

SHARED RESIDENTIAL CUSTODY

PERMANENT CARE

- THE PORTUGUESE CASE -

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(Portugal)**

- I -

CONCEPT OF PARENTAL RESPONSIBILITY

Portuguese Fundamental Law (Constitution of the Portuguese Republic) establishes various principles that directly affect parent-child relationships, such as:

a) - Equal rights and duties for both parents concerning to their civil and political capacity and to the maintenance and education of their children (Article 36th, n.º 3);

b) - Both parents possess the right and the duty to educate and maintain their children (Article 36th, n.º 5);

c) - Children shall not be separated from their parents, except if they do not fulfil their fundamental duties towards their children, and always by judicial order and a due process of law (Article 36th, n.º 6)¹.

Children are subject to parental responsibility from their parents until they reach majority (18 years old) or become emancipated (after 16 years old).

The concept of “parental responsibility” has been enshrined in Portuguese Family Law since the Act n.º 61/2008, 31st October.

According to Recommendation R (84) 4 (adopted by the Committee of Ministers from Council of Europe), “parental responsibility” is defined as a collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property.

The concept of “parental responsibility” covers the duties and rights to take care of the child’s and includes also the responsibility to ensure that the child has shelter, food and clothes as well as a responsibility for his or hers upbringing. It also integrates the responsibility to look after the child’s property, if any, and also includes the right to represent the child legally.

Those who have the child’s parental responsibility are referred to as “holders of parental responsibility”.

As long as the parents live together, they usually have jointly custody and, together, exercise the parental responsibility over their child, according to the law.

¹ Also according to Article 16th from Universal Declaration of Human Rights and Articles 23rd and 24th from European Chart Of Human Rights.

However, if the parents divorce or split up, they need to decide how this responsibility will be exercised in the future.

The parents may agree that the child shall live with one parent or both alternating time between them.

In both cases, the other parent usually has the right to contact the child at certain times.

The parents may decide these matters by a mutual agreement or through litigation.

In both cases, it is necessary to decide which parent the child will be the resident parent.

While one of the parents is granted single custody, the other is often granted the right to see the child during certain periods (access rights or visiting rights).

Portuguese Law has different meaning for “**custody**” and “**exercise of parental responsibilities**”.

“Custody” means the right of one of the parents to decide where the child shall live while “exercise of parental responsibility” refers to issues of particular importance of the child’s life that both parents must agree together, even after divorce or separation.

The exercise of parental responsibilities does not differ according to the previous relation between the parents (married, unmarried or parents not living together).

Any decision of the court concerning the attribution of parental responsibilities or the way these responsibilities are exercised should be based primarily on the interests of the child².

The court should also respect the equality between both parents and no discrimination shall be made, in particular on grounds of sex, race, colour skin, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 13rd of our Fundamental Law).

In order to establish the general principles of the regulation of parental responsibility, Portuguese Law imposes upon parents a “**positive duty to respect their children**”, which translates into a duty to take in account their opinion on important family matters, in accordance to their maturity, as well as the duty to gradually recognize their autonomy to lead their own lives³.

In case of divorce or separation, the court shall determine the residence of the child and the visiting rights in accordance with his interest, taking into account all relevant circumstances, namely the eventual agreement between the parents and the availability of each one of them to promote habitual relations of the child with the other parent.

Therefore, the court will always decide in accordance to the interest of the child, including the one of maintaining a close relationship with both parents, encouraging and

² The child’s interest is a vague legal concept as well as a cultural concept, profoundly dependent upon the system of values in force at a given moment in each society, concerning the person of the child, his or her material and emotional needs, and the conditions necessary for his or her healthy development. Thus, the notion can only be specified in reference to those values and by means of a systematic interdisciplinary study of the child’s real-life situation.

³ Portuguese Law also establishes that the parents should take their child’s wishes into consideration on matters regarding their academic and professional training.

accepting agreements or making decisions that promote extensive opportunities of contact with both parents and shared responsibilities between them.

- II -

PARENTAL RESPONSIBILITY PROCEEDINGS

As it was said, even in the event of divorce or separation, the parental responsibilities of the child are exercised by both parents.

Only the court, based on the interest of the child, may established that parental responsibilities are exercised by one of the parents⁴.

