



# Proposals for a Discussion regarding Amendments to the Law and Improvements to the Procedure of the Maltese Family Court.

[legal@HappyParentingMalta.com](mailto:legal@HappyParentingMalta.com)

Dr Ivan Sammut  
Ph.D. (Lond.) Advukat

[Ivan@HappyParentingMalta.com](mailto:Ivan@HappyParentingMalta.com)

Dr Cynthia Tomasuolo  
Advukat

[Cynthia@HappyParentingMalta.com](mailto:Cynthia@HappyParentingMalta.com)

# Applicable law in Malta

**No special Maltese legislation**

**BUT**

Existing Maltese law and its application  
must be in line with:

- **Article 8 ECHR – right to family life**
- **Article 13 ECHR – right to an effective remedy**



# European Court of Human Rights

## Main Case-law involving parental alienation

- *K.B and others v Croatia* App no. 36216/13
- *Aneva and others v Bulgaria* App no. 66997/13
- *Nanning v. Germany* App no. 39741/02
- *Bordeianu v. Moldova* App no. 49868/08
- *Pisica v Moldova* App no. 23641/17
- *Malec v Poland* App no. 28663/12
- ***I.S. & Others v Malta* App no. 9410/20**



# Should Family Court hear Children in PA cases

- **I.S. & Others v Malta App No 9410/20**

The Court finds it important to reiterate that while its case-law requires children's views to be taken into account, those views are not necessarily immutable and their objections, which must be given due weight, **are not necessarily sufficient to override the parents' interests**, especially in having regular contact with their child. **The right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered** and an examination being carried out to determine their best interests (see *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017); such interests normally dictate that the child's ties with its family must be maintained, except in cases where this would harm the child's health and development



# Ping-pong in Family Court/state malfunction

- The Court reiterates that **lack of cooperation between separated parents is not a circumstance which can by itself exempt the authorities** from their positive obligations under Article 8. It rather imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties, keeping in mind the paramount interests of the child..
- The authorities involved had still not put in place a way forward to permit the rebuilding of the relationship between the applicants, who have fallen **victim of a ping pong between the Family Court and the appointed psychologists...**
- **It cannot be said that the authorities have taken all necessary steps** that could reasonably be demanded in the given circumstances to enforce the applicants' contact rights.



# 1a of 3 Proposals on substantive change of family law regarding children

- **A new law should be promulgated to deal specifically with the interests of children and which clearly recognises the existence of Parental Alienation.**

The concept of Parental Alienation as is happening in various European countries and around the world, should be recognised by civil and criminal legislation. Through civil law, applicable measures may be taken for children to be reunited with the alienated parent. Under criminal law parental alienation as an example of domestic violence and abuse of minors, with the penalties to be applicable upon the alienating parent.



## 1b of 3 Proposals on substantive change of family law regarding children

- **Reform of the Criminal Code in Article 338 LL regarding access to children and Article 338 Z regarding maintenance.**

The reform must take place so that these legal provisions are indeed in conformity with the European Convention on Human Rights. For example, in the case of lack of access, what is essential is that there is compensation of quality time with the children. In the case of maintenance, what is important is that there is information which makes sense for the whole family. Detention should be removed both for access as well as for maintenance.



## 1c of 3 Proposals on substantive change of family law regarding children

- **There should be recognition by the law of children who, as a general position, should have equal upbringing.**
- Although the current law does not exclude this, the rule should be that the care, custody and upbringing should automatically be joint, without automatic maintenance and with the costs for healthcare and education to be shared between the parents in an equal manner. It is up to a parent to request for this to be changed. After hearing the valid reasons therefor and following the drafting of an experts' report, the Court may vary the custody agreement and thus establish maintenance according to the means and wishes of the family as the case may be.
- This means that unless there is a valid reason, established following analysis, as to why this should not be the case, children spend 50% of their time with each parent and each parent is financially responsible for the children during that period. In the case of a 50/50 custody arrangement, no maintenance is required. Thus, equality is achieved between the parents, since at the moment the Court is generally granting custody automatically to the mother and ordering the father to pay maintenance.





## 2a of 3 Proposals for change in procedural Family law involving children

- **A Board made up of two psychologists (with specialisation in Children and Parental Alienation), and an advocate should be constituted, so that in a case such as that of separation involving minor children.**
  - Before passing on to litigation in Court, this Board may study the case within three months and make recommendations as to how co-parenting should be carried out. In cases where this is not possible, there should be established decent access and maintenance as the case may be.
  - This idea may be developed by means of out-of-court proceedings which may help the parents find a balance between them. A model like this already exists, for example, in some instances of drug possession.



## 2b of 3 Proposals on change of procedural family law regarding children

- **The Family Court should be strengthened and presided by one judge and two-family experts such as a psychologist and a therapist.**

This should be done for decrees, *in-camera*, for sittings and final judgments. The judge should ensure that legal affairs and the rest take place as a formation.



## 2c of 3 Proposals on change of procedural family law regarding children

- **How service of the Family Court is made should be strengthened and improved, and more use of electronic means should be made so that service is made seriously and does not end up being a game between the parties.**

The collection of evidence should not be done by advocates who practise and appear before the Court, but there should be officials who are engaged directly by the Court to answer directly to the Court. Part-time judicial assistants may leave room for a conflict of interest and undue familiarity with the judiciary to appoint them.



# 3a of 3 Proposals on change of the administration of the Family Court regarding children

## The Family Court should have readily Approved Lists of Experts

- Psychologists
- Psychiatrists
- Doctors
- Therapists
- Social workers
- Parental Alienation Practitioners



## 3b of 3 Proposals on change of the administration of the Family Court regarding children

**The judiciary and legal profession (judges, mediators and advocates) should be trained professionally to not adjudicate based on stereotypical ideas such as that only the woman takes care of the children. They should be trained regarding Parental Alienation.**



## 3c of 3 Proposals on change of the administration of the Family Court regarding children

**The judiciary and legal profession (judges, mediators and advocates) should be trained on how a change of residence may be made in cases of Parental Alienation, and the possibility of a change of residence should be provided for at law. Parental Alienation experts globally, including Dr Amy Baker, Dr William Bernet, Dr Steven Miller, Karen and Nick Woodall, Dr Linda Gottlieb, Dr Richard Warshak, Dr Michael J Bone, Dr Jennifer Jill Harman, Brian O Sullivan, usually recommend no less than 90 days during which children are kept away from the alienating parent.**



# Other points for consideration

- There should be **better facilities in Court where** there are minors, for example, the Family Court should have a different format from the ordinary Court, and ideally in a separate block. When children are heard, there should be transparency, and the parents should also be heard.
- There is the need for a **section in the Police Corps specialised in matters regarding access, maintenance, Parental Alienation as domestic violence, which offers assistance to the public and the district stations.** The police *should not issue charges based on complaints but should do so following an intensive investigation.* The issue of *ex-officio* charges should be revised. This includes that nobody should be removed from his house on mere allegations and without assessment or investigation. And if this needs to be done, proceedings should be carried out in a short-time within days and not months or years.
- **The process for the recognition of a natural parent utilizing DNA should be sped up.** Parents should be entitled to apply for DNA test to take place upon the birth.





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