
**THE SYNDEMIC GENDER VIOLENCE IN JUDICIAL DISCOURSES
THAT APPLY THE PARENTAL ALIENATION LAW*****LA SINDÉMICA VIOLENCIA DE GÉNERO EN LOS DISCURSOS
JUDICIALES QUE APLICAN LA LEY DE ALIENACIÓN PARENTAL******A SINDÊMICA VIOLÊNCIA DE GÊNERO NOS DISCURSOS
JUDICIAIS QUE APLICAM A LEI DE ALIENAÇÃO PARENTAL*****SHEILA STOLZ**

Associate Professor at the Law Course and Director Professor the Post-Graduation Program in Law and Social Justice (FaDir/FURG/RS). PhD in Law by the (PUC/RS), taken at *Facultad de Derecho* da (UCM/Madrid/Spain). Master in Lay by the *Universitat Pompeu Fabra* (UPF/Barcelona/Spain). General Coordinator at the Center for Research and Extension in Human Rights (NUPEDH/FURG). Coordinator of the Specialization in Education in Human Rights E-mail: sheilastolz@gmail.com.

SIBELE DE LIMA LEMOS

Professor and researcher of the Research Group Law, Gender and Plural Identities (DGIPLUS/FADIR/FURG). Post-Graduate student in Education in Human Rights (PGEDH/FURG-UAB-CAPE). E-mail: belelilemos@gmail.com.

RAFAELA ISLER DA COSTA

Student of Post-Graduation Program in Law and Social Justice (Master's) of the Federal University of Rio Grande (FaDir/FURG/RS). Researcher of the Research Group Law, Gender and Plural Identities (DGIPLUS/FADIR/FURG) and the Center for Research and Extension in Human Rights (NUPEDH/FURG).



CAROLINA FLORES GUSMÃO

PhD student in Feminist and Gender Studies at the University of Ottawa, ON, Canada
Master's degree in law and social Justice by the Faculty of Law at the Federal University of Rio Grande – FURG. Researcher of the Research Group Law, Gender and Plural Identities (DGIPLUS/FADIR/FURG) and the Center for Research and Extension in Human Rights (NUPEDH/FURG).

ABSTRACT

Objective: To investigate the use of gender stereotypes by the Court of Justice of the State of Rio Grande do Sul (TJRS) when applying Law N°. 12.318, of August 26, 2010 – known as the Parental Alienation Law (PAL – in its decisions dated between 2019 and 2020.

Methodology: The deductive method of research was adopted, contemplated by bibliographical research (scientific articles, theses and books) and by documental research based on reading and critical-reflexive analysis of the decisions of the Court of Justice of the State of Rio Grande do Sul (TJRS)

Results: Among the 547 procedural judgements found, we selected for analysis those dated in the limited period between 2019 (82 sentences) and 2020 (36 sentences until October 6). Of 118 second degree decisions evaluated (2019-2020) we noticed that where there were accusations of parental alienation, the women/mothers are most of the alleged parties, in a total of 107 decisions. The year of 2019 made up 82 decisions like that, 75 referring to parental alienation accusations against women/mothers. In 2020 the survey found 36 decisions, in which 32 of them were parental alienation accusations against the women/mothers. The survey also identifies and measures the stereotypes reproduced in the decisions weighed highlighting the fact that during the period studied the fathers received between 4 (2019) to 7 (2020) ratings and, the mothers, between 40 (2019) to 39 (2020) pejorative ratings.

Contributions: The research carried out showed that the application of the Parental Alienation Law by the TJRS has been an instrument for the perpetuation of gender stereotypes. Furthermore, the application of the PAL violates the constitutional and conventional rights of women/mothers, children and adolescents.

Key Words: *Parental Alienation Law. Syndemics Gender Violence. Human Rights.*



RESUMEN

Objetivo: Investigar la utilización de estereotipos de género por parte del Tribunal de Justicia del Estado de Rio Grande do Sul (TJRS) al aplicar la Ley N°. 12.318 del 26 de agosto de 2010 – Ley de Alienación Parental (LAP) – en sus decisiones en el período fechado entre los años de 2019 y 2020.

Metodología: Se adoptó el método de investigación deductivo, contemplado por la investigación bibliográfica (artículos científicos, tesis y libros) y por la investigación documental basada en la lectura y análisis crítico-reflexivo de las decisiones del Tribunal de Justicia del Estado de Rio Grande do Sul (TJRS).

Resultados: De las 547 sentencias procesales encontradas, se seleccionaron para el análisis aquellas fechadas en el período comprendido entre los años 2019 (82 sentencias) y 2020 (36 sentencias hasta octubre). De las 118 sentencias de segundo grado evaluadas (2019-2020) donde aparecieron acusaciones de alienación parental, las mujeres/madres son la mayoría de las acusadas, totalizando 107 sentencias. En 2019, de las 82 decisiones de la TJRS, 75 se refieren a acusaciones de alienación parental contra mujeres/madres. En el año 2020, de las 36 decisiones de la TJRS, 32 se refieren a acusaciones de alienación parental contra mujeres/madres, totalizando 107 decisiones. La investigación identifica y computa los estereotipos reproducidos en las decisiones del TJRS, constatando que, durante el período estudiado, los padres recibieron entre 4 (2019) a 7 (2020) calificativos y, las madres, entre 40 (2019) a 39 (2020) calificativos peyorativos.

Contribuciones: La investigación realizada demostró que la aplicación de la Ley de Alienación Parental por parte del TJRS ha sido un instrumento para la perpetuación de los estereotipos de género. Además, la aplicación de la LAP vulnera los derechos constitucionales y convencionales de las mujeres/madres, niñas, niños y adolescentes.

Palabras clave: Ley de Alienación Parental. Violencia de Género Sindémica. Derechos Humanos.

RESUMO

Objetivo: Averiguar a utilização de estereótipos de Gênero pelo Tribunal de Justiça do Estado do Rio Grande do Sul (TJRS) quando da aplicação da Lei N°. 12.318 de 26 de agosto de 2010 – Lei da Alienação Parental (LAP) – em suas decisões datadas entre os anos de 2019 e 2020.