The decision may result from an approval judgment, confirming an agreement between the parents on the exercise of parental responsibility⁵, or a judgment of merits containing always a compulsory decision on the exercise of this responsibility.

The agreement on parental responsibilities must be approved by the judge or by the civil registry office (only in divorce proceedings by mutual consent and after the approval from a Public Prosecutor) and must be attached to the application for divorce.

This agreement may also be concluded during the attempt to reconciliation which occurs in a divorce proceeding, presided by the judge.

In contested proceedings for divorce and in judicial proceedings to decide on the exercise of parental responsibility the attempt to an agreement between is compulsory.

An agreement approval must be refused whenever that agreement is not in the interest of the child.

At any stage of the proceedings and whenever this seems appropriate, the judge may, on his own initiative and with the consent or of those involved, order the participation of public or private mediation services.

If it protects the interests of the child, the judge will approve the agreement secured through mediation.

When parental responsibility is exercised by both parents, they decide on the matters affecting the life of the child under identical conditions to those applied during the marriage, in exception of one major difference: the child can't live with one of them.

In this context, the position of the parents with regard to the child does not change, in legal terms, upon divorce or separation.

⁴ Shared custody is becoming applied by courts more often but, at this time, it is usually possible by an agreement between parents establishing a system of shared residential custody.

⁵ According to the Portuguese Family Law, parents may submit to a family court a parental plan where they present their parental responsibilities, including the commitments to be made concerning the custody, care and education of their children, such as:

- the residence of children and rules on how to allocate custody at each time;
- the tasks to be performed by each parent in relation to children's everyday lives;
- the ways in which changes in custody are to be made and if necessary how to allocate possible costs;
- contact and communication with children during periods in which they are under the care of the other parent;
- stays of children with each parent in vacation periods and on special dates;
- the type of education as well as extracurricular and leisure activities;
- how to discharge the duty of sharing all information about education, health and well-being of children;
- how to make decisions about change of residence and other relevant issues for children.

This parental plans may also include provisions on how to use mediation facilities in order to solve conflicts relating to their implementation or modification.

Regarding to acts or issues of particular importance or the acts for which the law expressly requires the consent of both parents, the non-resident parent must be consulted and give his consent.

Furthermore, the parent who does not exercise parental responsibility has the power to oversee the education and living conditions of the child.

In the absence of agreement between the parents on **issues of particular importance**, the court must decide on these, after an attempt to reconciliation⁶ and hearing the views of the child, unless it is inadvisable to hear the child's view⁷.

In all proceedings concerning to parental responsibilities, it is not compulsory to instruct a lawyer except at an appeal stage⁸.

Voluntary jurisdiction rules apply to these proceeding concerning the child's interest, as so, the court may freely investigate the facts, collect evidence, order enquiries and gather the information regarded as appropriate.

Only evidence which the judge considers necessary is admitted but both parents and the Public Prosecutor may suggest their evidences and other important information.

At any stage of the proceeding, the judge can appoint or request technical advisers to assist with enquiries, provide elucidations, make examinations or prepare advices.

In these proceedings, the court is not subject to a criteria of strict legality but in each case, it must adopt the solution which seems most appropriate.

Therefore, when called to intervene in determination of parental responsibility, is must be guided by full and exclusive consideration of the child's interests.

However, the voluntary nature of the jurisdiction does not release the court from basing its decisions on facts and law.

In proceedings of this kind, decisions may be changed, without prejudice to the effects already produced, on the basis of supervening circumstances which justify the change.

Supervening circumstances are those occurring after the decision and those occurring before the decision which has not been raised due to lack of knowledge or other substantial grounds.

Parents are entitled to hear the information, reports, examinations and opinions disclosed in the proceedings and may request clarifications, submit further evidence or request the gathering of any information which they consider necessary.

The judge will reject, in a ruling against which there is no appeal, those requests which are pointless, impossible to carry out or manifestly intended to delay matters.

The hearing of both sides with regard to the evidence obtained by the means described is guaranteed.

⁶ Sometimes, the law refers "attempt to reconciliation" and other times refers "meeting"; however, in the judiciary practice it is used to seek for an agreement presided by the judge.

⁷ Usually, the child does not take part in proceedings concerning regulation of parental responsibilities and, therefore, is not represented by either his or her parents. The child's interests are considered to be protected by the Public Prosecutor's Office, which intervenes in all proceedings concerning to children.

