

Parental Alienation In Brazil And Comparative Law Between The United States, Portugal And Argentina

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Abstract:

Parental alienation in Brazil is regulated by Law No. 12.318, of August 26, 2010, and is defined as interference in the psychological formation of a child or adolescent promoted or induced by one of the parents, grandparents or whoever has custody of them under their authority. This law seeks to identify and punish alienating behavior, ensuring the fundamental right of children and adolescents to healthy and balanced family life, protecting them from emotional and psychological abuse resulting from conflicts, as established by the Rights of the Child and Adolescent. Parental alienation is a phenomenon that transcends borders and is recognized and dealt with in different ways in various countries. Some have specific laws on parental alienation, while others deal with the issue generically within family law. With this in mind, the aim of this article is to carry out a literature review on parental alienation in comparative law, looking at legislation in the United States, Portugal and Argentina. While Brazil stands out for having created specific and advanced legislation, the other countries analyzed address cases of parental alienation based on generic laws available in their legal systems, with different approaches in the countries analyzed.

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I. Introduction

During the development process of human beings, from pregnancy to adulthood, they need to be guaranteed support to ensure their full physical, psychological and social development. This initial support must be provided by their parents, together with the family who will be responsible for this initial support (Lima, 2022). However, the family is not solely responsible for this support; the rights inherent to children and adolescents must also be guaranteed by the state and society, which play a fundamental role in guaranteeing the rights of children and adolescents, as established by the national legal system and by international treaties and conventions ratified by Brazil (Zanini, 2021).

In this way, the State must implement effective public policies aimed at the education, health and well-being of these individuals, while the Judiciary must act swiftly and firmly in situations involving violations of these rights (BRASIL, 1988). The 1988 Federal Constitution enshrines the fundamental right to family life as one of the pillars of child and adolescent protection, recognizing the family as the foundation of society (Lôbo, 2017). Among the various factors that can jeopardize the quality of life of children and adolescents, parental alienation stands out as a harmful practice that often manifests itself in a veiled way in society (Teixeira & Rodrigues, 2013). This conduct can have serious emotional and psychological consequences for the child involved in an environment marked by family conflicts (Calado & Silva, 2020). Given this reality, Law No. 12.318/2010 was passed on August 26, 2010, with the purpose of curbing and punishing acts of parental alienation, ensuring the right to healthy and protected family life.

Parental alienation can be understood as harmful interference in the psychological formation of a child or adolescent, promoted or induced by one of the parents - or by whoever has authority, custody or surveillance over the child - with the aim of distancing them from the other parent or causing damage to the maintenance of affective ties between them (BRASIL, 2010). This practice, in addition to violating fundamental rights, is a form of moral abuse, generating deep and lasting damage to the emotional development of the child or adolescent (Calado & Silva, 2020). Thus, parental alienation goes beyond the ethical and social limits of family life, requiring the intervention of the State when it is not possible to resolve the conflict through consensual means (Souza, 2019).

In general, cases of parental alienation arise in the context of marital breakdown, especially during legal disputes over custody of children. This is when the first manifestations of defamation or disqualification of one of the parents often occur, promoted or encouraged by the other (Dias, 2017). Given the complexity of the issue and the harmful effects on children and adolescents, parental alienation has aroused the interest of different areas

of knowledge, including comparative law, which seeks to understand how the various legal systems around the world face this problem (Melo, 2021).

In this context, this article aims to carry out a literature review on parental alienation from the perspective of comparative law, focusing on the legislation and practices adopted in the United States, Portugal and Argentina. It analyzes the different legal approaches used by these countries to deal with parental alienation, in order to identify good practices and possible contributions to improving Brazilian legislation.

The methodology used to prepare this article was qualitative bibliographical research, which aims to provide the researcher with a broad and critical understanding of the various types of knowledge related to the topic (Severino, 2016). The deductive method was also adopted, starting from general concepts to analyze specific cases. To this end, we consulted doctrines, scientific articles, monographs, dissertations, theses and foreign legislation, obtained through specialized databases. This approach allows for an in-depth and comparative investigation, providing a more comprehensive view of the legal strategies adopted internationally to combat parental alienation.

