

donna2 (« donnadue » in italian) : association of swiss women living with a separated or divorced man

Report written for the CEDAW, UN

October the 3rd, 2016

Discrimination of second families

Introduction

In Switzerland the law protects mothers after separation or divorce. They have the right to maintain a living standard rather similar to the one they had before the separation. They have the right not to work until the youngest child is 10 years old, if the father's income allows it. In the 60ies it was a real progress for women's condition and for their children.

Nowadays, even if most of the mothers work and fathers take much more care of their children, in case children spend most of their time with the mother (which is usually the case), she still gets a alimony calculated according to the father's revenu¹. Mothers also get family allowances and tax deductions and if their financial situation is critical, they can afford social help easily, as they are considered as a « monoparental » family. If the father does not pay the alimony, social services called « Services de recouvrement des pensions alimentaires » (Service for recovery of alimonies) can lend it to her and depending on the cantons, they can also sue the father themselves.

Little by little, laws change according to societal changes. For 2 years now it has changed in favor of shared custody as it has also was the case during the past decades in other western countries.

Resulting discrimination

As an association of women living with a seperated or divorced man, we would like to inform you that the legal dispositions that had been implemented in order to protect

¹ In Switzerland, the pension is usually calculated with the « Zurich tabelles ». For one child, 15% of the father's revenu, for 2, 20%, for 3 or more, 30%.

women nowadays often discriminate second wives and second families. Sometimes it even promotes abuses committed by first wives. Children from the second union are not protected by the law in the same way children from the first union are. For instance, only if they are under the minimum subsistence level, will they be allowed to get legal protection. It often happens that the second wife needs to work more than the first one in order to insure a sufficient financial level to the second patchwork family, while also actively taking care of her stepchildren.

There are no statistics concerning all that because large access of fathers to children (30-40% of the time) and patchwork families are not recorded. Fathers' poverty is not recorded either, because the alimony is not taken into account from social services. Separated mothers with main custody (« familles monoparentales ») are most often considered to be the only population to protect, even if the financial alimony is high².

Our demands

We claim that society changes should be better taken into account : fathers take more and more care of their children, most mothers work and separations often lead to new patchwork families.

We ask for a better consideration of the role of stepparent, a better protection of the relationship between children and stepparents and thus between children from the first union and children from the second one. We ask for a better consideration of patchwork families, even if children from a first union are only there 20 to 40% of the time. For instance in case of death of a father or of separation of the second couple, the relationship between children and their step-siblings and their step-parents should be protected.

We ask for a better consideration of the definition of shared custody³, and that the money given for the children depends on their needs and the expends of both parents and not mostly on the non-custodial parent's salary.

² One example on usual custody : a couple from Geneva divorces. The mothers takes care of the children 60 to 70% of the time and the father 30 to 40. He earns 7500 CHF/month (average salary in Geneva). He pays the mother 1800 CHF/month (25% of his salary). She also gets 600 CHF/month from family allowances. She also benefits from tax deductions as the children officially live with her. In Geneva, 2 school aged children cost in average 2400 CHF/month. In our example it is precisely what the mother will get each month for her children (1800+600).

³ Definition of shared physical custody in swiss law (arrêts 5A_46/2015 du 26 mai 2015 consid. 4.4.3, 5A_928/2014 du 26 février 2015 consid. 4.2, 5A_345/2014 du 4 août 2014 consid. 4.2 et 5A_866/2013 du 16 avril 2014 consid. 5.2) and in european law (Report of September the 14th, 2015, Commission of the Council of Europe on Equality and non-discrimination, ch. 15) is rather large, between 50-50% of the time children spend at each parent's home to 30-70% (35-65% according to some authors).

We ask for fast divorce procedures, with a maximum of 2 years duration. We ask for procedures that are respectful of each person, mostly children, their financial but also psychological and developmental wellness. Thus we ask a compulsory on-going training for judges and lawyers as all professionals in charge of families in separation.

