

## **EUROPEAN CHILDREN AND THE DIVORCE OF THEIR PARENTS: A QUESTION OF RIGHT TO HEALTH**

This document is the result of a research work regarding the habits of 15 European countries on the subject of the protection of children's right to co-parenting.

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### **ABSTRACT**

It is universally acknowledged that the role of a parental figure has a huge direct influence on children's health, both from a psychological and physical point of view. After divorce of the parental couple many European children lose the possibility to keep in contact with one of their parents, with dramatic social and biomedical consequences.

This research aims at providing a general overview on the different practices of several European countries on the subject of the protection of children's interests. This survey shows that there are still very different conceptions of children's protection, varying from country to country (contrary to the medical world where shared and common guidelines usually exist) and there is also a global inadequate perception of the importance of co-parenting principle: in most cases, one of the parents is originally marginalised as a consequence of judicial disposition. An intervention of the EU institutions aimed at guaranteeing the protection of children's rights and harmonising existing good practices (as would happen in medical science) seems therefore urgently needed. There is also a clear need for switching from a formal-legal language to a scientific language, which could be understood and applied by all Member States as well as introduced into the relevant legal systems (in order to avoid discrimination based on children's nationality).

### **INTRODUCTION**

It is universally acknowledged that the role of a parental figure has a huge influence on children's health, both from a psychological and physical point of view. The most evident effects can be traced in life satisfaction level and in hormonal and bio umoral balance (oxytocin, cortisol, vasopressin, growth hormone, CRP etc.) as well as an increase in the probability of suffering from panic attacks in adult life and even consequences on chromosomal integrity with possible effects on progeny.

From a social point of view, there are clear evidences of the effects on micro-criminality, on school dropout rate, on tobacco addiction, on unintended pregnancy rate as well as on economic status.

Also animal models demonstrate the effects of parental care and parental loss on wellbeing of cubs and on organic development of nervous system .

It is therefore unwise to link this topic exclusively to the field of family law, considering that biomedical and psychological aspects are also involved.

Unfortunately, it often happens that the child loses contact with one of the two parental figures and, in industrialised countries, this event is mainly linked to divorce, to the birth of children out of wedlock or to changes in cohabitation conditions (parents not sharing the same house).

The Author wanted to provide a general overview of the different approaches adopted by European legal system. This research turned out to be very complex to carry out and it revealed very interesting information concerning the lack of official data in many Countries (especially Eastern Europe countries), which made it necessary to rely on data from local studies. On the other hand, in some cases, the data and the information were only available in the national language and not in English, so it was necessary to rely on the skills of professional translators. The use of professional translators was fundamental because of the need to compare different cultural systems, different terminologies

and different legal backgrounds frameworks. In addition to this, un-married couples tend not to address the courts for solutions to family issues. Moreover, each local administration body tends to publish official data that seem to be in contrast with the real situation determined by the application of the law.

In this sense, the Italian case is striking (although not isolated): on one hand, there is a formal 'idyllic' law ensuring the children's right to have and keep significant and stable relationships with both parents after divorce/separation (joint legal custody is formally applied in 89% of cases). But the partition of the time between the parents is 83% by "primary parent" and 17% by the "less involved parent" (also called "Parent B"): but this formal situation is not actually reflected in reality since time allotment is often different from what is attested by official data. For this reason Italy has been convicted several times by the European Court of Strasbourg for not properly protecting the relationship between a child and a divorced parent. Around 1 child out of 3 does not have a stable relationship with one of his/her parents after divorce or separation .MEP Roberta Angelilli presented a written interrogation (E-000713/2013) to the European Commission about this issue, and the European Commission replied to it admitting that it has actually no information and data about studies and best practices regarding joint custody of children or/and co-parenting. The EC also stated that the definition of "joint custody" is to be determined by national family law since it does not concern the spectrum of competences of the European Union (it shall therefore be regulated according to Member States national normative framework).

According to the EC, this passage clarifies why there are still remarkable differences among national legal systems regarding the definition of the concept of "joint custody" and its actual application in real situations.

A later question by Hon. Sonia Alfano has pointed out that the italian paediatrician, Vittorio Vezzetti, has shown that the loss of a parent or difficulties caused by parental separation can have both immediate and long-term effects on children's health. This new question has therefore highlighted that it is clear that this subject — far from being seen as an issue specific to family law, as in the case of maintenance and the allocation of the family home — has to be tackled using a more universal scientific language that each legal system will then be able to transpose independently in accordance with its own methods. In the end Hon. Alfano asked the Commission whether, in order to ensure equal rights to health, it is intending to conduct or assess research to identify the best practices that might serve as a guide for Member States with a view to greater harmonisation of procedures. The answer has been that "the matters raised by the Honourable Member will be assessed in the overall review of the Brussels IIa regulation and, more broadly, of the EU policy in respect of the promotion of the protection of the rights of the child".

This research was carried out thanks to the cooperation of many European associations which are working to promote the co-parenting model and professionals in this field who are able to provide us with real and comparable data.

#### THE SITUATION IN EUROPE

For a complete investigation we point out the link

[http://www.figlipersempre.com/res/site39917/res666721\\_europeanchildren2.pdf](http://www.figlipersempre.com/res/site39917/res666721_europeanchildren2.pdf) where is published the full report. In order to be syntethic here we publish only the tables resuming the findings.

Table I

Estimate average amount of time to be spent with the second parent

LESS THAN 16%	BETWEEN 16% AND 20%	OVER 20%
Switzerland	UK	Sweden

Austria	Italy	Belgium
Czech Republic	Portugal	France
Slovakia	Greece	Germany
	Romania	Spain
		Denmark

Alternatively, a second model can be developed (Model 2) by assessing the number of cases with exact time division (Table II).

