



STATISTICAL ANALYSIS IN SPAIN, WHICH ENABLES US TO LEARN THE VARIABLES AND HARMFUL EFFECTS THAT OCCUR IN CHILDREN AND ADOLESCENTS INVOLVED IN THE PROCESS OF THEIR PARENTS BREAKING UP, WHEN THERE IS A PROCEDURAL DELAY IN SETTING UP THE PROVISIONAL MEASURES AND DRAFTING THE PSYCHOSOCIAL REPORTS FROM THE PSYCHOLOGICAL AND LEGAL POINT OF VIEW.

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1.- INTRODUCTION

This work presented by the Multidisciplinary Spanish Association on Research into Parental Interferences (ASEMIP in Spanish) before The Committee of Children's Rights denounces the consequences for children and adolescents in Spain brought about by delays in Civil Jurisdiction procedures.

As an entity, we are aware that it is necessary to raise awareness among our political representatives, since it is not enough for the law to indicate a deadline if this is not applied in terms of time and manner, and definitively in the right, fair measure. The problem of delays in judicial processes is found within a broader context related to the right to access justice and to having appropriate, effective judicial cover. The problems affecting anybody with the right to effective judicial protection can also affect children and teenagers, who are not denied this fundamental right, but their case is quite particular in that they are especially vulnerable. It is necessary to take this matter into account so as to adapt the procedures as much as possible, at all times being aware of their particular characteristics and circumstances.

For these reasons, in order to comply with one of its objectives and specifically that of active intervention, ASEMIP denounces before this body the real situation in which these children and adolescents find themselves in family judicial proceedings in Spain throughout all of the judicial districts, together with their legal and psychological consequences revealed following an analysis by the professors and professionals of the association, as well as the statistics drawn up by the Doctor in

Mathematics and Professor in Biostatistics at the Faculty of Medicine in the University of Murcia, the city in which ASEMIP has its official address.

If this work serves to raise awareness among our political representatives when Spain is examined, we will have helped ensure that when there is a breakup in the affective relationship and cohabitation of many children's and adolescents' progenitors, this will have the least possible effect on their personal development and on their new lives. Children's time is an irretrievable legal good, and cautionary measures are the only justice that is truly "just" when they are called upon to preserve children's rights, because cautionary justice is the only immediate one that prevents the passage of time from making specific decisions in their favour ineffective.

María Paz Antón Moreno. Lawyer and Vice-president of ASEMIP.

2.- PREFACE

THE NUMBERS SPEAK FOR THEMSELVES

The numbers speak for themselves with certainty. They throw light on the matter, based on mathematical criteria; they show us where we are and the real, specific situation. They are both a warning and a summary; the presentation and the conclusion.

Whereas grammatical statements using a symbiosis of morphology and syntax help us understand ideas, i.e. the concepts themselves, numbers have the virtue of going beyond any verbal statement.

Using numbers, the Multidisciplinary Spanish Association on Research into Parental Interferences (ASEMIP) has drafted the work it now shows, which reveals that based on the work, policies may be activated and implemented to change the

factors that cause delays in the procedures with the administration of Spanish justice.

It is not only the legal practitioners and civil servants who are all too familiar with the procedural delays; the subjects of judicial processes and citizens who at least have sufficient information about the matter also suffer from them to a large extent, becoming manifestly distrustful.

It would seem to be very complicated to dispose any time soon of the growing amount of litigation in our country, about which the media and reports from judicial bodies now speak with greater clarity, because this involves several matters that naturally include the matter of the budget decided by the Government in power at the time.

ASEMIP, in its resolute involvement in the world of legal minors, and with its special dedication to those involved in the breakup of their progenitors' marriages or relationship as couples, experiencing unjustified suffering, has intended to make good the commitment made in 2015 before the UN Committee on the Rights of the Child, based in Geneva.

The statistical conclusions of the work are the result of the work by the technical management of the Doctor in Mathematics and Professor in Biostatistics at the Faculty of Medicine at the University of Murcia, Ms. Matilde Campos Aranda.

Based on a random sample, with a contribution from the association's members as regards matters relating to the provisional measures that may be achieved in court, on seeing the different percentages it is easy to see what issues are most often left open to the elements in the space of time between the request for the measures and the applicable judicial ruling.

At ASEMIP, we take action in children's environment, their circumstances and prevalent interests that must be safeguarded. Without adopting a dogmatic position, and aware of its modesty, the association raises its voice to reveal the

incidents, damage and legal insecurity brought about by the aforementioned space of time.

This may be the first step that specifies in numbers the direct damage to children in judicial proceedings, and thus towards the commitment to happiness contributed by the association.

The numbers have spoken—with precision and validity.

Francisco Javier Meseguer Martínez. Lawyer and Secretary of ASEMIP.

3.- STATISTICAL STUDY:

ON THE DELAYS ARISING IN THE ADMINISTRATION OF SPANISH JUSTICE AS REGARDS THE TIME AS OF REQUESTING PROVISIONAL MEASURES UNTIL THE PERTINENT RULING HAS BEEN GIVEN. SUBJECT: FAMILY LAW.

