



**CONCLUSIONS OF ACADEMIC SESSIONS AND WORKSHOPS:**  
**INTERNATIONAL SCIENTIFIC CONFERENCE ON BEST INTEREST OF THE CHILD**  
**AND SHARED PARENTING. DECEMBER 2-3, 2019. MÁLAGA, SPAIN**

**Inaugural Speech**

**JOSÉ MARI TIROL.** Dean of the School of Law of the University of San Agustín. Iloilo. The Philippines.

***“The Philippines. Protecting tomorrow’s hope today: The Philippine legal perspective, from the tender age presumption to the shared parenting”.***

**CONCLUSIONS**

Importance of Spanish civil law in current Philippine law, due to the inheritance of Spanish Law, and its maintenance during the North-American period. In the Philippines divorce is not provided by law. The tender age approach is applied when minor is under 7 years. Shared parenting is possible and there are judicial judgements that decide this type of measure. Remember the words of José Rizal: *A la juventud Filipina, bella esperanza de la patria mía*, in other words protect children means protecting tomorrow’s hope.

**1<sup>ST</sup> ACADEMIC SESSION: BEST INTEREST OF THE CHILD AND SHARED PARENTING. AULA MAGNA.**

**MARTIN WIDRIG.** Associate Professor of Family Law. University of Friburg. Switzerland.

***“The use of child’s best interests standard.”***

**CONCLUSIONS:**

Law system. Art. 6 draft-CRC 1988 (now art. 9 CRC) 1. the States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

Art. 7.1 CRC The child shall ... have the right to ... be cared for by his or her parents.

Art. 18.1 CRC States Parties shall...ensure recognition of the principle that both parents have common responsibilities...

UN system: Art. 23 ICCPR Other systems. Art. 8 and 14 ECHR. Art. 5 Prot. No. 7 to ECHR Resolution 2079 (2015) of the Council of Europe: No need to change the law, but: We need to apply it.

**ALMUDENA MORENO MÍNGUEZ.** Associate Professor of Sociology. Universidad de Valladolid; **MARTA ORTEGA GASPAS.** Lecturer in Sociology. Universidad de Málaga; and **ANA MARÍA LÓPEZ NARBONA.** Lecturer in Sociology. Universidad de Málaga.

***“Family structure, parental practices and child subjective well-being in post-divorce situations: The case of shared parenting.”***

**CONCLUSIONS:**

In order to obtain a deep knowledge about the real application of Shared custody researchers and social scientists will need to check or follow up about ‘children well-being’. A relevant limitation is, How to check the compliance of the agreements?

Our study: Highlights the need of a consensus around: The concept Joint Physical



Custody, shared-parenting (place of residence, shared time arrangements...) Best interest of the child, children wellbeing (objective and subjective indicators, and an index are needed). And the methodology: Size of the samples, Unit of analysis(separated, divorced, no-married parents) Age/gender of the children. Conflict or not between parents...

**It shows a lack of surveys and Databases** (Solsona and Spijker 2016, underlined the limitation of the current data because they don't offer information about parental sharedtime plan, neither of the application of the plan).

## WORKSHOP 1A ON BIC

**MARÍA DOLORES CANO HURTADO**, Profesora de Derecho Civil. Universidad CEU Cardenal Herrera (CEU-UCH) Alicante, Spain

**“Shared Parenting Vs. Change Of Address Of A Progenitor”**

### CONCLUSIONS

FIRST.- The right to relate is configured as one of the most important in legal-affiliate relations. When parents live together with their children, the relationships between them flow naturally within the framework of daily living, and the emotional ties that arise between them. The problem in the exercise of this right of relationship is generated when there is a break in the coexistence of parents. In these cases, it will be determined how the relationship regime between the children and the parents will be configured from that moment. There is no doubt, and this has been determined by our Supreme Court, that the system of shared custody has many advantages in the exercise of this right to relate, compared to the attribution of custody to only one of the parents and the determination of a regime of visits for the other. However, apart from other issues to be assessed, and always of course prevailing the best interests of the child, one of the requirements to apply for shared parenting is by its own configuration the distance of the domiciles of the parents, as has repeatedly stated by the Supreme Court. The problem arises, when in the exercise of article 19 of our Constitution, one of the parents intends to change their domicile making the maintenance of shared parenting unfeasible, which implies the attribution of custody to one of the parents and a right of visit in favor of the other, thus producing a substantial modification in the exercise of the right to relate. There is no doubt that the change of address falls within the content of *patria potestad*, and when it is exercised jointly, both parents must agree on everything related to this issue.

SECOND.- When the parents do not agree on these circumstances, the solution passes through the courts. You cannot give general solutions, but you will have to be in the specific case looking for an *ad hoc* solution. It is a very complex judicial decision, which will decisively affect the child's future life. In any case, it must always be adopted respecting the principle of the best interests of the child following criteria such as the roots to the place of origin or new destination, emotional ties with the parents and other relatives and relatives, psychosocial reports of specialists ... etc., but always giving entry to the child in these procedures, since as the new wording of article 9 of Organic Law 1/1996 of January 15, on the Legal Protection of Minors, has the right to be listened.



- Mauricio Alexander Piper Speaker - Consultant - Papas Academy. Germany. *The Missing Key in Parenting*
- Carmen Florit Fernández Departamento de Ciencias Jurídicas y políticas Facultad de Ciencias Sociales y de la Comunicación. Universidad Europea *Custodia compartida y statu quo*

## WORKSHOP 1B ON BEST INTEREST OF THE CHILD

**ELENA AVILÉS HERNÁNDEZ.** Criminal Law Researcher, Faculty member School of Law. University of Málaga, Spain.

***“Best interest of minors children in “Daeshis” families: a picture of the most vulnerable groups in a postconflict situation”***

### **CONCLUSIONS**

It is crucial that the guarantee and protection of human rights prevail over any political or governmental decision; this is where the solidity, or not, of the rule of law on which the democratic system is based will be ascertained.

If we keep looking the other way based on the fact that the problem is "someone else's", these children, who are now the most vulnerable group in this situation, will become the new generation of ISIS.

**CRISTINA DÍAZ-MALNERO FERNÁNDEZ.** Abogada y mediadora. Presidenta de la sección de Derecho de familia y matrimonial del Colegio de la Abogacía de Barcelona, Barcelona, Spain.

***“Factors of share custody with breastfed children. The situation in Spain”.***

### **CONCLUSIONS**

The balance between all the benefits of breastfeed and the right of the child to have a relationship with his/her parents is the key point. **A) Factors for shared custody with breastfed children: A.1** Resolutions in which the court considers that share custody is **not suitable** in case of breastfed children. CA Balears18/02/2015. Therefore, the custody is granted to the mother and the judge fix a regime of visit for the father usually every day during two or three hours. During the six first months of life, considering by the World Health Organization, in order to achieve a correct growth and health. Some decisions do even consider that no overnight is possible for these children with the one parent. **A.2** Resolutions in which the court considers that share custody **is suitable** and do protect the interest of the child even using formula nutrition or breast pump, considering that the child has the right to be cared by both parent, even during breastfeeding. CA Cordoba 8/06/2016. **A.3.** Resolutions in which the courts consider that shared custody **is possible but in a progressive way**: in these decisions, the judge do fix first a custody for the mother and, once the breastfeeding is finished, shared custody is decided. These are mixed decisions as sometimes it is very complicated to know or even to decide when the breastfeed has to stop. Therefore sometimes the mothers do decide to breastfeed till the age of 2 or 3 of the children, and the shared custody is not achieved



**MARÍA ROSA GARCÍA VILARDELL.** Associated Professor of State Ecclesiastic Law. Universidad CEU Cardenal Herrera (Centro de Elche). Elche-Alicante, Spain.

