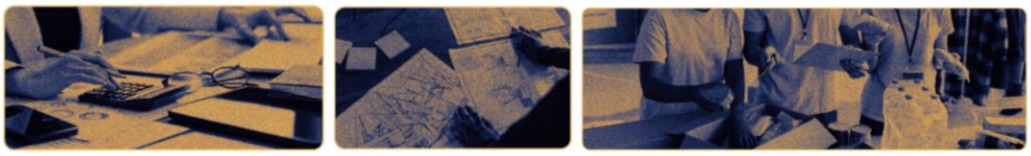

IMPACTO CIENTÍFICO
EDITORA

NARRATIVE WARS IN FAMILY LAW: DECONSTRUCTING MYTHS ABOUT PARENTAL ALIENATION IN BRAZIL AND THE WORLD

GUERRAS DE NARRATIVAS NO DIREITO DE FAMÍLIA: DESCONSTRUINDO MITOS SOBRE A ALIENAÇÃO PARENTAL NO BRASIL E NO MUNDO

GUERRAS NARRATIVAS EN EL DERECHO DE FAMILIA: DECONSTRUYENDO MITOS SOBRE LA ALIENACIÓN PARENTAL EN BRASIL Y EN EL MUNDO

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ABSTRACT

This article aims to critically analyze the Parental Alienation Law (Law No. 12,318/2010), deconstructing the narrative that associates it with the discredited "Parental Alienation Syndrome" (PAS). The methodology employed is a qualitative approach based on a critical analysis of the literature, hermeneutic dogmatics, and a comparative law study, focusing on decisions from international courts, such as the European Court of Human Rights and higher courts in the Americas. The results show that the Brazilian legislation, by focusing on "acts" of alienation, aligns with global best practices, which also concentrate on the alienator's abusive conduct and the protection of the child's best interest, rather than on a pathological diagnosis. The jurisprudential analysis confirms that the phenomenon is universally recognized and combated by the courts. Additionally, the study points out, from a methodological critique, the fragility of research that attributes a gender bias to the law, showing that the national legal system already has safeguards against its misuse in contexts of domestic violence. It is concluded that the Brazilian law is an advanced and constitutionally valid instrument, whose misinterpretation, not its text, fosters controversies, making its correct application essential for the protection of family life.

Keywords: Qualitative Research. Human Rights. Hermeneutics. International Courts. Domestic Violence.

RESUMO

O presente artigo tem como objetivo realizar uma análise crítica da Lei de Alienação Parental (Lei nº 12.318/2010), desconstruindo a narrativa que a associa à desacreditada “Síndrome de Alienação Parental” (SAP). A metodologia empregada consiste em uma abordagem qualitativa, baseada na análise crítica da literatura, na dogmática hermenêutica e no estudo de direito comparado, com foco em decisões de cortes internacionais, como o Tribunal Europeu dos Direitos Humanos e tribunais superiores das Américas. Os resultados demonstram que a legislação brasileira, ao focar em “atos” de alienação, se alinha às melhores práticas globais, que igualmente se concentram na conduta abusiva do alienador e na proteção do melhor interesse da criança, e não em um diagnóstico patológico. A análise jurisprudencial confirma que o fenômeno é universalmente reconhecido e combatido pelos tribunais. Adicionalmente, o estudo aponta, a partir de uma crítica metodológica, a fragilidade de pesquisas que imputam à lei um viés de gênero, mostrando que o ordenamento pátrio já

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possui salvaguardas contra seu uso indevido em contextos de violência doméstica. Conclui-se que a lei brasileira é um instrumento avançado e constitucionalmente válido, cuja má interpretação, e não seu texto, fomenta as controvérsias, sendo sua correta aplicação essencial para a proteção da convivência familiar.

Palavras-chave: Pesquisa Qualitativa. Direitos Humanos. Hermenêutica. Cortes Internacionais. Violência Doméstica.

RESUMEN

El presente artículo tiene como objetivo realizar un análisis crítico de la Ley de Alienación Parental (Ley nº 12.318/2010), deconstruyendo la narrativa que la asocia al desacreditado "Síndrome de Alienación Parental" (SAP). La metodología empleada consiste en un enfoque cualitativo, basado en el análisis crítico de la literatura, la dogmática hermenéutica y el estudio de derecho comparado, con foco en decisiones de cortes internacionales, como el Tribunal Europeo de Derechos Humanos y tribunales superiores de las Américas. Los resultados demuestran que la legislación brasileña, al centrarse en "actos" de alienación, se alinea con las mejores prácticas globales, que igualmente se concentran en la conducta abusiva del alienador y en la protección del interés superior del niño, y no en un diagnóstico patológico. El análisis jurisprudencial confirma que el fenómeno es universalmente reconocido y combatido por los tribunales. Adicionalmente, el estudio señala, a partir de una crítica metodológica, la fragilidad de las investigaciones que imputan a la ley un sesgo de género, mostrando que el ordenamiento jurídico nacional ya posee salvaguardias contra su uso indebido en contextos de violencia doméstica. Se concluye que la ley brasileña es un instrumento avanzado y constitucionalmente válido, cuya mala interpretación, y no su texto, fomenta las controversias, siendo su correcta aplicación esencial para la protección de la convivencia familiar.

Palabras clave: Investigación Cualitativa. Derechos Humanos. Hermenéutica. Cortes Internacionales. Violencia Doméstica.

1 INTRODUCTION

The debate around the Parental Alienation Law (Law No. 12,318/2010) in Brazil is at the epicenter of intense narrative wars that often divert the focus from its protective purpose. One of the most persistent distortions consists of associating Brazilian legislation with the controversial "Parental Alienation Syndrome" (PAS), a theoretical construct developed by psychiatrist Richard Gardner. Such an association ignores the textual clarity of the norm, which is dedicated to describing acts that interfere in the psychological formation of the child or adolescent so that he or she repudiates a parent, and not to diagnosing a child pathology. This mistaken attachment has generated serious practical consequences, fostering the search for manifestations or "symptoms" in the child, to the detriment of the objective analysis of the alienating parent's conduct.

This article proposes a critical analysis of this reality from a different angle: dogmatic hermeneutics, taking as a counterpoint the rigorous interpretation in the field of Criminal Law. A criminal lawyer, accustomed to the principle of strict legality, would hardly make the hermeneutic leap that Family Law operators have made to extract from the norm what it does not actually contain. Accustomed to a tradition of analogical, elastic and often informal interpretation, the actors of the family justice system end up moving away from the literalness of the law to achieve purposes that, although they may seem fair, lack legal support. This interpretative culture, which relativizes the strength of the normative text, is largely responsible for the contamination of the debate and the misapplication of the Parental Alienation Law, which becomes hostage to theoretical constructions that are not positive in its text.

In view of this scenario, the present study turns to comparative law, with a special focus on the jurisprudence of the European Court of Human Rights, to investigate how international courts have dealt with the issue of parental alienation. This article aims to carry out a critical analysis of the Parental Alienation Law (Law No. 12.318/2010), deconstructing the narrative that associates it with the discredited "Parental Alienation Syndrome" (PAS)1985[2].

[2] "Parental Alienation Syndrome" (PAS) is a theoretical construct created by psychiatrist Richard Gardner in 1985 to describe a supposed disorder in which the child, in the context of a custody dispute, would join one parent (the alienator) in a smear campaign against the other parent (the alienated parent), without plausible justification. According to Gardner, the syndrome would be identified from eight primary manifestations in the child: (1) a campaign of demoralization; (2) weak, frivolous, or absurd rationalizations for depreciation; (3) absence of ambivalence; (4) the phenomenon of the "independent thinker"; (5) automatic support to the alienating parent in parental conflict; (6) absence of guilt about cruelty against the alienated parent; (7) the

In this way, the comparative analysis will serve as a critical mirror and a guiding example against the bad legal practices that insist on looking for answers to the abusive behaviors of adults in the child. In the end, this article argues that a rereading of the Parental Alienation Law, guided by a hermeneutic that is more faithful to the principle of legality, not only rescues its purpose, but also aligns it with the best international practices, reinforcing its constitutionality and its importance as an instrument for protecting the psychological integrity of children and adolescents.

