



1. The different manifestations or specific types of domestic and intimate partner violence experienced by women and children, including the use of “parental alienation” and related concepts in child custody and access cases. Please also include a description of the different forms of violence that may be experienced by the mother and child as well as fundamental human rights violations, where relevant.

- a) Mothers are under the general suspicion of “gatekeeping” towards fathers before the youth welfare service and the family court and are thus confronted with allegations of attempting “alienation”. The psychologically unproven legal construct of “attachment intolerance” (“Bindungsintoleranz“) can be used as a synonym for the scientifically untenable alienation theory, “PAS”. An accused mother faces the problem of having to prove these allegations untrue, even against a background of refuted slander, threats, and discrediting. As a rule, a “symmetrical parental conflict” is assumed, even in cases of psychological and physical violence. In these cases, however, it is exactly those instruments of family court proceedings that are supposed to promote agreements that are likely not applied.

In the 692 cases examined in the study¹ and the documentation of further cases reaching the research group, exclusively mothers are accused with PAS/similar constructs using optional terminology of

- attachment intolerance (“Bindungsintoleranz“)
- alienation (“Entfremdung“)
- symbiotic mother-child attachment (“Symbiotische Mutter-Kind-Bindung“).
- In some cases also "Munchausen-by-proxy" (a rare phenomenon, which was later on disproved in the examined cases).

- b) Psychological, physical, and sexual violence against children and mothers is sometimes ignored, trivialized, or negated in the examined proceedings. Often, an offender-victim reversal can be observed. This becomes particularly obvious against a backdrop of pedophilia or pedophilic tendencies. Even in these cases, a “parental conflict“ is stated.

Economic violence also plays a major role. The mothers are forced to spend a lot of money due to the long family law proceedings. They can also be bled dry financially by the fathers' representatives through clever legal maneuvers.

All resources of the mothers are affected: In most cases, the children (still) live with the mothers. In addition to everyday concerns about care, schooling, illness, leisure activities, and their own occupation, there are also

¹ Hammer et.al.: Familienrecht in Deutschland. Eine Bestandsaufnahme, April 2022, vgl. <https://www.familienrecht-in-deutschland.de/studie/>



- The great concern and fear for the integrity of the children
- The very time-consuming work involved in the family law proceedings
- Contact by the father, often several times a week, often coupled with threats and accusations, which cannot be ignored against the background of the ongoing legal proceedings and in most cases having the character of "coercive control"
- Degradation, as mothers in their inherent role as mothers are continuously defamed by the father and parties to the legal proceedings sometimes third parties as well, their lives are meticulously scrutinized to prove them wrongdoing
- The mother is humiliated, blackmailed, threatened with custodial consequences or/and (re)questioning and assessment of the children and herself in the courtroom or by the family law actors
- Exhaustion, recurrent trauma from the proceedings and actors from the proceedings, which cannot be "left behind" because the legal proceedings have a permanent dynamic

The children and mothers are under constant observation with the accompanying pressure that such knowledge of the judicial usability of a wide variety of situations in life can bring. In addition, the father may be constantly "watching" to see if a situation is judicially exploitable. This restricts the children's right to a relaxed and age-appropriate upbringing.

The situation of the affected children is dramatic. Long-term and multiple parallel proceedings and associated behavioral problems, the termination of childcare models that were tried and tested for many years in favor of "alternating models" as well as ad hoc relocations of children are becoming more frequent. This happens not only against the will of one of the parents, but also of the children who, out of loyalty, do not participate actively but actually do not want to live in an alternating model. Children's needs for security and stability are led ad absurdum.

Children are sometimes affected by family law proceedings and the tensions that accompany them for most of their childhood. From the cases studied, it is clear that the majority of children affected are in infancy or toddlerhood when the first legal proceedings begin.

Children may experience trauma due to, among other things.

