

Judicial treatment of applications for joint physical custody in Belgium: criteria considered and underlying family normativities

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ABSTRACT

Joint physical custody (JPC) of children after parental separation is increasingly prevalent in many countries. The literature describes a series of criteria that are—or should be—considered by judges who must rule on applications for JPC. However, little is known about how family courts evaluate these criteria, or about the normative representations that shape their evaluations. Based on the perspectives of lawyers and judges in Belgian family courts—collected in 2018 through an online survey and semi-structured interviews—this article examines the most commonly used criteria, how these criteria are evaluated, and the underlying normative representations of the family. Three criteria are widely used both by lawyers in their advisory role and by judges: the child's age, the geographical distance between parents, and the applicant's temporal availability. Nevertheless, judges make use of a broader range of criteria, which they evaluate on a case-by-case basis. This evaluation is based on a normative representation that continues to prioritize the nuclear family, resulting in tensions between gender equality and the precedence of the mother when young children are concerned.

KEYWORDS: Divorce, Belgium, Joint physical custody, Family, Court rulings, Norms, Sociology

I. INTRODUCTION

Joint physical custody (JPC), in which children's residence is divided between their divorced or separated¹ parents, is a growing phenomenon in western Europe, the USA, and Australia.² In the European Union (EU), approximately one in five children of separated parents lives according to such an arrangement (Hakovirta *et al.* 2023).³ JPC is particularly common where governments have adopted legislation encouraging this model, as in Sweden, Belgium, Catalonia, and the US state of Wisconsin: in these regions, more than one in three children of separated parents is concerned by JPC, with a majority living in an egalitarian arrangement.⁴

There is now a considerable body of literature characterizing parents who establish JPC, which tends to conclude that this arrangement is more frequent among parents with high educational and income levels and moderate levels of inter-parental conflict. However, JPC is spreading to other strata of the population, particularly where this arrangement serves as a reference.⁵ For Cancian *et al.*, this tendency results mainly from 'a change in norms and the custody determination process'.⁶ In this context, it would seem essential to better understand how applications for JPC are evaluated and treated by the judicial system, and by judges in particular.

To date, few studies have investigated judges' views on JPC.⁷ This article contributes to this effort by examining the criteria that family lawyers and judges in Belgium use when they evaluate applications for JPC, how judges weigh these different criteria, and the underlying normative representations of the family.

Belgium constitutes a particularly interesting case in this regard. Its legislation—which obliges the court to prioritize the possibility of equally dividing the child's residence between the parents and stipulates that parents opposing it must prove it would be contrary to the best interests of the child (BIC)—stands out as particularly favourable to this arrangement.⁸ Furthermore, there are no fixed criteria that courts must evaluate systematically to determine whether egalitarian JPC is appropriate, in contrast to other legislation such as the Catalan Civil Code.⁹ The Belgian system thus gives judges considerable latitude in how cases are evaluated, allowing us to better apprehend the values that form the basis for their decisions.

¹ Henceforward the term 'separated' will be used to include both separated and divorced parents.

² L. Bernardi and D. Mortelmans (eds), *Shared physical custody. Interdisciplinary Insights in Child Custody Arrangements* (Springer, 2021).

³ M. Hakovirta, D. R. Meyer, M. Salin, E. Lindroos and M. Haapanen, 'Joint Physical Custody of Children in Europe: A growing phenomenon' (2023) 49 *Demographic Research* 479–492. These statistics group together equal JPC and asymmetric JPC (with children residing at least 30% of the time with one parent) in the same category.

⁴ D. R. Meyer, M. Carlson, and M. M. U. Alam, 'Increases in Shared Custody after Divorce in the United States' (2022) 46 (38) *Demographic Research* 1137–1162; Hakovirta, Meyer, Salin, Lindroos and Haapanen (n 3); M. Solsona and J. Spijker, 'Influence du Code Civil Catalan (2010) sur les Décisions de Garde Partagée: Comparaisons entre la Catalogne et le Reste de l'Espagne' (2016) 17 (2) *Population* 313–341.