Metodologia: Adotou-se o método dedutivo de pesquisa contemplado pela pesquisa bibliográfica (artigos científicos, teses e livros) e pela pesquisa documental baseada na leitura e análise crítico-reflexiva das decisões do Tribunal de Justiça do Estado do Rio Grande do Sul (TJRS).



Resultados: Entre os 547 julgamentos processuais encontrados, selecionou-se para análise aqueles datados no período limitado entre os anos de 2019 (82 acórdãos) e 2020 (36 acórdãos até outubro). Das 118 decisões de segundo grau avaliadas (2019-2020) constata-se que onde apareceram acusações de alienação parental, as mulheres/mães são a maioria das acusadas, totalizando 107 decisões. No ano de 2019 das 82 decisões do TJRS, 75 se referem a acusações de alienação parental contra as mulheres/mães. No ano de 2020 das 36 decisões do TJRS, 32 se referem a acusações de alienação parental contra as mulheres/mães, totalizando 107 decisões. A pesquisa identifica e mensura os estereótipos reproduzidos nas decisões do TJRS, constatando que durante o período estudado os genitores receberam entre 4 (2019) a 7 (2020) qualificações e, as genitoras, entre 40 (2019) a 39 (2020) qualificações pejorativas.

Contribuições: A pesquisa realizada demonstrou que a aplicação da Lei de Alienação Parental pelo TJRS tem sido um instrumento para perpetuação dos estereótipos de gênero. Ademais, a aplicação da LAP viola direitos constitucionais e convencionais das mulheres/mães, crianças e adolescentes.

Palavras-chave: Lei da Alienação Parental. Sindêmica Violência de Gênero. Direitos Humanos.

1 INTRODUCTION

The worldwide societies and, especially, the Brazilian one, are, in this digital era, daily immersed multitude of images, videos, links, texts, news and concepts that may serve for the sharing of information, but also, to induce, above all through changes and/or forgeries, to error and the dissemination of deceits. In other terms, this “created reality” so called post-truth, forms and deforms the public opinion through the relativization and trivialization of the straightforwardness of data and facts, appealing to the supremacy of personal, religious, cultural beliefs but, mainly, beliefs of emotions (CHOMSKY, 2014).

Circumstances that are, simultaneous and inexorably, a major source of profits for the ones who control virtual networks and a great threat to democracy and to the life of people. A rich ground for the spread of unfounded ideologies and, among them, the Parental Alienation Syndrome (hereinafter, PAS), used as another instrument to violate, oppress and submit women/mothers, children (STOLZ, 2020), and adolescents; for, it should be remembered, that Brazil is the only country in the world



with a proper law based on this presumed and unreal syndrome, rejected in the other countries due to the lack of scientific proof and acceptance of healthcare and legal professionals that daily deal with family issues. A turning point when we think that the State is responsible for protecting the human and fundamental rights of such social group and that are legally materialized in International Human Rights Treaties of which Brazil is a signatory, as well as in the Federal Constitution.

Through researches developed in the scope of the Center for Research and Extension in Human Rights (NUPEDH/FADIR/FURG) and the Research Group Law, Gender and Plural Identities (DGIPLUS/FADIR/FURG), we intend to analyze the **syndemics**¹ decisions rendered by the State Court of Rio Grande do Sul (TJRS) that has been applying the Law n. 12.318, from August 26th 2010, known as the Parental Alienation Law (hereinafter, PAL), in order to demonstrate the iniquities it has been causing.

Therefore, we chose to present, in the first section, a brief history on the origin of the Parental Alienation Syndrome (PAS) that will help us to understand the reasons that led to the Law Project that motivated the enactment by the Brazilian National Congress of the PAL, topic of the second section of this article. As a base in the previous arguments and descriptions, the third and last action will provide the data collected in the research carried out at the State Court of Rio Grande do Sul and that focused on analyzing the second level decisions rendered that applied the PAL; an investigation that will provide subsidies to conclude that we are before a picture of institutional violence perpetrated by state public agencies.

¹ Term borrowed from the American physician, anthropologist and professor Merrill Singer. For Singer, as well as for most of the international scientific community, the containment of the advance of the progress of the contamination and the impacts of the Corona virus, it is not only a matter of personal health or comorbidities each individual may have, nor only a matter of public health, but also of modifying certain socio-economic conditions that make lower-class and racialized social groups, for instance, more vulnerable to the disease. For him, therefore, we are not facing a pandemic, but a syndemics (term formed by the expressions: synergy and pandemic).

We are defending here that the institutional gender violence syndemics demands, among many changes, some rethinking concerning of institutional practices and, among them, the judicial ones.

See more in: SINGER (2009).



2 THE ORIGIN OF THE ALIENATION SYNDROME

Richard Gardner graduated in medicine at *Columbia University* and at *SUNY Downstate Medical Center*. He was the director of child psychiatry in the Army medical staff of the United States while he was in Germany and, when returning to the United States of America, he worked, in an unpaid position, as a Clinical Professor of Psychiatry at *Columbia University*. He was also a legal expert in over 400 cases of childcare, defending parents (men), professors and members of religious congregations (pastors, priests, etc.) of accusations of sexual abuse and pedophilia. In his reports, as well as in his books, he used to recommend legal bodies the removal of the children from the “transferor’s” houses (as the mothers were called) to place them under the guard of the fathers alleged as authors of the sex abuse. He wrote and published several books and articles through his own publishing house *Creative Therapeutics* – editorial that published only his works, because, notorious as it is, his works on the Parental Alienation Syndrome (PAS) were not supported by any renowned college or scientific society, as he did not provide empirical data to prove the existence of such idealized syndrome, appealing, only, to his authority and professional experience as scientific grounds, a defense that made the PAS quite questionable.

