

# The Development of Children Endangered by Their Own Biological Parents within the Context of Joint Custody Arrangement after Divorce

*Lenka Šulová<sup>1</sup>*

## Abstract

Specifics of the post-divorce adjustment of so-called “joint custody” and its benefits and disadvantages that is subject to a several years-long discussions in the whole Czech society. Joint custody can take on many forms, such as true co-ordinance of mentally mature parents who are able to cooperate in the child’s interest. However, when and how can this form of organisation become suitable for the child? In some cases, perhaps even more so at certain ages, can this form be unsuitable or even threatening to the child? This article will present several specific cases that originate from qualitative research practise-based on the author’s long-term psychological practice in this area.

**Keywords:** joint custody, post-divorce arrangement, pre-school age child, joint custody risks, examples from practice.

## Abstract

I dati specifici relativi alla gestione del cosiddetto “affidamento congiunto” dopo il divorzio, e i suoi vantaggi e svantaggi, sono oggetto di un dibattito che dura da diversi anni in tutta la società Ceca. L'affidamento congiunto può assumere diverse forme. Può rappresentare un vero e proprio coordinamento di genitori che sono in grado di cooperare nell’interesse del bambino. Tuttavia, quando e come questa forma di organizzazione può diventare adatta al bambino? In alcuni casi, forse ancor più a certe età, questa forma può essere inadatta o addirittura minacciosa per il bambino? Questo articolo presenterà alcuni casi specifici che nascono da ricerche qualitative fondate sulla pratica psicologica a lungo termine realizzate dell’autrice.

**Parole chiave:** affidamento congiunto, accordo post-divorzio, bambino in età prescolare, rischi dell’affidamento congiunto, esempi dalla prassi.

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<sup>1</sup> Professor of Social and clinical psychology at the Department of Psychology, Charles University of Prague, Czech Republic.

*Introduction*<sup>2</sup>

The new phenomenon named “joint custody”, which is beginning to massively appear also in Czech society, demands deeper thought by the expert public that works in the interest of the child and their healthy development. Joint custody is the tendency of parents to enforce a quasi-democratic division of parenting of the children who grew up during their marriage. Joint custody can take on many forms. It can be the true co-ordinance of mentally mature adult parents who are able to cooperate in the child’s interest in a way that the child cannot tell that they are in some disagreement. Some parents are even able to take care of a very small child who is left in their own stable domestic environment and the parents take care of them according to their abilities and the child’s needs. However, this text is not about this kind of functional joint custody. Instead, the focus is on joint custody where the parents themselves are not able to come to an agreement in the interest of their child, searching for specialised help of lawyers, social workers, psychologists, teachers, experts, all of whom are supposed to help them reach an optimal system of post-divorce care over their own child.

I suppose that it is necessary to not only think about whether their parental role fulfilled in this fluid arrangement is satisfactory in consideration to the people involved in the divorce proceedings, but also about what this very artificial and unnatural “division” of the child’s time and namely the unnatural quality of their daily life brings to the affected child and what are the possible developmental risks.

*1. General thoughts about joint custody as the most common post-divorce arrangement today*

It is necessary to highlight in this introduction that joint custody can be perceived in various ways. First viewpoint is how it satisfies the parents in their parental roles, expectations, rights, feeling of life quality and life continuity. Then, how does it immediately affect the child’s life and what risks it can potentially bring into their future roles as a partner and parent during adulthood. Lastly, what stance does society as a whole take towards this arrangement (legislative system, social system, education system).

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<sup>2</sup> This text mainly focuses on the child of pre-school age.

In the Czech Republic, especially clinical and developmental psychologists (including this paper's author) warn of the need to pay attention to joint custody as a potential development risk for children that live in it. However, their warnings are not based yet on research, but fractional examples from their practice. The possible negative influence on the child's psychological development is not obviously shown and it is very important to research internal apparitions that take place in the family system in the sensitive post-divorce situation. Hopefully for the purpose of this text we can limit to the basic presumption that post-divorce arrangement in which the child regularly switches between two homes, value systems, environments as well as two communication systems or social contexts will not provide the ideal developmental and educational environment.

