

# PARENTAL ALIENATION

LUSOBRAZILIAN DIGITAL JOURNAL

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Parental Alienation Magazine Team consists of a Luso-Brazilian partnership, founded by Sandra Ines Feitor, Portuguese jurist, with master's thesis in law published by Coimbra Editora, entitled «Parental Alienation Syndrome and its Treatment in the Light of Child's Law» and now PhD student in Law with Thesis into parental alienation.

With the close collaboration of all partners it becomes possible to implement a serious plan to create a professional journal on Parental Alienation issue with Luso-Brazilian context and contributes.

Parental Alienation, regardless of whether it is considered or not a syndrome, is a socio-legal and family phenomenon. This is not a new issue, but less known by society, and mostly by legal professionals, justifying the need of specialized information and training on this topic for all law operators whom are faced with, but also for families who are apart.

Parental Alienation has been a growing phenomenon, in which there are no winners, but most victims and those who suffer most are children, since they are the centerpiece of parental conflict.

It has been considered as emotional abuse, psychological violence to children which can have serious consequences, either for their best interests, and psycho-emotional well-being and for the development of personality, with projection into adulthood. Also, is a violation of fundamental and constitutional rights of children.

Acts of parental alienation seriously violate the dignity of the child, the right to freedom of affection in violation of the European Convention on Rights of the Child because it destroys, disrupts, demoralize and discredit the paternal-branch ties.

Thus, all efforts in information about what is Parental Alienation and its legal aspects, whether directed to society in general, and directed to schools, operators of social and legal sciences, will gain a new achievement in combating, prevent and understand this phenomenon, its characteristics and dynamics.

The Digital Luso-brazilian Journal on Parental Alienation is bringing information on the subject in several areas, providing knowledge and tools in order to a paradigm change, in law, and in court practice.



**PRESENTATION**

Parental Alienation Magazine is composed by articles from professionals from different areas of knowledge and researchers in University research programmes, master degree, PhD degree or Post PhD degree, about matters linked with parental alienation and family conflict, in a multidisciplinary view.

Once information, study and investigation tools is important, the Journal is also composed by case law, laws and legislative projects in discussion, but also information about literature and events or training about these matters.

Luso-brazilian Journal is, since its second edition, bilingual, once is digital and have been great reception around the world – not only in Portugal and Brazil. The translations are not professional yet. The Journal represent the altruistic desire and willingness to contribute to information sharing and knowledge, in order to a better law application, as well as, to grant the system of study, work and research tools.

LusoBrazilian Journal has no funding program, existing only thanks to the cooperation and joint effort.

All editions are digital and free access in <http://revistaalienacaoparental.webnode.pt/>



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# **SHARED PARENTING LEGISLATION LUSOBRAZILIAN**



**PORTUGUESE CIVIL CODE**

**Law 61/2008, of 31.10**



**Article 1906.º**

***Exercise of parental responsibilities in the event of divorce, legal separation of people and goods, declaration of nullity or annulment of marriage***

1 - Parental responsibilities relating to issues of particular importance to the child's life **are exercised jointly by both parents under which applied during the marriage**, except in cases of urgency manifested in which either parent can act alone and should provide information to the other as soon as possible.

2 - When the joint exercise of parental responsibilities on issues of particular importance to the child's life is deemed contrary to best interests, should the court, through a reasoned decision, determine that these responsibilities are discharged by a parent.

3 - The exercise of parental responsibilities relating to the acts everyday life of the child's is up to the parent with whom he has his habitual residence, or to the parent with whom he is staying; however, the non-guardian, in exercising their responsibilities, should not contradict the most relevant educational guidelines as they are defined by the parent with whom the child habitually resides.

4 - The parent who is responsible for the exercise of parental responsibilities relating to the acts of ordinary life can exercise them by themselves or delegate their exercise.

5 - The court will determine the **residence of the child and visitation rights according to the interest of this, taking into account all relevant circumstances, including the eventual agreement of the parents and the readiness expressed by each of them to promote usually relationships with the other.**

6 - At the parent who doesn't exercise, in whole or in part, parental responsibilities have the right to **be informed about** the manner of its exercise, particularly on education and the child's living conditions.

7 - The court always decide in accordance with the child's best interests, including that of **maintaining a close relationship with both parents**, promoting and accepting agreements or making decisions that **favor broad opportunities for contact with both and sharing of responsibilities between them** .