Gardner describes PAS as “a psychiatric disorder that arises in the context of litigious disputes for child custody, mainly when the dispute is long and distressful. There are three types of parental alienation syndromes, whose differential diagnosis is fundamental for the adequate treatment of the disorder” (1985, p. 3). The syndrome in its typology can be mild, moderate, or severe, with distinct symptomatic manifestations. The psychiatric disorders are nothing more than, according to Gardner, a logical consequence of the conducts of the guardian parent, called transferor parent (*conditio* overwhelmingly attributed to the mothers), who harm and/or hinder the relationship of their child/children with the disposed parent (the father) after the separation and/or divorce, as the mothers (transferor parent) usually make use of false accusations of violence and sex abuse, brainwashing their children by creating false memories. The doctor goes on arguing that



The Parental Alienation Syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of dispute for the child/children custody. Its primary manifestation is a child campaign of defamation against a good and lovely father – a non-justifiable campaign. It results from the combination of the indoctrination of a controller father (brainwashing) and the child/children's own contributions for the defamation of the target father. (GARDNER, 2002, s/n.)

The previous allegations add to the usual Gardner's protection of child abusers and offenders, misinterpreted by their accusers, such as the American nurse Stephanie Dallam when analyzing the following work by Gardner transcribed below:

The sexually abused child is usually considered as the victim although the child may start sexual relationships by "seducing" the adult. Despite Gardner's emphasis in false allegations of sex abuse, he admits that the genuine sex abuse of children is generalized and that the vast majority ("probably more than 95%") of all allegations of sex abuse are valid (Gardner, 1991, p. 7 e 140). In fact, Gardner (1992, p. 670) considers the sexual activities between adults and children a universal phenomenon that exists in a significant level in all cultures all over the world. Likewise, "pedophilia within the family (that is, the incest) is generalized and ... is probably an old tradition" (Gardner, 1991, p. 119). Gardner (1991, p. 118) suggests that the Western society is "excessively moralist and punishing" regarding pedophiles. Gardner states that the "Draconian punishments imposed to pedophiles go way beyond what I consider the severity of the offense". The current prohibition of sex between adults and children is an "exaggerated reaction" that Gardner attributes to Jews. Gardner (1992, p. 15) states: "There are good reasons to believe that most, if not all, children have the capacity to have an orgasm the moment they are born". Besides this, some children experience "Strong sexual impulses in the early childhood" and "the normal child [italics in the original] display a wide range of sexual fantasies and behaviors, many of which would be labeled as 'sick' or 'perverted' if displayed by adults" (Gardner, 1991, p. 12). [...] Gardner (1986, p. 93) observes that the "the child sexually abused is usually considered as the victim" although the child may start sexual encounters "seducing" the adult. Gardner (1986, p. 93) suggests that if the sexual relationship is discovered, "the child will probably mention it in a way that the adult will be the one to be blamed for such initiation". [...] As a Western culture product, Gardner (1992, p. 49) states: "I have also started to believe that the sexual activity between an adult and a child is a reprehensible act. However, I do not believe that it intrinsically is like this; in other societies and in other times, it might not be psychologically harmful". "The determining factor if the experience will be traumatic is the social attitude regarding these encounters" (Gardner 1992, p. 670-1). (DALLAM, 1998, s/n, emphasis from the *author's da citation*)

The American psychiatrist also defended the idea that children firmly lied to help the mothers in the false accusations of abuse and these attitudes were part of PAS symptoms, a reason by which he recommended them to make use of the therapeutic



program developed by him. In such program, Gardner (1986) presented some guidelines to be followed, namely: 1) the one that only one psychologist were appointed to treat the family; 2) that such professional should be appointed by the judge entrusted in the case as a way to assure direct communication between both parties, but, especially, as a way to remove possible legal non-compliances and the omission of the transferor acts practiced by the transferor parent and that substantially hinder the PAS treatment.

Reinforcing the misogynist aspects of the fundamentals of PAS, Gardner (1992, p. 575-585) stated that the mothers who found out that their husbands were sexually abusing their children were, in fact, the ones to be blamed for such abuse as they certainly did not sexually, please their husbands. What motivates him to suggest therapists that treat mothers of incest victims to put the situation in the adequate perspective: 1) discouraging the separation and, if not possible, that they try to solve their problems peacefully and not through disputes that traumatize the children; and, 2) always remember in their statements that she (wife) and the offspring are responsible for the father's acts that, if well understood, do not constitute abuse but a historical and socially ubiquitous behavior in all societies.

Gardner and some of his followers (Naomi Ben-Ami and Amy Baker, 2012) point out daring implications for the children who suffer from parental alienation², but that, according to the research presented by Josimar Mendes, Julia Sursis Nobre Ferro Bucher-Maluschke, Danielle Ferreira Vasconcelos, Gabriella Assumpção Fernandes and Paulo Victor Madureira Nunes Costa, do not present **“yet, any cohort and/or randomized study that proves or justifies their existence** (MENDES; et. al., 2016, p. 162, *our emphasis*).

Concerning the disposed father, Gardner (1992, p. 585-595) describes the genitor's deep suffering, qualifying him with the following adjectives: despised and upset husband, in need of help, a victim of indifference, worried, someone who needs

² They are: “(a) irreparable and deep feelings of child in adulthood for acting as an accomplice of the alienating parent; (b) enuresis; (c) development of addiction; (d) low resistance to frustration; (e) outbreak of psychosomatic diseases; (f) problems with anxiety, nervousness, aggressiveness and depression; (g) antisocial behavior; (j) identity disorder; (h) “dual personality”; and (i) incidence of suicide. (MENDES; et al., 2016, p. 162, *notes of the team of authors*).



help to be encouraged so that he can resist and protects himself from severe punishments imposed to those who, in our time and society, pursues his sexual impulses. Thus, the therapy with the father should not focus on the sexual disturbance but in forgetting it that is presently considered a problem.

It should be remembered, in the wake of the American professor of Clinical Law and director of the National Family Violence Law Center from George Washington University Law School, Joan Meier (2009) and Brazilian psychologist Josimar Antônio de Alcântara Mendes that

Richard Gardner had a controversial professional career, not only because of trying to defend, unsuccessfully, the acknowledgement of the Parental Alienation Syndrome (PAS) as a diagnosable and classifiable disorder in the International Classification of Diseases (ICD) and in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), but also by serving as an expert in the defense of men accused of pedophilia/incest. Later on, Gardner himself was accused of pedophilia because of his book *True and False Accusations of Child Sex Abuse*, from 1992, in which his opinions seem to rationalize and naturalize the incidence of sexual abuse of children, besides affirming that almost all allegations of sexual abuse in the context of dispute of custody would be false (MENDES, 2019, p.11-12, *notes of the author*).

