

## *Joint custody and shared parenting: Analysis of practices in the Civil Court of Rome*<sup>\*†</sup>

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**Summary.** *The current research examined the question of custody of children in divorced families in Italy. This study proposed to evaluate if changes occurred after introduction of the Law 54/2006 in March 2006 about shared custody, in both the sentences of judicial divorce in Ordinary Court of Rome, and the choices of the parents who divorce by mutual consent in the same Court. The archival research examined 100 judgments of judicial divorce (50 before the Law 54/2006 -2005- and 50 after the Law 54/2006 -2007- ) and 100 judgments of divorce by mutual consent (by the same procedure). The instrument employed was a schedule of content analysis. The data was examined with frequencies analysis and statistic tests ( $\chi^2$  test and ANOVA). Consistent with assumptions of the authors, results shown that after Law 54/2006 there was significant changes in the child custody. Research and clinical implication are discussed.*

**Key Words:** *child custody, co-parenting, divorce, shared custody, visit planning.*

In this paper we examine how, in recent years, the award of child custody following parental divorce has changed in Italy. An important factor in bringing about change was the introduction of Law n.54/2006, which

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identified shared custody as the preferred model in custody cases for the children of divorced parents. The primary objective of the law was to guarantee the continuity of affective bonds; attributing equal importance - on both an educational and affective level - to both parents, independently of any conflict which may exist between them. This law proposed to break with pre-existing trends, which in Italy had previously been based upon a culture of mono-parenting. In the 1980s and 1990s in the opinions of both parents and experts alike, the mother was, in fact, held to be the “custodian” par excellence. Such thinking guaranteed the continuity of a traditional organization of family roles, where the *expressive* role in child rearing was seen to be the mother’s; the father, instead, being assigned the *instrumental* role. “The maternal preference was reinforced by untested psychoanalytic theory which focused on the exclusive importance of the mother; early child development research which focused solely on mothers and children; and early separation research of British wartime and hospitalized children, which reported the dangers of prolonged separation of children from their mothers” (Kelly, 2006, p.36). Such principles in Court procedures were then translated into the research of *parent psychologist* (Goldstein, A. Freud & Solint, 1980), wherein we find, that [the mother is] the parent who had established the strongest emotional bond with the child:- insofar that she had known how best to respond to its affective and material needs in their everyday relationship. However, it should also be pointed out that there had previously been signs of change. From 1987, it had been possible in Italy for judges to award shared custody to parents. However, the data of the National Statistics Office (ISTAT) reports a low instance of its being applied

### **Joint custody and co-parenting**

Given that there has always been a discrete collaboration between the judicial and psychological professions, we hold that the positive reception to a series of results obtained from psychological research – results which, it should be noted, had already been accepted by the International Conventions to which Italy had also adhered – lies at the root of the recent promulgation of the law on shared custody. Noteworthy amongst the principal research oriented in this sense, are the studies on *Attachment* (Bowlby, 1988; Parkes, Stevenson-Hinde & Marris, 1991; Holmes, 1993) and above all, those on the *Primary Triangle* (Fivaz Depeursinge & Corboz Warnery, 1999) and *Infant Research* (Beebe & Lachmann, 2002; Threvarthen, 1993; Tronick, 1989) – which emphasize a child’s triadic relational competencies from the earliest moments of life – and have underlined the importance of a child’s relating in a significant way with both the maternal and paternal figures. The constructs of *co-parenting* (McHale, 1995; 1997; 2007) and *inter-subjectivity* (Stern, 2004) are recognised as having a fundamental role in the healthy and

harmonic development of the child's personality; likewise, the possibility for a child to be able to grow up in a family environment where a normative triangulation with both parents is guaranteed. The popularization of psychological research into the importance of the parental role of the father (Lamb, 2004), and into the evolutive needs of children, and a different conception of the roles of men and women within the family unit (two career families) have all contributed towards recognising the child's rights to maintain his/her affective relationships with both parents, also in cases of family instability. Divorced families are still families and co-parenting concerns the relational dynamics between parents who are redefining the boundaries of their relationship (Sbarra & Emery, 2008). Many studies show that the presence of a positive relationship with either the mother or father was associated with fewer mental health problems for divorced children, as compared to not having a close relationship with either parent (Sandler, Miles, Cookston & Braver, 2008). Moreover, early divorce research cited the importance to children's well-being of continued contact with their fathers (Kelly, 2006).