⁵ D. R. Meyer, M. Cancian, and S. T. Cook, 'The Growth in Shared Custody in the United States: Patterns and Implications' (2017) 55 (4) *Family Court Review* 500–512; C. Recksiedler and L. Bernardi, 'Are "Part-Time Parents" Healthier Parents? Correlates of Shared Physical Custody in Switzerland', in L. Bernardi and D. Mortelmans (eds.), *Shared Physical Custody* (Springer, 2021) pp. 76–102.

⁶ M. Cancian, D. R. Meyer, P. R. Brown, and S. T. Cook, 'Who Gets Custody Now? Dramatic Changes in Children's Living Arrangements After Divorce' (2014) 51 (4) *Demography* 1381–1396, p. 1392.

⁷ For an exception, see J. E. Artis and A. V. Krebs, 'Family Law and Social Change: Judicial Views of Joint Custody' (2015) 40 (3), *Law & Social Inquiry* 723–745.

⁸ N. Nikolin, 'The Belgian Legal System', in N. Nikolin (ed.), *Divided Parents, Shared Children: Legal Aspects of (Residential) Co-Parenting in England, the Netherlands and Belgium* (Intersentia, 2015) pp. 119–156.

⁹ Solsona and Spijker (n 4)

II. BACKGROUND: JPC IN BELGIUM

In 2006 Belgium, whose divorce rate is historically high (and higher than average for the EU¹⁰), adopted a law defining egalitarian JPC (*hébergement égalitaire*)¹¹ as the model to be ‘envisage[d] as a priority’ in case of parental separation in the absence of agreement, as long as at least one parent requests it (Art. 374, § 2, line 2 of the Civil Code, introduced by the Law of 18 July 2006 ‘to promote egalitarian JPC for children whose parents are separated and to regulate the enforcement of orders concerning child custody’). Since this law was adopted, the implementation of egalitarian JPC has increased steadily. At the country level, it is estimated that in 2021, 30.3% of children with separated parents reside alternatively with each one of them, with 19.6% dividing their time equally between the two residences.¹² One parent having sole custody remains the dominant model in the country; however, this is becoming less common, concerning 48% of children in 2021 (amongst which 42% reside with the mother).¹³ According to the Family League, in 2020, more than four in ten parents residing in Brussels and Wallonia had experienced divorce or separation, and one separated couple in three shared physical custody of their children in an egalitarian manner—with a higher prevalence among young parents.¹⁴ The increasing prevalence of JPC is also illustrated by an increase in judicial rulings in favour of JPC when it is requested by one parent against the other’s wishes: from 33% in 2006 to 37% in 2011 and 47% in 2014.¹⁵ Moreover, half of separated couples in Brussels and Wallonia choose custody arrangements for their children amicably (informally or by means of a notary), with only 36% having recourse to a judicial ruling.¹⁶

The Belgian legislation emerged in a context of evolving familial norms, tending to prioritize each parent’s right to maintain ties with their child as well as the child’s interests in having equal time with each parent.¹⁷ These norms are based on the principle of survival of the parental couple after conjugal separation, in the interests of the child.¹⁸ Indeed, when a conjugal couple must separate, the parental couple persists in view of a conception—which is increasingly accepted socially and judicially—that ‘supports the principle of an obligation for each of the two parents to maintain their responsibility towards the child, and to respect and encourage that of the other parent’.¹⁹ The term ‘coparenting’ thus emerges, accentuating the desire to see both parents continue in their parental roles. These developments in the legal framework are in line with the principles of the International Convention on the Rights of the Child, which enshrines children’s right to know and to be cared for by their parents (Art. 7, §1), the right of children separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, unless this is contrary to the child’s best interests (Art. 9, §3), and the principle that both parents have common responsibilities for the child’s upbringing and development—the primary responsibility lying

¹⁰ Between 2000 and 2019, the mean divorce rate in Belgium was 2.9, compared to about 2.0 in the EU overall (sources: Statbel and Eurostat).

