hence it follows that denigrating the parent who does not live with the child by the other parent is abusive. The simple fact that the parent living with the child has an antipathy (more or less justified personally) to the other parent and does not want the minor's relationship with the alienated parent to be close, not only that this is not a reason for restricting the relationship, but it is even an emotional abuse. A proper emotional development of a child requires affective bond with both parents, and placing the child in a position to refuse to meet with a parent for the sake of the other parent causes most often, inner conflicts and damaging effects in the child's soul, leading to depression, suicidal ideas, low self-esteem, behavioral disturbances, etc.

An unjustified denigration is sometimes brought by the relatives of the parent living with the child. Being disappointed by the relational break between parents or disliking the alienated parent for personal reasons, they transmit this aversion also to the child, sometimes intentionally other times without expressly pursuing this purpose. Yet the result is sad for the alienated parent and tragic for the child, who sees himself/herself torn between the love for that parent and the disregard shown by those who takes care of the child.

Back to the point, when the complaint for parental alienation is lodged, there will be started the checks carried out by social assistants and other officials with responsibilities in this regard. First all participants in the conflict are invited in order to verify the information in the complaint. If the statements in the complaint are true, the parties are invited to mediation. They will be explained what are their rights and obligations concerning the minor, and the effects of parental alienation for the child.

Following the mediation the alienating parent in should understand how important it is to the minor development to have a harmonious personal relationship with both parents, and especially the legality and necessity of maintaining this relationship that is in the child's best interests. Of course, if the psychologist finds also negative effects of the parental alienation, the child, both alone and together with his/her parents, will benefit from a specialized psychological treatment. Fortunately, the negative effects of parental alienation can be removed by using therapy and adjusting the child's relations with both parents.

But if the parties fail to agree, do not admit or accept the existence of abuse, workers within the child protection directorate cannot do anything but guide the alienated parent to sue the alienating parent in order to legally remedy the situation. For this type of emotional abuse, there is not a possibility to order the parties to adopt a proper behavior, but this can be done by the competent court: the guardianship court, the court within the area of minor's domicile or court of appeal.

In carrying out the activity of complaint investigation, the workers within the directorate should prove diplomacy, firmness and objectivity, targeting all the time the child's best interests, which the minor cannot defend by himself/herself because of his/her vulnerable situation. According to Article 12 of the Code of Conduct for Civil Servants (Law no. 7/2004) they should prove impartiality, any discrimination or unjustified preferential treatment being forbidden.

3. Legal protection of minors affected by the parental alienation syndrome

As mentioned even since the paper introduction, the question of existing a parental alienation syndrome in children is arisen in the context in which the minor's parents are separated: either they have been married at some point and got divorced or have formed a couple without being married and subsequently broke up, either they have never formed a couple. The scenario is that of one child or many children living with one of the parents.

The present Romanian society, through its characteristics, has changed the traditional family. First of all, due to the poor remuneration methods, many parents preferred to choose a job abroad, pursuing thereby to ensure a standard of living adequate for their children, but depriving them in this way of a reunited family which would have ensured them a suitable basis of emotional safety.

Finally, the analysis of all reasons why today there are so many single parent families and, consequently, the children lacking attention, (financial and moral) support and love of both parents represent a very complex issue and, maybe, the subject of some very extensive research.

This paper aims at a more modest goal, namely, to explain and describe the context in which the syndrome of parental alienation occurs, the fact that it should be differentiated from the parents' abandonment or neglect and how can a parent who is estranged from his/her minor child to combat this problem and have a satisfying emotional relationship with the child, even if he/she no longer forms a couple with the other parent.

The principle of child's best interests is enshrined in Article 263 of the Code of Civil Procedure. According to this, in the claims concerning children authorities must give all the necessary guidance for an amicable settlement of the situation, the settlement should take place within a reasonable time so as family relations not to be affected.

In the event of divorce, the guardianship court decides "on the relationships between divorced parents and their minor children, taking into account the *best interests of children*"⁹, the evidence presented in the case and parents' understanding.

The State, through the court, has a duty of care, that is "must act in a manner enabling those concerned to develop a normal family life and [...] affective relations."¹⁰ Article 8 of the European Convention on Human Rights regulates the right of each person to have a family life, meaning that the States have to ensure an optimum environment for relations among children and parents to run harmoniously. They are entitled to personal relations, correspondence, meetings, holidays together,

⁹ Civil Code, Article 396 par. (1).