II. Theoretical Reference

Concept of the family

The origin of the family dates back to the dawn of civilization, emerging as a natural institution aimed at satisfying the human need to establish stable emotional bonds (Lemos, 2019). This union between individuals led to the formation of the family, considered the fundamental nucleus of society and responsible for its genesis and development. It is a primary social structure, whose primary function is to ensure the physical, social and cultural reproduction of the human species, transmitting values, norms and traditions from one generation to the next, thus contributing to the maintenance of social order (Godoy; Lima; Cardoso, 2020).

From a historical perspective, the concept of the family comprises a fundamental institution with a sacred character, which is why it requires the protection of the state (Gaiotto Filho, 2013). Initially, family organization was based on a patriarchal model, in which the father - known as *pater familias* - held absolute and unitary power over all family members. This power was exercised by the father in his capacity as *sui juris*, i.e. a person with full legal capacity, who was in charge of and dominated the other members of the family unit, who were considered *alieni iuris*, i.e. subject to the pater's authority (Machado, 2000). The *sui juris*, the term used to represent the pater, represented power:

It is unrestricted when compared to the other members of the family, called *alieni juris*, who have the power to freely dispose of people and property, apply corporal punishment, sell and even kill, since it was he who judged the members of his *domus*, as president of the domestic court, which met before the household (Fiuza, 2000, p.30).

The term *sui juris*, used to represent the pater, translated the idea of patriarchal and unquestionable power over the family's assets and people, including the wife, children and slaves (Ferreira, 2013). This power, known as *patria potestas*, gave the head of the family the authority to decide on all internal matters, including the life and death of its members, reflecting the legal regime of the ancient Roman family (Godoy, Lima, & Cardoso, 2020). In this way, the family environment was made up of a group of people and assets that were subject to a patriarch figure.

Family structures have undergone significant transformations since the 16th century, resulting in substantial changes in the roles played by its members (Dallefi & Turesso, 2019). In pre-industrial society, the family was conceived as a cohesive and indissoluble social group, configured as an institution focused on subsistence, in this context, subjective needs were not considered relevant in family relationships (Ferreira, 2013). With the advent of industrialization and urbanization, there was a growing diversification of family arrangements, accompanied by the decline of the traditional model of a nucleus composed of a couple and children, mainly due to changes in the social and economic status of women (Dias, 2017).

Given the growing diversification of social structures, multiple family configurations have emerged, breaking with the traditional patriarchal model and giving way to more complex arrangements in which men and women share responsibilities and jointly contribute to the subsistence of the family group (Zanini, 2021). Over time, the concept of the family has undergone significant transformations and adjustments, and is no longer seen from a single normative perspective. Although each society establishes different patterns of family organization, there are universal elements that delimit the essential core of this institution (Fonseca & Carrien, 2019). In this sense, the term "family" has come to encompass different forms of coexistence based on affection, and can be made up of parents and children under a patrilineal or matrilineal lineage, as well as cognatic groups or relatives and their descendants who share the same domestic space (Calado & Silva, 2020).

Roudinesco (2003) identifies three key moments in the historical evolution of the family. The first corresponds to the traditional model, characterized by the patriarchal structure, in which the father's authority was absolute and the main objective was the preservation and transmission of the family heritage. The second refers to the modern family model, structured on the basis of romantic love and affective reciprocity, in which children

come to be seen as the joint responsibility of parents and the state. The third is the post-modern model, which emerged in the 1960s and is based on the search for intimate relationships and personal fulfillment between individuals, which may or may not include children, and is marked by greater flexibility in family configurations (Roudinesco, 2003). Currently, it is possible to identify and systematize different conceptions of the family, which depart from the traditional pattern and reflect the plurality of affective and parental relationships present in contemporary society:

a) nuclear family (consisting of father, mother and children), extended family (which goes beyond the nuclear family due to the presence of other people in its formation), divorced family (which has gone through a marital breakdown) and reconstituted family (which involves internal reformulation based on the inclusion of new partners). There is therefore an increasingly significant formation of complex groupings: remarried families, reconstituted families, single-parent families, homoparent families, among others (Souza et al., 2016).