2 METHODOLOGY

The present study was developed through a qualitative approach, configuring itself as a critical and methodological analysis of the existing literature and jurisprudence on the subject of parental alienation (Creswell; Clark Plan, 2007). A documentary research was carried out from a direct source (in legislation) and indirect (using authors from the literature) and discussion in a narrative way (Pereira et al., 2018). The main focus is to evaluate the robustness of the arguments and methods employed in other studies, specifically those that address the application of Law No. 12,318/2010 and its relationship with gender violence, contrasting them with judicial practice in international courts.

To this end, the research began with an in-depth literature review to understand the "state of the art" of the debate, allowing the identification of the different currents of thought, the location of gaps in the research and the contextualization of the problem (Ximenes, 2011; Cunha et *al*, 2013; Gil, 2002).

From this survey, the backbone of the work was carried out: a rigorous critical and methodological analysis, which involved a thorough examination of the methods and arguments presented in other studies, seeking their consistency and validity. In this detailed scrutiny, serious methodological flaws were identified and detailed in studies that conclude the existence of gender bias in the application of the law, pointing out that their conclusions are scientifically fragile, especially due to the absence of control groups and the confusion between correlation and causality (Fabiani, Tormin, 2023; Lakatos, Marconi, 2017).

The analysis of judicial decisions from different national and international courts was then used as a primary source for comparative analysis, moving away from merely statistical

presence of borrowed scenarios; and (8) hostility extended to the alienated parent's family and friends. This construct is not recognized as a mental disorder by health associations such as the World Health Organization (ICD-11) or the American Psychiatric Association (DSM-5).

inferences to focus on a qualitative analysis of the reasons for deciding (*ratio decidendi*), in a detailed examination of each concrete case. Finally, all these methods were articulated for the construction of a theoretical argumentation that, by opposing different theses, culminates in a reasoned position, which seeks to contribute to the qualification of the debate on the subject.

3 STRICT LEGALITY AS A HERMENEUTIC PARADIGM FOR THE PARENTAL ALIENATION LAW

In contrast to the growing interpretative fluidity that marks contemporary Family Law, Lenio Streck's correct criticisms of "pamprincipiologism" and judicial activism offer an indispensable theoretical reference. Streck (2014) warns against the dangerous notion that everyone does what they want with the law, a decisionism where the judge's will overrides the literalness of the norm in the name of a supposed "justice" of the concrete case. Few fields illustrate this hermeneutical anomaly as vividly as the application of Law No. 12,318/2010. It is in this scenario that an unacceptable hermeneutic leap is observed: one starts from the description of concrete and objective acts of an adult listed in the law, to arrive at the discredited construct of Richard Gardner's "Parental Alienation Syndrome", which requires the verification of pathological manifestations in the child.

This transmutation of an adult and objective conduct into a subjective childhood "syndrome" would be unthinkable from the perspective of penal sciences. According to the penal dogmatics, consolidated by authors such as Zaffaroni & Pierangeli (2001), the principle of strict legality categorically prohibits the analogy *in malam partem* and requires a rigorous correspondence between the fact and the norm (typicality). An interpreter of criminal law could never validate an accusation based on a theoretical construct that is not only foreign to the legal type, but that has been widely discredited by the scientific community. In view of the current state of the art, in which discussions about the repeal or declaration of unconstitutionality of the Parental Alienation Law are increasing, the incorporation of a minimum of rigor and respect for legality, inspired by the criminal tradition, appears as a way to rescue the integrity and correct application of the institute. The insistence on ignoring the text of the law in order to seek in Gardner what the Brazilian law deliberately excluded is the primary cause of the contamination of the debate and the legal uncertainty that hovers over the subject today.

Still from the perspective of Lenio Streck's criticism of decisionism, it is possible to understand the resilience of certain narratives in the contemporary legal debate. The method of pamprincipiologism, which fosters the creation of "pseudo-principles" to support the will of the judge to the detriment of the legal text, proves to be a tool perfectly adapted to the post-truth era. In the case of the Parental Alienation Law, this phenomenon is flagrant: a pamprincipiologist reasoning is used to support the thesis that the norm, in its "core", would have incorporated Richard Gardner's pseudoscience. Such an allegation represents an exemplary rhetorical alibi, as it deliberately ignores that the law does not draw a single line or word that links it to any specific theoretical construct, focusing instead on the description of objective acts.

Thus, what we see is the fabrication of an "implicit construct" and contrary to the literalness of the norm, just to validate the premise that the legislation would be contaminated. This argumentative maneuver ignores what Streck (2010) clearly points out: in a Democratic State of Law, "complying with the letter of the law" is not an attitude of nineteenth-century exegesis, but a duty of respect for a democratically constructed legality submitted to the Constitution. Ignoring the explicit text of the law — which is limited to describing acts of alienation — to seek in a discredited theoretical construct its "real meaning", is a form of decisionism that, under the pretext of overcoming positivism, ends up endorsing its worst facet: judicial discretion and insecurity (usually backed by technical reports loaded with subjectivity). Thus, pamprincipiologism functions as the perfect alibi in the era of legal post-truth, camouflaging the arbitrariness of an interpretation that deliberately "overrides the law" to validate a thesis that the democratic legislator himself rejected by abstaining from any mention of syndromes or childhood pathologies.

From the comparison with international decisions and parameters, it will be possible to verify that the Brazilian law is not only part of the global debate on the subject, but also establishes an advanced legislative paradigm. By providing, in its article 2, that "An act of parental alienation is considered to be the interference in the psychological formation of the child or adolescent (...) in order to repudiate the parent or to cause damage to the establishment or maintenance of ties with the parent", the Brazilian norm delimits its object in the conduct of the alienating agent, and not in an alleged pathological condition of the child. Such conceptual precision is deepened in the exemplifying list of the sole paragraph, whose item I typifies the conduct of "carrying out a campaign to disqualify the conduct of the parent in the exercise of paternity or maternity". The lexical choice of the term "campaign" is of

paramount importance, as it denotes the requirement of a conduct that presupposes not only a finalistic objective (specific intent, which distinguishes it from protective acts, *in* Rocha, 2025), but also a reiteration and systematicity in the motivation.

This normative construction is in line with the guidelines of important international bodies. As an example, the *American Professional Society on the Abuse of Children* (APSAC) literally stated that, "in order to verify that one of the parents committed psychological abuse (...) direct evidence of the parent's behavior is required, such as significant defamation (and) efforts to undermine the child's relationship with the other parent." The entity also warns that "the avoidance of one parent by a child is not sufficient evidence of psychological abuse by the other parent" (APSAC, 2019).[3] The congruence is manifest: both the "disqualification campaign" of Brazilian law and the "direct evidence of the parent's behavior" required by APSAC demand proof of abusive, observable and persistent conduct, moving away from hasty conclusions based solely on the child's refusal and thus confirming the guarantor character and the vanguard of the national legislation.

4 THE UNIVERSALITY OF PARENTAL ALIENATION IN INTERNATIONAL LEGAL PRACTICE

In a study published in 2020, William Bernet, professor emeritus of forensic psychiatry at *Vanderbilt University School of Medicine*, highlighted the "remarkable amount of misinformation" about parental alienation disseminated in academic journals, conferences, *websites,* and *blogs*. The author analyzed cases in different countries, such as Sweden, Tunisia, Spain, and the United States, highlighting the international reach of the problem. According to Bernet, the polarization stems from discomfort in dealing with conflicting ideas, such as "always believing children" *versus* "sometimes children are manipulated into making false accusations"; from the human bias to confirm pre-existing beliefs; from concerns about the use of the category against mothers in custody disputes; and from the tension between

[3] In the original: "(...) *It is negligent, even reckless for a judge, attorney, guardian, counselor or other professional to cite or otherwise mischaracterize this or any APSAC document or publication on psychological maltreatment as endorsing or even lending credence to a diagnosis or finding of "parental alienation". To find that a parent has committed psychological abuse of a child in an effort to interfere with that child's relationship with the other parent requires direct evidence of the parent's behavior such as significant denigration, efforts to undermine the relationship of that child with the other parent, efforts to get the child to make false allegations of abuse or other extremely damaging behavior by the other parent. A child's avoidance of a parent is not sufficient evidence of psychological abuse by the other parent. Professionals seeking guidance on these issues may, as a starting point, wish to review APSAC's 2016 Position Statement on "Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution" and other relevant publications* (...)."

the legal fields of domestic violence and parental alienation. Their conclusion is clear: the spread of false and distorted information is a widespread phenomenon.

