

Legal rules on the exercise of joint parental responsibility – jointly or individually?

A comparative approach to the law and its impact on bargaining power

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The question

How is joint parental responsibility to be exercised when parents are living apart - jointly or individually?

Who can decide what, who can act alone and when do parents have to act jointly?

How does the law differ from a comparative perspective, and what are the commonalities?

The basic rules nowadays

... but jurisdictions differ

Different legal models

how to exercise joint parental responsibility (p.r.)

Model A: The power to act alone is the general rule, each parent with p.r. is authorized to exercise it individually (**with some exceptions**) England and Wales, Poland, Spain (for separated parents)

Model B: Joint exercise is the general rule, but a **presumption** applies that **each parent acts with consent of the other**. A parent can act alone, with some exceptions Belgium, France, Switzerland

Model C: Joint exercise is stressed; a parent can **act alone only in 'daily matters', 'usual matters' or non-important decisions** alone. Germany, Greece, Italy, Lithuania, Netherlands, Norway, Sweden

Commonalities of different jurisdictions

Core issues where parents have to act jointly

- put the child up for adoption
- change the child's name or surname
- take the child for a longer stay abroad

Often, but not always a matter of joint decision-making

- change of residence
- choice of school
- religious affiliation
- major health treatment and medical intervention

Model A: the power to act alone as the basic rule

The **power to act alone is the general rule, with some exceptions**

Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility.

S. 2 (7) Children Act 1989

England and Wales, Poland, Spain (for separated parents)

Exceptions: by statute or court order

A dissenting parent can apply to the court

Model B: Joint exercise, but a legal presumption of consent allows to act alone

A **presumption of consent** of the other parents **allows to act alone**. There are differences how far-reaching the presumption is and **to which type of legal acts it applies**

Belgium: applies to all legal acts

France: applies to 'routine decisions'

Portugal: applies generally, but not to issues enlisted by statute or acts of special importance

Russia: applies to all but a few enlisted major decisions

The **presumption is rebuttable** (*mala fide* third party)

A dissenting parent can apply to the court

Model C: Joint exercise is stressed, with a limited right to act alone in 'daily matters'

Joint exercise is the general rule for **important decisions** and **legal representation**. A parent can **act alone** in '**daily matters**', '**usual matters**' or take **not important decisions** alone.

Germany, Greece, Italy, Lithuania, Netherlands, Sweden

Germany: '**daily matters**' are those happening frequently and without consequences on the child that are hard to reverse

Sweden: **no definition of 'daily matters'**, limited access to court decisions in conflict situations

Norway: **extended right to act alone** of the parent with whom the child lives alone also in **important matters of care and major decisions of daily life**

Commonalities, differences, problems

Test the difference: typical conflicts

Advantages and disadvantages of models A, B, C

My preference: a **presumption of consent** (model B) - and why I don't agree to the **CEFL-preference** for model C to act alone in 'daily matters'

The need for empirical research: Do different rules how to exercise joint p.r. really make a difference in practice? How do they affect the bargaining power? What is the gender dimension?

References

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