

## THE LEGAL INSTITUTION OF PARENTAL ALIENATION AND HOW IT IS REGULATED IN ROMANIA

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**Abstract:** *Parental alienation is a complex and controversial phenomenon, often encountered in the context of parental separation or divorce, and involves the process whereby a child is emotionally and psychologically alienated from one parent as a result of negative influence from the other parent. It involves a series of behaviors and actions whereby the alienating parent manipulates the child's perceptions, inducing feelings of hostility, fear or contempt towards the target parent. Parental alienation can have devastating consequences for both the child and the alienated parent, in the sense that it has negative effects on the child's emotional and relational development, affecting the child's ability to maintain healthy long-term relationships and at the same time causing significant distress for the alienated parent, who feels excluded from the child's life. In the legal and social context in Romania, parental alienation has been a challenge for family courts and professionals working in the field of child protection, as until now there was no specific legislation directly regulating this phenomenon, despite all the general principles of family law and child protection legislation that provided mechanisms to prevent and address such situations. This article aims to provide an introduction to parental alienation and to emphasize the importance of understanding and properly managing the phenomenon from both a legal and psychological perspective in order to protect the interests and well-being of children.*

**Keywords:** *divorce, best interests of the child, maintenance of personal ties program, estranged parent, parental alienation.*

### **Introduction. The situation of children in Romania before Law 272/2004**

It was only in 1970 that the first Romanian law on child protection was adopted, and the purpose of this law was to provide protection to certain groups of children, especially children in need of care outside the family.

This law provided for institutionalization as the main form of protection for these children. However, institutions became overcrowded during the communist regime as a result of the communist government's policy of increasing the population at all costs by banning abortion and other more conventional methods of family planning. After the fall of communism, the terrible effects of this policy shocked the world. Foreign journalists were allowed to visit children's homes and hospital homes for children with disabilities, and numerous articles and documentary films were published in many countries.

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Thus, Romania's image suffered, and the positive side of things was only the compassion of people from all over the world, who, seeing their situation, began to send humanitarian aid in the form of food, clothing and judgment to the institutions that cared about their plight and had made such a deep impression. (Visu, 2022: 62) Despite the efforts of these people, their situation was not going to change without a fundamental change on several levels, which is why representatives of organizations such as UNICEF, USAID, World Vision, Holt Terre des Hommes were set up in Romania and, in cooperation with local and central public authorities, they carried out staff training programmes, restructuring programmes for some institutions, as well as the creation of new types of services in certain pilot counties.

The year 1997 proved to be a landmark for the reform of the child protection system in Romania, as the first governmental strategy covering the period 1997-2000 took place, which led to the decentralization of child protection activities, the restructuring and diversification of child protection institutions, the development of family-type alternatives to residential protection, and the prevention of child abandonment. The immediate effect of the adoption of the new legislation was the establishment, in all counties of the country and in the six sectors of Bucharest municipality, of child protection commissions and specialized public services for child protection, called Child Protection Directorates.

***Brief considerations on Law no. 123/2024 amending and supplementing Law no. 272/2004 on the protection and promotion of children's rights***

Law No 123/2024 was introduced in Romania to update Law No 272/2004 on the protection of the rights of the child, with the main aim of strengthening measures to protect the relationship between children and both parents, especially in the context of custody disputes. The amendments aim to combat the phenomenon of "parental alienation," which is considered a form of psychological violence. This occurs when a child develops hostility or withdrawal towards one parent due to negative influence from the other parent, which may include manipulation or restriction of personal relationships with that parent.

New provisions include the possibility for courts to order protective measures or sanctions to ensure that the child's right to maintain personal relations with both parents is respected. Courts can also decide that parental authority should be exercised by one parent if the other parent displays serious behaviors, such as manipulating the child against the other parent, violence or addictions.

With this law, the Romanian government aims to better protect the emotional well-being and development of children, while facilitating balanced relationships between them and their parents, including in difficult cases of separation or divorce.

In concrete terms, Law no. 123/2024 was designed with the intention to target two major purposes, namely, a first main purpose which is reflected in combating **real situations of parental alienation** encountered in very large numbers in practice and seriously affecting an increasing number of children, and the second secondary purpose, aimed at combating **situations in which unfounded accusations of parental alienation are made**, usually to hide an abusive behavior of their own against the child or the other parent.

Law No 272/2004 states that they are entitled to protection and support to exercise their rights, and if it is found that a minor is unable to exercise his or her rights, the responsible persons must take action in accordance with the law.

The primary responsibility for the upbringing and development of the child lies with the parents, who must act in the best interests of the child, and where parents are unable to fulfill these obligations, the local community has an additional role in supporting the family by developing services appropriate to the child's needs.

The intervention of public authorities is complementary, ensuring child protection only when necessary, through the actions of specialized institutions and competent authorities.

