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**2022 Proposals for a Discussion on amendments in the Law
and improvements to the Family Court procedures.**

by Dr Ivan Sammut

Dr Ivan Sammut, Deputy Dean of the Faculty of Law, University of Malta, strongly believes that the Family Court needs urgent investment and updating to continue serving the needs of Maltese people. Many parents in Malta stop living together for various reasons, and many times they have to resort to the Courts. The two most common issues that arise concern maintenance and access to children. It results, judging from the various experiences of Maltese citizens or residents, that the Maltese state is not equipped enough to deal with this type of issue, whose very nature can create bitter disputes.

Let us take as an example a case in the field of parental alienation, where a parent denies the other parent access to their children for no valid reason. Lawyers involved in cases that concern children behave as if they are dealing with the cases that involve the evaluation of property.

Proposal for a long-term solution

HPM4HC is proposing the setting up of an authority or agency whose brief will be to examine such cases and to determine whether maintenance should be given and if so, how much. It will also determine whether shared parenting is feasible and if not, the modality of the access to minors that should be given. Then, of course, one will be able to apply for any required changes,



while there will be constant supervision by the Family Court on issues of rights or facts once certain conditions are met.

To understand this concept more clearly, one can draw a comparison with the Planning Authority. This entity has all the resources required to execute a planning policy: it has technical experts in the field. It is more accessible to the public and operates under the supervision of the Courts whenever this is required. In the same way that this authority has building architects, family ‘architects’ should run this proposed entity. This idea has not been invented by the HPM4HC but is based on the situation abroad including in the United Kingdom.

Proposals that can be implemented immediately

Since the above proposal is somewhat ambitious and, apart from a new legal framework, it requires considerable training, HPM4HC is making further proposals, some of which can be immediately implemented.

1. An improved notification system in the Family Court

It is necessary to strengthen and improve how the Family Court issues notifications. There should be wider use of electronic media to deliver notifications efficiently.

2. A reform in the composition of the Family Court

One should consider strengthening the Family Court, and this Court should be presided over by a judge and two family experts such as a psychologist and a therapist. This should apply to decrees, *in camera*, sittings and final sentences. The judge would focus on legal issues while the rest take place as a formation. It would be a good idea to establish a Board made up of two psychologists (specializing in children and parental alienation) and a lawyer. This Board



would study cases such as those of separation, where minor children are involved before they move on to litigation in Court, and within three months make recommendations on the type of co-parenting that would be suitable. Where this is not possible, appropriate access and maintenance would be established according to each case in question.

This could take place in an out-of-court process that would enable the parents to reach an agreement.

3. The strengthening of the Child Protection Services to enable them to intervene in the Courts

Knowledge and experience in the field of children are found in the officers working for this directorate, which was created for this purpose. Not all lawyers or judges would have studied and specialized in children. As a result, the need for Child Protection arises.

4. The enactment of a law focusing on the interests of children that recognizes in clear terms the existence of parental alienation

The concept of parental alienation should be recognized in civil and criminal law, as is happening in various European countries and globally. Thanks to Civil Law, adapted to cases arising in contemporary society, applicable measures can be taken so that children are not cut off completely from the harassed parent. A serious and comprehensive study of a case, and its various elements, may enable the designation of suitable access to the two parents as deemed appropriate and most conducive to the welfare of the children.



5. A reform in the Criminal Code Article 338 LL on access to children and Article 338 Z on maintenance.

Reforms should ensure that legal depositions conform to the European Human Rights Convention. For example, restricted access should be compensated by quality time with children. Regarding maintenance, this should make sense to all the parties involved in the case. Detention or clear imprisonment should be removed, both from access as well as from maintenance, to prevent these from being used as instruments of litigation instead of as a solution.

6. The Laws affecting children should uphold a general stance that the equal sharing of the raising of children is to be seriously considered.

Although the present legal provisions do not exclude this, there need to be legal interventions to change the current mentality, usually conservative, of the judiciary and the legal profession. We need to come into line with the 21st century with all the effects of the march of time. Contemporary society no longer embraces the values of yesteryear.

In the case of an inamicable separation, the rule should be that the care and custody of children would be automatically conjoined, without automatic maintenance, while medical and education expenses would be equally shared by the parents. It should be one of the parents who may request modification to this arrangement. Then valid reasons are given and a report is drawn by the experts. It should be the Court that modifies the custody, and thus determine maintenance, according to the means and wishes of the parent, as the case may be.

This means that, unless there is a valid reason established following an analysis, children would spend 50% of their time with either parent and that



parent would be financially responsible during that time. In the case of a 50/50 custody arrangement, maintenance would not be required. In this way, equality would be established between the parents. As things now stand, the Courts generally awards guardianship automatically to the mother and orders the father to pay maintenance.

7. Proposal for an improvement in the administration of family procedures

This could include the provision that the collection of evidence should not be done by practising lawyers. They could be officials who are directly engaged by the Courts and who are answerable directly to the Courts. Part-time judicial assistants may have a conflict of interest, affecting their selection and appointment.

It is a good idea for the Court to have a list of experts: doctors, psychologists, psychiatrists, experts in the field of parental alienation, social workers and approved therapists.

The time has come for the judiciary and the legal profession (judges, mediators and lawyers) to be trained professionally not to make judgements based on stereotypical ideas positing that only the woman knows how to look after children. These should be instructed on parental alienation.

There should be better facilities in a Court where minors are involved, such as the Family Court. This Court should have a format that is different from the ordinary Court, and ideally, it should be placed in a separate building. When children give their testimony, there should be transparency, and the parents should also be heard.



Conclusion

The proposals being made here are among many that are being mentioned and studied in various other countries. In the same way that we are ready to analyse developments in other areas of society to improve the situation in our country, we need to observe, analyse and study this field properly. Children's lives in the environment of the family, irrespective of whether it is an ideal one or one that hurts, leaves an indelible mark on their lived experiences. We cannot waste more time because today's children are the young people of tomorrow and the adult generation a few years down the line. What happens today reflects on our expectations of the future. You and I are responsible for our country's society.