Deeper analysis and methodically correct research are very rare in this area. If they do exist, only very few of them are dedicated to the child and their needs. This is understandable as it is difficult to formulate research hypotheses that would involve a topic that is hard to grasp such as the family system and additionally the joint custody phenomenon that is relatively new and specific for each family.

Research from abroad is useful to support our conclusions, but according to my judgement they cannot be applied generally as the social context of the given country (history, values, discipline principles, legislative system, economic status) that without question influence the whole process is connected to the given culture.

Right now, most of the research focused on joint custody are conducted by sociologists who mainly quantify the situation. A specific example of this is Fučík who is concerned with the stances taken towards shared custody within the frame of EVS (European Values Study). The author states that the results show there is a substantive distinction between the attitudes of men and women and the acceptance of shared custody is higher in the younger age group (Fučík, 2020).

Expert discussions of psychologists bring up more interesting stimuli that affect the real life of the people involved (therefore also children to whom this text is dedicated). During specialised forums, the following questions are addressed: is there persuasive evidence that shared parenting provides real benefit to children of Divorce? Should shared parenting be a legal presumption, and if so, what factors should make for exceptions? Should high parental conflict or one parent's opposition to shared parenting be grounds for an exception? Should parental alienation dynamics preclude shared parenting? What should happen when one parent wants to relocate? (Braver, Lamb, 2018).

The Justice Academy forum initiated a similar discussion in 2019 in the Czech Republic during which selected questions were posed and then discussed by six local experts (including also this paper's author). For example: What is the age limit from which children can be taken into joint custody care? What are the criteria for the indication of joint custody? Are there any facts why this post-divorce care arrangement should be excluded? How important is the opinion of children when deciding about joint custody? The conference was initiated by custodian judges who often confront this post-divorce arrangement and especially with the consequential quality of life of the affected children (Justice Academy, 2019). There might be more reasons in the ČR why joint custody is accepted by parents as a suitable post-divorce parental arrangement.

It can be a reaction on the previous historical development in the country. This system might seem like a democratic arrangement and so we can assume that it is a kind of social reaction to the previous favouritism of women as children's caretakers in the post-divorce arrangement.

Another significant influence could have originated from abroad, namely after the year 1989 when Czech society accepted many foreign influences and therefore also from the USA. In American society, where joint custody is present for much longer, a different legislative system is at place and American parents must have fought for joint custody not only for socio-emotional, but also economic reasons.

I often come across parents wrongly understanding expert psychological publications that emphasise that the child needs both parents. Obviously, the psychologists do not emphasise enough that the child really needs both parents, but in co-habitation, therefore the originally well-intended activation of both parents in their parental influence on the child is incorrectly interpreted into divided individual care for the child by both parents. In some cases, the parents even think that the child will not be harmed if they attend two different schools, go to two paediatricians, have two homes with two sets of the same toys.

Based on many examples seen during my practice-based researches, I know that the parents also sometimes "use" the child as a tool of putting pressure on the other partner, with whom they are in conflict even after the divorce and this parenting arrangement creates many opportunities to continue their disputes. They transfer their pain from a failed partnership into malicious social games where the child becomes a sort of messenger. During my experiences in the field, I even came across child custody becoming a kind of currency in the discussion over possessions as in the following example: "I will keep the child in your care if you give up rights to half of the house".

## *2. Methodological problems when researching joint custody*

We are often asked what research looks like in this area of joint custody and if it is possible to find support in academic psychological research. The baseline studies and the results that also emerged from this study, make it clear that in our society this mode of childcare after divorce has not existed long enough to conduct quantitative psychological research. It is necessary to realize that many connections appear only many years later, at the time when children become parents. It is necessary to realise that many connections only appear many years later in the period when these children become parents.

Therefore, according to the practice-based research methodology (Spring, 2007), we base our statements on our experience during consulting or therapeutic psychological practice that focuses on the whole family system or on the child within the frame of the family. Our views also stem from regular contacts with social workers, special teachers and custodial judges for example during master seminars, lifetime employment sessions and also discussion forums.

