The ECtHR's Interpretation of 'Democratic Necessity' When Assessing Domestic Court Interventions in Cases of Parental Alienation and Contact Denial

Sylvana Brannon, LL.B., Dip.L.P., B.Sc., B.A.(SMU)

Dissertation submitted in partial fulfilment of the
Master of Advocacy (Preparatory Programme)

Faculty of Laws

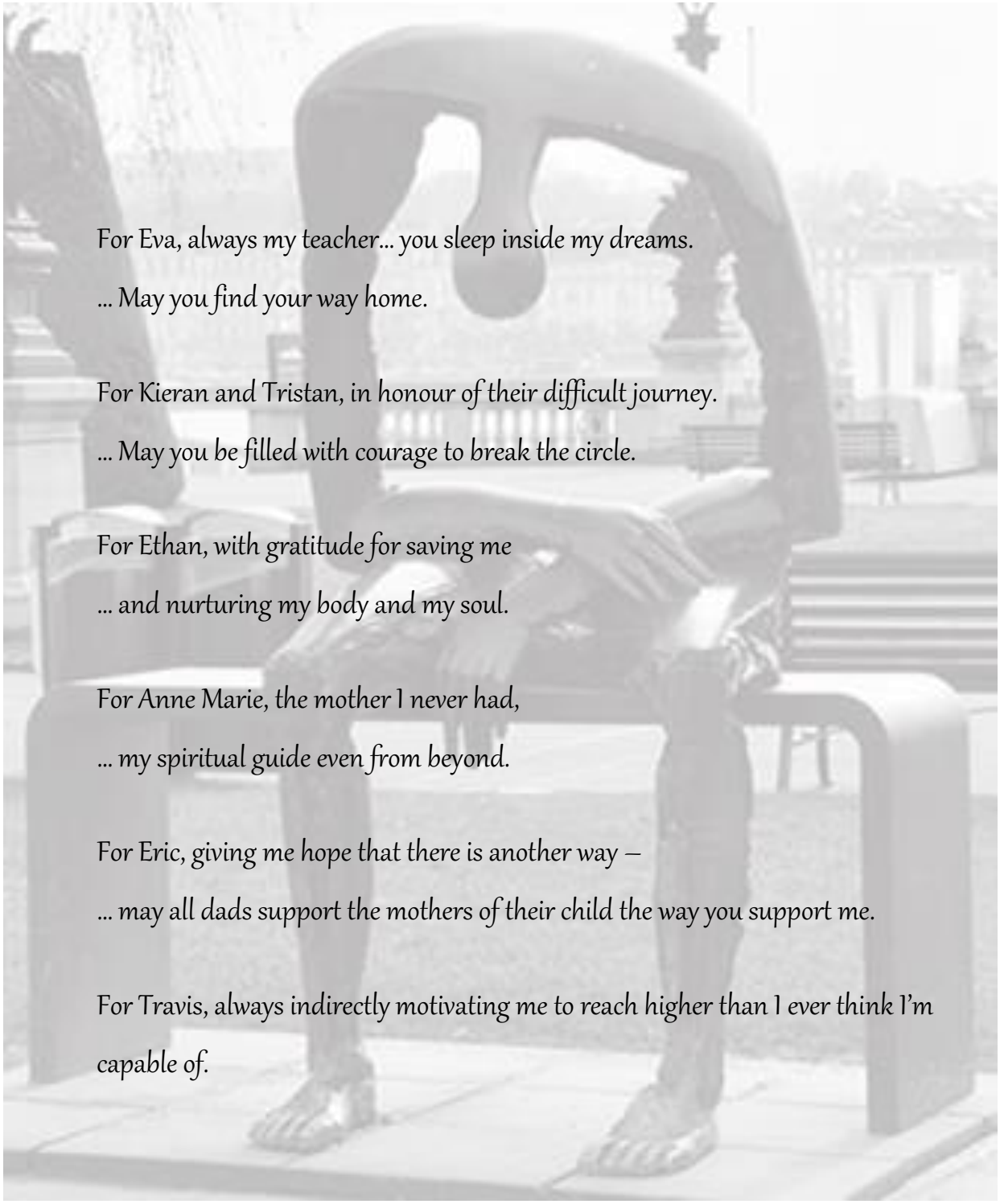
University of Malta

May 2021

ABSTRACT

When cases of parental alienation and contact denial reach the European Court of Human Rights seeking a remedy for a violation of the applicants' rights as protected by Art 8 of the European Convention of Human Rights, namely the right to respect for family life, the domestic authorities frequently attempt to justify their interference with this right by invoking the democratic necessity of the impugned measure. This study analyses the principles applied by the European Court of Human Rights in these cases, in its interpretation of 'necessary in a democratic society'. The margin of appreciation accorded to national authorities in cases where a child and parent are being denied the right to mutual enjoyment of each other's company – which constitutes a fundamental element of family life – is narrow, and decisions taken by the authorities in these cases are subject to a higher intensity of review. Particular diligence should be applied by national authorities when interpreting an alienated child's expressed wishes, as these could be a reflection of the alienating parent's voice. Cases of parental alienation and contact denial should be dealt with swiftly by courts if damage to the parent-child bond is to be mitigated, with as little procedural delay as possible and a decisive enforcement of court orders. Transfer of the alienated child's residence to the targeted parent offers the best outcomes in severe cases of parental alienation, and waiting for the situation to resolve spontaneously is never successful. A number of reforms for Malta's Family Court are recommended, which do not require the time-consuming implementation of new laws but rather the better application of existing provisions with minor amendments. The approach proposed incorporates principles of judicial continuity, organised case management and a focused case strategy which, if applied, would contribute to a reduction in unnecessary delays and thus bring Malta in line with its obligations under Art 8.

(Keywords: parental alienation; contact denial; necessary in a democratic society; right to respect for family life; family court reforms)



For Eva, always my teacher... you sleep inside my dreams.

... May you find your way home.

For Kieran and Tristan, in honour of their difficult journey.

... May you be filled with courage to break the circle.

For Ethan, with gratitude for saving me

... and nurturing my body and my soul.

For Anne Marie, the mother I never had,

... my spiritual guide even from beyond.

For Eric, giving me hope that there is another way –

... may all dads support the mothers of their child the way you support me.

For Travis, always indirectly motivating me to reach higher than I ever think I'm capable of.

ACKNOWLEDGEMENTS

Had I not been blessed with support, I would have given up this journey years ago. First and foremost, and with more gratitude than words can adequately express, I thank my supervisor **Judge Silvio Meli**. Even on the days where I lost track of time and contacted him for feedback at odd hours, he was always available with contributions that improved my perspective and helped me get back on track.

Thanks are also due to **Dr Tonio Azzopardi** for his valuable feedback and support. It is rare to encounter such humanity and humility in a lawyer; I intend to honour him by carrying the values he has instilled in me throughout my career.

Many tears and laughs were shared with my colleagues Annalise Bondin, Kim Busuttil, Liselle Cassar, Caroline Catania Cassar, Nadia Ciappara, Charmaine Muscat and Doreen Parnis – thank you, and may the friendship we forged over these four years carry us through more challenges in the future.

My sister Josephine Cassar was always ready with encouraging words and goodies, and patiently putting up with my monologues, as I shared my ideas with her. Much appreciation also goes toward Charlot Cassar, with whom I started along this path, and who has remained my True North through all the bumps.

Finally, I must acknowledge the pain of all those mothers and fathers, from Malta and beyond, who shared their stories of loss with me – heartbreaking stories about missing their children's first steps, first words, first haircut, first days of school, first school concert, first bra, first period, first beer, first boy/girlfriend, first driving lesson, first hangover, first suit, graduations, mother's days, father's days, exams, birthdays, grandchildren, weddings, and even death. Indeed, the pain of losing a child while she is still alive is likely greater than that of the death of a child, for in parental alienation, one cannot bury the child, grieve, and move on. It is a scourge, and one that society in general, and the Courts and support services in particular, ought to put greater effort into eradicating.

TABLE OF CONTENTS

TABLE OF CASES

European Court of Human Rights

Pisică v the Republic of Moldova, no 23641/17, 29 October 2019
Sahin v Germany [GC], no 30943/96, ECHR 2003-VIII
Salgueiro da Silva Mouta v Portugal, no. 33290/96, ECHR 1999-IX
Silver and Others v the United Kingdom, 25 March 1983, Series A no 61
Sommerfeld v Germany [GC], no 31871/96, ECHR 2003-VIII (extracts)
Strand Lobben and Others v Norway [GC], no 37283/13, 10 September 2019
Süß v Germany, no 40324/98, 10 November 2005
The Sunday Times v the United Kingdom (no 1), 26 April 1979, Series A no 30
Vocaturo v Italy, 24 May 1991, Series A no 206-C
Zavřel v the Czech Republic, no 14044/05, 18 January 2007
Zawadka v Poland, no 48542/99, 23 June 2005

TABLE OF STATUTES

Criminal Code, Chapter 9 of the Laws of Malta
Civil Code, Chapter 16 of the Laws of Malta
Education Act, Chapter 327 of the Laws of Malta
Gender Based Violence and Domestic Violence Act, Chapter 581 of the Laws of Malta
The Civil Court (Family Section), The First Hall of The Civil Court and The Court Of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations, S.L.12.20

TABLE OF INTERNATIONAL INSTRUMENTS

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 005 (1950) (*European Convention on Human Rights*)

Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS 210 (2014) ((*Istanbul Convention*)

LIST OF ABBREVIATIONS

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
PA	Parental alienation

They fuck you up, your mum and dad.
    They may not mean to, but they do.
They fill you with the faults they had
    And add some extra, just for you.

But they were fucked up in their turn
    By fools in old-style hats and coats,
Who half the time were soppy-stern
    And half at one another's throats.

Man hands on misery to man.
    It deepens like a coastal shelf.
Get out as early as you can,
    And don't have any kids yourself.