This random, representative sample has been contributed by different lawyers, members of ASEMIP, from different Autonomous Community Regions in Spain. There have been 119 cases studied. The following aspects which we consider important have been dealt with in them:

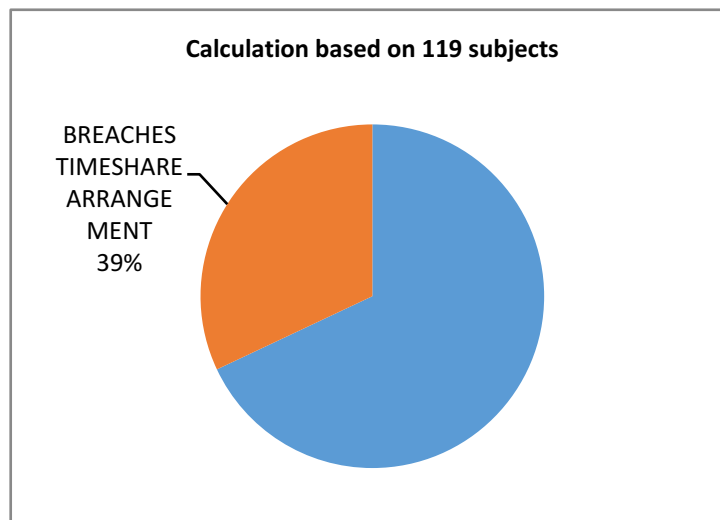
- The **time** elapsed as of the request for provisional measures until the pertinent ruling.
- **Breach of timesharing schedule** by the progenitor without custody.
- **Default in alimony (maintenance) payments by the parent who has taken on this obligation.**
- **Manipulation of the legal minor** by the progenitors.
- One of the progenitors **has no contact with the minor.**
- **Difficulty for the minor in relating** to or maintaining contact with his/her progenitors.
- **Serious problems** in relationship between the parents.

These statistical analyses carried out in order to generalise the results from the sample of 119 cases, showing significant contrasts.

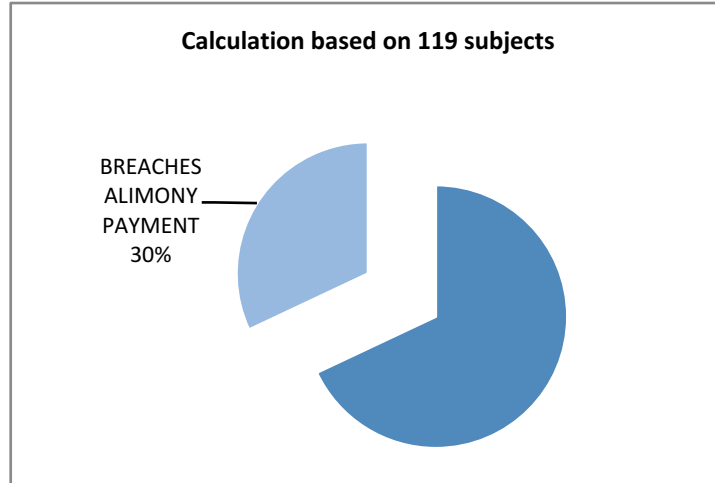
1. In general, we can say that over 20% of the cases take over six months, with a probability of $p < 0.05$, to be resolved by the corresponding courts, together with reports issued by the psychosocial teams attached to the family courts.



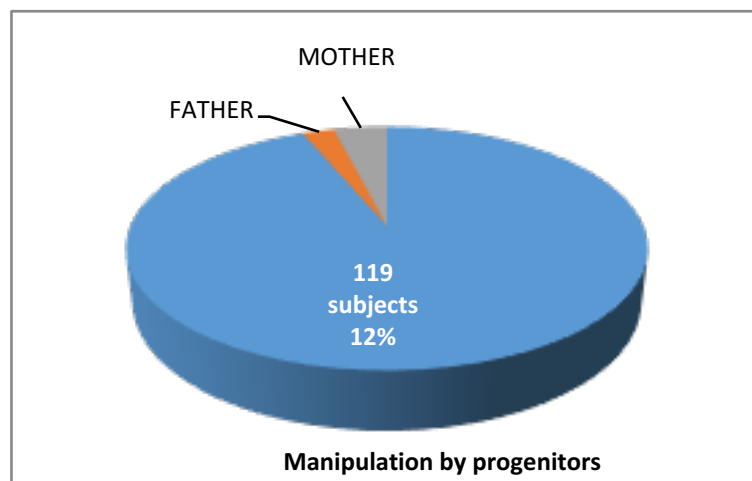
2. We show, in general, that in over 39% of cases, with a probability of $p < 0.05$, the progenitor without custody breaches the timeshare schedule, with the father usually being the one in breach.



3. Failure to pay the maintenance, in general, occurs in over 30% of cases, with a probability of $p < 0.05$, usually by the father.