**BRAZILIAN LAW OF SHARED PARENTING**

**Law 13058/2014, of 22.12**

**Art. 1.** This Law establishes the meaning of "shared parenting" and provides for their application, for which modifies **arts. 1,583, 1,584, 1,585 and 1,634 of Law 10,406, of January 10, 2002 (Civil Code).**

**Art. 2** The Law 10.406, of 10 January 2002 (Civil Code), enters into force with the following changes:

**"Art. 1583.**

§ 2. In **shared parenting, the convivial time with the children should be divided in a balanced manner with the mother and the father**, always taking into account the factual circumstances and the interests of children.

§ 3. In shared parenting, the city considered the children home base will be the one that best serve the interests of the children.

§ 5. Unilateral guardianship forces the father or mother to oversee the interests of the children, and to enable such monitoring, either parent will always be a legitimate party to request information and /or accountability, objective or subjective, on issues or situations that directly or indirectly affect the physical and psychological health and education of their children. "

**"Art. 1,584.**

§ 2. When there is no agreement between the mother and father regarding custody of the child, lying both parents are able to exercise parental authority, **will apply to shared parenting unless one of the parents declare to the court that doesn't want custody the child.**

§ 3. To establish the father's duties and mother and periods of living in shared parenting, the judge, ex officio or by request of the prosecution, may be based on **technical and professional orientation or interdisciplinary team, which should aim to balanced division of time with the father and the mother.**

§ 4. Unauthorized modification or unmotivated failure of unilateral or joint custody clause may lead to the reduction of privileges assigned to its holder.

§ 5. If the court finds that the child should not remain in the custody of the father or mother, defer guardianship to the person who proves compatibility with the

nature of the measure considered, preferably, the degree of kinship and affinity relationships and affectivity.

**§ 6. Any public or private institution is obliged to report to any of the parents on their children,** on pain of a fine of R \$ 200.00 (two hundred reais) to R \$ 500.00 (five hundred reais) per day for noncompliance the request. "

"**Art. 1585.** In place of injunction separation bodies in precautionary measure headquarters guard or other guard injunction mounting headquarters, the decision on child custody, even if temporary, shall be made preferably after the hearing of both parties before the judge, unless the protection of the interests of the children require the granting of an injunction without hearing the other party, by applying the provisions of art. 1,584. "

"**Art. 1634.** It is up to both parents, regardless of their marital status, the full exercise of parental authority, consisting of, as for the children:

I - direct their creation and education;

II - exercise unilateral or joint custody pursuant to art. 1,584;

III - grant them or deny them permission to marry;

IV - grant them or deny them permission to travel abroad;

V - grant them or deny them permission to change his permanent residence to another municipality;

VI - to appoint them tutor by will or authentic document, if the other parent does not survive you, or the surviving family can't exercise power;

VII - represent them judicially and extra judicially up to sixteen (16) years, in the acts of civil life, and watch them after that age, the acts in which they are parties, supplying them consent;

VIII - claim them who illegally detain them;

IX - requiring that provide them with obedience, respect and the services themselves on their age and condition. "

## **PARENTAL ALIENATION LAW**

**Law 12318/2010, of 26.08**



**Art. 1.** This Law regulates the parental alienation.

**Art. 2** It is considered an act of parental alienation interference in the psychological training of the child or promoted teenager or induced by a parent, by grandparents, or by having the child or adolescent under his authority, custody or vigilance to repudiate parent or adversely affecting the establishment or maintenance of ties with this.

**Single paragraph.** Are exemplary forms of parental alienation, in addition to acts so declared by the judge or discovered by expertise, practiced directly or through third-party assistance:

I - I perform disqualification Campaign conduct of the parent in the exercise of parenthood;

II - hinder the exercise of parental authority;

III - hinder contact with child or teen parent;

IV - hinder the exercise of the regulated right to family life;

V - deliberately omit the parent relevant personal information about the child or adolescent, including educational, medical and address changes;

VI - to present false complaint against parent, family against this or against grandparents, to prevent or hinder them living with the child or adolescent;

VII - change the home for long distance, without justification, in order to hinder the coexistence of the child or adolescent with the other parent, with this family or grandparents.

**Art. 3** The Parental Alienation Act of practice hurts fundamental right of the child or healthy family life teen, impede the implementation of affection in relationships with parent and the family group, is moral abuse against the child or adolescent and breach of duties inherent to parental authority or arising from custody or guardianship.

