

CHAPTER A

Subject matter and purpose

Article 1 Purpose

The purpose of this Act is to serve the best interests of the child through the **active presence** of both parents in the upbringing of the child and the fulfilment of their responsibilities towards the child.

N.B. This is not equivalent to upbringing by both parents

Article 2 Subject matter

The subject matter of the law is the reform of the relations between parents and child after the termination of the cohabitation of the spouses, divorce, annulment of marriage or dissolution of the cohabitation agreement and the recognition of a child born out of wedlock.

CHAPTER B –

AMENDMENTS TO THE CIVIL CODE - RESIDENCE, PARENTS' AND CHILDREN'S RELATIONS

Article 3

Residence of a minor - Amendment to Article 56 CC

A minor under parental responsibility is domiciled at the residence of his or her parents or the parent exercising parental responsibility alone. **If both parents exercise parental responsibility without having the same residence, the minor shall have the residence of the parent with whom he or she usually resides.** **N.B. This remains the same as it was for sole custody.**

Notification of documents to the child shall be effected at the residence of either parent or at the residence of a third party exercising parental responsibility.

Article 4

Divorce by consent - Replacement of Article 1441 CC

"Article 1441

Divorce by consent

1. The spouses may, by written agreement or joint digital declaration, dissolve their marriage. In the case of a joint digital declaration, a certificate of the authenticity of the spouses' signatures is not required. The written agreement or joint digital declaration shall be concluded between the spouses in the presence or with the digital representation of a lawyer authorised to act on

behalf of each of them respectively. Where the agreement is in writing, it shall be signed by them and by their attorneys or only by the latter, if they have a special power of attorney. The power of attorney must have been granted within the month preceding the signing of the agreement.

2. If there are minor children, in order to dissolve the marriage, the written agreement or the joint digital declaration of par. 1 or by another agreement between the spouses, drawn up as specified in par. 1 and valid for at least two (2) years, the division of parental responsibility and in particular the custody of the children, their place of residence, **the parent with whom they reside**, their contact with the other parent and their alimony. **N.B. It is further on prohibited to have alternative residence, which was up to now permitted.**

3. α. The written agreement on the dissolution of the marriage, as well as any separate agreement on custody, place of residence, communication and maintenance of minor children, shall be submitted by the attorneys representing each spouse together with special powers of attorney to a notary public.

β. The drawing up of the notarial deed referred to in par. 4 shall be at least ten (10) days from the written agreement of the spouses or the joint digital declaration. The date of the written agreement of the spouses shall be evidenced by a certificate of the authenticity of their signatures.

4. The notary shall draw up a deed confirming the dissolution of the marriage, ratify the agreements of the spouses and incorporate them into the deed. The notarial act shall be signed by the spouses and their attorneys, or by the latter alone if they have a special power of attorney. The power of attorney shall be given in the last month before the signing of the instrument. Where the certificate concerns custody, communication and maintenance of minor children, the instrument shall constitute an enforceable title, provided that the provisions of Articles 950 and 951 of the Code of Civil Procedure have been included in the agreement. After the expiry of the validated agreement, custody, communication and maintenance of the children may be regulated for a further period of time by a new agreement and in accordance with the same procedure.

5. The dissolution of the marriage shall be effected by filing a copy of the notarial deed at the registry office where the establishment of the marriage has been filed, or by informing the registry office using Information and Communication Technologies (ICT)."

Article 5

Interest of the child - Amendment of Article 1511 CC

"Article 1511

Exercise of parental authority in the best interests of the child

1. Any decision of the parents concerning the exercise of parental responsibility shall be in the best interests of the child.
2. The child's best interests, which are served primarily by the **effective participation of both parents** in his or her upbringing and care and by the prevention of a breakdown in the child's relationship with either of them, must also be the aim of the court's decision when it decides on the award of parental responsibility or on the manner in which it is to be exercised. The court's decision shall take into account in particular the ability and intention of each of the parents to respect the rights of the other, the conduct of each parent during the previous period and his or her compliance with court decisions, public prosecutor's orders and previous agreements concluded with the other parent concerning the child. **N.B. not upbringing of the child**
3. The court's decision must also respect equality between the parents and must not discriminate on the grounds of, in particular, sex, sexual orientation, race, language, religion, political or any other opinion, nationality, ethnic or social origin or property.
4. Depending on the **maturity of the child**, the child's opinion shall be sought and taken into account before any decision relating to parental responsibility and the child's interests is taken, if the child's opinion is **found by the court** not to be the product of guidance or suggestion." **N.B. Criterion is not the maturity but the discretion of the child. Provided the absence of social services within the court, the judge is incompetent to seek and evaluate the opinion of the child.**

Article 6

Mediation - Replacement of Article 1512 CC

"Article 1512

In the event of a dispute in the exercise of parental responsibility, the parents shall be obliged to make an effort to find mutually acceptable solutions, if necessary by resorting to mediation. If they disagree and the best interests of the child require a decision to be taken, the court shall decide."