***“The Best Interests Of The Child And Religious Freedom: Disputes Between Progenitors”***

### **CONCLUSIONS**

Without forgetting that in situations as sensitive as those that concern us, we will have to face the specific circumstances of the case, it is possible to approximate some observations around the issue raised.

In case of conflict between the child's will and the religious beliefs chosen by the parents to form him, the child's decision takes precedence, provided he has sufficient maturity. A different question is when the difference in criteria occurs between the parents themselves, with respect to the religious formation of the common children, and we are faced with young children, in respect of whom it is not yet possible to imagine an autonomous exercise of their right to freedom. religious.

In this direction, the jurisprudence is unanimous in stating that the religious beliefs of the parents cannot be taken into account, by themselves, as a determining factor for the modulation of the rights of parental-filial relations.

More complicated are the conflicts caused by the wills faced by the parents regarding the education of the child in a particular religion. However, the recent reform of the LOPJM has introduced two elements that, in the matter at hand, seem of essential relevance for the correct interpretation of the minor's interest: first, the opinion of the minor, which must be taken into account in all decisions that affect you and regardless of age; and, secondly, the identity of the child, which must be preserved in order to guarantee its harmonious development. This communication finds its origin in the paper: GARCÍA VILARDELL, M.R., “El ejercicio conjunto de la patria potestad en el caso de progenitores no convivientes: conflictos en torno a la formación moral y religiosa de los hijos”, en PÉREZ VALLEJO, A.M. (Ed.), *Estudio multidisciplinar sobre interferencias parentales*, Dykinson, Madrid 2019, pp.47-73.

**JOSÉ MANUEL MARTÍN FUSTER** Researcher at the Department of Civil Law. University of Málaga, Spain.

***“The Best interests of the child in the jurisprudence of the Spanish Supreme Court”***

### **CONCLUSIONS,**

Judgement of the Spanish Supreme Court of 8 October 2009 (STS 623/2009): Spanish Civil Code contains an open clause that obliges to apply SP as a rule in order to guarantee the best interest of the child. In order to decide a SP system should be taken into account the following circumstances: Previous behavior of parents and relationship with their child, wish of the child, number of children, fulfilment of parental duties, previous agreements of parents, distance between domicile of parents, report of professionals, and other criteria that inform who to achieve a child's prosperous life

## **2<sup>ND</sup> ACADEMIC SESSION: SOCIOECONOMIC PROFILE OF SHARED PARENTING**

**GERARDO MEIL LANDWERLIN.** Full Professor of Sociology. Universidad Autónoma de Madrid. Spain.

***"Socioeconomic profile of parents with shared custody in Spain.”***

**CONCLUSIONS:** The main conclusions that can be drawn from the information we have analyzed is: 1) That gender roles changes in the family seem to affect substantially



the probability of opting for shared physical custody 2) That the application of the best interest of the child when deciding custody doesn't revolve in a preferred maternal custody for very small children. 3) The present analysis is subject to numerous limitations, particularly the limited information gathered on the separation process, the socioeconomic conditions of both parents and their caring practices. Further research should take into consideration not only these characteristics, but also the availability of other resources for balancing working and family lives and in particular the role played by grandparents (grandmothers)

**RAUL RUIZ CALLADO**, Associate Professor of Sociology, Universidad de Alicante Universidad de Alicante. Spain and **RAFAEL ALCÁZAR RUIZ**, Lecturer in Sociology, Universidad de Alicante. Spain.

**"Shared custody as a social construction in changing process & Social factors assessments in cases of shared custody disputed."**

### **CONCLUSIONS**

Shared parenting is a social construction. There are different interpretations of this abstract concept made by different social agents. In addition, there are experts, lawmakers, political groups, and social movements try to define its content in accordance with a specific social and cultural context. 1) In respect to the shared parenting, it is necessary to use the same terminology in a global scenario. Concepts as shared parenting, parental responsibility, contact or access differ from one country to another. From a sociology perspective this is a handicap for comparative studies.

2. When awarding shared custody are used different criteria by the law. These criteria are the basis for social empiric studies, and give guidelines to determine this controversial concept.

3. In all the legal systems the wishes of children are deemed to be a decisive and significant criterion to award shared parenting. It is a priority that the minor feels free to give his/her opinion. Therefore, it is very important to detect possible parental interferences.

## **WORKSHOP 2A ON SOCIOECONOMIC PROFIL**

**JESUS MARTÍN FUSTER** Researcher at the Department of Civil Law. University of Málaga, Spain.

**"Shared custody and economic interests"**

### **CONCLUSIONS**

There is a wide number of different cases. Judgement of the Spanish Supreme Court of 15<sup>th</sup> July 2015. (391/2015): SP is an ideal and preferable situation. Any measure adopted to achieve a SP regime should be considered positive, unless there is evidence that is in detriment of the child.

Judgement of Spanish Supreme Court of 10 October 2018 /516/2018), SP is not an award or a penalty, but the most adequate system, that should be adopted always to favour the best interest of the child.

Other decisions: Judgement of the Appeals Court of Madrid 12 March 2019 (224/2019) in this case the father was considered to suffer personality disorder.

Judgement of the Appeals Court of La Rioja of 9<sup>th</sup> February 2019 (43/2018): The fact of being a debtor is not an obstacle to exercise a SP system.



**SANDRA INÉS FEITOR** Lawyer, Lecturer at Lisbon Law University. Organization: SIF law office. Lisbon, Portugal.

**“Shared Residence Presumption in Portuguese Legal System”**

**CONCLUSIONS**

**Project of Portuguese Law 1882/XIII/4:** Proposes the establishment of «...a principle which dictates that the Court should favor the model of shared residence regardless of parental agreement, where this corresponds to the best interests of the child, when considering all relevant circumstances...»

**Project of Law 1190/XIII/4:** Proposes the establishment of a legal presumption «...the principle of shared residence of the child in the event of divorce, legal separation, declaration of invalidity or annulment of the parents' marriage by amending the Civil Code...»

**Project of Law 1209/XIII/4** Proposes to lay down the terms and conditions under which the Court may determine the regime of alternate residence «...The Court may determine the shared residence of the child with each parent, as agreed upon by each other, or, having regard to the circumstances and the best interests of the infant, as determined by the court...»

According to the **Final Report of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees on 20.03.2018**, «... the arguments put forward by the petitioners are convincing that shared residence corresponds to the best fulfilment of either the right of each parent to exercise parental responsibility or the child's right to during their personal development both parents...». The **Supreme Judicial Council has given its opinion in 08 November 2018**, according which «...except powerful reasons, shared residence of children from separated parents should be with both of them, in a alternately adapting to each case...».

In the same sense the **Supreme Council of Public Prosecutors, has given its opinion in 10 October 2018**, according which implementing shared residence in Portuguese legal system it is appropriate in light of European Council of Europe Recommendation analysing each case.