Parents, therefore, need to have the willingness to facilitate - or at least, not to block the establishment of such relationships with the other parent - thereby fostering the comparison with their roots and family history: the definition of what was considered to be in the children's best interests has been changed in terms of shared custody and the right to co-parenting.

In the following paragraph, we shall better examine early co-parenting research, in as much as the construct of co-parenting represents a central tenet in connecting those juridical and psychological aspects which child custody proceedings entail.

### **Co-parenting in divorced families**

Co-parenting is considered to be the quality of coordination between adults in their parental roles (McHale, Kuersten-Hogan, Lauretti, Rasmussen, 2000) and the capacity to, in turn, support and enable each other as leaders of the family (Katz, Low, 2004). Given that co-parenting and marital life are interrelated yet, at the same time, distinct systems within the same family unit (Gable, Belsky & Crinc, 1992; McHale, 1995; Cox, Paley & Harter, 2001; McHale, Lauretti, Talbot & Pouquette, 2002; Parke & Buriel, 2006) co-parenting can exist on a functional level, even in divorced families wherein marital life has broken up.

Research on co-parenting in divorced families is still very rare (Maccoby, Depner & Mnookin, 1990; Emery, Kitmann & Waldron, 1999; Sbarra & Emery, 2005 Ahrons, 2006). Nevertheless, many of the dynamics typically described in families that are not divorced, can also be found in divorced families. Ahrons & Wallisch (1987) identified five typologies of divorced

coparenting relationships which range from a continuum of lesser – greater functionality (Ahrons, 2006): dissolved duos; angry associates; fiery foes; perfect pals and cooperative colleagues. Adult children were interviewed in a longitudinal study: they reported that (in) 60% (of cases) their parents were cooperative 20 years later; only 22% said their parents were still angry associates or fiery foes, and 18% said that their parents were now dissolved duos (Ahrons, 2006).

Maccoby and Mnookin (1992) underlined that approximately one year after divorcing, a third of couples continued to have conflictual relations and that a quarter of subjects continued to experience conflict in the following four years, too. In a successive study, Maccoby, Buchanan, Mnookin and Dornbusch (1993) underlined that following divorce, it is possible to identify 3 patterns of coparenting relationship: cooperative (1/3 of subjects), disengaged (1/3 of subjects), and hostile (1/3 of subjects). Kelly (2006) has found similar results: 20-25% of couples display a *conflictual* co-parenting; more than 50% a *parallel* co-parenting, only 25-30% display a *cooperative* co-parenting. According to Maccoby and coll. (1993), over time, the pattern of *disengage* became the most common pattern observed ten years after divorce; and refers to those parents who are not involved in any form of inter-parental communication. This pattern usually occurs in small families with children who are in the pre-adolescent or adolescent stage. A more recent study by Sbarra and Emery (2005) shows how, ten years after divorce, about a third of subjects no longer have any contact with the other parent, even as regards matters concerning their children. A small percentage of parents is openly hostile, and only 10 - 25% of people share the educational issues with the other parent. If, instead, the children continued to frequent both parents, the most common pattern was that of “parallel coparenting”, even 10 years after parental divorce. Only a small percentage of parents remained openly hostile towards each other, and between 10 and 25% of subjects shared those problems inherent to child-rearing with the other parent.

In summary, the literature examined highlights that, even though it is possible to continue to co-operate in parental roles following divorce, the most common outcomes are those of disengage on the part of one parent, or of parallel coparenting. The type of coparenting pattern which develops following a divorce seems to be associated to partner acceptance of the end of the marriage (Sbarra & Emery, 2008).

Even less common is research which has studied the relationship between the type of custody awarded by the Court and family re-organization (Maccoby & Mnookin, 1992; Laumann-Billings & Emery, 2000; Bauserman, 2002; Lee, 2002; Fabricus, 2003). The results currently available do not concur: some authors (Furstenberg & Nord, 1985) have highlighted that shared custody doesn't, in itself, guarantee collaboration between parents; neither does it determine a greater level of cooperation.