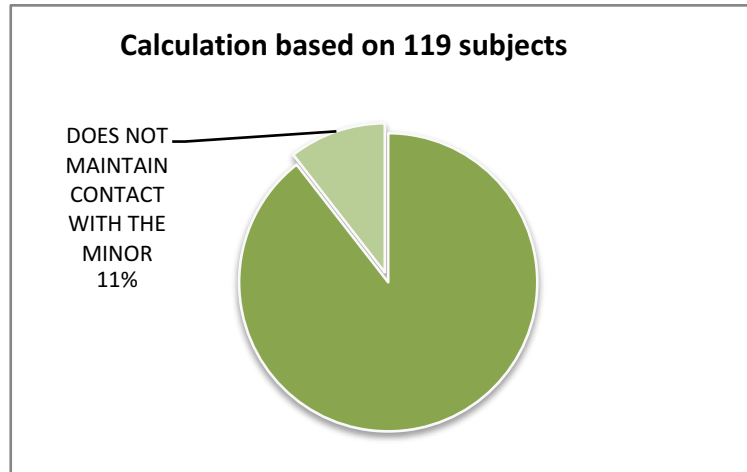


4. The legal minors are manipulated by either of their progenitors, in general in over 12% of cases, with a probability of <0.05 . In this vein, it is necessary to point out that persistent, damaging interference with the minors may lead to mental, somaticized suffering. All activity aimed at correcting said interference must be considered little until it is definitively corrected.

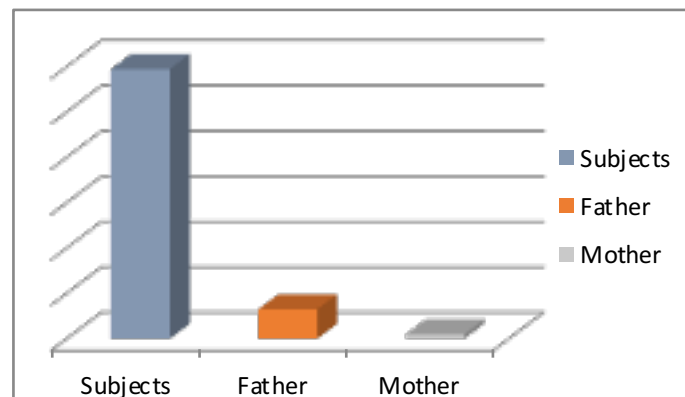


5. In general, in over 11% of cases, with a probability of $p < 0.05$, the minor does not maintain contact with one of his/her progenitors, whether this

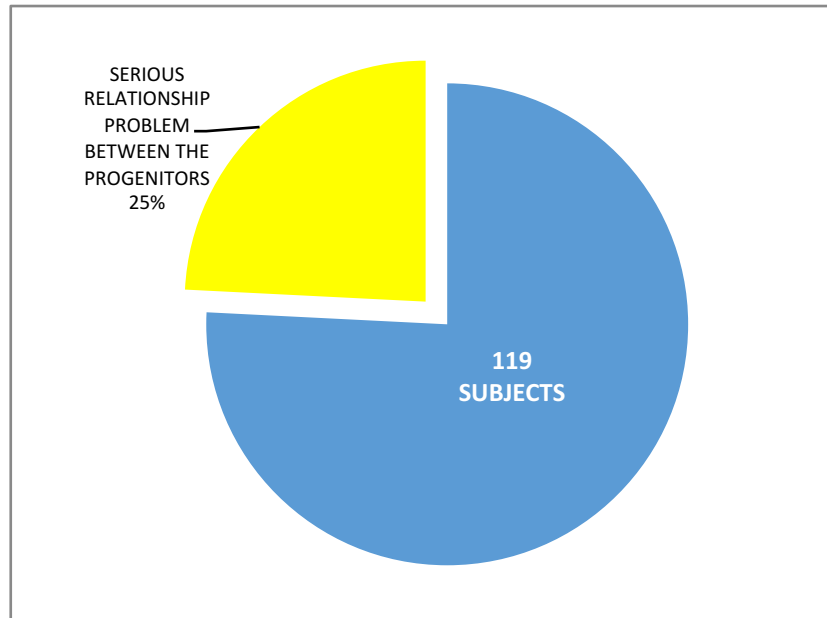
is due to a change of address, due to being in prison, or because the progenitors do not wish to maintain a relationship with him/her.



6. The minor has difficulty in relating to or maintaining contact with his/her progenitors in general in over 9% of cases, with a probability of $p < 0.05$.



7. There are serious problems of comprehension and relationship between the progenitors generally in over 25% of cases, with a probability of $p < 0.05$.



There have been times when it has been believed that a good relationship between the progenitors was not entirely necessary. However, as the shared custody has progressed in being articulated, it has been seen that if the relationship between the progenitors is not in thrall to feelings of confrontation and opposing attitudes for the good of the children, it will be much more beneficial for the well-being of the children.

When the children are able to see that the relationship between their parents is good and respectful although they no longer live together, this means a support of security and emotional stability for the children.

This report was headed by:
Matilde Campos Aranda, Doctor in Mathematics and
Professor of Biostatistics at the Faculty of Medicine of the University of
Murcia.

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4.- PSYCHOLOGICAL ANALYSIS

A) EFFECTS ON CHILDREN OF DELAYS IN ADOPTING PROVISIONAL MEASURES IN CASES OF PARENTS SPLITTING UP

The progenitors' function goes beyond guaranteeing the survival and physical growth of the child. They are promoters of his/her social and affective development, and thanks to the bond of attachment established between them, the baby may become a bio-socio-psychological individual; in other words a person. This is why it is relevant, in cases of couples splitting up, to protect the relationship between parents and children, especially when the bond is healthy and nurturing on an emotional level.

