

Benefits of post-divorce shared parenting and the situation in the Netherlands, Belgium and Germany

Drs. Peter Tromp, Father Knowledge Centre Europe, February 4, 2008

1. Introduction

Good morning Mr. Chairman. THANK YOU' for ARRANGING this meeting and offering me an opportunity to speak.

Let me introduce myself. My name is Peter Tromp. I am a child-psychologist from the Netherlands and I represent the Vaderkenniscentrum (Father Knowledge Centre Europe in English).

Father Knowledge Centre (Europe) was originally set up by Dutch voluntary-sector NGO "Stichting Kind en Omgangsrecht" (the Dutch Foundation for Children, Access and Equal Parenting), which was founded in 1989.

Father Knowledge Centre forwards the cause of equal parenting and keeping both parents involved in children's lives after divorce and separation. It works with policy makers, campaign groups, lobbyists and reformers and is aimed at making knowledge and information available about the role, the contributions and the efforts men and fathers are making in children's lives and in raising and educating (their) children. Whether that is in the family - both before and after divorce - or in any of the other living environments where children grow up, like childcare and education. The aim is to have these contributions and efforts of fathers better acknowledged and supported on the social policy level. The mode of operation (to these effects) are on both the Pan-European as well as the national levels in Europe.

I now would like to speak to you about the benefits of post-divorce shared parenting for children. Also I would like to give you brief introductions to the situation of - and the developments in - shared parenting in Dutch, Belgian and German family law. Before starting of however I would like to apology upfront for any mistakes made in my English and I would kindly like to request you to grant me some patience in that respect and ask clarification directly if anything stays unclear because of the language.

2. The benefits of post-divorce shared parenting

If we look at what available scientific research tells us what the best interests of children are after divorce or separation, then the picture cannot be clearer.

Comparing the outcomes for children growing up in shared parenting, having regular contact with and care from both parents after divorce or separation, with the outcomes for children growing up in sole care of only one of the parents, generally the mother, then children growing up in shared parenting do much better. After intact two-parent families, post-divorce shared parenting families for children prove to be the next best situation for growing up

Better outcomes for children

And those better outcomes for children also emerged in research that controlled for pre-existing levels of conflicts between the parents as self-selecting factor for shared parenting. From meta-analysis on 33 underlying separation researches Bauserman (American Psychological Association, 2002) concluded, that children growing up in a form of shared parenting with frequent contact with and care from both parents, had less behavioural - and emotional problems, exhibited higher levels of self-worth and self-confidence, were better capable of building and preserving social contacts and relations, both within and outside the family and performed better at school, then children who had grown up in sole care of one of the parents.

Children growing up in shared parenting of both parents after divorce and separation did so much better than children growing up under sole care of one of their parents, that shared parenting after separation by far proved to be "second best" for children and for them best approached the ideal situation of an intact family.

From a range of other researches it further became clear, that children growing up in shared parenting of both parents develop better, are more satisfied, prove to be better adapted and adjusted and have more self-confidence and self-worth in comparison with children who growing up in sole care of one of their parents (Nunan, 1980; Cowan, 1983; Pojman, 1982; living barrel, 1983;

Noonan, 1984; Shiller, 1984.,1986; Handley, 1985; Wolchik, 1985; Bredfield, 1985; Öberg & Öberg, 1987).

From a Harvard study on 517 separation families over a period of 4 years wide, children growing up under post-divorce shared parenting proved to be less depressed, exhibited less unadjusted behaviours, and achieved better school results than children growing up in post-divorce sole care. (Buchanan, Maccoby, Dornbusch, 1996.)

Also **boys** growing up in shared parenting, proved to have less emotional problems than boys growing up in sole care (Pojman 1982; Shiler 1986).

Interest of the child

From a point of view of the interest of the child the current practice of sole care in family law should therefore be considered quite incomprehensible.

The available research shows that children growing up in sole care, mainly fatherless and with their mothers in mother-headed families, do much worse than children growing up in shared parenting.