Philip Larkin,
"This Be the Verse" from *Collected Poems*.

INTRODUCTION

In an ideal world, separating parents recognise the value that each of them brings to the life of their child, irrespective of the differences between them. They would agree to co-parent in the best interests of the children and ensure that they minimise any trauma their children might already be experiencing because of their separation. However, custody and contact of children is the most aggressively debated issue in the Family Court to the point where, regrettably, children are used as weapons by one of the parents who obstructs their contact with the other parent. Unless tackled in a timely and effective manner, this can result in a *parentectomy*, where the child-parent relationship completely breaks down and the other parent is completely erased from the child's life.

A parent's psychological manipulation of a child which results in that child's unjustified resistance or hostility towards the other previously loved parent is termed *parental alienation*. **Chapter 1** gives a brief overview of this phenomenon, and explains why it begs for urgent and decisive action by the Courts.

When contact denial and parental alienation cases are insufficiently addressed in the domestic courts, victims may seek a remedy from the European Court of Human Rights (ECtHR), frequently invoking Arts 6, 8 and 13. Art 8 in particular protects an individual from arbitrary interference by a public authority with his/her right to respect for family life. An interference is not justified unless it has a legitimate aim, is made in accordance with the law, and is *necessary in a democratic society*. While the first two points are rarely disputed by the parties, the State often puts forward the third to defend the impugned measure. **Chapter 2** analyses the principles applied by the ECtHR when interpreting the doctrine of democratic necessity to cases of contact denial and parental alienation.

Chapter 3 zooms into those cases that reached the ECtHR specifically mentioning 'parental alienation', highlighting where and how the term was used and addressed by the parties, domestic authorities, and the ECtHR.

This study culminates in **Chapter 4** with an analysis of the current shortcomings in Malta's Family Court when compared with the expectations of the ECtHR with respect to the doctrine of democratic necessity, followed by a set of recommendations for *reform of the Family Court* that can be implemented easily and without requiring major changes in the law.

Methodology and Literature Review

Research for this study was carried out over a period of five years and consisted of a careful reading of numerous academic peer-reviewed papers addressing the psychological, sociological, medical and legal aspects of parental alienation. A quantity of the legal research on this subject focuses on different jurisdictions and their various shortcomings. No study was encountered where one delves deeply into the European Court decisions and how they affect and influence domestic authorities.

The focus of this study was on the legal aspect, specifically on an analysis of how the ECtHR addresses cases of parental alienation within the context of Art 8. To extract relevant judgments, a search on HUDOC was conducted in all document collections using the text search terms "parental alienation", "parent alienation" and "alienation" combined with filters for 'Art 8 – Respect for family life' admissibility. This resulted in an output of 35 judgments, some of which were grouped together by the Court and analysed in one judgment. Cases where the contact was stopped by the domestic authorities via, for example, care orders, were also excluded from the analysis since the focus is on cases where contact is obstructed by one of the parents.

CHAPTER 1:
PARENTAL ALIENATION – 'A ROSE BY ANY OTHER NAME'[1]

Difficulties in a child-parent relationship are common in all families, whether the parents are living together or not. Children frequently take advantage of their parents' disagreements, using one parent against the other to get their way. Most parents are aware of these tactics and will not take the bait. However, in certain situations it is a parent who instigates a child to reject the other parent, creating in the child an ally against the other parent.

A detailed overview of parental alienation (PA) has already been given elsewhere[2]. Scholars disagree about the labels applied to this phenomenon, and professionals can get caught up in whether it should be called parental alienation, parental alienation syndrome, hostile-aggressive parenting, maladaptive gatekeeping, brainwashing, intractable contact, programming and so on. Whether one is focusing on the tactics used by the parent causing the behaviour in the child, or on the behaviour of the child, or on the psychological and emotional manifestations in the child, or linguistics, what is relevant for the purposes of protecting a child's emotional and psychological integrity and hence the best interest, is the outcome. It is common knowledge that the behaviour as described is a form of emotional abuse, and protective action must be taken no matter if it is a syndrome, condition or behaviour.

PA is the psychological manipulation by a parent, resulting in a child developing unjustified resistance or hostility towards the other previously loved parent. The manipulation of the child does not even need to be malicious or deliberate for the damage to the parent-child relationship to be done. It is the process and the end-result that matter.

To achieve this, the parent could be portraying the other parent negatively to the child, suggesting (directly or indirectly, through words or actions, to the child or around the child) that the other parent does not love the child or never wanted her,

[1] William Shakespeare, *Romeo and Juliet* Act II Scene II
[2] Amy Zahra, 'The Fundamental Human Right to Respect Family Life: Parental Alienation Syndrome (PAS)' (LL.B. (Hons.) term paper, University of Malta 2020)

contacting the child continuously while with the other parent and thus sending the message that the other parent is not safe or reliable, and making unfounded allegations or insinuations about the other parent.

Once alienation is allowed to fester it reaches a severe status, where the child is completely and seemingly of her own volition refusing contact with the target parent. At this point, the demands placed on the Court will be exceptional, and the challenges much more difficult to surmount. The more distant the relationship between the child and the rejected parent becomes, the more powerless the Court, and thus the greater the breach of rights of parent and child. All of this could be avoided if, when faced with such cases, the Court resists the urge to find 'easy' solutions to short-term problems, and focuses instead on the long-term benefits. Short-term solutions are invariably always ineffective, whereas the Court should be searching for solutions that are effective in the long term and that respect the Rule of Law.

Sadly, Court judgments in this area of family law read like a post-mortem report of a destroyed parent-child relationship. Any remedy given by the Court at that point can never make up for the pain resulting from the often Court-enabled *parentectomy*, or for the lost experiences missed by both parent and child of enjoying each other's company and sharing in each other's lives. This is why early and effective Court intervention is crucial.

A child that is exposed to PA suffers various negative outcomes[3], and thus in a situation of PA the Court has an obligation to respond swiftly and resolutely, with exceptional diligence, taking whatever effective measures need to be taken. Choosing the remedy of least resistance might be easier for the Court and less stressful for the child in the short term, but it offers no long-term solution and in reality achieves nothing but a reinforcement of the position of the alienating parent at the expense of the rights of the target parent and victim child. Furthermore, it will likely result in contact failure, making the next attempt at intervention even harder. The Court, after

[3] Amy J. L. Baker and Naomi Ben-Ami. 'To Turn a Child Against a Parent Is To Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being' (2011) 52(7) Journal of Divorce & Remarriage 472

all, does not simply have the responsibility to provide remedies when human rights are breached, but it has rather a positive obligation to do all it can to uphold the child's and parent's right to respect for family life before it is breached.

Being cautious when faced with cases involving PA is a disservice to all the parties involved and to society at large, for children who are victims of PA are victims of child abuse who will carry the trauma with them into their future. Appropriate action should be taken at the first signs of alienation, without waiting for serious, irreparable harm to be done.

CHAPTER 2:
'DEMOCRATIC NECESSITY' UNDER ART 8 OF THE ECHR

Art 8 of the European Convention on Human Rights (ECHR) states:

> Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Art 8 is a qualified right – the rights contained in the first paragraph may be interfered with on the basis of the justified limitations in the second paragraph.

The State's primary obligation under Art 8 is not to interfere with the rights in the first paragraph. However, the Article additionally imposes positive obligations in taking steps to ensure protection of those rights against interferences by another individual[4].

2.1 The ECtHR's approach to Art 8

When assessing an application invoking a breach of the rights inherent in Art 8, the ECtHR follows the approach outlined below:

1. **Can the applicant claim that the right under Art 8(1) is engaged?**
   The Court considers whether 'family life', 'private life', 'home' or 'correspondence' exists within the meaning of Art 8 in the particular case.
2. **Has there been an interference with the applicant's rights?**
   This is rarely disputed by the domestic authorities.
3. **Was the interference with the right permissible under Art 8(2)?**
   The Court considers the domestic and international laws applicable.
4. **Was the interference made 'in accordance with the law'?**

[4] *MC v Bulgaria*, no 39272/98, § 153, ECHR 2003-XII

The legal basis for any interference must be easily accessible and precise enough to enable an individual to regulate his/her conduct. A person 'must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'[5]. This does not only require a specific legal rule that allows the interference, but also an analysis of the actual quality of the legal provision[6]. The scope of such discretion should also be clear[7].

5. **Did the interference pursue one of the legitimate aims set out in Art 8(2)?**
   The aims are listed in the second paragraph of Art 8. The onus is on the State to prove that the particular aim raised in defence of the interference was being pursued by the measure impugned. In many cases, this is not disputed by the parties and the Court rarely finds that an interference did not comply with one of the aims in the second paragraph.
6. **Was the interference 'necessary in a democratic society'?**
   'Necessary' requires the existence of a 'pressing social need' and that the interference is proportionate to the legitimate aim pursued[8]. When assessing proportionality, the Court takes into consideration whether:
   i. an alternative means of protecting the relevant public interest was available, which did not involve an interference or which involved less intrusive means;
   ii. the reasons adduced for the interference are 'relevant' and 'sufficient' to justify it;
   iii. the decision-making process leading to the impugned measure was fair;
   iv. effective controls on the impugned measures were in place.

