

# International Platform on Shared Parenting

**[twohomes.org](http://twohomes.org)**

Kick-off Workshop

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## (Nearly) Equally Shared Parenting in Belgium

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# Law tending to privilege the **egalitarian housing** of the child of separated parents and regulating the forced enforcement in matters of child housing 18 JULY 2006

## Civil Code Art. 374 § 2 :

“In case the **parents do not live together** and seize the court with their dispute, the **agreement** on the housing of the children is **homologated** by the court except when it obviously is contrary to the interest of the child.

In the absence of an agreement, in case of joint parental authority, the **court examines with priority**, at the request of at least one parent, the possibility of fixing the housing of the child in an egalitarian way between his parents.

However, if the **court estimates** that the egalitarian housing is not the most appropriate formula, it can decide to fix a non-egalitarian housing.

Anyhow, the court decrees by a specially motivated judgment, taking into account the concrete circumstances of the case and the interest of the children **and of the parents.**”

(Un)evenly divided residence

**Loi tendant à privilégier l'hébergement égalitaire de l'enfant  
dont les parents sont séparés et réglementant  
l'exécution forcée en matière d'hébergement d'enfant**

**18 juillet 2006**

**§ 2. Lorsque les parents ne vivent pas ensemble et qu'ils saisissent le tribunal de leur litige, l'accord relatif à l'hébergement des enfants est homologué par le tribunal sauf s'il est manifestement contraire à l'intérêt de l'enfant.**

**A défaut d'accord, en cas d'autorité parentale conjointe, le tribunal examine prioritairement, à la demande d'un des parents au moins, la possibilité de fixer l'hébergement de l'enfant de manière égalitaire entre ses parents.**

**Toutefois, si le tribunal estime que l'hébergement égalitaire n'est pas la formule la plus appropriée, il peut décider de fixer un hébergement non-égalitaire.**

**Le tribunal statue en tout état de cause par un jugement spécialement motivé, en tenant compte des circonstances concrètes de la cause et de l'intérêt des enfants et des parents.**

# More general information:

## **Study on the Enforcement of Family Law Judgments**

### **National Report of Belgium**

Prof Marta PERTEGÁS Professor of Private International Law,  
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GREENILLE Estate & Trust Attorneys – [www.greenille.com](http://www.greenille.com)

[http://ec.europa.eu/civiljustice/publications/docs/family\\_rights/belgium\\_en.pdf](http://ec.europa.eu/civiljustice/publications/docs/family_rights/belgium_en.pdf)

# Law Proposition concerning the Housing Regulation of Minor Children with their Non-Cohabiting Parents

(deposited by Mr. Guy Swennen)

30 March 2004

“In the absence of such an agreement, the judge, when one of the parents requested it, **enunciates** an in time as equal as possible shared parenting, except when there are **objective** reasons in the interest of the child not to grant it, and determines the domicile.

The objective reasons for not granting this housing regulation are on the one hand the fact that the child not yet has the **age** of three years and on the other hand the **material** impossibility to organise this housing regulation in practice.

The judge circumstantially motivates these objective reasons in the light of the concrete circumstances of the case.”

# JUDGMENTS

## Frequencies

In a 2010-2011 research in 2 Belgian courts concerning 276 judgments in cases in which fathers asked an egalitarian housing (equally shared parenting), this housing regulation was granted in 37 % of the cases. Of the remaining 63 %, an in-between regulation like 9/5 was ordered in 17,25 % of these cases (10,9 % of the total), while in the remaining 82,75 % (52,1 % of the total), the traditional half-of-the-weekends-regulation (or less) was ordered.

Dossier “Intérêt de l’enfant dans le cadre de la loi sur la garde alternée”.

Dossier réalisé avec les collaborations de Céline Lefèvre, Sophie Tortolano, Thierry Riechelmann, Eric Messen. Mental'idées n°19 (février 2013).

Les tendances statistiques des décisions judiciaires en matière d’hébergement, p. 26.

## REFUSING ORDERS

The 200 **motivations** for these 174 refusing orders were (each order could have several motivations; absolute numbers):

1. Young age: 41
2. Order of preliminary social inquiry, study, police inquiry: 34
3. Conflict between parents: 32
4. Need of progressivity: 32
5. Need of permanence/anchorage in the maternal house: 21
6. Inadequate professional time schedules and occupations/distances between domiciles: 20
7. Childrearing deficiencies: 14
8. Material deficiencies: 6



## GRANTING ORDERS

Motivations (89) for the 102 positive decisions:

1. Nothing is opposed to the installment of an egalitarian housing:  
correct conditions in father and mother: 60
2. Need of equilibrated contacts with father and mother: 19
3. Childs opinion for egalitarian housing (more than 12 years): 4
4. No specification of the motivation: 4
5. Egalitarian housing practiced since ...: 2



## PRACTICE in Flanders

“2,207 divorced families in which there was at least one common child at the time of the residential separation.”

“Joint physical custody = child lives at least 33% of time with each parent”

“The frequency of sole mother custody has decreased over time: the incidence has dropped from almost 80% to approximately 53%. This decrease was nearly balanced by an increase in joint physical custody, which has tripled over three decades. The incidence was less than 10% for couples divorced before 1995, but joint physical custody was the arrangement for **33%** of the most recently divorced couples.”

“**cooperative couples** were more likely to have joint physical custody compared to sole mother custody”

“joint physical custody was most likely when children were between 4 and 12 years old” “at the residential separation”.

p.831-833.

An Katrien Sodermans, Koen Matthijs, Gray Swicegood:  
Characteristics of joint physical custody families in Flanders.

*DEMOGRAPHIC RESEARCH*, Volume 28, article 29, pages 821-848, published 16 april 2013.

<http://www.demographic-research.org/Volumes/Vol28/29/>

# PRACTICE

## Changes over time

“The association with the highest change over time was parental conflict. (...) Before 1995 joint physical custody was significantly associated with low parental conflict. For example, parents with joint physical custody arrangements that divorced before 1995 reported a mean conflict score of 3.9, whereas this figure was 4.7 for sole father custody families and 5.6 for sole mother custody families. However, **the association between parental conflict and the custody arrangement was absent** for couples that divorced **after 1995.**”

“joint physical custody became **more widespread** among average-educated parents after joint physical custody had been legally adopted (2006).”

p. 833.

**Thank you for your attention!**  
**Merci beaucoup pour votre attention!**  
**Vielen Dank für Ihre Aufmerksamkeit!**  
**Dank u wel voor uw aandacht!**

**Jan Piet H. de Man**

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