It may be said that all of these named professions are in regular contact and work with children in joint custody. Many of them provide significant support to the children, especially teachers. It is also symptomatic that most research that is focussed on this problematic is realised by sociologists who are more focused on the description and quantification of this post-divorce arrangement as psychologists, and also pedagogist, are fully aware of the difficulty of understanding the topic and its complex long-term links. Pavlát, who focussed on this topic for the last few years, wrote an article that I find very successful. The author is aware of the fact that “conflicts regarding entrusting childcare brings out such an emotional engagement (namely the Father’s association and groups advocating for the interests and rights of women) that a whole line of researchers lose critical overview over the method of their work and the limited validity of their conclusions” (Pavlát, 2010).

## *3. What does family mean specifically for the child?*

Already in the first few months of life, the family passes onto the child atmosphere, social values, norms and rules, ways of communication as well as ways of thinking and handling situations.

The influence of family shows in both verbal and non-verbal social communication; the family creates a foundation for that the child will

understand its surrounding and would be able to communicate well with others. The family also creates the foundation for game activities, learning and later work habits. The family passes onto the child spiritual values in the form of fairy tales, situations and traditions, forming their ethical and aesthetic feeling and allows them to make their own artistic creations.

I could be mistakenly assumed that the child needs for their healthy development to live in the daily company of both parents, as the parents create a complementary pair that represents both genders. Specific dynamics taking place in the family creates a completely unique environment for forming the child's stance towards the world, close social circles and then also towards themselves. Family creates value orientation and creates the basis for forming the concept and vision of one's own life and of their own "I" identity. The parents and children do not play their roles, but they live them.

The family fulfils the significant needs of the child as well as adult. The child offers the adult unconditional acceptance, uncritical love, the feeling of meaning need of a stable environment, support and help, the need for peace and relaxing, sharing experiences, shared history, shared rituals, the need for closeness, trust, social perspectives and plans as well as the need to be connected to something stable, eternal, non-reciprocal – and most of these needs are important for all age categories. The child needs to be in contact with both parents for their normal psychological development by sharing life, domestic environment and leisure time or work activities.

#### *4. Joint custody of pre-school child and its possible risks*

Let's try to mention at least a few selected areas of psychic development of the preschool child in relation to the need of the presence of both parents and the possible risks of joint custody.

The key risk of this arrangement is the disruption of stability of the family environment of the preschool child, which is one of the main providers of their activities, development of autoregulation process, development of confidence, identity and independence. It is shown in many examples that as a result, the child's self-assuredness is disrupted, having a negative effect also on the development of their cognitive structures (*memory, concentration, speech skills, learning, consequent intelligence*). (These are testimonies of the above-mentioned professions shared during case conferences and also recorded in court's files).

In relation with the motivationally free characteristic of the preschooler, it is also important to remind ourselves of their restless need to be active. This activity is expressed verbally, often in the form of a wave of questions; it is also expressed on a locomotor level – constant jumping, sitting, playing. An undeniable part of this significant need for activity and initiative is however the equally strong need for stability, environment, solidity, and safety.

The child of the pre-school age therefore needs more than ever to be in a stable environment, which gives them energy and desire to explore, be curious, to independently let go of this stability and environment. The child however needs to have “under control” this latching from stability, they must be the actor of their life. It is interesting that the child that views their environment as insecure stops to experiment, explore, and will instead fixate on the unstable relationship and their parents’ behaviour, become more closed-off and passive.

Therefore, the parents, who decide to destroy the stable domestic environment through joint custody, actively threaten not only the child’s socioemotional development, but also their cognitive maturity as the child stops to explore their surrounding environment, slowing down their cognitive development (Šulová, Zaouche Gaudron, 2016). Often there appears the efforts of one or both parents to continue their disputes through the child. The child becomes a tool of tormenting the other parent. This behaviour has long-term psychological consequences that the parents need to be informed about in great quality. I am sure that no parent would want to consciously harm their child and cause complications in their next life (mainly in their sexual, partner and parental relationships) (Šulová, Fait, Weiss, 2011).

Among other significant needs of the preschool child is the need of an emotional relationship, social contact, societal acceptance, emancipation, identity, and self-realisation. The preschool period is very important for the formation of basic emotional expressions. The emotional sensitivity of children at this age is very intense, but also short-term and ever-changing. The children begin to control their emotional expressions, they can even be critical towards themselves, judging their behaviour, they know how to pity themselves and be angry at themselves for something. They create a feeling of self that is connected to the feeling of own identity and confidence. In this age the healthy child tends to be mostly in a happy mood, gradually they lose the fear of the unknown, social emotions begin getting more important (love, hatred, sympathy, antipathy). The child can recognise their emotions towards different people and even describe them.