2.2 The principles applied by the ECtHR when interpreting 'democratic necessity' in contact denial and parental alienation

The principles underlying ECtHR case law addressing denial of contact can be summarised as follows:

[5] The Sunday Times *v the United Kingdom (no 1)*, 26 April 1979, § 49, Series A no 30
[6] *Oleksandr Volkov v Ukraine*, no 21722/11, ECHR 2013
[7] *Silver and Others v the United Kingdom*, 25 March 1983, §§ 88-9, Series A no 61
[8] *Kutzner v Germany*, no 46544/99, § 81, ECHR 2002-I

1) The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents breaks down[9]. Art 8 protects not merely the parent's right to contact with his child, but also the child's right to contact with her parent.
2) Custody and contact cases must be dealt with speedily and with exceptional diligence to ensure that they are not determined by the mere effluxion of time[10].
3) Art 8 includes a right for a parent to have measures taken with a view to being reunited with the child and an obligation for the national authorities to take such action[11]. As part of their obligation, national authorities must do their utmost to facilitate cooperation between the parents[12].
4) Rights must be real and effective, not illusionary as they would be if the domestic courts allowed a decision to remain inoperative to the detriment of one party. Execution of a judgment without delay is thus an integral part of 'fair trial' for the purposes of Art 6[13].
5) The positive obligations extend in principle to the taking of coercive measures not merely against the recalcitrant parent but even against the child[14].
6) Any obligation to apply coercion can only be limited since the interests, rights and freedoms of all concerned must be taken into account, in particular the best interests of the child and the child's rights under the Convention[15].
7) The obligation of the national authorities to take measures to facilitate reunion may require preparatory measures and the cooperation of all concerned[16].
8) The applicant's lack of action cannot be used by the national authorities to justify their interference with the applicant's rights, since it is they who exercise public authority[17].

[9] *Elsholz v Germany [GC],* no 25735/94, § 43, ECHR 2000-VIII
[10] *Glaser v the United Kingdom,* no 32346/96, § 93, 19 September 2000
[11] *Kutzner* (n 8) 61
[12] *Hansen v Turkey,* no. 36141/97, § 98, 23 September 2003
[13] *Immobiliare Saffi v Italy [GC]*, no 22774/93, §§ 63 and 66, ECHR 1999-V
[14] *Hansen* (n 12) 106
[15] *Ignaccolo-Zenide v Romania*, no 31679/96, § 84, ECHR 2000-I
[16] *GB v Lithuania*, no 36137/13, § 93, 19 January 2016
[17] *Ignaccolo-Zenide* (n 15) 111;

2.2.1 'Family life' and the Right to Contact

Family life consists of a broad range of parental rights and responsibilities regarding care and custody of children. In *Nielsen*, the Court elaborated that the care and upbringing of children require that a parent makes decisions about where a child is to reside, and imposes certain restrictions on the child's liberty:

> Thus the children in a school or other educational or recreational institution must abide by certain rules which limit their freedom of movement and their liberty in other respects. Likewise a child may have to be hospitalised for medical treatment. Family life in this sense, and especially the rights of parents to exercise parental authority over their children, having due regard to their corresponding parental responsibilities, is recognized and protected by the Convention, in particular by Article 8. Indeed the exercise of parental rights constitutes a fundamental element of family life.[18]

The Court has consistently reiterated that:

> … where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be created that render possible as from the moment of birth the child's integration in his family. [19]

The ECtHR's approach to cases about contact denial starts from the presumption that the right of a parent to have contact with the child, and similarly, of a child to have contact with a parent, is included in the right to respect for family life, 'even when the relationship between the parents has broken down'[20]:

> The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8. [21]

[18] *Nielsen v Denmark*, 28 November 1988, § 61, Series A no 144
[19] *Emonet and Others v Switzerland*, no 39051/03, § 64, 13 December 2007
[20] *Diamante and Pelliccioni v San Marino*, no 32250/08, § 170, 27 September 2011
[21] *Elsholz* (n 9)

Thus, in the event of a breakdown of the parents' relationship, the child still has a right to enjoy contact with both parents as well as siblings[22], and neither parent can be deprived of the right to remain in contact with the child. Unless there is sufficient justification for an interference by the national authorities, contact cannot be denied, and the State must take reasonable steps to enforce it.

In *Hoffmann*, the Court concluded that the Government's justification of the impugned measure that the decision was taken in the context between private individuals 'makes no difference' to the reality that the intervention constituted an interference with the mother's family life[23].

2.2.2 The margin of appreciation

Little could pose a more serious interference with the right to respect for family life than the denial of contact between parent and child, and hence one expects that the margin of appreciation accorded to the authorities would be narrow, and that decisions taken will be subject to a higher intensity of review.

In cases where the contact between a child and a parent breaks down or is denied for whatever reason, the State has a positive obligation to take measures targeted to reunite parents and children[24] and to protect a parent's right to have contact with their child[25].

When assessing the State's margin of appreciation, the Court has always emphasised that its role is not to substitute itself for the domestic authorities in their assessment of custody and contact issues, especially since these have the benefit of direct contact with all the parties, 'often at the very stage when measures are being envisaged or immediately after their implementation'[26], but only to review the decisions taken by those authorities in their exercise of discretion with respect to their positive obligations and proportional measures. The Court will also consider that perceptions

[22] *Strand Lobben and Others v Norway [GC]*, no 37283/13, § 200, 10 September 2019
[23] *Hoffmann v Austria,* 23 June 1993, § 29, Series A no 255-C
[24] *Glaser* (n 10) 63
[25] *Hokkanen v Finland*, 23 September 1994, Series A no 299-A
[26] *Elsholz* (n 9) 48

as to the appropriateness of intervention by national authorities in the care of children vary across States, depending on factors such as traditions relating to the role of the family, to State intervention in family affairs and the availability of resources for public measures.[27]

The margin of appreciation enjoyed by the domestic authorities in custody and contact cases varies according to the nature of the issues and the seriousness of the interests at stake, 'such as the importance of protecting the child in a situation in which its health and development may be seriously at risk and the objective of reuniting the family as soon as circumstances permit'.[28]

However, 'the more serious the interference with Convention rights the more closely the decision will be scrutinised'[29]. The ECtHR has affirmed that:

> A number of factors must be taken into account when determining the breadth of the margin of appreciation to be enjoyed by the State in any case under Article 8. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted.[30]

In *Penchevi*, the Court elaborated on the State's discretionary power when it stated in no uncertain terms that it:

> must ascertain more specifically whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and whether they made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child.[31]

---

[27] *Johansen v Norway*, 7 August 1996, § 64, *Reports of Judgments and Decisions* 1996-III
[28] *Kutzner* (n 8) 67
[29] Heleen Bosma, *Freedom of Expression in England and under the ECHR: In Search of a Common Ground: A Foundation for the Application of the Human Rights Act 1998 in English Law* (Antwerp, Intersentia, 2000)
[30] *Evans v the United Kingdom*, no 6339/05, § 77, 7 March 2006
[31] *Penchevi v Bulgaria,* no 77818/12, § 55, 10 February 2015

In addition, the Court further elaborated on how 'respect' for family life required that biological and social reality be taken into account, 'to avoid the blind, mechanical application of the provisions of the law to this very particular situation for which they were clearly not intended'. In *Emonet*, the Court went as far as to say that the national authorities' failure to consider these elements 'flew in the face of the wishes of the persons concerned, without actually benefitting anybody'[32].

2.2.3 The effects of procedural delays

The Court has stressed that 'it is an interference of a very serious order to split up a family'[33]. The Court is very conscious of the fact that restrictions on contact or refusal of contact will severely limit the enjoyment of family life even to the tragic extent of extinguishing it:

> However, a stricter scrutiny is called for both of any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed.[34]

Any measures designed to take a child into care, for example, should only be temporary, to be discontinued as soon as circumstances permit[35]. In *Eriksson*, the Court found that notwithstanding Sweden's margin of appreciation, 'the severe and lasting restrictions on access combined with the long duration of the prohibition on removal are not proportionate to the legitimate aims pursued'[36]. This also applies to private law cases, and measures should always be consistent with the aim of reuniting a parent and child[37]. An automatic denial of contact rights through an application of the law without there being the possibility of a judicial review of such a decision is likely a violation of Art 8[38].

---

[32] *Emonet and Others* (n 19) 86
[33] *Olsson v Sweden (no. 1),* 24 March 1988, § 72, Series A no 130
[34] *Sommerfeld v Germany* [GC], no 31871/96, § 63, ECHR 2003-VIII (extracts)
[35] *Kutzner* (n 8) 76
[36] *Eriksson v Sweden,* 22 June 1989, § 71, Series A no 156
[37] *Olsson* (n 33) 81
[38] *MD and Others v Malta*, no 64791/10, 17 July 2012

The procedural requirements of Art 8 in the context of delay were analysed in *Kopf and Liberda*[39] where the child's attitude towards contact had regressed to vehement opposition by the end of proceedings three years later. The ECtHR found that the passage of time had been crucial to the decision with a direct and adverse impact on the applicant's position.

Section 1(2) of the UK Children Act (1989) is cognisant of the harm that procedural delay causes children:

> In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

The obligation imposed by the ECHR in this area is actually wider than that of the Children Act (1989), because it applies to all domestic authorities and not just to courts.

The Court is alert to the very realistic concern that procedural delay may give rise to a '*de facto*' determination of the issue in question[40], at which point enforcement becomes impossible[41]. Thus, delayed conduct of custody proceedings is likely to give rise to a breach of Art 8[42].