Moreover, early studies of joint physical custody reported better adjustment of children compared with those in sole custody, and greater satisfaction expressed by joint-custody youngsters, and that joint custody: – given that it is free of the “winner/loser” dynamic – promotes collaboration and cooperation between parents. However, samples were small, non-representative and self-selected (Steinman, 1981; Pearson & Thoennes, 1990; Luepniz, 1991; Cloutier & Jacques, 1997; Kelly, 2006). Fabricus (2003), highlighted that among young adults who lived in joint physical custody, 93% expressed satisfaction and believed that the arrangement was the best for them. Another study of college students who had lived in joint physical custody reported that they experienced fewer feelings of loss; and were less likely to view their lives through a lens of divorce, compared with those in sole physical custody arrangements (Laumann-Billings & Emery, 2000). A meta-analysis of 33 studies comparing joint physical and sole maternal custody from Court, convenience and school-based samples indicated that children in joint physical custody arrangements were better adjusted across multiple measures of general, behavioural, and emotional adjustment (Kelly, 2006). Conflict was not a predictor of the joint custody advantage in child adjustment (Bauserman, 2002). Two other studies similarly found joint physical custody to be more beneficial to children and adolescents than sole maternal custody along multiple dimensions when conflict was low, but these benefits were suppressed by high levels of conflict (Maccoby & Mnookin, 1992; Lee, 2002).

The difficulties inherent in carrying out shared custody seem to belong to the initial period of adaptation and, thanks to prolonged contact with parental figures, seem to gradually disappear. These results leave the problem of the existing level of parental conflict somewhat open to question. These are questions which have accompanied the legislative processes on the law on shared custody in Italy: as shared custody is currently also prescribed as a measure to induce greater collaboration between parents.

The current research project proposes, therefore, to include the application of the institution of shared parenting in the procedures of one of the principal Italian Courts to examine clinical management of children’s custody. Considering the time necessary for the effective application of the new provision, we still do not possess studies capable of describing of what the eventual effects of Law 54/2006 upon the children of divorced parents will be. However, the declared objective of the law is to limit the risk of one parent being excluded from their children’s lives. The first step is therefore to verify how much and if, the judges – and the parents – will utilize this new formula.

## **Child custody before and after the introduction of the Italian Law 54/2006.**

This project proposes to:

- monitor any eventual changes in the dispositions of the judges of the Ordinary Court of Rome, in the years 2005 and 2007 – i.e.: in the years prior to and following the introduction of Law 54/2006 – regarding the procedures of custody and visiting rights and the relative motivations in the proceedings of judicial divorce;

- monitor any eventual changes in the decisions of parents who agreed upon a mutual consent divorce in the Ordinary Court of Rome in the years 2005 and 2007 regarding the procedures of custody and visiting plans and their relative motivations.<sup>1</sup>

The choice to examine both judicial procedures and divorces by mutual consent was necessary in order to fully understand the interpretation of the new law amongst both judges and parents, and to highlight the eventual differences between cases of low conflict (divorce by mutual consent) and high conflict (judicial divorce). In fact, prior to the new Law in Italy, cases of divorce by mutual consent evidenced a percentage of maternal, mono-parental custody of more than 93%, a great deal higher than that registered in judicial divorces; thus presupposing a deeply rooted culture of mono-parenting amongst Italian parents following divorce.

The hypothesis is that Law n.54/06 has brought about significant changes, not only in the motivations and instruments used by judges, but also in the decisions of parents. Kelly (2006), illustrating the situation in the USA, evidenced that although many States adopted statutes in the 1980s and early 1990s which encouraged frequent visitation and permitted joint physical custody (defined as the child spending between 33% and 50% of their time with one parent and the remainder with the other) as an acceptable parenting option, the living arrangements of children following divorce have remained remarkably stable over the past 35 years, despite social and cultural changes. Divorce researchers reported that mothers continued to seek sole physical custody 80%-85% of the time (Emery, 1999). Joint physical custody arrangements were small in number. Statutory changes permitting joint physical custody have not markedly increased the number of parents sharing physical custody because many jurisdictions continued to rely on traditional visiting guidelines.

### ***Method***

The current research project was based upon the archive research model. With the authorization of the president of the Family Division of the Ordinary Court of Rome it was possible to have access to the necessary information useful for this research. We certify that we have complied with

the APA ethical and privacy principles in the conduct of the research presented in this manuscript.

### *Data*

The process of accessing the sample was random and we began by examining the sentences of judicial divorce, and their counterparts in divorce by mutual consent, as published by the Ordinary Court of Rome in the years 2005 and 2007, i.e.: in the years immediately prior to, and following, the introduction of Law 54/2006 on shared custody. Apart from the year in which the proceeding was concluded, a further criterion for inclusion in the sample was the presence of at least one underage child in each case of divorce.

For each year analyzed, 50 sentences of judicial divorce and 50 corresponding cases of divorce by mutual consent were randomly extracted from the relative archives.

Those sentences published in 2006 were not analyzed, in that they are part of the 'transition-period' in the application of the law: thus avoiding any sentences published after March of 2006, which had, in reality, been deliberated before the 54/2006 law had fully entered into force. This bias could have distorted our understanding of the results obtained.