⁸ Legal aid (*i.e.* free charges and non-payment of lawyer costs) applies in all courts and registry offices, whatever the form of proceedings.

At any stage of the proceedings and whenever it is considered appropriate, the court may provisionally decide on those matters which must ultimately be resolved and also order any urgent steps which are essential to ensure the effective enforcement of the decision.

Within the general terms of the civil procedure, parents or the Public Prosecutor may submit an appeal to the District Court of Appeal.

However, decisions delivered according to the criteria of appropriateness and expediency are not open to appeal to the High Court of Justice.

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MAINTENANCE OBLIGATION

Portuguese Law requires member of the same family to provide assistance in the basis of parental responsibility.

Therefore, parents must feed, educate and maintain their children.

This obligation is generally discharged by a monthly payment known as maintenance.

The parent's agreement or the court fixes the amount of the payment and the conditions for its variation but it may exempt a parent from that obligation if he or she undertakes the house, feeds and maintains the child.

If maintenance payments are in arrears, it is possible to take on court action to enforce the payment, requesting an attachment order for the amount of maintenance against sums payable to the debtor by other people (an employer).

Primarily, enforcement will take an assignment of earnings (part of debtor's wages or salary can be seized and the maintenance payments will be paid from it)⁹ but it is also possible to collect an attachment of goods, bank assets or an execution against real property.

There are certain categories of assets and claims that can't be attached (clothing, food, certain items of furniture, part of the salary) so that debtors and their family can still enjoy a reasonable standard of living.

The amounts deducted will also include the maintenance which may be about to fall due and will be paid directly to the maintenance creditor (resident or custody parent).

If a civil enforcement proceedings do not produce the desired result, in some circumstances, this obligation may result also in criminal responsibility.

Since January 2000, Portugal has also a Public Fund available in the event of a maintenance creditor failing the payment and not being possible to take an assignment of earnings or goods.

In this case, the Public Fund supports the maintenance payment and, as soon as possible, it will try to recover that money from the debtor parent.

⁹ If this involves a public official, the respective amounts will be deducted from their salary on a request from the court send to the official service; if this involves an employee or salaried worker, the amounts will be deducted from their wage or salary (the employer will be notified and will be designated as the approved depository; if this involves a person in receipt of profits, pensions, subsidies, commission payments, percentages, fees, gratuities, shared earnings or similar income, the deduction will be made from the amounts when they are paid or credited, with the necessary requests or notifications being made for this purpose and with the notified bodies being designated as the approved depositories.

- IV - CONTACTS

A child and his or her parent shall have the right to obtain and maintain regular contact with each other and such contact should only be restricted or excluded when necessary in accordance to the best interest of the child.

Nowadays, the right of contact in the context of a divorce or separation is broadly understood.

At most parental agreements, this consists on the right of the non-custodial parent to relate to and spend time with the child, not only through occasional contacts but also by providing accommodation for the child for some periods of time (such as weekends, holidays and special occasions) and by corresponding with the child (by letter, e-mail, telephone, electronic communication or any other way).

Portugal was sanctioned by Human Rights European Court concerning to malfunction of legal instruments to prevent violations on contacts concerning children and parents (*e.g.* Case Reigado Ramos *v.* Portugal and Case Maire *v.* Portugal).

Therefore, Portuguese Family Courts must take the necessary steps to enforce compliance, including civil or criminal responsibility.

A range of international instruments have been adopted in Europe, which directly or indirectly regulate the child's right to contact, as well as their procedural rights, such as:

- 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR);

- 1980 Hague Convention on the Child Aspects of International Child Abduction (Hague Child Abduction Convention);

- 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (Hague Convention Protection Convention);

- 1996 European Convention of the Exercise of Children's Rights (ECECR);

- 2002 White Paper of the Council of Europe on Principles Concerning the Establishment and Legal Consequences of Parentage;

- 2003 European Convention on Contact Concerning Children (ECCC);

- Council Regulation (EC) N.º 2201/2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (Brussels II *bis*).

National legislations in Europe are very similar, mainly due to the existence of common guidelines and obligations arriving from the international instruments which address the rights of children, especially the right to contact and the procedural rights.

The child needs to have close, quality contact, not only with both parents but also with other persons with a close relationship with him or her (relatives and other close persons, if this is in the child's best interests and the child so desires).

