

	<p>Oupa Joe (Andries van Tonder) <i>Still serving when possible</i></p>	<p>Take Notice: Information supplied based on my opinion reading - The Constitution, Conventions, law, Case Law, Rules, Regulations and Standards in the Republic of Ireland only. This sheet is drafted by a lay litigant and might not be correct.</p> <p>This is not legal advice, but the opinion of the author(s). Please consult your legal advisor</p>
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Andries van Tonder et al
Pre approved:: 14 December 2019
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The Gardaí does not want to help me

Dear Oupa,
 In a situation where:

“My ex still does not allow me to see my child. I have approached the Gardaí but they told me to speak to a solicitor”

Dear Target parent,

I suggest that you print a copy of this “Opinion” and hand it to the Garda involved when you attempt to lodge the criminal complaints, as outlined hereunder or a complaint under another enactment. **Draw the attention of said member to the past lacuna in law as described in the second part of this opinion.**

First part:

- Your ex may be guilty of an offence under subsection 5 (2) of the Courts (No. 2) Act, 1986, as copied hereunder, by refusing access:

Courts (No. 2) Act, 1986	
Enforcement of certain orders under Guardianship of Infants Act, 1964.	
5.—	<p>(1) In this section “the Act of 1964” means the Guardianship of Infants Act, 1964 , as amended by the Courts Act, 1981 , the Age of Majority Act, 1985 , the Status of Children Act, 1987 , and the <i>Children Act, 1997</i> .</p> <p>(2) Without prejudice to the law as to contempt of court, where the District Court has made an order under section 7, 11 or 11B of the Act of 1964 containing a direction regarding—</p> <p style="padding-left: 40px;">(a) the custody of an infant, or</p> <p style="padding-left: 40px;">(b) the right of access to an infant,</p> <p>any, person having the actual custody of the infant who, having been given or shown a copy of the order and—</p> <p style="padding-left: 40px;">(i) having been required, by or on behalf of a person to whom the custody of the infant is committed by the direction, to give up the infant to that person, or</p> <p style="padding-left: 40px;">(ii) having been required, by or on behalf of a person entitled to access to the infant in</p>

	<p>accordance with the direction, to allow that person to have such access,</p> <p>fails or refuses to comply with the requirement shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.</p> <p>(3) For the purposes of this section a person shall be deemed to have been given or shown a copy of an order made under section 7, 11 or 11B of the Act of 1964 if that person was present at the sitting of the Court at which such order was made.</p> <p>(4) The references in subsections (1) and (7) of section 8 of the Enforcement of Court Orders Act, 1940, to an order shall be construed as including references to a maintenance order made under section 7 (6) or section 11 (2) (b) of the Act of 1964 and to a variation order made under section 12 of the Act of 1964.</p>
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- Your ex may also be guilty of an offence under section 246 of the Children Act 2001, as copied hereunder, by practising pathogenic parenting (emotional abuse), attempting to persuade you to abandon the child and more.

This section should be read together with the definitions as outlined in the Children First Act 2015.

<p>Children Act 2001</p> <p>Cruelty to children.</p>	
246.—	<p>(1) It shall be an offence for any person who has the custody, charge or care of a child wilfully to assault, ill-treat, neglect, abandon or expose the child, or cause or procure or allow the child to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing.</p> <p>(2) A person found guilty of an offence under this section shall be liable—</p> <p style="padding-left: 40px;">(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, or</p> <p style="padding-left: 40px;">(b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 7 years or both.</p> <p>(3) A person may be convicted of an offence under this section—</p> <p style="padding-left: 40px;">(a) notwithstanding the death of the child in respect of whom the offence is committed, or</p> <p style="padding-left: 40px;">(b) notwithstanding that actual suffering or injury to the health of the child, or the likelihood of such suffering or injury, was obviated by the action of another person.</p> <p>(4) On the trial of any person for the murder of a child of whom the person has the custody, charge or care, the court or the jury, as the case may be, may, if satisfied that the accused is guilty of an offence under this section in respect of the child, find the accused guilty of that offence.</p> <p>(5) For the purposes of this section a person shall be deemed to have neglected a child in a manner likely to cause the child unnecessary suffering or injury to his or her health or seriously to affect his or her wellbeing if the person—</p> <p style="padding-left: 40px;">(a) fails to provide adequate food, clothing, heating, medical aid or accommodation for the child, or</p>

	<p>(b) being unable to provide such food, clothing, heating, medical aid or accommodation, fails to take steps to have it provided under the enactments relating to health, social welfare or housing.</p> <p>(6) In subsection (1) the reference to a child’s health or wellbeing includes a reference to the child’s physical, mental or emotional health or wellbeing.</p> <p>(7) For the purposes of this section ill-treatment of a child includes any frightening, bullying or threatening of the child, and “ill-treat” shall be construed accordingly.</p>
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Note: If you neglect to report this offence to the Gardai, you are guilty of an offence.