Article 7

Joint exercise of parental responsibility in case of divorce or annulment of marriage and separation of spouses - Replacement of title and article 1513 CC

"Article 1513

Divorce or annulment of marriage - separation of spouses

In cases of divorce or annulment of marriage or dissolution of a civil partnership or separation of the spouses, and where both parents are living, they shall continue to exercise parental responsibility jointly and equally. **The parent with whom the child resides shall attempt the acts provided for in the first subparagraph of Article 1516 of the Civil Code, after informing the other**

parent." N.B. the child lives with one parent who makes all the everyday decisions concerning the child.

Article 8

Derogation from the joint exercise of parental responsibility - Replacement of title and Article 1514 CC

"Article 1514

Derogation from the joint exercise of parental authority

1. By way of derogation from Article 1513 of the Civil Code, the parents may, for a period of at least two (2) years, by a document of certified date, otherwise regulate the division of parental responsibility, in particular by assigning the exercise of parental responsibility to one of them, and by determining the place of residence of their child, the parent with whom he or she will reside, and the manner of communication with the other parent. 2. If the joint exercise of parental responsibility cannot be carried out because of a disagreement between the parents, and in particular if one parent is indifferent or does not cooperate in it or does not respect any existing agreement on the exercise or manner of exercising parental responsibility, or if such agreement is contrary to the child's best interests, or if parental responsibility is exercised contrary to the child's best interests, either of the parents may bring an action before the court. 3. The court may, depending on the case:

- (a) allocate the exercise of parental responsibility between the parents, specify how it is to be exercised in private matters or entrust the exercise of parental responsibility to one parent or to a third party,
- (b) order an expert examination or take any other appropriate measure,
- (c) order mediation or the resumption of mediation which has been discontinued, appointing at the same time the mediator.

In reaching its decision, the court shall take into account the child's hitherto existing ties with his or her parents and siblings, as well as any agreements made by the child's parents on the exercise of parental responsibility."

Article 9

Children without marriage of their parents - Replacement of Article 1515 CC

"Article 1515

Children of unmarried parents

Parental custody of a minor child born and remaining unmarried to his or her parents shall be vested in the mother. Where the child is recognized voluntarily or by court action brought by the father, the father shall also acquire parental responsibility, which he shall exercise jointly with the mother. If the parents do not live together, Articles 1513 and 1514 of the Civil Code shall apply mutatis mutandis.

In the case of a judicial recognition to which the father has contested, the father shall not exercise parental responsibility or substitute for the mother in exercising it, unless the parents agree. The court may, if the best interests of the child so require, decide otherwise on application by the father. N.B. If i.e. the father has asked to the Court DNA test he will be excluded for life.

Article 10

Acts by one parent - Amendment of Article 1516 CC

"Article 1516

Acts by one parent

Each of the parents shall attempt acts relating to the exercise of parental authority on his or her own:

1. When it concerns ordinary acts of custody of the child's person or the current management of the child's property or acts of an urgent nature, N.B. these are the acts that make children live and grow
2. When it concerns the making of a declaration of will addressed to the child.

In cases of termination of cohabitation of the parents, divorce or annulment of their marriage, as well as in the case of a child born out of wedlock of his/her parents, either of the parents may exercise the maintenance claims that the child has against the other parent or a third party."

Article 11

Custody of the person - Addition of a subparagraph to Article 1518 CC

"Article 1518

Custody of the person

Custody of the child's person shall include in particular the child's upbringing, supervision, education and training, as well as the determination of the child's place of residence. This is contrary to article 56

In bringing up a child, the parents shall encourage him or her, without discrimination on grounds of sex, to develop his or her personality in a responsible and socially conscious manner. Correctional measures may be taken only if they are necessary for educational purposes and do not harm the child's dignity.

In the education and vocational training of the child, parents shall take into account the child's abilities and personal inclinations. To this end, they must cooperate with the school and, if necessary, seek the assistance of the competent government departments or public bodies.

Each parent has the duty to safeguard and strengthen the child's relationship with the other parent, his or her brothers and sisters and the other parent's family, especially when the parents do not live together or the other parent is deceased.

