



This paper is taken from

*A Europe of Many Cultures
Proceedings of the fifth Conference of the Children's
Identity and Citizenship in Europe Thematic Network*

London: CiCe 2003

edited by Alistair Ross, published in London by CiCe, ISBN 1 85377 369 7

Without explicit authorisation from CiCe (the copyright holder)

- only a single copy may be made by any individual or institution for the purposes of private study only
- multiple copies may be made only by
 - members of the CiCe Thematic Network Project or CiCe Association, or
 - a official of the European Commission
 - a member of the European parliament

If this paper is quoted or referred to it must always be acknowledged as

Bezenšek, J. (2003) Some social aspects of children's rights after divorce or separation in Slovenia, in Ross, A. (ed) A Europe of Many Cultures. London: CiCe, pp 279 - 284

© CiCe 2003

CiCe
Institute for Policy Studies in Education
London Metropolitan University
166 – 220 Holloway Road
London N7 8DB
UK

This paper does not necessarily represent the views of the CiCe Network.



This project has been funded with support from the European Commission. This publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained herein.

Acknowledgements:

This is taken from the book that is a collection of papers given at the annual CiCe Conference indicated. The CiCe Steering Group and the editor would like to thank

- All those who contributed to the Conference
- Cass Mitchell-Riddle, head of the CiCe Coordination Unit
- London Metropolitan University for financial and other support for the programme, conference and publication
- The SOCRATES programme and the personnel of DGXXII for their support and encouragement.

Some social aspects of children's rights after divorce or separation in Slovenia

Jana Bezenšek

Univerza v Mariboru (Slovenia)

Introduction: aspects of the consequences of social changes on family members' roles in Slovenian society

Slovenian society is developing with intensiveness, and the role of the child is constantly changing. These changes are the consequence of changing family roles, especially the so-called new fatherhood and the intensity of childhood, but paradoxically there are least changes in the role of motherhood, which is still defined as biologically determined.

In post-modern Slovenian society changes in childhood include:

- parental decisions to have children later;
- postponed motherhood (which is more frequent than postponed fatherhood);
- parents choosing to have fewer children;
- the changed images of children: the decision to have children at all is no longer self-evident;
- the influence of consumption on childhood, the way of growing up and the quality of the child's life.

The reasons for postponed parenthood is not only the professional aspirations of potential parents, especially mothers, but also the changed values applied to the role of successful parents and the expected outcome of a happy and satisfied child. To achieve both, appropriate social-global and intimate family conditions should be created. The role of parents is becoming an increasingly demanding social and individual role, and potential parents carefully consider their decision to have a child: but it is also evident that their own demands, expectations, and aims are increasing - young parents are not willing to accept any kind of a child. They will make sacrifices to improve possible defects and/or differences or deviations from the expected and socially acceptable (such as a stutter, strabismus, partial deafness, eyesight defects, and so on). Parents frequently encourage their pre-school children to develop specific abilities (such as early language learning, courses in various sports, learning a musical instrument, etc.), and they consciously influence their child's development. In this way the importance of individuality - dependent on the social and cultural capital of the family into which a child is born - is increased. The postmodern understanding of successful parenting is based on developing the child's individuality to its greatest extent.

The role and duty of parents in learning socially valid norms and values is seen as less important. Childhood is understood as a social category that varies in time and place, but as one also influenced by other factors. In Slovenian society, the differences in understanding the education of children are huge, typical and imminent. Most frequently the education, income and age of the parents define the education they desire for their children. Empirical data suggests that parents who espouse the liberal concept of individualistic education and /or the democratic postmodern education (which is

increasingly considered important in Slovenian society) are more educated, have higher incomes and also follow the global social aim to improve the quality of life. The traditional and materialistic understanding of parents who regard social development as limited to providing material conditions and centralising power of the state is losing ground. These parents are not well-educated and their incomes are lower.