The relationship between mother and father, to whom the child pays much attention to, is very important in this period. It is not only the parental interactions that play a significant role in families, but also the intense whole-life bond between siblings. It is also important whether it is the case of a younger or older sibling and also what gender they are. Permanent sibling relationships should be carefully protected in the post-divorce care because children react emotionally differently to divorce and also judge differently the specific parents and their behaviour, which may cause imbalance in their sibling relationships.

It also happens that children “gain” siblings and the new family arrangement assumes that similarly aged boys will get along, play together, and want to share the same room, but this isn’t the case and similar assumptions might be also incorrect.

It was also mentioned that a significant relationship within the family for the pre-schooler is also the bond with grandparents. Grandparents provide a sort of alternative parental interactions with certain specifics. They have more time, more often they are positively set for interaction with the child, they are much more tolerant at their age towards the child’s naughtiness. They provide a kind of objective, more complex perspective. They do not hesitate to discuss certain questions with the child even for a long time and they provide the child with many alternative behaviours, allow them to consider different perspectives that may happen between the grandparents and parents. They allow them to understand the continuity of life, they allow the child to be in contact with limitations (handicaps), illness and sometimes also with death.

It is possible to say that the relationship between grandchildren and their grandparents is mutually very enriching and the parents should support it. In post-divorce situations, it does happen that the children’s contact with their grandparents are limited or complicated by the parents, which surely negatively affects their relationship and then also the psychic development of the preschool child. On the other hand, the grandparents can sometimes play an important role in understanding the grandchild’s situation and offer specific instructions how to come to terms with the situation. It is often also important that they can actively listen, play neutral or objective position or that the opinions remain the same. It seems clear, that the basics of forming interpersonal relations are passed onto the child by the family, but an equally important role is played by child company at the 3-6 age. Once again, the joint custody shouldn’t disrupt this company in the interest of the parents and often difficult logistics or parental ambitions. The child’s regular contact with



friends (not only those in the preschool institution) shouldn't be obstructed by the joint custody.

In the socialisation process changes on three key levels happen in the preschool child. Social reactivity improves and develops. This development takes place naturally from birth, but the preschool period supplies the child first relationships on several levels: with peers (older, younger, opposite sex, same sex, more skilled...), with parents, grandparents, siblings and adult strangers. It is important exactly for the range of relationships and their novelty that the child is put in an environment with stable relations. Moving in this period is viewed very negatively by the child. How does the child view regular moves from a so-called home to another so-called home? Already these small children ask themselves the question: where am I really at home? Even in this form of post-divorce care we prepare the new generation for a future where they will belong anywhere (but also nowhere) at home, which will be able to fulfil the demands of global companies, and be ready to move anywhere?

There also takes place the development of social controls or in other words the acceptance of social norms of expected behaviour. It is a gradual process, and we speak about the internalisation of social norms first in connection with reaching roughly the 3<sup>rd</sup> year of age, even though there are significant interindividual differences mainly in connection to the family environment and applied educational methods. In this area it is clearly important that the parents have time to educate their child and focus on the child's needs. In joint custody the child must identify with the values and norms of two systems that do not have to be mutually balanced. Sometimes they are in complete contrast, and it is emphasized to the child that here it won't work the same as there. This leads the child to increased empathy regarding what is expected from them in attempt to please everyone. Consequently, this social skill can develop the child's skill to become a skilful manipulator, which paradoxically is handled negatively by the parents even without them thinking twice about what caused it.

Another significant level is the adoption of social roles that take place inside the family. The child observes inside the family behaviour that belongs to certain roles that they then can replicate, train, modify even outside the family, mostly in the group of peers or various preschool institutions. In the pre-school age the child is already able to name several of their roles and this consciousness is a significant step towards process of forming their own identity ("I'm a son, grandson, pupil, friend, boy, skier..."). At this age the child is very interested in their "roots" (ques-

tions like who is their grandfather, what was he like during his youth, what kind of student their father was, how was I as a baby) and in the continuity of life (will I also be a grandfather with such white hair, will I have a baby, will I also marry...).

