

Urgent Reform needed at European Level

“Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests”.

[\(The Charter of Fundamental Rights of the European Union, Article 24\)](#)

CURRENT SITUATION

Even though in theory after a separation both parents retain full parental responsibility, in reality often one of the two parents is removed from the children's life, once a court order is issued. This happens regardless of the needs of the child or how caring and capable the parent was before separation. In countries like Italy, Switzerland, Romania, Portugal, Croatia, UK, Greece, Spain, Germany, Austria, Slovakia and Czech Republic, the child receive minimum time allowance *to interact with* and *to be cared by* the non-residential parent.

There is a huge difference in the treatment a child receives from Justice, depending whether s/he was born in one of the countries mentioned above, or in a country like Sweden or Belgium^A. Obsolete legislation is allowed in those countries while the new laws, aimed at reforming this field, are delayed for many years to enter into effect^B. Despite that the EU legislation guarantees non-discrimination of its citizens, the children of Europe are heavily discriminated based on the place where they happen to be born and live. Under the claim that judges in these countries know better what the “*best interest of children*” means, court orders are issued with total disrespect to:

- **Article 8 of the [European Convention of the Human Rights](#)^C** – despite it, the States brutally intervene in the relation of the parent (often with full parental authority by law) and the child.
- **Article 24 (par. 3) of the [Charter of Fundamental Rights of the European Union](#)^D** – despite it, court orders offer most children, very little time and opportunities to maintain a meaningful relationship with the non-resident parent and half of their extended family.
- **Articles 9 & 18 of the [United Nations Convention on the rights of the child](#)^E** – despite them, the states wrongfully separate millions of children from their loving parents, against their will, actively boycotting the parental authority of parents who proved to be perfectly fit before separation.
- **Principle 3:20 of the [Principles of European Family Law regarding Parental Responsibility](#)^F** – the national legislation is very slow in adopting these principles despite they are largely recognized as being the best practices in Europe.
- **Article 4 of the [Convention on Contact concerning Children](#)** – the law is still unratified by most States despite the fact that they have had 10 years to do it. Even in countries which ratified it, the judges wrongly interpret it, by meaning that parent-child interaction every 2-3 weeks is sufficient.

The Conventions listed above should have precedence over national legislations. Still, in most countries they are ignored. Ample evidence^G, provided by the social science researchers, which states that the child benefits when he or she can interact with both parents on a regular, frequent and substantial basis, is also ignored. Sadly, social science studies do not seem to reach the ears of our national policymakers and of European judges.

As a result, most of the children^H are allowed to interact with their non-resident parent once every 2-3 weekends. The “standard visitation program” in most countries, means no more than 2 interactions (often without the right of overnighing) every month. This represents a **psychological abuse** that those children do not deserve. Their “visitation right” is less (in terms of frequency) than the “visitation right” un-convicted prisoners have, by law, in the UK^I and many EU countries. Such visitation schedules are practically destroying the emotional link between the child and the non-

resident parent, regardless of the parent having “parental authority”, neglecting scientific evidence that the bond between the child and the non-resident parent is extremely fragile. The break of the parent-child emotional bond invariably leads to parental disengagement and child alienation. We estimate that three years after separation, approximately 40% of the “children of divorce” end up not seeing their non-resident parent more often than a couple of times a year, or not at all^J.

WHAT CAN BE DONE

[Colibri Federation](#) calls for all European policy makers to influence national legislations, in the light of the strong evidence offered by the studies in this area. CE officials replied us that they cannot interfere with the national family law legislation^K. However, as has been shown by several studies, custody arrangements have an important impact on the health and well-being of children.^L The European Union has the competence and the duty to take action to improve, promote and protect their health^M. It follows that if there is political will, the European Commission and European Parliament have the right and the means to carry out actions to improve the well-being of millions of European children and reduce expenses of the public health system. For these reasons we ask the EU policymakers to take action and request the EU member states to protect the health of the children concerned, as well as to ratify and respect the Conventions mentioned above. Such actions will directly improve the wellbeing of millions of European children, with minimum costs for the society now, but great future output, as these children will grow as complete, emotionally balanced adults.

HOW THIS WILL HELP SOCIETY

It is demonstrated^N that the children who benefit of the care and involvement of both parents experience fewer emotional problems^O, fewer delinquency problems, less risk for use of alcohol, drugs and tobacco, fewer adolescent pregnancies, less risk for bullying and victimization, fewer suicides, fewer depressions and fewer problems related with the low self-esteem^P. OECD-statistics show that child poverty reduces by factor 3 when both parents work^Q. These are issues which surely fall within the aims of our European Union.

It is also demonstrated by studies that the joint physical custody (or the reasonable contact orders) are beneficial not only for children and non-residential parents but also, which is very important to mention, to residential parents^R. It is demonstrated that raising a child alone, puts a heavy pressure on the sole caregiver (workload, financial problems, and stress) which, in turn, also negatively reflect on the child.

It is demonstrated that the strategic use of mediation *together with* a clear shared parenting and contact legislation (see cases of Sweden^S or Belgium but also Australia) correlate with a reduction of cases settled in court. This can also reduce the overall social cost and improve the celerity and quality of issuing court orders for the remaining fewer cases.

CONCLUSION

We consider that it is the duty and within the power of the EU leaders to create the sense of urgency, so that the needed reforms do happen at appropriate speed. Colibri federation of ONGs is here to assist and to provide the needed scientific facts to the EU policymakers.