The sample was found to be balanced in terms of geographical origins, level of education and income. Of the women and men 100% were Caucasian.

The most represented age group for women, in both divorce by mutual consent and judicial divorces, was between the ages of 26 and 40. For the husbands, the most represented age group was between 41 and 60 years of age.

In the judicial divorce cases there were 144 children, whilst in the cases of divorce by mutual consent there were 165 children. As regards the age of the children in our sample, the highest concentrations (percentages), in both mutual consent and judicial divorces, were in the age group 6-10 years. In both the years analysed, mutual consent divorces were found to occur most commonly in families with 2 children, whilst judicial divorces are more greatly represented by those families with only one child.

The mean duration of marriage (months) is 167.89 (SD = 75.59) for divorces by mutual consent and 143.26 (SD = 73.76) for judicial divorces.

Most parents have a secondary-higher level of education.

### *Instrument*

The analytical instrument employed was a semi-structured analysis form: semi-structured in order to ensure both quantitative and qualitative content analysis. The analysis form was created 'ad hoc' and was tested out in a pilot phase, on 30 judicial sentences, by 2 independent judges who had been trained in the use of the form and who were blind to the objectives of the

research. This phase enabled the elimination of superfluous entries, the closure of certain open question items and the addition of missing information. Consistent with qualitative methodology, data were reviewed by two research assistants, and categories assigned were compared (Cohen  $K = .81$ ). When disagreements between the coders occurred, the project director reviewed them and made the final decision.

The definitive version of the instrument was defined in such a way as to receive minimum inference from the researcher and is composed of  $N = 30$  items on a nominal scale of closed Yes/No questions. Apart from containing information useful to identify every single procedure (number and year of sentencing), the instrument is also subdivided into thematic areas inherent to: *structural data*, which enable the acquisition of socio-demographic information on the subjects involved in the divorce; *procedural data*, which enable the acquisition of information on the divorce procedures in which the subjects are involved; *data relative to the award of custody and visit planning* and data regarding instruments used by the judges in their decision to whom to award custody and the other routes followed during the procedure. Schedules developed for this study are available from the authors.

### *Data Analysis*

Data of a purely qualitative nature were elaborated using the SPSS software package; proceeding onto an analysis of percentage frequencies.  $\chi^2$  test and ANOVA statistical tests were used, at a level of  $\alpha$  critical to .01 to check for type I errors.

The comparison of variables relative to the custody of children was carried out on the total number of children: the order to award custody being relative to each child. The motivation for this choice was to distinguish between any eventual different decisions that the Judge might adopt towards children of the same couple.

## **Results**

### *Procedural Data*

Table1 summarizes the data relative to the duration of proceedings in the years examined. As regards judicial divorces no significant differences in the average duration of proceedings during the two years examined came to light,  $F(1, 98) = 0.25, p > .01$ . Equally, as regards mutual consent divorce, there were no relevant differences to note between the years 2005 and 2007  $F(1, 98) = 1.34, p > .01$ .



**Table 1. Duration of proceedings (months)**

	Judicial divorce <sup>a</sup>		Mutual divorce <sup>b</sup>	
	Year 2005	Year 2007	Year 2005	Year 2007
Mean	33.64 <i>a</i>	34.54 <i>a</i>	3.42 <i>a</i>	3.04 <i>a</i>
SD	20.55	11.50	1.01	1.15
N	50	50	50	50

a: Univariate  $F_{(1, 98)} = .25, p > .01$ ; a, b: different letters indicate means significantly different,  $p < .01$

b: Univariate  $F_{(1, 98)} = .134, p > .01$ ; a, b: different letters indicate means significantly different,  $p < .01$

### *Custody of children*

In the corresponding cases of divorce by mutual consent, there had been no contestation regarding the custody of children, insofar as these parents are in agreement as to custody. Examining the sentences awarded in judicial divorce, it was possible to identify two sub-samples of children: contested children and uncontested children. These two groups were thus defined by the parental requests for custody first made to the Judge. The first group, contested minors, were those children for whom both parents had made an explicit request for sole custody, whilst the second group, uncontested minors, were those children for whom there had not been a request for sole custody made by both parents. Contested minors made up 83.33% of cases ( $n = 64$ ) in the year 2005 and 47.00% ( $n = 32$ ) of cases in the year 2007. In the same years, uncontested minors made up 16.67% ( $n = 13$ ) of cases in 2005 and 53.00% ( $n = 35$ ) of cases in 2007. There was a significant difference between contested minors and uncontested minors for the year 2005,  $\chi^2(1, N=77) = 33.78, p < .01$ , but not for the year 2007,  $\chi^2(1, N=67) = .14, p > .01$ .