In *H v UK*, the UK Government in its defence had submitted that procedural matters were not an element in the protection afforded by Art 8, and that the length of the proceedings was therefore irrelevant. However, the applicant's case had been 'seriously prejudiced' by the delay. The Court placed 'special emphasis on the importance of what was at stake for the applicant in the proceedings'. It clearly acknowledged that, in addition to being decisive for the applicant's future relations with her own child, the impugned proceedings had a particular quality of irreversibility, being graphically described as a 'statutory guillotine':

[39] *Kopf and Liberda v Austria*, no 1598/06, 17 January 2012
[40] *Süß v Germany*, no 40324/98, § 100, 10 November 2005
[41] *Deak v Romania and the United Kingdom*, no 19055/05, 3 June 2008
[42] *Eberhard and M. v Slovenia,* nos 8673/05 and 9733/05, *§* 127, 1 December 2009

> In cases of this kind the authorities are under a duty to exercise exceptional diligence since there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing. And, indeed, this was what happened here.[43]

The Court emphasises that the duration of proceedings is a factor to be taken into account in such cases:

> Concerning as they did the question of the applicant's future relations with her child, the proceedings related to a fundamental element of family life. Irrespective of their final outcome, an effective respect for the applicant's family life required that the question be determined solely in light of all relevant considerations and not by the mere effluxion of time.[44]

The Court reached the same conclusion in *Süß*, in which the applicant complained that the delay in the proceedings and the failure to enforce access decisions 'had contributed to alienating F. from him':

> This duty [to exercise exceptional diligence], which is decisive in assessing whether a case concerning access to children had been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8.[45]

Even if orders enforcing contact were taken by the State authorities, a delay in enforcement could also result in an interference and thus a violation of Art 6 and Art 8, as this delay in seeking enforcement could result in contact being rendered practically unrealistic. In fact, the Court has often reiterated that, in matters pertaining to the reunification of children with their parents:

> The adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between a child and the parent who does not live with him or her.[46]

[43] *H v the United Kingdom,* 8 July 1987, § 85, Series A no 120
[44] *Glaser* (n 10)
[45] ibid
[46] *IS and Others v Malta*, no 9410/20, § 115, 18 March 2021

In *Ignaccolo-Zenide*, the Court highlighted the fact that this requirement was even more relevant in this case since the applicant had brought an urgent application in the courts, the essence of which is 'to protect the individual against any damage that may result merely from the lapse of time'[47].

The Court considers the complexity of the case, the conduct of the parties and the importance of the issue to the applicant when it is assessing the reasonableness of the duration of proceedings[48]. However, the applicant's failure to seek enforcement cannot be used by the State to justify the State authorities' inactivity in enforcing orders, as 'the inaction of the authorities placed on the applicant the burden of having to have constant recourse to a succession of time-consuming and ultimately ineffectual remedies to enforce his rights'[49].

2.2.4 The interests of all family members

In cases involving custody and contact, the interests of the two parents and the child are in conflict. The Court has emphasised that consideration of the child's best interests is 'crucial'. Where contact with the parent appears to threaten the child's best interests, the Court gives the State a margin of appreciation in striking a fair balance between the best interests of the child and those of the parent in being reunited with the child[50]. The best interests of the child, such as the child's health and development, may override those of the parent[51].

The Court has acknowledged that the child's interest stands on two pillars: one that involves ensuring that the child develops in a sound manner, and the other entails that '[i]t is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots'[52].

[47] *Ignaccolo-Zenide* (n 15) 102
[48] *MV v Serbia*, no 45251/07, 22 September 2009
[49] *Pawlik v Poland*, no 11638/02, § 53, 19 June 2007
[50] *Kutzner* (n 8) 45;
[51] *Sommerfeld* (n 34) 64
[52] *Neulinger and Shuruk v Switzerland [GC]*, no 41615/07, § 136, ECHR 2010

From this assessment it follows that the child's best interest dictates that only circumstances of a truly exceptional nature may justify the severance of family ties, and furthermore that in the event that such an extreme measure is necessary, everything must be done to preserve personal relations and to rebuild the family[53].

In certain cases, if the resident parent will be exposed to harm if contact between the child and the other parent is allowed, for example in situations of domestic violence, the interests of the resident parent will justify an interference in the child's right to contact. For example, the serious tensions between the parents in *Sahin* would have affected their daughter, and the Court did not find a violation of the applicant father's Art 8 rights arising from denial of access.

Görgülü exposed how evidence justifying the breach of a parent's rights must be strong. After the relationship between the parents broke down, the mother placed the child for adoption. Afterwards, the father sought contact and custody. The national court did not order contact because the child was well settled with his adoptive parents. The ECtHR held that depriving the natural father of his rights required consideration of all the alternatives open to court and a consideration of the long-term wellbeing of the child, which meant that the consideration by the national courts of the alternatives had been inadequate[54].

2.2.5 The views of the child

The case law of the ECtHR indicates how the views of children carry considerable weight and can justify the State not ordering contact. However, the national authorities should ascertain that the views expressed by the child are their genuine views and have been reached independently and are not the result of brainwashing by the alienating parent. In cases of PA, the voice of the child becomes nothing more than an echo of the voice of the alienating parent. The fact that a child opposes contact, therefore, and actively rejects the parent, does not automatically justify the lack of the domestic authorities to issue and enforce contact orders that respect the right of the applicant parent to contact with the child.

[53] *Strand Lobben* (n 22) 207
[54] *Görgülü v Germany,* no 74969/01, 26 February 2004

In *C v Finland*[55], the applicant's two twelve-year-old children rejected contact and the domestic authorities had simply accepted their views without holding an oral hearing or taking further steps such as hearing expert evidence. The lower domestic courts ruled that, in spite of their wish to remain with their mother's partner, it was in their best interest for custody to be given to their father. The Court of Appeal confirmed that it was not bound to follow the wishes of a child, even one aged 12 or over. However, the Supreme Court placed exclusive weight on the children's views without taking the father's rights into consideration. The ECtHR strongly criticised the decisive weight given to the children's wishes, as this had given them 'an unconditional veto power' to reverse the earlier decisions given in the father's favour, and found an infringement of the father's rights to contact.

Thus, all competing interests as well as all the evidence must be considered when weighing the competing rights, even when mature children have clear views. The Court has also emphasised with ample clarity that 'correct and complete' information about the child's views must be obtained[56]. The suggestion initially encountered in the Court's case law that, prior to denial of contact, the child is required to give evidence in Court, was rejected by the Grand Chamber in *Sahin*[57]. However, this in turn imposes the necessity of proper evidence of a child's view, such as an expert report, to ensure that the child is truly and justifiably opposed to contact and not simply echoing the views and wishes of the alienating parent[58].

In *Nanning*[59], the national authorities did not take steps to enforce contact between a mother and her alienated 16-year-old daughter following a court expert's recommendation to increase contact between them despite the daughter's opposition. The ECtHR found a breach of the mother's Art 8 rights, reinforcing the point that even the views of a mature child are not sufficient to determine the matter.

[55] *C v Finland,* no 18249/02, §§ 58 and 59, 9 May 2006
[56] *Sahin v Germany [GC],* no 30943/96, § 48, ECHR 2003-VIII
[57] ibid
[58] *Ignaccolo-Zenide* (n 15)
[59] *Nanning v Germany*, no 39741/02, §§ 26 and 72-7, 12 July 2007

2.2.6 Parental participation and procedural fairness

An order not allowing contact must be the result of 'exceptional diligence'. When assessing whether the reasons brought forward by the State to justify the impugned measures are 'sufficient' for the purposes of Art 8, the Court insists that although Art 8 contains no explicit procedural requirements, the decision-making process as a whole must be fair, and must provide the applicant with the requisite protection of his interests, having been involved in the decision-making process[60].

Both parties must be able to cross-examine witnesses and to have access to any reports that formed the basis of court orders. The ECtHR has stated:

> … it is of paramount importance for parents always to be placed in a position enabling them to put forward all arguments in favour of obtaining contact with the child and to have access to all relevant information which was at the disposal of the domestic courts[61].

An order for denial of contact must follow an oral hearing[62]. In fact, the ECtHR case law repeatedly clarifies that contact should only be denied after a hearing in which the domestic Courts would have been able to make a proper assessment of any and all relevant evidence especially with regard to the child's views, and after proceedings in which both sides were able to present their case appropriately[63].

In *C v Finland* a decision was reached without the applicant father being given a chance to appear in court and without analysing the evidence from a different perspective. Nor were any experts hired to assess if the decision reached by the courts to send the children to the mother's partner, which was to deprive them of a relationship with their father, would result in greater harm to the children's mental health. This resulted in the father being understandably left with the impression that the court had allowed the mother's partner to manipulate the children and the system resulting in him being unjustifiably deprived of his parental role[64].

---

[60] *Süß* (n 40) 89
[61] *Sahin* (n 56) 71; *IS and Others* (n 46) 130
[62] *Elsholz* (n 9)
[63] *Neulinger and Shuruk* (n 52) 139
[64] *C* (n 55) 58

This active participation of both parents in proceedings concerning children is a requirement to ensure the protection of their interests. Additionally, when a parent applies for enforcement of a court order, 'his conduct as well as that of the courts is a relevant factor to be considered'[65].

Finally, in contact disputes, there must be no discrimination between mothers and fathers[66], married and unmarried fathers[67], or on the grounds of sexual orientation[68].

2.2.7 Enforcement of court orders

The Court's intention to continue protecting the nurturing of family ties after parental relationship breakdown is clear in the positive obligations it has ingrained in its interpretation of 'effective respect for family life'. This has been frequently reiterated by the Court as follows:

> Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life.[69]

The obligations have been interpreted to consist of the adoption of measures designed to secure respect for family life, including both the provision of a regulatory framework of adjudication and 'enforcement machinery' to protect individual rights[70].

As the Court explained clearly in *Immobiliare Saffi*[71]:

> 63. … the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without

[65] *Glaser* (n 10) 70
[66] *Sahin* (n 56)
[67] *Sommerfeld* (n 34) 93-4
[68] *Salgueiro da Silva Mouta v Portugal*, no. 33290/96, ECHR 1999-IX
[69] *Eberhard* (n 42) 126
[70] *Diamante and Pelliccioni* (n 20) 173
[71] *Immobiliare Saffi* (n 13) 63, 66

> protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. Thus, failure of the State to enforce a court order can give rise to a breach of Art 6 in addition to Art 8.
>
> 66. … the right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party. Accordingly, the execution of a judicial decision cannot be unduly delayed.

In *Hansen*, following the father's refusal to allow the mother to have contact after he was awarded residence, the court only attempted to order enforcement via fines. The ECtHR found this to be insufficient[72].

Similarly, the ECtHR found an Art 8 violation in *Zawadka*, where the domestic courts had failed to take sufficient steps to enable the applicant father to enforce his rights of contact with his son, when the mother was unwilling to comply[73].