¹¹ JPC in Belgium assumes the egalitarian division of time with the child between parents (50-50). It also encompasses quasi-egalitarian JPC (for example, 9 days/5 days) (see L. Merla and B. Nobels, *Belonging and Belongings: Children’s Sense of Home in Shared Custody Arrangements* (Bristol University Press, 2025)).

¹² Hakovirta, Meyer, Salin, Lindroos, and Haapanen (n 3)

¹³ F. Ghesquière, *Monoparentalités: Etude des situations de garde des enfants de parents séparés—Regards statistiques n° 14* (IWEPS, 2024).

¹⁴ Ligue des familles, *Le baromètre des parents 2020* (Service Études et Action politique de la Ligue des familles, 2020).

¹⁵ L. Jacobs, ‘L’*hébergement égalitaire*: état des lieux’, in Cefap (ed.), *Les Après-midi d’études du Cefap. Actualités en droit de la famille* (Larcier, 2015) pp. 95–134.

¹⁶ Ligue des familles, *Le baromètre des parents 2024* (Service Études et Action politique de la Ligue des familles, 2024).

¹⁷ Nikolin (n 8)

¹⁸ J. Marquet, ‘La famille à l’épreuve de la rupture conjugale’ (2008) February *Les Cahiers du CEPESS* 8–44.

¹⁹ J. Marquet, ‘Couple parental—couple conjugal, multiparenté—multiparentalité’ (2010) 4 (2) *Recherches sociologiques et anthropologiques* 51–74, p. 56.

with the parents or, as the case may be, with legal guardians (Art. 18, §1). They are based on 'the interests of the child, the democratization of family ties, and the protection of the role of the father following conjugal separation'.²⁰

In particular, Article 374, §2 of the Civil Code states that 'in the absence of agreement, in case of joint parental authority, the court shall examine as a priority, at the request of at least one of the parents, the possibility of establishing physical custody of the child in an egalitarian manner between parents. Nevertheless, if the court considers that egalitarian JPC is not the most appropriate arrangement, it can decide to establish non-egalitarian physical custody [ie, asymmetrical JPC or one parent having sole/primary custody]. In any event, the court shall provide its ruling in a carefully substantiated judgement, taking into account the concrete circumstances of the case and the best interests of children and parents'.²¹ In other words, the law defines three necessary conditions for a judge to be able to consider egalitarian JPC: that there has been no agreement between the parents, that parental authority is exercised jointly and that at least one parent requests JPC. If these conditions are satisfied, the judge must prioritize the application for egalitarian JPC over any other custody arrangement requested. It is important to note that it is no longer up to the applicant to prove that JPC would be beneficial. On the contrary, a parent opposing JPC must demonstrate that it would be contrary to the interests of the child.²²

Judges can rule against granting egalitarian JPC to a parent who applies for it, providing reasons for their decision and exercising their power of discretion. Consequently, the legislation has not defined a list of criteria to be considered systematically. The preparatory work and the commentaries on the articles of the law cite the following (non-exhaustive) examples of circumstances that may justify a refusal, by way of illustration: significant geographical distance between parents, a parent's temporal unavailability²³ (this must involve serious imbalance, and must not immediately disadvantage a parent exercising a professional activity), a parent's evident disinterest in the child before or after the separation, the child's young age, the child's wishes as expressed in a hearing before the judge, the wish to preserve the sibling group, lack of capacity to accommodate the child, flagrant lack of parenting skills, too great a difference in parenting styles or lifestyles, poor communication between parents, and a parent's health concerns that would interfere with caring for the child effectively on a daily basis.²⁴ However, other criteria may affect a judge's decision; each criterion must be evaluated with care, and the presence of one or more of these criteria will not result in automatic rejection of an application.²⁵ In practice, the elasticity of the criteria that inform judicial rulings leaves considerable room for lawyers' and judges' representations, values, and practices in the application of the 2006 law.²⁶

²⁰ D. Côté and F. Gaboreau, 'Nouvelles normativités de la famille: la garde partagée au Québec, en France et en Belgique' (2015) 27 (1) *Canadian Journal of Women and the Law* 22–46, 45.

²¹ The BIC is thus not the only relevant standard for the court, which should also take into account the specific circumstances of the case and the interests of the parents.

