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Post-Divorce Parenting: Characteristics Related to the Assignment of Custody of Children after the Breakdown of Heterosexual Marriages. The Case of Andalusia

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Spain has experienced unprecedented social changes in recent decades and at a rate never seen before in history. This dizzying pace offers little time for reflection and analysis. In this sense, the family has not been exempt from these transformations. Perhaps it is striking to ask, but the reality is that the transformations regarding marital breakdowns and the assignment of custody are very recent. Just fifteen years ago it was mandatory to separate before divorcing and you had to file a case if there was no agreement.

Precisely the year 2005 is presented as the fundamental date in the understanding of these changes. In this year, through Law 15/2005 of July 8 which modified the Civil Code and the Civil Procedure Law in matters of separation and divorce, the marriage breakdown undergoes a great change. The main novelty was to move from a model of breakdown of various stages to another in which divorce is accessed directly (without going through separation) and where, in addition, the time limits are shortened. This has made, among other things, that separations are residual today, divorce being the most requested type of breakup. In Spain (95,254 divorces), Andalusia is positioned as one of the Autonomous Communities where there are more divorces (17,772 in 2018), with the gross dissolution rate at 2.11 per thousand. Thus, in this autonomous community there is practically a fifth of all divorces that occurred in Spain.

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Divorce leads the spouses to a negotiation process that can acquire a contentious or consensual nature. With respect to this issue, there is an outstanding aspect that influences how the process develops: the possession or not of children. At the moment when divorced couples have children, the situation becomes more complex and the solution to custody of minors constitutes a process with multiple edges (Suso *et al.*, 2012). The decision regarding who corresponds to the custody of the children make up one of the most controversial aspects that any process of rupture entails (Becerril, 2014). Precisely the 2005 law introduced a novel aspect in Spain although it exists in other countries (Germany, France or Austria, among others): the introduction of the figure of shared custody.

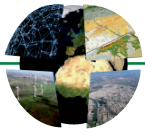
In Andalusia, divorce proceedings that include sons and daughters comprise more than half of the breakups. Data from the Nullities, Separations and Divorces Statistics (ENSD hereinafter) indicate how, in recent years, around 53-56% of marriages that divorce do so with children. Therefore, the question of what type of custody modality is established is not trivial, since in more than half of divorce proceedings this question must be decided.

Despite the fact that this social reality has been analyzed at the national and international level, there is no detailed study for this autonomous community. It is precisely this factor, together with the number of divorces that occur with children present, which leads to the main research objective of identifying whether certain social variables are related to the type of custody granted. For this, a thorough review of the literature has been carried out in order to identify variables that determine or are related to the type of custody granted. In this way, the possession, and number, of dependent minor and dependent children of legal age (Jiménez & Becerril, 2020; Spijker, 2012), the ruling of the sentence (Chausseborg, *et al.*, 2009; Joussetme, 2008), the product gross interior (Becerril, 2012; Juby *et al.*, 2005), the plaintiff of the process (Brinig & Allen, 2002), age (Juby *et al.*, 2005; Solsona *et al.*, 2014) and the nationality of the spouses (Becerril & Jiménez, 2016) are selected.

The methodology used is quantitative. Specifically, the Nullities, Separations and Divorces Statistics (ENSD) from the National Institute of Statistics (INE) are used. This is annual and is carried out by the INE by virtue of an agreement with the General Council of the Judiciary (CGPJ). Its preparation is made from the information on sentences provided by different competent judicial bodies in this matter. On the other hand, data from economic indicators such as Gross Domestic Product (GDP) are used. The selection and use of these variables allows taking into account a solid set of characteristics necessary to understand the phenomenon under study. In this sense, descriptive and multivariate analyzes are carried out (factor analysis and correspondence analysis). The year on which the data analysis is carried out is 2017 in order to provide information on recent data. Note that, by performing the same analysis on the different annual statistics available, the results are similar. The considered database has been filtered for Andalusia, obtaining 17,437 cases.

The main results obtained confirm how the number of dependent minor or dependent children of legal age, the judgment ruling and the gross domestic product of each province are variables related to the custody modality finally assigned. Other variables such as the age of the spouses or their nationality do not seem to have such a decisive association with the modality that is granted. Specifically, the modality of joint custody seems to occur more frequently when the number of children is three or more. The existence of a consensual ruling appears more related to the shared modality than to the exclusive one towards the mother, although the latter continues to be the predominant type (in all the provinces it exceeds 74%, 2018). Regarding the economic aspect, those provinces with a lower gross domestic product have a higher percentage of exclusive custody towards the mother figure than, for example, shared ones. However, other variables such as the nationality and age of the spouses or the applicant in the process are not so intensely related to the established custody modality. These results indicate that the established hypothesis *the possession of minor or dependent children of legal age, the age of the members of the couple and the ruling of the sentence will be the key variables to understand how the allocation of custody of children occurs in Andalusia*, is partially validated.

In this way, it can be concluded that these variables are strongly related to the allocation of custody. However, this research shows some limitations, since it leaves out sociodemographic variables such as the age of the children, the income level and the educational level of the spouses. It also excludes contextual



items such as the importance of the judicial figure and psychosocial teams. Their inclusion could contribute to a more comprehensive and complete understanding of the factors that affect the custody modality finally assigned. The reasons why they have not been included lie, mainly, in the inexistence of databases that contemplate this type of variables; and in the non-existence of studies in Andalusia on this subject that include these variables.

A possible future line of research that complements and deepens the study of this social reality would be to apply qualitative research techniques since it would help to capture aspects that are not obtained with quantitative methodology. It would also be interesting to know what happens to the assignment of custody of children after the divorce of a group that has not been analyzed so far: the ruptures of same-sex couples. For all that has been analyzed and exposed, the need to pay greater attention to a social phenomenon that involves an important part of the Andalusian population is clear.