

Parental Alienation Syndrome during the Covid-19 Epidemic in the Republic of Slovenia

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Abstract

This year we are all experiencing health concerns due to the epidemic of the covid-19 infectious disease. We would all like to protect our health and the health of our families. We predominantly want this coronavirus gone and never to return. How can we do this best is what is discussed now all around the world. Even when the measures aimed at stemming the spread of this viral disease will be eased, the life of certain parents – separated from children – and their children will be far from normal. During the epidemic it is necessary to pay special attention to safeguarding and respect of family values. Family breakdown is unpleasant and stressful for all, spouses or partners and children which are often forgotten. It is considered that children will get used to the changed conditions because they are still young and do not understand relationships. However, this is not the case. Children desire quality contacts with both parents. After partners separate it is the most important for them to set boundaries in their partner relationship and focus all energy on the custody and care of their joint children. Normal psychophysical development of a child requires both parents, since otherwise it is possible to expect the parental alienation syndrome (PAS) to occur.

Keywords: parental alienation syndrome, custody and care of the child, child's interest, marriage, family law

Introduction

Parental alienation syndrome (PAS)² is a syndrome which quickly develops in families after parents separate and when the child rejects one of them without reasonable cause. The syndrome is usually expressed when a child spends majority of the time at one parent's house and develops excessive attachment to this parent. It is usually mothers who knowingly or unknowingly alienate the child from the father out of fear of losing the child after separation or because they want to get revenge or punish their partners³. The biggest damage in such cases is done to the child who requires both figures (i.e. father and mother) for a healthy psychophysical development and upbringing. Balanced contacts with both parents are in the child's best interest after separation. With the Family Code⁴, joint custody and care⁵ of the child (hereinafter referred to as DZ) became the first choice of the court and not just an option when courts decide on custody and contacts.

Alienation syndrome is an expression which is, more often than ever, recognized in cases including child disputes which worsened during the epidemic due to parents' personal distress. In cases where parents cannot agree on contacts with their children, the court decides, upon the proposal or on its own initiative, in accordance with Article 102 of the Non-contentious Civil Procedure Act (ZNP-1)⁶ and adopts a decision about the dynamics of the child's contacts with the parent with whom the child does not reside.

Contacts with parents are determined in Article 141 of DZ which defines that the child has the right of access to both parents and both parents have the right of access to their child. Contacts ensure child's interests and are the basic principle for their enforcement. When contacts contradict with child's interests, the child's interests prevail over the parents' right of contact with the child.

When the child is unwilling to go to another parent voluntarily, clinical psychologists or psychiatrists are engaged to determine the cause of reluctance if the parents and the supporting decision-making authorities (Social Services Centre and Courts) agree. The child alienates from the absent parent because of the other parent's conscious or unconscious behaviour. In certain cases, individual parent's behaviour is obvious and deliberate. There are also cases where individual parent's behaviour is unintentional and subconscious. There are only a limited number of approaches which the court can use when faced with the PAS syndrome.

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² PAS – parental alienation syndrome

³Ganc, D.: Izziviočetovstvapoločitvi, DružinskiinstitutZaupanje, Sevnica 2015, page10.

⁴Official Gazette of the Republic of Slovenia, No.15/17 et seq.

⁵Article 138 of DZ

⁶Official Gazette of the Republic of Slovenia, No. 16/19

Upon an individual parent's proposal (usually the alienated parent) the court may adopt a temporary decision about the arrangement of contacts and grant the custody of the child to the absent or alienated parent as a measure of last resort. On the basis of the first and third paragraph of Article 102 in relation with Article 100 of ZNP-1 the court may, in case of proceedings concerning family disputes and disputes arising from relationships between parents and children, upon the proposal of the client or on its own initiative adopt temporary decisions regarding custody and maintenance of joint children as well as temporary decisions regarding withdrawal or restriction of the right of contact or regarding the contact enforcement method. DZ grants the court general authorization for the adoption of the temporary decision which it considers to be the most effective for the protection of the child's best interests. When adopting the decision, the court must consider the principle of the least onerous measure⁷. When selecting the measure, the court must take into account the restrictions of imposing measures where the parental care will be limited as little as possible and impose a measure where the child is not taken from the parents.⁸ Child's interests represent the guideline in such decision-making. Temporary decisions in family matters are intended to temporarily settle the exceptional situation where the child's position is endangered to such extent that it is impossible to wait for the proceeding to end and for the court's decision to become final. In such cases, the adoption of a temporary decision is limited to emergency exceptional cases where severe irreparable damage or violence could occur. A temporary decision regarding the arrangement of contacts is only adopted if the proposer is able to show that the child's situation is endangered to the extent where it is necessary to arrange child's contacts before taking of evidence can begin and before the substantive decision of the court is adopted. The court adopts a temporary decision when it is substantiated that the child is endangered (Article 161 of DZ). Endangerment of the child therefore represents the assumption which has to be substantiated in order for the court to adopt a temporary decision on its own initiative or upon the proposal of the participant. Adoption of the temporary regulatory decision regarding contacts is a measure adopted by the court only in cases where the court determines that the child would suffer irreparable or disproportionately irreparable damage if a temporary decision is not adopted.

