

# SITUATION ON SHARED -ALTERNATING CUSTODY IN ITALY + SOUTH TYROL

DOTT. VITTORIO VEZZETTI

PEDIATRICIAN SCIENTIFIC RESPONSIBLE  
EUROPEAN PLATFORM COLIBRI

President “figli per sempre”

presented by Michael Bockhorni (Väter aktiv)

Kick off Workshop **International Platform on Shared Parenting**  
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# **Law from 8. Februar 2006, Nr.54**

Regulations for the separation of  
parents and the mutual custody of  
children

# **Art.155. - Regulations concerning the children**

Even in the case of personal separation of the parents, the minor child has the right to obtain a balanced and lasting relationship maintained with each parent to obtain from both care, education and training, and receive meaningful relationships with the ancestors and relatives of both parental lines.

# Parental authority ...

... is exerted by both parents. The decisions that are of greater interest i.e. training, education and health of children, are taken by mutual agreement, ... limited to decisions on matters of ordinary administration (daily decisions) the judge may determine that the parents exercise their power separated.

# alimentation

on alimentation of the children each of the parents  
carrying in relation to its own income

- 1) the current needs of the child
- 2) the standard of living of the child during cohabitation with both parents
- 3) the times in which it resides with the respective parent
- 4) the economic resources of both parents
- 5) the economic value of the housework and the care that can be taken from each parent. ... index-backed

# sole custody

The judge can arrange the entrusting of children at only one of the parents (possibly at the request of one parent), if he believes, with reasonable disposal, that entrusting to the other parent is against the interest of the minor.

# inspection at any time

Parents have the right to request at any time disposals concerning the custody of children, the allocation of parental authority and any orders in the amount and manner of contribution to be paid at any time to check the orders.

# Apartment

The allocation of the family apartment and regulations governing the residence, taking into account:

- (primarily) due to the interests of the children
- economic relations and ownership of parents

forfeited if:

- does not live there permanently or ceases to reside permanently in
- in a marriage-like relationship in living or newly married.

Rewriting the agreements / actions

- if one of the spouses changes the residence or domicile and this will have an impact on the exercise of custody rights.



# Mediation

- the judge can give the possibility of a mediation with the help of experts to try to reach an agreement with particular reference to the protection of the moral and material interests of the children.

# Sanctions

In the case of gross non-compliance, which are to the detriment of the minor or interfere with the proper handling of entrusting:

- 1) admonish the not complying parent
- 2) pay compensation against the minor, by the non-compliant parent
- 3) pay compensation against the other parent
- 4) an administrative fine with a minimum of 75 and a maximum of 5000 Euro.

# jurisdiction South Tyrol

- Alimentation: 250 - 350 € / minimum per child (+ costs for the apartment / house)
- contact: once a week one afternoon (with night) + every 2nd weekend + 3 weeks in summer + half eastern holidays + half Christmas holidays + half vacation

The situation in Italy  
- alternating custody under 2%

- sole custody for fathers  
0,8% after the separation and  
1,9% after the divorce

<http://www.istat.it/it/archivio/66665>

25.000 children losses their contact to one of its  
parent (ISTAT)

Court of VARESE “In accord to our jurisprudence the court doesn’t agree about time fragmentation, assuming it’s destabilizing” (Judges Anna Giorgetti, F.Paganini, C.Leotta)

Court for children of MILAN : The changing of domicile and of managing of daily deal causes the loss of steady reference points... Alternating domicile can produce negative effects on minors. (Daniela Guarnieri et al.)

Court for children of TRIESTE: «It’s our steady jurisprudence not allowing the alternating custody, neither if the parents live in different flats of the same building». (Paolo Sceusa et al.)

Court of FIRENZE granted only 2 nights per month with following argumentation: "The joint custody does not mean automatically that the children were living in equal parts with both parents"

Document CSM March 2011 (Dr. Fiorella Buttiglione):  
"It seems to me it can not be, that the child's welfare is served with a double residence mostly, where both parents had split almost an uniformly exact share of hours of childcare"

criticism to two-home model is argued  
with „strong“ terms like „playball“, „parcel“  
„nomad child“, „luggage kid“

# The Italian judge's image of children:

The children, especially teenagers, are lazy and they prefer one living reference point; even more because they don't have the same personal belongings in both houses.

(Official document of Upper Council of Magistracy

<http://www.minoriefamiglia.it/download/RELAZIONE%20CSM%208%20MARZO%20AFFIDAMENTO%20CONDIVISO%20e%20ESCLUSIVO%2027%20marzo.pdf>)

So personal belongings... are more worth than one parent.