The child and parental divorce

In addition to the emotional conflicts and physical troubles that spouses and parents experience in the process of separation and divorce, the reaction of their children to their decision represents a special problem. Divorce can cause different crises and trigger off unwanted reactions, which (unfortunately) the child often experiences alone, without parental care and support. Parents themselves experience severe troubles and are concerned with their own reactions, and/or may use their child as a weapon against their partner. This exacerbates the child's troubles.

Until recently it was thought that divorce itself caused troubles for the child, but recent research suggests that the child suffers most because the family is destroyed and because of the conflicts preceding the divorce, when a child is often miserable, confused, insecure and scared; forced to listen to frequent rows, quarrels and conflicts between the parents. Even where a child is the subject of violent family behaviour, s/he does not expect a divorce as such: even a child who is neglected and/or a victim of aggressive parental behaviour and is happy when parents separate finds it shocking when one of the parents, most frequently the father, departs from the family home. A child who has not been a victim of aggressive and conflicted behaviour is affected by divorce even more: the child's feeling of security and of his own value can be destroyed.

Children's reactions to divorce are different; they depend on the age of the child and may be conditioned by receiving an appropriate explanation from (at least) one parent and by the child's own character. However, all children require the help their parents to experience the relief of pain through tolerant conversation, love and understanding. Children often react to an unknown new situation with a lot of questions: it is not clear whether children who ask questions handle the situation better, especially as we know that numerous (unsolved) questions about the past are never answered, because the topic is painful and parents do not like answering the questions. This is something that cannot be prevented nor changed. Charlis (1998) states that many children who face parental divorce do not want to ask questions, because they fear that they may be to blame for making family relations worse, and they worry that neither parents will stay with them and take care of them, that their parents are no longer a solid support in their life.

The child's rights after divorce

After a divorce the child retains the right to suitable conditions for healthy growth, appropriate personality development, and the support necessary to develop independent life and work which it is both parents' duty to provide. Parents need to distinguish between their role as partners, which is legally separable, and their role as parents, which lasts until the child is independent or even longer. It is beneficial for the child if parents can carry out their parental role in harmony with each other, which optimises the provision of the child's right. However, Geč- Korošec(1997) warns that in cases of disagreement between parents, the court has the right to the final decision, after

consultation with an appropriate agency for social work. Despite the divorce it is the parents' responsibility to educate their children to become working and honest members of the community with the help of the social community. The child has the right to grow up in the environment full of love, kindness, warmth and understanding, as a complete and suitable development of personality will only be possible in such conditions.

According to the UN Convention on the Rights of the Child, a child is a subject of rights and parents have both a duty and a right to direct their child in asserting her/his rights. After a divorce, the child and the realisation of his rights are still (too) often connected with a family, more precisely with the parents. Pavlović (1993, 182) warns that acknowledgement of reality, which means that mediation with the child, with whom the society has direct communication, is a necessity.

Under Slovenian legal practice the custody of the child is usually awarded to the mother, who thus experiences a heavier burden of parental duties. Custody is awarded to the father when, because of social or and medical grounds, the mother is not capable of providing optimal care for the child, or when she declines to accept these duties. Geč-Korošec (1999) suggests that when agreement between the divorced parents is not reached, the right of making a final decision should be in the hands of a competent centre for social work (2nd paragraph, Article 87) and the decision is subject of the court. The decision is based on which of the parents provides better conditions for the child's education in physical, moral and intellectual aspects, the child's benefit being the most important factor. The child has an undisputed right to an appropriate home, supply of food, clothing, shoes, medical care, care and control over movement, etc. S/he also has the right to visit his relatives and attend social events. The purpose of this social contact is that the child preserves the feeling of connection not only with the parent with whom s/he does not live but also with relatives. If it is for the child's benefit, the court can also decide that the non-custodial parent does not have the right to contact the child, or the right of contact is limited (eg. in case of accustoming the child to crime, danger of abuse etc.).