- attachment breakdowns, attachment discontinuities
- multiple and inadequate questioning of different people who are strangers to them in their daily lives, asking them intimate details about things that are vital to their childhood: security, stability, and continuity



- constant tension on the part of the parents due to the ongoing proceedings
- as well as by the father perpetrating violence:
 - Manipulations of the violence perpetrating father
 - Sexual violence, abuse
 - Physical violence
 - Psychological violence
 - as witnesses of domestic violence

Behavioral problems (wetting the bed, defecation, aggressiveness, etc.) and illnesses (ADHD, bulimia, obesity, etc.) may occur, as well as developmental delays and changes (for example, to self-efficacy, over-adaptation) and attachment disorders.

Articles of the Universal Declaration of Human Rights violated:

- 1 (Degradation)
- 2 (Gender discrimination)
- 3 (Disregard for the right to freedom and security)
- 5 (Humiliating treatment)
- 7 (Discrimination)
- 12 (No protection against arbitrary interventions)
- 19 (Obstructing/preventing the free expression in public)
- 22 (Disregard for the right to social security)
- 25, 2 (Disregard for the special protection of mother and child)
- 28 (Counter to social order) and
- 29 (No recognition/respect for rights and freedom, no observance of just requirements of morality)



2. The factors behind the increased number of allegations of parental alienation cases in custody battles and/or disputes involving allegations of domestic violence and abuse against women, and its differentiated impact on specific groups of women and children.

It is notable in Germany:

Ideologies and lobbying organizations influence family law proceedings. This can be seen, for example, in publicly available education and training materials that have left the much-needed neutral ground. For example, mothers are referred to as “child owners” being “in control”, and parents are degraded as “derailed” and “legally incompetent”.

⇒ Four narratives are widely spread as being the rule:

- (1) Mothers alienate children;
- (2) only a 50:50 split in care time allows children to grow up in a healthy manner;
- (3) mothers want children and money; and
- (4) mothers make up stories of violence and abuse.

The evaluations in our study² show that these narratives are neither scientifically nor professionally tenable, yet they are regularly used to justify decisions in family law proceedings and in child and youth welfare. In more than half of the 92 examined cases in Germany that have been brought to the Federal Constitutional Court since 1998, fathers were represented as complainants by the very same lawyer who is employed by one of the lobbying organizations that spread these narratives. Some of the cases resulted in far-reaching custody changes.

Family courts commission expert witnesses to provide family reports. Children are examined – even when they are not at risk. A veritable “expert opinion industry” has formed, which generates an annual turnover of over 2 billion euros with family assessments (average price currently approx. 8,000 euros/assessment). This figure refers to the latest statistical data of 270,000 family reports per year in 2015. Most likely, this number has increased significantly in the meantime. There are no control bodies or binding quality criteria for expert opinions. Interviews with parents and children are often non-transparent. In practice, statements of children, parents, or third parties are at times even interpreted or falsified to achieve a specific result.

Judges, experts, guardians ad litem and the youth welfare service can work together in practice to prejudice the outcome of the proceedings. Family court-induced “parenting agreements” can be the result of pressure and threats with serious consequences for the children’s lives (relocations, alternating models, removal).

² Hammer et.al.: Familienrecht in Deutschland. Eine Bestandsaufnahme, April 2022, vgl. <https://www.familienrecht-in-deutschland.de/studie/>



Mothers adverting to abusive behavior of fathers toward the children or themselves on the occasion of visits were, without exception, accused of making false statements – also without verification. Mothers were then urgently advised by their legal counsels to not make any allegations against the fathers, even after unmistakable hints from treating pediatricians or family doctors, in order to not diminish their prospects in the current proceedings. This was confirmed by pediatricians/family doctors who, upon contacting the youth welfare service because of indications of violence and/or sexual assault, were advised by the youth welfare service to “not allow the mothers to exploit them.”

3. The way in which different groups of women and children experience this phenomenon differently based on any intersecting elements such as age, sex, gender, race, ethnicity, legal residence, religious or political belief or other considerations and the factors that contribute to these situations.

The mothers' experiences are similar regardless of the factors mentioned in the research question. This suggests that it is a phenomenon due to gender (women) and their (innate) role as mothers.

4. The role that professionals play, including welfare workers, child protection services, guardian ad-litem, psychologists, psychiatrists, and how they are regulated in any way as expert witnesses.