**ANNELIEN JONCKHEERE.** Psycho- en kindertherapeute, Belgium.

**“Shared parenting in strained relations between parents? How can we help traumatized parents to take their responsibility for the best interest of the child?”**

**CONCLUSIONS:**

Take your own responsibility. Do not only blame the other person, but communicate and practice what you preach;

- Fahad Siddiqi Lawyer. Organization: Child Custody Law Services In Pakistan, Lahore , Pakistan *Fair Play Natural Justice And Due Process In Child Custody Proceedings*
- Jani Turunen. Senior lecturer. Organization: Sodertorn University Huddinge, Sweden. *The Socioeconomic Gradient of Shared Physical Custody: Contrasting Sweden and Spain*

**3<sup>RD</sup> ACADEMIC SESSION: SHARED PARENTING AS PREVENTIVE OF PARENTAL ALIENATION, AND SOCIOLOGY**



***EDWARD KRUK. “Shared parenting as preventative of parental alienation.”***

Associate Professor of Social Work at the University of British Columbia. Canada.

- **CONCLUSIONS:** Effects of Alienation on Children. 1) Poor self-esteem, depression and self-hatred. 2) Disrupted social-emotional development: withdrawal, isolation, social anxiety. 3) Low self-sufficiency; lack of autonomy; dependence on parent 4) Poor academic achievement 5) Poor impulse control; struggles with addiction and self-harm.

Parental Alienation as Family Violence and Child Abuse: Intervention. 1) Family reunification and therapeutic programs 2) Child protection response 3) Legal sanctions for contact refusal

Shared Parenting as Preventative of Parental Alienation. 1) *Practice with Children:* Children’s wishes should not be determinative; Hold the alienating parent accountable; Development of critical thinking skills; Call their bluff; Challenge distorted views of targeted parent. 2) *Practice with Targeted Parents:* Educate about parental alienation, Validate parental identity, Support self-care and recovery efforts, Maintain the high road, Never give up

**Prevention:** Shared parenting as the foundation of family law: A rebuttable legal presumption of equal shared parenting

***JOSEF A. MOHR. “Parental alienation and shared parenting in litigation and consultation.”*** Certified Family Law Attorney. Munich, Germany

**CONCLUSIONS:**

The court’s objective must be to eliminate the imbalance in power between the parents and to quickly restore the attachment relationship between the child and the target parent. Imbalance of power is linked to superiority of one parent. For an alienating parent superiority is already achieved when he or she is feeling more important for the child than the other one, and when he or she is thus given more parenting time.

Shared parenting, especially symmetrically shared parenting sets boundaries to such behaviour. It puts both parents at an equal level. Even if they do not practice cooperative parenting, nor neutral parenting but uncooperative parenting, in a shared parenting setting none of them may claim that he or she is more important than the other parent or superior to him. In shared parenting settings, the child, at least, can continue to profit from both parents.

Again, parents who have substantial deficiencies in their parenting ability, will harm the child in any kind of parenting settings. In such cases, it must be considered to substantially reduce the contact of the deficient parent with the child or even to suspend the contact. This has nothing to do with the question whether shared parenting or single parenting with visitation should be granted. It is rather a matter of effective intervention in the given case or of leaving the child in the abusive situation.

***DIEGO BECERRIL RUIZ,*** Associate Professor of Sociology, Universidad de Granada and *Jose Jimenez Cabello,* Associate Professor of Sociology. Universidad de Granada. Spain  
***“Legislation, divorce and shared parenting”.***

**CONCLUSIONS:**

Legal impact on Divorce: it is not possible to define a predominant position of the legal impact on the divorce rate: **-There is impact:** Friedberg, 1998; Glendon, 1989; González & Viitanen, 2006; González & Marcén, 2012; Kneip & Bauer, 2009; Chiappori, Ivygun & Weiss, 2007. **-There is no impact or it is very small:** Gray, 1998; Phillips, 1988; Sepler, 1981.



The central axis of this discussion is derived from methodological or conceptual issues (Por ejemplo: Sepler, 1981). **A)** Investigations that prove the impact of the law: Allen & Brinig, 2011; Atteneder & Halla, 2007; Böheim, Francesconi & Halla, 2012; Blasio & Vuri, 2013; Solsona, Spijker & Ajenjo, 2016. **B)** In general, shared custody has been strongly favored after legal reforms, its presence has increased progressively **C)** Legislative changes have other consequences detected (greater degree of agreement or not, less emotional costs, etc.).

-After adoption of SP laws, the shared custody has grown for a period of two years. (Evidence: Spanish Autonomous Community that have adopted SP laws) However, Balearic Islands Autonomous Community is where shared custody has grown the most, and it has not its own SP regulation.

On the other hand, in the case of separation of homosexual couples, the SP rate is more than 80% irrespective of being in a territory with or without SP law. It is possible to deduce that the impact of the SP regulations is not so important as previously thought.

## WORKSHOP 3A ON PARENTAL ALIENATION/SOCIOLOGY

**EIVIND MELAND.** Professor emeritus and Family Physician. Organization: University of Bergen. Bergen, Norway

***“The mutual importance of good relations with both parents”***

### **CONCLUSIONS**

Main conclusions from our longitudinal cohort study: 1) Divorce impacts the confidence in conversations only with fathers. 2) Fathers and mothers mutually important for preserving subjective health and self-esteem after divorce. 3) The conversational confidence with fathers is especially important as it predicts deterioration of health and self-esteem and impacts the childrens vulnerability for health and self-esteem loss after a divorce experience

Implications of two studies from Sogn og Fjordane in Norway: Stronger efforts on a societal level, in welfare politics and the justice system, should be performed in order to preserve paternal relations and confidence after divorce

**PAIVI HIETANEN.** Advisor. Organization: The Federation of Mother and Child Homes and Shelters, divorce and children services. Helsinki, Finland.

***“The Cooperative Parenting Triangle as a tool”***

### **CONCLUSIONS**

*”Co-parenting after the divorce. It’s taking care of the child, together. It’s talking to each other, even though you don’t always want to. It means compromises, flexibility and openness. Our main aim, as parents, is the welfare of our children. And that is something I sometimes have to remind myself. It’s trust, that both parents have the same goal and the goal is the best interest of the child. It’s understanding that our marriage is over but we must do our best together, so that our children feel themselves loved.”*

**SILVIA DANOWSKI.** Psychological Expert Witness in the Family Court. Organisation: Self Employed, PASG-Member. Dresden, Germany

**“Professional co-operation and successful family court interventions in cases with access refusal and access boycott in Germany”****CONCLUSIONS**

Detection of Interference with Parental Relationship: Preceding requirement: There used to be a loving relationship and bond between the child and the now rejected parent. 1) Campaign of denigration: utter rejection of the parent, willingness to report on that. 2) Weak frivolous absurd reasons for rejection. 3) Lack of ambivalence 4) „Independent thinker” phenomenon: Example: „I figured it out on my own. It is my free will not to see my father again. Mom has nothing to do with that“. 5) Reflexive support of the alienating parent in the parental conflict. 6) Apparent absence of guilt about cruel and harsh treatment of the rejected parent and no empathy with that parent: Example: „Dad doesn't deserve to see me.“ 7) The presence of borrowed scenarios: „Dad is reckless with money and a womanizer.“ Rejection of extended family of rejected parent

**JESPER LOHSE.** World Parents Organization, Denmark.

**“The World’s first Gender Equality catalog for Children and Fathers”****CONCLUSIONS**

New Family Law: **The 3 basic principles:** *Level A:* All children and parents are equal as the basic assumption. *Level B:* The parents have a free choice to make their own arrangements. *Level C:* A family court with children experts can make decisions in case of concern by parents or authorities in the best interest of the child.