Regarding parental requests for custody in judicial divorces, we found that the higher incidence of requests in the two years under consideration concerns requests for maternal sole custody. However, an effective diminution in these requests can be noted in these years: - from 68.35% ( $n = 54$ ) requests in 2005, we can see a reduction to 47.06% ( $n = 32$ ) requests in 2007, but there wasn't a significant difference. Shared custody of minors in 2007 was requested by both parents in only 2.94% ( $n = 2$ ) of cases of judicial divorce.

**Table 2. Types of custody established in sentencing**

	Judicial divorces		Mutual divorces	
	Year 2005	Year 2007	Year 2005	Year 2007
Sole Custody	56 (72.73%)	22 (32.83%)	68 (80.95%)	5 (6.18%)
Joint/Shared Custody	2 (2.60%)	37 (55.22%)	6 (7.14%)	70 (86.42%)
Children of Age	13 (16.88%)	5 (7.47%)	4 (4.77%)	3 (3.70%)
Other	6 (7.79%)	3(4.48%)	6 (7.14%)	3 (3.70%)
N	77 (100%)	67 (100%)	84 (100%)	81 (100%)

Table 2 shows the types of custody established in sentencing in the years examined for both kinds of divorce. As regards judicial divorces, we observed that there was a significant difference between the awards made for sole custody and joint/shared custody in the two years under consideration. In particular, for the year 2005,  $\chi^2(3, N = 77) = 96.76, p < .01$ , the type of custody more frequently by judges was sole custody, whilst in 2007,  $\chi^2(3, N = 67) = 45.64, p < .01$ , the year immediately following the introduction of Law n.54/06, the type of custody most often awarded was shared custody as prescribed by the new law, despite different requests from parents.

Examining in detail the figures for the award of sole custody, the trend in 2005 was characterized by the choice of the mother as custodial parent: 71.43% ( $n = 55$ ) in 2005. In 2005, in only 1.30% ( $n = 1$ ) of procedures was custody granted in favour of the father. However, 2007 saw a diminution in the award of sole maternal custody, which was granted in only 29.85% ( $n = 20$ ) of cases. When compared to mutual consent divorces, this trend is even more apparent. Specifically, in 2005, sole custody prevailed in 80.95% ( $n = 68$ ) of cases,  $\chi^2(3, N = 84) = 140.37, p < .01$ ; whilst in 2007 shared custody had arrived at a level of 86.40% ( $n = 70$ ) of cases,  $\chi^2(3, N = 81) = 163.08, p < .01$ .

In both typologies of proceedings, for the year 2005, “sole custody” was the prevailing type of custody; the situation differs in 2007 because the recommendations of the new law seem to have found substantial application.

There were no significant differences to note in the work of judges and parents about the brothers: never the Judge has divided the brothers

Table 3 provides data on the motivations<sup>2</sup> relative to the custody of children for mutual and judicial divorces, respectively.

**Table 3. Motivations**

	Judicial divorce		Mutual divorce	
	Year 2005	Year 2007	Year 2005	Year 2007
Motivations concerning the parent-child relationship	7 (9.40%)	14 (21.25%)	3 (3.57%)	0
Motivations concerning the children's subsystem	18 (22.71%)	15 (22.50%)	33 (39.28%)	12 (14.81%)
Motivations concerning the couple's relationship	16 (21.43%)	2 (2.5%)	3 (3.57%)	0
Motivations concerning the coparental relationship	13 (16.66%)	15 (22.50%)	43 (51.20%)	65 (80.25%)
Motivations concerning the parents	12 (15.50%)	8 (11.25%)	2 (2.38%)	4 (4.94%)
Other motivations	11 (14.3%)	13 (20%)	0	0
N	77 (100%)	67 (100%)	84 (100%)	81 (100%)

As regards judicial procedures, in 2005 motivations concerning the children's sub-system prevailed. In 2007, motivations regarding the coparental relationship and the children's sub-systems are the most prevalent

and occurred in almost the same percentage. However, only the area of “motivations concerning the couple’s relationship” appears as a differential variable of the two years taken into consideration,  $\chi^2 (1, N = 18) = 12.8, p < .01$ : in fact, the Judge, had always made less reference to the dynamics of the couple’s relationship in establishing the custody of children. Greater weight was given to those aspects inherent to parenting and co-parenting. A discrete presence of the category “other motivations” is noted. This category includes all those conditions in which the Judge requested specialist interventions: such as CTU, Social Services and mediation and made reference to these in sentencing.