After divorce the child is entitled to the same standard of life as s/he experienced before the divorce: therefore the non-custodial parent must contribute money for the child's maintenance. The divorced parents may reach agreement about the amount of alimony, but where this is not possible the court can determine the amount, based on information about the income of the parent who is obliged to pay. Appropriate alimony covers all the necessary expenses required for the child's life (e.g. costs of food, clothing, housing, education, recreation, etc.). In Slovenia the amount of alimony can be recalculated as often as necessary in accordance with increases in living costs and salaries, and the method of payment may be agreed between the parents or stipulated by the courts. It should be emphasised that the child does not have the right to reject the alimony, as there would be no reasonable legal effect of such a rejection. The obligation to pay alimony ceases with the death of the person liable to pay, or the person entitled to maintenance (the child).

In Slovenia the child also has the right to the so-called 'child's supplement' in cases where the income per family member does not exceed the upper limit of income, or when the joint family gross income per family member in the previous year did not exceed 99 per cent of an average salary in Slovenia. When the child lives in a one-parent family after the divorce, s/he has the right to an exceptional amount of child's supplement which increases the child's supplement by 10 per cent. The Slovenian state's social policy tries to ensure

and encourage the prosperity of children after their parents' divorce: there is a consistent consideration for the continuation of the child's rights after divorce which ensures both the coordinated care of both parents for his optimal development and the active participation of the non-custodial parent in the child's security and education. Social policy also enables divorced parents to cooperate in their care for their child and to achieve appropriate mutual communication, agreement, consensus and fewer negative emotions.

The abuse of power in the hands of parent violates vital rights and interests of any dependent family members, but after divorce the rights of children are most in jeopardy. The child is and will be dependent on his parents emotionally, socially, financially and legally. When parents cannot (or more often do not want to) fulfil their parental obligations appropriately, the Slovenian state is obliged to intervene. If the state cooperates in the process of the formation of the family, it is correct that it also cooperates in the process of its disintegration.

Besides its basic functions, the family has great influence in the property transfer sphere. The Slovenian state wants to neutralise conflicts in the family during divorce, and therefore tries to solve the conflicts with organisations and procedures conducted by state bodies. We estimate that legal intervention is only needed in cases when divorced spouses abuse their child because of mutual conflicts. The state is very careful in its relations with families, which it no longer disciplines directly when there is familial disintegration. It only intervenes in extreme situations, and even then it can offer little to the threatened, although mechanisms are being developed to try 'to relieve threatened members to withdraw from the family' (Pavlović, 1993, 136). The basic and most important legal act that regulates the legal situation of children is The Constitution of the Republic of Slovenia (Ur.l. RS, n.33/91-I), which (also) ensures the child her/his rights in the chapter on human rights and basic privileges, equality before the law, prohibition of torture, protection of freedom and one's dignity, right to personal dignity, protection of privacy, freedom of speech, the right to own property, the right to due process of law, right to conscientious objection, etc. In practice, centres for social work often help when realising children's rights after divorce.

Team work is very important when working with family members after divorce: this is satisfactorily done by centres for social work. The committee of experts encompasses those from different fields (psychologists, pedagogues, lawyers, social workers, doctors etc.), which is very important for a full clarification of the situation and in reaching the right decision. Sometimes the judicial expertise of the clinical-psychological profession is needed and can play an important role in the decision of the court on the custody of the child, with regard both to upbringing and arranging personal contacts. The task of such an expert is to protect the rights and benefits of a child after divorce. An expert in the clinical-psychological profession faces complex difficulties in balancing law, a comprehensive analysis of the personality of each parent and of the child, and the circumstances of the particular divorce; in respecting the ethics and the doctrine of other experts and also modern developmental psychology, family sociology and family law, aspects of each of which are brought before the courts. Last but not least, an important role must be played by the honesty of all the concerned parties, because it is the only and best way to ensure the social and life circumstances for the child's optimal development.