- If the situation is causing you or your child serious psychological pain, to such an extent that you require medical intervention, your ex may also be guilty of an offence under section 4 of the Non-Fatal Offences against the Person Act 1997 by causing serious harm to yourself and the child.

<p>Non-Fatal Offences against the Person Act 1997</p> <p>Causing serious harm.</p>	
<p>4.—</p>	<p>(1) A person who intentionally or recklessly causes serious harm to another shall be guilty of an offence.</p> <p>(2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for life or to both.</p>
<p>Evidential value of certain certificates signed by medical practitioners.</p>	
<p>25.—</p>	<p>(1) In any proceedings for an offence alleging the causing of harm or serious harm to a person, the production of a certificate purporting to be signed by a registered medical practitioner and relating to an examination of that person, shall unless the contrary is proved, be evidence of any fact thereby certified without proof of any signature thereon or that any such signature is that of such practitioner.</p> <p>(2) In this section “ registered medical practitioner” means a person registered in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act, 1978.</p>

- Your ex and possibly other persons, may also be guilty of other offences. I suggest that you attend a Parental Alienation Professional (PAP) to assist you and the authorities to identify any other offences involved in your case.

Second Part

1. Background information:

Due to the misunderstanding of the “in-camera rule”, a problem developed where offences committed during in camera proceedings, were ruled as “civil matters” or immune from investigation and prosecution.

I was compelled to ask the Superior Courts to assist. The High Court ruled in the favour of victims like you and your child against the Garda Commissioner. (Redacted version of the Declaration) -

NB: Any offence can be investigated and prosecuted.

(Only the relevant part of the order is copied hereunder)

Respondent And on hearing Counsel for the Applicant and Counsel for the
And it appearing that a compromise has been reached herein save in
respect of costs

The Court doth grant a Declaration that a prosecution for a criminal offence allegedly occurring during the course of civil proceedings heard in a court of law otherwise than in public (in camera) is capable of being investigated and prosecuted as prescribed by law

The contents of this declaration have not yet been circulated to all the members of An Garda Síochána.

2. Members of An Garda Síochána may be offending without realising it

By not hearing and accepting information of an offence, a member of the Gardai may be guilty of an offence, without realising it.

If the alleged offence did, or still is causing the victim serious physical or psychological pain or suffering, and the member refuses to receive and administer the report or refuses to act on it, then said member is in “acquiescence” and condoning the offence or approving it.

- Said member is now guilty by “omission”¹ of torture² and may be sentenced to up to life imprisonment.

The member may also be guilty under other enactments e.g. in the case of parental alienation where the Alienating Party is attempting to get the Target Parent to give up the fight and abandon the child -

- Said member is guilty of cruelty to children, by condoning or allowing the abandonment of the child³
- Said member is guilty of cruelty to children, by condoning or allowing the pathogenic parenting that is classified as psychological abuse of the child.
- And more...

3. State may be in breach of the Constitution of Ireland and several Conventions

The situation as above is in clear breach of the Constitution, UNCAT and ECHR.

Without wasting your time with a lot of rhetoric, please refer to paragraph 101 of Volodina v. Russia⁴ where the court ruled that there has been a violation of Article 3 of the Convention (torture) and there has been a violation of Article 14 of the Convention, taken in conjunction with Article 3. Quoting of the judgement:

1 See section 1 – Interpretation – of the Criminal Justice (United Nations Convention Against Torture) Act, 2000 (as amended)

2 Section 2 of the Criminal Justice (United Nations Convention Against Torture) Act, 2000 (as amended)

3 Section 246 of the Children Act 2001 – read together with the Children First Act 2015

4 Volodina v. Russia, No. 41261/17, 9 July 2019, Final 04 November 2019

In view of the manner in which the authorities handled the case – notably the authorities’ reluctance to open a criminal investigation into the applicant’s credible claims of ill-treatment by S. and their failure to take effective measures against him, ensuring his punishment under the applicable legal provisions – the Court finds that the State has failed to discharge its duty to investigate the ill-treatment that the applicant had endured.

Hope this information will assist you in dealing with the matter.

Regards

The Old Men.

(TVA, BJ, AP 2019)

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Comments and suggestions by email to andy at aps dot ie