Pursuant to the first paragraph of Article 96 of ZNP-1, the court, in the proceeding regarding the protection of child's interests, invites the Social Services Centre to appropriately notify the child, who is capable of understanding the importance of the proceeding and the consequences of the decision, about the opening of the proceeding about his right to express opinion. During the proceeding, I believe that it is mandatory to obtain the child's opinion about the issue providing him with an insight into the content of his interest in the same manner as this was provided for in the repealed Article 410 of the Contentious Civil Procedure Act (ZPP)⁹. Article 12 of the United Nations Convention on the Rights of the Child sets the child's right to express his opinion as one of the most important child's rights. On the basis of the indicated substantive provisions it is necessary to treat the child during the proceedings as a subject, which implies in particular that it is necessary to allow the children who are, taking into account their age and maturity level, able to understand the circumstances and independently express their will to actually do so. However, it is not necessary to fully consider the child's opinion, but it is necessary to take a position on this opinion.

When deciding on the child's contacts with parents it is therefore necessary to take into account the child's statement and to assess it in the light of child's interests and to achieve a fair balance between the interests of the child and the interests of parents.¹⁰

Resolution of the alienation of the child from the parent often includes psychological therapy for parents, entire family and the child, usually with clinical psychologists or psychiatrists, provided that the parent with whom the child resides stops all actions contributing to the child's negative attitude towards the other parent. Parents should be aware that their children have the right to preserve their relations with both parents if this is safe and in the child's interest.

What children want and need the most is to preserve healthy and stable relations with both parents and protection from parents' conflicts. The parent with whom the child resides should endeavour and try to make his child spend the time normally and have quality contacts with the other parent. Aggravation and obstruction of contacts occurs whenever a parent with whom the child resides overreacts in saying goodbye and loudly asks: »Do you really have to go. Will you be able to manage without me«? We talk about aggravation of contacts also in case of hostile behaviour of one parent towards the other in the presence of the child where the other parent is disdained or where one parent pretends that the other was never a part of their life together. Such behaviour is passed to the child who internalizes it, especially during the first years of his life, since he might start treating the absent parent with hostility and contempt.

⁷Article 156 of DZ.

⁸Čujovič, M.: Načelonajmilejšegaukrepa in: Komentar Družinskegazonika (2019), page. 484.

⁹Official Gazette of the Republic of Slovenia, No. 26/99et seq.

¹⁰Decision by the Higher Court in Maribor, Case No..III Cp 868/2017, Oct. 9, 2017

Decision-making about individual parent's contacts with the child is predominantly focused on pursuing and exercising the child's interests in order to ensure that the child preserves the sense of emotional attachment and mutual affinity to the parent with whom the child does not reside. Contacts also help parents fulfil their emotional needs and acquaint themselves with the child's physical and psychological development, because they can see and speak with the child and participate in his upbringing. When exercising the parental right, the interests of the child and the parent are generally inseparable and inextricably linked, however, when they contradict it is necessary to establish an appropriate balance between the child and the parent. Objectively, contacts of the child with the parent are undoubtedly important and necessary. In its decision IV Cp 2047/2015, from July 22, 2015, the Higher Court in Ljubljana decided that restriction of contacts cannot be based on a complaint that the father does not honour all agreements and that the child's grandmother is inappropriately included in the child's upbringing. In this case, the court did not detect any clue that the father would pose a threat to the child.