**The 10 basic rules:** **1** All children have a life-long right to know and be cared for by their parents. **2** All parents have the right to the same public information about the child. **3** All children have the right to 3 months parental leave with each parent. **4** All parents have shared custody. **5** All children that are not living together with both parents have living address at both parents and equal parenting time. **6** All parents share the income and cost of the child unless there is not equal or almosty equal parenting time. Then one parent is financially responsible alone based on a standard child allowance from the other parent. **7** If a parent moves more than 80 kilometers away from the child's place of residence, the other parent as the basic assumption has the living address of the child and the parent that moves away is responsible for transportation of the child. **8** The parents can make another agreement on parenting time and child finances if agreed. **9** If there is concern for the child by a parent or authority, the case is handled by a family court with children experts and a certified contact person is appointed for the child. **10** The family court can make decisions based on equality, documentation and the best interests of the child. All allegations of criminal offenses are handled by the police. Gender or any type of discrimination related to children is regarded as psychological violence.

- Celia Lillo. Psicóloga , mediadora familiar y coordinadora parental (Psychologist, family mediator & parenting coordinator) . Organización: Clinique de psychologie Celia Lillo Montréal Qc, Canada *Parental Alienation and Shared Custody: Challenge or Ideal Situation?*

**NICOMEDES RODRÍGUEZ GUTIÉRREZ.** Juez Sustituto adscrito al Tribunal Superior de Justicia de Andalucía. Huelva, Spain.

***“El plan contradictorio en la solicitud de custodia compartida”*****CONCLUSIONS**

The decisions on custody of children should be based on judicial scrutiny (motivadas). Therefore, the judge can study the case in accordance with the contradictory parental plan presented by the parents. The problem arises when the parents does not present any plan. The Law does not require to present this plan when asking for the custody of children, however it should be legally required. In any case the Spanish Supreme Court has stated that it is a duty of the parents to specify how they want to exercise their parental duties.

**WORKSHOP 3B ON PARENTAL ALIENATION/SOCIOLOGY**

***Carmen Rosa Iglesias*** Profesora asociada doctora del Área de Derecho Civil, Departamento de Derecho Privado. Universidad de Salamanca, Spain

***“El síndrome de alienación parental y el "friendly parent" como ejemplos de perversión del sistema”*****CONCLUSIONS**

During a long period of time two different theories enjoyed particular success: “Parental alienation Syndrome” and “Friendly Parent”. The former was referred as cases in which one parent, usually the mother, used to manipulate the will of the common child in order to take him/her closer to her objectives. The latter implied that the court decided in favour of the gentler parent, who was awarded with the custody of the child. Therefore, the important was that the parent would be friendly and collaborative. This implied a punishment or regard approach.

Nowadays our Courts state that the decision about the custody of the child cannot depend on a punishment/regard schema. On the contrary, open criteria should lead to determine the application of the best interest of the child. There is a certain risk of putting the child on a situation of dominance due to biased arguments. It is necessary a detailed study of every case, taking into account all the circumstances, and decide proportionate measures.

***JORGE GUERRA GONZÁLEZ*** Profesor / Asistente científico / Director de proyecto, Leuphana Universität Lüneburg, Germany.

***“Shared Parenting and Politics: the Background of Equal Opportunities in the German Shared Parenting context”*****CONCLUSIONS**

Not justice for one half at the cost of the other... in whatever field. For my part - it is time to fight for justice... for everyone. It is not about reducing women protection. It is about making necessary corrections that will directly benefit women... and everyone else. Otherwise, new political balance: e.g. political energy is energy and cannot disappear... - the next gender revolution could be arriving from the far right side of politics - So... if you do not agree... let us hurry. “Darkness cannot drive out darkness: only light can do that. Hate cannot drive out hate: only love can do that” Martin Luther King Jr. A Testament of Hope: The Essential Writings and Speeches

- Sonia Jordán Almeida Abogada del ICALPA desde 1998 y Profesora Asociada de la ULPGC desde 2015 (Doctora en Derecho desde 2005). Las



Palmas de Gran Canaria, Spain *La custodia compartida de hijos con discapacidad en España. Análisis jurisprudencial*

## 4<sup>TH</sup> ACADEMIC SESSION: RECENT EVOLUTION OF SHARED PARENTING IN A COMPARATIVE SCENARIO

**LLUIS FLAQUER.** Emeritus Professor of Sociology. Universidad Autónoma de Barcelona.

*"Shared parenting after separation and divorce in Europe."*

### **CONCLUSIONS:**

1. We must pay attention to the presence of stepparents and stepsiblings in the households where children involved with shared residence are living. These children are experiencing various transitions and their number may possibly impinge on their well-being levels. The key finding that in joint physical custody the presence of step parental figures may be more frequent than in other family arrangements tells us about the possible greater resilience of two home children.
2. If we focus on the study of divorce, our scope of observation is limited and we are only visualising the middle classes. In Spain nearly half of dissolutions of unions with children are separations of unmarried couples. Wide gaps in the shares of dissolutions by mutual consent are unacceptable because high rates of contested separation are barring the way to joint physical custody.
3. One of our conclusions is that the growth of shared parenting after separation or divorce has to do with widespread and comprehensive gender equality. It remains to be seen whether the promotion of shared residence creates more gender equality or the extension of gender equality allows for or demands more equitable family arrangements after separation or divorce. At any rate, both terms are most likely to make progress by means of a virtuous circle.
4. As far as I know, not a single Eurobarometer have been issued on shared parenting [after separation or divorce]. Activists promoting joint physical custody should lobby not only for the harmonisation of national legal divorce systems, but also of statistical standards concerning the collection of information on this issue. The existence of equivalent indicators could help us to understand the operation of mechanisms underlying the desired and adverse outcomes.

**JOSÉ MANUEL DE TORRES PEREA.** Associate professor of Civil Law. Universidad de Málaga. Spain.

*"Evolution of recent regulations on shared parenting in Western countries."*

### **CONCLUSIONS:**

It looks like as if after three decades of research the main questions on shared parenting are still waiting for a response • Study coordinated by Smyth in 2017: A) In spite of the fact that presumptions of equal time are not welcome by lawmakers, there are several countries that promote shared-time arrangements as a starting point, always conditioned by the best interest of the child and safety of family members. B) During the first two decades of XXI century shared-time arrangements have gradually increased in the global scenario. This popularity should be due to a broader social, cultural and legislative change.



Terminological diversity provokes hard difficulties in interpreting the different legislations.

- In fact, shared parenting is a term that can be expressed and interpreted as shared-time parenting, or even joint physical custody, shared custody, shared care, shared residence, alternative residence, co-parenting, with dependence on each state regulation.

- Nevertheless, the concept may also differ. Shared parenting is a term that may involve a broad **range** between 25% and 50% of the time that a child spends with each parent. Therefore, the definitions also differ from one legislation to another. (not necessarily sleeping over at home). However in Austria, Belgium and other countries it is estimated that SP implies a third of the time which each father (33%).

- The attempt to transpose conclusions of data from a specific country to another may be a risky activity. It is a dangerous task to imitate models when social and cultural backgrounds diverge between different cultural scenarios. Girard has pointed out the risks of imitating another's wishes and ways of life. The best legal model should be the one based on serious and reliable data.