REFERENCES

- A** Vittorio Vezzetti (2013), *European children and the divorce of their parents study*, <http://goo.gl/l31TNJ>.
- B** The [Convention on Contact concerning Children](#) opened for signatures in 2003. In 10 years it was ratified by only six European states, mostly non EU members. Details on ratification status you find here: <http://goo.gl/cwknDi>.
- C** See: http://www.unicef.org/crc/files/Rights_overview.pdf.
- D** See: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
- E** See: http://www.unicef.org/crc/files/Rights_overview.pdf.
- F** See: <http://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf>.
- G** To quote just few of the studies:
- Richard A. Warshak (2014), *Social Science and Parenting Plans for Young Children*, <http://goo.gl/Orbola>.
 - Linda Nielsen (2013), *Shared Residential Custody: Review of the Research*, <http://goo.gl/ZqqR6U> and <http://goo.gl/cEuPkd>.
 - Sünderhauf Hildegund (2013), *Wechselmodell, Psychologie - Recht - Praxis*, Wiesbaden, 920 pages; for a summary in english see: <http://goo.gl/Po7uz7>.
 - Edward Kruk (2012), Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody, <http://goo.gl/C3rwCP>. Read more on Co-Parenting by Edward Kruk in *Psychology Today*.
 - Thoroddur Bjarnason (2012), *Life Satisfaction Among Children in Different Family Structures: A Comparative - Study of 36 Western Societies*, <http://goo.gl/srWx60>.
 - Vittorio Vezzetti (2012), *Joint Custody: The Interest Of The Child In Different Family Structures*, <http://goo.gl/7Rj0RA>.
 - Linda Nielsen (2010), *Shared Parenting: A Review Of The Supporting Research*, <http://goo.gl/xO50kL>.
 - Joan B. Kelly (2007), *Children's Living Arrangements Following Separation and Divorce: Insights From Empirical and Clinical Research*, <http://goo.gl/RDJlhb>.
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 - Bruno Raschetti (2005), *Rapport Bien-fondé de la résidence alternée pour les enfants dont les parents sont séparés*, <http://goo.gl/FpZvbT> (in french).
 - Robert Bauserman (2002), *Child Adjustment in Joint-Custody vs. Sole-Custody Arrangements: A Meta-Analytic Review*, <http://goo.gl/slz7ws>.
 - William V. Fabricius & Jeffrey Hal (2000), *Young Adults' Perspectives On Divorce Living Arrangements*, <http://goo.gl/LZ7vV5>.
 - Edward Kruk (1991), *Discontinuity Between Pre- and Post-Divorce Father-Child Relationships: New Evidence Regarding Paternal Disengagement*, <http://goo.gl/rou1vq>.
- Consider further:
- Edward Kruk (2013), *The Equal Parent Presumption: Social Justice in the Legal Determination of Parenting After Divorce*, <http://goo.gl/qNdJ14>.
 - Ben Sneiders (2013), *Fewer sparks in shared-care relationships*, <http://goo.gl/l3hBpG> (newspaper-article on research by academics at the Australian National University).
 - Linda Nielsen (2011), *Divorced Fathers and Their Daughters: A Review of Recent Research*, <http://goo.gl/Lic3e2>.
- H** Especially those children, whose parents could not agree on a parenting plan.
- I** See for example <http://goo.gl/U30Q9O> or <http://goo.gl/VEFVsr>.
- J** Within two years after divorce approximately 50% of all children loose contact to one of their parents (Tazi-Preve Miriam Irene et al. (2007), *Väter im Abseits*, Wiesbaden, 120 f., 157 ff. and 257 ff.).
- K** See answer given by Mrs. Reding on behalf of the Commission to the E-000713/2013 inquiry here: <http://goo.gl/JdBL0I>: *The definition of joint custody belongs to substantive family law. As such, it does not fall within the EU's competence but remains under the sole responsibility of the Member States. This explains why there may be differences in the national systems as regards the definition of joint custody and how it works in practice.*
- L** According to Hildegund Sünderhauf, the loss of contact to a parent is one of the most detrimental stressors that affect children concerned by the separation of their parents (Sünderhauf Hildegund (2013), *Wechselmodell, Psychologie - Recht - Praxis*, Wiesbaden, p. 239).
- M** Art. 4 and 6 of the Treaty on the European Union, <http://goo.gl/Uls3om>.
- N** "Abstract: *Children in joint physical custody experienced more positive outcomes, in terms of subjective wellbeing, family life and peer relations, than children living mostly or only with one parent*" - Malin Bergström - Malin Bergström - <http://goo.gl/R4Nhal>
- O** See Footnote ^G.
- P** As per Carlsund, Bergström, the cited resumé of Nielsen (2011): "...children living in shared physical custody were a lot healthier than children living in standard solutions"
- Q** OECD (2011), *Doing better on families*,: <http://www.oecd.org/social/soc/doingbetterforfamilies.htm>: chapter 1: <http://www.oecd.org/els/family/47701118.pdf>.
- R** Roland Proksch, *Gemeinsames Sorgerecht, Ergebnisse der ersten repräsentativen Studie über Scheidungseltern und Scheidungskinder in Deutschland*, <http://goo.gl/lnRk81> and <http://goo.gl/YFwIWt>.
- S** Anna Singer, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1142789.