The family today reflects the social, cultural and legal changes that have taken place in contemporary society, and is made up of a variety of family forms and structures. Nuclear families are recognized, consisting of parents and children; single-parent families, where only one parent is responsible for raising the children; homoaffective families, formed by same-sex couples; extended families, which include grandparents, uncles and other relatives; and adoptive families, among others (Oliveira, 2020). Regardless of its composition, the main role of the family continues to be the formation and development of individuals, providing emotional, social and economic support (Souza, 2019). It is seen as a place of affection, care and socialization, where values and norms are passed down from generation to generation.

Legal recognition of different family structures varies according to jurisdiction, but there is a growing trend to include and protect all forms of family. Laws are evolving to reflect these changes, offering equal rights and duties to all families, regardless of their composition (Souza. et al., 2016). Thus, Family Power is a legally non-renounceable, non-transferable, inalienable and imprescriptible institute, and the obligations that result from it are of a very personal nature (Dias, 2021). It is a responsibility of both parents that stems from both natural paternity and legal filiation, and nowadays also from socio-affective filiation (Melo, 2021).

Comprehensive protection of children and adolescents in the Brazilian legal system

With the advancement of fundamental rights and the consolidation of the principle of human dignity in the Brazilian legal system, the concept of family has come to be understood from a broader perspective, overcoming the traditional model based exclusively on the union between man and woman (Lemos, 2019). In this context, affectivity came to be recognized as a structuring element of family relationships, reflecting directly on the comprehensive protection of children and adolescents (Melo, 2021). The recognition of the Universal Declaration of Human Rights in 1948 by most of the member countries of the United Nations Organization was fundamental to a common standard of human rights to be achieved by all peoples and nations, serving as a basis for the development of national and international legislation aimed at protecting and promoting human rights (Fontoura, 2011).

But it was only with the 1989 International Convention on the Rights of the Child that the protection of human rights for children and adolescents was consolidated, and they were recognized as subjects of rights (Souza, 2019). These are supported by international documents protecting the rights of human beings that have been signed by Brazil, and children are guaranteed special protection and care due to their lack of physical and mental maturity, including that these rights must be exercised without discrimination of any kind, such as race, color, sex, origin, religion, economic position or physical disability; and that all actions relating to children must primarily consider their best interests (Ribeiro, 2022; Rieder; Hermes, 2020).

The Convention also states that it is the right of children and adolescents to be raised and educated within their family and, exceptionally, in a substitute family, ensuring family and community life in an environment that guarantees their full development (BRASIL, 1990). Family power will be exercised on equal terms by the father and mother, in accordance with civil legislation. It is the duty of the family, the community, society in general and the public authorities to ensure, with absolute priority, the realization of rights (BRASIL, 1988; BRASIL, 1990).

The consolidation of this legislation in our doctrine occurred with the promulgation of the 1988 Federal Constitution, which in its article 227 recognized children and adolescents as subjects of rights, in a condition of development, with primacy of interest, priority of care, creating a System of guarantee and protection of these rights (BRASIL, 1988). In order to regulate the state's actions and policies in the face of this new paradigm, and to bring national legislation into line with the International Convention on the Rights of the Child, in 1990 the Statute of the Child and Adolescent (ECA) was published, which regulated the system for guaranteeing and protecting children and adolescents' rights. The Statute establishes:

Art. 21: Family power shall be exercised, on equal terms, by the father and the mother, in accordance with the provisions of civil law, and either of them shall have the right, in the event of disagreement, to appeal to the competent judicial authority for the solution of the disagreement (BRASIL, 1990).

In addition to the responsibility of the family, society and the state must ensure that these rights are exercised and enforced. The Constitution and the ECA emphasize the Principle of Integral Protection, establishing the obligation for both parents to protect their children equally, and determining punishments for those who violate these rights (BRASIL, 1990). Because they are unequal in comparison to adults and cannot fully exercise their potential, and their personality is not yet fully formed, what is best for them must be taken into consideration, regardless of their financial, personal and legal condition (Machado, 2003).