²² Nikolin (n 8). With regard to the burden of proving that JPC is justified, the Court of Cassation ruled on 20 January 2020 that each party must prove that the proposed accommodation arrangements are appropriate to the factual situation and to the interests of the child – see Cour de Cassation – arrêt n° F-20200120-2 (C.18.0514.F) of 20 January 2020. This ruling came two years after the study on which this article is based.

²³ 'Parents' temporal unavailability', synonymous with 'lack of temporal availability', refers to periods when a parent cannot spend time with their child due to other commitments.

²⁴ N. Dandoy and F. Reusens, 'L'hébergement égalitaire—Lorsque la promotion de la coparenté sur le plan de l'hébergement aboutit à une réforme faussement modeste de la procédure en matière d'autorité parentale' (2007) 6259 *Journal des tribunaux* 177–189.

²⁵ Ibid.

²⁶ M. T. Casman, A. César and C. Waxweiler, *Évaluation de l'instauration de l'hébergement égalitaire dans le cadre d'un divorce ou d'une séparation. Recherche commanditée par le Secrétariat d'État à la Politique des Familles* (Université de Liège, 2010).

The rare studies that have looked at Belgian jurisprudence, based on review of published rulings in law journals, confirm judges' recourse to criteria such as the child's wishes, the distance between residences, parents' ability to communicate, parents' temporal availability (particularly during the day), the child's age, or the parents' views on childrearing.²⁷ To date, to our knowledge, only one study has examined on a large scale the relative importance of these criteria through a quantitative analysis of decisions rendered in 2005 and 2013 in Flemish jurisdictions.²⁸ It shows that the main criteria for excluding JPC are: parental disagreement, their lack of availability, the distance between residences, the child's age, and the child's opinion. This article aims to contribute to this body of research by analysing how different criteria are considered in cases involving applications for egalitarian JPC, through a mixed-methods design combining data from a questionnaire-based survey of family lawyers and semi-structured interviews with judges. Beyond the criteria identified through this research, our aim as sociologists is to understand the normative representations of the family that underlie evaluation of applications and reasons for refusal to grant JPC. We will first examine the criteria that family lawyers make use of in general in their advisory role. Then, in a series of cases selected by these lawyers, we will explore the arguments they used when representing a client opposing an ex-partners' application for JPC in court and those used by judges to substantiate refusal of such applications. Subsequently, we will compare the criteria emerging from the lawyers' responses with the judges' practices and representations, which will help us to appreciate the concepts behind these criteria, how family judges weigh them, and ultimately the representations of the family that form the basis for this process.

In the following sections, the term 'JPC' will refer specifically to egalitarian JPC.

III. METHODS

This article is based on two datasets.

The first dataset is derived from an online survey of French-speaking family lawyers in Belgium that was carried out in 2017–18. The closed, multiple-choice questionnaire was developed by our team in collaboration with legal specialists and family lawyers and judges.²⁹ Its objective was to better understand lawyers' professional practices, to shed light on current trends in judicial rulings concerning JPC, and to provide insight into the profiles of parents requesting this arrangement. Overall, 112 lawyers completed at least part of our questionnaire; we have chosen to retain and analyse the 56 questionnaires that were completed in full.³⁰ The first part of the questionnaire explored the respondents' general professional practices in their advisory roles—specifically, whether they tended to advise their clients to apply for JPC and under what circumstances they would not advise it. In the second part, respondents were invited to describe up to five cases that they had recently handled before Belgian courts concerning applications for JPC. In total, respondents provided us with information about 98 cases that were resolved amicably³¹ and 47 conflictual cases³²: this article will focus on the latter group.

²⁷ See, for instance, Nikolin (n 8); D. Pire and N. Massager, 'Hébergement égalitaire: du nouveau?', note sous Cass., 20 January 2020, (2021) 1 *Act. Drfam.* 5–7.

²⁸ C. Van Roy, *De (on)deelbaarheid van her kind* (Intersentia, 2021).

²⁹ Participants could add their own criteria to the provided list, but none did.