Please refer to the answers under 2) (the roles of the professionals are described in depth in chapter 3 of the study³).

5. The consequences of the disregard for the history of domestic violence and abuse and intimate partner violence or the penalising of such allegations in custody cases on the human rights of both the mother and the child, and the interrelationship between these rights.

Children's rights have not yet been enshrined in the German constitution. However, this is in the planning stage. To date, family law has focused on the enforcement of parental rights, albeit theoretically with due regard for the best interests of the child. In practice, however, as shown previously, the enforcement of the father's parental rights has priority in many cases (without consideration of a violent background as defined by the Istanbul Convention). As a consequence of state/institutional favoritism and support for the father's behavior, violence can be multiplied. Mothers and children are continuously re-traumatized. Please compare the answer to question 1, which includes human rights violations.

³ *ibid.*



6. The challenges in collecting disaggregated data on courts' practices concerning custody cases, the areas/sectors for which data is particularly lacking and the reasons for such challenges.

The 16 federal states supply data to the Federal Statistical Office. Prior to this, the type and scope of the data to be collected were determined in a long-lasting coordination process (Ausschuss für Justizstatistik - committee on judicial statistics).

In order to be able to take better account of children and their needs in terms of family law, there is a lack of data that has not been collected statistically to date or is not publicly known. However, solid knowledge of the initial situation is first necessary for a child-oriented family law reform, which the German Minister of Justice is currently planning. The non-existence of relevant and important basic data was recently confirmed by the federal government.⁴ However, a family reform needs a solid foundation. This requires data collection and, if necessary, the need to adjust statistical characteristics, such as:

- Age/number of children involved in family law proceedings
- Number of applications for proceedings per child
- Duration of all proceedings per child
- Incidence of court-ordered or initiated alternating models
- Court-initiated parenting agreements (so called „Wechselmodell“ = alternating residence for the children)
- Family law expert opinions (number per year, economic significance, qualification of experts, business models, etc.)

7. The good practices, strategies adopted by different organs of the State or other non-State actors, at local, national, regional, or international level to improve the due consideration of domestic and family violence, including intimate partner violence against women and abuse of children in determining child custody, as well as in providing remedies and redress for victims/survivors.

There are numerous publications with recommendations on the part of governmental and non-governmental actors, and family law also provides for careful clarification of the facts. However, in the cases we examined and the case documentation we continue to receive in high numbers, across all federal states, this is often simply not applied or negated in the family law system.

⁴ Bundestagsdrucksache / German Parliament Document no. 20/4836, 7th December 2022, <https://dip.bundestag.de/vorgang/forschung-und-aufkl%C3%A4rung-studienergebnisse-zu-ideologie-statt-kindeswohlorientierung-in/293713?term=20/4562&rows=25&pos=2>



8. Recommendations for preventing the inadequate consideration of a history of domestic violence and abuse and gender stereotyping in custody cases to restore the human rights of mothers and their children, as well as ensure that survivors/victims are effectively protected and assisted.

A family law reform requires a transparent, participatory and comprehensive consultation process comparable to the reform processes in Australia and the UK. In the UK, the phenomenon of "coercive control" in the family law context in particular has been studied extensively.⁵

RECOMMENDATIONS

1. Priority Of The Continuity Principle

Security and stability for physically and psychologically healthy children

2. Child's Will/Child Interviews

In cases without a suspected child welfare endangerment⁶:

- a) Establish child-psychologically based, age- and developmentally appropriate criteria for "eye examinations" and interviews with the child
- b) The goal is to test for application of the continuity principle. The focus is on getting to know the child and to explore its well-being in his direct and immediate environment.
- c) Limitation of the number of "eye-witness examinations" by family law actors per child and year
- d) Obligation to record the encounter with the children, archiving of the recordings and binding stipulations of usage by rules respecting the personal rights of the child

In case of suspicion of a risk to the child's well-being:

- e) Child interviews according to binding criteria in order to avoid re-traumatization and only by professionals specifically trained for this purpose. Obligation to record the encounter with the children, archiving of the recordings and binding stipulations of usage by rules respecting the personal rights of the child

⁵ Ministry of Justice, UK: Domestic abuse und private law children cases, 2020, p. 165, <https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>; Monk, L. and Bowen, Erica (2021) *Coercive Control of Women as Mothers via Strategic Mother-Child Separation*. Journal of Gender Based Violence, 5 (1). 23-42 (20). ISSN Print: 2398-6808 Online: 2398-6816, WRaP, <https://eprints.worc.ac.uk/id/eprint/8499>

⁶ Child well-being risk in the sense of neglect, abuse, sexualized violence as well as traumatization as a result of witnessed domestic violence according to the Istanbul Convention.