Article 6° of the Statute of the Child and Adolescent (ECA) recognizes children and adolescents as subjects in a peculiar condition of physical, intellectual, psychological and moral development. For this reason, they are considered people in a vulnerable situation, holders of fundamental rights and recipients of the doctrine of full protection, and should be treated with absolute priority, regardless of the interests of the adults involved (BRASIL, 1990). Thus, it is recognized that children and adolescents, due to their fragility and peculiarities, require special protection. This responsibility falls not only on the family, but also on society and the state, which have a duty to ensure that these rights are fully realized and exercised (Lima, 2022).

Brazil's legislative and jurisprudential evolution has accompanied these social transformations, promoting legal protection for the various forms of family organization and ensuring, as a priority, the fundamental rights of its most vulnerable members: children and adolescents (RIBEIRO, 2022). In line with articles 226 and 227 of the 1988 Federal Constitution and the Statute of the Child and Adolescent (Law No. 8,069/1990), the national legal system enshrines the principle of comprehensive protection, imposing on the state, society and the family the duty to ensure, with absolute priority, the rights to life, health, education, family and community life, among others.

Origin of Parental Alienation

The term parental alienation arose from the research and clinical studies of child psychiatrist Richard Gardner in the 1980s, when he analyzed similar patterns among the children of his patients who had separated and developed the concept of “parental alienation syndrome”, conceptualized as follows

Parental alienation syndrome (PAS) is a disorder that emerges primarily in the context of child custody disputes. Its first manifestation is a campaign to denigrate the child against their parent, a campaign that has no justification. It results from the combination of a programmer parent's indoctrinations and the child's own contributions to the vilification of the target parent. When parental abuse or neglect is present, the child's animosity can be justified. It is classified into three gradual stages, with the last stage being the phase in which there is irreparable damage to parental relationships and the possibility of children becoming savages and psychopaths (Gardner, 2002, p. 50).

Initial studies on the impact of marital dissolution focused on comparing families in which the parents separated and those in which they remained in a stable union or marriage, showing that children from separated backgrounds had higher rates of aggressive, impulsive and antisocial behavior (Silva, & Souza, 2022). At the same time, research has emerged highlighting parental conflicts as a relevant factor, revealing the difficulties faced by some parents in reorganizing the post-divorce family structure (Dallefi, & Turesso, 2019)

In this context, it can be seen that the emergence of parental alienation is closely associated with the conflictual dynamics of marital separation, from which negative feelings emerge which, if not adequately dealt with, culminate in behaviors that seek to disqualify the other parent before their offspring (Zanini, 2021). These behaviors, marked by hostile words and attitudes, directly affect the child's perception of the alienated parent, causing negative feelings and breaking the emotional bond (Veloso et al., 2014).

According to Gardner (2002), parental alienation can be characterized as a disorder that manifests itself mainly in contexts of child custody disputes. It involves the repeated practice of disqualification, defamation and demoralization of one of the parents by the other, without any plausible grounds, with the aim of emotionally distancing the child from the alienated parent. The main characteristics of this phenomenon include:

Smear campaign against the non-custodial parent; weak, frivolous and absurd rationalizations to belittle the other parent; phenomenon of the false “independent thinker”, according to which the child thinks badly of the other parent “on their own”; absence of guilt about the cruelty and/or exploitation exercised against the alienated parent; presence of borrowed scenarios, invented, constructed, non-congruent scenarios and/or situations; spread of animosity to the alienated parent's family and friends (Gardner, 2002, p. 54).

Parental alienation is a complex phenomenon of great relevance in the legal and psychosocial context, especially with regard to the full protection of children and adolescents (Dias, 2021). It manifests itself, subtly or explicitly, in family relationships marked by legal disputes, especially in cases of separation or conflictual divorce. It is a practice that directly interferes with the emotional development of minors, undermining their fundamental

right to healthy family life, as guaranteed by the Brazilian legal system and international human rights treaties (Zanini, 2021).

