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Mr. José Ignacio Gómez León

Vice-president, SOS Papá.

Children's Rights Association (Spain)



“FAMILY MEDIATION AND JOINT CUSTODY: POLICIES TO REDUCE THE INCREASE OF FAMILY BREAKDOWNS AND FAMILY MAINTENANCE IN CASE OF SEPARATION/ DIVORCE”

It is a great honor to speak before you today as the Vice-president of the Children's Rights Association SOS DAD in this Parliamentary International Forum for the VI World Congress of Families / WCF VI Madrid 2012.

1.- World situation of divorce

In the Anglo-Saxon culture (U.S, U.K) divorce has been admitted and legislated for many decades. Some decades ago several countries of Protestant influence (Northern Europe and the Netherlands) and many countries of Christian influence (most Western Europe, South-America, etc.) have joined this idea.

In those countries of Christian influence divorce rates were initially low, but they have seen exponential growth in the last decades, and they have nearly reached the rates of Anglo-Saxon countries.

Today, divorce rates (% per one thousand inhabitants) are slowly becoming equal in all the countries of Western Europe, over 2 % and near 3 % as in the U.S, Canada and Australia.

In the U.S, due to the long tradition and age of divorce, the rates reach 4 %.

Many countries in South-America (Mexico, Uruguay, Argentina, etc.) are reaching rates close to 2 %.

“The culture of a country is measured through its capacity of prevention strategies in different areas, but especially in those which refer to the outreach of family welfare. The intuition of responding to the needs of the married couple or the family, from a preventive, advising or therapeutic point of view, is based from the beginning, on the necessity of maintaining good health, conjugal and family stability and



preventing the weakening of its functions, and also on the wish of tempering the crisis and the suffering of the persons concerned.”

“The moral and economic cost of these breakdown rates is without any doubt incalculable”.

2.- “ Family Mediation “: Present situation

The Directive 2008/52/CE, of May 2008, of the European Parliament and Council, regulates that Member States adopt national legislation for mediation in civil and business matters, especially in family matters, and this entails trying to implement Community policies in the search for improvement, uniformity and approximation of the judicial systems of the European Union States to the citizens. The Transposition of the Directive must be observed by the Member States before May 2011.

Nevertheless, due to the delay of the Directive (regarding other international initiatives), and maybe its unequal implementation in the different Member States, its impact in family conflicts and in the decrease of divorce rates has not been enough.

In the U.S and Canada, family mediation is prior to the judicial proceeding and it is mandatory in many countries if there is an underage child. There has been some information published recently in France, which shows that this reduces the litigation and the divorce rate in some measure

Family mediation initiatives in South-America are minimal.

2.- “ Joint Custody“: Present Situation

In case of separation, Joint Custody enables children to live alternately with both parents, and this way their family does not fall apart and it has still some possibility of being reunited since both parents maintain strong bonds with the children.

It has existed in the U.S and in Canada for some years, in compliance with international treaties on “children’s rights”, and its application is high.

In Europe it has gradually extended to different countries in the last decade, but its application continues to be unequal, high in countries of Northern Europe, France and Germany and low or inexistent in those countries of Southern Europe, like Portugal, Spain and Greece.

Various countries of South-America have legislated in this field in the last three years, and its effects remain to be seen.

3.- “ Family Mediation and Joint Custody: policies to attenuate the increase in family breakdowns and family maintenance in case of separation/ divorce”

From here we are demanding the appropriate modifications of the Convention on the Rights of the Child, to the Commission of the UN (UN, November 20 1989), of the European Convention of May 20 1980 on minors, and of the Hague Convention of October 25 1980, to include Family Mediation and Joint Custody in these treaties as a priority dealing with family conflicts, preventing the increase of family breakdowns, and in the case of divorce the survival of the family for the children.



Legislative and executive authorities of international governments [FALTA TEXTO] urgent measures that it considers essential for dealing with the problems of marital breakdowns, through the development of appropriate Family Mediation Legislation, making its use mandatory and prior to any judicial proceeding that involves a family. This would prevent the aggravation of the conflict and the “no reunification” that leads to the judicial proceeding.

Likewise, if the separation is inevitable, the family should be maintained through the development of appropriate Joint Custody laws, making it preferential in every judicial proceeding that involves a family with children.

Due to its uneven and maybe inefficient application in the countries which already have laws in this regard, it is essential to create Governmental Committees that monitor the Family Mediation and Joint Custody application ratios in these countries. These would enable the governments to take the appropriate measures to achieve a high level of effectiveness.

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