Amongst the motivations recorded in the proceedings for the corresponding mutual divorces, the area most often mentioned is that relative to the co-parental relationship, which undergoes a statistically significant increase:  $\chi^2 (1, N = 108) = 4.48, p < .01$ . This figure is attributable to the micro-category “agreement between husbands and wives” which, in the years in question, reaches 72.09% ( $n = 31$ ) and 66.15% ( $n = 43$ ) respectively. In 2007 decreased the motivations concerning the children’s subsystem:  $\chi^2 (1, N = 45) = 141.80, p < .01$ .

### *Visit planning*

Regarding the visit planning between parents and children not living together on a full time basis, we chose to utilize the following categories: ‘wide’; ‘standard’, ‘limited’ and ‘free’. We found only a trend in increase in ‘wide’ visiting plans (twice weekly visits, plus overnight stays and holidays equally divided between both parents) for judicial divorces  $\chi^2 (1, N = 30) = 4.80, p < .05$ .

In particular, whilst judges in 2005 prescribed ‘standard’ visiting plans (one day a week with alternating week-ends plus overnight stays and holidays) between father and son in 44.44% ( $n = 20$ ) of cases, in 2007, ‘standard’ visiting plans took second place 30.95% ( $n = 13$ ) to ‘wide’ visiting plans in 50.00% ( $n = 21$ ) of cases. In 2005 ‘wide’ visiting plans were prescribed in 20.00% ( $n = 9$ ). ‘Free’ visiting plans were prescribed only in 8.89% ( $n = 4$ ) of cases in 2005 and in 11.90 % of cases ( $n = 5$ ) of cases. Judges in 2005 prescribed ‘limited’ visiting plans in 26.67% ( $n = 12$ ) of cases and in 2007 in 7.14% ( $n = 3$ ).

As far as the corresponding mutual divorces are concerned, there was a significant difference between the type of visit planning decided upon in years 2005 and 2007.

The most frequently adopted visiting plans were found to be ‘standard’, with similar percentages for the years under consideration 35.72% in 2005 ( $n = 30$ ) e 30.87% in 2007 ( $n = 25$ ). However, there was a significant increase over the years in ‘free’ visiting plans: 18.75% in 2005 ( $n = 9$ ) and 43.42% in 2007 ( $n = 33$ ),  $\chi^2 (1, N = 42) = 13.72, p < .01$ . No significant difference was

found regard 'wide' visiting plans: 18.75% in 2005 ( $n = 9$ ) and 22.68% in 2007 ( $n = 18$ ).

#### *Further specialist evaluations*

The Judge required specialized assessment -construed as specialist evaluation (CTU) o psychosocial evaluations- only in judicial divorce. These evaluations were carried out only in judicial divorce because in mutual divorce these evaluations are not required under the agreement of parents.

However, the frequency of specialist evaluations was found to be a somewhat rare occurrence during the two years examined. Precisely, in 2005, of the 50 sentences analyzed, only in 14.00% of cases ( $n = 7$ ) was a technical office consultation requested by forensic psychologists, likewise for psychosocial evaluations. In 2007 technical opinions were requested from forensic psychologists o for psychosocial evaluations in 24.00% ( $n = 12$ ) of cases. No significant difference was found into years.

Rarely did the Judge request a direct audience with the minor.<sup>3</sup> In 2005 the minor was listened in only 2.60% of cases ( $n = 2$ ) and in 2007 in 5.97% of cases ( $n = 4$ ). No significant difference was found into years.

## **Discussions**

The principal objective of this research was to explore the application of shared custody in the Ordinary Court of Rome during the years 2005 and 2007. Special attention was given to the type of custody awarded, its relative motivations and the modalities of parental visiting rights for children in both judicial divorce and mutual consent divorces. This enabled us to monitor changes in the procedures judges used to establish the modalities of custody of minors in situations of conflictual divorce; and likewise, monitor changes in the decisions of parents in mutual consent divorces.

The choice to examine this period (the years 2005 and 2007) derives from the fact that it reflected the time frame which saw the passage from the old Law regulating parental custody of minors to the new law, Law n.54/2006, enter into force.

The Legal procedure of judicial divorces is long and complicated in Italy, whilst that of comparative mutual consent divorces is decidedly shorter. This can be attributed to the persistent conflict between those spouses who decide to divorce via judicial divorce. This conflict in the Courtroom represents the externalization of a desperate mode of dealing with the separation (Cigoli, Galimberti e Mombelli, 1998).