Brazil follows this same trend of polarization and misinformation, with the aggravating factor of sustaining the narrative that it would be the only country to deal with parental alienation in the courts, as if the matter were rejected in all other legal systems in the world. This posture, in addition to distorting comparative reality, reinforces misperceptions and compromises the seriousness of the debate. By spreading the idea of exclusivity, the fact that parental alienation has been faced for decades in different jurisdictions is obscured, each one developing its own solutions to the complexity of its manifestations.

In this scenario, the study of international cases becomes essential to deconstruct myths, broaden the understanding of the phenomenon and show that parental alienation is not a "Brazilian creation", but a global legal challenge. It is precisely this comparative analysis that allows us to draw lessons, recognize good practices and prevent national courts from being led by false premises or by an argumentative war detached from reality.

The comprehensive research conducted by Demosthenes Lorandos (2020) in the United States offers a robust empirical counterpoint to these claims. In this study, entitled *"Parental Alienation in U.S. Courts, 1985 to 2018",* the author investigated the extent to which US courts, over more than three decades, have not only recognized the concept, but admitted it in custody and child abuse litigation. Lorandos' findings are revealing, demonstrating a broad judicial acceptance of the concept of parental alienation as a relevant factor in family disputes, with a significant number of cases identified in both state and federal courts. In addition, the research evidenced the consistent admissibility of the allegations as evidence in the proceedings, indicating that the American justice system recognizes the seriousness and impact of such conduct on the well-being of the child. Finally, by covering such an extensive period, Lorandos' work proved a clear evolution and consolidation in the understanding and treatment of the subject, refuting the idea that it is a "fad" and confirming its support in international forensic practice.

On this point, it is undeniable that the very appointment of the institute served as a catalyst for research on its incidence in the courts. Regardless of whether or not there has been an increase in the number of cases for social or behavioral reasons, it cannot be ignored that the visibility of the phenomenon has grown in part because, once named, it has become easier to identify it and insert it into statistics. The existence of a specific term makes it possible to search jurisprudential databases and compile data that would otherwise remain

diffuse under more generic descriptions of custody conflicts, facilitating the quantitative analysis of their presence in the judiciary.

Lorandos' conclusions, therefore, demystify the narrative of Brazilian isolation and confirm that the debate and the application of measures against parental alienation are part of a universal legal concern, aligned with the protection of children's rights and the maintenance of healthy family ties.

The harmony of the Brazilian legislative approach with international judicial practice is well illustrated by *Sentence* No. SCJ-SS-24-0444, handed down by the Second Chamber of the Supreme Court of Justice of the Dominican Republic on March 27, 2024. In this judgment, which made express reference to Brazilian law as an example of comparative law, the Court analyzed an appeal in which a father accused his daughter's mother and maternal grandfather of the criminal type of psychological violence (Article 309-2 of the Dominican Penal Code). When examining the concrete case, the Supreme Court recognized that the only two acts pointed out by the father, namely, the change of the daughter's psychologist and a confusion about the date of the 15th birthday party, were far from configuring a repetitive pattern of conduct with the aim of undermining the paternal-filial relationship. Although Brazilian legislation was mentioned in the first instance to support the acceptance of the criminal complaint, the final decision of the Supreme Court, in rejecting the accusation, was perfectly in line with the precepts of Brazilian law itself. The Dominican verdict, by requiring more than isolated acts, reflects the same logic that would be applied in Brazil, where the law requires proof of a "campaign", that is, concrete and repeated acts with the specific purpose of undermining the relationship, demonstrating that the need for a pattern of abusive conduct, and not specific incidents, It is an understanding shared in the analysis of cases of this nature.

Even more incisively, the Constitutional Court of Colombia, in *Sentencia* de Tutela No. 526/23, moved in the same direction by expressly proscribeing the construct of the so-called "parental alienation syndrome" from judicial proceedings. The decision, however, established a crucial distinction between the pseudoscience that underpins the notion of "syndrome" and the reality of acts that constitute abuse. It was recognized that, although the Parental Alienation Syndrome lacks a scientific basis, the dysfunctions in the relationship between caregivers and children and adolescents, as well as phenomena of exploitation, constitute forms of violence against subjects that require special protection. The Court emphasized that the possibility of the child being instrumentalized and having his or her discernment

manipulated by one of the parents is not ignored. However, it determined that such situations should be analyzed comprehensively, through the use of scientifically validated instruments and based on an approach guided by the rights of children and adolescents. In summary, by rejecting any syndromic character of the phenomenon, in line with Brazilian legislation, which does not refer to this terminology, the Colombian decision recognizes that acts of parental alienation that instrumentalize the child against the other parent or attachment figure constitute psychological violence and child maltreatment, and should, therefore, be investigated from a multifactorial perspective and duly sanctioned[4].

In the specific case analyzed by the Constitutional Court of Colombia, the custody dispute involved a father who accused his mother of parental alienation, while she accused him of gender violence. The lower courts had granted custody to the father, basing the decision on the alleged alienation. Upon re-examining the case, the Constitutional Court granted the guardianship to protect the fundamental rights of children, annulling the previous sentences for violation of due process. The Court determined that the lower and lower courts had failed to conduct a thorough and gender-sensitive evidentiary assessment, making allegations of violence invisible and disproportionately focusing on the allegation of alienation. As a result, the Court ordered the family court to issue a new decision, this time analyzing the evidence in its entirety, assessing the risk that living with the father could represent and determining the custody that best served the best interests of the children, beyond the parental conflict.

The analysis of the Colombian case, from the perspective of Brazilian legislation, reveals a remarkable robustness of the national system in the protection of the gender perspective. By the correct interpretation of Law No. 12,318/2010, the father's own conduct in the case judged by the Constitutional Court – using a false allegation of parental alienation to obtain the reversal of custody – would be, in itself, framed as an act of parental alienation. This conclusion is drawn directly from the letter of the law, which in its article 2, sole paragraph, item VI, considers as a form of alienation "to file a false complaint against the parent, against his family members or against grandparents, to hinder or hinder family life".

[4] In the original: "*Por lo anterior, la Sala no desconoce o desvirtúa que pueden existir eventos en los que niños, las niñas y los adolescentes sean instrumentalizados y su juicio pueda verse alterado, mucho más si su edad es corta, por uno de los progenitores; However, this situation should be analyzed broadly, having en cuenta instrumentos validados por la ciencia y con enfoque de derechos, esto es, que reconozca y no mine su agencia, valorando su proceso de maduración acorde a la edad.*"

Unlike the Colombian Court, which had to construct argumentatively protection against the misuse of the allegation in a context of gender violence, Brazilian legislation already explicitly provides for this mechanism. National law does not require the child to effectively repudiate the falsely accused parent for alienation to take place; the focus is on the practice of the intentional act of interference, which includes the instrumentalization of the justice system (Merten, 2025). Therefore, in Brazil, the false accusation of parental alienation is, by express legal classification, an act of violence that distorts the protective purpose of the norm to manipulate the Judiciary, constituting psychological abuse against the child and the unjustly accused parent, which demonstrates a much more consolidated protection of the gender perspective than the one that the Colombian court itself had to build in the case on trial.

The analysis of the approach to acts of parental alienation gains a broader dimension when it is transposed from national jurisdictions to international human rights courts. For this study, judges from two of the most influential regional protection systems in the world were selected: the Inter-American and the European. The Inter-American Human Rights System, linked to the Organization of American States (OAS), has as one of its main organs the Inter-American Commission on Human Rights (IACHR), which processes petitions from individuals alleging violations of the American Convention on Human Rights by member states. Similarly, the European system is articulated around the Council of Europe and the European Convention on Human Rights, the application of which is guaranteed by the European Court of Human Rights (ECHR, n.d.), a supranational court based in Strasbourg.

The choice to analyze the decisions issued by these two bodies is justified by their representative character and the robustness of their jurisprudence, which establishes the parameters for the protection of fundamental rights for the Americas and Europe, respectively. Examining how these courts deal with the complex issue of acts of parental alienation, therefore, not only offers a solid panorama of comparative law, but also highlights the universality of the phenomenon and the concern of the highest human rights bodies to safeguard the best interests of the child and the right to family life.

