

The National Association for Equal Parenting (Foreldrajafnrétti)

Individual UPR submission for Iceland

24 March 2016

I. Introduction

The National Association for Equal Parenting (EAP) is a leading human rights organization in Iceland promoting the rights of children with separated parents and parental rights. The organization is volunteer based and approx. 1.5 percent of the Icelandic population are a member of the organisation on Facebook which reflects in our view our supporter base the best at the current moment. Our mission statement is to promote the right of children to know and be cared for by both biological parents regardless of the relationship status between the parents as well as the right of children to know their correct paternity. We believe that all decision made by the government on the behalf of children should be based on the Convention of the Right of the Child as well as proven well documented/argued research on what has been shown to be in the best interest of the child.

II. The Icelandic government consulting process responsibility

EAP would like to point out that we first received a notification from the Icelandic Ministry of the Interior of the pending UPR with a letter dated 11 March 2016 on 18 March 2016. There has been no consultation process hosted by any Icelandic government agency prior to that time that we were aware of. Given the short time frame we can only make limited UPR submission and we hope that our report will be viewed accordingly. We believe that the Icelandic government (SUR) consulting process with NGOs has been inadequate and not in line with guidelines set forth by the UPR. Our experience over the last 10 years or so (not to take it longer back) is that in way too many cases when the Icelandic government as well as both parliament and government institutions are to institute a committee, they fail to uphold equal gender roles. This has influenced decisions, in our views that have demonstrated biases towards reduced importance of father roles in the life of the child, after divorce. We have, as well had the suspicion, that because of lack of transparency in the governing body, and lack of regulations, the absence of audition on the governing work, the decisions made, have often been lacking in professional, well founded arguments and qualified work. As there are such lack of documentation, and information statistics collection available for external parties such as our association, we can not in any way, at this time, proof our suspicion. We must therefore hope that this report of ours, will influence positively on our government for the future to come.

III. Background information

In recent years there has been a dramatic rise in the population of children that have parents that do not live together. It is estimated that about 41,8% of all children in Iceland have parents living in two separated homes. When this is the case, one parent is recognised as having the legal residence of the child and the other has visitation rights. According to government statistics, about 90% of those children have their legal residence at their mother's home, and only about 10% have their legal residence at their father's home. There is a vast disparity in the rights of the parent that has legal residence and the parent that has visitation right. It affects the rights do make decisions on behalf of the child, child-support payments, rights to social benefits and other parental responsibilities. When the amendment to the Children act, effective 1 January 2013, was approved in the parliament, joint custody was enacted as the basic principle in Icelandic law. But the same legislation, made the term almost meaningless in Icelandic law as most of the powers that had been associated with joint custody where transferred to the parent that has the legal residence. The resident parent can move the legal resident of the child anywhere without consulting with the other parent regardless of shared custody or not. Only the resident parent has the authority to take solitarily all decisions regarding health care, medicine, education and leisure for the child regardless of shard custody or not. We believe this new kind of so called "shared custody" violates 5th and 18th article of the Convention on the Rights of the Child.

When parents can't agree on terms of visitation rights, district magistrate rules on visitation rights and their ruling can be appealed to the Ministry of interior. The ruling made by the Ministry of the interior is a final ruling that cannot be appealed. Therefore, there is no juristically oversight by the decisions made by the government. Furthermore, according to the Children act, a parent cannot go to court to get ruling on visitation rights.

IV. The government refusal to publish any statistical information on it's rulings and publish any rulings on visitation rights

The Icelandic government does not record and report any statistical information on its rulings in the affair of children that are based on the Children right act. Furthermore, the government refuses to publish any of its ruling in visitation right cases. Therefore, there is no oversight by any governing transparent agency on how the government makes it ruling, as the public and the media cannot get any reliable information on these rulings. We believe that it is imperative that this information should be published, especially as there is no regulated external audition.

V. The human right of child to a due process

Rulings on visitation rights are made by a legal expert at the district magistrate. Often these rulings are made by the legal expert without any consultation with an expert in psychology, social work, sociology, family counsellor or any person with expertise in the matter of children. That is in accordance with the Children act as the act does not require the district magistrate to consult with an expert on the matter. The same is the case, when the Ministry of interior makes rulings on appeals. The government claims that, when necessary, they get consultation from experts in the matters of children. However, the government has refused to publish any statistics on the matter. Furthermore, there are no criteria's that they have on when they consult with an expert and when not.

We also believe that the appeal process is inadequate. The district magistrate is a government agency that is under the control of the Ministry of Interior. It is therefore very unfortunate that the Ministry of Interior has to rule on the appeals of the decisions made by the district magistrate. We believe that there is a self-review threat and possible independence issues. It would be appropriate that appeals should be made to oversight committee that is independent of the Ministry of the Interior. Furthermore, we believe that it should be allowed to appeal all major decision made by the government on behalf of the children to the judicial system.