The conflict requires much longer times of resolution, because it is also amplified by the logic of "winner/loser".

The introduction of the new law – at least until of time of research – did not bring about significant changes regarding the duration of custody

proceedings. The data relevant to the duration of judicial proceedings acquires relevance when viewed in relation to specific results. For example, it is very probable that some proceedings sentenced in 2007 began prior to the introduction of the new law on shared custody. The absence of changes in the “istruttoria” phases and in the preliminary parental requests made during the early stages of judicial divorce - phase into should be required specialist evaluations and audience with minor-, can be attributed to this phenomenon.

This phenomenon is not found in mutual consent divorces where, given the briefness of the proceedings, the date relative to the request for custody coincides with that established in the sentence.

Despite this, it emerged that contested custody in judicial divorce decreased in 2007; a fact which is probably due to a parental tendency not to compete for custody. It is unclear if this phenomenon corresponds to increased parental cooperation. There is still no agreement on this issue and this research project was unable to detect this data. According to some authors, joint custody promotes parental cooperation (Kelly, 2006), whilst according to others, this does not occur (Fursteberg & Nord, 1985) and in situations of high conflict, the children would not benefit from joint custody. According to Kelly, difficulties in the management of joint custody would be limited to the initial post-separation period and disappear later. Regarding parental requests in 2007, the requests for sole maternal custody remained high, and these requests, were, nonetheless, lower than in 2005. This figure may be amplified by presence of legal actions begun before the implementation of Law 54/2006. These trends would lead us to think that now the new law has fully entered into force, and despite the prevalence of a mono-parenting custody model, it is today possible to see a greater recognition of both parents, thus favouring the transition from a model of mono-parenting, to a model of parallel parenting. The changes in question remain to be fully assimilated into, and accepted by, our culture. Indeed, it could be argued that the change in legislation has been the impetus for a change in the culture of the separation and of custody of children, rather than the contrary. It would be desirable to interview those involved - parents, judges, lawyers and psycho-social sciences – in order to better understand the representations and investigate this question.<sup>4</sup>

Given that our research was carried out immediately after the law on shared custody had come into force, it would be opportune to verify whether, in the sentences of 2009, there had been further changes: an increase in parental requests for shared custody – which would bear witness to a real change.

As regards the practices of the judges and the data relative to the typology of custody awarded, we found that in 2007 shared custody was awarded for more than half of the children involved in the cases of judicial divorce we examined. If this figure is compared to what happens in mutual

consent divorces, where, in 2007, shared custody reached much higher percentages, we could hypothesize the persistence of a difficulty in awarding shared custody in cases with serious manifestations of conflict.

Analysis of the judges' motivations for establishing custody in both typologies of divorce, brought to light that for judicial divorces, judges had, over the years, always made less reference to motivations concerning the couple. In this case, whilst the judges had chosen not to underline those elements pertaining to the couple's conjugal life, great importance had been placed on everything pertaining to the child's interests; as a possible way to maintain a stable and continued relationship with both parents.

The instances of direct audiences between judges and minors remain very low. This is principally due to the age of the minors concerned. We found that in most cases, these are minors under the age of 12 and it is probably due to a kind of prejudice towards the adequacy of the context where the hearing takes place, the competence of the judge hearing the case and above all, the absence of a shared standard procedure. In other cases, given the age of the minors in our sample (6-10 years), and so audition at the discretion of the Judge who evaluates the child's ability.

Regarding the types of visiting plans given to that parent with whom the child has not been placed/or/ does not make their primary home, we note an increasing consensus among judges in promoting and favouring shared parenting duties. Thus giving that parent the possibility to maintain their own role towards their child, and, in turn, transmitting to the child a sense of continuation of lifestyle useful to their social relations. This seems to be increasingly more evident in mutual consent divorces, where, over the years, we have seen a significant increase in "free" visiting plans: indicative of a type of visiting plans where limits and restrictions are not foreseen. The wording for this type of visiting plans states that the parent with whom the child has not been placed/or/does not make their primary home, "May see their child whenever they wish" provided notification is given to the parent with whom the child makes their primary home/has been placed. These parenting plans seem to provide adequate opportunity for a positive relationship with both the mother and father. As Kelly (2006) has stated, traditional visitation guidelines of every other weekend are not optimal for facilitating an active ongoing involvement of the non-custodial father in children's lives. Traditional custody guidelines and visiting patterns are for the majority of children, outdated, unnecessarily rigid, and restrictive, and fail in both the short and long term to address their best interests. She proposes that, instead, "children's contacts with their non resident parents ... should reflect the diversity of parental interest, capability, and quality of the parent-child relationship" (p. 47). Because such a thing is possible only when founded upon a real agreement between parents, programmes of "education in divorce", mediation or parenting coordination interventions become fundamental in order to support and bring about the concrete

application of shared custody, In socio-political terms, it is in fact necessary to help parents overcome their ambivalence towards the culture of coparenting, through processes which encourage the enhancement of both parental figures and the rights of the minor to a continuity of bonds.

