

When battered mothers and children struggle with allegations of parental alienation and harassment, and are prevented from achieving safety and independence, the challenge concerns more than merely legislation. An Italian Supreme Court ruling shows how the very perception of mothers' actions influences decisions about visitation and custody.

The Italian Supreme Court gave [a judgment](#) on May 17, 2021, no. 13217, which prohibits the use of the theory of “parental alienation”. At the same time, the court describes the theory with a concept that partly captures the experience of the victims of violence of family law, and partly functions as an axial structure for an overall analysis: *The 'Tater type'*.

The word 'tater type' is the Italian translation of the German word *tätertyp*, *perpetrator type*, in English.

The Italian ruling shows that the concept of “parental alienation” is a perpetrator typology. The lawyer who defended the mother in the case, [Antonio Voltaggio](#), stated that the Supreme Court was thus referring to a theory that was used in Nazi criminal law.

Below you can read about the ruling from the Italian Supreme Court, about perpetrator types and the aforementioned Nazi theory, along with its connection to the theory of parental alienation and the experience of practice for mothers exposed to violence in complex family law cases.

The judgment of the Italian Supreme Court

The Italian judgment concerned the custody of a [6-year-old child](#), who had lived with his mother prior to the case. [The mother's lawyer states](#) that the father had been violent, and it appears from the judgment that the mother had engaged in what we in Denmark call “contact harassment”, that is, had withheld the child from contact with the father.

The Court of Appeal in Venice had commissioned two expert reports in the case. The experts concluded that the mother had behaved *maliciously*. She had taken normal care of her daughter, but because she had tried to prevent contact between father and child, the experts considered that she was conducting parental alienation. They also concluded that the reason for the child's resistance was that the child was influenced by the mother's negative attitudes towards the father.

During the investigation, the experts had presented these assessments to the mother and given her recommendations to change her behaviour, which she had refused. Her lawyer describes her as *not very submissive* towards the experts, who in turn described her as lacking flexibility and reflexivity by preventing the father and child from developing a relationship. It was believed that this constituted a deficiency in her parenting skills.

The Court of Appeal in Venice therefore assumed that there was a risk that the mother would alienate the child from the father, and because of this, gave the father full custody of the child with only limited contact to the mother.

The child's reaction to the trauma of being moved from his home was not assessed. There is no mention of a violence assessment in the case, and we must therefore assume that the mother's allegations of violence by the father were not examined. It was also not examined whether there were legitimate reasons for the child to distance himself from his father.

The Court of Appeal did not take a stance on the expert statements, but accepted them uncritically. It placed decisive emphasis on the fact that there was a high level of conflict between the parents and that the father was the best suited to create peace and stability because the mother was "parental alienating", which is understood as a personal characteristic that does not actively support the child's relationship with his father.

The reasoning of the Italian Supreme Court

The Supreme Court reversed the Appeals Court's ruling and ruled in favour of the mother. They placed crucial emphasis on two factors.

First of all, the Supreme Court rejected the argument that the appellate court could uncritically rely on the expert statements without considering their content. The appellate court was not obliged to consider the level of scientific knowledge behind the theory of parental alienation, but it was supposed to critically consider the statements and the facts of the case.

The Supreme Court elaborates on the requirement for the court to take a position by emphasizing

that the expert assessments were unclear and too general, especially when it comes to the assessment that the mother had withheld the child from contact on some occasions, and how that action reflected upon her parenting skills. Against this background, the Supreme Court assessed that too abstract a prognosis had been made about the mother, and that the assessments of her lacked grounding in concrete empirical evidence. The experts had instead used generic deductions, i.e. they had derived the interpretation of the theory and concluded backwards. In other words, they had interpreted her obstruction of contact as evidence that she was conducting "parental alienation" without investigating whether that was the case.

The veracity of expert assessments, the Italian Supreme Court stated, must be assessed using ordinary means of proof and must not be deduced in general considerations.

Secondly, they rejected the idea that an expert assessment could even be based on the theory of parental alienation, because the theory is inherently based on prejudices against women. The court found that the negative assessments of the mother's character were stigmatizing and that the experts had ignored that she had good parenting skills, that she had provided appropriate care for her daughter, and that she had in no way neglected the child.

The fact that the expert assessments of the mother did not turn out in her favour was due to "an improbable syllogism, the main premise of which was an unjustified serious stigmatization of the mother's behaviour based on a simple postulate" (my translation).