Children growing up fatherless in single-parent families have more depression complaints, use more and earlier drugs and alcohol, get more accidents and more often commit suicide, than children growing up in the care and with the involvement of both parents. (Swedish population study into the consequences of single-parent families on children, Ringbäck Weitoft, Hjern, Haglund, Rosén, 2003).

Children (0-12) growing up in fatherless single-parent families have a greater risk to a life in poverty, run more risk on physical, emotional and sexual abuse, more often become runaways from home, have a greater risk of becoming homeless youth, have more risk on health complaints and have more problems at school and in their social contacts with others.

Teenagers growing up in fatherless single-parent families have a greater risk of teenage-pregnancy, to end up in (youth)crime, to smoke, to use alcohol and drugs, of playing truant, to be suspended, of becoming drop-outs and ending their school careers at an early age school, and of getting adaptation problems.

And young adults, having grown up in fatherless single-parent families, stand a greater risk of not having finished a proper vocational education, earning lower incomes, becoming jobless and in need of benefits, at risk of becoming homeless, or of getting involved in crime, of developing chronic emotional and mental-health problems, of developing general physical health complaints, and sooner have cohabiting relations, more often have extramarital children, only to end up in separation and divorce more often. (Meta-study experimenting in living, The fatherless family, 'Civitas', O'Neill, 2002).

And recently also a consistency has now been determined between growing up in fatherless single-parent families and the prevalence of ADHD at children (Strohschein, 2007).

Less conflicts.

Moreover, from the meta-study by Bauserman (APA, 2002) it became clear that, in contrast with what is frequently claimed about shared parenting, the number and levels of conflicts between the parents strongly diminished in comparison with the number of conflicts in situations of sole care with access arrangements. So also that highly contributes to better child welfare and well being.

British teenage-girls having grown up in sole care indicated themselves to get stressed out and overloaded by the separation problems of their parents, especially caused by the call on them by their caring parent, in 90% of the cases the mother, for support in the fight concerning the children, put up with the other parent after divorce and separation. (Bliss survey, 2005: Girls take strain or parents' split)

Moreover, not only the parents prove to run into less mutual conflicts in shared parenting arrangements. Also children growing up in shared parenting appear to

have less conflicts with their parents, than children growing up in sole care of one parent (Karp, 1982).

Children want it themselves

By antagonists of shared parenting it is further claimed, that proponents of shared parenting only argue from the point of view of the parents and do not take the interests and wishes of children concerned at heart. From child-research in which children themselves are questioned on their preferences however, it became clear that children themselves also most prefer shared parenting and care from both their parents after separation (Fabricius, 2003). Children themselves most want to preserve and maintain their relations with both parents after divorce and separation. They consider having narrow links and bonds with both their parents as being important to them, and growing up in shared parenting leaves them more satisfied than growing up in sole care. (Kelly, 1993).

Less allegiance conflicts (less loyalty conflicts)

It is frequently claimed that children growing up in shared parenting arrangements with both parents do not have a place and home of their own (do not take away the children's home it is claimed). Children in shared parenting arrangements are pictured as being constantly underway between houses and as being continuously exposed to allegiance conflicts. Available research however also shows a different picture in this respect. Children are more flexible - within reason of course - than we think them to be. What is more important to them is keeping their relations with both parents. (Steinman, 1981, Luepnitz, 1986, Shiller, 1986, Coller, 1988, Tornstam, 2000).

Less divorces and separations

Finally, the more shared parenting arrangements are to be implemented instead of sole care after separation, the less parents are inclined to go for a divorce as post-divorce shared parenting also proves to be a valuable incentive for keeping two-parent families together when possible. (Brinig, et al, 2000) And also that is in the best interest of children, as all of the available research shows that intact

two-parent families are still the best and most ideal setting for children to grow up in and flourish.

To come to a first conclusion:

Overseeing the research one is inclined to ask therefore why sole care at present is, and shared parenting still isn't, the preferred default presumption for post-divorce parenting arrangements in family law and family courts?

Because: If we really give priority and weight to the best interests of children, then shared parenting and keeping both parents involved in children's lives seems to be the only way to go.