Beginning the analysis by the Inter-American System, the Inter-American Commission on Human Rights (IACHR), in Report No. 41/25, analyzed Petition No. 2079-17, in which a mother (N.C.) accused the Brazilian State of violating Articles 5 (Right to Humane Treatment), 8 (Judicial Guarantees), 11 (Protection of Honor and Dignity), 19 (Rights of the Child), and 24 (Equality before the Law) of the American Convention on Human Rights. The petitioner

challenged a series of decisions of the Brazilian courts that, after identifying alienating conduct practiced by her against the child's father, determined the reversal of custody.

In analyzing the admissibility of the case, the IACHR was faithful to the facts assessed and considered by the national courts. The Commission noted that the Brazilian decisions were not arbitrary, but rather the result of a lengthy judicial process that included multiple psychosocial evaluations by experts. These reports concluded that the mother practiced acts that hindered and harmed the daughter's bond with the father, generating intense suffering and conflict of loyalty in the child. The measures taken by the courts, including the reversal of custody, were based on the protection of the best interests of the child.

Finally, the IACHR declared the petition inadmissible, concluding that the facts alleged did not constitute a violation of the rights protected by the Convention. The Commission understood that it could not act as a fourth instance to reassess the decisions on the merits of the Brazilian courts, which acted in a reasoned manner and based on a vast body of evidence. Thus, the IACHR, by not rejecting the merits of the decision that investigated the acts of parental alienation, validated the actions of the Brazilian judiciary, indicating that the identification of alienating conduct and the application of protective measures, such as the reversal of custody, when duly based on the best interests of the child, do not constitute, in themselves, a violation of human (or gender) rights.

Moving on to the jurisprudence of the European Court of Human Rights, the case *N.P. and V.P. v. Bulgaria* (Application No. 57184/22) demonstrates that the recognition of acts of parental alienation and the duty of the State to act are not a Brazilian particularity, but a requirement in the international scenario. In the specific case, the Bulgarian courts investigated a series of acts of alienation practiced by the mother, including the systematic obstruction of the father's contact with the daughter, the refusal to comply with the court orders of visitation and the negative influence on the child, who began to express fear and rejection of the father, aligning with the mother's discourse.

The central point of the judgment, however, was that, although the Bulgarian authorities recognized the occurrence of acts of parental alienation, the European Court of Human Rights condemned the State for its inaction. The conviction was not due to the lack of recognition of the phenomenon, but rather due to the slowness and ineffectiveness of the measures taken to combat it, which proved insufficient to reestablish the paternal-filial bond and protect the child's right to family life. It is precisely to mitigate this risk of state ineffectiveness that Brazilian law, in its article 4, provides for the priority processing of cases

involving parental alienation, a measure that, although it does not always achieve in practice the speed for which it is intended, evidences the legislator's concern to provide a timely judicial response for the protection of the child.

The robust approach of the European courts is also strongly exemplified in the case *of De Almeida Semião v. Portugal* (Application No. 46719/18), in which acts of parental alienation were not only recognized, but also supported a criminal conviction. In this case, the applicant was convicted in Portugal of "child abduction", a criminal type that criminalizes obstruction of contact, something that does not even exist in an analogous way in Brazil for this purpose, demonstrating an even greater rigor of the Portuguese system. The acts of alienation practiced by the mother, and endorsed by the European Court of Human Rights, were dissected in detail: the Portuguese court found it proven that the mother unjustifiably obstructed the father's right of contact with the child on 41 separate occasions between September 2010 and February 2013.

As a result, the Family and Minors Court of Barreiro, in a decision of September 29, 2017, sentenced her to one year in prison, with suspension of the sentence conditional on attendance at courses on parental alienation, in addition to the payment of 2,000 euros to her father as non-pecuniary damages. Dissatisfied, the mother appealed to the European Court, alleging violation of her right to a fair trial (Article 6) and respect for family life (Article 8), arguing that the national authorities had failed to facilitate contact. The European Court, however, vehemently rejected his arguments, saying it was not a "fourth instance" to reassess the merits of national decisions, which did not prove to be irrational or unfair. The Court noted that the applicant herself gave cause to most of the procedural procedures and failed to fulfill her parental responsibilities. In the end, the Court declared the petition inadmissible, considering the complaints manifestly unfounded and, with that, validated the decision of the Portuguese justice that recognized the seriousness of the acts of parental alienation to the point of justifying a criminal sanction.

Following the same line of analysis, the case of *Jurišić v. Croatia (No. 2)* (Application No. 8000/21) before the European Court of Human Rights reinforces the thesis that the state's ineffectiveness in curbing parental alienation constitutes a violation of rights. In that litigation, the mother's conduct was also considered criminal by the Croatian justice system. The court professionals expressed serious concerns about the acts of parental alienation practiced by her, which could "contaminate the memory" of the child, stressing that the mother's behavior, in conjunction with that of the father, would have direct consequences for the child's

psychological and physical well-being. The Croatian court was categorical in considering that the child's perceptions were "shaped by years of parental alienation".

However, in analyzing the case, the First Section of the European Court of Human Rights understood that, despite the criminal actions brought against the mother, these measures were insufficient to guarantee effective contact and did not demonstrate that the authorities took "all necessary steps" to protect the family bond. Although the Court noted that the applicant's own behavior (the father) was not "entirely free from censure," the failure to enforce the contact order was ultimately attributed to the lack of diligence on the part of the competent authorities. For this reason, the Court declared the application admissible and concluded that there was a violation of Article 8 of the Convention, which guarantees the right to respect for family life, condemning the Croatian State not for ignoring acts of alienation, but for its failure to combat them effectively. The judgment demonstrates that the mere criminalization of conduct, as provided for in Croatia, may not solve the problem, and it is more useful to arm the legal system with specific civil tools to deal with the obstruction of coexistence resulting from alienating acts, such as those provided for in article 6 of Law No. 12,318/2010, which range from the setting of a fine to the change of custody, always having as a parameter what is best for the child.

The case *of Ilya Lyapin v. Russia* reveals a unique intertwining between allegations of affective abandonment, parental alienation and socio-affective filiation, whose complexity reveals the multiple dimensions in which the violation of the right to family life can manifest itself. The procedural narrative demonstrates that, after the dissolution of the marital bond, the applicant remained estranged from the child, a circumstance used as a basis for the Russian courts to extinguish his parental authority, transferring it to the mother and consolidating the stepfather's position as a parental figure of reference. This decision had as a practical consequence the definitive rupture of the legal and affective bond between father and child, culminating later in the adoption of the child by the new maternal spouse.

The European Court, however, recognized that, even if the applicant had engaged in conduct interpreted as indifference or lack of zeal – elements that touch on the category of affective abandonment – such behaviors did not justify the extreme measure of deconstitution of paternity, especially because the State was unable to demonstrate the existence of compelling reasons that authorized the rupture of the family bond. On this point, the Court was incisive in stating that the Russian judicial decision exceeded the limits of proportionality

and reasonableness, constituting an illegitimate interference with the right to respect for family life provided for in Article 8 of the European Convention on Human Rights.

The ruling, therefore, allows us to understand that there was parental alienation at different levels. On the one hand, the alienation operated in the intra-family environment, marked by the symbolic and affective substitution of the father figure by the stepfather, legitimized by the mother's behavior in removing the parent from the child's life. On the other hand, state parental alienation, embodied in the decision of the Russian courts that, without sufficient motivation, consolidated the definitive exclusion of the biological father from the child's life, instead of adopting gradual measures that preserved, even if minimally, contact and coexistence. This double alienation, at the same time private and institutional, illustrates in a striking way how public authority can reinforce and perpetuate dynamics of distancing that originate within the family.

Ultimately, the judgment demonstrates that the State's failure to balance the tensions between biological filiation, socio-affective filiation and the alleged indications of affective abandonment of the parent resulted in a serious violation of the child's fundamental right to live with both parents. The European Court has shown that the role of the jurisdiction is not simply to sanction the replacement of parental ties in the name of practical convenience, but to ensure that any intervention in the family sphere is guided by criteria of necessity, proportionality and the best interest of the child, preventing justice itself from becoming an agent of parental alienation.

If the case under analysis were submitted to the Brazilian legal system, it is plausible to assume that the outcome would be different, due to the consolidation of multiparenthood within the scope of national jurisprudence and doctrine. The Federal Supreme Court, in paradigmatic decisions (Extraordinary Appeal (RE) 898.060/SC, and Theme 622), recognized the possibility of coexistence between biological filiation and socio-affective filiation, dismissing the idea of automatic exclusion of a parental bond in favor of the other[5].

