

Speech minister Van Quickenborne

4th Intl Conference "Protecting Family Ties after Separation"

09/09/2021

Ladies and gentlemen,

Thank you all for being here today to talk about this important subject. The matter of the relationship between a child and its family occupies a central place in our society. In legal terms, the importance of this bond is enshrined in the Belgian Civil Code. Obviously, it is the parents who normally have parental authority. Since 1995, grandparents also have the legal right to maintain personal relations with the child, even when the parents object. And more recently, in 2021, a new law guaranteed the right of children not to be separated from their brothers and sisters.

When parents separate, the guiding principle in Belgium is that of equal custody of the child. Both parents enjoy the same rights after separation. Only if the court considers that equal custody is not the most appropriate formula can it decide to mandate non-equal accommodation. The judge will take into account the concrete circumstances of the case and the interests of the children and the parents.

So in theory, everything seems to be settled.

Yet since the beginning of my mandate, almost a year ago, I have been contacted by numerous parents who testify of the broken relationship with their children after separation. Something that can be harmful to both the child and the parent involved. And it obviously extends to a whole branch of the family being completely withdrawn from the child's life for a more or less long period of time.

As the minister of Justice I am confident that the decisions of judges are made in the best interest of all parties involved based on the information at hand and within the existing laws. It is not my job to adjudicate individual cases. On the contrary. It is however my job to make sure that

judges are given the right legal framework and the necessary tools to make the best decisions.

It is important that our primary objective in this is always the safety and wellbeing of the children involved. That is why we must protect them from domestic violence, be it physical or psychological. Protecting family ties does not take precedence over keeping children safe from an abusive or violent parent. And this must never be minimised or denied. Domestic violence requires appropriate measures, which must be taken into account.

However, when there is no violence or abuse at play, that same regard for the wellbeing of the child compels us to ensure that healthy relationships with both parents are maintained after separation. Going through these proceedings most definitely has an impact on the children involved. Sometimes parents see childcare as a power issue with the conflict between parents being crystallised in the dispute over custody.

Children can therefore become hostages in the tumultuous proceedings. And custody over them weaponized in the conflict between the parents. Parents can influence their children against the other parent and ultimately reject them.

How should we therefore talk about parental alienation?

This terminology can be confusing. In its final report on Belgium 2020, the Group of Experts on Combating Violence against Women and Domestic Violence recommends that the professionals concerned should be made aware of the scientifically unfounded nature of the 'parental alienation syndrome', and that public opinion should be made aware of this.

It seems to me that a clear distinction must be made between the phenomenon of "parental alienation" and "parental alienation syndrome". The notion of "parental alienation syndrome", i.e. a psychological syndrome in a child, is rightly a controversial notion, on which there is little research to date.

In contrast, parental alienation or even rejection is a very real problem and a multi-faceted issue. It is certainly possible that the child is being

manipulated by one of the parents and exploited in a divorce. It also happens that one of the parents uses the child in the form of blackmail. In both situations, it is detrimental to the child and his or her family.

That is why my office was contacted by Oliver VANHAELEN, Marie-France-CARLIER and Bee MARIQUE in order to present the project that they implemented in the court of the Belgian city of Dinant a few years ago. The aim of this project is to avoid a break in the parental relationship or, where it has already occurred, to allow contacts to be renewed. Each of them will naturally have the opportunity to explain it in detail over the next two days.

It puts the wellbeing of the children involved front and centre.

That should be the main focus of a change in mentality based on their approach.

First of all, parents should be made more aware of the implications of legal proceedings and the importance of safeguarding the interests of the child after divorce or separation. In a lot of cases parents need to be helped to go from being partners in life to partners in raising their children. To this end, we are working on information sessions for parents starting legal proceedings regarding children's custody.

These should allow parents to reflect on the challenges of the proceedings initiated and to move more easily towards an agreement or to consider alternative methods of dispute resolution, such as family mediation.

In some particularly conflictual cases, however, court proceedings are the only way to resolve the dispute. In such cases, it must serve its purpose. But in this phase a change in mentality can also be achieved by taking a number of measures.

Procedures can be objectivized by using a simplified application form that discourages the type of accusations that usually inflate this type of dispute.

Magistrates obviously have an important responsibility in these proceedings. It is important that they are trained in recognizing the

dangers of parental alienation and immediately put in place provisional measures to calm the conflict and guarantee the relationship between the child and its parents. They have to empower the parties involved to make commitments to each other and respect them throughout the proceedings. Moving forward step by step with frequent hearings to check on the progress being made.

The magistrates are supported by a team of interdisciplinary experts and extrajudicial actors who are crucial to gathering the necessary objective information to allow the judge to make an informed decision. Caregivers provide a safe space for the children in which they are supported, listened to and can voice their needs.

Throughout this process, alternative methods of conflict resolution can be promoted. Although mediation should never be imposed, and special attention should be given to the equality and safety of both parties in order to be confident and secure enough to be able defend themselves.

Such a change in mentality can only come about in cooperation with all the actors involved. First the magistrates, some of whom are present today. Their attitude in court is obviously essential. Equally important is the creation of a network of auxiliary persons based on the problems that arise in a given case.

And then, of course, there are the lawyers whose role is also vital: this type of litigation is not won by waging war or by ensuring that their client wins on all points of their application, but by reaching an agreement between the parties that reflects the best interests of the child.

This change in mentality should also be reflected in the law. That is why I intend to carry out, in collaboration with the academic world, a reflection on the place that should be given to the child in the context of legal proceedings concerning him or her. This reflection will naturally have repercussions on the way in which disputes concerning children's custody are dealt with.

This conference about the various aspects of protecting family ties after separation, will certainly help guide that. I therefore hand over to the

excellent speakers and look forward to your exchange of ideas in this complex and nuanced debate.