The provisions of Law No 272/2004, which has been updated by the new law, emphasize that the state plays a **supporting and intervening role only in necessary cases**, respecting the right of parents to raise and educate their children. However, if there is a risk or finding of a violation of the child's rights, including in situations of parental alienation, the public authorities must act in accordance with the legal provisions to protect the child. (Spîrchez, 2022: 10)

The amendments brought by Law no. 123/2024 further emphasized the role of **state institutions** in rapid intervention to protect the child in cases of psychological violence, neglect or parental alienation.

#### ***Measures proposed by Law no. 123/2024 to combat the phenomenon of parental alienation***

Law No 123/2024 introduces a number of new measures to combat the phenomenon of parental alienation (or parental alienation) in Romania, as part of the amendments to Law No 272/2004 on child protection. These measures include: **monitoring** by the representatives of the public social welfare service, **financial sanctions in the form of late payment penalties** imposed on the parent who refuses to implement or comply with the provisions concerning the child's living arrangements or the child's personal relations maintenance program, the **service plan** to be drawn up and implemented by the public social welfare service and the **visits** organized by the representatives of the social welfare services in case there are reasonable grounds to suspect that the child's life and security are endangered in the family. We note that all these measures introduced by Law no. 123/2024 have as a prerequisite situation, the disagreement between parents on how to exercise the right to have personal contact with the child or even situations in which one of the parents deliberately prevents the non-resident parent to comply with the visitation schedule established in favor of the latter, a situation that actually reflects the phenomenon of parental alienation.

In the following lines we will give a brief overview of what is involved in preventing the phenomenon of parental alienation:

#### ***Monitoring compliance with the personal links program***

The monitoring of the contact schedule between the child and the non-resident parent is a regulated procedure to ensure that the child's right to have a relationship with both parents is respected, even in situations of divorce or separation. This monitoring can be carried out in a number of ways, depending on the circumstances of the case and the decision of the court, with the proviso that monitoring can also be carried out in a situation where, by

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an authentic instrument issued by a notary public, the parents have agreed on a schedule for the non-resident parent to maintain contact with their child.

Therefore, if one of the parents hinders or negatively influences the child's relationship with the other parent by not complying with the court-ordered or mutually agreed program, the other parent has the right to request the intervention of the public social welfare service or other persons responsible for social welfare in the area where the child lives, to monitor contact with the child for a period of up to 6 months.

The monitoring allows representatives of the public social welfare service or persons responsible for social welfare to be present during the child's pick-up from the non-resident parent, during the non-resident parent's visits to the child's home, and when the child is returned to the resident parent. Also, if the court has ordered monitoring by a final judgment, social workers may also be present when the child is accommodated by the non-resident parent. During the monitoring, the representatives of the public social assistance service or, where appropriate, the persons in charge of social assistance may interview the parents, the child, the persons with whom the child has a relationship and other persons whose interview is deemed to be useful for the purposes of drawing up the monitoring report.

At the end of the monitoring period, the social service representative may request an extension of the monitoring for a maximum of 6 more months, if deemed necessary. He or she may also recommend psychological counseling for one or both parents, as well as other measures to improve the child's relationship with the non-resident parent. The monitoring report is given to both parents and can be used as evidence in court if the situation so requires.

***Measures of an insurance, guarantee or penalty nature***

In accordance with the provisions of Article 20 of Law no. 272/2004 amended by Law no. 123/2024, at the request of the interested parent or other entitled person, the court may order one or more measures of a precautionary nature, guarantees or penalties to ensure that the child's personal relations with his/her parents or other persons with whom the child has enjoyed family life are maintained, to ensure the return of the child to his or her home at the end of the period of accommodation, to prevent the child from being prevented from being taken back to the home of the parent who does not live with the child at the end of the period of accommodation, and to ensure compliance with the provisions concerning the child's residence.

In the case of penalties, they are set between 10% and 15% of the monthly net income of the person obliged to pay it, but not less than 300 lei, and if the court finds the existence of a situation of parental alienation, the penalty is mandatory and the minimum and maximum limits of the penalty are doubled.

As for the rest of the precautionary measures that can be ordered by the court in case of non-compliance with the program, we also specify the possibility of depositing a real or personal guarantee by the parent or the person from whom the child is to be taken, in order to maintain personal relations or, where appropriate, upon termination of the visitation program, as well as the deposit of the passport or other identity document with an institution designated by the court.

### ***Service Plan***

The Service Plan is an important tool in combating parental alienation, providing a clear framework of intervention and support for parents and children. This plan is developed by the General Directorate of Social Assistance and Child Protection (DGASPC) and aims to protect the best interests of the child, ensuring that the bond with both parents is maintained and that the child's rights are not violated.

The DGASPC specialists conduct a detailed assessment of the family situation, identifying behaviors that indicate parental alienation (for example, the child's refusal to meet with a parent without a real justification). On the basis of the assessment, a personalized service plan is established with the main objective of restoring a healthy relationship between the child and the estranged parent.

The service plan may include psychological counseling for both the child and the parent who is hindering the personal bond, as this can help identify and correct alienating parenting behaviors, helping to heal the affected relationship. Family counseling may also be included in the plan to help the whole family manage conflict and improve communication.