- › In helping the children to adapt to the separation of parents and maintaining an adequate parent-child bond, it is helpful if the split-up process is not very conflictive or it has been easily agreed upon by the progenitors. In our legal context, disputed separations are the most common. For this reason, extensions of deadlines and delays that sometimes have an effect on setting up the provisional measures cause uncomfortable and potentially explosive situations.
- › In our professional experience as experts and counsellors, we have been able to see extremely tense situations due to the delay in taking steps:
 1. For example, there are progenitors that have continued to live together at the family address for months so as not to lose their rights to use it or for fear of losing contact with their children. These potential sources of tension have been handled through silence (parents who do not talk to each other, cynical communication, denigration and passive-aggressive or openly aggressive attitudes), shouting, frequent arguments, situations involving psychological pressure, threats and fear of being reported with little justification.

2. Loss of contact with one of the progenitors. For example because the parent has remained in the family address, he/she does not allow contact between the children and the other progenitor. Or on the contrary, children who are picked up from school without informing the other progenitor or who stay out of the family address for weeks or months, without even going to school (nursery or kindergarten where education is not compulsory). Clearly, apart from the odd case where one may see a risk of abuse or mistreatment, in most of these cases the reason is usually to hinder access to the children in common in order to force agreements not wanted by the progenitor, who usually feels blackmailed and gives way or accepts the lack of contact until the provisional measures have been resolved.

In a scenario of splitting up, it is easy to predict that if an agreement is not reached which is accepted and observed by both progenitors, the entire family system becomes used to living in tension until the first judicial ruling. If this were carried out truly fast, it would help the children so as not to live amid situations marred by uncertainty and which are potential sources of conflict for the parents and anxiety for the children. These circumstances may lead to the parents' positions festering and becoming radicalised, causing consequences difficult to forget in their children's psychological character.

One must take into account that individuals generally take quite a long time to take the decision to split up, and that acceptance of the breakup requires a complex process that Bolaños (1998) identifies very well on pointing out that legal divorce does not necessarily coincide with the process of psychosocial and emotional divorce.

We have not found specific studies on how children are psychologically affected by these situations before the provisional measures are established. As a result, on reviewing the bibliography of similar matters, we have drawn up an ad-hoc protocol for collecting data for the mental health counsellors as regards these situations, including aspects that have been considered relevant on a theoretical level (an 'other relevant aspects observed' category is included).

From the bibliographical review, we have found numerous studies, especially in English, that talk of the impact of divorce on the children, comparing the children of non-divorced parents with those of divorced parents. Out of these, it is convenient to review the most significant ones that concentrate on split-ups that are conflictive. Vallejo, Sanchez and Sanchez (2004) include the following, among others:

- Hetherington, Bridges and Insabella (1998) believe it is relevant to point out a series of effects on the child's behaviour caused by changes in the family composition with the separation of the parents. Most especially, they include the negative effects of the absence of the paternal figure and the existence of interparental stress among other negative aspects of the separation.
- For McLanahan and Sandefur (1994), the most relevant factor is found in the absence of the father figure, associating it with a lower school performance in both boys and girls, a low level of employment in the case of adult males and early pregnancy in ladies. The presence of the father is also crucial for harmonious development in the children in the study by Amato and Gilbreth (1999).
- Buchanan, Maccoby and Dornbusch (1992) classified the factors that affect the child's adaptation after a divorce or separation into three categories: the loss of one of the progenitors, confrontations between the progenitors and a decrease in their paternal functions.
- One of the classic studies most quoted is the one by Amato (1994), which considered the negative effects of divorce: a drop in academic performance, a worse concept of oneself, social difficulties, behavioural problems and emotional difficulties such as depression, fear and anxiety.
- Other research indicates that the big changes in the relationships of children with both parents are accompanied by greater anxiety, especially when the separation takes them by surprise, and taking into account that the dedication from one of the parents may have disappeared. Such a feeling of loss may lead children of all ages to the conclusion that harmonious personal

relationships are not possible, and that there are no guarantees that they will be maintained in the future. These beliefs are usually still present in adolescence and adult life, as they are reinforced by personal experience in the years just after the divorce or separation, due to the interest that the parents showed in making the lack of affection for each other clear (Wallerstein & Kelly, 1980; Wallerstein & Blakelee, 1989; Hetherington & Kelly, 2002; Wallerstein & Lewis, 2004).

After carrying out the review, these authors explain: “There is a great deal of evidence, therefore, that the harshness of the suffering experienced by the components of a couple after it splits up emotionally marks the child indelibly. It may be that, with the passage of time, the influence of these conflicts surrounding the parents’ separation or divorce becomes lighter, but they are not usually completely forgotten.” (Vallejo, Sánchez and Sánchez, 2004).

For many years, there has been a tendency to consider that divorce implied a traumatic situation with negative consequences for the children’s evolution and development (Kelly, 2000). However, as explained by Arch (2010), as the scientific results came from studies carried out with a more solid methodological base, different specific factors became apparent that have an influence on this negative result. One of these is especially significant: the influence of exposure to interparental conflicts. This type of interparental disagreement entails placing the children in the very centre of the conflict. The negative effect of exposing children to the disputes over custody has been documented, for example by Johnston (1993, 1994).