In short, these are the proposals of Richard Gardner's program which served with a level of scientific veracity the articles of the Law Project 4.053 from 2008 and, as we analyze in the next section, are the fundamentals that implement the Parental Alienation Law.

3 MISOGYNIST AND PUNISHING FUNDAMENTALS OF THE LAW PROJECT 4.053/2008 THAT ORIGINATED THE PARENTAL ALIENATION LAW

The demand for the drafting of the Parental Alienation Law (12.318/2010³) arose from the Associations of separated fathers who sought for claiming their rights of conviviality with their children, building a discourse that the women/mothers used it

³ BRASIL. **Law 12.318** from August 26, 2010. Brasília, DF: National Congress, 2010 Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12318.htm Access on: Sep. 02, 2020.



as a revenge because of the end of the relationship, as “there were no” reasons for this impediment or restriction.

Although the Associations use in their names the expressions separated Fathers and Mothers, or Daddy and Mommy, in fact they do it with the purpose of masking the sexist movement that connects some men who say they are affected by the women and, due to this, refer to them as mothers who commit acts of parental alienation.

In the Law Project 4.053 presented on October 7th, 2008, by the then Federal Representative Regis Oliveira (PSC/SP), another circumstance, moreover, is noticed: its proceeding in conclusive nature having its merit examined with outmost urgency by the Parliamentary Commissions of Social Security and Family, Constitution and Justice and of Citizenship. Furthermore, the justifications for the so mentioned legal proposal were based on publications of fathers’ associations that gathered in the Internet and not in reliable articles and researches and, let alone, in the hearing of skilled professionals. This is not a value judgement issued by the article authors, but some information found in the justification of the Law Project itself, *in verbs*,

It should be stressed that the present justification is elaborated based on the article by Rosana Barbosa Ciprião Simão, published in the book “Síndrome da Alienação Parental e a Tirania do Guardiã – Aspectos Psicológicos, Sociais e Jurídicos” **“Parental Alienation Syndrome and the Guardian Tyranny – Psychological, Social and Legal Aspects”** (Editora Equilíbrio, 2007), on information from the “SOS – Papai e Mamãe” **“SOS – Dan and Mom”** association site and on the article “Parental Alienation Syndrome”, by François Podevyn, translated by the Associação de Pais e Mães Separados “Separated Fathers and Mothers’ Association” - APASE, with the collaboration of the “Pais para Sempre” **“Fathers Forever”** association. Members of the “Pais para Sempre” **“Fathers Forever”**, “Pai Legal” **“Legal Father”**, “Pais por Justiça” **“Fathers for Justice”** associations and from the civil society have also collaborated with individual suggestions. (PL 4.053/2008, 2008, p. 4, LP author’s emphasis).

Even though in the conclusion of the justification text there is the clipping of the prophetic and perverse analyses of the Associate Judge Maria Berenice Dias

However, many times the break in the married life causes a feeling of abandonment, rejection, betrayal in the mother, resulting in a considerable vengeful trend. When unable to properly elaborate the grief of the separation,



a process of destruction, demoralization, discredit of the ex-spouse triggers. When perceiving the father's interest in preserving the conviviality with the child, she wants to take revenge, moving the child away from the father. In order to do this, she creates a series of situations with the purpose of complicating as much as possible or preventing the visits. This leads the child to reject the father, to hate him. The American psychiatrist Richard Gardner called this process "Parental Alienation syndrome": programming a child to hate the father with no justification at all. It is a true campaign to demoralize the father. In this game of manipulations, all weapons are used, including saying that the child was a victim of sexual abuse. As the mother's intention is to cease the conviviality, meetings are undermined, using all types of means so that the visits do not take place. There is no other way out but seeking identification of other symptoms that allow identifying the parental alienation syndrome and that the allegation of abuse was effected by the spirit of revenge [...]. **As the presence of parental alienation syndrome is spotted, it is essential the liability of the father that acts in this way as he is aware of the difficulty to measure the veracity of the facts and uses the child with a vengeful purpose. Despite feeling that there is the risk, for example, of losing the custody, in case the falsehood of the allegation is revealed. Without punishment to attitudes that impair the healthy development of the child and put at risk his/her emotional balance, this surge of allegations carried out will surely increase irresponsibly**". (2005, p. 11-13, *our emphasis*)

Definitely, as alluded to, the Law Project 4.053/2008 was quickly approved (07/10/2008-26/08/10) and after twenty-two months of its presentation, unanimously approved, with no public hearings besides a brief non previously published hearing and to which a single representative of the Federal Counsel of Psychology (CFP) with restricted right to speaking time, but where you may see a clear concern about the proposal presented. Anyway, other agencies that work with issues concerning the Law, among them, for example, the National Council of the Rights of the Child and the Adolescent (CONANDA) and the Federal Council of Social Service (CFESS), should be called. Notwithstanding the failure of a qualified civic participation, it is important to mention that the Law provides that the professional of Psychology and Social Service Councils, work in psycho-social investigations.

In the next section we present the conclusions obtained through document search carried out based on decisions given by TJRS having the PAL as a foundation.



4 THE COURT OF JUSTICE OF RIO GRANDE DO SUL AND THE APPLICATION OF THE PAL UNDER OBJECTIVE ANALYSIS

Since the approval of the Parental Alienation Law (PAL) the Judiciary – particularly in Rio Grande do Sul – formalized one more legal instrument of subjugation and torment of the women/mothers. There is no doubt that the persistence in calling “impertinent conflict” the demands of the women/mothers for the custody of their children and the wish to convert such plea almost exclusively in accusations of parental alienation practiced by them, has prolonged and reinforced in a worsened form, the gender discrimination and, with it, has perpetrated injustices.