**Art. 4** Declared parental alienation act of Clue, upon request or ex officio, any procedural time in autonomous or incidental action, the process will have priority processing, and the judge will determine, with urgency, after hearing the public prosecutor, the provisional measures necessary to preserve the psychological integrity of the child or adolescent, including to ensure their familiarity with parent or enable the effective rapprochement between them, if applicable.

**Single paragraph.** Ensure shall be the child or adolescent and parent minimum guarantee of assisted visitation, except in cases where there is imminent risk of injury to the physical or psychological integrity of the child or adolescent, attested by professional if designated by the judge for monitoring visits .

**Art. 5** If there is evidence of the commission of an act of parental alienation in autonomous or incidental action, the judge, if necessary, determine biopsychosocial or psychological expertise.

§ 1 The expert report will be based on extensive psychological or biopsychosocial evaluation, as appropriate, including even personal interview with the parties, examination of documents in the case, the couple's relationship history, split chronology of incidents, personality assessment of those involved and take shape as the child or adolescent is manifested about possible charges against parent.

§ 2 The testing shall be performed by professional or skilled multidisciplinary team, required in any case, proven by fitness professional or academic background to diagnose acts of parental alienation.

§ 3. The expert or multidisciplinary team assigned to verify the occurrence of parental alienation will within 90 (ninety) days to submit the report, which may be extended only by court order based on detailed justification.

**Art. 6** Characterized typical acts of parental alienation or any conduct that hinders the child from living or teenage parent, in autonomous or incidental action, the court may, together or separately, subject to due civil or criminal liability and the wide use of suitable legal instruments to inhibit or mitigate its effects, according to the severity of the case:

- I - I declare the occurrence of parental alienation and warn the alienating;
- II - expand the family living arrangements in favor of the alienated parent;
- III - stipulating fine to alienating;
- IV - determine the psychological and / or bio-psychosocial follow-up;
- V - determine the change of the guard for joint custody or its reversal;
- VI - determine the precautionary attachment of the domicile of the child or adolescent;
- VII - declare the suspension of parental authority.

**Single paragraph.** Characterized abusive change of address, impracticability or obstruction to family life, the judge may also reverse the obligation to take or remove the child or teen of residence of the parent, during the alternating periods of family life.

**Art. 7** The assignment or change of custody will give a preference to the parent that enables the effective coexistence of the child or adolescent with the other parent in cases where joint custody is not feasible.

**Art. 8** The child's domicile change or adolescent is irrelevant to the determination of competence related to actions founded on the right to family life, unless resulting from consensus among the parents or a court decision.



**PORTUGUESE CASE LAW**



**Court of Appeal of Porto, which ruled in the judgment of 09.09.2014** «... *We are not dealing with a theory accepted and scientifically proven, free of controversy and a matter of relative consensus among specialists in the field. However, even though we*

*are not, until now, faced with a fully studied phenomenon, with well-defined criteria of demarcation and accepted by the generality of the scientific community, it seems that we are in the presence of something with an actual existence, of a social phenomenon that exists And obeys a certain standard of behavior that is allowed to be typified...»*

**Évora Court of Appeal in the Judgment of 27.09.2007** states that «... children also need the father and the mother and, by nature, none of them can fulfill the role of the other. (...) Parents and especially the one with the child guardianship must internalize these principles and values of family harmony, which are not confused with and do not presuppose conjugal harmony. **If, despite all the cautions in regulation, parents persist in the relations between them, in using children as the object of their war, and as a vehicle for transmitting the negative feelings they have from each other, they will have to consider the child's trust in the third person, since the maintenance in this family context, can be highly harmful for the physical, psychic and affective development of the child ... ».**

**The same court as in the Judgment of 11.04.2012**, «... *The behavior of the mother reveals excessive care and excessive protection, ... This obsession of caring, coupled with the exclusiveness of the relationship with the daughter, excluding the parent and also The entire paternal family and godfather, put the child in a situation of danger, disturbing their emotional stability ... ».*

Also changing the guardianship the , **Lisbon Court of Appeal, in judgement of 22.10.2013** states that «... what seemed and should be a father's right was, from the point of view of the court, was a mere faculty from the mother's point of view! (...) The court considers that the family life "... it is an autonomous right, finalistically ordered to the psychic and emotional development of the child and, of course, can only be exercised when it does not contend with such functional objective. (...) **neither parent can prevent contact with the other, nor can they relegate the exercise of such right to the will or availability of the child ... "**

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