An Art 8 violation was also found in *Eberhard*, since the authorities failed to enforce an access order and proceedings lasted for more than four and a half years[74].

From as early as 1994 in *Hokkanen*[75], the ECtHR has repeatedly emphasised that, with respect to contact or access rights, the obligation of the domestic authorities to take measures to facilitate parent-child reunions is not absolute, seeing as such a reunion may not be possible immediately if the child has lived away from the parent for some time and they may be strangers to one another[76]. Such situations may require the State to implement appropriate preparatory measures, in which case the immediate enforcement of contact may not be appropriate. In fact, '[t]he nature and extent of

[72] *Hansen* (n 12)
[73] *Zawadka v Poland,* no 48542/99, 23 June 2005
[74] *Eberhard* (n 42)
[75] *Hokkanen* (n 25)
[76] *Mihailova v Bulgaria*, no 35978/02, § 82, 12 January 2006

such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned will always be an important ingredient'.[77]

In *Mihailova*, the fact that the authorities' efforts to enforce contact were not successful, did not automatically imply that the State failed to comply with its positive obligations[78]. The State's positive obligation to enforce contact means that reasonable steps must be taken[79]. However, the Court has clarified that, in the sphere of family law, '[w]hat is decisive is whether the national authorities have taken all necessary steps to facilitate reunion or contact as can reasonably be demanded in the special circumstances of each case'[80].

Additionally, a non-enforcement of a custody order may be justified in the case of a change in circumstances, so long as the change was not a result of events or actions imputable to the State[81].

2.2.8 Sanctions against parents who do not permit contact

Contact rights, once granted, must be effective in practice[82]. In *Hansen*, the Court indicated some procedural measures that domestic authorities could take to enforce contact when a parent is unwilling to allow it[83]:

1. seeking the advice of social services or the assistance of psychologists or child psychologists to create a better relationship between the parents and to facilitate contact;
2. allowing the children an opportunity to develop a relationship with the other parent in a calm environment, so that they could express their feelings;
3. taking steps to locate the children when the parent fails to produce them for contact sessions; or

[77] *GB* (n 16) 93
[78] *Mihailova* (n 76) 82
[79] *Pisică v the Republic of Moldova*, no 23641/17, § 62, 29 October 2019
[80] ibid 64
[81] *GB* (n 16) 93
[82] *Gobec v Slovenia*, no 7233/04, § 159, 3 October 2013
[83] *Hansen* (n 12) 105

4. taking 'realistic coercive measures' against the parent denying access, in addition to the fines. The Court, however, did not elaborate on what these 'realistic coercive measures' might involve.

Although the Court discourages the use of coercive measures against children, it urges that the use of sanctions 'must not be ruled out in the event of unlawful conduct by the parent who owes enforcement'.[84]

In cases of PA and contact denial, one parent is actively obstructing contact between the child and the other parent, and even blatantly ignoring court orders. Although the Court accepts that the cooperation and understanding of all concerned is important[85] and that the extent to which contact can be enforced is limited in situations of intense conflict between the parents[86], the Court has repeatedly held that parental lack of cooperation does not exempt the domestic authorities from their positive obligations to take steps and implement effective measures to facilitate contact, 'even if it is possible that more severe sanctions7 would not have changed the mother's stance towards the applicant's rights'[87]:

> The lack of cooperation between separated parents is not a circumstance which can by itself exempt the authorities from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures that would reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child[88].

In *Zawadka*, while the Court acknowledged that the task of the domestic courts was rendered difficult by the strained relationship between the parents, yet the authorities failed to take 'practical steps' that would encourage them to cooperate in the enforcement of the access arrangements. Neither did the authorities 'secure concrete and appropriate assistance by competent state agents within a specific legal

[84] *Aneva and Others v Bulgaria*, nos 66997/13 and 2 others, § 110, 6 April 2017
[85] *Zawadka* (n 73) 67
[86] *Kaleta v Poland*, no 11375/02, 16 December 2008
[87] *Kuppinger v Germany,* no 62198/11, 15 January 2015
[88] *Diamante and Pelliccioni* (n 20) 176

framework suited to the needs of separated parents and their underage child'. This failure resulted in the applicant losing contact with his child.

However, the Court has also highlighted the risk that extreme enforcement mechanisms such as the imprisonment of the parent denying contact is likely to work against the child's best interest by infringing on the child's rights to respect for family life[89].

[89] *Mihailova* (n 76) 82

CHAPTER 3:
OVERVIEW OF ECTHR CASES DEALING WITH PARENTAL ALIENATION

Elsholz v Germany[90] introduced the term 'parental alienation syndrome' into the discourse of the ECtHR by the applicant, who referred to the research which the authorities failed to take into account, relying instead wholly on the child's wishes. The Court found that the national authorities' refusal to order an independent psychological report and the absence of a hearing meant the applicant was not sufficiently involved in the decision-making process.

In *Sommerfeld v Germany*[91] it was the dissenting Judges who brought up PA. Although no violation was found, Judge Ress joined by Judges Pastor Ridruejo and Turmen, in their dissenting opinion, stated that the procedural requirement to have up-to-date expert evidence to evaluate a child's seemingly firm wishes is endorsed by research into PA syndrome, referring to the work by Richard Gardner[92]. The dissenting Judges emphasised that courts should investigate whether PA is present, as well as its potential consequences on the child's development, in the process of evaluating a child's 'true wishes':

> '[t]he statements of a ten- or thirteen-year-old girl, whether she is heard in court or not, cannot always be decisive or even indicative of her true wishes. In such a complex situation, where the alienation of the child from her natural father by the strong influence of her mother and her stepfather can be perceived, a more thorough approach has to be taken and an effective and genuine chance of participation has to be given to the natural father.'

In *Süß v Germany*[93], PA was once again raised by the applicant, who maintained that the courts had ignored findings of modern psychology. The delays and the failure of the courts to enforce court orders had contributed to his daughter's alienation from

[90] *Elsholz* (n 9)
[91] *Sommerfeld* (n 34)
[92] Richard A Gardner, 'Should courts order PAS children to visit/reside with the alienated parent? A follow-up study' (2001) 19(3) American Journal of Forensic Psychology 61
[93] *Süß* (n 40)

him, and the suspension of access exposed his daughter to danger for her health and emotional well-being.

The Court in *Koudelka v Czech Republic*[94] noted that experts had earlier on in the proceedings drawn attention to the PA, and found it evident that the passage of time had had adverse consequences for the applicant. In the Court's view, the Czech courts had allowed this dispute to be settled by the mere passage of time, such that the resumption of relations between the applicant and his daughter no longer seemed possible.

In *Zavřel v Czech Republic*[95], a court-appointed expert noted the first signs of PA, and recommended an increase in the father's access. The Court noted that according to the expert's initial report, PA was only mild at the time, and had adequate measures been implemented quickly, the son could easily have gotten used to his father again.

In the domestic proceedings in *Patera v Czech Republic*[96], a mediator had stated that it was necessary to determine whether the minor's opinion was due to the manipulations of the mother and, therefore, to PA, before assessing the weight to be given to this opinion.

Mincheva v Bulgaria[97] is the first case where PA is used by the Court itself in connection with a breach of Art 8. The Court concluded that by not acting diligently, the national authorities favoured a process of PA to the detriment of the applicant.

The Court in *Piazzi v Italy*[98] noted that the delays were not justifiable, it being the responsibility of each State to organize its judicial system so as to ensure compliance with its positive obligations. The Court found it hard to ignore the psychologist's opinion that the mother's attempts to incite the child against the father could lead to PA.

[94] *Koudelka v the Czech Republic*, no 1633/05, 20 July 2006
[95] *Zavřel v the Czech Republic*, no 14044/05, 18 January 2007
[96] *Patera v the Czech Republic*, no 25326/03, 26 April 2007
[97] *Mincheva v Bulgaria*, no 21558/03, 2 September 2010
[98] *Piazzi v Italy*, no 36168/09, 2 November 2010

Diamante and Pelliccioni v San Marino[99] is a very interesting case, where the applicant (mother) was continuously denying contact to the father and inducing PA in the daughter (second applicant). The reports by domestic authorities even pointed to the fact that the applicant was inducing PA in the daughter. The Court found no violation. This was the first time that the Court, of its own motion, referred to PA, recognising that while there was no threat of violence or serious health issues, 'there could have been a risk of psychological abuse as evidenced by the suggestions that the child might develop PA Syndrome'.

The Court in *Bordeianu v Moldova*[100] commented on how the authorities must have been aware that the daughter's PA had reached a degree which now made the enforcement of the judgment difficult, and that the solution of the problem required a complex approach with the participation of experts.

In *Gobec v Slovenia*[101] the daughter was alienated from her father (the applicant) by her mother. Strangely enough in this case the Court did not find a violation, even though it acknowledged that the enforcement orders and fines were unsuccessful.

Expert reports from the domestic authorities in *GB v Lithuania*[102] stated that the behaviour of the children exhibited PA enhanced by their father's influence. With reference to PA, the Court stated that seven days of being separated from the mother were unlikely to have made much of a difference in how the daughters viewed her. The Court found no violation, but Judges Sajo and Motoc dissented. In their opinion, the preference of the children while under the influence of their father determined the outcome of the custody issue. They refer extensively to PA in their dissenting opinion, citing previous ECtHR judgments and literature. They state that:

> Courts should address the question whether the parental alienation syndrome is present and what specific consequences such a syndrome could have on the child's development. The authorities have a positive obligation to prevent the development of that syndrome and they

[99] *Diamante and Pelliccioni* (n 20)
[100] *Bordeianu v Moldova*, no 49868/08, 11 January 2011
[101] *Gobec* (n 82)
[102] *GB* (n 16)

> should not have tolerated the conditions which in the circumstances of the present case led to the development of that syndrome.

The dissenting Judges accuse the members of the Chamber that, by not finding a violation, they had favoured a factual situation created by an illegal state of affairs.