It is therefore very important that the child completely understands the new family situation that is connected to divorce and that they can pose questions to the parents when they do not understand something. The child often understands that similar questions are unwanted and painful, they then begin to taboo them and further worry about them internally.

The morally ethical development of the pre-schooler is connected to the development of emotions and progress in social relations. The child at this age forms first ideas of the ideal behaviour, personality. If the pre-schooler knows “what is allowed”, “what is forbidden”, “what is polite” or “what a good girl doesn’t do”, then these suggestive formulas are internalised in such a way that they do not need the direct checking from an adult, as the child is already a guide to themselves. This happens of course only in cases that they have a trustworthy adult in their family. If the child is in the start or middle of divorce battles, disputes, and even sometimes physical fights, they will stop considering their parents to be trustworthy adults. They then do not have anyone to discuss their “moral” behaviour with.

It is therefore rather punishable how the adults disappoint this illustrated or rather idealistic world vision of the children. I have in mind the sharp pre-divorce arguments or their conflictive behaviour during the consequent post-divorce care, verbal attacks, forbidding the child to speak about the absent parent, aggressive harassment, or abuse of children through manipulation. The child does not protect themselves against the even completely absurd behaviour of their beloved adults. They even often think that they themselves caused the inexplicable and bad behaviour of their beloved people – the mother and father – and are worried with guilt. In my practice I even come across parents who sometimes consciously let them feel this way or even provoke these feelings.

The role of adults for forming the child’s moral sensitivity, to create ethical principles at this age, is irreplaceable. It is important to carefully explain, lead and form them in connection to everyday activities, like knowing the difference between borrowing and stealing, maliciousness and joking, aggression and toughness. It is a period that is very critical in creating the basis of moral ethical development and it is necessary that the adults pay full attention to the preschool child as well as enough time

together. It is also an important period for the development of autoregulation when the child is learning to discover themselves, their limits, independence in activities and thought. That is why it is so important that in the case of joint custody, the parents can work together, speak about the child and in their interest, pass on information about past and future events. It is in the child's interest that the parents continue to speak to each other.

### *5. Examples from my own research-practice*

Upon entry to the parent's house, the child must take off all clothes and leave on the threshold so that no objects touched by the other parents enters the house.

The child attends two bilingual pre-school institutions or kindergartens (Czech/English and Czech/German) because the parents did not want to agree which language is more important in the Czech Republic. The child stopped speaking any language at 4 years old.

The child has two sets of plush toys. They are very worried which beloved plush toy is the real one and which one is the copy: "What is the "real" plushie doing when I'm not with it?"

The mother does not let the father into the apartment with the words "I am scared of you." The child is then confused: why is their beloved mother scared of their beloved father?

The mother rents for the hand-over of the child a safety agency which scares the pre-school child.

The five-year-old must carry on their own all their luggage from a one-week stay at one parent to the other parent's home on the 2<sup>nd</sup> floor of an apartment building, because the mother doesn't want to meet the father in person and the child cannot take the elevator alone.

The child attends different interest activities during the week with father than during the week with the mother.

### *Conclusion with food for thought*

Judges who allow joint custody through their decision often do not have even basic knowledge concerning children's psychological development and they therefore make their decision completely based on intuition or their own life experience. The consequences of such decisions

are not visible and immediately controllable, therefore there is no such thing as the risk of “complaint” against a bad decision.

Joint custody does not stop being an explosive topic not only between psychologists, paediatrics and special pedagogues, but also custodial judges who daily decide in divorce proceedings about the child and determine detailly the quality of the child’s life.

Psychic development of the child is so long-term and without life continuity so hard to control that, experts working for their adult clients can practically support any “desired” decisions. Experts often have different psychological specialisations than the child’s development.

The parents are not driven by “intuitive parenting” to prioritise the child’s interests, but their own, their fear of losing the child, sometimes the effort to blackmail or hurt the other partner.

The parents are probably the only ones who can look over the future of their child and the possible consequences of divorce. They know the child’s character dispositions, weak and strong points better than any expert and therefore it is necessary to appeal to them especially to be mature enough to come up themselves with a post-divorce arrangement that prioritises their child’s needs over their own.

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