Arch (2010) reports on the different lines of research that have explored the relationship between the high level of conflict in a period of divorce or post-split-up and the well-being of the children. He makes it clear that:

- The high level of conflict heightens the risk of negative effects for both the children and the adults during and after the divorce (Lebow, 2003). In the case of legal minors, depending on their personal characteristics

and other mediating factors, they appear internally (e.g. depression) or externally (e.g. behavioural problems).

- For children who face a family split-up, the most stressful aspect is exposure to the parents' conflicts (Wolchik, Ruehlman, Braver & Sandler, 1989).
 - a) Interparental conflict is the single strongest predictor of child inadaptation in cases of divorce (Amato, 1993, 2001; Amato & Keith, 1994). Appendix 1.
- The relationship between the exposure to these situations and different types of psychopathological disorders is common, with significantly higher levels of stress and anxiety in both the children and adults (Grych & Fincham, 1990). Generally, it is associated with the harmful effects in the functioning of children and adolescents in this situation (Gould, 1998; Otto, Buffington-Vollum, & Edens, 2003).

The negative effects on children arising from exposure to interparental conflict (e.g. depression) have been observed until adult age (Schmidtgall, King, Zarski, & Cooper, 2000).

- Among the long-term effects, there have been effects described on physical health brought about by exposure to interparental conflict (Katz & Gottman, 1997; Luecken & Fabricius, 2003; Michael, Torres & Seemann, 2007).
- In Spain, since the 1990's studies have been carried out on the relationship between the family atmosphere and its influence on the children (Bragado, Bersabé and Carrasco, 1999; Mirón, Luengo, Sobral & Otero, 1988; Pons-Salvador, 1999).
- When analysing how conflicts influence the adaptation of children, one should take into account its specific dimensions: frequency, intensity, lack of resolution, and content (Cortés & Cantón, 2007).
- Martínez, Sanz, Iraurgi and Iriarte (2009) state that the effect on academic performance is not directly associated with the matrimonial conflict, but with the psychological unease generated in the children by

the conflict, mentioning 4 dimensions of this unease: anxiety/depression, somatic complaints, aggressiveness and antisocial behaviour, although they point out that the symptoms described are not very severe. In the study, they continue by concluding that the children show greater psychological unease, in other words both internally and externally when there is (a) a greater level of conflict (which has the most relevant direct effect) and (b) a drop in the quality of the parental relationships and lower family satisfaction (effect of the conflict).

- Finally, they state: “Divorce is a difficult transition for the children, who experience intense feelings that may lead to higher rates of depression, anxiety and interpersonal difficulties (Pedro-Carroll, 2005). It should be noted that the increase in mental health problems is related to higher levels of post-divorce stress factors (continuity of the conflict, changes in family relationships, etc.) and not so much to structural changes (single parents), as we have been able to verify.” (Martinez, Sanz, Iraurgi & Iriarte, 2009)
- Different studies show that the exposure of children to frequent conflicts is related to problems of aggressive and delinquent behaviour (ElSheikh, Buckhalt, Mize & Acebo, 2006). Although the frequency is significant, the impact on the children also depends on the way it expresses itself. Witnessing conflicts of low intensity, though they appear frequently, may not have such negative effects on the children as those of great intensity, above all those that involve physical aggression (Ybarra, Wilkens & Lieberman, 2007). Furthermore, conflicts whose content revolves around the children precede their aggressive behaviour (Cummings et al., 2004) and their delinquent behaviour (Cui, Donnellan & Conger, 2007).
- Some Spanish studies also point to this fact. Cantón, Cortes and Justicia (2002) write that during the year following the separation, both the sons and daughters show higher rates of external problems (aggression, delinquency, consumption of drugs) than in intact households, although in males they are more frequent and appear to persist for longer.
- According to a subsequent study carried out on families from Jaén by Justicia and Cantón (2011), they found that even in normal families the frequency of conflicts between the parents precedes the children’s behavioural problems and is associated with a greater incidence in their

problems in adapting. They do not find differences in gender, given that the exposure to conflicts between the parents affects sons and daughters equally, though there are differences in their evolution. As for the age, they state that younger children spend more time in the company of their parents, which leads to a greater exposure to the conflicts. They also have fewer psychological resources and less elaborate strategies to face them.

- Novo, Arce and Rodriguez (2003) point to 10 risk factors associated with parental separation: age, level of parental conflict, compliance with the timeshare schedule, new partners, gender of the parent with custody, satisfaction with the maintenance payments, time elapsed since the separation, separation of siblings, importance of the period before the split-up, and psychological state of the parents. Moreover, as they had already done with previous contributions from their team, they point out the importance of knowing these factors in order to minimise certain difficulties associated with separations (Sej3, Fariña & Novo, 2000).
- On studying the maladjustment in children, if one takes into account their age, we can see that smaller children tend to show behavioural disorders such as regressive conduct, repetitive behaviour, learning problems, school and performance difficulties and depression, whereas the older ones usually show problems of social competence, such as disruptive, violent, aggressive or antisocial behaviour, delinquency, isolation from the peer group and deficits in social skills (Fariña, Seijo, Arce & Novo, 2002; Seijo, Fariña & Novo, 2002).
- As for the evolution, some authors suggest that the conflicts have a more negative impact in preschool children (for example, Mahoney, Jouriles & Scavone, 1997), whereas others point to adolescence as the period of greatest vulnerability (Sim & Vuchinich, 1996), although there is also research that does not find differences (Cumming & Davies, 1994). It is therefore difficult to draw conclusions about which age group is the most vulnerable (Davies & Cummings, 2006).