3. Family Judges

- a) Examination and adaptation of training content on family law
- b) Obligatory comprehensive qualification and continuous further training on child psychological aspects, family dynamics, expert opinions, etc., thus enabling them to take responsibility for qualified decisions
- c) Supervision, control instruments
- d) Solve legislative shortcomings: Reducing the complexity of procedures
- e) Salaries commensurate with the high level of responsibility

4. Experts

- a) Commissioning of family expert reports – on the basis of binding content criteria for commissioning their preparation – exclusively in cases of suspected endangerment of the welfare of children⁷
- b) Binding requirements for the qualification of experts for family reports, prerequisite for admission to court must be a health insurance license, proven knowledge of forms of violence in accordance with the Istanbul Convention and at least five years of practical work in a practice/clinic
- c) Binding evidence-based, scientific quality standards for family psychological reports
- d) Data collection on family law expert reports (number per year, economic significance, qualification of experts, business models, etc.)
- e) Disentanglement of economic interests
- f) Assignment on the basis of a list of professionally qualified experts of the respective federal state, which is systematically worked through in a transparent manner
- g) Obligation to provide regular further training

⁷ *ibid.*



5. Guardian ad-litem

- a) Re-examination of the necessity of guardians ad-litem

Transitional:

- b) Appointment of guardians ad litem - on the basis of binding criteria exclusively for proceedings where the welfare of children is endangered⁸
- c) Binding definition of suitable professional background - necessity of child psychology or pedagogical training and at least three years of established/practical activity
- d) Possibilities for dismissal and/or sanction in case of unsuitability, e.g. in case of actions not in accordance with the mandate or conflicts of interest with parental rights associations
- e) Assignment on the basis of a list of professionally qualified experts of the respective federal state, which is systematically worked through in a transparent manner

6. Youth Welfare Offices

- a) Comprehensive qualification campaign
- b) Creation of qualified independent control bodies and use of internal and external control instruments
- c) Measures to deal responsibly with power and power asymmetries
- d) Reduction of case numbers and maximum case numbers per employee
- e) Remuneration commensurate with the high level of responsibility

7. No Court Order Or Court Inflicted Implementation Of Alternating Residence Of All Kind For Children In Conflictual Parental Relationships

8. Taking Into Custody And Re-Placement Of Children

Accelerated examination, on the basis of child well-being criteria, of decisions to change the center of the child's life – in particular taking into custody – of previously psychologically and physically healthy and socially well integrated children and, if necessary, returning the children to the parent who was the main caregiver.

⁸ ibid.



9. Parental Counseling/Mediation

No enforcement of parental counseling/mediation. Right to reasoned refusal of parental counseling, mediation, etc., especially if there is a background of violence (in accordance with the Istanbul Convention). No Threat or implementation of custodial consequences in case of justified refusal.

10. Reducing the duration and complexity of family law proceedings

11. Principle of neutrality – examination of providers of education and training in the family law system. Exclusion in case of violation of the principle of neutrality

12. Identification of necessary data and expansion of data collection in the context of family law and the expansion or adaptation of official statistical indicators

13. Expansion of the scientific foundations

14. Comprehensive review and adaption of all training and further education that (can) lead to work with children in the sense of child protection. In addition to the necessary qualifications, the personal suitability of the people must also be included.

15. Use of regional Ombudsman Offices for affected persons as well as for documentation for scientific purposes

16. Establishment of an Enquete Commission of the German Bundestag



9. Any other issue of relevance that are vital for consideration but that may not have been mentioned in this call for inputs.

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