Therefore, that is the reason why we decided to carry out a strong bibliographic¹⁷ and documental research partially reproduced in this article using as main sources, concerning the second type of research, second-degree decisions handed down by the Court of Justice of Rio Grande do Sul (henceforth, TJRS⁴) and that are available on its institutional website. The search for terms “parental alienation” and “parental alienation syndrome” unveiled 547 decisions dated since 2006, precisely the year in which there were the 2 (two) first judged with the keywords mentioned. Both had as the rapporteur the so Associate Justice Maria Berenice Dias. Here it is important to highlight that even before the approval of the PAL in 2010, TJRS had been accusing women/mothers of parental alienation, as, for instance, in the Ruling of the Seventh Civil Chamber of TJRS then presided by the so referred Associate Justice and alluding the Bill of Review no 70014814479, *in verbs*:

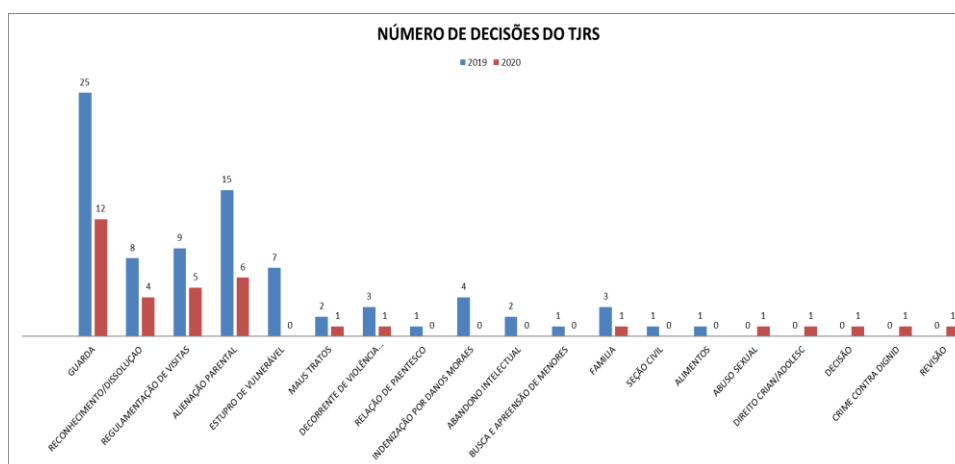
CUSTODY. BEST INTERESTS OF THE CHILD. PARENTAL ALIENATION SYNDROME. In case of finding in the mother’s attitude **evidence of parental alienation syndrome**, which may compromise the daughter’s psychological integrity, it is for the best interests of the child, to keep her under the temporary custody of the paternal grandmother. Provision denied to the bill of review. (TJRS, 2006, p. 1, *our emphasis*)

Among the 547 procedural judgements found, we selected for analysis those

⁴ COURT OF JUSTICE OF RS (TJRS). Available at: <https://www.tjrs.jus.br/novo/buscasolr/?aba=jurisprudencia&q=&conteudo_busca=ementa_completa>. Access on: Aug 10. 2020.



dated in the limited period between 2019 (82 sentences) and 2020 (36 sentences until October 6) with the purpose of carrying out a comparative between the decisions adopted and, also, in order to try to identify if there was, during the pandemic, any type of deliberative aggravation against the women/mothers. The bills of review were ranked by topic following the nomenclature of the National Council of Justice (CNJ) and are found in the table below.



Nowadays the Full TJRS is comprised by 94 male associate justices and 43 female associate justices. Consequently, the women do not represent even half of the seats of the superior state judiciary. Such configuration made us pay attention to the fact that we should list the gender of the people who rendered the court decisions in the cases examined and we concluded that in the year of 2019 they corresponded to 13 male associate justices and 6 female associate justices, and in the year of 2020, they were 9 male associate justices and 2 female associate justices who headed the judgements.

Contrary to expectations, the readings of the convicted exposed that the women acting as associate judges are as much or even more prejudiced and e discriminatory than the men in the same position in relation to the women/mothers, as shown in the judgment from 2006 and it will revalidate in the deliberation that follows:



Bill of Review n. 70082646308 Court: Court of Justice of RS Class **CNJ**: Bill of Review. Rapporteur: Sandra Brisolará Medeiros Judging Body: Seventh Civil Chamber Court of Origin: OTHER Section: CIVIL Issue CNJ: Guard Judgement Decision on 27-11-2019: "(...) Even though it is not possible to state with absolute certainty the mother's level of responsibility for such unfortunate psychological condition of her daughter, it is strongly suggested in the report to impute her, surely, considerable responsibility: of the mother, totally separate, as she does not participate neither gets involved with the girl's learning issues (fl. 329). **But even if there was no reference in the report, considering that the girl has spent most of her life under the mother's guard, it is then logical corollary the primary liability of the mother.** (...) The mother is seen as a good person, but she does not **satisfy her daughter's need of care and affection.** As appropriate, I emphasize that it is not overlooked the fact that **the father was also assessed with reservations, with a likely anti-social personality disorder** (TJRS, 2019, fl. 339v, *our emphasis*)

Of 118 second degree decisions evaluated (2019-2020) we noticed that where there were accusations of parental alienation, the women/mothers are most of the alleged parties, in a total of 107 decisions. The year of 2019 made up 82 decisions like that, 75 referring to parental alienation accusations against women/mothers. In 2020 the survey found 36 decisions, in which 32 of them were parental alienation accusations against the women/mothers.

When the decisions are in favor of keeping the maternal and/or shared guard, the women/mothers are warned about the obligation of keeping their permanent residence unchanged as well as the fact that they do not incur in absences regarding visits imposed in the processes, as these may be immediate causes of parental alienation and change in the child's guard in favor of the father, as, for instance, in the Bill of Review n. 70079525861 (n. CNJ 0317798-61.2018.8.21.7000) of the Seventh Civil Chamber of the Court of Porto Alegre (RS), where it is stipulated that

3. Having the author been warned by the judge *a quo* that keeping the practice of acts of parental alienation will result in the increase of interaction with the father, or, even, the reversal of the guard, shall be kept the decision that kept the guard of the two children with the mother. (COURT OF JUSTICE OF RIO GRANDE DO SUL (TJRS), 2019a).

In the ratings attributed to the father we do not identify any moral approach concerning his personal, affective, professional life and/or in the exercise of fatherhood in contrast to the profuse pejorative attributions and disdain to the women/mothers.



Below we present, in a table, the stereotypes reproduced in the decisions weighed highlighting the fact that during the period studied the fathers received between 4 (2019) to 7 (2020) ratings and, the mothers, between 40 (2019) to 39 (2020) pejorative ratings.