In conclusion, the Italian Supreme Court concludes that the Venice Court of Appeal had based its judgment on an "unacceptable typological assessment", i.e. that the Court of Appeal had "*configured* a character flaw" in the mother based on the postulate of "parental alienation" (my emphasis).

The Tater type

The Italian word *tater type* means directly translated into English 'offender type'. It is about profiling types of people and categorizing them into typologies that the state wants to be able to punish for being a given 'type'.

The following explanation of the concept is based on a legal history article on the use of perpetrator types by the Italian professor of criminal law, Francesco Forzati.¹ In addition, law professor and honorary doctor Kai Ambos' review of Nazi criminal law is included.² The focus is on the perpetrator type as it was expressed during the Nazi era, as this is the version of the theory that lawyer Antonio Voltaggio refers to.

A perpetrator type - or typology - is first and foremost a departure from the criminal law principle *nulla poena sine culpa*, i.e. no punishment without guilt. *No punishment without guilt* expresses, among other things, the presumption of innocence as a fundamental principle in criminal law. It follows from the principle that there must be a criminal *action*, in order for there to be guilt that can be judged in court. The assessment of guilt also includes an assessment of intent, and the act does not have to be completed, but the court's assessment is still based on the act that was intended to be committed or that was being prepared.

If one applies the principle of perpetrator types instead, it is not actions that are punished, but a person's mindset. Punishment for a mindset is not punishment for a criminal act, but for a person's way of being. It is punishment that is based on attitudes and other attributes that, according to the theory, testify to the person's *character*.

Perpetrator typologies have been used in authoritarian societies to punish undesirable behaviour by defining the character types believed to be prone to not conforming to the will of the state.

In Nazi Germany, these ideas were further developed in the so-called Kieler School, led by, among others, the Nazi lawyer Georg Dahm, professor of criminal law at Kiel University. In his version of the perpetrator type, the criminal offense does not consist primarily in the criminal act, but in the character of the individual who lies behind the act.³ It is this character his typology aims to punish.

Therefore, mapping the facts in relation to the crime took a back seat for Dahm; it was the underlying character that the act revealed that was to be in focus. The mapping of the person's

¹Forced (2019).

²Both (2019).

³Ibid. (2019), p. 111.

character was thus not induced on the basis of the facts. On the contrary, it was deduced in light of the perpetrator typology. The offense itself was vaguely defined and structured in such a way that it was not possible to prove that one did *not* have a 'dangerous' character because all facts had to be interpreted in light of the typology and not the other way around.

A perpetrator type was thus a criterion of legitimacy for punishing the person solely for having a certain personal character that was undesirable by the state, and which was determined by a vague and indefinite interpretation, with the factual circumstances relegated to the background.

'Parental alienation' - the perpetrator type in Danish family law

Regarding the Italian verdict, the mother's lawyer, [Antonio Voltaggio](#), stated that his client did not lose custody in the Venice Court of Appeal because she was unfit as a mother, but because of her character being 'not very submissive' and because she was a woman.

The judgment from the Italian Supreme Court states that the theory of parental alienation is by definition a discriminatory theory based on prejudices about women and women's motives. When a mother seeks reduced or terminated contact, it follows from the theory that she either consciously manipulated the children into distancing herself from their father, or she does so unconsciously by 'transferring her own negative feelings' to the children. In popular parlance in Denmark, such a mother is now called a 'harassment mother'.

The Supreme Court's finding that the theory is a perpetrator type is emphasized, among other things, by the fact that it is not possible to prove one's innocence in any other way than to demonstrate the "cooperative nature" that supporters of the theory expect, i.e. forcing children to have contact with their father, even when the children fear it, fail to thrive with it and say that they are exposed to violence or abuse, or when it compromises the mothers' own safety, or when the contact is used for post-separation abuse.

Another common feature is that abused mothers have consistently experienced being placed under suspicion and reprimanded from the first meeting in the Family Law Agency and all the way through the lengthy processes with child experts as well as in family court, where they are repeatedly encouraged to prove their innocence.

A third common feature is that the theory is used to suppress the facts of the case. Women who have been subjected to violence consistently report that the procedures make all violence disappear, i.e. that the violence becomes irrelevant to the requirement that the victim *cooperate* and the children have contact. This is done by focusing only on whether the victim cooperates sufficiently, and not on the alleged violence.