## **Conclusions**

Before concluding, we would like to highlight some of the limitations of this study. Firstly, archive research does not permit the researcher to examine all variables of interest, and these variables are not present in the available material. The type of data available does not permit us to perform parametric analysis or to use more articulated explanative models. Secondly, the research also regards the Ordinary Courts and those proceedings relating to unmarried couples under the responsibility of the Juvenile (T.M.) Court were not examined. To overcome this weakness, a new survey is being carried out of cases T.M. Rome, which will also highlight the *modus operandi* between the two different courts. Moreover, the territoriality of the sample could involve the non-generalizability of results to the national population. However, we underline that the research has been extended to the sentences of the Ordinary Court of Naples (Malagoli Togliatti, Lubrano Lavadera, Caravelli & Villa, 2009) and to the sentences of the Ordinary Court of Milan -Research Unit (co-ordinated by prof. Giancarlo Tamanza) whose results are being published. In both cases, however, the results appear similar to those found in the Ordinary Court of Rome, with trends for greater speed in implementing the laws in Milan and a slower procedural process in the Ordinary Court of Naples.

Despite these limitations, we note the importance of this research - providing as it does access to material otherwise difficult to find - for the planning of social policies for families undergoing divorce to promote the culture of co-parenting. We shall have to implement programs to support families in divorce and protocols of cooperation between the Court and Social Services, allowing an orientation of couples being divorced into alternative interventions such as family mediation, or information on the risks to the welfare of children in the indefinite continuation of the parental conflict.

To date, is not possible calculate the effect of joint custody on the wellbeing of a child and research conducted at international level has yet to provide unequivocal results regarding this question.

Future research will examine if shared custody favours the decrease of parental conflict and the increase of co-parental cooperation and child and parent adjustment.

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## Notes

<sup>1</sup>. In Italy it is possible for couples to divorce in two ways: divorce via mutual consent and via judicial divorce. The procedures for mutual consent divorce are characterized by two distinct moments: recourse for mutual consent divorce and homologation of the sentence. Homologation of the sentence is that legal measure which marks the final phase of mutual divorce and favors the full efficacy of the terms of divorce. In general, the Court sanctions what has been decided upon by the couple wishing to divorce via mutual consent save in the presence of any clause contrary to the interests of the minor. In Italy, judicial divorce follows three phases: 'Presidenziale', Istruttoria' and 'Decisoria'. As parents undergoing a judicial divorce are unable to agree upon the terms of their divorce, these are then set by the Judge.

<sup>2</sup>. The motivations were divided into 6 macro-categories mutually excluding set out by Giuliani, Bertoni & Iafrate (2007): Motivations concerning the parent-child relationship (i.e.: appropriate relationship mother-child); Motivations concerning the children's subsystem (i.e.: age of children); Motivations concerning the couple's relationship (i.e.: mother's betrayal); Motivations concerning the coparental relationship (i.e.: agreement between the parents); Motivations concerning the parents (i.e.: mother psychopathology:); Other motivations (i.e.: professional opinions of the social service).

<sup>3</sup>. Law 54/2006 also introduced the possibility for the Judge to order the audition of a child older than 12 years of age or if they are capable of discernment. motivations were divided into 6 macro-categories mutually excluding: Motivations concerning the parent-child relationship (i.e.: appropriate relationship mother-child); Motivations concerning the children's subsystem (i.e.: age of children); Motivations concerning the couple's relationship (i.e.: mother's betrayal); Motivations concerning the coparental relationship (i.e.: agreement between the parents); Motivations concerning the parents (i.e.: mother psychopathology:); Other motivations (i.e.: professional opinions of the social service).

<sup>4</sup>. The research has also included an interview using a questionnaire ad hoc with Judges, Lawyers, CTU, family mediators and parents on key issues raised in the legislation. Results being developed are also showing ambivalent representations of that construct, especially among parents, CTU and Family mediators.