Article 12

Joint exercise of custody of the child in important matters - Replacement of title and Article 1519 CC

"Article 1519

Important issues of child custody

Where custody is exercised by one parent or has been divided between the parents, decisions on the naming of the child, on the child's religion, on matters of the child's health, except for urgent and completely current matters, and on matters of education which have a decisive influence on the child's future, shall be taken jointly by both parents. The last two subparagraphs of Article 1510 and Article 1512 of the CC shall apply accordingly.

A change in the child's place of residence which substantially affects the right of contact of the parent with whom the child does not reside shall require the prior written agreement of the parents or a prior court decision issued at the request of one of the parents. The court may order any appropriate measure. **N.B. the determination in the first place of the child's place of residence is the decision of the primary parent.**

A parent who has not been awarded custody shall have the right to ask the other parent for information about the person and property of the child."

CHAPTER C –

Establishment of a communication channel and cases of bad parental care Article 13 Right of communication - Replacement of Article 1520 CC

Article 1520

Personal communication

1. The parent with whom the child does not reside shall have the right **and the obligation** to communicate with the child as widely as possible, including both the physical presence and contact of the parent with the child and the child's residence in his or her home. The parent with whom the child resides shall facilitate and promote communication between the child and the other parent on a daily basis. **The child's contact time in physical presence with the parent with whom he or she does not reside shall be presumed to be one third (1/3) of the total contact time,** unless that parent requests a shorter contact time, or a shorter or longer contact time is required for reasons relating to living conditions or the best interests of the child, **provided that, in any event, the child's daily life is not disrupted.** Exclusion or restriction of contact shall be possible only for exceptionally serious reasons, in particular where the parent with whom the child does not reside has been convicted of a final conviction for domestic violence or crimes against sexual freedom or crimes of economic exploitation of sexual life. **N.B. not equal, 1/3. The total contact time is not including overnights. The "disruption" of the child's life depends on the decisions of the residential parent who alone makes all decisions.**

2. The parents shall not have the right to prevent the child from communicating with his or her senior ascendants and brothers and sisters, unless there is good cause. Parents shall not have the right to prevent communication between the child and third parties with whom the child has developed a social and emotional relationship of a family nature, provided that such communication is in the child's best interests.

3. The matters relating to communication shall be determined in particular either by written agreement between the parents or by the court. In this case, paragraph 2 shall also apply. 4 of Article 1511. Where there is a case of improper or abusive exercise of the right of communication, the other parent or either of the parents, if the communication is with a third party, may request the **court to reform the communication.**"

Article 14 Consequences of malpractice - Replacement of Article 1532 CC

"Article 1532

Consequences of malpractice

If the father or the mother violate the duties imposed on them by their function of the custody of the child's person or the administration of the child's property, or if they exercise this function improperly or are unable to perform it, the court may, if the other parent or the child's next of kin or the public prosecutor so request, order any appropriate measure.

Misuse of parental responsibility shall constitute in particular: a. culpable non-compliance with decisions and provisions of judicial and prosecutorial authorities concerning the child or with the existing agreement of the parents on the exercise of parental responsibility; b. **disruption of the child's emotional relationship with the other parent** and his or her family and in any way causing a breakdown in the child's relationship with them; c. culpable violation of the terms of the parents' agreement or of the court decision on the child's communication with the parent with

whom he or she does not reside and in any other way obstructing communication; d. the wrongful exercise and culpable failure to exercise the right of access by the entitled parent; e. the unjustified refusal of the parent to pay the maintenance awarded to the child by the court or agreed between the parents; f. the irrevocable conviction of the parent for domestic violence or crimes against sexual freedom or crimes of economic exploitation of sexual life. **N.B. disruption in order to avoid the term parental alienation**

The court may, in the cases referred to in the preceding subparagraph, deprive the parent responsible of the exercise of parental authority or custody, in whole or in part, and entrust it exclusively to the other parent, and order any appropriate measures to safeguard the child's best interests. If both parents are in the circumstances referred to in the second subparagraph, the court may entrust the actual care or even the custody of the child, in whole or in part, to a third party or appoint a guardian. In cases of extreme urgency, where the conditions of the first subparagraph are fulfilled and there is an imminent danger to the child's physical or mental health, the public prosecutor shall order all appropriate measures for the child's protection until the court's decision, which must be taken within ninety (90) days, with the possibility of extending this period by a further ninety (90) days for good cause."

N.B. this is the only mechanism provided for the enforcement of judicial decisions : An other trial after a long line of trials. Meanwhile the child will become adult. There are no social services within the court and the decisions of the can not be directly enforced.