Family law uses concepts that do not refer to observable phenomena, such as 'alienation', 'collaborative harassment' and 'contact harassment'. These concepts are assessments, and thus the 'judgment' is already present in the accusation. The court can ask: "Why are you engaging in collaborative harassment?" and you cannot deny it, because if, for example, you refuse direct contact for safety reasons, you have by definition engaged in collaborative harassment. In this way, the court deduces from the theory and interprets the facts in light of it in the same way as with the perpetrator type. This is precisely what the Italian Supreme Court calls "configuring" a character flaw in the mother based on a postulate.

Harassment does exist, but that is another topic. The term harassment is an interpretation, because harassment is not something we can see or hear. We cannot observe harassment; we can only observe a given behaviour, and it must be investigated before it can be determined whether it is harassment. The behaviour could, for example, be withholding of a child from contact. That is objectively observable behaviour, and there can be many motives for it. It is the specific behaviour that we should designate with our choice of words.

There are mothers who have been accused by child psychologists of being manipulative when they have tried to present evidence of violence during child expert examinations. This has harmed them in the conclusion. And mothers who talk about judges who literally refuse to "reward" them with full custody when they do not want to "cooperate" on visitation, i.e. be responsible for getting fearful children to want visitation. Thus, the decision appears to be punitive. About judges who have shouted at mothers exposed to violence in their courtroom. About child psychologists who demand answers from mothers exposed to violence as to whether they don't feel sorry for the father. About the Family Law Agency's continued practice of trying to force mothers who are victims of violence to participate in supervised visitation and receive meticulous guidance on where she should sit, how she should smile and how to direct her gaze, in order to help the

perpetrator of violence establish a bond with the child. This continues to happen, even though management has apologized and acknowledged that there is no legal basis for this practice.

The mothers' experiences are largely documented in case files, but it would require an impartial investigation with a guarantee of anonymity if their personal accounts are to be documented. They are - independently of each other - consistent across time and place.

In Denmark, we have primarily used surrogate concepts, and this makes it difficult to recognize the use of the theory of parental alienation in practice. One of the most commonly used surrogate concepts is to describe the child as 'squeezed into the conflict field when the burden of proof for violence or sexual abuse is not lifted in a criminal case. This assessment often leads to the victim of violence having to enter into a cooperation process with her abuser, because she is thus attributed responsibility for the child's resistance. It is "concluded backwards" that it must then be because the mother is not *cooperating*.

Mothers feel placed under suspicion the moment they walk through the door. And nothing they say, no evidence they present in the five or ten years of litigation can make anyone focus on the perpetrator instead of the victim. The victims describe it as unreal, as impossible to convey the severity of the experience to outsiders, as a nightmare.

Of course, one cannot compare Nazi criminal law with Danish family law, already because family law is civil law and not a penal system. But the use of the perpetrator type has many similarities; women victims of violence experience that they are subjected to mental punishment, and this undermines their ability to achieve a life of safety and independence. The family law system seems designed so that the abused mother or the mother of abused children must be understood in the light of her alienating nature and must be corrected. It is her character that is the target of the procedures, and she is put under pressure during the closed court hearings and the child expert investigations, which are not based on a violence-professional foundation and divert the focus away from evidence of violence.

The theory of parental alienation has been dominant in Danish family law since the Parental Responsibility Act came into force in 2007. It is now incorporated and is seen in all agencies and entities, including schools and kindergartens, who issue statements about the children. They have

interpreted the deterrent typology in advance, i.e. perceived the case as one in which the mother does not sufficiently support contact and cooperation when she withdraws from direct contact with her abuser or expresses concern for the children. There is no family law arena left where the mother victim of violence is not understood in light of the perpetrator type 'parental alienation'.

When the mothers victims of violence do not 'cooperate', that is, ignore the children's failure to thrive, their case files show that they are stigmatized as manipulative and alienating, and this can cost them the children. The proceedings are exhausting and frequently last five to ten years, with constant attempts to modulate the mothers' personalities under pressure and with incessant moral reproaches when their attempts to protect the children continue. They feel infantilized, as if they do not understand better. They feel instrumentalized for the sake of contact. They feel demonized by being blamed when the children continue to try to resist contact.

The French psychologist, [Sarah Thierre](#), an expert on institutional violence for the International Criminal Court, ICC, describes the spread of the idea of parental alienation as a European crisis. She describes the treatment of abused mothers as 'psychological torture'.

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