VI. The unacceptable long dispute process

The legal process, at the district magistrate, when parents are in dispute, has several serious flaws, in EAP view. The result of this, has shown EAP these flaws to affect the children of those parents, in a damaging way, not acceptable, as we think, could be avoided easily. To begin with, both parents, can if they feel fit, decide to miss appointment to a counsellor, according to legal duties of the district magistrate peace process, resulting in renewed appointment several times before decision of the district magistrate. The appointed legal employee, sometimes psychologist, has no legal tools to use to make clear to parents, that dismissing or disrespecting the governing body, could result in fines or other burdening decisions for the disrespecting parent. This results in a long dispute process, going on for up to many months, even over a year, while no changes are to the current disputed situation of the child in question. Often, there is the notion that mothers in such disputes, enjoy certain freedom of act and decision, unaffected by the lack of respect towards the right of the child and the father questioning the situation. As one newly published research made by a social worker MA in Iceland, fathers questioned about their experience at the district magistrate, voiced it, "as they were not viewed as a part of the decision process", when applying for divorce and meeting with the legal representative. This goes as well when seeking justice at the court process, as in many cases, the process is both drawn out, and prolonged, often due to prioritising process of lesser importance by the court, or unclear legal process and coincidental, regarding seeking professional evaluation, when preparing the case. It is apparent that the priority is lacking within the governmental institutions, when handling the rights and the welfare of the child, in divorced, disputed situation, between to parents. To many incidents have we known of, where cases, where children are thought to be the victim of unhealthy, damaging, even violent environment at their home, the due process is drawn out in such extent, that it becomes difficult to prove, or react if the situation is in fact affecting the right of the child to security and safe environment.

VII. Legal residence parent violation of the right of the child to know the non-legal resident parent

Parent, with the legal home of the child after divorce, who executes psychological behaviour towards child, resulting in absence, disconnected behaviour of the child towards the other parent, can do so, even though the affected parent files a legal complaint to the governing body. The child, in-between does in such a case experience psychological violence, reported by the absent parent to the right institution, without that parent seeing any measures taken as a result. EAP knows about many cases where children, in such situations have not been able to see and enjoy their parents for many years, and even though that parent have sought legal means, won cases, even many, that has not ended by implementing order on bringing children to their parent, by the governmental body of any kind. This has resulted in many conflict situations, and traumatic stress in families, affecting the larger environment of the affected parents. For the affected parent it can lead to reduced psychological state, disability and sometimes ending with suicide, mainly by fathers. When the resident parent is using the child to heard the other parent, the child is not respected as an individual person, but like an extension of the resident parent. The purpose of the child is to serve the emotional needs of the resident parent instead of the parent taking care of the child's needs. Such kind of psychological violence against a child has a long term harmful effects on the child. We believe the inaction of the government in those cases violates the 19th, 8th and 9th articles of the Convention on the Rights of the Child as well as the 8th article of the European Convention on Human Rights.

VIII. Paternity right

If a man consider himself a father of a child, but the paternity has already been set to another man, he is not permitted to seek his legal redress in court or in other ways. The paternity can be wrong by many reasons, for example, if the mother is living with a man in cohabitation or marriage, that man is automatically considered the father.

We believe that the ban for a man to seek his legal redress in court for a paternity of a child he considers himself a father of is a violation of the child's right to know it's parent and a violation of that man's right to his family.

IX. The right of representation

As mentioned above, 90 % of parents that have visiting rights are male and there is a vast difference in the rights of the visiting parent versus the parent that has the legal residence. The visiting parents have had very little effect on the Children law that is the premise of these rights. The current Child act, is based on a work of a committee of three females and no males. The Children act is complex and the meaning of the law is buried in the report of the committee and are in many cases counter intuitive to the wording in the Children act. The committee was appointed the Minister of the Interior and the appointment was in breach of the Equal right act, which stated that in a three-member committee made by the government there should be at least one person from each gender. The Ministry of the Interior was assigned by the parliament to form a committee to address the inequalities of parental rights and the difficulties faced by the visiting parents' rights. The Minister of Interior formed the committee early on 16 January 2015, but again the appointment was in breach of the Equal rights act as the males did not have proper representation in the committee. It was not until EAP and other civil right organisation complaints to the media that it was changed and the appointment to the committee was changed in line with Equal right stipulations. Furthermore, the Icelandic Minister of the Interior appointed a new work group on 10 March 2016, which has the mandate to further advance the work of the before mentioned committee. Again, the Minister of the Interior appointment is not in line with the Equal rights act as males do not have the representation that is stipulated in the act. There disrespect to the Equal rights act, and maybe other laws and regulations, seems to be institutional problem within the Icelandic Ministry of the Interior. It should be noted that the current Minister of the interior is female as well as most of the senior personnel of the ministry. Given they're lack of respect to male's rights to have representation when laws are made in regards of children and their parents it is troubling that the Ministry of the interior is in charge of rulings made on the issue, with no judicial oversight and no oversight by the public and the media as they operate in complete secrecy.

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On behalf of the Association of Equal Parenting in Iceland

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