2. Some developments in family law and family courts in the Netherlands, Belgium and Germany

The Netherlands

- In 1996 > Joint legal custody law reform (Gezamenlijk Gezag) passed Dutch Parliament making joint legal custody the standard for post-divorce parenting in the Netherlands to oblige with EVRM Article 8 (rights to family life)
- However shortly after the introduction of the law, the family courts in conjunction with the Dutch High Court already made the intend of the law by Dutch Parliament to keep both parents involved in children's lives undone by jurisprudence saying that joint legal custody could be awarded but that it did not automatically entitle to a contact and access arrangements.
- The past years Parliament took several new initiatives for introducing equal parenting as the presumption for post-divorce parenting arrangements by law.
- The first attempt was the law proposal initiative by parliament in 2004 (Law on administrative divorce and continued parenting, nr. 29676). It passed in the Dutch House of Commons in the winter of 2005 only to strand in the Dutch Senate in the summer of 2006, mainly caused by the "Administrative Divorce" made possible by the law as well, which hit on heavy resistance with the Dutch judiciary.

- This summer a new attempt for family law reform was made with the Law on Promoting Continued Parenting (nr. 30145). This law while it passed in the Dutch House of Commons in June 2006 was amended by a constitutional majority amendment introducing equal parenting as the presumption for post-divorce parenting. It is now in consideration with the Dutch Senate.
- This new law has the following features:
 - Introducing a presumption of equal parenting after divorce
 - Introducing a strong incentive for parents to come up with a mutually agreed parenting plan during the divorce proceeding (but not obligatory).
 - Adding new but complicated reinforcement possibilities for court-ordered parenting arrangements to the toolbox of judges h

Conclusion on family law reform in the Netherlands:

What this law will bring in practise for divorcing parents and their children remains to be seen, especially considering the long history of family court practise aimed at making the legislator's intentions towards post-divorce equal parenting undone by jurisprudence.

Belgium: Presumption of Dual Location by Law (Wet op de Bilocatie, 2006)

Belgium already had a presumption of joint **legal** custody for several years when in September 2006 the Belgian federal family law reform on the presumption of "Dual Location" and "alternating residence" came into effect after having passed both houses in the Belgian federal Parliament.

In it was a presumption of joint **physical** custody as the norm for preferred post-divorce parenting arrangements to be ordered by the Belgian family courts.

Contrary to common belief the Belgian family law reform of September 2006 however did not introduce 50/50 joint physical care and residency as a result.

Instead it introduced the **presumption of dual location** which by law should be taken into consideration and investigated by Belgian family court judges with

priority **on the request of either one separately** or both of the divorcing parents.

In effect the wishes with regard to the post-divorce residency, care and access arrangements of either parent parties involved were thus again acknowledged and reinstated at the core of Belgian family court proceedings regarding physical custody. By law Belgian family court judges were endowed with the need and obligation to explicitly motivate their decisions and orders with regard to the presumption of post-divorce alternating residence in writing.

Also when both parties put forward consensual residency, care and access proposals the law put judges under the obligation to accept those as leading in the orders to be made.

A further underestimated but most important additional element in the new Belgian family law was especially the introduction of **immediate or priority access to the courts and judges to either one of the parties one-sidedly** with requests on additional reinforcement orders when there were complaints about the other parent with regard to abiding by the specific arrangements laid down by the judge in the original case residency, care and access order given.

Although the law as a federal national framework is in effect for only 18 months now in Belgium (Sept 2006), and it is still too early to evaluate it thoroughly, first impressions are that it has contributed strongly to the appeasement between divorcing parents in Belgium.

Germany – The 'Schemer' Model

Also in Germany a post-divorce presumption of joint legal custody was already in effect in family law since 1998, when several years ago the family court judge Jurgen Rudolph - residing in the regional family court in the city of Cochem, Germany - in his courtroom bench was confronted time and again with capable parents fighting each other almost to death in adversarial court proceedings with the help of their lawyers (and to the detriment of their children) over post-

divorce arrangements concerning the residency, care and access over their children and demanding from him as the judge to decide in favour of either of them. All parents and lawyers from both sides seemed to be involved in and doing during court proceedings was painting their adversarial 'opponents' as black and incapable as possible.

