



Advisory report 'Preliminary draft of the Partial Custody Act', Council for the Administration of Criminal Justice and Protection of Juveniles

Summary

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as 'the RSJ') has been asked for a response to the preliminary draft of the Partial Custody Act (Wet deelgezag).

In its response the RSJ dissuades the Minister for Legal Protection from submitting the current draft of the legislative proposal. The interests of the child are insufficiently served by the legislative proposal. It is doubtful to the RSJ whether the Partial Custody Act will have the practical effect that is envisioned and whether it will therefore constitute a meaningful amendment to Book 1 of the Dutch Civil Code.

Protection of the relationship between caregiver(s) and child

The aim of the legislative proposal is to protect the relationship between the child and a third (or fourth) adult involved in bringing up and taking care for the child. According to the RSJ, it may indeed be in the best interests of the child to have this relationship enshrined in law. The RSJ appreciates the fact that this legislative proposal takes continuity in the relationship with parents or caregivers as its guiding principle. Furthermore, the RSJ supports the basic assumption that any increase in the number of conflicts involving the child as a result of a change in rights of custody should be avoided.

Bottlenecks

The RSJ has nevertheless identified a large number of bottlenecks related to five topics in this legislative proposal. Among other things, the RSJ does not consider it to be in the best interests of the child to invest the third (or fourth) caregiver with mainly procedural rights rather than defining the relationship between this caregiver and the child in substantive terms. As a result, it is possible for the child to become involved in unnecessary formal conflicts. The RSJ also believes that the child should be involved more closely in the creation and termination of this caregiver's legal position.

Recommendations

Should the legislative proposal nonetheless be submitted in its current shape, the Council recommends the following improvements.

First, the Council recommends changing the term 'partial custody' into 'caregiver custody', as its implementation is less closely related to the custody relationship than to the relationship of upbringing and care. Second, the Council recommends limiting this 'caregiver custody' to the authority to take daily decisions. The creation of formal rights that may exacerbate conflicts should be avoided. Finally, the Council recommends giving the Child Care and Protection Board a role when both parents with custody rights over the child pass away.

This recommendation can be consulted on the website of the Council for the Administration of Criminal Justice and Protection of Juveniles, www.rsj.nl, under the header 'Adviezen' (Recommendations).