Table 1 very graphically shows a chart with the maladjustment according to each age group, taking into account aspects of evolution over time.

Table 1. Taken from Novo, Arce & Rodríguez (2003).

Age	Emotions and Cognitions	Behavioural problems expected	Risk factors
Early infancy (0-3 y.)	Perception of parental loss.	Regression, problems with eating habits, sleep and hygiene; irritability, excessive weeping; apathy; withdrawal.	Loss of carer, lack of ability or psychological alteration in the parent with whom they live.
Pre-school age (3-7 y.)	Fear of abandonment, fear of loss of the parent with custody, confusion.	Fears, complaints, request for pampering, regressions, nightmares, confusion, aggression, sadness, low self-esteem, guilt.	Persistent or serious regression, nightmares or anxiety of separation, encopresis, rejection of the parent with whom they do not live or opposition from the other parent to visits, parental lack of skill as regards discipline.
School age (7-12 y.)	Self-blame for the separation, feeling of loss, feeling of betrayal and rejection, confusion, beginning of understanding of the separation, shame, rejection, resentment and loneliness.	Sadness, depression, weeping, longing for the absent parent, rage, hyperactivity, hope for reconciliation, conflict of loyalty, worry about custody, hostility with parents, dependence, school problems, behavioural problems.	Stoppage in development, loss of interest for peers and activities, other personal losses, changes of school, chronic hostility with parents, complete rejection of one of the parents, parental pressure on the child to take positions or sides, poor school performance.
Adolescence (12-15 y.)	Worry about loss of family life and their own future, feeling of responsibility with the family, rage and hostility.	Immature behaviour, early or late development of independence, over-intimacy or competition with the parents of the same sex, worries about their own role such as sexual or marital partner.	Persistent academic failure, depression, suicide attempts, delinquency, promiscuity, abuse of toxic substances or alcohol.

As has been seen in the research gathered, there is a lot of scientific literature that points to separation or divorce of the parents as having a significant impact on the children's overall development. Our hypothesis puts forward that there are circumstances that help it become a situation that is not experienced in such a negative way. These include when the separation happens in a low conflict environment, with a lot of social support, when there are figures that bolster resistance, or when a quick end is put to unsuitable post-split situations.

Good adaptation to the divorce of the parents and a fast, efficient judicial handling of the split help in preventing future situations of victimisation from developing, which are so devastating for children's mental health, such as

the parental interferences described by Tejedor, Molina and Vázquez (2013).

In our country, we have a programme created by Francisca Fariña's team aimed at couples in the process of separation in order to foster better adaptation to it: "Non-family couple split programme", which has been in place for years and is widely known in our context. There are also more recent programmes involving intervention with victims of parental interferences, created by Tejedor, Molina and Vázquez.

Asunción Tejedor, Forensic psychologist and mediator and member of ASEMIP.

Asunción Molina, Doctor in Psychology, expert Forensic Psychology, Vice-president of the Board of the Legal Section of the Official Professional Association of Psychologists of Catalonia.

Sonia Benítez, Doctor of Psychology, Associate Lecturer at the University of Barcelona.

Nuria Vázquez Orellana, Doctor in Psychology, expert in Forensic Psychology, Associate Lecturer at the Rovira i Virgili University of Tarragona and member of ASEMIP.

B) EMOTIONAL CONSEQUENCES IN SONS AND DAUGHTERS FACED WITH LENGTHY DIVORCE PROCEDURES.

Situations of breakup in the family system arising from separation or divorce processes entail significant changes in the children's subsequent evolution and adaptation, which necessitate a reorganisation in the future paternal-child relationships.

According to the American Psychiatric Association, "divorce of the parents is a very stressful experience for the children with short-, medium- and long-term consequences" (APA, 1987).

Although processes of separation and divorce are frequent in our society, this is a reality for which there is still a large lack of knowledge about how to deal with them properly so as to cause the least emotional harm, especially to the children.

Different studies indicate that the most powerful effect on the children's mental health comes from the quality of the family relationships, both before and after the parents' separation. It is during the judicial proceedings that this mental health may be most affected.

The level of parental conflict or disagreement has been seen to have negative effects on their children's adaptation, appearing in the form of behavioural disorders, aggressiveness, depression, anxiety and school problems (Amato & Keith, 1991; Grych & Fincham, 1990).

When the decision is taken for a couple to break up, both progenitors may enter a significant process of discord which leads to a lack of ability to provide solutions aimed mainly at ensuring their children's emotional stability.

Often, a significant difficulty arises for one of the partners to accept their partner's decision to separate, or the breakup is preceded by a high level of conflict or lack of understanding in the couple, which leads to this emotional effect having a negative influence on subsequent decisions taken, making them rather uncooperative, individualistic and often using their own children as a means of negotiation.