The position he took in this was that he considered post-divorce physical custody arrangements between principally fit and capable parents not a standard-decision for a family court and himself as the family judge to make and decide on by default over the heads of either one of the parents, as from the lawfully existing care-obligation for both parents over their children the making of physical custody arrangements over their children had by default to be considered primarily as a matter of responsibility for both divorcing parents themselves to decide on in the first place.

In the face of the resulting in-fights between parents and their lawyers taking place in adversarial divorce proceedings, the regional family court of Cochem then experimentally changed its family court practises. In the newly introduced family court practises divorcing parents were strongly encouraged by the court to first come up themselves with a mutually and consensually agreed parenting arrangement proposal or "parenting plan" for the residency, care and access to and over their children, as a necessary and prerogative preparatory part before being able to enter and finalise their divorce settlements in the Cochem family court.

As the parents now needed to come up with a mutually agreed parenting plan or parenting arrangement proposal, this prerogative demand of the court both not only resulted in a reinstatement of the equal level playing field and cooperation between the parents looking for divorce (instead of the previous court practises magnifying the differences and conflicts between the parents), but just as or may be even more importantly it also lead to a complete practise overhaul with the professionals around the divorce proceedings in the family court being involved with the divorcing parents.

Instead of helping the parents in (aggravating) their conflict, all professionals, including lawyers, social workers, youth welfare workers, etc., instead started cooperating with each other in order to offer mediatory and other support services to the divorcing parents who were in demand of support in making the parenting plan needed in order to finalise their divorce proceedings. In time the cooperation between professionals evolved from cooperation on the individual case levels to a more structured network cooperation of the involved professionals around the Cochem family court.

These changes in Cochem court practises and the resulting changes in practises by the surrounding professionals in the mean time have earned wide recognition in Germany and are nationally referred to in Germany as the Cochem court practises or the Cochem model. They are now also taken into evaluation and consideration in a future planned reform of family law by the German federal ministry of justice in Berlin.

Comparing Belgium and Germany

These two developments are interesting because of their congruency, as in Belgium they have started **top-down** so to speak from the **federal political and legislative level** with the introduction of a new family law creating a national framework and new guidelines for the functioning of family courts, while in Germany these same developments started **bottom-up** from the **family courts** themselves experimenting with less adversarial proceedings and court practises regarding post-divorce residency, care and access arrangements and orders.

Both developments share in their emphasis the concept of restoring an **equal level playing field** between both divorcing parents in either family law and/or family court practises as opposed to the single parenting presumption dominating family law and family court practises at present.

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II. As for the second seminar-issue :: ‘Is the voice of the child heard in the Family Courts?’

As a starting point for a short statement on this issue I would like to draw on the children's rights convention and the explicitly formulated rights of children in it to have family life and care from both their parents.

With regards to these basic rights of children I would like to issue warning for the dangers of institutionalising systemic child abuse when state agencies and family courts for their own legitimacy reasons further continue on the path of explicitly and deliberately bringing children into the conflict of continued adversarial divorce proceedings and single parent custody practises and are thus bringing children into a position in which they are solicited into publicly speaking out against one of their parents in favour of the other parent.

Not only do such family law and family court practices involve children directly in divorce conflicts, by doing so they are also exposing them to an immediate risk of emotional and physical abuse by social, psychological and physical pressure coming from incompetent temporary court appointed care parents and their family members, to choose for them and against the other parent.

Finally what is demanded of children, when solicited by adversarial family courts and family law to publicly speak out in favour or against one or the other of its parents for court and family law legitimacy reasons, is also threatening children's longer term identity and depriving them of half of their identity by forcing children into expressing choices they are not naturally inclined to make and of which they cannot yet oversee the long lasting consequences when made. Further forwarding this course of action of directly involving children in the divorce conflict by family law and the family courts for solving their own legitimacy reasons, therefore creates severe risks for the identity and welfare of the children involved on the long run and well into their adult lives.

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