

Pr. Dr. Michel Grangeat
Educational Science Laboratory
Univ. Grenoble Alpes - France
micHEL.grangeat@ujf-grenoble.fr



The Gap between Empirical Evidence and Political and Legal Practice in France

- 1- Facts and figures on shared parenting in practice**
- 2- Legislative procedures for shared parenting**
- 3- Political trends for or against shared parenting**

Facts and figures on shared parenting in practice

In France, since 2002:

- Legal responsibility is always shared: joint legal custody is awarded to both parents.
- Shared residence is an explicit legal option for separating parents. Parents are allowed to share health insurance and government allowance for dependent children by [splitting](#) these allowances in two parts.

Shared residence isn't the main figure.

The most frequent figure is sole residence at the mother home with father visiting one week-end out of two plus half of school vacation times (in total 100 days per year = 27% of days).

Some arrangements comprise an extended week-end (beginning in Thursday evening or involving Wednesday) that increases father time up to 33% of days per year.

Legislative procedures for shared parenting

The justice decisions follow the parents' expectations in most of the cases.

In other cases, the judge takes her/his decision alone.

To decide for SP, three criteria are applied:

- Low conflict level.
 - Availability of each parent.
 - Closeness of the two homes and the school.
 - Similarity between the life style of both parents.
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- The big idea is **the need of stability and coherency** for the children and the **remoteness from parents' conflict**.
 - The pillar of most legal decisions is the old belief in the preservation of primary and principal **bonding attachment to the mother**. This misconception has been defended by some active psychiatrists from the WAIMH ([with M. Berger](#))

Usual court decisions on shared parenting

In 2012,

- shared residential parenting had represented 15% of the court decisions,
- sole residence at mother home (80%)
- and 5% at father home.

Nevertheless, claims for SRP represent 18% from the total of the cases.

95% of the SRP court decision are aligned with parents' demands (80% at mother home).

In case of parental discordance, SRP is ordered in 50% of the cases after a declaration by the Ministry of Justice before the French parliament ([August 2013](#)) and 12% after a report from the Ministry of Justice ([November 2013](#)).

A family mediation could be ordered in order to smooth the conflict.

A court decision that makes a stake

Recently, a decision by the [French highest court](#) (cour de cassation, 2014 May 14th) specified that the judgments are to be impartial thus the judges can't base their decisions after the declaration of only one parent without evidence for the claim.

This reminder to the judges seems very obvious

BUT

it may challenge a lot of usual court decisions.

New legislation on parenting

A new legislation on **parenting within ordinary families** had been voted in [January](#) within the law for promoting equality between women and men:

The period of parenting leave will represent 3 years for the second child but the last 6 months are to be under the father responsibility.

**If the father cannot be involved,
the parenting leave period will be reduced to 2.5 years.**

This decision is also an acknowledgement of the two parents' role in infant development.

The enabling decree had not yet been promulgated.

Political trends for or against shared parenting #1: the laws

An amendment had been proposed to be included within this law **Equality between Women and Men** in order to engage the judge :

- To firstly examine SRP in case of one parent's claim.
- To ask the second parent to justify her/his opposition.

This proposition was rejected but with a will to examine it in **a new law about family**.

Unfortunately, after a recent **contest of conservative families and catholic stakeholders**, this law had been cancelled.

Political trends for or against shared parenting #1: the laws

The representatives at the National Assembly had proposed a **new law** in [April](#).

This law is named Family: [Parental Custody and Children's Interest](#).

This law had been **accepted** by the National Assembly at the end of June but not yet by the Upper Chamber (Sénat).

This law addresses **four important issues** concerning shared parenting:

- The notion of 'visitor' is cancelled and replaced by the child's double residence.
- The parent who spoils the parenting bounding or who doesn't respect the parenting plan will be penalized.
- A mediation is ordered in case of parents' disagreement about parenting plan.
- The step-parents may have legal custody rights with agreement of both parents.

Is it so wonderful?

Political trends for or against shared parenting #2: shared residence

The double residence issue: success or danger?

Having two homes for their children appears as a success story for non-residential parents

BUT

The [ministry and representatives](#) emphasized the point that double residence **doesn't entail any change** in residential plans and schedules.

They only stress the **inadequacy** between their will to develop shared parenting and the 'visitor' status.

They want to **modify the words** but to maintain the reality of shared residential plans.

FURTHERMORE

They explicitly **target the fathers** who don't pay the allowance to the mother and who don't respect the shared parental plan (one week-end out of two).

The fact that some residential parents, often mothers, may benefit from maintaining a conflictual climate is **totally excluded** from their current reflections.

Thus, there is a danger that the real **children's needs and rights** might **be buried for a longtime** under the double residence notion.

Political trends for or against shared parenting #3: mediation

The mediation issue: breakthrough or misconception?

The law only asks that 2 **mediation sessions should be ordered**.

BUT

The opinions of policy makers are based on a report by a shared parenting group held by the government and ruled by a judge who think that mediation is an individual transformation process [through the encounter of the 'Other One'](#).

Supporters of such a mediation say that they want to apply 'Canadian procedures' but without any other specifications or references.

UNFORTUNATELY

A strong tradition in French mediation is aiming [to smooth the parents' relations](#).

In other words, **the focus is seldom to elaborate shared custody plans.**

Any recommendations are provided to the mediators by public services and the sector is strongly held by the catholic university.

Currently, some lawyers are spurring [judicial mediation](#) addressing parental plans.

Nevertheless, once again, there is a danger that the real **children's needs and rights** might **be forgotten** due to the mediation misconception.

Conclusion

The French case raises more general questions:

1- How to specify what SRP is?

Is a double residence sufficient?

What period of time is efficient for the children well-being?

2- What is the role of mediators?

Is it to resolve the conflict between parents?

Is 'conflict' a univocal construct?

3- What kind of supports are helpful for family professionals?

What are the key competences that need to be mastered after training?

To what extent the guidelines edited by public institutions are relevant?

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