- *Juergen Rudolph*. "**Shared parenting in the Cochem Court Practice**" German judge. Cochem. Germany.
- *Ryan Jeremiah Quan*, "**Philippine Perspective on Shared Parenting and Best Interest of the Child**" Program Officer, Graduate Legal Studies Institute, Ateneo de Manila University School of Law

## WORKSHOP 4A ON COMPARATIVE STUDY

**KAREN NIERNAN** CEO. Organization: One Family | [www.onefamily.ie](http://www.onefamily.ie) Dublin Ireland.

### **"Shared Parenting in Ireland"**

#### **CONCLUSIONS**

Issues of Concern to One Family: 1) Ireland is far behind our neighbours in the provision of high quality family law as well as the understanding and supporting shared parenting. 2) The process has been mainly privatised and left to parents to resolve all the issues in relation to children, finances, homes etc. 3) There are many negative and positive experiences from parents and families figuring it out by themselves. 4) We need a comprehensive Court Welfare Service and a statutory Child Maintenance Service as a minimum

**CSABA KISS ATTORNEY**, child protection activist. Organization: Father-Heart Association / Divorced Fathers Association. Budapest, Hungary

### **"Shared Parenting - Challenges in East-Central Europe"**

#### **CONCLUSIONS**

New Hungary Civil Code: 2013. 15 years of codification Hiatus of international/ European family law experience and law practice in the new Civil Code: 1) Lack of ex lege shared custody (fundamental right) after divorce or separation. 2) Part-time fathers: custodial and visitation parent stays torn apart powered by the system. 3) Shared parenting is possibility due to Civil Code. Without cooperation of one parent—no chance of shared custody/parenting. 4) Lack of cooperation not examined. Super power of mother in civil proceeding. 5) Shared parenting: in case of mutual consent and agreement. 6) Any claim: the „better parent” will „take it all”. 7) Reference to expert opinion only, without evidence provided. 8) The mediation procedure and its



consequences are only optional. 9) Basic right to access both parents(children) and custody(parent) still decided by judicial practice, but not the law 10) Fundamental law and international

Slovakia: New Family Law Code 2010. 1) Default shared parenting: weekly change Cooperation enforced 2) Decrease of divorce cases by 60% 3) No use and purpose of triggering fathers / other parent. 4) Custodial Office reports directly to Courts on parental cooperation and abilities. "But man is not made for defeat. A man can be destroyed but not defeated." Ernest Hemingway

- Simona Vladica, Doctor in Psychology, University of Bucharest, Romania. *Legislative regulations in Romanian legislation in the context of the need to reduce and / or stop the phenomenon of parental alienation*

**IAN MAXWELL NATIONAL** Manager Families Need Fathers Scotland / Both Parents Matter. Edinburgh Scottish Charitable Incorporated Organisation, United Kingdom  
***"Putting Shared parenting into Scottish Family Law"***

**CONCLUSIONS**

Collecting public opinion: Would you support a change in the law to create a presumption of shared parenting, meaning children spend half their time with each parent unless there is good reason not to? Yes: 81,5%, No: 18,5%

**JAN PIET H. DE MAN**, Child and Family Psychologist, Accredited Family mediator, European Institute for the Best Interest of the Child.

***"Development of Children under shared parenting after divorce or separation"***

**CONCLUSIONS**

1) Adapting the arrangements to the **individual case** is done mainly by the **parents themselves** (if necessary with the help of mediation), more than by the judge. This has the huge advantage for the children's best interests, that the parents are very much stimulated to elaborate peaceful **win-win-win** joint arrangements, not to fight and win (?) or lose in court. This way, the children become the 3rd winners instead of the 2nd losers –or the 3rd ones, together with one of their parents-

2) The positive effects of changing the court practices (by introducing new legal rules) is shown by the 2018 Kentucky "Shared Parenting Law". "The law **created a starting point that both parents have equal child custody time** if the parents are fit caregivers. (...) Kentucky's family court caseload and domestic violence cases had been rising (...). But, in early July 2017, that trend abruptly stopped and family court cases and domestic violence filings began declining. Why? July 2017 is when Kentucky implemented a partial version of the shared parenting law. The next July, Kentucky's full-blown shared parenting law took effect and the family court caseload and domestic violence filings dropped further. (...) The year before Kentucky had any shared parenting laws, beginning July 14, 2016, and lasting 365 days, there were 22,512 family court cases filed.



## WORKSHOP 4B ON COMPARATIVE STUDY

- Naina Athalye. National trainer Child protection, safeguarding at Kindernothilfe e.V. India. *The Participation Of Children And Other Good Practices For An Inclusive Judicial System : A Discussion Paper Exploring Issues Of Child Protection*

**CRISTINA CALLEJÓN HERNÁNDEZ** Contratada Predoctoral FPU . Organización: Universidad de Jaén. Jaén. Spain. *Régimen de visitas o comunicación en supuestos de inhabilitación especial para el ejercicio de la patria potestad vs interés superior del menor*

### **CONCLUSIONS**

Art. 46 of Spanish Criminal Code establishes a penalty of special disqualification (*inhabilitación*) and removal of parental responsibility (*privación de patria potestad*). The latter is thought for most serious crimes in relation specially with the minor's sexual integrity. The former, for crimes against the family relationships. In spite of the fact that both penalties imply the removal of all the rights related to the parental authority, the correlative obligations persist. The difference is that the special disqualification is temporal; therefore, once the penalty elapses the parental responsibility is recovered. In fact, the right of contact is configured as a right for child and parents, and a duty only for parents. Therefore, it could be possible to keep the relation between parent and child in spite of being the first one convicted. However, this contact is less frequent in case of removal of parental responsibility. This is due to the fact that the removal implies the commission of a serious crime; therefore, it should be advisable to prevent the relationship between child and parent. The final conclusion is that in case of special disqualification or removal of parental responsibility, cannot previously be affirmed that if the family links are going to be maintained or not. On the contrary, each case will depend on the special circumstances in accordance with the best interest of the child principle.

**PALOMA FERNÁNDEZ-RASINES** Sociology and Social Labour Department Researcher at the Universidad Pública de Navarra. Pamplona, Spain  
***"Transnational Shared Parenting After Divorce"***

### **CONCLUSIONS**

Recent literature devoted to how co-parenting after divorce is affecting children rights in Spain and Ecuador, as countries linked by significant migration flows during the past two decades in Spain, and Navarra particularly. Discussion here is addressed to see how new regulations on shared residence and joint physical custody are fostering children's wellbeing by challenging gender roles imbalance, principally regarding transnational families.

## 5<sup>TH</sup> ACADEMIC SESSION. ALTERNATIVE DISPUTE RESOLUTION ON SHARED PARENTING AND JOINT PARENTING PLAN



**HILDEGUND SÜNDERHAUF**, Family Law Professor. Evangelische Hochschule Nürnberg. Germany

***“Mediation and shared parenting”***,

**CONCLUSIONS:**

1. The legal principle of Shared Parenting rises the chance to find a shared parenting solution by mediation.
2. Mandatory mediation makes no sense if one parent is more likely (by gender) to win the main physical custody.
3. „Best Alternatives to Negotiated Agreement“ explain why the legal principle of Shared Parenting and mandatory mediation must be linked together.
4. Australian experiences proved that a law reform can make a change in society and reduce court proceedings.
5. After the council of Europe resolution no. 2079 (2015) all European countries need to develop their family law towards Shared Parenting and mediation.

