

Proactive Management of PA cases in Israeli Courts: A Novel Approach

Philip Marcus, Judge (retired) Jerusalem Family Court

PARENTAL ALIENATION STUDY GROUP

Conference 2019, Philadelphia PA.

PA and the courts

- **The roles of courts**
- **Parental responsibilities**
- **The need to act immediately when PA is alleged**
- **Novel approaches in the Israeli courts**
- **What can you do?**

The Roles of Courts

- **TO PROTECT THOSE WHO CANNOT PROTECT THEMSELVES**
- **TO PUT A STOP TO UNLAWFUL ACTION**
- **TO PREVENT HARM, OR AT LEAST REDUCE IT**
- **TO PUNISH THOSE WHO ACT UNLAWFULLY**
- **TO COMPENSATE THOSE WHO SUFFER DAMAGE**

Courts often act urgently, without sacrificing due process

Where an unlawful act is alleged, courts are empowered to take steps, to preserve an existing situation, or to prevent further unlawful acts, before the full trial.

- Injunctions**
- Applications for remand/bail**
- Applications for domestic violence exclusion and banning orders**
- Applications under child protection laws**
- Search warrants**
- Return of abducted children**

Parental Responsibilities

Parents have responsibilities to the child

- **Parental responsibilities are joint – parents must work together for the benefit of the child**
- **Parents must protect the child from harm: physical, mental, emotional**
- **Each parent is duty-bound to enable the child to have a positive relationship with both parents, even/ especially after the parents separate.**

Marcus P (2017) *Parental Responsibilities: Reformulating the Paradigm for Parent–Child Relationships* *Journal of Child Custody*, October 2017

Parental Alienation is maltreatment of the child

- **The acts of a parent to alienate the child from the other parent are in breach of parental responsibilities.**
- **Parental Alienation causes damage to the child, immediate and long term, and thus constitutes maltreatment**
- **PA is unlawful**

BUT

- **Not all cases where contact fails are due to parental alienation**

Prevention of Parental Alienation

Major efforts should be invested in prevention, including:

- **Educating the public and potential alienators.**
- **Educating professionals who are in frequent contact with children: educators, medical staff, etc.**
- **Early identification and immediate therapeutic intervention for the child, and psycho-didactic intervention with the parents.**
- **Where necessary, immediate court intervention, including orders for contact and treatment for the child.**
- **Strict sanctions where a parent refuses to comply with court orders for contact and/or for treatment, including fines or imprisonment**

Parental Alienation, Contact Refusal and Maladaptive Gatekeeping: A Multidisciplinary Approach to Prevention of Contact Failure Published as a chapter in *Family Law and Family Realities, 16th ISFL World Conference Book*, C. Rogerson, M. Antokolskaia, J. Miles, P. Parkinson, M. Vonk (eds.) (2019, The Hague, Eleven International Publishing) 349-366.

By the time a PA case comes to court, it is often too late

If primary prevention is not available, and secondary identification and intervention are not done, contact may cease altogether.

The damage is already happening.

A child who has not seen a parent for three months is unlikely to respond to therapeutic intervention.

Unless the rejected parent is aware of the situation as soon as alienation starts, and acts immediately, the Court processes may start after three months have passed without contact

Unless the alienating parent agrees, professional intervention – treatment of the child to reverse rejection, and work with the parents to restore adequate co-parenting, will only start when the court orders it.

IT'S TOO LATE.

The Israeli Family Law system

Adversarial but also Therapeutic

Common Law – Judges are bound by legislation and precedent, but wide discretion.

Capacity and Guardianship Law, 5722-1962: power of the court to make any order necessary to protect minors and disabled persons

Family Courts Law, 5755-1995: power of court to diverge from procedural rules and evidence rules in the interests of justice; in-house social services; specialist judges with pre-appointment family law knowledge and experience.

Legal Aid for children and for litigants with below average income.

One Family-One Judge

Philip Marcus: The Israel Family Court – Therapeutic Jurisprudence and Jurisprudential Therapy from the Start (2017) International Journal of Law and Psychiatry DOI 10.1016/j.ijlp.2018.06.006

The new Israeli approach

**Pilot schemes in Tel-Aviv Family Court (the Fast Track),
Family Courts in Central District (Questionnaire and
security of costs)**

**Both schemes: The objective is to ensure that the case is
dealt with fairly, taking into account:**

- Urgency**
- The needs of the child, especially the dangers of allowing
unjustified contact failure to continue**
- The possibility that contact failure is justified, or that the
application is unfounded**

**Avoids the debates: syndrome/not syndrome, etc, and does
not require full investigation of parenting capacities.**

Is it PA, or likely to become PA?

TWO QUESTIONS

Has contact stopped, or there are problems with contact?

If so, why?

THE BURDEN OF PROOF IS SHIFTED

Instead of the applicant parent alleging PA having to prove that the residential parent is alienating the child, or facilitating the child's unjustified rejection, the residential parent has the burden of proving that there are justifiable reasons, e.g. severe abuse or violent behavior by the other parent, severe untreated mental illness, etc for cessation of contact.

The new approach: Tel Aviv

Where PA is alleged, THIS MAY BE AN EMERGENCY.

However, not all cases where contact fails are due to parental alienation.

Where the judge dealing with the family receives an application alleging PA, or becomes aware that contact has failed or is liable to fail, the case is referred immediately to a designated Judge.

Accelerated timetable for determination if there is PA or likely to lead to PA: response within 7-14 days, hearing immediately thereafter, decisions and orders within days.