Aneva and Others v Bulgaria[103] concerned three applications where contact was denied to a parent by the other parent. The Court noted that, despite unambiguous observations in expert reports which showed that the children were victims of PA, the authorities took no concrete action.

Psychological reports by domestic authorities in *Pisiça v Republic of Moldova*[104] showed that the children's attitude towards their mother had changed to the extent that they hated her, and that the father's alienation of the children amounted to emotional abuse. The domestic court recognised and accepted the PA syndrome, and to try to remedy the alienation, the mother was eventually awarded custody of the two younger sons. The Court noted that, considering how often the mother complained to the authorities about alienation, the authorities should have been well aware of the situation, and that the father 'had ample opportunity to influence [the children], unlike the applicant'. The authorities must also have been aware that the father's actions were threatening future relations between the applicant and her sons. Furthermore, there was no follow-up despite a report saying that the father's actions constituted psychological abuse. The Court, finding that the delay of a year and a half to decide on custody added to the period where the applicant had no contact with her sons while the father remained able to continue alienating them, concluded that this delay was contrary to the principle of exceptional diligence. The Court also found that by failing to respond to the applicant's complaints about alienation and to examine the case urgently, they contributed significantly to the difficulties encountered in enforcing the judgment. The Court further condemned the national authorities for not doing any preparatory psychological work with the children and parents, notwithstanding clear signs of alienation.

[103] *Aneva and Others* (n 84)
[104] *Pisică* (n 79)

The Court in *Ilya Lyapin v Russia*[105] felt that the removal of the applicant's parental authority had only cancelled the legal link between the applicant and his son, since there had been no personal relationship for 7 years. The Court did not find a violation, but two dissenting opinions were entered by Judges Serghides and Schembri Orland.

Judge Serghides stated that:

> … parent-child relations and ensuing rights should not be treated like property rights which may lapse if not exercised for a period of time. Whenever there is hope that parent-child relations can be restored, the authorities ought to assist them and not terminate them totally and permanently, as they did in the present case.

When addressing the child's wishes, Judge Serghides emphasised that listening to a child's views must not become a child's unconditional veto power:

> … those views are not necessarily immutable, and their objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially their interest in having regular contact with their child.

Judge Schembri Orland expressed the same concerns, namely that the father's passivity was not a direct threat to the child's well-being, and hence not an exceptional circumstance that merited the father being stripped of all parental authority. She added:

> … the assessment of the parent-child relationship, conducted exclusively with a 10-year old boy who had not seen his father for the past eight years, was one-sided and reliant on the child's declarations. The right of a child to express his or her opinion, whilst an important evidential element in family proceedings of this nature, is not of itself decisive of the outcome, especially when the father-son ties were to be completely truncated.

IS and Others v Malta[106] is the first case from Malta dealing with PA. Various reports from domestic authorities confirmed the presence of PA. The Court, finding a violation,

[105] *Ilya Lyapin v Russia*, no 70879/11, 30 June 2020
[106] *IS and Others* (n 46)

noted that despite admonitions to the mother and the recommendations in the various reports, no concrete measures were put in place to ensure that access was effective or for the mother to not obstruct access. No matter the orders issued, contact was unsuccessful, 'allowing the mother to take full control of the situation, to the extent that she felt comfortable threatening the court'. Furthermore, the Court pointed out that the reason why the children resisted contact with the applicant was clear from the beginning of the case, however no meaningful measures were taken by the authorities to facilitate contact. The Court was concerned that the applicants had 'fallen victim of a ping pong between the Family Court and the appointed psychologists'. A further comment was made by the Court regarding the fact that the domestic court found nothing wrong with the father that could possibly point to contact not being in the best interests of his children. To the contrary, they found nothing to reproach in the father, except 'his multiple requests to have contact with his children' and his earlier request to place the children in care if necessary. The Court also analysed the weight of the children's wishes, which seem to have been crucial in the determination of the issue.

Quite a number of procedural problems with Malta's family court were identified by the ECtHR in this judgment, including the duration of the case in the constitutional proceedings. The Court also commented that:

> … the impossibility for the first applicant to maintain meaningful contact with his children, the remaining applicants, must have caused them frustration and suffering and certainly prevented them from developing relations over a period of years.

CHAPTER 4:
RECOMMENDED FAMILY COURT REFORMS

4.1 Introduction

The European Court judgments very clearly highlight the areas where domestic authorities fall short when addressing contact denial and PA. Maltese Courts would do well to incorporate policies, procedures and legal provisions within their operations that address these commonly condemned shortcomings. Anything less will result in Malta being found in violation of its obligations to protect the right to respect for family life under Art 8 and the right to a fair trial under Art 6 of the ECHR when parents that have been targets of PA and thus denied contact with their children start taking their grievances to the European Court of Human Rights – and this is a question of *when* rather than *if*.

The overriding focus of the Family Court ought to be that of improving outcomes for children caught in litigation between their parents. However, it is cursed by procedural delays which choke the justice system and present the greatest obstacle to the best interest of the child being served. People's lives – those of both parents, the children as well as extended families – are suspended in a limbo until cases are resolved. Additionally, the longer the duration of the proceedings the greater the financial, health and emotional burdens incurred by the families – which burdens make the children their greatest victims – and the more the animosity between the parents is allowed to fester as a result of frustrating court sittings that trickle slowly on for years.

Three aspects of Family Court procedures that, if fine-tuned, would contribute to a reduction in unnecessary delays and ensuing damage, include judicial continuity, organised case management and a focused case strategy. These will be discussed in detail in the sections that follow.

4.2 Judicial continuity

The longer a case drags on, the more likely that the Judge hearing the case will change, as Judges might retire or be moved to a different section, to be replaced by a new one. Every time the case moves to a new Judge, time is necessarily required for his

replacement to acquaint him/herself with the case, resulting in more delays as sittings are adjourned for this purpose. A new Judge might also have a different mindset and approach towards the issues raised in the case than the previous one, which might take the case in a tangentially new direction. Aiming to reduce delays would remove the obstacle of different Judges hearing the case.

4.3 Organised case management

4.3.1 'Early Intervention Programme'

An '*Early Intervention Programme*' could be introduced to place cases in different streams depending on seriousness and complexity. This programme would be an out-of-court procedure that includes, but is not limited to, mediation.

Current Maltese legislation obliges parties to appear before a mediator prior to being given Court authorisation to proceed with a suit for separation or divorce[107]. However, mediation is often considered by parties to be a useless but imposed burden that one must endure before proceeding to 'the real case'.

As part of this Early Intervention Programme, mediation is supplemented by a parent education programme. It is the author's belief that quite a number of parents fighting over contact with their child truly want what is best for their child, and it is highly likely that they are unaware of the damage they cause their children when obstructing their contact with the other parent, thinking rather that they are 'saving' them from that parent.

A parent education programme that runs concurrently with mandatory mediation would explain, through leaflets, videos, interviews with adults that were alienated as children, and talks, the damage caused to children by polarisation. Parents would also be introduced to healthy coparenting strategies and assisted in drawing up a parenting and contact plan.

[107] The Civil Court (Family Section), The First Hall of The Civil Court and The Court Of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations, S.L.12.20, Art 4(3)

4.3.2 The Fast Stream

Such a programme, if implemented and managed professionally, will sieve those cases out of Court, where the parents simply need some guidance and support in handling the very strong emotions that accompany a relationship breakdown, particularly where it involves one's children. This sieved group will enter a '*Fast Stream*' in which cases, seeing as mutual agreement on major points of conflict would already have been reached, are closed rapidly, according to a schedule that spans weeks rather than months.

4.3.3 The Focus Stream

The cases that remain will be those that are more complex and resource intensive. These will enter a '*Focus Stream*' and resolved according to a schedule that spans months rather than years. The increased attention necessitated by these cases will become available as a result of the reduced strain on the Court after the sieving process.

Within five days of receiving an application from a 'Focus Stream' family, a case management meeting is held, attended also by a 'support person' (who could be a social worker) and aimed towards assisting the Judge to actively manage the case, to identify the predominant issues and to fix a case schedule for ALL sittings including the date of the final sitting when judgment will be handed down.

If PA has been alleged, it is vital for this case management team to include professionals who have familiarity and experience in the very particular dynamics and characteristics of PA, as otherwise the case will be derailed.

4.3.4 Legal framework

Art 7(2) of S.L.12.20 actually requires the Court to fix time limits within which the parties are to produce all documentary evidence in support of their case and to produce any witnesses whose evidence cannot be produced by affidavit. When the time within which the documents and witnesses that were supposed to be produced

has elapsed, the law obliges the Court to close the pre-trial period[108], and except for grave and serious reasons, the pre-trial period is not to extend beyond one year[109]. Considering the ECtHR's emphasis on the 'exceptional diligence' expected from domestic authorities as part of the State's positive obligations under Art 8, the Court would do well to be guided by the ECtHR's interpretation of what constitutes grave and serious reasons when these are used as justification for delays. For example, the European Court has frequently iterated that States are responsible for organising their legal systems in such a way as to guarantee the right to obtain a judicial decision within a reasonable time[110]; furthermore, an excessive workload cannot be taken into consideration[111].

Nowadays there is agreement that PA is a form of domestic violence, being psychological and emotional abuse[112] on both the child and the target parent. The Gender Based Violence and Domestic Violence Act includes all acts or omissions including verbal and psychological violence in its definition of domestic violence[113]. Considering the relationship between the parties involved, the actions also qualify as aggravating circumstances under the Istanbul Convention[114]. Once Courts move away from focusing only on physical and/or sexual abuse when considering domestic violence, towards the encompassing definition in the laws that Malta has ratified, then there is an implied requirement to appoint cases with allegations of PA within four days[115].