It is inevitable for this problematic situation, which can be seen in a great many couples, to be transferred to their children, giving rise to different positioning by the children in favour of or against one of their progenitors, with the resulting emotional damage this entails.

Lengthy judicial proceedings in the family processes mean that the children must withstand the uncertainty about how their future is going to be after their parents break up.

In general, each of the progenitors (when there is not a prior agreement) take on approaches to matters related to the way the relationship will be in an incompatible future, directly or indirectly driving the children to enter a process of conflict of loyalties in which they may develop different attitudes.

When the children have to take responsibility for a parent's mental well-being, they may be in a high risk situation. The overload from this task may make it difficult for them to evolve as a child and affect their mental health.

For all of these reasons, lengthy judicial processes may be very harmful in achieving good adaptability for the children to their new family situation, given that it often implies that positions are taken that are not very realistic and are the result of the frustrations themselves and their own progenitors' resentments.

Likewise, a delay in drafting the reports by the psychosocial teams also brings with it a delay in the judicial procedures, with the resulting aforementioned harm.

Children need to be protected after the breakup of their progenitors, providing them with security as regards their future and fostering the relationship with their progenitors in the most suitable conditions depending on each case, and these decisions should be taken in the shortest possible time, thereby avoiding the children taking on a "supposed responsibility" for which they feel obliged to choose as regards a future they do not understand. They need more than ever to feel that their parents are going to be by their side in a situation of breakup, with these relationships becoming normalised and natural.

Olga Beltrán Llago, Forensic Psychologist and member of ASEMIP.

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5.- LEGAL ANALYSIS

LEGAL MINORS, DELAYS AND JUSTICE. CONCLUSIONS

1. The matter of the impact on minors (understood to be any human being under eighteen years of age, unless by virtue of the law applicable to them they reach the age of majority before then) caused by delays in administering justice has not been sufficiently studied. Non-Governmental Organisations such as Save The Children (Childhood and Justice. A question of rights, 2012.), and some regional public institutions (*Generalitat de Catalunya*, Government of Catalonia, *Centre d'Estudis Jurídics*) and European ones (European Commission on the study Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU, 2015) have paused to look at this question, but there is a lack of more accurate data on the direct impact and on the eventual psychological effect of such delays.
2. The problem of delays in judicial proceedings is part of a broader context related to the general right to access justice and to have adequate judicial protection. The problems that affect any right holder to effective judicial protection (Art. 24 CE) may also affect minors, who are not denied this fundamental right. The specific nature of these right holders is to be found in their particular vulnerability, a matter which must be taken into account to adapt the procedures, as well as the effectiveness and public service provided by the judicial Administration, to these specific circumstances as much as possible.
3. On analysing this matter, one must not forget that the protection of children in all fields as well as this one is also constitutional in nature. This is the case because Art. 39.4 CE recognises that children have the right to protection provided for in the international agreements that safeguard their rights, and also because Art. 10.2 CE imposes the hermeneutic criterion on public powers, and especially on the judges and courts, that "the rules as regards fundamental rights and liberties that the Constitution recognises are interpreted in keeping with the

Universal Declaration on Human Rights and international treaties and agreements ratified by Spain in the same areas.”

In this context, it is essential to take into account Art. 40 of the International Convention on the Rights of the Child, which although it refers fundamentally to the relationship of minors with justice in terms of how far they may be considered offenders, it also expressly mentions the need for “[the case] to be reviewed by a higher competent, independent and impartial authority or judicial body according to law”.

Furthermore, the International Convention lays down a series of general principles that must be applied to the right of minors to judicial protection. These principles refer to the fact that children hold rights (except to political participation in the strict sense), such that decisions taken which affect them must be founded upon the minor’s greater interest, that the minors have the right to be heard and that their opinion should be taken into account and, finally, that the judicial administration must act to guarantee children’s rights.

4. The matter of undue delays must be analysed in the light of the jurisprudence of the Constitutional Court in the matter. If this is not done, there is a risk of confusing the desire for the proceedings to be terminated hastily, with the possibility of demanding responsibilities from the judicial Administration for breaching a fundamental right.

In this vein, our constitutional doctrine states:

- That there is no constitutional right to procedural deadlines being observed, but there is a right to the procedure being dealt with in a reasonable time.
- That there is no definition in chronological time about what that a reasonable time is, although there are four interpretive guidelines that enable an assessment as to whether the length of proceedings has been reasonable or not. These guidelines are:
 - o The procedural behaviour of the party that claims for him/herself the right to effective judicial protection without undue delay.
 - o The inherent difficulty in the specific process.
 - o The assets and rights involved or at stake in the proceedings

- The average duration of equivalent processes. This guideline is the most controversial and criticized by the doctrine, firstly because it is not based on the jurisprudence of the European Court of Human Rights, and secondly because this guideline may be used to naturalize structural delays.
 - Lastly, in order to recognize the breach of the fundamental right in question (the right to effective judicial protection without undue delay), the constitutional doctrine also requires there to have been a prior claim regarding the breach of the right in the ordinary proceedings, so as to ensure the subsidiarity of the remedy for the protection of constitutional rights, and that the normal procedure has not yet terminated when the request for the intervention of the Constitutional Court is made.
5. Although most of the studies carried out to date as well as the existing international standards and guidelines for action drafted referring to minors' relationship with justice are concerned with criminal justice and the interaction of minors with said jurisdiction as juvenile offenders or child victims and/or witnesses, one cannot ignore that minors are very clearly going to have a relationship with the administration of justice in at least three jurisdictions.