Joint custody and care of the child

Pursuant to the previous Marriage and Family Relations Act (ZZZZDR) it was possible to confine the child into joint custody and care only based on the agreement between the parents, however, DZ leaves the decision on joint custody and care of the child to the court if this court determines that such a decision is in the child's best interest.¹¹ The child's best interest is the most important interpretative principle arising from Article 3 of the United Nations Convention on the Rights of the Child¹² and Article 7 of DZ. Child's interest is the primary consideration in all activities related to children, regardless of whether they are carried out by private or public social service institutions, courts, administrative authorities or legislative bodies. In the assessment of children's best interests, also in terms of trusting in the custody and care of the child, it is important to build on their current position, situation, health condition, emotional stability, age, their needs, relations they have with others, their past and their interests, and above all, to consider their future and upcoming autonomy.

Joint custody is the primary principle for all decisions adopted by the court. Joint custody and care of the child is a constitutional right and the developmentally-psychologically most appropriate solution for the child who preserves an intensive and extensive contact with both parents. Joint custody is supposed to make the separation easier for the child and the parents, because the child symbolically keeps both parents and no one loses anyone. Joint custody and care can only work if parents are able to forget their negative emotions from their partnership and to put the child's best interests at the heart of their actions. Both parents should be aware that custody and care are two of the key elements of parental care. In custody and care of the child, both parents are equivalent and equal. When or until the parents live together, joint custody and care for the joint children are something natural and obvious. When parents separate, it is in the child's best interest that parents make an agreement about custody and care, which is why Article 138 of DZ directs parents to conclude such an agreement. The fundamental starting point is that it is in the child's interest that custody and care remain the same as when the parents were still together, which is why joint custody and care represents the basic and primary solution.

Child's interests and the expediency of exposing the child to coronavirus

A final judicial ruling on the contacts between the child and the parent with whom the child does not reside is also valid during the epidemic; however, this raises a legitimate question regarding the child's interests and the expediency of the potential exposure of the child to the coronavirus infection. It is reasonable and in child's best interest that the child has contacts with the parent with whom he does not reside via telephone, computer or video conference. When parents provide an appropriate explanation, children understand the circumstances we are living in during the epidemic. From a legal standpoint, physical contacts of the child with the parent with whom the child is not residing are not explicitly prohibited. During the first wave of the epidemic in April, the Supreme Court of the Republic of Slovenia warned that contacts between parents and children that do not reside in the same municipality are possible, because the published opinion of the Ministry of the Interior says that prohibition of movement outside permanent or temporary residence does not apply to maintenance of contacts between parents and children defined by a court settlement or decision¹³. The Supreme Court appealed to parents that it would be in the best interest of children if the parents developed an agreement on the enforcement of contacts taking into account all adopted national measures aimed at stemming the spread of the virus. The court would only have to decide if parents could not reach such an agreement. Measures aimed at stemming the spread of the coronavirus infection, which are obviously necessary, resulted in an increasing number of cases of children alienated from parents which will realistically be revealed only after the epidemic ends. Neither DZ nor ZNP-1 regulates enforcement of contacts in extraordinary circumstances. In such circumstances, the parents are obliged to reach agreements regarding the enforcement of contacts considering the child's best interests.

¹¹ Article 138 of DZ

¹² Official Gazette of SFRY - MP, No.15/90 and Official Gazette of the Republic of Slovenia - MP, No. 9/92

¹³ Izvajanje med starši in otroki v času epidemije, URL: <http://www.sodisce.si/vsrs/objave/2020040610490634/>, November 23, 2020

When parents cannot reach an agreement on the enforcement of contacts during the epidemic, they can file an application at the competent District Court for interim measures during the epidemic which would regulate enforcement of contacts in a different manner than stated in the final judicial ruling, court settlement or temporary decision. A temporary decision may be issued for the purpose of prohibiting contacts with the child because of the danger of infection or because the other parent unjustifiably prohibits contacts due to the danger of infection. In the case of an application for interim measures, the court shall consider all circumstances of the specific case and examine what is in the child's best interest.

In normal times, it is difficult to manage child's contacts with parents due to the circumstances arising from conflicts and discord between the parents. The global epidemic was not a circumstance we were prepared for and is not a one-off event because it is a state of continuance. The question we have to ask ourselves now, when we have to deal with this reality, is: How can we manage the time of the contact with the child while simultaneously not alienating the other parent or alienating ourselves from the child?

During the epidemic, children should not be without any contact with the other parent which they would be in contact with otherwise. The duty of the parent with whom the child resides during the epidemic is to try to help the child preserve and develop an appropriate relationship also with the other parent. The only difference is that such a relationship can be maintained during the epidemic through electrical communication and not physical contact.

Alienation of the child from the other parent only gives the manipulative parent short-term satisfaction, because the consequences of such manipulation and indoctrination reflect in the child's low educational achievements and, what is even worse, in long-term problems in terms of the child's social development and various behavioural problems¹⁴.