The service plan may also include measures to mediate between parents in order to resolve disputes related to the visitation schedule and to prevent conflicts from escalating.

During the implementation of the service plan, DGASPC monitors progress and carries out regular evaluations. If the relationship between the child and the non-resident parent does not improve, additional measures may be proposed, such as prolonging the monitoring or recommending more intensive interventions (e.g. specialized therapy), and at the end of the monitoring period, a detailed report is drawn up and submitted to the parents, which can be used as evidence in court in case of litigation. The report includes observations of the parent's behavior that hinders personal bonding, as well as recommendations for further necessary interventions.

The service plan is therefore essential to combat parental alienation as it provides a structured set of interventions that support the child in maintaining a balanced relationship with both parents. It helps protect the best interests of the child and contributes to conflict resolution, thus preventing the negative consequences of parental alienation on the child's development.

### ***Visits by representatives of the public social welfare service***

If there are reasonable suspicions that the safety and well-being of the child is at risk within the family, representatives of the public social welfare service or the General Directorate for Social Assistance and Child Protection (DGASPC) are obliged to visit the child's home. During this visit, they must assess the conditions in which the child is being cared for, check the child's state of health and physical development, as well as aspects of the minor's education and vocational training. If irregularities or shortcomings are found, the representatives have a duty to provide the necessary recommendations and guidance to remedy the situation.

This intervention is designed to protect the child's best interests by ensuring that the child develops in a safe and healthy environment. If the situation so requires, DGASPC may decide to apply additional protective measures, including placing the child in a more secure environment, if remaining in the family would pose an imminent danger to the child. If,

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following the visits carried out by the representatives of the public social welfare service, it is found that the child's development is endangered physically, mentally, spiritually, morally or socially, and the personal ties with the non-resident parent are negatively affected or there is clear evidence of parental alienation, the social welfare service is obliged to notify the General Directorate of Social Assistance and Child Protection (DGASPC) within 24 hours. This referral is necessary in order for the DGASPC to take appropriate legal measures to protect the best interests of the child.

Among the measures that DGASPC can take in the above-mentioned situation are a detailed assessment of the situation of the child and the family, recommending or imposing psychological counseling measures for the parents, adjusting the previously established program of personal ties, if it affects the child's development, and in serious cases, initiating a temporary placement procedure to protect the child from an environment considered dangerous.

It is important to note that the court is the only competent authority to decide, taking into account, as a matter of priority, the best interests of the child, on: the person exercising parental rights and fulfilling parental obligations in the situation where the child is temporarily or permanently deprived of parental care, the manner in which parental rights and obligations are exercised and fulfilled, the total or partial deprivation of parental rights, the restoration of parental rights and the determination of the existence of parental alienation.

### ***Conclusions***

We conclude that parental alienation is a subtle but deeply damaging form of emotional abuse of the child, and that it interferes with the healthy relationship between the child and the target parent, creating confusion, emotional distress and, in the long term, affecting the child's healthy development.

Success in tackling this phenomenon requires a shared responsibility on the part of parents, mediators, counsellors and the legal system to recognize the signs of parental alienation and to act in the best interests of the child, through early interventions, such as those mentioned in this article, which can help to restore damaged relationships and provide a stable and healthy environment for the child.

Essential for the prevention and management of cases of parental alienation are both counseling and mediation programs and the intervention of legal professionals, who, through the measures made available by the legislation in force, can sanction abusive behavior and promote healthy parent-child relationships. (Motica, 2015: 58)

Parental alienation affects not only family dynamics, but also the emotional health of the child, with consequences that may persist into adult life. Understanding and tackling this problem requires empathy, cooperation and prompt intervention, with the ultimate aim of the child's well-being and harmonious development.

Last but not least, the best interests of the child must be paramount in all actions concerning children. This is not to say that the best interests of the child will always be the only determining factor to be taken into account, but that "there may be competing or conflicting human rights interests, for example between children taken separately, between different groups of children and between children and adults". (Nicolae, 2016: 189) However,

the best interests of the child must be taken into account in all situations and it must be demonstrated that the child's best interests have been given priority.

The provisions of Law 272/2004 and the rights of the child as a whole may be seen as diminishing the authority of parents, other family members or caregivers. However, such a perception is not correct, as Law 272/2004 emphasizes the essential role of the family in the child's life and emphasizes the respect the child owes to parents, other adults and peers.

In conclusion, Law No 272/2004 emphasizes parental authority and the responsibilities of the parents in their relationship with the child, as well as the fact that every child is important and is a capable being. This law, like the UN Convention on the Rights of the Child, considers that good average results or a high rate of overall progress is not enough.

In short, the idea that Law 272/2004 conveys to all those who are responsible for promoting children's rights in Romania is that every child matters and all authorities responsible for the promotion and protection of children's rights in Romania have a duty to do their utmost to ensure that no child is forgotten or ignored.

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