Firstly, the minors will come into contact with the civil jurisdiction in family matters, particularly those relating to separation, divorce and the annulment of marriages, where matters will be settled concerning their care and custody, maintenance and timeshare schedules, etc. In addition, they are also related to this jurisdiction insofar as they are in a situation of vulnerability.

Secondly, they are related to the criminal jurisdiction either as juvenile offenders or as victims or witnesses. In this regard, the **United Nations' Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules)** are applicable, which act primarily as a guide for states to draw up specific systems for the administration of juvenile justice that protects and responds to the needs of young people's rights. In addition to the Beijing Rules, there are the **United Nations' Rules for the Protection of Juveniles Deprived of their Liberty (1990)** and the United Nations' *Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines of 14th December, 1990).

All of these provisions of international “soft law” refer to the need for justice to act in such cases without delay and as far as possible with the participation of the progenitors. As regards the consideration of minors as victims or witness-victims, it is necessary to refer to the Guidelines of the United Nations Economic and Social Council of 2005 on Justice in Matters Involving Child Victims and Witnesses of Crime, Circular 3/2009 from the Attorney General on the protection of child victims or witnesses, and the EU Directive from the Parliament and Council of 20th September, 2012. All of these provisions refer to three fundamental bases that should guide the actions of the public authorities in this context: the obligation to inform the child; the obligation to protect and repair, taking into account the special importance of protecting children when taking evidence, which involves another victimization; and undue delay in the procedure.

Thirdly, minors may be deeply involved in procedures by the administrative jurisdiction. In this case, the situation of unaccompanied children or foreign children seeking a family reunification is particularly problematic. In both cases, the structural delays in the administrative jurisdiction are particularly damaging, because the time taken in these cases may lead to the proceedings losing part of the objective.

6. There are few legal rulings relating to the particular impact on children caused by an undue delay in a particular procedure.

The ECHR has determined that there are attendant circumstances in the process which by their nature call for particular speed in the process, for example when minors are involved (*Hokkanen v. Finland*, §72, *Niederböster v. Germany*, §39, *Tsikakis v Germany*, §§64 et 68, *Paulsen-Medalen and Svensson v Sweden*, §39; *Laino v Italy*, §22).

7. Reading the previous judgments and everyday practice in courts enables us to make the following assessment:
 - a. Children particularly suffer from delays in the administration of justice because their perception is that the time it takes is too slow.
 - b. Delays in justice for children detract from the effectiveness of the sanctions because the minor disconnects the punishable act from

the sanction, detracting from the sanction's re-educational effectiveness.

- c. Legal minors' time is an irretrievable legal good, and cautionary measures are the only justice that is truly "just" when they are requested to preserve children's and adolescents' rights, because cautionary justice is the only immediate one that prevents the passage of time from making specific decisions ineffective.
 - d. There is a great lack of awareness of the rights of childhood among legal practitioners, as well as a great lack of resources aimed at avoiding a double victimisation of minors, or the primary victimisation arising from the existence of excessively long judicial proceedings.
 - e. The lack of protection for the child when they face the Judicial Administration may result from the mere omission of sufficient care or the mere absence of measures specifically aimed at mitigating the impact on the child of facing said Administration, and it becomes institutional violence, which is a form of violence against childhood included in the United Nations World Report on Violence Against Children known as the "Pinheiro Report".
8. It is worth ending these conclusions with the Guidelines of the Council of Europe on CHILD-FRIENDLY JUSTICE adopted by the Council of Ministers on 17th November, 2010, in meeting 1098 of ministers, which should be unquestionable in judicial proceedings subject to statistical evaluation. These Guidelines expressly refer to the need to avoid undue delays and they do so in the following terms:

In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

In family law cases (for example parentage, custody, parental abduction), the court must exercise exceptional diligence to avoid any risk of adverse consequences on family relationships.

When necessary, judicial authorities should consider the possibility of taking provisional decisions or making preliminary judgements to be monitored for a period of time and subsequently revised.

In accordance with the law, the judicial authorities should have the possibility of taking decisions that are immediately enforceable in cases where this would be in the best interests of the child.

Itziar Gómez Fernández – Lawyer of the Constitutional Court.

6.- APPENDIX

A) LEGISLATIVE TEXTS THAT IMPLEMENT THE MATTER:

› Substantive law:

- Articles 102 and 103 of the Civil Code enable the action of **Provisional Measures** via appeal for annulment, separation or divorce, in terms of the effects in the interests of children (address, *patria potestas*, living arrangements with their progenitors and all the necessary guarantees to give priority to their interests). And article 92, section 9 as regards the power of the Judge to appeal to the decision of qualified specialists, and as regards the suitability of the way of exercising the parents' power and the children's custody arrangements.

› Procedural law:

- Article 771 of the Law of Civil Procedure et seq. as regards the formalities and procedural requirements to be followed in the proceedings for **Provisional Measures** prior to an appeal for annulment, separation or divorce.

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