

# Parental Alienation in the European Court of Human Rights

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## Citation

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## Excerpt from Chapter 13

Regarding custody and parenting time, the proceedings of the European Court of Human Rights are mostly based upon the following articles of the European Convention on Human Rights:

### Article 6 – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

### Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. 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.

### Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 6 is the article most frequently cited, especially regarding the length of proceedings. It is crucial in family matters because, as the Court reiterates time and again, the excessive length of proceedings can predetermine their outcome, with “alienation” progressing in time, even to a point of no return, and in any case no way to recover the lost years of childhood.

Different from family court, of concern to the European Court of Human Rights are only possible violations of the rights of the applicant by the state's authorities in handling the case. The Court thus does not hear the other parent or the child, nor are new psychological evaluations ordered. The Court bases its judgment solely on the evidence available from the national proceedings, brought forward by the applicant or as counterarguments by the representative of the concerned state.

These are very important points to keep in mind when asking whether this highly prestigious supranational court recognizes parental alienation (PA). It can be said to be true, if the Court specifically refers to PA as a relevant factor for its decision. That is most likely to happen when PA arguments already played a significant role in the national proceedings.

As of April 2012, PA was such a factor in eight decisions among twenty-three judgments in which the terms parental alienation (parental alienation syndrome) or aliénation parentale (syndrome d'aliénation parentale) appeared. In the remaining cases PA was mentioned just by the applicant, although sometimes also by national courts.

The eight decisions specifically using PA arguments were

- *Sommerfeld v. Germany* (Application no. 31871/96), July 8, 2003
- *Koudelka c. République Tchèque* (Requête no. 1633/05), July 20, 2006
- *Zavřel c. République Tchèque* (Requête no. 14044/05), January 18, 2007
- *Patera c. République Tchèque* (Requête no. 25326/03), April 27, 2007
- *Mincheva c. Bulgarie* (Requête no. 21558/03), September 2, 2010
- *Piazzzi c. Italie* (Requête no. 36168/09), November 2, 2010
- *Bordeianu c. Moldavia* (Requête no. 49868/08), January 11, 2011
- *Diamante and Pelliccioni v. San Marino* (Application no. 32250/08), September 27, 2011

The case of *Elsholz u. Germany* (2000) was the first with a reference to PA (by the applicant) and received a lot of attention but did not yet represent a recognition of PA by the Court. The same applies to the case *Kutzner v. Germany* (2002), in which young children were taken to a shelter by social services. The Court merely used "alienation" in a more general sense, for drifting apart, becoming strangers due to lack of contact, without necessarily implying that someone was trying to turn the children against the applicants or that the children were rejecting a parent.

In *Sommerfeld v. Germany* (2003), PA is not mentioned in the majority decision, but PA and fundamental questions regarding the child's true wishes and best interests were discussed in the dissenting opinion of Judge Rees (Germany), joined by Judges Pastor Ridruejo (Spain) and R. Türmen (Turkey), thus paving the way for PA recognition by the Court.

**Comment by Christian Dum (March 2020)**

Two key points are still valid and important today, especially if PA is seen as a judicial issue, which necessarily is the case regarding ECHR decisions:

1. Statements by children in court hearings cannot always be decisive or even indicative of their true wishes, nor are they necessarily in their best interest.
2. Courts and states—in the case of the European Court of Human Rights—have a positive obligation to undertake everything possible and in a timely manner for re-uniting parents with their children. Not doing so is a violation of Article 8 (1) and perhaps also Article 6 (1) of the European Convention of Human Rights.

These principles still hold just the same for more recent decisions of the European Court of Human Rights, even if the term “parental alienation” is no longer used by this high court itself, although it can still be found in submissions by the “applicants” and in the decisions of some national courts. See for example *Pisică v. the Republic of Moldova* (Application no. 23641/17), October 29, 2019. Most important is the upholding—or if needed enforcement—of the principles for allowing children a conflict free access to both parents, also after separation/divorce.