³⁰ Most of these 56 respondents were at least 36 years old (76.8%). Most were women (83.9%), and most had more than 10 years of experience as specialists in family law (74.6%). Respondents were evenly distributed among the bar associations of Belgium's five French-speaking regions (Brussels, Walloon Brabant, Liège, Hainaut, and Namur).

³¹ In these cases, the parents were able to agree concerning JPC, either by mutual consent or following a mediation, conciliation, recourse to collaborative law, or other form of negotiation, and submitted their agreement for the court's approval.

³² In these cases, one parent (the lawyer's client, or the client of the adverse party) had requested JPC against the other parent's wishes.

It should be noted that in 40 of the 47 conflictual cases (85.1%), it was the father who applied for JPC against the mother's wishes. Most applications concerned households with either one or two children (90% of cases), and the youngest child was generally under 12 years old—under 7 years in roughly half of cases. The professions of parents who applied for JPC against their ex-partners' wishes were relatively varied. Of the seven mothers, four were not employed; two were employees or civil servants, and one was a blue-collar worker. In contrast, more than half of the fathers were either managers, professionals, or self-employed (11 fathers) or employees or civil servants (12 fathers); nine were blue-collar workers and six were not employed (information was missing for two). Judges ruled in favour of JPC in 19 of the 47 cases (40%); 28 thus resulted in unfavourable rulings. Of the 40 applications originating with fathers, 18 resulted in favourable rulings: 15 resulted in weekly alternation between parents for the school term (7-7 days), two in quasi-egalitarian alternation (9-5 and 8-6 days) and one in monthly alternation. Of the seven applications originating with mothers, only one resulted in a favourable ruling.

The second dataset is derived from semi-structured interviews conducted in 2018 with eight family judges, who described their practices and representations concerning JPC in more depth, with particular attention to the criteria they used to evaluate an application. Interviews of approximately 1.5 hours were conducted with five judges in the Walloon region, one in the Brussels-Capital region, and two in the Flemish region.³³ Our panel includes judges from first instance and appeal courts. Only one of the eight judges was male, reflecting the preponderance of women in this role; all were aged between 40 and 60 years. These interviews allow us to better understand the conceptual basis of the criteria identified in our survey of family lawyers, as well as how judges make use of these criteria in the exercise of their discretionary powers.

IV. RESULTS

1. Family lawyers' perspective

In the first part of this section, we will examine the criteria that our respondents reported considering in their advisory role. We will then turn to the conflictual cases that they selected, to examine the arguments they used to oppose an ex-partner's application for JPC and those judges used to substantiate a negative ruling.

A. Lawyers' professional practices and criteria considered

Lawyers' role is to transmit their clients' wishes to the courts—which does not prevent them from assessing their chances of success. In this regard, we note that only 4.4% of respondents 'often' discouraged their clients from applying for JPC, while 40% 'often' advised them to do so. Most respondents appeared to take a case-by-case approach, with some 60% answering 'sometimes' when asked how frequently they would encourage—or discourage—an application for JPC.

Respondents appeared to agree on the importance of certain criteria when evaluating an application for JPC, either to discourage a client from making such an application (Figure 1) or to advise a client opposed to an ex-partner's application *a priori* (Figure 2).

Four criteria were cited by more than half of respondents as 'often' or 'always' arguing against a client's applying for JPC (Figure 1): the child being under 3 years old, significant geographical distance between parents, the client's temporal unavailability, and the application being motivated by a desire to harm the ex-partner. In contrast, the client's economic

³³ All the interviews were conducted in French, as both Flemish judges were fluent in this language.

