

Joint Parental Responsibilities and Compulsory Arrangements with regard to Children upon Divorce

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From Sole to Joint Parental Responsibilities after Divorce

- **First stage:** upon joint request of the divorcing parents and/or an agreement on the execution of parental responsibilities
- **Second stage:** automatic continuation

From Sole to Joint Parental Responsibilities after Divorce

- 100% of divorce cases in Russia the last 80 years;
- 86% in France in 1996
- 75,54% in Germany in 2000
- 97% in Sweden in 2002
- more than 90% of cases in the Netherlands since 1997

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Ideas behind joint parental responsibilities

- Promoting formal legal equality of the parents
- The idea that parent-child relationships and parental decision-making with regard to the children should not be affected by the dissolution of the marriage
- The idea that contact with both parents is, in the rule, in the best interest of the child

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Equality of the parents:

Equal rights on paper - little rights in reality

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Equality of the parents:

25% of children of divorce in the Netherlands do not see their father at all

Another 25% have inadequate contact arrangements

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Continuation of pre-divorce parent-child relations and parental decision-making with regard to children

- Parents who are no longer on speaking terms with one another are charged with joint parental responsibilities
- The disputes of the parents, who are unable to agree on child issues, will have to be brought before the court
- Continuation of the amicable decision-making that existed before divorce is an illusion

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Contact with both parents is not always in the child's interest

Much contact at the expense of much stress from parental conflict - more detrimental than little or no contact and no stress

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Content of a 'parental plan':

- Care for the child
- Education of the child,
- Consultations between the parents
- Exchange of information between the parents
- Financial contributions of the parents to the costs of childcare and child education

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Compulsory parental plan

Not a pre-condition for the continuation of joint parental responsibilities,
but...

a pre-condition for filing a joint or unilateral divorce petition before the court

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Private member Bill:

Parental plan is compulsory in case of:

- Administrative divorce
- Judicial divorce upon joint request
- Judicial divorce upon unilateral request

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Governmental Bill:

Parental plan is compulsory in case of:

- Judicial divorce upon joint request
- Judicial divorce upon unilateral request

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Requiring compulsory agreement over children by unilateral divorce – unique in Europe:

- 10 out of the 22 European jurisdictions covered by the CEFL require an agreement with regard to children for a divorce by mutual application
- not one jurisdiction extends this requirement to unilateral divorce

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Expectations from the parental plan:

- **Group one:**
couples in a deep conflict – waste of time and money
- **Group two:**
couples with communication problems – possibly useful
- **Group three:**
couples without communication problems – unnecessary formalisation

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Ideas behind the compulsory parental plan:

- Overestimation of the power of law
- Paternalistic inclination to solve the problems of post-divorce parentage at the expense of the parent's autonomy
- Inclination to solve the problems of one particular category at the expense of the whole population of divorcing parents