A nonresidential parent is under the obligation to maintain contact with the child and the child has the right to contact with the nonresident parent.

The resident parent is also responsible for encouraging contact with people who are not so close, but whose presence would have a positive impact on the child's development.

Contact with children refers to the personal relationship between the child and the parent who lives in a different residence, including planned visits, the time spent together on particular days, weeks, or even longer periods of time.

- V -

ENFORCING DECISIONS

If, in the case one of the parents does not comply with what has been agreed or decided, the other parent may ask the court to take the necessary steps to enforce compliance and to sentence the parent guilty of this non-compliance and to pay a fine and compensation in favour of the child and the applicant, or both.

Once an application has been made or attached to the proceedings, the judge will invite the parents to a meeting or order the respondent to be notified so that he or she reply appropriately.

At the meeting, the parents may agree to change the arrangements for the exercise of parental responsibility, bearing in mind the interests of the child.

If a meeting has not been held or when the parents can't agree during the meeting, the judge will order to be carried out a brief investigation, together with any other steps which he considers necessary, and will, ultimately made a decision.

This proceeding is incidental to the main proceeding and may result from a application by a parent or the Public Prosecution Service.

- VI -

FAMILIAR MEDIATION

In recent time, courts throughout Europe have embraced dispute resolutions methods, such as, **family or divorce mediation**, designed to reduce the parental conflict.

These and other alternative dispute resolutions mechanisms are intended to help both parents and children by embracing a more supportive, less adversarial model of the legal process.

Some studies revealed that several years after the dispute resolution, the member of separated families assigned to mediation, at the flip of a coin, had better co-parenting relationships, substantially more nonresidential parent-child contact, and, as judged by the residential parent, significantly better nonresidential parent-child relationships in a variety of essential domains of family life.

In mediation, decision making remains with the parties, being that the role of the mediator is to assist parents in reaching mutually acceptable agreements. In contrast to adversarial proceedings, mediation emphasizes cooperative problem solving and addressing the needs of all family members.

Mediation should also contribute to promote a situation where parents have taken on the responsibility of separating their previous marital conflicts from their ongoing parental responsibilities, and are able to develop a parenting plan¹⁰ that is guided primarily by their children's need for both parents actively involved in routine parenting, and enhanced cooperation between them.

When parents are unable to reach negotiated settlements, a range of the most formal legal processes requiring judicial determination is used for settling custody disputes, including judicial hearings, pretrial settlement conferences and custody trials.

Shared residential custody, like family mediation, introduces into the law the principle of "self-determination" because both parents are empowered by the court or by themselves to retain equal legal rights, authority and responsibility for the care and control of their child¹¹.

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SHARED RESIDENTIAL CUSTODY

The children would live equal time with each of them as long as both were "fit and loving parents".

Children of divorce benefit most when both parents are actively engaged in their lives across a wide range of daily activities.

Given this, limiting parenting time to weekends or to brief weekday visits is less likely to benefit children because the kinds of activities that build strong parent-child bonds and promote authoritative parenting are less likely to occur. These ordinary routines and rituals include cooking together, running errands, getting ready for school, working together on homework, shopping, doing chores, and being together in spontaneous, unstructured ways. In other words, it is not merely the total number of hours with their parent that benefits children most.

It is having the kind of time together engaged in a broad range of daily activities that promotes the best outcomes for children.

The typical parenting plan after divorce or separation only allow nonresident parents and children to be together every other weekend and on occasional weeknights for a part of the evening. This means that most children only live with one of the parents fifteen percent of the time, at most.

This might not be the best parenting plan for many children because it might not be the best way to encourage or promote high-quality parenting time.

¹⁰ A parenting plan is a detailed articulation of post-divorce parenting responsibilities, including specific arrangements regarding time spent by the children in each parent's household, holiday schedules, how decisions are made, and how costs will be allocated. Such a plan orients parents toward the development of a post-divorce parenting arrangement that primarily reflects children's needs and interests, emphasizes parental responsibilities over parental rights, and leaves neither parent feeling either overburdened or disenfranchised in relation to these responsibilities.

¹¹ Self-determination in developing custody plans is more desirable than court imposed plans.

In sole custody families, divorced parents' relationships with their children often grow weaker and deteriorate altogether. This weakened or damaged bonds leaves many children feeling that the greatest price they have paid for their parents' divorce is the damaged or lost relationship with one of the parents.