It is therefore possible to identify and conceptualize two terms with different meanings. The first refers to parental alienation, which consists of an act carried out by the alienating parent with the aim of damaging the child's and/or adolescent's relationship with the other parent or the person responsible for their custody by showing feelings of contempt, repudiation or disgust (Lima, 2022). Parental alienation syndrome is the direct consequence of the effects of the act that effectively generate in the child a derogatory campaign towards the alienated parent (Oliveira, 2022).

The effects of this alienation can materialize throughout the family nucleus, namely in the parental relationship itself, or even in the relationship of grandparents, uncles or close relatives, consisting of the act of denigrating the image of the parent of the opposite pole of the kinship relationship, creating a negative image of this parental figure, in order to distance the child or adolescent from it (Lima, 2022). The most common short-term consequences for alienated children and adolescents are changes in the affective area, such as feelings of guilt, anguish, insecurity, fears and compulsive crying for no apparent reason, and changes in the interpersonal area, such as difficulties in making friends and trusting others (Madaleno; Madaleno, 2018). In the long term, these children can develop psychological disorders such as anxiety, panic disorder, low self-esteem, as well as difficulties in relating and/or maintaining stable relationships (Torres, 2018).

Parental Alienation in Brazil

Family Law, as a legal field, has begun to identify and analyze Parental Alienation Syndrome due to its social and legal impacts. Within this context, the Brazilian legal system's approach to the issue has encompassed three central aspects: the right of children and adolescents to family life (art. 227 of the Federal Constitution), the Principle of the Best Interest of the Child, which has been widely consolidated in the country, and comprehensive protection for the family, which is recognized as the foundation of society (art. 226 of the Federal Constitution) (Gonçalves, Saraiva, & Guimarães, 2017).

In order to preserve the fundamental rights of children and adolescents to healthy family life and considering the increase in reports about the suffering of minors who are victims of parental alienation, the President of the Republic sanctioned Law No. 12.318/10 in August 2010. This law deals with parental alienation and amends art. 236 of the Statute of the Child and Adolescent (ECA):

Interference in the child's or adolescent's psychological development promoted or induced by one of the parents, grandparents or those who have the child or adolescent under their authority, custody or surveillance to repudiate the parent or cause harm to the establishment or maintenance of ties with the parent (BRASIL, 2010, p. 1).

The process of alienation would therefore be the act of denigrating the image of the parent at the opposite end of the parental relationship, creating a negative image of this parental figure in order to distance the child or adolescent from them (Lima, 2022). The law provides examples of situations considered to be cases of parental alienation:

I - carry out a campaign to disqualify the conduct of the parent in the exercise of paternity or maternity; II - make it difficult to exercise parental authority; III - make it difficult for the child or adolescent to have contact with the parent; IV - make it difficult to exercise the regulated right to family life; V - deliberately omit relevant personal information about the child or adolescent to the parent, including school, medical and address changes; VI - making false accusations against a parent, their family members or grandparents, in order to prevent or hinder them from living with the child or adolescent; VII - moving to a distant location, without justification, in order to hinder the child or adolescent from living with the other parent, their family members or grandparents (BRASIL, 2010, p. 1).

Law No. 12.318/2010 aims to protect the interests of children and adolescents, highlighting that the practice of acts of parental alienation hurts the fundamental right of minors to family life, recognizing in these cases moral abuse, as it harms the development of affectionate relationships with the alienated relative (BRASIL, 2010). It can be classified into three levels of intensity: mild where there are no major difficulties in coexistence between the alienated parent and the child or adolescent; medium occurring a more expressive inducement of the alienating parent in the depreciation of the alienated parent, where the child starts to have feelings of resentment, hatred and fear towards the other parent; and severe, the presence of the alienated parent or family member becomes harmful, since feelings of hatred and fear prevail, as the child or adolescent is strongly affected by negative feelings towards the other parent or family member (Gardner, 2002; Gonçalves, Saraiva, & Guimarães, 2017).

In light of this, Law No. 12.318/10 has as its main objective the protection of the interests of children and adolescents, highlighting that the practice of acts of parental alienation violates the fundamental right of minors to family life, configuring, in these cases, moral abuse, since it impairs the development of affectionate relationships with the alienated parent (Godoy, Lia, & Cardoso, 2020). When this situation occurs, the legal

system must intervene to ensure that the rights of children and adolescents are guaranteed, so the magistrate must order a psychological examination of the child, analyzing their behavior in relation to any accusations against the parent (Ribeiro, 2022). In this process, the participation of professionals such as psychologists, social workers and psychiatrists is essential to ascertain the reality of the facts (Souza, 2019).