We recall, furthermore, that the research was carried out until October this year (2020), which leads us to derive that during this pandemic period, or rather *syndemics*, there is a growing (as it is hidden) downgrading of the women/mothers reproducing, in legal scope, the remainder, but so in vogue, cultural patriarchy that overvalues the male gender and devalues the female one, as it can be checked in the video (ALVES, 2020) of the hearing where the rapist of **Mariana Ferrer** was to be judged and not her, the victim, who ended up being unfairly and morally **despised**.

From our point of view, the paradigmatic Mariana Ferrer case, the most recent Brazilian Medusa⁵, brought to light something that has been usually reproducing and, however paradoxical it may sound, in the second decade of the new millennium, that is, court cases of public execration of women (in the contemporary case imposed by public institutions of a democratic rule of law) with characteristics of proximity to trial processes carried out during the so-called Holy Inquisition, a Movement of the Roman Catholic Church introduced in the European territory (and, later, in all the Colonies) in the beginning of the 12th century and that lasted until the beginning of the 19th century. Religious ideology that had a mean, disguised, spurious intention of persecuting,

⁵ In the Greek mythology the legend of the gorgon Medusa (only mortal from a family of gods) is one of the mostly well-known. Medusa lived with her sisters in the Athens's temple, she was a beautiful woman with enviable hair. As Athens's priestess, she was pure and chaste. Medusa was raped by god Poseidon inside Athens's temple. As Poseidon and Athens had confronted each other in other in other disputes, this time the victim of Poseidon's lewdness, she ended up being punished and he, Poseidon, was free of any type of condemnation. Athens transformed Medusa into a terrible monster. Her hair was transformed into serpents, her body had fish scales and her teeth were transformed into tusks. The curse of Athens also determined that whoever looked at her would instantly be transformed into stone figures. As if such curse were enough, Medusa and her sisters were expelled from the temple and had to take shelter in a cave in the Eastern part of Greece, separated from everything and everyone, being led to live a petrifying loneliness. The burden carried by Medusa only ended when she was beheaded by Perseu (BONNEFOY, 2001). The Case was so absurd that it gave rise to LAW N° 14,245, OF NOVEMBER 22, 2021, which amended "Decree-Laws 2,848, of December 7, 1940 (Criminal Code), and 3,689, of October 3, 1941 (Code of Criminal Procedure), and Law No. 9099, of September 26, 1995 (Law of Special Civil and Criminal Courts), to curb the practice of acts that violate the dignity of the victim and witnesses and to establish cause for increased penalty in the crime of coercion in the course of the process (Law Mariana Ferrer)".



subjugating and destroying those people who were considered heretics, but, particularly, the women who did not adjust to the existing system.

In the tables that follow we list all the features destined to the parents and, also, all stereotypes of gender that were mentioned in the Court decisions. The first table refers to the year of 2019 and the second to the year of 2020 (until the month of October).

STEREOTYPES REPRODUCED IN THE 2019 DECISIONS			
FATHER (04)	<ul style="list-style-type: none"> ✓ MALE ✓ HAS A SET OF PERSONAL ASPECTS THAT, ACCORDING TO THE SPECIALIZED LITERATURE, ARE FOUND IN INDIVIDUALS WHO COMMIT SEXUAL ABUSE ✓ ANTISOCIAL PERSONALITY DISORDER ✓ SPHERE OF THE MERE SORROW OF THE AVERAGE MAN 		
MOTHER (40)	<ul style="list-style-type: none"> ✓ LEVEL OF RUDENESS ✓ SNEAKY ✓ HISTORY OF ESCAPE AND DISAPPEARANCE ✓ ATTACKS AND EXPOSES ✓ <i>BORDERLINE</i> ✓ WITH NO RESPONSIBILITY ✓ USES THE CHILD AS A TRADE CURRENCY ✓ IMPLEMENTS FALSE IDEAS IN THE MEMORY OF THE CHILD ✓ IN OUTBREAK; ✓ POSSIBLE MENTAL DISORDER ✓ PSYCHIATRIC BEHAVIOR ✓ EMOTIONAL INSTABILITY ✓ AGGRESSIVE THREATS 	<ul style="list-style-type: none"> ✓ AGGRESSIVENESS ✓ LACK OF CONTROL ✓ CRUEL BEHAVIOR ✓ FITS OF JEALOUSY ✓ FALSE ACCUSATION ✓ ALIENATING CONDUCT ✓ ALIENATING CONDUCT ✓ FALSE ACCUSATION ✓ DISTORT THE FACTS ✓ DRUG USER ✓ ACTS OF ALIENATION ✓ ACTS OF PARENTAL ALIENATION ✓ EMOTIONAL UNBALANCE ✓ ALLEGED DOMESTIC VIOLENCE ✓ NO LIMIT TO HARM THE EX-HUSBAND AND/OR PARTNER 	<ul style="list-style-type: none"> ✓ CONTROLLING AND ALIENATING CONDUCT ✓ LIMITATIONS OF PSYCHOLOGICAL ORDER ✓ DID NOT OVERCOME THE END OF THE RELATIONSHIP ✓ NOT ABLE TO PRIORITIZE THE CHILD'S INTERESTS ✓ NEGLIGENCE CONCERNING THE CHILDREN ✓ AGGRESSIVE BEHAVIOR ✓ DIFFICULT TEMPER ✓ USES CHILD AS REVENGE ✓ LACK OF CRITICAL CAPACITY ✓ VENGEFUL CHARACTER ✓ NEGLIGENT



