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## **Parental plan and informal relationship terminations. A comparative study**

In the Netherlands there currently is a Governmental Bill of the Act *On Promoting Continuation of Parentage after Divorce and Responsible Divorce* before the Second Chamber of the Dutch Parliament (*Kamerstukken II 2004 - 2005, 30 145*). Among other things, this Bill states that every divorce or registered partnership dissolution petition should include a **parental plan**. As of now, this Bill contains no parental plan requirement for the approximately 18.000 children whose unmarried or unregistered parents are currently involved in the termination of their relationships.

The purpose of this paper is to provide comparative information for use in further discussions concerning whether the introduction of a parental plan requirement is also feasible and workable in of informal relationship terminations between the parents.

Austria, Portugal, Serbia and Slovenia appear to be the only European countries currently requiring arrangements to be made with regard to children involved in the termination of informal relationships. The study of these four countries allows delineating four important reasons for requiring an agreement with regard to children if the children's parents are ending an informal cohabitation:

- a) Precondition for continuation of joint parental responsibility after the separation of the parents (all four countries);
- b) Avoidance of legal discrimination between marital and extramarital children (Slovenia and Serbia);
- c) Further equalisation of marriage and durable cohabitation (Slovenia and Serbia);
- d) Facilitation of good communication between the separated parents (all four countries).

With regard to the scope of the agreement, two groups can be distinguished among the four countries. In Portugal and Slovenia the scope of the agreement is considerable, and can be compared with the scope of the parental plan proposed in The Netherlands. In contrast, in Austria and Serbia the scope of the agreement is exclusively limited to child residence.

None of the four countries considers such an agreement a precondition for the termination of the informal relationships. On the contrary, in all four countries such an agreement is a formal precondition for the continuation of joint parental responsibility. However, due to the informal nature of ending an informal relationship, there is no possibility of being able to control the fulfilment of this requirement. Therefore, joint parental responsibility in fact simply continues after the parents separate, even if no agreement was ever concluded. The legislatures of all four countries tolerate this situation. In Austria and Slovenia this tolerant policy is openly acknowledged. The attitude in Portugal is more hesitant, but in practice it boils down to the same result. In Serbia there is as yet almost no experience with the application of the new law enacted in 2005. The absence of legal sanctions for non-fulfilment

of the requirement to make an agreement makes the law of all four countries into a *lex imperfecta*.

At the same time, the conducted study has revealed that the obligation to make an agreement is not entirely a dead letter. The Austrian legislature was perfectly aware that in practice a judge would have no means to discover the termination of informal relationships between parents, and would therefore not be able to control the fulfilment of the requirement to make an agreement with regard to the children of such a relationship. Nonetheless, the Austrian legislature has chosen to introduce such a requirement because it is expected to play an important part if the parents later run into problems with the execution of their parental responsibility and have to ask the judge to resolve them. In Slovenia there is evidence that the parents sometimes submit the required agreement to judicial control upon on their own motion in order to acquire more legal certainty.

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