In cases where parental alienation is proven, the law provides for a series of measures that should be adopted to re-establish the emotional bonds that have been violated and the immediate cessation of the acts of alienation. Under the terms of Art. 6 of Law 12.318/2010, if typical acts of parental alienation or any conduct that makes it difficult for a child or adolescent to live with their parent are characterized, the court will order measures to repair the damage caused and punish the alienator, such as: a warning, fine, alteration or reversal of custody, precautionary establishment of the child's home and suspension of parental authority (BRASIL, 2010).

Depending on the severity of each case, other resources can be offered, such as family mediation and various treatments, such as psychological, individual and/or family psychotherapy and, in some cases, psychiatric treatment (Duarte, 2019). Without prejudice to civil liability (moral and material damages), the alienator may also face criminal charges for the following offenses: slanderous denunciation - a penalty of up to 8 years in prison; false reporting of a crime - a penalty of up to 6 months in prison; false testimony - a penalty of up to 6 months in prison; defamation, slander and libel - a penalty of up to 2 years in prison; embarrassing a minor - a penalty of up to 2 years in prison (BRASIL, 2010).

International legislation on parental alienation in comparative law

Parental alienation is a topic of both legal and psychological relevance, characterized by the interference of one of the parents in the relationship between the child and the other parent, with the purpose of hindering or damaging this affective bond (Gonçalves, Saraiva, & Guimarães, 2017). International legislation on parental alienation is considerably complex and varies significantly between countries. While some nations choose to criminalize this conduct, others adopt approaches aimed primarily at protecting children's rights and strengthening family ties.

The Universal Declaration of Human Rights proclaims that children have the right to special care and assistance, emphasizing the principles of human dignity, affection and comprehensive protection (Angelis Neto, 2019). When analyzing parental alienation in comparative law, it is essential to understand how different countries regulate this issue. Understanding the approaches adopted by different legal systems is fundamental to improving child protection policies and ensuring the well-being of children in diverse family contexts (Souza & Lemos, 2019).

In the United States of America, the states are organized by the federalist system, which gives them administrative autonomy and the ability to create their own laws and jurisprudence, resulting in different legislation on the same subject (Gonçalves, Saraiva, & Guimarães, 2017). In this context, the use of the term "parental alienation syndrome" is prohibited in some US courts and is often recognized as junk science or pseudoscience (Bruch, 2015). Despite this, it is possible to observe the recurrent use of parental alienation in the US legal system, with legal recognition in 21 of the 50 states of the federation. States such as Pennsylvania and California have sanctions for its practice.

In the state of Pennsylvania, possible penalties are regulated for a custodian who disobeys court orders or violates communication or childcare systems, including the following sanctions: imprisonment for a period not exceeding six months, a fine not exceeding \$500, and temporary or permanent suspension of the driver's license (Souza, Lemos, 2019). In California, article 278.5 of the Penal Code provides for imprisonment of up to one year or a fine of no more than ten thousand dollars for the conduct of a parent who restricts visitation rights, without using the term parental alienation (Oliveira, 2022).

According to Oliveira (2020), the other American states have adopted a legal system that presents different forms of custody, aiming to prevent parental alienation from occurring as much as possible. In cases where evidence of alienation is verified or presented, the court will determine the best course of action to favor the child or adolescent, considering all relevant facts (Souza, Lemos, 2019). Thus, most of the United States punishes cases of parental alienation, although it does not have specific legislation regulating this type of violation.

Portugal's legal system does not have a specific law on parental alienation, however, the current legislation has legal rules with direct application to cases involving this type of violation (Souza, 2019). According to Brito (2015):

[...] currently, there are legal rules with direct and immediate application to cases of Parental Alienation, but we still don't have a legislative instrument that expressly addresses the issue, promoting its knowledge and dissemination, as a legal and also legislative issue, setting out its characteristics and punishing or repressing them, either at the level of Civil Law or at the level of Criminal Law (Brito, 2015, p. 104).