[5] The STF's judgment in RE 898.060/SC enshrined the possibility of legal coexistence, in the civil registry, between biological paternity and socio-affective paternity, imposing that both be recognized with their own legal effects and under conditions of hierarchical equality. This understanding, established with general repercussion in Topic 622, is configured as a contemporary paradigm of family law, as it replaces the traditional binary model of filiation with a more plural, emotionally diverse structure, which mirrors the complexity of current family configurations. By maintaining both ties, the Brazilian legal system ensures greater protection of the best interest of the child, avoiding excluding or hierarchizing affection in the face of biology. This orientation is supported by the constitutional principles of human dignity, responsible parenthood, the best interest of the child and equality between children, as well as the Statute of the Child and Adolescent. (*Judgment 1066380, 20160210014256APC, Rapporteur: MARIA DE LOURDES ABREU, Third Civil Panel, judgment date: 11/16/2017, published in the DJe: 12/13/2017.)*

In this context, the formalization of the stepfather's socio-affective paternity would not necessarily imply the suppression of the biological father's parental authority, allowing the child to be legally protected on both fronts of family belonging (art. 227, § 6 of the FC; art. 1,596 of the CC/2002; art. 20 of the ECA).

The discussion about the appropriate measures to protect the child deepens in jurisdictions such as the United Kingdom, where parental alienation is also expressly recognized. In the case *of Father v Mother [2023] EWHC 1454 (Fam),* judged on 6 June 2023 by the High Court of Justice (Family Division) of the United Kingdom, the discussion centred on the mother's request to move with her 4-year-old son, K, from Nottingham to Rugby, and the father's application for a 50/50 time-split shared custody arrangement. The case was not treated as parental alienation, although it did address a period of unilateral interruption of contact. The court noted that after a disagreement over the length of the overnight stays, the mother unilaterally decided to "restart" contact, which led to a "complete breakdown" of relations between the parents[6]. The mother later admitted in court that she "acted wrongly at that time". In response to this situation, the father initiated the legal process in August 2020. Overnight contact was gradually corrected through the process, being reintroduced in May 2021 and continuing since then, with a stable routine established from October 2021. It is relevant how complex these processes become and sometimes depend on structuring decisions (Câmara, 2023), handed down over time, in the search for the gradual rebalancing of family relationships.

It is precisely this complexity that justifies the approach adopted by Law No. 12,318/2010 in Brazil. Aware that cases of parental alienation require a continuous and adaptive procedural analysis, the Brazilian legislator provided the court with a series of gradual tools. Article 6 of the aforementioned law lists a list of measures that can be applied in isolation or cumulatively, from a warning to the alienating parent, through the expansion of the cohabitation regime in favor of the alienated parent, stipulation of a fine, to the change of custody. This range of instruments enables the application of diverse and proportional judicial

[6] In the context of the judgment of *Father v Mother [2023] EWHC 1454 (Fam),* the expression "reset" *contact*" refers to the unilateral decision of the mother to interrupt the cohabitation regime that was in force. As described in the sentence, she made this decision effective by taking her son, K, to the maternal grandparents' house before the agreed search time, so that when the father arrived, the child was not there. This attitude led to the "complete breakdown" of relations between the parents and was the trigger for the father to start the judicial process. The mother herself later admitted that she acted wrongly.

responses, as the specific case unfolds, allowing the magistrate to intervene in order to rebalance the family dynamics, always in search of the effective protection of the child.

The complex dynamics of custody litigation is sometimes marked by the strategic use of narratives to obfuscate one's own responsibilities. The case of *Shottes v. Regan*, judged by the Massachusetts Court of Appeals on January 22, 2020, clearly illustrates this other facet inherent in judgments on cohabitation arrangements. In the process, the father sought the modification of custody alleging that the mother would be practicing parental alienation, making it difficult for her to contact her daughter. However, the court was not convinced by his father's arguments. On the contrary, the judicial analysis delved into the history of family violence, considering that the allegation of parental alienation, in the specific case, seemed to be an attempt by the father to cover up his own controlling and abusive behavior. The decision underscores that the father's focus was more on punishing his ex-wife than on the child's well-being. This judgment highlights a logic present in the adversarial system: when one of the parties is not willing to recognize its own mistakes, the tendency is to look for the fault in the other. This instrumentalization of allegations is a recurrent phenomenon in family courts anywhere in the world, and it is up to the judiciary to discern to separate genuine protective concerns from litigious tactics.

The case ***of Shottes v. Regan*** (*Appeals Court of Massachusetts*, 2020) highlights the tension inherent in custody and cohabitation disputes, in which allegations of family violence and parental alienation often overlap. The mother filed a lawsuit for modification alleging an episode of domestic violence involving the father and children, in addition to the manifest desire of the adolescents to restrict paternal coexistence. The court recognized the seriousness of these allegations and understood that the relationship between the father and the children had deteriorated to the point of requiring therapeutic intervention. The decision determined the provisional suspension of visits, conditioning the reestablishment of coexistence to a minimum of ten sessions of joint therapy, with a view to rebuilding the family bond.

The father, on the other hand, sought to reverse the narrative, filing a counterclaim for exclusive custody on the grounds that the mother would be practicing parental alienation. She also alleged that her children's resistance to maintaining contact resulted from maternal manipulation. However, the court was categorical in stating that the father did not present sufficient evidence, notably due to the absence of expert testimony to corroborate his allegations. The court pointed out that the mere insistence on attributing to the mother the

responsibility for the rupture was not enough to deconstruct the objective elements of the process, especially in the face of the explicit refusal of the children themselves to live with him.

In summary, the ruling reaffirms that, although allegations of parental alienation may arise as a defensive strategy in the face of accusations of violence, the burden of proof remains central. In the Brazilian context, this conclusion harmonizes with the discipline of **Law No. 12,318/2010**, which requires the proof of concrete, objective and factually identifiable acts for the characterization of parental alienation. The simple accusatory discourse, unaccompanied by an effective demonstration of typical conducts, is not enough to configure the practice, when it does not indicate, by itself, the imputed violence itself.

Thus, if the controversy examined by the Massachusetts Court of Appeals were analyzed in the light of Brazilian law, the solution would probably converge. The father, although he imputed to the mother the practice of parental alienation, did not point out specific acts that could be legally qualified as such. The absence of objective elements of evidence would make it impossible to judicially recognize the allegation, under the terms of national legislation. On the contrary, the attempt to attribute to the mother the exclusive cause of the removal, without robust empirical foundations, reveals itself as a procedural expedient of blame that, ultimately, ends up reinforcing the defamatory image of the mother in the judicial space.

National jurisprudence also reinforces this rigorous evidentiary approach. For example, the Court of Justice of Minas Gerais upheld a decision to dismiss a parental alienation action for lack of compelling evidence, highlighting that the troubled relationship between the parents does not constitute, in itself, an alienating act[7]. In another decision, the Court of Justice of Goiás concluded that "in the absence of concrete and unequivocal evidence that the mother of the minors has practiced acts of parental alienation to the detriment of the appellant, there are no reasons to change custody", preserving the principle of the best interest of the child[8].

Thus, both in the North American experience and in the Brazilian legal system, there is a need to separate defensive narratives from effective acts of parental alienation,

[7] (TJ-MG - Civil Appeal: 5034805-47 .2021.8.13.0024 1 .0000.23.183371-6/002, Rapporteur.: Des. (a) Roberto Apolinário de Castro, Judgment Date: 06/06/2024, 4th Specialized Civil Chamber, Publication Date: 06/10/2024)
[8] (TJ-GO - AI: 00291649820208090000, Rapporteur.: Des(a). CARLOS HIPOLITO ESCHER, Judgment Date: 05/25/2020, 4th Civil Chamber, Publication Date: DJ of 05/25/2020)

safeguarding the justice system from rhetorical instrumentalizations and ensuring that decisions are based on technical, objective criteria[9].

The in-depth analysis of the constitutionality of parental alienation was also the subject of scrutiny in Mexico, in a landmark judgment of the Plenary of the Supreme Court of Justice of the Nation. In Unconstitutionality Action 11/2016, the National Human Rights Commission (CNDH) presented a series of arguments against the legislation of the state of Oaxaca, sustaining, among other points, the incorporation of the "parental alienation syndrome" (PAS); that the norm objectified the child by describing alienation as a "transformation of consciousness"; that the law reproduced gender stereotypes, causing discrimination against women; and that the penalties for loss of parental authority were disproportionate and infringed the principle of legality because of the lack of objective criteria.