**YOLANDA DE LUCCHI LÓPEZ-TAPIA**, Associate Professor on Procedural Law. Universidad de Málaga. Spain; and **MARIELA CHECA CARUANA**, and *Mariela Checa Caruana*. Psicóloga Técnico del servicio de Atención Psicológica de la UMA. Psychologist. In charge of UMA Psychological assistance. President of Association “Filio

***“Other ADR on shared parenting”***

**CONCLUSIONS:**

Other ADR on shared parenting: Negotiation. Collective work. Arbitration (not in Spanish Law). Mediation. Parenting coordination. 1) Costs of high conflict divorces: Consumption of judicial resources. Collapse of Courts. Judges deciding not lawful disputes. Children affected (major cost) 2) What is parenting coordinator? Child-centered dispute resolution service that assists parents in developing and implementing workable parenting plans or court orders when they are unable to do so on their own. 3) How does parenting coordinator work? The court appoints a parenting coordinator with a double objective: Prevention of potential litigation, helping families. If the litigation finally reaches the court, judges will be assisted in their decisions by the parenting coordinator, acting as an expert witness. 4) Parenting coordinator in Spain today: First appeared in US and Canada (late 90s). Progressively developing and fully implemented now in many countries. Spain: First used by Provincial Court of Barcelona, confirmed it. Tribunal Superior de Justicia. Many courts are appointing parenting coordinators. Absence of a legal frame yet. Documents suggesting the best use of parenting coordination. 5) Consequences of the absence of a legal frame: Can the parenting coordinator make decisions? Can parents discuss a parenting coordinator decision? What happens if parents do not comply with the decision? Who is going to be the parenting coordinator? Who is going to finance parenting coordination? For how long should the parenting coordinator be appointed?

**BELÉN CASADO CASADO**, Lecturer in Civil Law. University of Málaga.

***“Joint Parenting Plan and Shared Parenting”***. ***“Plan de Parentalidad en relación con la guarda conjunta”***.

**CONCLUSIONS:**

In recent years, courts have upheld shared custody claims in most cases, due to consideration as a rule of general application with exceptions. We understand that under this general rule the courts are opting for a presumption of convenience of this measure for the interest of the child. We can therefore state that



the jurisprudential criteria already established over the years to assess the opportunity for shared custody are not being considered, at least not with priority, only if the presumption is intended to be undermined.

On the other hand, it is highly doubtful that it can be argued today that shared custody should be the measure of general application because it is the most beneficial for the child without incurring interpretation.

There are also recent rulings that understand that changing doctrinal and social views could lead to an amendment of measures. This is how demands for shared custody are increasing considerably. If widespread application might prove doubtful, it would be less acceptable to build on this basis a review of the earlier pronouncements from the prism of generality, based solely on the change of doctrinal opinion on the matter.

Shared custody is imposed as a safeguard of the child's interest, but it is also a mechanism that indirectly protects the interests of parents. Widespread joint custody would only be timely when it is intended to safeguard the interests of the child, which are the prevailing in any case; it is not suitable when, under the idea of protecting the child, the personal interests of parents, contaminated by other particular interests such as economic interests, are also being protected; and this is the case with the custody of children, since it constitutes the direct or indirect initial basis for the determination of measures of economic content, such as the pension of food or the attribution of the use of housing.

There is also a trend towards the equal distribution of the functions that come with the exercise of parental authority. The term parental co-responsibility refers to this. The desirability of the sharing of parental responsibilities after the break-up, the idea of equality in the distribution, the greater involvement of both parents, the increased social awareness towards the equality of rights-duties in the interests of the child and in the interest of his parents, should not necessarily happen because there is also a similar distribution of periods of coexistence with the child.

The parental plan should become an instrument of widespread and imperative use for self-regulation and for equality in the sharing of parental

## WORKSHOP 5A ON ADR AND SHARED PARENTING

- Esther Alba Ferre Profesora Dra. De Derecho Civil Universidad Europea de Madrid. Spain. *Parentality Coordination As A Solution To The High Family Conflictivity And The Protection Of The Minor*

**BEATRIZ VERDERA IZQUIERDO** Full Professor of Civil Law. Universidad de las Islas Baleares. Palma de Mallorca, Spain

*“La edad y la madurez como conceptos clave en el estatuto jurídico del menor”*

### CONCLUSIONS

Se ha puesto de relieve la sobrevaloración y abuso del término interés del menor en el Siglo XX cuando, en determinados Ordenamientos, como es el español no estaba concretado sino sólo formulado en términos muy generales.

Las leyes de infancia y adolescencia españolas de 2015 han servido para precisar y delimitar el término estableciendo una serie de *criterios y elementos* para su identificación en cada supuesto particular, poniendo especial énfasis en la edad y madurez del menor como conceptos clave y con ello, en los conceptos autonomía progresiva y capacidades especiales. Es decir, la capacidad del menor de: sopesar, comprender, evaluar, actuar y asumir las consecuencias.



- Bernd Dr. Evers *The Augsburg Business Modell in Separation and Divorce*

**LOVISE GRAPE** PhD Candidate, Clinical psychologist. RKBU North, UiT Arctic University of Norway. Tromsø, Norway

*“Children’s statements about changes in living arrangements following separation and divorce in the context of mandatory family mediation in Norway”*

### **CONCLUSIONS**

In general, most parents and children in mandatory family mediation in Norway usually agree on what living arrangement to live with following separation or divorce. The individual views of children about living arrangement preferences varies, which contradicts with any fixed regulation about time-sharing between parents following parental break-up. By exploring the similarities or differences between the living arrangement preferences of children and parents, we have the opportunity to get to know different perspectives in a family on what is the best interest of the child.

- Elena Goñi Huarte Profesora de Derecho Civil. Universidad Europea Madrid, Spain. *The Reasoning Of Judgments About Joint Custody*

## **WORKSHOP 5B ON ADR AND SHARED PARENTING.**

- María del Mar Villanueva Martín Facultad de ciencias de la Educación UMA. Málaga, Spain *Educar en el respeto mutuo a través de la custodia compartida*

**BEATRIZ GARCÍA FUELLO** Profesora de Derecho Romano, UMA, Malaga, Spain. *“The concept of pietas from roman law as an element of parental custody in case law”*

### **CONCLUSIONS**

We know that *patria potestas* competed exclusively to the *paterfamilias*, as he was head of the household. The classic jurispudent does not seem to deny the mother the attribution of potestas, it just qualifies her as “unequal” in front of the paternal power, without clarifying if this lack of equality is in reference of the nature of the power, or the degree or the content or the form of exercising it.

However, in situations in which the mother was vulnerable, both parents were on an equal footing, thanks to the roman pietas. This is stated in a fragment written by Ulpian, taken from the Digest, part of the Corpus Iuris Civilis (D. 27,10,4). In this fragment, the concept of pietas has a double perspective: on one hand, it is used to attribute the curatorship of the mother to the son or daughter, with no distinction between genders, and the children are chosen before any other male relatives, being appointed as curators.

On the other hand, some degree of *auctoritas* is recognized to the mother on the offspring: it entitles the mother to advise their children and it also implies the duty of obedience the children owe to the mother. And although this is more of a moral power, rather than a legal one, it was a socially accepted position by everybody. Other possible economic implications should be taken into account, as the mother could be *sui iuris* and holder of wealth.