Thus, although there is no specific law on parental alienation, the rules of family law serve as a basis for the courts to decide the cases that are submitted to them, taking into account the principles and laws that provide

the courts with elements to guarantee the integrity of young people (Oliveira, 2020). According to Artico (2017), the Portuguese legal system has some legal diplomas that punish the practice of some elements that configure parental alienation, constituting the penalization of attitudes that prevent and disrespect the regime of contact between parents and children. Article 1906 of the Portuguese Civil Code establishes the right to coexistence and isonomic participation of parents in the upbringing of their children, allowing that in cases of abuse, penalties can be enacted that can go as far as disqualification from exercising parental responsibilities (Brito, 2015).

In Argentina, although the country's constitution generally protects the family, there is no specific law on parental alienation. There are only regulations regarding the obstruction of the right to family life through Law No. 24.270/1993, known as "the right of children to contact with both parents", formulated to repress false accusations made by parents who do not have custody of their children (Madaleno, 2011). As reported

Article 1 A parent or third party who unlawfully prevents or obstructs contact between minors and their non-cohabiting parents shall be punished with imprisonment from one month to one year. If the child is under ten or disabled, the penalty shall be six months to three years in prison. Article 2 The same penalties apply to the parent or third party who obstructs the non-cohabiting parent by moving house without judicial authorization. If, for the same purpose, they move abroad without judicial authorization or exceed the limits of this authorization, the prison sentences are increased to double the minimum and half the maximum (Argentina, 1993).

According to this law, if the rights of children under the age of ten or people with disabilities are violated, the penalty is increased. Thus, the articles presented show that the punishment in cases of obstruction of parental contact and moving house without judicial authorization, as forms of parental alienation, is characterized as strict and more serious (Souza, 2019). This reflects a more punitive approach, with an emphasis on criminal sanctions, such as imprisonment, to prevent and repress parental alienation.

A comparative analysis of the laws of Brazil, the United States, Portugal and Argentina in the context of parental alienation reveals different approaches and stages of legal development. Brazil stands out as a pioneer in the creation of specific legislation, Law No. 12.318/2010, which legally defines parental alienation and offers a legal framework that provides means to help characterize and penalize these cases. This approach, together with the Federal Constitution of 1988 and the Statute of the Child and Adolescent, reinforces that our country's legal system seeks to guarantee the full protection of children and adolescents, in line with human rights.

In the United States, the approach varies from state to state, with no specific federal legislation on the subject. Some states have more detailed legal provisions, while others deal with the issue within the broader context of family law. Portugal and Argentina do not have specific laws on parental alienation, using available legal resources to address these cases. Although this gap may limit the effectiveness of the measures adopted, so far the legal systems used have shown positive effects in addressing the issue of parental alienation.

III. Final Considerations

In Brazil, the legislation regarding parental alienation has a specific and targeted law to deal with these cases, while in countries such as Portugal, Argentina and the United States this problem is dealt with in a generalized manner with broad legislation. Since the 1988 Constitution, there has been considerable progress in recognizing the rights of children and adolescents, culminating in Law No. 12.318 in 2010, which legally defined the phenomenon of parental alienation. This legal framework provides greater security for legal professionals and greater effectiveness in protecting children and adolescents, in accordance with the constitutional principles of comprehensive protection.

In contrast, Portugal and Argentina do not have specific laws on parental alienation, although they use the legislative resources available to deal with cases involving this issue. As in most of the states that make up the United States, only Pennsylvania and California have laws directed at parental alienation, the rest direct their judgments based on jurisprudence and laws in a generalized way, which can make it difficult to deal with these cases properly, leading the legal system to seek help from professionals in other areas, such as psychiatry and psychology, to ensure fairer and more reliable decisions.

While Brazil has specific legislation that addresses cases and punishes situations in which alienation occurs, the other countries analyzed face challenges in addressing parental alienation, highlighting the need to develop and implement more comprehensive and effective legal measures worldwide to ensure the protection and integrity of children.

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