In its decision, the Mexican Supreme Court made a fundamental technical distinction: although it recognized the absence of scientific consensus on "parental alienation syndrome", it validated that there is evidence of the existence of "alienating practices", highlighting that the local legislator used the broader and more acceptable term "parental alienation" (PA), and not Gardner's controversial PAS. The Court declared unconstitutional the definition of PA as family violence based on the expression "transforms the conscience of a minor", understanding that it denies the progressive autonomy of the child and presumes that his testimony is vitiated. However, it considered constitutional the description of AP's conduct as "manipulation or induction (...) to produce at the slightest rejection, resentment, hatred, fear or contempt", as it focuses on the acts of the parent. In addition, the Court invalidated the automatic sanction of loss or suspension of parental authority, considering it disproportionate

[9] In this sense: "(...) *The allegation may even be incidental and in the context of enforcement, but the evidential burden persists in the face of the person who alleges parental alienation. In the specific case, what prevailed was the lack of evidence regarding the alleged parental alienation. That was the decisive circumstance for the denial of the request* (...). (STJ - REsp: 1894168, Rapporteur.: MARIA ISABEL GALLOTTI, Publication Date: 06/30/2023). And also: "(...) *And in order to ensure greater effectiveness, including in the face of the need for legal science to keep up with the transformations that society is going through, given the complexity of family relationships and their ruptures, the national legislation expressly provides for the institute of parental alienation, as a direct corollary of the principle of the best interest of the minor, in the search to safeguard a healthy and balanced development of the child. (...) 6. It is necessary to weigh the disagreements of the litigants and the conduct of the mother towards the child, to the point of concluding whether the latter, in any way, constitutes parental alienation. And in this regard, there is no sufficiency in the evidence presented to reach a closed conclusion immediately, to the point of taking into account only prints of excerpts of conversations held between the parents, for the application of the punishments provided for in the respective legislation. (...) 8. Thus, considering that unilateral custody was regulated by a judgment and the evidence of the practice of parental alienation, as a matter of prudence, one must wait for the psychosocial study to be carried out in the original demand* (...)". (STJ - AREsp: 2201880 CE 2022/0277636-4, Rapporteur.: Justice ANTONIO CARLOS FERREIRA, Publication Date: DJ 19/12/2022)

in preventing the judge from weighing the best interests of the minor and applying less restrictive measures. Finally, the arguments of gender discrimination and secondary victimization were rejected, as it is understood that the norm is neutral and does not annul the child's testimony.

In contrast, the Brazilian legislation demonstrates a legislative technique that anticipated the criticisms punctuated by the Mexican court, showing itself to be in total consonance with the decision. Law No. 12,318/2010 never mentioned the expression "transforms the conscience of a minor", focusing, since its conception, on the "act of parental alienation", according to its article 2. The rule describes an exemplary list of objective conduct practiced by adults, such as "carrying out a disqualification campaign" or "hindering the exercise of parental authority", avoiding the subjectivity that the Supreme Court of Mexico rejected. In addition, the Brazilian legal system does not provide for the automatic loss or suspension of family power as a sanction, but rather a set of gradual measures that the judge can apply according to the seriousness of the case, in line with the principle of proportionality and the best interest of the child defended in the Mexican court.

The differentiation between the genuine refusal of the child and parental alienation is a crucial point in international jurisprudence, as observed in the case of *Caeridin v. Romania* (Application No. 48411/19). In the litigation, the father accused the Romanian State of failing to guarantee his right to contact his son, alleging that the mother would be practicing acts of alienation. The situation was duly investigated by the Romanian courts, which explored the possibility of alienation, but concluded that, in the concrete case, the child's refusal to see the father was autonomous and justified by his own feelings. In the end, both the Romanian authority and the European Court of Human Rights (ECHR) respected the child's will and autonomy. The ECtHR held that the national authorities had taken all the steps that could reasonably be expected, including consideration of the child's opinion, and declared the petition inadmissible. This judgment is fundamental to demonstrate that the recognition of the possibility of parental alienation does not annul the child's right to be heard; On the contrary, it requires even greater discernment from the judiciary to differentiate between manipulation and authentic will, protecting the best interest of the child in all circumstances.

State inertia as a form of institutional parental alienation is at the heart of the judgment in the case *of Gobec v. Slovenia* (Application No. 7233/04), where judicial slowness became the violation itself. In this case, the European Court of Human Rights condemned Slovenia for violating the right to a fair trial (Article 6), as the dispute over custody and paternal contact

dragged on for more than ten years. This excessive delay, marked by comings and goings of decisions and the recognition of technical errors in the handling of the case by the Maribor Social Work Center — the local body responsible for providing opinions and mediating coexistence arrangements — amounted to a true act of parental alienation practiced by the State. The failure of the system to provide a solution in a reasonable time, aggravated by the inadequate conduct of the Social Center, prevented the realization of the right to family life, leading to an irreversible erosion of the bond. In the end, the State was held responsible by the supranational court, not for a direct action, but for its omission, which in practice produced the same result of parental estrangement that alienation seeks to achieve.

The analysis of the *Gobec v. Slovenia case* allows us to draw a direct parallel with the Brazilian reality, showing that the slowness of justice, especially in cases involving children and adolescents in which several agencies act concurrently, is not an exclusively national problem. The decision of the European Court of Human Rights, in condemning a State for procedural delay, recognizes that the inefficiency of the system is equivalent to a violation of rights, producing an effect similar to that of alienation. Aware of this risk, the Brazilian legal system has sought to create mechanisms to mitigate such failures. The concern with speed is already a pillar of the Statute of the Child and Adolescent (ECA - Law No. 8,069/1990), which in its articles 4 and 152, ensures the "absolute priority" in the processing of processes and in the formulation of public policies. More specifically, Law No. 14,344/2022 (Henry Borel Law) advanced by introducing provisions that aim to unify and streamline the performance of the protection network, such as the integrated service flow provided for in its article 20 and, especially, the determination in its articles 10 and 11 that the hearing of children and adolescents takes place through specialized listening and special testimony, avoiding the repetition of evidence that generates revictimization and procedural delays.

In light of the comparative panorama outlined, which highlights the universality of acts of parental alienation and the requirement, in several jurisdictions, of concrete evidence and technical-interdisciplinary evaluations, it becomes possible to move on to a sensitive point of the Brazilian debate: the narrative that the application of the law would reproduce gender violence. Read together, international precedents and the national normative experience indicate that recognizing and curbing alienating acts does not imply delegitimizing complaints of violence, but distinguishing, with methodological and evidential rigor, relational manipulation from situations of real risk. This shift of focus to objective conduct and to the proportionality of judicial responses opens space to face the critique of gender bias on its

own terms, without giving in to the false dichotomy of "protecting against violence" *versus* "combating alienation". It is in this context that the next section is inserted: to examine how the critical literature formulates this objection, what methodological weaknesses sustain it, and how the Brazilian legal system already contemplates specific safeguards, including from a gender perspective, so that the protection against parental alienation is not instrumentalized or served as a pretext to make violence invisible.

5 THE NARRATIVE OF GENDER BIAS IN THE APPLICATION OF THE PARENTAL ALIENATION LAW

After analyzing international jurisprudence, which demonstrates the broad recognition of acts of parental alienation, it is imperative to address one of the most persistent critical narratives in the Brazilian debate: that the parental alienation law would produce, in its application, a form of gender violence. This thesis is largely based on studies that seek to empirically demonstrate that allegations of parental alienation (PA) are used to discredit and silence complaints of domestic violence and abuse, mostly made by mothers.

One of the works that supports this perspective is that of Nina Jaffe-Geffner (2022), who argues that, despite the garb of neutrality, allegations of parental alienation are used in the courts to discredit complaints of abuse made by mothers, resulting in decisions that punish them, including the loss of custody. According to this view, the PA allegation functions as a rhetorical tool that inverts the logic of protection, transforming the protective mother into a "vengeful alienator", which would reflect a systemic gender bias in the judiciary.