¹⁰ Tomescu, Milena, *Role of the authorities in ensuring the right to personal relations between parents and children after the divorce*, „Judicial Courier”, no. 4/2011, p. 224.

etc. Any interference with the exercise of this right is permissible to the extent it aims at the child's best interests, national security, public safety, health protection, etc. Disturbing and restricting family relationships otherwise is strictly prohibited.

When the parent alienated from his/her minor child could not exercise his rights and his/her relationship with the minor is affected unjustly, he/she may address the court with a request for entrusting the child, establishing a visit schedule (in case it had not been previously established) or for changing minor's residence motivated by the fact that, through manipulation and with malice prepense, is prevented from meeting and communicating with the child, from having a natural relationship with his/her child. Also, if the rights to visit are not observed, the aggrieved parent may address the competent court. The court competent from territorial and material point of view will decide on the child domicile (with which of the parents is to live) and on the rights to visit. In this regard, it is mandatory to be carried out a social assistant report in the homes of both parents, and as a rule, the guardianship court will find a solution taking into account the best interests of the child. The Deontological Code for Judges and Prosecutors, provides, in Article 8, that magistrates "are obliged to respect the citizens' equality before the law, ensuring them a legal treatment without discrimination, to respect and protect the dignity, physical and moral integrity of all persons who participate, in any capacity, in the judicial proceedings"¹¹.

An example for this is Order No. 1929/2006 of the Court of Appeal from Bucharest, which concluded that it is in the minors' interest to be entrusted to their mother motivated by the fact that the father tried to estrange them from the mother, by denigrating her, which had the effect of "deformation of the image which children had about their own mother, proven by the children's persistence in rejecting her, even a vehemence to refuse the image of mother, with whom they did not have the chance to have natural relationships developed through mutual visits or by spending holidays together, despite the mother's efforts to execute the order by which the children were entrusted to her and to keep in touch with them in any way."¹²

The subject of our approach actually does not refer to the judicial proceedings for divorce or for establishing the minor's residence and the visit rights of the other parent, so that we will not detail these proceedings. We only mention that parents can also agree on these aspects in the amicable divorce at the notary, may also conclude a mediation agreement of which will be taken into account by the court vested with divorce, etc.

Parental alienation involves a conflict (more or less open or recognized) between the minor's parents. In this context, the affective, personal relations of alienated parent with minor child are seriously damaged. The State, through the court, has an obligation to remove and punish this abuse. Virtually, the alienated parent may require to be changed the minor's domicile or to be established visitation rights so as to be able to have satisfactory personal relationships with his/her child.

Claiming the existence of parental alienation needs to be proven. Practically, emotional abuse is more difficult to prove than physical abuse. For physical abuse there are certificates issued by forensic experts, testimonies, complaints to the police, etc. The traces of emotional abuse are harder to detect: anxiety, suicidal thoughts, behavioral disturbances, depression and, once observed, their cause needs also to be evidenced. In such a situation, the only method of proving parental alienation consists of a psychological expertise required by the party and agreed by the court.

Upon the proof acceptance, will be chosen randomly, according to the provisions of Article 331 of the Code of Civil Procedure, an expert psychologist from the list of experts and this will carry out the expert report. As regards the proof of parental alienation, the objectives of a judiciary psychological expertise may consist of: clarifying the existence of parental alienation syndrome to the minor concerned, manner of showing and severity of the emotional abuse caused, the way in which the abuse was committed and the possibility of healing the child, establishing the child's best interests. When receiving the address with the expertise report objectives, the psychologist will

¹¹ Deontological Code for Judges and Prosecutors, as subsequently amended and supplemented, the Judgment of SCM No. 328 / 24.08.2005, published in the Official Gazette Part I, No.815/8.09.2005.

¹² Terzea, Viorel, *The New Civil Code annotated with doctrine and jurisprudence*, IInd edition, Juridical Universe Publishing House, Bucharest, 2014, p. 246.

request documents and information concerning the minor and his/her family. The psychologist will invite all family members at his headquarters and, depending on the situation complexity, will determine how many meetings will be needed for drawing up the report.

The psychologist appointed by the Court will formulate his/her conclusions and recommendations only after, during several of meetings with the minor and his/her parents, has collected and processed information from them. During these meetings, the psychologist will collect relevant information, likely to lead to the formulation of correct and complete answers to the report objectives. It is important to mention that, at the psychologist, both parents' presence is mandatory so as to be finalized the expert report and to be treated the syndrome, when found its existence.