STEREOTYPES REPRODUCED IN THE 2020 DECISIONS			
FATHER (07)	<ul style="list-style-type: none"> ✓ MALE ✓ WILLING TO ORGANIZE THE ROUTINE ✓ HIGH SELF-CENTERDNESS ✓ SIGNS OF IMMATURITY ✓ INSECURITY ✓ SUSPICION ✓ THE BAD ONE IN THE STORY 		
MOTHER (39)	<ul style="list-style-type: none"> ✓ HAS NO PSYCHIC CONDITIONS ✓ RESPONSIBLE FOR FUTURE HARMFUL CONSEQUENCES ✓ NEGLIGENT ✓ DOES NOT ACCEPT ✓ EXPOSES ✓ CID 10 F 60.3 SIGNS OF SYMPTOMS COMPATIBLE WITH EMOTIONALLY UNSTABLE PERSONALITY DISORDER ✓ NOT ABLE TO NOTICE TRUTH IN THE SPEECH ✓ DISGUISED ✓ NARCISSISTIC CHARACTERISTICS ✓ DEBAUCHED ✓ SEDUCTIVE ✓ IMMATURE ✓ SELF-CENTERED 	<ul style="list-style-type: none"> ✓ PROMOTES PERSECUTIONS ✓ MOVES FROM ONE CITY TO ANOTHER AS A STRATEGY TO MOVE THE CHILD AWAY ✓ CLEAR DISHONESTY ✓ UNNACCEPTABLE CONDUCT ✓ INTENTION TO HINDER THE COEXISTENCE ✓ SEVERE EMOTIONAL DIFFICULTIES ✓ PERPETRATED PARENTAL ALIENATION ✓ ALIENATING ✓ REPREHENSIBLE AND INADEQUATE CONDUCT ✓ IMAGINATIVE ✓ ACTS OF PARENTAL ALIENATION ✓ DISTORTS THE REALITY ✓ COULD NOT UNDERSTAND THE END OF THE RELATIONSHIP ✓ FORCING / FAKING CRIES AND SMILES 	<ul style="list-style-type: none"> ✓ SCORNS THE CHILD'S WELL - BEING ✓ FATHER'S IMAGE DECRIED AND DEPRECIATED BY THE MOTHER ✓ IGNORES THE CHILD'S DESPAIR ✓ HINDERS THE KEEPING OF THE RELATIONSHIP ✓ PERSONAL DIFFICULTIES DUE TO PHILOSOPHY OF LIFE AND RELIGIOUS ORIENTATION ✓ MAKES BIG FUSSES ✓ ONLY CONCERNED ABOUT THE ALIMONY ✓ ATTITUDES RESULTING FROM PARENTAL ALIENATION ✓ EMOTIONAL FRAGILITY ✓ SELF-CENTERED ✓ ALIENATING CONDUCTS

The list of characteristics in the previous tables, among them, the labels of **borderline**, in outbreak, possible mental disease, emotional instability,



psychiatric difficulty, are, in fact, unjustified allegations of hypothetical unbalances/psycho-emotional incapacities, as well as unjustified and tenacious are the critics concerning the capacity of caring for the children and showing affection of the women/mothers for their offspring. Such abundant features clearly expose what the lawyer Valéria Pandjjarjian, member of the national section of the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM-Brazil), says about the legal treatment given to women when she observes that

In the legal discourse, a symbolic violence is in general revealed, through the expression of double standard concerning behavioral demands made to women as their behavior is assessed according to adjustment to certain social roles, in which distinct burdens are attributed to attitudes perpetrated by men and women. (PANDJIARJIAN, 2003, s/n.)

Of all several forms of violence against women/mothers and children, the one that concerns the most and affects them personally and psychologically is, no doubt about it, the reversal of the guard, a matter present in 22 bills in the year of 2019 and in 7 bills in this year of 2020; a dismissal that when judicially applied it is followed by fallacious declaration that the change of guard that should be seen as exceptional measure. The Parental Alienation Syndrome (PAS) by Richard Gardner, endorsed in Brazil as a Law and applied by TJRS, represents a current reconstruction of what the feminist movement historically called **patriarchy**⁶ – a concept understood as a system of domination of men over women, noticeable by the oppression which they face and the respective no differentiation of this interpersonal system of the capitalism – determinants that for centuries usurped and, however take over everything that it wasn't / isn't a mirror.

Concerning the accusations of sexual abuse against the parents these appeared in significant number, as, in 2019, they are in 18 decisions and, in 2020, in 9 decisions. Among these procedural decisions, 11 of them, dated from 2019, and 7

⁶ According to Sheila Stolz the “word patriarchy comes from the Greek pater, expression regarding a territory or jurisdiction ruled by a patriarch, a father. The term homeland also comes from the word patriarchy. From a religious perspective, the term patriarch is used to refer to a male religious authority who has the power over everyone subordinate to him and, during the Middle Ages, its use also referred to adult men who had the power over their family members and servants”. (2013, p. 37).



from 2020, presented reports and proofs of sexual abuse. Even so, we found 4 processes of guard reversal to the parent accused of sexual abuse, that is, two for each year (2019 and 2020).

5 FINAL CONSIDERATIONS

In view of the continuation of the violence and discrimination against the women/mothers through the application of the Parental Alienation Law, many of them gathered in the “Act of the 12s” (carried out in 2017), under the #ProtegerNossosFilhosNãoÉCrime (Protecting our Children Is No Crime), part of a worldwide movement against institutional violence that took place, in that year, in many Brazilian and worldwide cities and capitals.

The above-mentioned Act, carried out on September 12, 2017, at 12:00, aimed at sensitizing the State Supreme Court of Rio Grande do Sul, about the injustices regarding the women/mothers and their children. Iniquities that were expressly shattered in the Law Project 4.053/2008 when highlighting that “rare are the trials the deeply examine the matter, **most of them from Rio Grande do Sul, whose courts had a notorious vanguard position in the protection of the full exercise of fatherhood**” (PL 4.053/2008, 2008, p. 5, *our emphasis*).

From that event in the gaúcha capital (Porto Alegre) and following other national movements (such as Mães do Brasil – Mothers of Brazil, presently known as Mães na Luta – Mothers in Fight Group), the Group Protection to Childhood Maternal Voice was created, formed by women and women/mothers who share their pains, marks, experiences, knowledge and their strengths so that they can empower each other and resist to the brutalities they are submitted to.

Distinct lives and experiences that, added to several occupations, have in common the fate of surviving to disqualifications, humiliations and threats of losing the guard of their children or even the single and total reversal of the guard for the aggressor/abuser. This is the *modus operandi* used by the Parental Alienation Law in cases of alimonies, regulation of visits or guard, registration of paternity and dissolution



of marriages and common law marriages, when the women/mothers report the suffered and / or suspected violence – either if they were mistreatment and/or sex abuse – against children at the Specialized Court and, immediately, the abusers counterattack with the accusation of parental alienation. As direct consequences, legal punishments are instituted regarding extension of time of coexistence of the children with the aggressors / abusers, the implementation of shared guard and, even, the reversal of the guard.