Average of time spent, in joint custody, by the  
parent 1 in Italy:  
83% (versus 17%)

Average of overnights:  
for parent 1: 26 per month  
for parent 2 with child older than 3 years: 6,5  
for parent 2 with child younger than 3 years: 2



# BALANCED RELATION?



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•17

# BALANCED RELATION? Under ten years

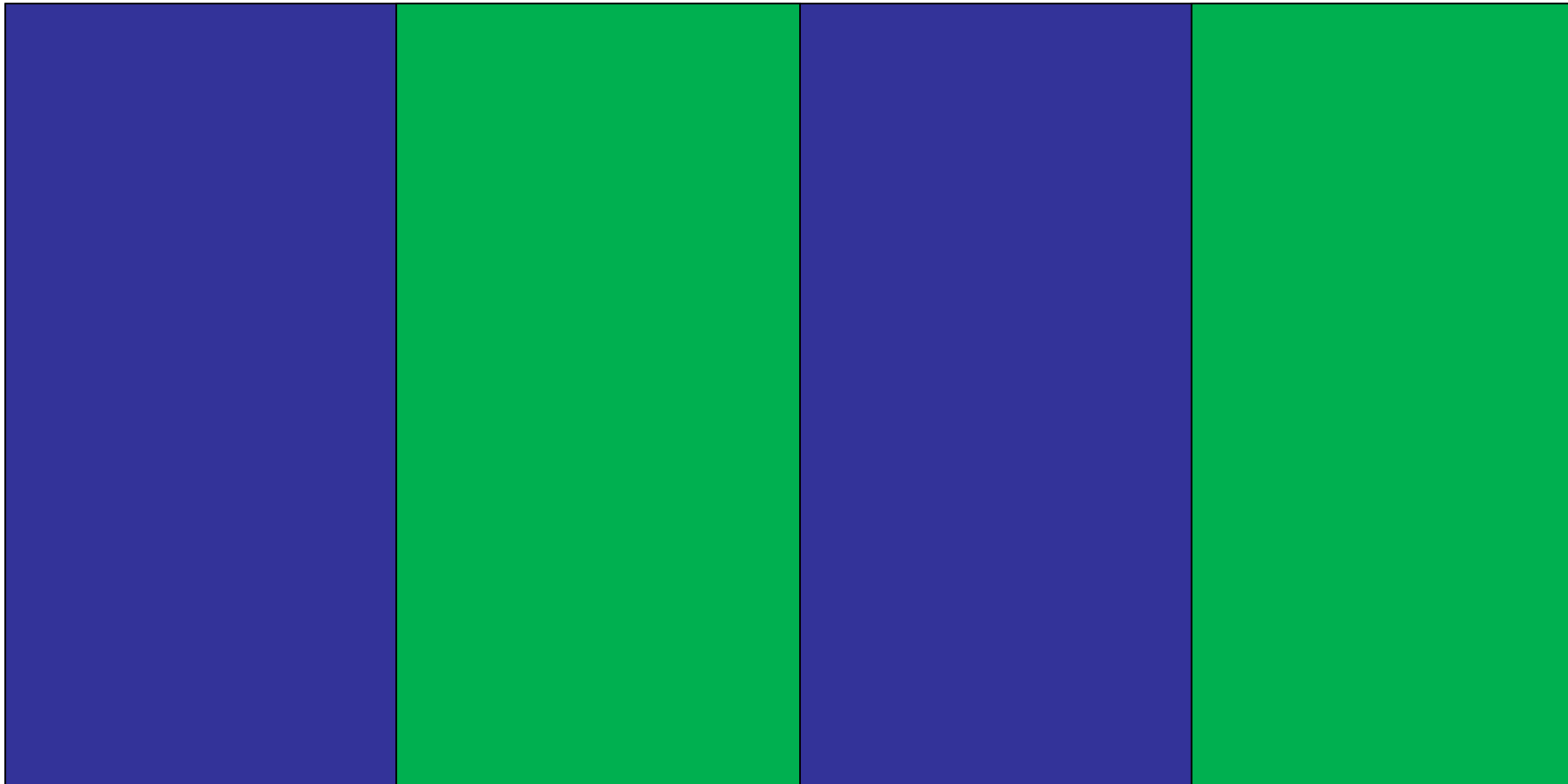


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IN NAME OF STEADYNESS THE JUDGES  
DENY ALTERNING WEEKS:  
4 MOVEMENTS