Alienation of the child from parents can happen when a child is psychologically manipulated with by one parent against the other. If children are sometimes exposed to family violence and severe conflicts between parents, they identify themselves with one of the parents and often express unwillingness to spend time with the other parent. This can happen when a child's defensive mechanism is triggered to avoid further conflict in the family.

The PAS syndrome has a special importance in family law. It is more than a simple intervention in the prevention of contacts or visits of the separated parent or his immediate family. Alienation of the child from the parent includes programming of the child by one of the parents whose intention is to make the other parent look bad with the purpose of undermining the child's relationship with that parent. The main manifestation of such parent is aspiration to slander the other parent, which is an unjustified effort. It arises from a combination of the child's programming (brainwashing), parental indoctrination and child's own contribution to slandering the other parent¹⁵. Psychiatrist Richard A. Gardner developed the concept of the parental alienation syndrome more than 20 years ago and defined it as a disorder arising especially within the framework of conflicts regarding custody.

Consequences of the PAS syndrome

One of the main characteristics of the PAS syndrome is that the child is a victim who is not only hostile towards the other parent, but also to the wider environment, former friends and other relatives. The reasons for rejection, which the child indicates, are mundane or unjustified, because they do not arise from the child, but from the alienating parent. First paragraph of Article 19 of the United Nations Convention on the Rights of the Child obliges the country to implement the appropriate legislative, administrative, social and educational measures in order to protect the child in custody of parents against all forms of physical or mental violence and trauma, abuse, neglect or negligent conduct, torture or exploitation, including sexual abuse. To protect the child's interest, the court may in severe cases adopt a temporary decision¹⁶ Child's interest is the guiding principle in decision-making about temporary decisions regarding relations between parents and children. The court adopts such a decision when it determines that the absence of a temporary decision would result in irreparable or disproportionately irreparable damage to the child¹⁷ Manipulative actions of parents put the child in the "crossfire" position. On one hand, it is forced to consider the alienated parent as completely bad, whilst on the other, it must consider the alienating parent as good. The child is not given an option of assessment in order to feel the same towards both parents, because he is psychologically and physically forced to deny a part of himself – mother or father – whereby in most cases of parental alienation the alienating parent is the mother¹⁸ who is granted custody and care of the child, whilst the helpless father plays the opposite role.

¹⁴Štadler, A., Starič Žikič, N., Borucky, V., Križan Lipnik, A., Černetič, M., Perpar, I. and Valenčak, K.:Otrok in ločitev staršev:da bi odrasli lažje razumeli otroke.Ljubljana:Otroci, 2009, page 39

¹⁵Gardner, R. A.:Parental Alienation Syndrome vs.Parental Alienation:Which Diagnosis Should Evaluators Use in Child-Custody Disputes?, Published in:The American Journal of Family Therapy, 30(2), 2002, page 93-115

¹⁶Decision by the Higher Court in Ljubljana, No.IV Cp 508/2020, from March 30, 2020

¹⁷Decision by the Higher Court in Maribor, No.III Cp 648/2020, from September 22, 2020

¹⁸Ganc, D.:Izzivi očetovstva po ločitvi, Družinski institut Zaupanje, Sevnica 2015, page 13.

A child, who is temporarily or permanently deprived of his family environment or whose interests do not allow him to stay in such an environment, has the right to special protection and help¹⁹Parental manipulations can lead to the point that the child joins the manipulator and actively participates in the boycott and hostile campaign, in offending, abusing and humiliating the other parent and relatives without feeling guilty. This is the first sign of alienation: The child consistently speaks negatively about one parent, whilst worshipping the other²⁰

Characteristics of the PAS syndrome²¹:

- The child expresses firm hatred or contempt towards the target parent without remorse;
- The child will base his hatred on unreasoned and mundane reasons and not on his personal experience;
- The child will reject contacts with the target parent;
- In his eyes, the child will see the “favourite” honest and good parent on one side, and the “unpleasant” bad parent on the opposite side;
- The child will copy the alienator’s behaviour, his opinion and actions;
- The child will insist that he developed hatred towards the parent on his own and that he was not encouraged by anyone;
- The child will also reject other relatives from the family of the hated parent.