The ongoing quality and endurance of the parent-child relationship is closely related to the amount of time they spent together in the years immediately after the parents separate.

In the last years, Portugal, like other countries, is undergoing a shift in custody laws, public opinion and parents's decision: a shift toward more shared parenting responsibilities and keeping the affective bonds with their children.

Initially, some countries were sceptical about shared custody arrangements, basing their concern on the premise that such arrangements undermine children's key need for a stable home¹².

The main principle of the Portuguese custody laws is to safeguard **“the best interest of the child”**.

Thus, among judges, lawyers and other professionals is growing the idea that children of divorce benefit most when both parents are actively engaged in their lives across a wide range of daily activities and when they have an authoritative rather than a permissive or an authoritarian parenting style.

Divorced parents need more extensive and more “regular” time with their children to maintain a quality relationship.

In fact, the typical parenting plan after divorce or separation only allow nonresident parents and children to be together every other weekend and on occasional weeknights for a part of the evening. This means that most children only live with one of the parents fifteen percent of the time, at most.

Those parents began to understand this might not be the best parenting plan for many children because it might not be the best way to encourage or promote high-quality parenting time.

A significant number of children have lost contact with their non-resident parents subsequent to divorce.

At the same time, custodial parents, usually mothers, are overwhelmed by the assumption of sole responsibility for their children¹³, while non-resident parents suffer the absence of their children.

Conflict between parents does not cease in disputed cases, particularly those in which the court is involved in determining custody and child poverty remains a pressing issue.

In our courtrooms bench we are confronted with capable parents fighting each other with the help of their lawyers.

¹² In the European Union, there are some reasons for a kind of “domino-effect” in other countries about family laws (judicial cooperation, public opinion, law harmonization, university cooperation and so on).

¹³ Demanding “child-free time moments” because both parents have more time for themselves and new relationships.

Thus, parents and lawyers from both sides seemed to be only involved in painting their adversarial “opponents” as black and incapable as possible during the divorce proceedings in the family court.

However, some judges, lawyers and mental health professionals holds that priority should be given to the seat of the affections and the stability of the home, even at the expense of the quantitative relationship with the other parent.

On the other hand, another group maintains that priority should be given instead to the relational continuity and stability of affection at the expense of the stability of home.

When considered only on the basis of professional experience with divorcing and divorced families, is difficult for the traditionalists among judges, lawyers and mental health professionals to accept these new concepts, because they often view these matters through the prism of failure.

However, in joint custody we are increasing the expectations of parents and are addressing themselves to their strengths, not their weaknesses.

Therefore, the main discussion among judges, lawyers and health professionals is based in two questions:

- a) - Do children who live in two homes feel more unstable or more insecure than those who live with only one of their parents ?
- b) - How stressful or destabilizing is having two homes ?

First of all, instability should not be confused with flexibility.

Making a change in the initial parenting plan might mean that the parents are being flexible and responsive by making a change that they feel will benefit their child.

In second hand, across three decades of research, the children in shared residence custody generally have equal or better outcomes on measures of emotional, behavioral, physical, and academic well-being.

Finally, non-residential parenting time is closely related to the quality and endurance of the non-custodial parent - child relationship¹⁴.

So, is there any evidence that living together more than a couple of weekends a month is associated with stronger or more enduring bonds between parents and their children ?

Parents do not have to be exceptionally cooperative, without conflict, wealthy, and well educated, or mutually enthusiastic about sharing the residential parenting for the children to benefit.

Our country, like most other industrialized countries, is undergoing a shift in custody laws, public opinion and parents’ decisions: a shift toward more shared parenting responsibilities and keeping the bonds with the children.

Therefore, Portuguese Family Law defines as normative criteria for determination of child custody:

¹⁴ Joint custody eliminates the demeaning, alternating and artificial concept of “visitation” from the divorced family’s vocabulary and feelings. The child has two functioning homes and not one home and a visitor.

- a) - The child's best interest;
- b) - The willingness of each parent to foster relationships with the other;
- c) - The maintenance of a very close relationship with both parents;
- d) - The encouragement of ample opportunities for contact with both parents;
- e) - The encouragement of sharing responsibility between both parents.