Delays resulting from inaction of the parties, abuse of rights by the parties, or stalling tactics by lawyers should not only be unacceptable to the Family Court, but rather should be admonished and sanctioned, as it is the responsibility of the Judge to

[108] S.L.12.20 (n 107) Art 7(3)
[109] S.L.12.20 (n 107) Art 7(4)
[110] *Vocaturo v Italy*, 24 May 1991, § 17, Series A no 206-C
[111] *Cappello v Italy*, 27 February 1992, § 17, Series A no 230-F
[112] Wilfrid von Boch-Galhau, 'Parental Alienation (Syndrome) – A serious form of psychological child abuse' (2018) 14 Ment Health Fam Med 725; JJ Harman, E Kruk and DA Hines, 'Parental alienating behaviours: An unacknowledged form of family violence' (2018) 144(12) Psychological Bulletin 1275
[113] Gender Based Violence and Domestic Violence Act, Chapter 581 of the Laws of Malta, Art 2
[114] Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS 210 (2014) ((Istanbul Convention) Art 46
[115] Civil Code, Chapter 16 of the Laws of Malta, Art 37(2) and Art 37(9)

manage the case and keep it on schedule. In any case, allowing delaying tactics by one of the parties would not absolve the Maltese authorities in front of the ECtHR from their duty to ensure that proceedings are conducted within reasonable time[116].

After the close of the pre-trial stage, the Judge is to fix a date for the trial, wherein the advocates of the parties and the children's advocate if appointed make their submissions and counter-submissions[117]. The Judge then proceeds to judgment.

Thus, Malta's laws actually oblige the Courts to implement a case management approach and to set reasonable time limits. How far this is actually adhered to would make for interesting future research that could help elucidate problem areas and extrapolate solutions.

4.4 Focused case strategy

Maltese legislation empowers the Judge assigned to the case to give guidance and directives as they deem fit for the better management of the case[118], giving paramount consideration to the welfare of the children, and even limiting or denying access once PA is seen by our Courts as what it is, *i.e.*, a form of domestic violence (Section 4.3.4)[119]. Domestic violence is also a 'grave reason' for which the Court may, even of its own motion, declare that the alienating parent is not fit to have custody[120].

4.4.1 Expert involvement

The involvement of experts such as Appoġġ should be expanded. Children who are being alienated from a parent will require a social worker to follow them long enough to form a long-term and trusting relationship. One must also keep in mind that the alienating parent will also very likely be indoctrinating the children to mistrust 'the system', including any social workers, psychologists or child advocates assigned to the case. The intervention of a skilled social worker familiar with PA behaviours and responses is vital for both the children and parents, and may also be used to facilitate

[116] *Mincheva* (n 97) 68
[117] S.L.12.20 (n 107) Art 7(6)
[118] S.L.12.20 (n 107) Art 13
[119] Civil Code (n 115) Art 47
[120] ibid Art 56A

contact by preparing the child and the alienating parent for contact, and being present during transfer time to ensure no obstacles at hand-over.

4.4.2 Dealing with false allegations

One of the hallmarks of PA is the false allegations made by the alienator, directly or indirectly through the child, about the target parent. The more common allegations made in PA cases revolve around sexual or physical abuse, loose or immoral lifestyle, drug or alcohol abuse, unsuitable parenting skills and involvement in pornography. Red flags should be raised when any of these allegations are made with respect to blocking a parent's contact with a child, as otherwise they tend to take on a life of their own. These allegations are highly damaging and destructive, even in the long term, not only for the target parent (who has to live with the humiliation and mental health consequences of being publicly slandered) and to the parent-child bond, but even for the child when, in the future, she will perhaps access the court files and realise how she was weaponised to destroy the other parent.

PA cases usually proceed in exactly the way the alienator is hoping it will – an allegation is made, together with a demand to either stop access, or to allow minimal access under supervision, which demand is frequently accepted pending investigations into the allegation. Such a decision, especially when accompanied by delay tactics, favours the alienator by allowing him/her more time and opportunity to entrench the alienating behaviours, to the detriment of the alienated child and target parent.

Faced with allegations, the Court must grasp the bull by the horns and investigate and resolve them at the earliest, rather than leave them to fester and to remain a weapon in the arsenal of the alienating parent, to be brought up repeatedly at various points in the proceedings. Inaction in this area achieves no purpose other than that of allowing the allegations to remain a continuing source of dispute and friction between the parents. Unless tackled immediately, this is not a problem that will go away if ignored, and therefore the Court must make time for fact-finding without delay.

Allegations that could (or ought to) have been made earlier but only come up during separation proceedings, especially those made without any formal police report, should be viewed with scepticism. It is very easy for one parent to throw mud at the other parent hoping that something would stick, knowing that one will not be held

accountable. This sense of impunity is encouraged by the awareness that Family Court proceedings drag on for years, at which point, after years of denial of contact, the issues are resolved merely by the passage of time, seeing that the child might no longer be a minor and in any case the breakdown of contact would have reached an intractable stage.

4.4.3 Addressing the child's wishes

There is unanimous agreement that children should be heard in proceedings that involve them. A child's right to be heard, however, is not equivalent to the right of that child to make decisions, and a child's voice must never override her best interests, with which it may be inconsistent.

In everyday parenting situations, a good parent will listen to a child's wishes, and, after giving them due consideration, will ultimately make the decision that is in the child's best interest. If parents adopted the approach of 'child's voice = child's choice', then children would be allowed to eat only junk food, play videogames all day, skip school, never shower, stay up all night, never use a seatbelt, and so on.

Giving children what the ECtHR has termed 'an unconditional veto power' to decide on custody and access proceedings burdens them with a responsibility that they should not be weighed down with. An alienated child has already been given an unrealistic sense of power, and a distorted sense of reality and permission to behave disrespectfully and in Contempt of Court orders. The Courts, by their decisions, should assist children to disengage from such a dynamic of false perceptions. Taking this inappropriate role away from children frees them from guilt and further provides them with an excuse to 'save face' and rebuild their relationship with the target parent. The Court must keep in mind that research shows how alienated children actually love their rejected parent, and the only reason for their vehement rejection is because they are caught up in a loyalty conflict and a situation of coercive control. In other words, they may be vocally denying a relationship with a parent with whom they previously enjoyed a loving relationship, while all the time on the inside they are screaming for someone to notice, dig deeper and set them free[121]. When a Court orders contact and

[121] Barbara J Fidler and Nicholas Bala, 'Children resisting postseparation contact with a parent: concepts, controversies, and conundrums' (2010) 48(1) Family Court Review 16

actively enforces such an order, the child will feel and be able to say that they cannot be blamed for seeking a relationship with the target parent since this was 'imposed upon them' by the Court. Thus, they have an emotionally safe way out of the conflict.

This emphasises the importance that the Court engages a child psychologist with expertise and background in PA behaviours and dynamics early in the proceedings, in order to identify if PA is indeed taking place. This should inform the Court when making contact and custody decisions.

4.4.4 Intervention measures to dislodge severe parental alienation

PA cases necessitate a synergistic combination of legal and clinical management[122] if families are to be aided to function in a healthy manner. The level and type of judicial intervention depends upon the severity of the alienation[123]. Some of the interventions commonly availed of by courts include[124]:

a) Leaving the child with the alienating parent while the parents undergo individual and/or family therapy;
b) Putting strict visitation schedules in place, while imposing court sanctions to force the alienating parent to comply with court orders;
c) Ordering that the victim child reside with the target parent; or
d) Taking no action, expecting that the alienation will be resolved in time by itself.

The initial measure implemented by Courts when addressing contact issues is usually the imposition of traditional therapy. While this may have some success in cases where the PA is still at the early stages and hence its manifestations are mild, therapy alone is unlikely to resolve severe PA and has been shown to be ineffective and may actually result in further damage[125].

[122] Matthew J Sullivan and Joan B Kelly, 'Alienated Children in Divorce: Legal and Psychological Management of Cases With an Alienated Child' (2001) 39 Family Court Review 299
[123] Douglas Darnall, 'The Psychosocial Treatment of Parental Alienation' (2011) 20(3) Child and Adolescent Psychiatric Clinics of North America 479
[124] Sylvana Brannon, 'A review of legal interventions in severe parental alienation cases' (2020) 7 ELSA Malta Law Review 129
[125] Kathleen M Reay, 'Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System' (2015) 43(2) The American Journal of Family Therapy 197; Richard A Warshak, 'Family Bridges: using insights from social science to reconnect parents and

The only effective way to restore a broken parent-child bond and to overcome the damage caused by alienation is to move the child away from the alienator to live with the target parent. The risks inherent in a forced transfer far outweigh the risks involved in keeping the child in a situation of emotional abuse and distorted reality, and the long-term gains are greater.

The change in residence must be accompanied by a minimum 30-day *protective separation phase*, during which contact with the alienating parent is suspended. This is because the child's healing, like that of disentangled cult members, will only be possible following isolation from the source of influence[126].

90% of PA cases in one study of 400 cases where an increase in parent-child contact was ordered by the Court in spite of an objection by the child showed an improvement in the relationship between the child and the alienated parent[127] without additional interference from the alienating parent. A review of the commonly recommended responses to severe PA concludes that a change in residency in favour of the target parent can reduce and even eliminate PA[128] and that, rather than harm the children, removing them from the alienating parent protects them from further emotional abuse in spite of the transient distress experienced.

Not one study endorses the position of waiting for PA to resolve spontaneously, or allowing the child to decide on custody or residency[129]. To the contrary, this 'intervention' (or rather, lack of one) aggravates PA by enabling the abuse to continue and even get further entrenched[130].