Table III: protection of children's right to co-parenting in case of divorce in different European countries

SECTION 1	Sweden	Exact time division > 25%
SECTION 2	Belgium	Exact time division > 20%
SECTION 3	France, Denmark, Spain	Exact time division 8-20%
SECTION 4	UK, Germany,	Exact time division 3-8%
SECTION 5	Romania, Austria, Czech Republic, Slovakia, Italy, Greece, Switzerland, Portugal	Exact time division <3%

Another criterion that could be adopted in order to assess the co-parenting trend of each single country would be through an evaluation of the number of children that lose contact with one their parents after the separation/divorce (although we cannot rely on reliable data about this topic). Alternatively, we might take into consideration the percentage of children under physical joint-shared custody (see Table VIII). It is important to specify that by "physical joint (shared) custody" we mean, in this survey, that form of custody in which the child spend from 30% to 50% of the total amount of time with the secondary parent.

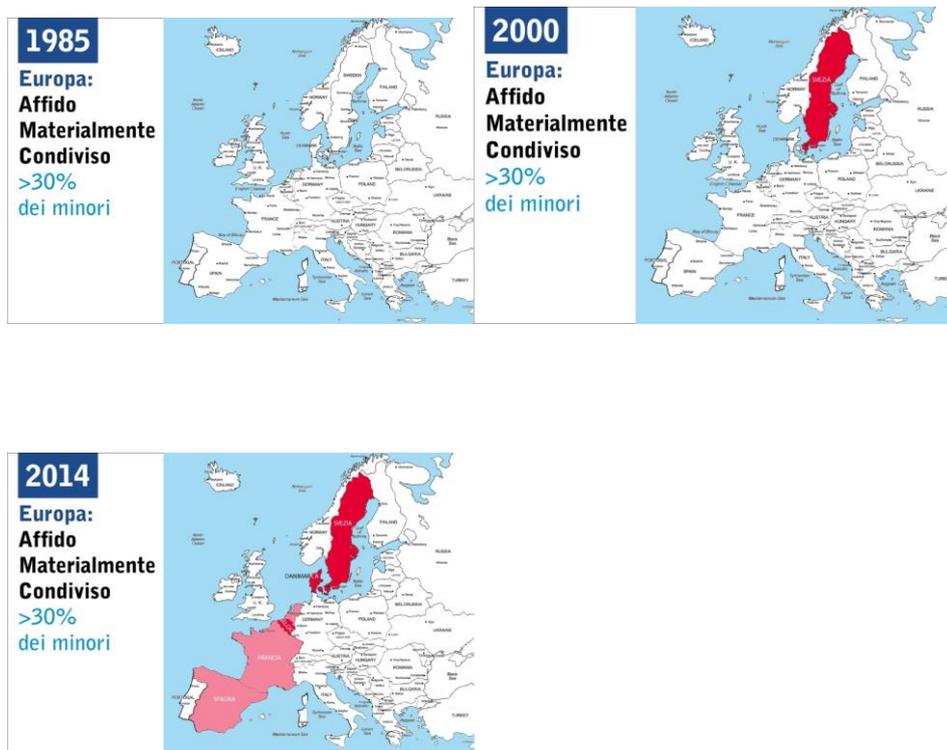
TableIV

Physical shared custody<15%    15%< physical shared custody< 30%    Physical shared custody >30%

Italy, Switzerland, Greece, Austria, Germany	France	Sweden, Spain, Belgium, Denmark
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Czech Republic, Slovakia		
UK, Romania		
Portugal		

Figures 1,2,3: Trend in last 30 years of shared custody (30-33% of the time spent by “less involved parent” ) in Europe:



## CONCLUSIONS

European governments are not able to provide us with concrete, real data about the application of joint custody, as they are only able to give us, and even then not always, official data.

In certain countries, children’s rights to have a stable relationship with both parents is not even respected on the formal level, as established by the Convention on the Rights of the Child (1989).

In some other countries, real data, provided by local associations, show the lack of the respect for such children’s right.

European children are treated differently (and sometimes with clear differences in the fundamental Right to Health) according to their nationalities and the legal system they are subject to.

It is necessary to make practices more harmonised by taking example from most advanced countries.

Considering the consequences on children’s psychological and physical health, this might be possible only by replacing the dominant “sectionalist” legal language with a more universal scientific language allowing all children to have an equal right to health. The author highlight that out of 50 researches published on international reviews with critical revision “peer in review” between 1977 and 2013,

only two showed findings adverse to shared custody , while eleven were neutral or with mixed outcomes and thirtyseven (!) carried absolutely positive results in favour of shared custody. In the fundamental article “Social Science and parenting plan for young children: a consensus report” by George Warshak, that received the endorsement of 110 experts across the world, is clearly reported (after a deep metanalysis of the most serious scientific literature on the topic) that sufficient evidence does not exist to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers.

There are also complaints coming from several actors related to the lack of application of court decisions, which leads hundreds of thousands of children to lose their contact with one of their parents every year.

The consequences of this loss of contact between one of the parents and the child/children will turn out to be heavy on future European generations, both from a biomedical and social point of view (as shown by the best survey carried out so far).

It seems to be clear that children are prevented from having a stable relationship with their male parent and it therefore seems to be a concrete violation of the right to equal opportunities for parents.

*“Children do not care if their parents adopted joint custody, sole custody, parental responsibility. Children only care about the amount of time they will be allowed to spend with their parents after divorce”*

J. Garcia Sanchez.

*“Europe cannot be defined as truly “equal and fair” until it does not ensure the same care and attention for all of its children”.*

Gianadalberto Maria Aquilani (from the book Nel nome dei Figli, In the name of the children)