Zero tolerance for timewasting by litigants and lawyers.

Sanctions for unwarranted allegations.

Tel Aviv: what happens next

If the designated judge concludes that there is no PA, the case is returned to the regular list, and dealt with as an “ordinary” case; order for costs against vexatious applicant.

If there is PA, the designated judge will continue to deal with the case.

- Orders for contact and professional intervention**
- Follow up – progress reports by parents and experts within two-three weeks**
- Sanctions for non-compliance**

The new approach: Central District

Where PA is alleged, THIS MAY BE AN EMERGENCY.

However, not all cases where contact fails are due to parental alienation.

Where the judge dealing with the family receives an application alleging PA, or becomes aware that contact has failed or is liable to fail, applicant is ordered to:

- Answer questionnaire about contact, in affidavit form**
- Give undertaking and third party guarantee for respondents costs and for costs to state treasury, in the event that the application is unfounded**

Central District: what happens next

If applicant's affidavit and undertakings not filed, case continues as if no allegation of PA filed.

If affidavit and undertakings are filed, date fixed for hearing within 7 days.

Respondent required to answer questionnaire about contact, in affidavit form, at least three days before hearing.

If allegation found justified:

- Orders for contact and professional intervention**
- Follow up – progress reports by parents and experts within two-three weeks.**

If allegation found unjustified:

Costs awarded to respondent and to state treasury

The voice of the child

The child is entitled to be involved in proceedings which will affect his future.

Preferable to appoint independent counsel for the child (GAL) who is knowledgeable and experienced in PA cases, at the stage of determination of the reasons for contact problems.

If there is parental alienation, there is little justification for hearing the child. The child has been brainwashed, and will not say anything positive about the rejected parent.

Involvement of social workers, psychologists and other professionals

Family Court Social Services:

- Assist the parties in making contact arrangements, including visitation schedules, contact centers**
- Assist in finding experts for treatment of the child and establishing adequate co-parenting**

Experts:

Reconciliation and rehabilitation of child-parent relationships

Philip Marcus, *The Israeli Family Court –Therapeutic Jurisprudence and Jurisprudential Therapy from the Start* 2019 *International Journal of Law and Psychiatry* Vol. 63 68-75

The orders

Precise framing of decisions for contact, in such a way as to prevent manipulation by those ordered to comply:

- **places, dates and times for transfers**
- **stated sanctions for non-compliance**
- **requiring frequent reports by the parties and those overseeing contact**

Clarity and precision in framing decisions for treatment:

- **the identity of the person to provide therapy**
- **the goals of treatment, including intermediate stages**
- **the dates by which treatment shall start**
- **who is responsible for payment of fees**
- **requiring frequent reports by those conducting therapy.**

Sanctions for non-compliance

- **Fines, under the Contempt of Court Ordinance, to be payable to the court treasury**
- **Payment of compensation to the other parent for wasted time**
- **Reduction of child support**
- **Imprisonment for contempt of court**
- **Moving the child to live with the alienated parent**
- **Banning contact with the alienator.**
- **Investigation by the child protection authorities**
- **Order to pay the other parent's legal fees and court costs, and/or to pay the costs of wasted court time to the court treasury**
- **Request to the police to open an investigation on the basis of the criminal offence of breaching a court order**

Benefits of the new Israeli approach

For the child

- **Gets help fast**
- **Reduces period of uncertainty**

For the parents

- **Returns adequate co-parenting**
- **Saves legal fees, loss of work, stress**

For the public

- **Prevents waste of court resources**
- **Better prognosis for the child**

How to achieve effective court intervention

Depends on legal system – adversarial, inquisitorial, combined-therapeutic, etc.

- Powers of the court, to make changes in the child's residence and contact arrangements, to order interventions with the child and the parents, sanctions for non-compliance, to restrict the decision-making powers of the alienator**
- Procedures, including time limits, fixing dates for hearings, etc.**
- Specialist family court judges**
- Multi-disciplinary work.**

What needs changing?

How to achieve effective court intervention: Your assignment

Research:

Search for statutes, procedural rules, case law, which may have been ignored or not used.

Education and training:

Make sure judges and lawyers know about PA and its disastrous effects.

If necessary: push for law reform:

For specialist Family Courts and experienced judges.

Broad powers to decide fast in matters relating to children

Enforcement of orders including harsh sanctions for non-compliance

Upcoming articles

For more information about the Israeli courts' approaches, including references to caselaw, and other prevention techniques:

Philip Marcus, *Practical Programs for Preventing Parental Alienation: Education, Early Identification, Effective Intervention.*

To be published in a special issue of Family Court Review, Summer 2020

For more about savings from prevention and prompt action in cases of PA:

Philip Marcus: *Economic Implications of Prevention and Early Intervention for Parental Alienation*

To be published in Chapter 13 of Bernet and Lorandos *Parental Alienation – Science and Law*, Spring 2020.

In-between

<https://balev.org/children-come-first/>

- **In-between has set up centers for multidisciplinary work with children of divorce and their parents**
- **Education and early intervention to minimize the damage and suffering caused by the breakup of families**
- **Workshops for teachers**
- **Lectures for social workers and youth counselors**
- **Parental alienation prevention team**



THANKS

To the PASG for organizing the conference.

To you for your attention.

For more information and training materials, please be in touch:

Philip Marcus, Judge (Retired), Jerusalem Family Court

www.philip-marcus.com

philipmarcusjurist@gmail.com

+972 5444 55703