On the other hand, this assessment, as well as others that start from the same empirical perspective, is contested by studies that point to serious methodological flaws in the research that reaches this conclusion. Aaron Robb, in his article on methodological challenges in social science, explains why this assessment is mistaken (Robb, 2020). Robb argues that many studies that claim PA discredits abuse reports fail to distinguish causation and do not utilize appropriate control groups. Without a control group for cases in which parental alienation *was not* alleged, it is methodologically impossible to conclude that the PA allegation was the causal factor for disbelief in the abuse report. The author points out that allegations of abuse can be discredited by a number of other factors, such as lack of evidence, inconsistencies in the reports or the evaluation of the parties' behavior, and not necessarily by the introduction of the argument of alienation. Therefore, according to this critical perspective, the narrative that PA is a tool of gender-based violence is based on

research with scientifically fragile conclusions, which do not stand up to rigorous methodological analysis.

For those who transit in the field of law, it is especially difficult to give credibility to research that intends to empirically demonstrate the existence of judicial errors without a detailed analysis of each concrete case. The logic of legal science requires that one understand the reasoning of the decision, the evidential context that supported it and the limits of judicial discretion. As Yeung (2017) reminds us, jurimetrics, understood as the quantitative analysis of judicial decisions, is only legitimate when built on representative samples and rigorous statistical methodologies, capable of avoiding selection biases and distinguishing correlation from causation. In the legal sphere, this means that the interpretation of the results cannot dispense with the qualitative examination of the reasons for deciding, under penalty of transforming statistical inferences into hasty conclusions about alleged judicial errors. Thus, the attempt to attribute to the mere allegation of parental alienation the disbelief in the reports of violence, without this necessary methodological and evidential scrutiny, proves to be scientifically fragile and unconvincing for legal dogmatics.

Notwithstanding the fragility in the empirical demonstration that the application of the parental alienation law produces gender violence, the author who defends this thesis, Nina Jaffe-Geffner, concludes that, in order to remove such risk, it would be necessary to adopt a series of legislative measures. Among them, it proposes the prohibition of the use of the "*friendly parent*" criterion in cases of domestic violence[10]; the establishment that allegations of alienation could not, by themselves, rule out unsubstantiated allegations of abuse; the reform of the role of custody evaluators, with a requirement for mandatory training in domestic violence and the prohibition of them making recommendations on the final decision; and, finally, the prohibition of children's lawyers (AFCs) from substituting their own wishes for their own judgment.

When analyzing such proposals, it is observed that the Brazilian legislation not only already contemplates these concerns, but in several aspects offers even more consistent

[10] The *friendly parent* is a criterion used in some legal systems, especially in the United States, in determining custody. According to this principle, when deciding which parent the child should live with, the court should give preference to the parent who is most likely to facilitate and encourage a continuous and healthy relationship between the child and the *other* parent. The criticism of this criterion, especially in contexts of domestic violence, lies in the fact that it can penalize the protective mother, who, by limiting the child's contact with an abusive father, can be wrongly interpreted as "unfriendly" or "alienating", ignoring that her actions are motivated by the safety and well-being of the child. In addition, as a study by the Canadian Department of Justice points out, in situations where there is family violence or coercive control, it is unreasonable to expect the victim parent to proactively encourage contact, as their main concern is safety, and cooperation can be impossible or even dangerous (Jaffe et *al.* 2023).

protection. Law No. 14,713/2023, for example, went beyond international recommendations by expressly prohibiting the establishment of shared custody in cases where there is domestic violence or even risk of its occurrence. With regard to the so-called "failure of evidence", the Brazilian procedural system establishes that the burden of proof lies with the one who alleges (article 373 of the CPC), so that a complaint of abuse dismissed due to insufficient evidence is not to be confused with a "false complaint", since the latter requires, for its configuration, the demonstration of intent, that is, of the awareness of the falsity of the imputation on the part of the complainant.

Likewise, the requirement of technical training of experts, provided for in article 5 of the Parental Alienation Law, necessarily covers the competence to identify dynamics of family violence. As for the formulation of the decision on custody, Brazilian law is unequivocal: the responsibility for the trial is exclusive to the magistrate, and the expert is a mere assistant to the court, without any interference in the definition of the measure to be adopted. Finally, the figure of the child's lawyer (AFC), existing in other systems, does not find correspondence in national law. In Brazil, the defense of the interests of the child is attributed to the Public Prosecutor's Office, which acts as an inspector of the legal order and not as the legal representative of the child, which prevents the replacement of his will by a lawyer.

The application of the gender perspective is equally central in *Sentencia de Tutela No. 181/23*, in which the Constitutional Court of Colombia reversed a decision that removed custody of a mother. The case began before an administrative authority, the *Comisaría de Familia* – which in Brazil would be equivalent to the Guardianship Counselor, although the latter does not have the same investiture to decide on custody – which determined the change of custody based on a psychological report. This report, although it did not indicate a violation of rights in the paternal environment, concluded that the mother had an "insecure attachment" that did not allow the development of the father-child relationship. From the perspective of Brazilian law, such a basis would be insufficient to characterize parental alienation, since the diagnosis of "insecure attachment" does not constitute the volitional element required by law, which requires proof of the specific intent to manipulate the bond with the other parent to weaken him. Thus, the national legislation expressly distinguishes the *animus corrigendi/protegendis* from the *animus nocendi* (Rocha, 2025), focusing on the intention to harm, and not on personality characteristics or parental styles.

Returning to the English case *Father v Mother*, the court decision serves as an example of the application of the gender perspective, although not expressly. When analyzing

the mother's request for change, the judge made a consideration that transcended the mere logistics of paternal contact, focusing on the impact that the refusal to change would have on the well-being of the mother and, consequently, on the child. In the words of the magistrate, the mother "would not be able to continue her work if she remained in Nottingham, which would have a very serious impact on her wellbeing, self-confidence and self-esteem. She would feel trapped, resentful, isolated, and vulnerable, and that, in turn, would affect K." In this vein, the court decision contradicted the very conclusion of the Cafcass (*Children and Family Court Advisory and Support Service*) report[11], as it understood that the agency had underestimated the impact of the decision on the mother and incorrectly evaluated her motivations, demonstrating a sensitivity of the court in recognizing how the living conditions and mental health of the main caregiver are inseparable from the best interest of the child.

It is possible to observe a significant parallel in the Brazilian legal scenario, in which the authorization to change the domicile of the mother, motivated by professional reasons, has been admitted in analogous situations, even in the face of shared custody and the father's disagreement. An emblematic example is the judgment of the *Special Appeal* in the STJ (REsp 2.038.760), in which the Third Panel reinstated a decision of the first instance that admitted the modification of the child's reference home, authorizing her to move from Brazil to the Netherlands accompanied by her mother. The rapporteur, Justice Nancy Andrighi, was based on the principle of the best interest of the child and on the flexibility of the shared custody regime, explaining that it is not to be confused with alternating custody and allows the definition of a main residence for the children, making room for arrangements adapted to the family reality, regardless of the geographical location of both parents[12].

In addition, reinforcing this understanding, the official communication of the STJ (2021, June 23) highlighted that shared custody includes various forms of implementation and does not require joint physical custody or equal cohabitation, admitting that one of the parents — even residing in another country — maintains shared custody, as long as coexistence with the other parent is guaranteed through appropriate measures.

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[11] Cafcass (*Children and Family Court Advisory and Support Service*) is an independent public body in England that acts to protect the interests of children and adolescents involved in family court proceedings. Your social workers and *guardians* are appointed by the court to act as an impartial voice for the child, conducting evaluations and preparing technical reports that assist the judge in making decisions that are in their best interest. Cafcass advises the court on what is safe for children and what would be the most appropriate living arrangement in each case.

[12] (STJ - REsp: 2038760 RJ 2022/0212032-3, Judgment Date: 12/06/2022, T3 - THIRD PANEL, Publication Date: DJe 12/09/2022)

In short, contemporary Brazilian jurisprudence converges with the sensitivity demonstrated in the English decision: both courts recognize that the living conditions and mental health of the main caregiver directly affect the child's well-being, validating that judicial decisions consider the affectivity, the existential project of the parent and the quality of life of the child.

Evaluating the conduct of the courts, both in Brazil and in other jurisdictions, in concrete cases, it is possible to see that the gender perspective is not only present but also legally recognized and incorporated into judicial decisions. Jurisprudence demonstrates sensitivity in identifying situations in which the health, autonomy and integrity of the female caregiver have a direct impact on the best interest of the child, dismissing the idea that the application of the parental alienation law is, in itself, linked to a discriminatory logic. The empirical research that supports the opposite thesis reveals methodological weaknesses that prevent the direct link between legislation and possible gender violations. With this, it is not intended to affirm that such violations do not occur in the context of family disputes, but only to highlight that their existence does not automatically follow from Law No. 12,318/2010. On the contrary, comparative analysis and jurisprudential practice indicate that the law, when correctly interpreted and applied within the parameters of strict legality, can work in harmony with the gender perspective, protecting more broadly both the child and the vulnerable parent in the family relationship.

