

Divided Parents, Shared Children; International and European legal framework on residential co- parenting

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Background of the researcher

- PhD student at Utrecht University (Netherlands)
- Part of the project Divided Parents; Shared Children: a multidisciplinary (socio-legal) study funded by the Dutch Government into residential arrangements and their influence on the well-being of children, parents, and other family members.
- The project includes data collection among 3000 couples
- Thesis focus: legal comparison between England (and Wales), the Netherlands, and Belgium with aspects of sociology and psychology.
- Book to be published in the spring



Terminology

- Parental responsibilities/joint parental responsibilities: *legal* term indicating the collection of rights and duties held by parents aimed at the care for their child or children including the ability to take legal decisions concerning the child
- Joint exercise of parental responsibilities: Division of care in *practice* by both (separated) parents irrespective of the time division.
- Residential co-parenting: a term indicating a *practical* arrangement in which a child or children of separated parents spend roughly equal time with both parents. On average at least 3 nights a week.



Why international legal framework?

- National legislation operates within the international framework
- International instruments influence national law
- Possible source of similarities between different national systems



Binding instruments

- International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Rights of the Child
- European Convention on Human Rights
- Treaty on European Union
- Treaty on the Functioning of the European Union
- Charter on Fundamental Rights of the European Union
- *European Convention on the Exercise of Children's Rights*
- *European Convention on Contact Concerning Children*



Non-binding instruments

- Recommendation on Parental Responsibilities 1984
- White Paper on Principles Concerning the Establishment and Legal Consequences of Parentage
- Draft Recommendation on the Rights and Legal Status of Children and Parental Responsibilities
- *Principles of European Family Law Regarding Parental Responsibilities of The Commission on European Family Law*



Differences between binding and non-binding instruments

- Broad and general scope v. specific topics
- Minimal/consensus based v. eye to the future/promoting change
- Legal capacity of parents v. parental responsibilities
- State and parent oriented v. child oriented



Recurring notions

- Best interests of the child
- The right to know, have contact with and be cared for by both parents
- Protection of family life
- Parental responsibilities
- Child's right to be heard



Emerging trends

- Parental authority → Parental Responsibilities
- Parents' rights → Parents' duties/child's rights
- No distinction between married, non-married or separated parents
- Sole parental authority → Co-parenting



National perspective

- England, the Netherlands, and Belgium: Joint parental responsibilities continue automatically after separation and residential co-parenting possible as a legal model.
- England: The court has the power to make a shared residence order if requested (but is in no way obliged to do so and shared residence does not have to be 50/50)
- The Netherlands: The child has the right to equal care by both parents. Equal care does not mean equal division of time spent with each parent. The parents are obliged to make a parenting plan upon separation. The court can make the parents' residential co-parenting agreement part of (binding) decision.
- Belgium: The court is obliged to consider a 50/50 alternating residential arrangement as the first option if either (or both) of the parents requests this.



More information

- N. Nikolina, "The Influence of International Law on the Issue of Co-Parenting: Emerging Trends in International and European Instruments", *Utrecht Law Review*, Volume 8, Issue 1, January 2012 www.utrechtlawreview.org
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