Contrary to other mental disorders and forms of emotional abuse, parental alienation can be treated in a rather short time. On average it takes about three months until the alienated parent can resume normal relations with his/her child. The psychological therapy can remove relatively easy both the negative effects of parental alienation, when parents understand their obligation to participate in the treatment, the way in which their behavior has affected the minor and that a relationship amicable and of mutual respect between them will ensure a harmonious emotional development of their child, despite the negative effects of separation.

The psychologist, as a professional, will know how to select from family members the information relevant for the minor's condition, will adequately manage the states of anger, frustration or shame of the parents, will directly observe the parent-child relationship and, perhaps most importantly, will "evaluate the potential of change of the identified problems"¹³ and will draw up a clear and balanced report that can be used by the court when the judge's decision is delivered and grounded.

Concerning the panel of judges, it will show objectivity, will hear the minor under the terms provided in Article 226 of the Criminal Procedure Code. It is important that the judge, going beyond the hearing solemnity, have a behavior human, parental or friendly with the minor whose case is called to resolve. It ran on the Internet this year, becoming viral the case of "judge with blue shoes", a magistrate who, with tenderness and a lot of tact, heard the minor who had been separated from his mother, when this decided the separation from her husband. Everyone who read the article was certainly excited, but the attitude of this judge was not extraordinary but absolutely normal, according to the rules of morality and law. This should be the manner to behave of each judge when having before a child, and perhaps many behave exactly in this way.

4. Conclusions

The idea is that a legal and equitable solution for removing parental alienation also involves to be taken into consideration the human beings whose relationships are at stake, the emotional pressures they are subjected to and the consequences that a solution or another will have on their lives.

Best interests of the children requires a careful and empathetic listening to them, inclination towards understanding the emotional side of life and understanding the consequences the emotional abuses committed against children have in their adult life. The emotionally abused child becomes an adult not-adapted to social life: sad, depressed, lonely, with behavior disturbances, etc. Believing that emotional abuse takes effect only upon his victim is an act of naivety. Emotional trauma is carried by the individual wherever he/she goes and will have effects on all people with whom he/she will relate: the couple partner, children, work colleagues, neighbors, etc. Finally, it will not be only the problem of the persons concerned, it will be our problem, of the whole community.

For all the reasons stated above, and for respecting the human being as a purpose in itself, it is necessary that social assistants, psychologists and magistrates being involved in a case of parental alienation or other type of physical or emotional abuse committed against a child, show understanding, firmness and empathy in the procedures and settlement of that abuse.

¹³ Luca, Cătălin, *The abused/neglected child's psychological expertise*, Hamangiu Publishing House, Bucharest, 2014, p. 179.

Bibliography

I. Treaties, monographs, specialized articles

1. Leș, Ioan, *New Code of Civil Procedure. Comment on articles*, C.H. Beck Publishing House, Bucharest, 2015
2. Luca, Cătălin, *The abused/neglected child's psychological expertise*, Hamangiu Publishing House, Bucharest, 2014.
3. Tomescu, Milena, *Role of the authorities in ensuring the right to personal relations between parents and children after the divorce*, Judicial Courier, No. 4/2011, p. 222-226.
4. Terzea Viorel, *The annotated new Civil Code*, Universul Juridic Publishing House, Bucharest, 2014.

II. Normative Acts

1. The European Convention on Human Rights, www.echr.coe.int/documents/convention_ron.pdf
2. United Nations Convention on the Rights of the Child, ratified by Law no. 18/1990, republished in the Official Gazette no. 314 of 13 June 2001.
3. Code of Conduct for Civil Servants, Law no. 7/2004 as amended and supplemented, republished in the Official Gazette, Part I no. 525 of 02.08.2007.
4. Code of Ethics for Judges and Prosecutors, as subsequently amended and supplemented, Judgment of the S.C.M. no. 328/24.08.2005, published in the Official Gazette Part I, no. 815 / 08.09.2005.
5. Criminal Code and Criminal Procedure Code, Hamangiu Publishing House, Eighth edition, Bucharest, 2016.
6. Law No. 272/2004 on the protection and furtherance of child rights with subsequent amendments and supplements published in the Official Gazette, Part I no. 159 of 5 March, 2014.