6 CONCLUSION

The methodology used in this study consisted of a dogmatic and comparative analysis, combining hermeneutic criticism with international jurisprudential investigation. It was based on the premise that the interpretation of Law No. 12,318/2010 should be led back to a paradigm of strict legality, moving away from the expansive and pamprincipiological readings that have distorted its normative content. The analysis of comparative law, especially decisions issued by the European Court of Human Rights, the Inter-American Commission on Human Rights, as well as constitutional courts and national courts in different countries, provided the necessary empirical counterpoint to test the validity of the narratives disseminated in Brazil.

What was demonstrated, from this approach, is that parental alienation is not a restricted or isolated phenomenon of the Brazilian reality, but a global legal problem, faced by different jurisdictions under multiple normative and jurisprudential approaches. It was also

evidenced that international courts not only recognize parental alienation as a form of psychological violence, but require that it be proven by concrete, repeated and intentional acts. Far from being a "Brazilian invention", parental alienation emerges as a common concern in the context of the international protection of children's rights, refuting the narrative that its discipline would be exclusive to the national system or devoid of empirical basis.

From this observation derives the central conclusion of this article: the polarized narratives that associate the Parental Alienation Law with a form of gender violence or the violation of the rights of children and adolescents do not find support either in the letter of Brazilian law or in comparative experience. On the contrary, what is verified is that its full protective effectiveness depends on the correct application of its provisions, in line with a hermeneutic that respects the limits of strict legality. Interpreting the law based on hermeneutic leaps or pamprincipiological assumptions means importing theoretical constructions into the normative text that are not found in it, distorting its purpose and compromising its constitutional legitimacy.

It is concluded, therefore, that Law No. 12,318/2010 maintains full validity and relevance as an instrument for the protection of family life and the psychological integrity of children and adolescents. However, its true effectiveness will only be achieved when applied in accordance with the legal text, based on objective evidence and identifiable conducts, moving away from readings contaminated by pseudoscience or polarized rhetoric. By reaffirming strict legality as a hermeneutic criterion, the present study argues that Brazilian law not only resists unfounded criticism, but is aligned with the best international practices for the protection of children, confirming its essential function in the contemporary legal system.

REFERENCES

APSAC. (2019, August 16). APSAC announces revisions to its definitions of psychological maltreatment. https://apsac.org/apsac-announces-revisions-to-its-definitions-of-psychological-maltreatment/

Bernet, W. (2020). Parental alienation and misinformation proliferation. Family Court Review, 58(2), 293–307. https://doi.org/10.1111/fcre.12473

Caeridin v. Romania, App. No. 48411/19, Eur. Ct. H.R., Feb. 8, 2022.

Câmara, A. F. (2023). Processo reestruturante de família. Revista de Processo, 338, 277–298.

Comisión Interamericana de Derechos Humanos. (2025, April 1). Informe Nº 41/25, Petición 2079-17, Admisibilidad, N.C. & P.C., Brasil.

Corte Constitucional de Colombia. (2023, May 29). Sentencia de Tutela nº 181/23 (Expediente T-8.993.278).

Corte Constitucional de Colombia. (2023, November 30). Sentencia de Tutela nº 526/23 (Expediente T-8.394.866).

Creswell, J. W., & Plano Clark, V. L. (2007). Designing and conducting mixed methods research. Sage.

Cunha, A. dos S., & Silva, P. E. A. da (Eds.). (2013). Pesquisa Empírica em Direito: Anais do I Encontro de Pesquisa Empírica em Direito, Ribeirão Preto, 29 e 30 de setembro de 2011. Ipea.

De Almeida Semião v. Portugal, App. No. 46719/18, Eur. Ct. H.R., Sept. 6, 2022.

Fabiani, E. R., & Tormin, M. M. (2023). Não fale do Elon Musk! A pesquisa jurídica no mestrado profissional. Revista Direito GV, 19, e2327. https://doi.org/10.1590/2317-6172202327

Father v. Mother [2023] EWHC 1454 (Fam).

Gil, A. C. (2002). Como elaborar projetos de pesquisa (4th ed.). Atlas.

Gardner, R. A. (1985). Recent trends in divorce and custody litigation. Academy Forum, 29(2), 3–7.

Gobec v. Slovenia, App. No. 7233/04, Eur. Ct. H.R., Oct. 3, 2013.

Ilya Lyapin v. Russia, App. No. 70879/11, Eur. Ct. H.R., June 30, 2020.

Jaffe-Geffner, N. (2022). Gender bias in cross-allegation domestic violence-parental alienation custody cases: Can states legislate the fix? Columbia Journal of Gender and Law, 42(1), 56–107. https://doi.org/10.52214/cjgl.v42i1.9373

Jaffe, P. G., Bala, N., Medhekar, A., & Scott, K. L. (2023). Making appropriate parenting arrangements in family violence cases: Applying the literature to identify promising practices. Department of Justice Canada.

Jurišić v. Croatia (no. 2), App. No. 8000/21, Eur. Ct. H.R., July 7, 2022.

Lakatos, E. M., & Marconi, M. de A. (2017). Fundamentos de metodologia científica (8th ed.). Atlas.

Lorandos, D. (2020). Parental alienation in U.S. courts, 1985 to 2018. Family Court Review, 58(2), 322–393.

Merten, B. (2025, July 9). Alienação parental e perspectiva de gênero: Desafios na aplicação. Migalhas.

N.P. and V.P. v. Bulgaria, App. No. 57184/22, Eur. Ct. H.R., May 27, 2025.

Pereira, A. S., et al. (2018). Metodologia da pesquisa científica [e-book]. Ed. UAB/NTE/UFSM.

Robb, A. (2020). Methodological challenges in social science: Making sense of polarized and competing research claims. Family Court Review, 58(2). https://doi.org/10.1111/fcre.12474

Rocha, B. M. (2025). Alienação parental e dolo específico: A função finalística do art. 2º da lei nº 12.318/2010 como critério de tipicidade. Revista Ibero-Americana De Humanidades, Ciências E Educação, 11(8), 544–564. https://doi.org/10.51891/rease.v11i8.20577

Shottes v. Regan, 96 Mass. App. Ct. 1118 (2020).

Streck, L. L. (2010). Aplicar a "letra da lei" é uma atitude positivista? Revista NEJ - Eletrônica, 15(1), 158–173.

Streck, L. L. (2014). O ativismo, o justo e o legal: Crítica ao pamprincipiologismo a partir do caso das "famílias paralelas". Revista de Direito Civil Contemporâneo, 1(4), 151–160.

Superior Tribunal de Justiça. (2021, June 23). Guarda compartilhada é possível mesmo que pais morem em cidades diferentes. https://www.stj.jus.br/sites/portalp/Paginas/Comunicacao/Noticias/23062021-Guarda-compartilhada-e-possivel-mesmo-que-pais-morem-em-cidades-diferentes.aspx

Suprema Corte de Justicia de la Nación, Pleno. (2019, March 22). Acción de Inconstitucionalidad 11/2016.

Suprema Corte de Justicia de la República Dominicana, Segunda Sala. (2024, March 27). Sentencia núm. SCJ-SS-24-0444.

Tribunal Europeu dos Direitos Humanos. (n.d.). O TEDH em 50 perguntas. Conselho da Europa. Retrieved August 31, 2025, from https://www.echr.coe.int/documents/d/echr/50questions_POR

Yeung, L. (2017). Jurimetria ou Análise Quantitativa de Decisões Judiciais. In M. R. Machado (Ed.), Pesquisar empiricamente o direito (pp. 249–274). Instituto Rede de Pesquisa Empírica em Direito (Instituto Reed).

Ximenes, J. M. (2011). Levantamento de Dados na Pesquisa em Direito: A técnica da análise de conteúdo. In Anais do XX Congresso Nacional do CONPEDI.

Zaffaroni, E. R., & Pierangeli, J. H. (2001). Manual de direito penal brasileiro. Editora Revista dos Tribunais.