Correspondingly, parents must assume the duties in respect to their children, with the same foundation and at the same level of commitment, at least in regard to the legitimate children: “until the child was seven years old, more or less, he or she was under the immediate care of the mother, who was responsible (specially during the



Republic) of the upbringing of her children, as abundant literary sources refer to, naming Aurelia (mother of Cesar) or Hacia (mother of Augustus) as examples. The important educational perspective takes place in the family, which to Romans meant the foundation of society, as it would imbue the child with moral principles which, in turn, he would apply during his adult life. Tacitus states *in gremio matris educari*, which means that the mother is in charge of monitoring all the manifestations and spontaneous reactions of his children in running, in playing, in speaking, either to correct them or to praise them. Hence it is said the son “obeys and respects his mother throughout his whole life,”. Even Catón said “we rule over all men, but are ruled by our women”.

Seneca refers to a power attributed globally to both parents, as it would need the cooperation of both of them to face the burden of the responsibility and the function entrusted to them.

In the sixteenth century, Jean Coras (in his *De iuris arte libellus*) when dealing with divine precepts, refers to godliness, to define pietas as a concept close to religion, which is understandable considering the historical context. Under the term “*parentum*”, the mother is included.

Bonfante, a romanist from the twentieth century explains how PIETAS progressively developed partly with an ethical character, and in another one with an economic perspective.

- José Luis Sariego Morillo Abogado. Organización: Miembro de la ICSP Sevilla, Spain *Yatrogenia in family processes according to the custody model*
- David Romero Benguigui. Licenciado en Psicología. Málaga, Spain *Influencia de la mediación en los regímenes de visita*

## 6<sup>TH</sup> ACADEMIC SESSION: SPANISH PERSPECTIVE

**KEPA AYERRA MICHELENA**. “*Reflections on Shared Parenting. Evolution, current state and concept*”. Attorney. Lecturer in Civil Law. Universidad de Deusto. Bilbao. Spain.

### **CONCLUSIONS**

Is Shared Parenting a beneficial option for children? In which cases is SP acceptable and under which requirements? Different research studies offer contradictory conclusions. As well, some commentators recommend it, and others prefer the sole custody. It is necessary to make a greater effort to research and clarify the real consequences of the application of SP on child’s welfare, and the recommended duration of the stay of the child with each parent. In respect to the recently adopted Spanish Law 15/2005 it is not sustained by any study or data analysis, what it is an important lack taking into account the importance of this Law on Children and teenagers.

**MARÍA LUISA MORENO-TORRES**. “*Maintenance guidelines in case of shared parenting.*” “*Derecho de alimentos en el supuesto de guarda conjunta*”. Professor of Civil Law. University of Málaga.

### **CONCLUSIONS**

In respect to the parental maintenance duty in cases of shared parenting, it would be useful not to change the current regulations. In fact, it is not necessary to adopt specific



laws to rule this matter. Moreover, is not desirable a legal distinction between extraordinary and current expenses. However, in practice, this is a common legal distinction.

- José María del Río Belmonte, “**Social workers in the context of the shared parenting**” *Trabajadores sociales en el ámbito de la custodia compartida*. Director of the legal Department of the Diputación Provincial de Málaga

**JOSÉ PASCUAL ORTUÑO MUÑOZ**. Magistrado de la Audiencia Provincial de Barcelona. JUDGE at the Provincial Court of Barcelona.

“*Judicial Problems on shared parenting*”. “*Problemas judiciales custodia judicial*”

### **CONCLUSIONS**

Guidelines on Shared Parenting decisions: 1) Best interest of the child principle is the main criterion to decide about the child’s benefit. This is established by articles 92, 156 and 159 of SCC and the Spanish Children Act (LO 1/96). This makes necessary a close judicial scrutiny of the circumstances in each different case. Therefore, there is no place for general presumptions. 2) The main requirement required by a SP regime is the real capacity of both parents to exercise the parental duties and responsibilities in order to guarantee the best interest of the child. The court must check the evidence of the existence of this capacity. 3) It is necessary that the two parents are able to keep a relationship based on a minimum mutual respect. Therefore, SP parenting is not possible when there is violence and the child may be a direct or indirect victim. It is not necessary a penal sentence to value violence; the civil court can get evidence thereof. 4) The domiciles of parents should be relatively close. A distance that jeopardizes the possibility to attend classes regularly is not compatible with the BIC. 5) Both parents should be able to distribute the time they share with their child. The labour duties can be a barrier to access to the SP, however a flexible formula could be adopted. Grandparents can support parents in the care of the child, but they cannot substitute them. 6) The child’s opinion is relevant but not determinant. Especially if the child is mature enough and he is not under pressure or influence of the parents. 7) Distribution of time between parents should be flexible. Currently, it is on trend to divide the week in two parts, what is acceptable and useful for parents and children.

## **WORKSHOP 6A ON SPANISH LAW**

**ANA PRIETO DEL PINO**. Faculty member. Criminal Law. Profesora Contratada doctora Derecho Penal UMA. Málaga, Spain

“*Financial Abuse: Alimony in Shared Parenting Plans as a Preventive Measure therefor*”

### **CONCLUSIONS**

The advantages of shared parenting and its compliance with best interest of the minors could be jeopardised by the threat of economic abuse, whose manifestations, despite their severity and harmfulness, are not usually perceived and labeled as violence. Domestic and gender violence, either direct or vicarious (that is to say, extended on the victim’s children or other relatives), include economic abuse, which can be defined as behaviour that is coercive, deceptive or unreasonably controls another without their consent and in a way that prevents them from being financially autonomous. As a



consequence of its frequent underestimation, pre-existing economic-abusive situations could be disregarded and maintained under the cover of shared parenting agreements. The Spanish Supreme Court decision dated February 11th 2016, should not be considered only an expression of the High Court's commitment to preserve and strengthen joint custody plans. Charging ex spouses with alimony in cases of remarkable disproportion in terms of financial resources can prevent them from causing harm to their former partners and their children, paradoxically, under the cover of the best interest of the minor.

**JUAN DE DIOS REYES RASCÓN** Contratado Predoctoral FPU  
Departamento de Derecho Financiero y Tributario. Facultad de Derecho. Universidad de Sevilla. Spain **ANTONIO CUBERO TRUYO** Professor of Finance Law, University of Sevilla

***“Effects of the shared parenting on the tax deductions in the personal income tax”***

**CONCLUSIONS**

Art. 82.2 of LIRPF (*Personal Income Tax*) states that nobody can be a member of two different family units simultaneously, what may be a problem in the case of shared parenting. However, the art. 61 LIRPF says that if there are two taxable people that have a right to a fiscal deduction due to the fact of exercising the shared parenting of a child, this benefit will be divided in two equal parts. In addition, art. 81.1 Bis establishes the same solution in case of the deduction due to the fact of existing a numerous family.

Finally, art. 64 LIRPF says that if a parent, has not the abovementioned benefit but pays maintenance for a child, he will have the right of a reduction in his/her tax duties.

**JÉSICA DELGADO SÁEZ** Abogado- Doctora en Derecho privado  
Villares de la Reina, Salamanca, Spain.

***Shared custody and child alternation***

**CONCLUSIONS**

Shared parenting system does not imply an equal division of care time between parents. On the contrary, it seeks an equitable distribution of time in accordance with labour timetables, as Judgement Spanish Supreme Court of 12<sup>th</sup> September 2016 (RJ/2016/4435) says.