Finally we ask that after divorce, mother and father both have the same chance to keep a relationship with the children, to work and to build a new family. Furthermore, it will give more chance for ex-wives to blossom professionally and emotionally.

Lack of equity also harms the ex-wife

Firstly, sometimes the alimony is so high that the father who has changed living or working conditions cannot pay it and most fathers then pay nothing anymore.

Secondly when the first wife is trapped in a dynamic of asking more money and asking to work less, it makes her more dependant on her ex-husband (and her lawyer), thus the mourning of the first relationship is longer and sometimes neverending. Moreover, in order to justify her financial claim, she often needs to show how a burden children are. Since her social identity is limited to the role of being a mother, it is more difficult for her to let the children go on week-ends and have fun with the father. Thus she even becomes dependant on her own children. Some of these mothers end up with depression, alcohol dependancy, etc. and even lose the custody, which is a real disaster.

We are sure that a more equal way of treating fathers and mothers could help mourning the past relation and in promoting more selfsufficiency, selfconfidence and selfpride can prevent some of these too frequent disastrous outcomes.

How can women contribute to this change ?

Our western society is still rather conservative. Although we know now that attachment theory can be applied for mothers but also for fathers or other important attachment figures, even for very young children, the idea that children are better with

Nowadays a very common share of custody is called « garde unique attribuée à la mère avec droit de visite élargi au père » (physical custody to the mother with enlarged visits to the father), which usually is half week-ends and half holidays plus one day (or more) a week at the father's place. This actually corresponds to 33% of the time, so it is already a shared custody. At this level, both parents really get involved as parents, children need a room at both parents' place and both parents help them out with homeworks, educate them, bring them to school, invite friends over, etc. Fathers are more than « papas-walibis » (as they call them in Belgium), who only have fun with their children when they see them.

the mother is still very strong. Moreover, taking care of children and the house is a way to have a certain power in society. The fact that there is no paternity leave in Switzerland confirms and endorses this idea. During the 4 months of maternity leave, the mother becomes an expert in house keeping and child caring. It becomes more and more difficult for her to delegate to the father who will not do the job as well as she does it. Therefore women are ambivalent to revendicate a real equality between men and women in family matters. And therefore she is often overwhelmed by the double work of being a professional and a home-worker.

We believe that in order to move forward towards more equality, separated women should free themselves from this ambivalence and accept, or even request more egalitarian solutions for custody⁴. On the contrary to many swiss feminists who still fight for more protection for mothers at home, we believe that for her good and the good of her descendants, the modern and independant woman has to fight for parental equality too, despite financial incentives and despite past (and still present) unequalities between women and men.

More equity between parents is also good for the child

Shared physical custody diminishes the risks of loss of relationship with one parent. The loss or the lack of a relationship with a parent is known to be very harmful for the child's development.

The child can identify to more equal parents, the boy can be proud of his father and it all prevents inequality between men and women for future generations.

More fairness in financial custody helps avoiding parents to use the child in their fight. The child is too often a hostage in litigations.

Lastly, children from the first wedding and from the second wedding don't have too unequal treatments from one another and it helps all of them to have a better harmony in the patchwork family.

⁴ Some modern parents chose one of the first two options for alimony :

- a- egalitarian : « I earn less than you but you also take care of the children and I don't want to be relying on you, so let's share half-half the costs of the children, for instance I get the family allowances and the tax deductions and I pay the bills »
- b- fair : « I earn less than you and I work part-time for the children, so you need to help me out financially so they don't get a much worse financial level of life at my place and at your place. If needed we go and see a mediator »
- c- legal : « we have the same salary but I have the custody, so you need to pay me 25% of your salary for the children. If you don't agree, I'll see a lawyer »

Conclusion

Overprotecting a category of population can lead to harming it by making it too dependant on the protection. It can also lead to harming other categories of population.

When our society's mentality and justice will consider better all kinds of modern families and not protect only seperated mothers, the whole enlarged family will gain from it, equality between men and women also and there will be less discrimination towards second families.

Thank you for your attention.

donna2 comity