Route to resolution

Parents should understand the dynamics of the problem in the very early stage in order to act on time and to prevent the situation to become too serious. If a parent believes that the other parent is alienating the child, he must become more attentive and initiate a proceeding with the Social Services Centre and later with the court. He must preserve regular and consistent contacts with the child since the alienator manipulates with the child with ultimate sentences: “Are you with me or against me?!” If the child turns against this parent, he risks being rejected. The target parent should not eliminate himself from the child’s life and must, if this is possible, spend as much time as possible with the child in a positive spirit, without conflicts and should not take rejection personally and to heart. After all, the child feels safer in the relationship with the alienated parent because he is not in situation where he is forced to choose²²

Alienation is an emotional challenge for all the involved, especially for the child and the alienated parent. The route to improvement is demanding, since it requires a lot of patience, tolerance and perseverance. Without professional help and counselling by experts in the field of clinical psychology and, in severe cases, psychiatrists, it is almost impossible to find a solution. Therapies and counselling are helpful, however, not necessarily effective. The precondition for their effectiveness is the adopted judicial ruling. The pressure of the alienator on the child usually increases when the therapy is introduced. Sabotage of the alienated parent also increases or even affects the child’s claims in front of the professional worker. It is the best if the victim of alienation seeks help of the solicitor specialised in family law to initiate legal proceedings on his behalf. If it can be proved by means of probability that the endangerment of the child is so severe that his interests can only be protected with an immediate removal of the child from the parents, the Social Services Centre removes such a child and entrusts him to another person, crisis centre, foster care or institution before the court decides on the proposal for the adoption of a temporary decision²³. The manipulating parent actually cannot be forced in any other way to honour the agreement arranging mutual contacts and custody and care of the child after the separation. We believe that, during and after the separation procedure, parents should be more aware of the consequences the child is facing and to demarcate the concept of partnership which separates from parenthood with the divorce or separation, since both parents will remain parents to their joint children their entire life. Parents should resolve conflicts and discord in the absence of the child and strive for good interaction. In some relations between the parents and the child it can take years before the results of decisions and the invested effort can be seen. It is a fact that the parent is important for the child who requires both parents for his psychophysical development: mother and father.

Conclusion

Every third marriage in the Republic of Slovenia ends in divorce. In 2019, there were 6,672 marriages and 2,476 divorces. Compared to 2018, the number of marriages decreased by 8% and the number of divorces increased by 5.5%.

¹⁹S. Bruch, C.: Parental alienation syndrome: Junk science, C. in child custody determinations, 3 European J. L. Reform 383, 2001, page 528, 529.

²⁰Idem, page 530

²¹Kruk, E.: The Impact of Parental Alienation on Children, URL: <https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201304/the-impact-parental-alienation-children?page=2>, November 22, 2020

²²S. Bruch, C, 2001, page 536

²³ First paragraph of Article 167 of DZ

The average age of men divorcing was 46.8 years, whilst the average age of women divorcing was 43.9 years. Marriages of these persons lasted 14.3 years on average. 40 marriages ended in divorce in the first year of marriage²⁴ Emancipation of women, free will and the changed economic conditions remain the main reasons why most of the couples decide to divorce and live separately and not to continue in unhappy marriages. We live in a society where there is an emphasis on rights and where duties, especially parental duties, are often disregarded reflecting in conflicts regarding contacts with children where strong emotions and tensions between partners can result in alienation of the child from the other parent. Regardless of their age, children suffer the most when parents divorce, since this period is very stressful for them. Children are involved in conflicts, negotiations and often witness verbal and physical violence. Some of the parents directly or indirectly demand from the children to side with them, thereby putting the child in the position opposing the parent which he considered the closest not long ago and felt dependent on. The American child psychiatrist Richard A. Gardner was the first to thoroughly study parental alienation. His theory is, however, not recognized in the Republic of Slovenia, but nevertheless provides a good insight into the dynamics of parental alienation. Alienation has lifelong consequences for the child because he is growing up in an environment full of hate, distress and deprivation. He is deprived of loving moments with the parent and often with the extended family of this parent from whom he was alienated. Regardless of the fact that the courts in the Republic of Slovenia still do not recognize this syndrome in the true sense of the term and that when searching for the term parental alienation or PAS syndrome I could not find many hits in the Slovenian case-law search engine (<https://www.iusinfo.si>), there are countless abuses of arranging contacts between the separated parents and their children. The authorities are of key importance in exercising the child's interests: Social Services Centre and the court should be familiar with the problem and should immediately react when the slightest abuse of child's interests occurs, however, this is unfortunately not the case in real life.

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²⁴Data valid for 2019:Republic of Slovenia, SURS, Marriages and divorces, Slovenia, 2019,
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