---

alienated children' (2010) 48(1) Family Court Review 48; Janet R Johnston and Judith Roth Goldman, 'Outcomes of family counseling interventions with children who resist visitation: an addendum to Friedlander and Walters (2010)' (2010) 48(1) Family Court Review 112

[126] Amy JL Baker, 'The cult of parenthood: a qualitative study of parental alienation' (2005) 4(1) Cultic Studies Review

[127] SS Clawar and BV Rivlin, *Children held hostage: Dealing with programmed and brainwashed children* (Chicago, IL: American Bar Association 1991)

[128] Brannon (n 124)

[129] Douglas Darnall and BF Steinberg, 'Motivational methods for spontaneous reunification with the alienated child' (2008) 36 American Journal of Family Therapy 107

[130] Deirdre Rand, Randy Rand and Leona Kopetski 'The spectrum of parental alienation syndrome part III: the Kopetski follow-up study' (2005) 23(1) American Journal of Forensic Psychology 15

4.4.5 Enforcement of measures

If the alienating parent obstructs or denies contact in spite of a contact order, the appropriate judicial response should be to apply a clear and definite approach that does not budge from the schedule. Maltese law addresses contact denial as a contravention under Art 338(ll) of the Criminal Code[131]. This Article, however, should be reworded so that it is not simply the 'refusing' to give access that is punishable, but also its obstruction and non-enforcement by the parent with the obligation to provide it. This is because most cases that go to Court over contact denial will use the excuse that not only did they not refuse access, but they actually encouraged the child to go with the other parent and it was the child who refused to go, whom they couldn't force.

A parallel can be drawn between a parent's duty to ensure regular school attendance[132], failure of which would constitute a criminal offence[133], and a parent's duty to ensure that a child respects a contact schedule. In most cases, a parent would not allow a child to skip school just because she refuses to go, so why should that parent allow a child to refuse to not go with the other parent just because she says so?

This should be seen as a breach of parental responsibility. The law places on parents the responsibility to 'look after, maintain, instruct and educate' their children[134]. Furthermore, a spouse is expected to provide moral support to the other in any obligation that the other spouse has towards their children[135]; one should note that, in cases of separation, it is only the obligation of cohabitation of the spouses that ceases[136] . Thus, a parent who is not actively supporting the other parent's access to their child, ought to be found in breach of his/her obligations.

Once the Courts start seeing PA as the act of domestic violence that is as, as discussed under Section 4.3.4, then the Court may also, even on its own motion, issue a protection or treatment order[137].

[131] Criminal Code, Chapter 9 of the Laws of Malta, Art 338(ll)
[132] Education Act, Chapter 327 of the Laws of Malta, Art 5
[133] ibid Art 139
[134] Civil Code (n 115) Art 7(1)
[135] ibid Art 9
[136] ibid Art 35
[137] ibid Art 39

Appropriate and proportional sanctions when a Court order is not adhered to constitute a basic pillar of the Rule of Law. In PA, the alienator will be looking for loopholes out of any Court orders. For example, an order that states that 'the child will be with the mother between 5 and 7pm' does not specify who does the pickup, the dropoff, from where and to where, and so on. Thus, Court orders need to be very detailed, specific and inclusive of what sanctions will be applied in case of non-adherence. The Court should stay away from 'threatening' with sanctions that it will not then be prepared to apply once the transgression occurs, as it most certainly will.

Possible sanctions at early stages could be the imposition of fines, community work and financial compensation to the target parent. For example, when the target parent has to take time off work and pay the lawyer to attend a sitting that is then adjourned as a result of inaction or delay tactics by the alienating parent, then the alienator could be made to compensate for such financial losses.

Imprisonment must only be the remedy of last resort as it will only serve to increase the hostility between the parties, and is counter-productive to the aim of the proceedings to restore the child-parent bond, since the alienated child will side with the alienator and blame the target parent for putting the 'preferred' parent in prison. However, detention could still form part of the case strategy if a very short sentence is imposed, for example of one to three days, in extreme cases, as this could act as a deterrent and encourage compliance, particularly in the early stages of the proceedings.

In order to maintain judicial continuity and decrease delays, criminal sanctions for contact denial should fall under the jurisdiction of the Family Court so that they will be heard and decided by the same Judge hearing the case.

CONCLUSION

When assessing the democratic necessity of an impugned measure regarding the right to respect for family life protected under Art 8, the ECtHR emphasises that a parent and child have a right to continue enjoying each other's company even after the breakdown of the parents' relationship. Furthermore, exceptional diligence must be applied by the courts when dealing with contact cases, to prevent that these are determined by the mere passage of time. The margin of appreciation afforded to national authorities in cases of contact denial is narrow, and measures implemented are subject to higher scrutiny.

The ECtHR also states that a parent has a right to have measures taken with a view to being reunited with their child, and national authorities have a positive obligation to do all that is within their power to facilitate such a reunion, including taking preparatory measures that may be necessary if the parent-child relationship has broken down. The positive obligations of the domestic authorities include the taking of coercive measures and applying effective sanctions, although coercion must take into account the rights of all concerned and the best interests of the child.

Another principle applied by the ECtHR is that rights must be real and effective, hence domestic courts must not allow a decision to remain inoperative to the detriment of one party. Judgments must be executed without delay, as the ECtHR recognises the prejudice caused by procedural delays. Additionally, the national authorities cannot justify their interference by the applicant's lack of action, because it is they who exercise public authority.

Children have a right to be consulted and heard in proceedings that concern them, but the ECtHR advises against giving children an 'unconditional veto power' especially since it is in children's best interest to maintain a relationship with both parents. Thus, the domestic authorities must ensure that the views expressed by the child are truly their own and not the result of brainwashing, as is the case in parental alienation.

The ECtHR was presented with the term 'parental alienation' for the first time by an applicant in 2000. Since then, 14 more such cases have appeared in front of the Court,

up until the latest one in 2021 against Malta. A violation of Art 8 or Art 6 was found in 10 out of these 15 cases. In three of the cases where no violation was found, the dissenting opinions very strongly condemned parental alienation. In another case where no violation was found, the applicant was the one denying contact to the other parent, a fact which was recognised by the Court.

Parental alienation and contact denial are very much a reality in Malta's Family Court, and they necessitate immediate and decisive action. The reforms proposed in this research do not necessitate the introduction of new laws, but rather a better application of the current laws coupled with minor changes. The approach is based on education of all parties and decision-makers, and the application of a case strategy that maximises the management powers inherent in the Judge's role.

Family court procedures that incorporate principles of judicial continuity, organised case management, and a focused case strategy would contribute to a reduction in unnecessary delays. The Early Intervention Programme proposed would stream cases into a Fast Stream consisting of straightforward cases resolved through mediation and a parental education program, and a more resource-intensive Focus Stream for the more complex cases. In both streams, sittings should be strictly scheduled and the schedule strictly adhered to, so that cases are resolved in a timely manner spanning months rather than years.

It is important that parental alienation is recognised as a form of emotional child abuse, and hence an act of domestic violence, as such recognition affords increased protection for the child who is being denied the opportunity to benefit from a relationship with one of the parents. Applying the principles outlined by the ECtHR will direct the Family Court to carry out, with exceptional diligence, a more accurate assessment of the wishes expressed by the child and any allegations made against the target parent.

Parental alienation does not resolve spontaneously. Research shows that a change in residence to the alienated parent is the most effective way to address severe cases of parental alienation. The earlier parental alienation is addressed by the Court, the more unlikely that the behaviours will become entrenched, and hence the less the damage

sustained by the child and the alienated parent. When contact denial cases are allowed to drag on, resulting in the breakdown of the parent-child bond, the victims will seek a remedy from the European Court of Human Rights which, by applying the same principles it has always applied, will find Malta in violation of its obligations unless the situation is improved. The application of the reforms as proposed should assist the Maltese courts in fulfilling their obligations in this respect.

BIBLIOGRAPHY

Baker AJL, 'The cult of parenthood: a qualitative study of parental alienation' (2005) 4(1) Cultic Studies Review

Baker AJL and N Ben-Ami. 'To Turn a Child Against a Parent Is To Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being' (2011) 52(7) Journal of Divorce & Remarriage 472

Brannon S, 'A review of legal interventions in severe parental alienation cases' (2020) ELSA Malta Law Review (7) 129

Bosma H, *Freedom of Expression in England and under the ECHR: In Search of a Common Ground: A Foundation for the Application of the Human Rights Act 1998 in English Law* (Antwerp, Intersentia, 2000)

Clawar SS and BV Rivlin, *Children held hostage: Dealing with programmed and brainwashed children* (Chicago, IL: American Bar Association 1991)

Darnall D, 'The Psychosocial Treatment of Parental Alienation' (2011) 20(3) Child and Adolescent Psychiatric Clinics of North America 479

Darnall D and BF Steinberg, 'Motivational methods for spontaneous reunification with the alienated child' (2008) 36 American Journal of Family Therapy 107

Fidler BJ and N Bala, 'Children resisting postseparation contact with a parent: concepts, controversies, and conundrums' (2010) 48(1) Family Court Review 16

Gardner RA, 'Should courts order PAS children to visit/reside with the alienated parent? A follow-up study' (2001) 19(3) American Journal of Forensic Psychology 61

Johnston JR and JR Goldman, 'Outcomes of family counseling interventions with children who resist visitation: an addendum to Friedlander and Walters (2010)' (2010) 48(1) Family Court Review 112

Rand D, R Rand and L Kopetski 'The spectrum of parental alienation syndrome part III: the Kopetski follow-up study' (2005) 23(1) American Journal of Forensic Psychology 15

Reay KM, 'Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System' (2015) 43(2) The American Journal of Family Therapy 197

Sullivan MJ and JB Kelly, 'Alienated Children in Divorce: Legal and Psychological Management of Cases With an Alienated Child' (2001) 39 Family Court Review 299

von Boch-Galhau W, 'Parental Alienation (Syndrome) – A serious form of psychological child abuse' (2018) 14 Ment Health Fam Med 725; JJ Harman, E Kruk and DA Hines, 'Parental alienating behaviours: An unacknowledged form of family violence' (2018) 144(12) Psychological Bulletin 1275

Warshak RA, 'Family Bridges: using insights from social science to reconnect parents and alienated children' (2010) 48(1) Family Court Review 48

INDEX