Moreover, the decision of the Spanish Supreme Court of 4<sup>th</sup> April 2018 (RJ/2018/1182) states that a minor of four years old can be under a shared parenting system. Furthermore, the decision of the Provincial Court of Salamanca of 8<sup>th</sup> December 2018 states that a nursing baby should be under maternal custody until he/she reaches the age of 3.

The judgement of the Spanish Supreme Court of 15<sup>th</sup> July of 2015 (RJ/2015/3004) says that if there is not agreement between the parents about the way to exercise the shared parenting, they must distribute the time that they stay with the child weekly, being this the general rule. However, in other cases the distribution has been decided fortnightly, quarterly or even annually, as in the case of the decision of the Spanish Supreme Court of 29<sup>th</sup> of November of 2013 (RJ/2013/7449)



**MONTSE SOLSONA PAIRÓ.** Demógrafa. Profesora titular, UAB CED, Universitat Autònoma de Barcelona (UAB). Centre d'Estudis Demogràfics Universitat Autònoma de Barcelona,. Bellaterra, Barcelona, Spain  
***“Joint physical custody beyond court orders: the case of Spain”***

### **CONCLUSIONS**

Joint physical custody has increased considerably since 2009, although exclusive custody of the mother is still predominant (Solsona & Spijker, 2016). This trend is explained mainly by the introduction of specific laws that foster (Solsona, Spijker & Ajenjo, 2017).

Previous research in Spain is mainly based on judicial data.

Our research questions are three: How many couples chose verbal agreements instead of undergoing a judicial proceeding? Are married couples more prone to undergo a judicial proceeding, comparing to cohabiting ones? Do cohabitant couples choose joint physical custody in a higher proportion than married ones?

The data: Encuesta sobre Custodia Compartida (CUCO2019 Survey), conducted in six Spanish Autonomous Communities. Sample: 750 (375 women and 375 men with a union disruption with minor children occurred in the period 2010-2017).

Main results: 19,6 % of the respondents reported not undergone a judicial proceeding; Although cohabiting couples are more prone get to verbal agreement, like married couples, 18% of them follow a contentious judicial process; Joint physical custody is (slightly) higher for married couples than cohabiting ones in Courts, but not in Verbal Agreement.

### **WORKSHOP 6B ON SPANISH LAW**

**ALBERTO PELÁEZ MORALES.** Abogado. Presidente de Hogar Abierto.

***“Intervención familiar por orden judicial en procesos de separación y divorcio”***

### **CONCLUSIONES**

Debo concluir, reafirmo el convencimiento de todos los profesionales que trabajan en Hogar Abierto acerca de los beneficios de la intervención familiar post-ruptura. En la mayoría de los casos las relaciones intrafamiliares han mejorado sensiblemente, aunque queda pendiente la realización de una evaluación de los resultados alcanzados. En todo caso, aunque la terapia no concluya con éxito, tenemos la tranquilidad de que se ha realizado un trabajo con los padres que les ha hecho tomar conciencia de su grave responsabilidad en la instrumentalización de sus hijos y en el daño irreparable que el no deponer su actitud va a causarles. De manera que son ellos, cada uno de los progenitores litigantes, quienes tienen en su mano el bienestar de sus hijos y quienes deben tomar la decisión de poner el interés de los menores por delante de cualquier otra consideración; quienes pueden crear un clima de respeto y concordia hacia el otro progenitor que permita a sus hijos un desarrollo emocional pleno y equilibrado, de manera que puedan construir vínculos afectivos en el futuro y no llevar consigo durante su vida la carga emocional de la ruptura mal resuelta de sus padres.

- Antonio Videra García Profesor de Psicología Social. Facultad de psicología UMA. Málaga, Spain. *Custodia compartida en la sociedad española del Siglo XXI: condicionantes científicos, sociales y políticos*



**M<sup>a</sup> AMALIA BLANDINO GARRIDO** Profesora Contratada Doctora, (acreditada a Profesora Titular). Universidad de Cádiz, Spain *La atribución del uso de la vivienda familiar en los supuestos de custodia compartida*

### **CONCLUSIONS**

Art. 96 of Spanish Civil Code rules the allocation of family dwelling in cases of shared parenting. This article is being interpreted in a very flexible way by the Supreme Court. In fact it is trying to make compatible the interes of the child and the patrimonial interest of parents. This flexible application of this rule in connection with the social reality makes possible not to allocate the family dwelling when the child does not need it due to the fact that his/her needs of accommodation are sufficiently covered

## **CLOSING SESSION**

**ROBERTO GARCÍA ALFONSO**. Director of the Family Department of the Malaga Bar Association. Spain.

### **“Shared Parenting in daily praxis”**

#### **CONCLUSIONS**

The conclusion of the AEAFA Family Law Observatory (March 2019) are: 79% of family attorneys consider that the adaptation of children to a SP system is regularly satisfactory or very satisfactory. In addition, the level of conflict in cases of SP is strongly lower than in cases of sole custody, what implies a lower level of judicial conflict.



### **FINAL GENERAL CONCLUSIONS:**

- 1) Joint physical custody has increased considerably since 2009 in a global scenario, although exclusive custody of the mother is still predominant
- 2) Need of common concepts: Concepts as shared parenting, parental responsibility, contact or access differ from one country to another. From a sociology perspective this is a handicap for comparative studies.
- 3) The legal principle of Shared Parenting rises the chance to find a shared parenting solution by mediation. Mandatory mediation makes no sense if one parent is more likely (by gender) to win the main physical custody.
- 4) The court appoints a parenting coordinator with a double objective: Prevention of potential litigation, helping families. If the litigation finally reaches the court, judges will be assisted in their decisions by the parenting coordinator, acting as an expert witness.
- 5) The application of the best interest of the child when deciding custody doesn't revolve in a preferred maternal custody for very small children
- 6) The best legal model should be the one based on serious and reliable data.
- 7) Need of Eurobarometer issued on shared parenting [after separation of divorce]
- 8) It is necessary to make a greater effort to research and clarify the real consequences of the application of SP on child's welfare, and the recommended duration of the stay of the child with each parent. More research and objective data are required.
- 9) The main requirement required by a SP regime is the real capacity of both parents to exercise the parental duties and responsibilities in order to guarantee the best interest of the child. The court must check the evidence of the existence of this capacity.
- 10) It is necessary that the two parents are able to keep a relationship based on a minimum mutual respect.
- 11) Shared parenting system does not imply an equal division of care time between parents. On the contrary, it seeks an equitable distribution of time in accordance with labour timetables
- 12) Presumption in favour of shared parenting could be a useful starting point. In this way it could be acceptable to defend the fact that a rebuttable presumption is based on the reality, that reflects the usual way in which courts decide. The debate is focused on the compatibility of this presumption with the child's welfare principle.
- 13) Not justice for one half at the cost of the other... in whatever field. It is not about reducing women protection. It is about making necessary corrections that will directly benefit women... and everyone else.
- 14) The decision about the custody of the child cannot depend on a punishment/regard schema. On the contrary, open criteria should lead to determine the application of the best interest of the child
- 15) The parental plan should become an instrument of widespread and imperative use for self-regulation and for equality in the sharing of parental.
- 16) The level of conflict in cases of SP is strongly lower than in cases of sole custody, what implies a lower level of judicial conflict.



17) How can we help traumatized parents to take their responsibility for the best interest of the child? Take your own responsibility. Do not only blame the other person, but communicate and practice what you preach;