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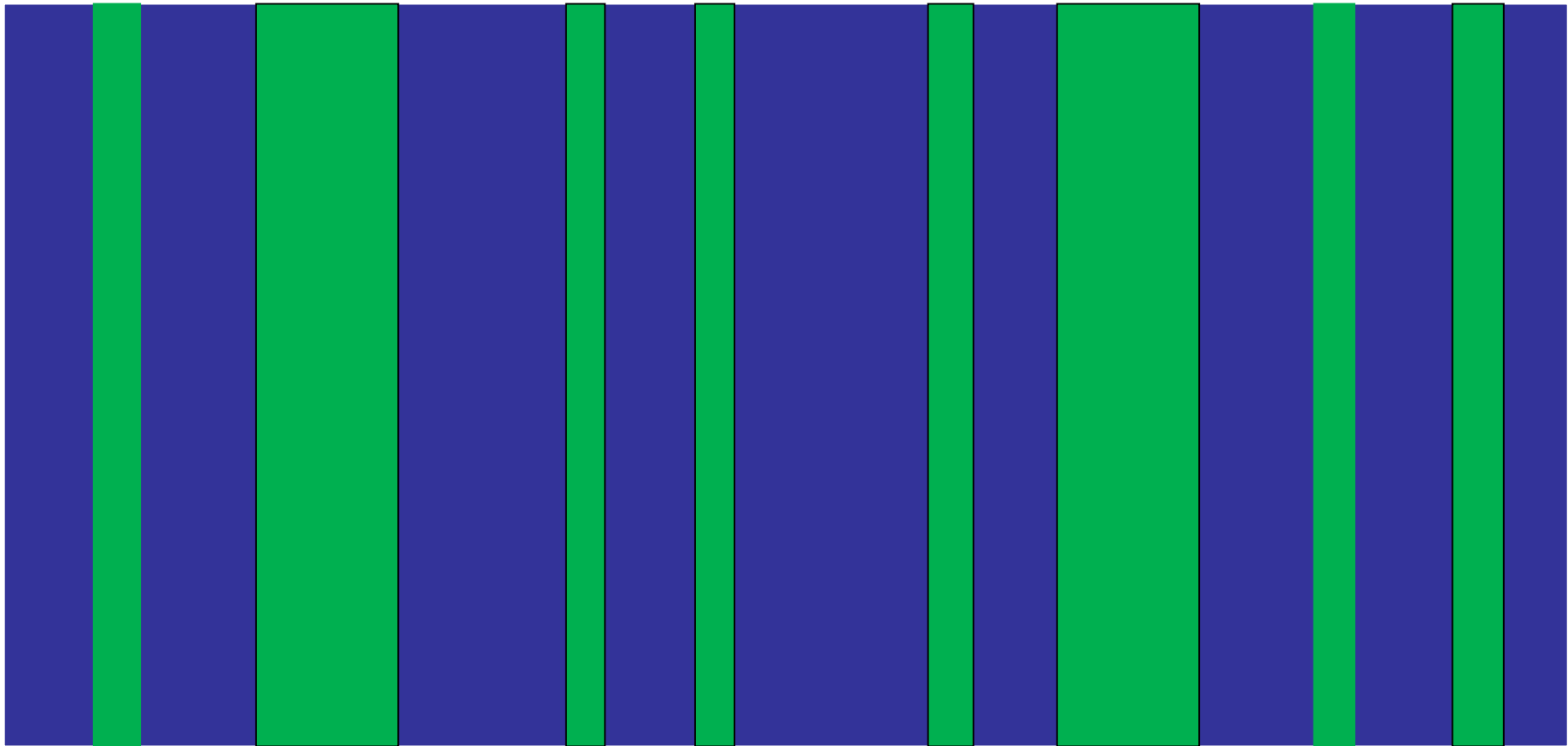
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TWO WEEKENDS AND 6 AFTERNOONS = 16  
MOVEMENTS



# ECJ judgment Lombardo v. Italy

The processing times of the Italian justice system, writes the ECJ, take far too long and this slowness is unacceptable, especially when it comes to children's rights.

The measures also were not allowed to be adopted by stereotypes

Italian judges react inappropriately to the violation of judgments and decisions for visitation

In Italy, there is often only an appealing to the parents not to argue and further handling is delegated to the Social Services, which are unfortunately often inefficient!

Thank you for paying attention  
[vittorio.vezzetti@crs.lombardia.it](mailto:vittorio.vezzetti@crs.lombardia.it)

Michael Bockhorni  
“Väter aktiv”  
Meran / Merano  
[info@vater-aktiv.it](mailto:info@vater-aktiv.it)

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