CHAPTER D: INTERMEDIATION AND FORMATION OF COURT

Article 15 Designation of mediators

The **appointment of a mediator by the court in accordance** with paragraph c) of this Article shall be subject to the provisions of paragraph 1. 3 of Article 1514 of the Civil Code (CC, Decree 456/1984, A' 164), shall be made from a special register of family mediators, which shall be established and maintained in electronic form by the Central Mediation Commission, as provided in particular in Article 21. **N.B. the compulsory mediation is a contradiction of terms. The mediators could be the equivalent to custody evaluators and working against shared parenting. The mediation shall be ordered by a decision of the Court. After the expected failure of the imposed mediation an other hearing should be held. This is two years of delay and more than a thousand euros in fees.**

Article 16

Special training programmes at the National School of Judicial Officers

Article 33 of Law no. 3689/2008 (A164), a paragraph shall be added. 4 and Article 33 is amended as follows:

1. The Board of Studies of each direction, upon the recommendation of the Director of Training and Education of the direction, shall draw up in September of each year a training programme, which may be supplemented or modified in the same way. In drawing up the programme, account shall be taken in particular of the recommendations of the judicial officers, the Presidents of the courts and of the councils of three judges presiding over the courts or the heads of the public prosecutor's offices, which are specifically requested for this purpose. The programme shall be displayed at the School's premises and published in a special issue issued by the School. The Director of Prosecutors' Training and Education shall make a recommendation for training programmes for prosecutors. The training seminars organised by the National School of Judicial Officers may be attended by judicial officers of the Judiciary of the Armed Forces, as well as members of the main staff of the State Legal Council. Training seminars on audit issues may also be attended by judicial officials serving at the Court of Audit.

2. The annual training programme shall specify the training activities to be developed during its implementation and formulate the individual programmes. Each of them shall specify: a. The subject of the training; b. The branch, the categories of judicial officers to whom each individual programme is addressed, the number of those invited to participate and the court or prosecution office where they serve; c. The time, duration and place of its implementation; and d. The method.

3. The individual programmes shall be completed at least two months before they are to be held, notified to the Ministry of Justice and sent to the judicial departments whose officials are invited to participate for further notification.

4. The National School of Judicial Officers (NJES) shall organize extraordinary training programs for judicial and prosecutorial officers, notwithstanding paras. 1 to 3 of this Article and Articles 37 and 39, concerning new legislative regulations to be directly implemented by the courts. The relevant decision shall be taken by the Director General of the ESDI, following the opinion of the competent Director of Training and Further Training or his legal deputy, who shall also have exclusive responsibility for the formulation and implementation of the above training programmes. Those selected for training participate in workshops and receive a certificate of satisfactory participation from the competent Director of Training and Further Training or his legal deputy, following a decision by the judicial officer who chairs each workshop. The staff supporting the above training programmes shall be selected from among the staff of the School. The ad hoc training programmes shall be held in the physical presence of the School's headquarters, in particular on the premises of the National School of Judicial Officers and the Centre for International, European and Economic Law. Where it is not possible to conduct them

in person, they shall be conducted by means of a web-based application ('webinars'). The compulsory and optional training programmes referred to in Article 34 shall include ad hoc training programmes, to which Articles 35, 36, 38 and 40 shall apply mutatis mutandis.

N.B. the training seminars is not the equivalent of organizing family courts and social services. The rear thought is that the same system and the same judges can keep on issuing decisions within the same legal frame.

Article 17 Training of judges

Cases under this Law shall be heard by judges who have successfully attended the special training courses at the National School of Judicial Officers (NSCJO) in accordance with Articles 33 and 34 of Law No. 3689/2008 (A' 164). The seminars referred to in the previous subparagraph may be financed by the Ministry of Justice. The specific terms and conditions of funding shall be determined by a joint decision of the Ministers of Justice and Finance. The above training shall be conducted by judicial officers, professors of higher educational institutions (HEI) and specialists, in particular psychologists and social workers.

CHAPTER E' TRANSITIONAL PROVISIONS

Article 18

Application of Chapters B and C to pending cases

Chapters B and C shall also apply to pending cases in respect of which no final judgment has been delivered by the date of entry into force of this Regulation. Agreements between the parents concerning the exercise of parental authority or contact with the child concluded before the entry into force of Chapters B and C shall apply unless the court makes a different arrangement at the request of one of the parents, submitted within two (2) years of the entry into force of this Regulation. N.B. hundreds of thousands of decisions already issued will not be modified. Sole custody and alimony decisions are untouchable. Children are divided in two categories. Before and after.

Article 19

Transitional provision for children recognised before the entry into force of this Act

Article 1515 of the Civil Code (CC, Decree 456/1984, No. 164) shall also apply to children recognised before the entry into force of this Act. The second paragraph of Article 18 shall apply mutatis mutandis.