Similarly, there is some type of collective blindness concerning qualified national and international researches that show how inappropriate the Parental Alienation Syndrome is, the domestic and family violence against women and violence sex abuse against the children is often denied. Data nationally collected show alarming figures of the incidence of domestic and Family violence against these groups either as witnesses and/or victims. According to the 8th edition of the National Research on “Domestic and Family Violence against the Woman” (2019), carried out by the DataSenado Research Institute in partnership with the Observatory of the Woman against Violence, the percentage of women abused by their ex-partners increased from 13% to 37% between 2011 and 2019, including situations in which the aggressors were ex-husbands and also ex-boyfriends at the moment of the attack. These numbers represent an increase of 284% of these cases. And if we consider that these figures do not represent the real scenario of cases of violence, as it is notorious the fact that there is underreporting due to the fear of reporting the aggressor, either because they are not aware about the safety net and/or because it is believed that this net is not always effective, the final data would in fact be more alarming.

Concerning violence against children and adolescents up to the age of 19, 233 daily aggressions of different types (physical, psychological and torture) were registered in 2019. Data from the National System of Notification Grievances (Sinan), linked to the Ministry of Health, point that, only in 2017, there were 85,293 notifications. Of all cases notified by the health services, 69,5% (59,293) were due to physical violence; 27,1% (23.110) of psychological violence; and 3,3% (2.890) of events of torture. The research did not make a survey of cases of sexual harassment, abandonment, negligence, child labor, among other types of aggression. The episodes



of aggression against children and adolescents cause, according to the data, a significant number of hospital admissions and deaths. According to the data collected in the period between 2009 and 2014 (last year with information available), there were 35,855 referrals of cases of physical and psychological violence or torture to hospitalization and 3,296 deaths. According to recent data released by the National Ombudsman of Human Rights (ONDH) of all 159 thousand records by the Human Rights Hotline along 2019, 86,8 thousand are of violations of rights of children or adolescents, an increase of almost 14% in comparison to 2018. Sexual violence represents 11% of the reports referring to this specific group, which corresponds to 17 thousand cases. The ONDH survey identified that: 1) “sexual violence happens, in 73% of the cases, at the victim’s or the suspect’s own house, but it perpetrated by the father or stepfather in 40% of the reports”; 2) that the “suspect is of male gender in 87% of the records and, likewise, of adult age, between 25 and 40 years, for 62% of the cases. The victim is adolescent, between 12 and 17, of female gender in 46% of the reports received” (MMFDH, 2020, s/n.).

In the Epidemiologic Newsletter n. 27, v. 49, dated from June 2018, elaborated by the Department of Health Surveillance of the Ministry of Health, the Epidemiologic Analysis on Sexual Violence against Children and Adolescents in Brazil in the period from 2011 to 2017 (time length of the PAL). According to the referred analysis, 1,460,326 cases of interpersonal or self-harm violence were notified to the National System of Notification Grievances (Sinan). Of this total, 219,717 (15,0%) notifications were registered against children and 372,014 (25,5%) against adolescents. In these periods, there were also notifications of 184,524 cases of sexual violence, in which 58,037 (31,5%) were against children and 83,068 (45,0%) against adolescents. Comparing to the years of **2011 and 2017, it is observed a general increase of 83,0% in notifications of sexual violence and an increase of 64,6% and 83,2% in notifications of sexual violence against children and adolescents**, respectively. Regarding the profile of notifications of children who were victims of sexual violence, part of them 43,034 (74,2%) were girls and 14,996 (25,8%) were boys. Of the total, **51,2% ranged between 1 and 5 years old**. The notifications concentrated in the Southeast (40,4%), South (21,7%) and North regions (15,7%). The evaluation of the



characteristics of sexual violence against children revealed that 33,7% of the events happened repeatedly, 69,2% occurred at their residence and 62,0% were registered as rape. The evaluation of the characteristics of likely aggressor of sexual violence against children pointed out that in **74,7%** of the notifications there was the participation of **one aggressor**. In **81,6%**, **the aggressor was male and, of these, 37,0% had some family bond with the victim**.

In accordance with the research data that show drastic and unfortunate number of violence against women and children, we can argue that the accusations that the women/mothers are revengeful, liars, uncontrolled and alienating should take into consideration the national data mentioned as well as the scientific researches as it was clear during the research the existence of a high level of moral judgement based on personal convictions and / or of religious biases more than in reasoned scientific²⁹ and statistic knowledge for the adoption of a judicial decision.

Besides that, it is worth saying that the women provide for the families, according to data from the Brazilian Institute of Geography and Statistics (IBGE, 2019), in more than 43% of homes – representing 34,4 million of women –, that is, the argument that the women/mothers forge the reports to assure the alimonies of their children is supported as a way to disqualify them and allocating them the stereotype of alienating genitor.

From a legal point of view, the Parental Alienation Law is unconstitutional and violates International Conventions to which Brazil is a signatory and which have been internalized by the national legal system⁷. Furthermore, from the political-social point of view, the PAL sought to respond to the portion of Brazilian society that feels threatened by the place that women/mothers occupied in families and society. In other words, it was thought and planned to block their autonomy and deep desire to break

⁷ Among the violated International Conventions are Convention for the Elimination of all Forms of Discrimination against Women (CDAW, 1979) and the Convention on the Rights of the Child (CRC, 1989) -both of the United Nations (UN) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará, 1994), which was approved by the National Congress through a legislative decree and integrates the Brazilian Legal System.



the cycles of domestic and family violence experienced by them and/or their own children.

The analysis of the decisions of the TJRGS leads us to conclude that they do not observe the Federal Constitution of 1988, the Statute of the Child and the Adolescent (Law Nº 8.069, from July 13, 1990); International Conventions and, currently, are also in total disagreement with the Protocol for Gender Judgment of the National Council of Justice (CNJ Portaria nº 27/2021), an inference that necessarily requires the continuity of this research.

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