



Residence and Contact in Belgium

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Parents & Children
3rd Rethinkin expert seminar
11-12 May 2017

Residence and Contact in Belgium

- Introduction
- Residential arrangement made by the parents
- Residential arrangement decided by the court
- Changing residential arrangements
- Contact
- Enforcement of arrangements in case of non-compliance

Introduction

- Act 13 April 1995: joint exercise of parental responsibilities (art. 373 and 374, § 1 CC)

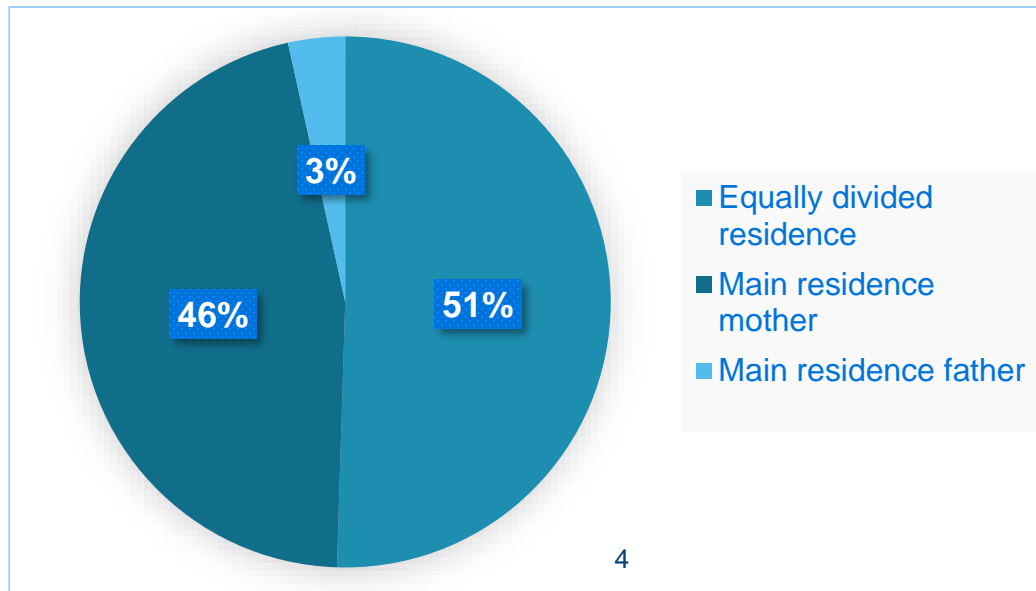
Parents not living together:

- joint exercise => residential arrangement
 - sole exercise => contact arrangement
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- Act 18 July 2006: equally divided residence as a first option

Residential arrangement made by parents

Agreement on child's residence

- Divorce by mutual consent: agreement incorporated in divorce decision
- Empirical research divorce agreements (Hemelseoan, 2012)



Residential arrangement decided by court

- Court's duty to consider equally divided residence as a first option, at one of the parents' request (art. 374, § 2 CC)
- Main residence / secondary residence, if equally divided residence is not the most suitable arrangement
- “taking into account the circumstances of the case and the interests of the child and the parents” (art. 374, § 2, *in fine* CC)

Residential arrangement decided by court

- The interests of the child

e.g. CA Antwerp (7 October 2015): *“After separation of the parents, equally divided residence is to be preferred. (...). In the interests of the children’s well-balanced development, the children should in principle reside with their mother and with their father for equal periods of time”*.

Residential arrangement decided by court

- Factors:
 - Distance between the residences
 - Child's age
 - Absence of communication
 - Severe imbalance in time spent on childcare
 - Child's opinion
 - "Continuity standard"
 - ...

Changing residential arrangements

- New request when new circumstances occur
best interests of the child (art. 1253ter/7 Judicial Code;
art. 1288 Judicial Code + art. 387bis CC – Cass. 28 June 2012)
- Relocation within Belgium
- Relocation outside Belgium

Contact

- Sole exercise of parental responsibilities: other parent holds right to have personal contact with child (art. 374, § 1 CC)
 - Except “very serious reasons”
- Grandparents (art. 375bis CC)
- Other persons – “special affective relationship” (art. 375bis CC)
 - Foster parents (1 year): presumption (Act 19 March 2017)

Enforcement in case of non-compliance

Art. 387ter CC:

- New decision (+ penalty payment)
 - Drastic reverse of residence arrangement: best interest of the child?
e.g. CA Antwerp 12 April 2016
- Enforced execution
- Unlawful retention of the child (art. 432 Criminal Code)
- Compensation for (moral) damage
 - 1 - 30.000 EUR (e.g. CA Brussels 23 December 2008)

Conclusion

- Justification of equally divided residence as priority model?
- What can the law do to make parents aware of the importance of good communication and co-operation after separation? Making parenting plans compulsory?