Although, Portuguese Family Law does not provide a list of legal criteria in order to determinate the best interest of the child and it is very difficult to specify the requirements contained under this obligation.

At the same time, Principle 3.20(2) CEFL¹⁵ establishes that alternating residence should be possible however, it does not clarify whether it should be a rule or an exception.

Thus, some courts didn't accept parenting plans were parents' defined to themselves and their children shared residential custody.

But, in the last year, two important decisions from the Lisbon Court Appeal defined that a fundamental principle is that the primary responsibility for the upbringing of children rests with their parents' and that the State, including the courts, should intervene only when the child is placed at an unacceptable risk.

Those decisions were sensible to the recent social and economic changes in Portugal, such as:

- a) - Lisbon Court Appeal (date of decision 28/06/2012)

«Family relationships are defined and unfold, for excellence, within the family, being that the state must not interfere at all costs in private affairs, which citizens adopt and establish between themselves, convinced that they are the best and most appropriate for their children, in the context of personal and social experience that they have and want to maintain.

The State should not, therefore, rule overlap at their will. Much less when the violation of any rule of law or public order is not concerned. It concerns to the parents, in the first row, choosing what they want for their children, considering the best they can give, within their abilities and their knowledge.»

- b) - Lisbon Court Appeal (date of decision 18/10/2012)

¹⁵ The main ideas from the Principles of European Family Law Regarding Parental Responsibilities are:

- 1.º - Recognising the existing diversities of national family law systems;
- 2.º - Recognising the free movement of persons in Europe;
- 3.º - Desiring to contribute to common European values regarding the child's right and welfare;
- 4.º - Desiring to contribute to the harmonization of family law in Europe and to further facilitate the free movement of persons within Europe.

Principle 3:20 Residence

(1) ...

(2) The child may reside on an alternate basis with the holders of parental responsibilities upon either an agreement approved by a competent authority or a decision by a competent authority. The competent authority should take into consideration factors such as:

- (a) the age and opinion of the child;
- (b) the ability and willingness of the holders of parental responsibilities to cooperate with each other in matters concerning the child, as well as their personal situation;
- (b) the distance between the residences of the holders of the parental responsibilities and to the child's school.

«Allowing the law the search for the most adequate and fair, without being subject to strict criteria of legality, it isn't understandable, nor acceptable, unrealistic solutions, with formal interpretations, at the edge of reality.

We live in troubled times, of economic and financial crisis, that demand from all families in this country who are not rich - and they constitute the majority of the Portuguese - a dose of initiative and imagination in order to avoid the difficulties caused by the lack of employment and the economic difficulties with which they struggle in their daily lives.»

At the same year, an important law concerning to children in school (Student Act and Scholar Ethics) established, for the first time in Portugal, the existence of families in shared residential custody, demanding to their decision about the exercise of the functions of educational guardian.

In Portugal, shared residential custody is characterized by the ability of each parent to live with the child, alternately, at a leap of time which may be of a school year, one month, two weeks, one week, one part of a week, or an organized distribution on a daily basis, in which, during that time period, the parent has, uniquely, the exercise of parental responsibilities.

At the end of that period, the roles are reversed.

While one parent has custody during that period, to the other are transferred the rights of supervision and visits. After that stipulated time, the child makes his way back to the other parent's home.

It's defined as a system determined to regulate and organize parents that do not live together with each other, with children, characterized by a rational and equitable distribution of the time with their children, agreed between the parents - through a covenant of family life - or, failing that, by a court decision¹⁶.

Those who accept this parenting plan believe that it increases a better adaptation by the child to this new family situation, and the maintenance of ties of affection and attachment with both parents.

They also believe that shared custody aims to reduce the level of litigation between parents emerging from the assignment of exclusive residence just to one parent and favor co-responsibility and equal distribution of social roles between men and women in family relationships.

Shared parenting creates a more natural, familiar setting where children and their parents can relate in a more meaningful, relaxed, in other words much "natural" ways.

Children in shared parenting families generally have stronger, more enduring relationships with their parents than children who see their non-custodial parent regularly but live with the other parent. Leaving aside other benefits associated with shared residential parenting, one could argue that the quality and endurance of the parent-child bond in and of itself should be the overriding and most compelling consideration in choosing a parenting plan.