Conclusion

Regardless of social and political changes, the rights and benefits of the child must always be of primary importance, even when it is not easy to determine them. We draw attention to the fact that the law does not mention the rights of a child after the divorce of his/her parents. It regulates only the parental rights and the duties and the State's measures for the child's protection after the divorce. Special attention should be devoted to the child's wishes and opinions and rights, having in mind that the age and maturity of the child concerned need to be taken in account. We propose that a new law should be enacted that would regulate the rights of a child after divorce, that a special procedure should be introduced for deciding on the child's rights, that it is necessary to have special children's courts, and that an independent societal body should be established for the protection of the rights and benefits of a child after parental divorce. The basis of the understanding of the child's rights should be the Convention on the Rights of the Child.

We also suggest that the majority of the cases relating to the regulation of the relations between the child and her/his parents after divorce, which are now decided by centers for social work, should be transferred to the competence courts. We also suggest that in the proposal for the new Civil Procedure Act, there should be provision for a child to appear before the court after a divorce if she/he has reached the age of 15 and is capable of understanding the legal consequences, and that in other cases, the child should have legal representation.

References

- Bajzek, J. *Kriza in perspektive evropske družine, v: Družina, zbornik predavanj na osrednjih strokovnih prireditvah v Sloveniji v letu družine*, Inštitut Antona Trstenjaka, Ljubljana, 1995.
- Bezenšek, J. *Družina s predšolskim otrokom, življenjski standard in zaznavanje revščine, v: zbornik: Predšolski otrok danes*, Vrtec (ur. J. Bezenšek), Slov. Konjice, 2003.
- Bezenšek, J. *Družina, življenjski standard, revščina in izobraževanje*, 22nd International Conference on Development of Organization Sciences, Slovenia, Portorož, March, 26th-28th, 2003.
- Carlsh, A. *Med dvema ognjema*, Državna založba Slovenije, 1998.
- Geč-Korošec, M. *Družinsko pravo*, Pravna fakulteta Univerze v Mariboru, Maribor, 1999.
- Kirk, M. *Dober zakon, Državna založba Slovenije*, Ljubljana, 1999.
- Kraljić, S. *Simpozij o evropskem otroškem pravu*, Pravna praksa, 1996/24.
- Kraljić, S. *Otrok ima pravico do obeh staršev*, Pravna praksa, 1996/21.
- Končina-Peternel, M. *Država, družina in otrok. Pravica do spoštovanja družinskega življenja, Zbornik znanstvenih razprav 54:203-213*, Ljubljana, 1994.
- Končina-Peternel, M. *Pomoč otrokom, ko starši odpovedo*, Znanstveno in publicistično središče, Ljubljana, 1998.
- Košiček, M. *Zakon na razpotju, Mladinska knjiga*, Ljubljana, 1993.
- Kuntzag, L. *Ločitev boli, Založba Kres*, Ljubljana, 1997.
- Pavlović, Z. *Psihološke pravice otroka. Otrokov pravice onstran pravnega varstva*, Didakta, Radovljica, 1993.
- Raspovič, M. *Enoroditeljske družine*, *Otrok in družina*, 1/99.
- Sociologija, *Gradivo za srednje šole*, ZRSŠ, Ljubljana, 1995.
- Situacijska analiza o položaju otrok in družin v Sloveniji*, Slovenski odbor za UNICEF, Ljubljana, 1996.

Statistični letopis Republike Slovenije 2001, [www. sigov/zrs/leto03](http://www.sigov/zrs/leto03)(15. 8. 2001)

Ziherl, S. *Kako se upremo alkoholu*, Mladinska knjiga, Ljubljana, 1989.

Unicef: Situacijska analiza o položaju otrok in družin v Sloveniji, Slovenski odbor za Unicef, Ljubljana, 1995.

Ustava Republike Slovenije, Uradni list RS , št. 33/91-I