The Portuguese Family Courts that accept shared residential custody in a parenting plan, defined these guidance criteria:

¹⁶ A joint custody plan that is successfully implemented also reduces the risk of the children losing contact with their kinship network, particularly grandparents who are able to provide a special kind of love, support and connection with the family's roots. In joint custody, both parents have more time for themselves and new relationships.

- a) - The child's best interest;
- b) - The ability to dialogue, understanding and cooperation between both parents;
- c) - A common educational model or consensus on its fundamental guidelines;
- d) - The geographical proximity;
- e) - The experience that precedes decision making (quality, consistency and duration);
- f) - The child's will;
- g) - The child's age;
- h) - The emotional bond with both parents;
- i) - The availability of parents to maintain direct contact with the child during their residence period;
- j) - Economic and housing conditions of each of them (equivalent or sufficient).

Cultural traditions and socioeconomic factors also heavily influence parental decision making about custody and visiting.

Socioeconomic factors such as employment, education, and level of income, also influence decision making, particularly the amount of contact that non-resident parents will have with their children.

The right of the divorcing family to define post-divorce structure and rules in accordance with the unique needs of each individual and the family as a whole is a good example of self-determination in the family.

Both parents are very special to their children and it is important for children that where possible, both parents take a positive parenting role in the lives of their children and exercise their responsibilities to their children.

Just because a relationship between parents is over, this should not mean that one parent disappears of the child's life or mind.

Children in all families benefit from the ongoing affection, interest and concern of both their parents. When parents support their child's relationship with the other parent, they are promoting their child's right to an independent and meaningful relationship with each parent.

Shared parenting gives children the possibility of a nurturing relationship with both parents and their extended families.

It reassures children that they have two parents and although they live in separate places, they children have a home with each of them and one parent is not unfairly burdened with the responsibility of discipline while the other becomes merely the fun or contact parent.

However, this needs parents who are able to co-operate, to be patient, to communicate, to put to one side their anger or bitterness, to put their children's welfare before their own comfort, to acknowledge that their children want and need both parents and to develop a new co-operative parenting relationship with one another.

A joint custody plan that is successfully implemented reduces the risk for the children to lose contact with their “kind-ship network”, particularly grandparents, who are able to provide a special kind of love, support and connection with the family’s roots.

In joint custody, both parents have more time for themselves and to develop new relationships.

A custody determination should involve more than merely establishing one residential address for the child. Whenever possible, the overall goal of a custody plan should be shared parenting, as an approach to the idea that “parents and families are forever”.

Joint custody involves a bit of commitment, cooperation and trust from parents.

A number of underlying factors contributed to widespread adoption of joint-custody laws across several countries and states:

1st - The division of labour between parents began to change (fathers began participating in child rearing and other household activities at greater rates, while mothers participation in the labour market rose substantially; the redefinition of traditional gender roles provided a political voice to fathers’ rights groups who actively sought equality in the division of children following marital dissolution);

2nd - Results from child-development research indicated the importance of fathers in the development of the children;

3rd - Rising welfare participation among single mothers and the preponderance of “dead-beat” dads who were in arrears of child-support payment led countries to consider policies aimed at resolving problems associated with the rising number of single-headed households.

Countries must be committed to ensuring that children have meaningful relationships with family members who are important to them following family separation, where it is in their best interest and safe.

As a matter of good practice, supporting a child’s ongoing relationships with their grandparents and wider family members should be considered when making arrangements for a child’s future.

Cultural traditions and socioeconomic factors also heavily influence parental decision making about custody and visiting.

Socioeconomic factors such as employment, education, and level of income, also influence decision making, particularly the amount of contact that nonresident parents will have their children, in part because they determine such parents’ ability to maintain a separate residence large enough for the children or to travel for visits when separated by long distance.

However, as society’s cultural and family traditions continue to change, it is likely that child custody and visiting arrangements will reflect, at least in part, these involving attitudes and customs.

Shared parenting is an option that should not be overlooked. It does require both parents to put the needs of the child ahead of their own unresolved anger and personal preferences. However, with help from mediators and parent educators, shared parenting is an option that can be extremely beneficial for each member of the family - and especially for the children.

The effort to ensure that children have post-divorce parenting arrangements which promote good social and psychological adjustment is an ongoing one, involving dialogue and debate at all levels.

Our children deserve no less than this.

Thank you for your attention,

Strasbourg, October 23rd 2013
(António José Fialho)