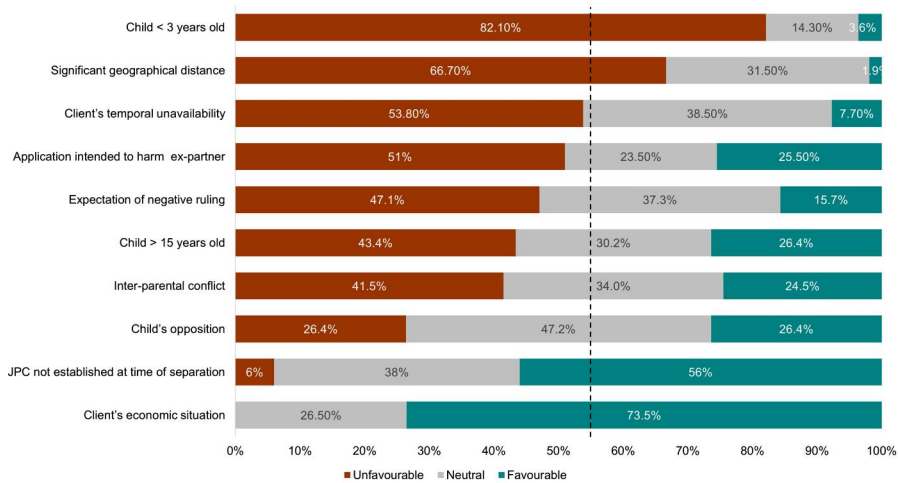


Figure 1. Criteria considered by lawyers—application for JPC originating with clients.

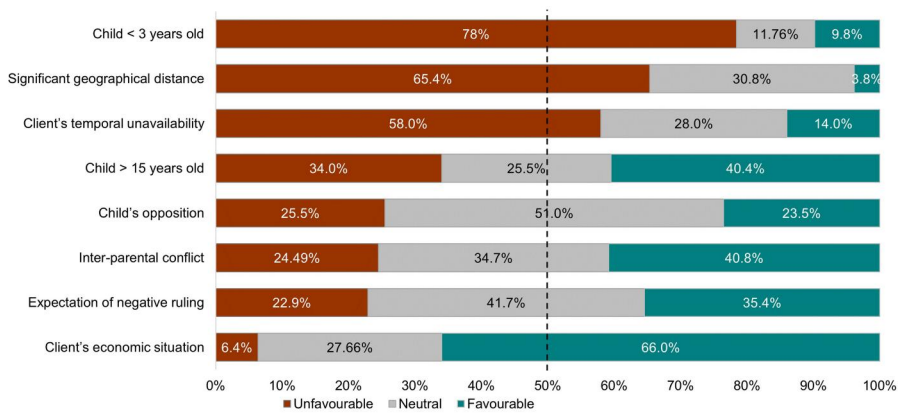


Figure 2. Criteria considered by lawyers—application for JPC originating with ex-partners.

situation, inter-parental conflict, and JPC not being the first custody arrangement established after separation were rarely if ever cited as arguing against JPC. Finally, three criteria were cited both as favourable and as unfavourable to JPC, or as neutral: the child being over 15 years old, expectation of a negative ruling, and the child's opposition.

We should note that where a client's ex-partner applied for JPC against the client's own wishes, the great majority of respondents said they would defer to the client's wishes—and thus advise refusal of the ex-partner's application—unless they considered that this would be contrary to BIC. However, a risk of conflict between ex-partners if JPC was not established would lead most respondents to advise accepting the application—again, unless this was considered contrary to BIC. In such cases, only 10% would abide by the client's initial wishes. All but three respondents said they would also inform clients that they had the right to refuse the application, that they would need to justify their refusal, and that the judge would make the final decision.

Respondents' consideration that JPC would be contrary to BIC was based on three main criteria, which would lead them to advise clients against either applying for JPC themselves (Figure 1) or accepting an ex-partner's application (Figure 2): the child being under 3 years old, significant geographical distance between parents, and the client's temporal unavailability. In contrast, the client's economic situation was rarely considered a counter-indication to JPC: 66% of respondents 'rarely' or 'never' considered this a reason to refuse an ex-partner's application. Four criteria were variably cited as favourable or as unfavourable to JPC, or as neutral, whether an application originated with the client or the ex-partner: the child being over 15 years old, inter-parental conflict, expectation of a negative ruling, and the child's opposition.

B. Arguments invoked by lawyers opposing and by judges refusing JPC

We will now examine the arguments that lawyers invoked to oppose their client's ex-partners' JPC applications in our respondents' 47 conflictual cases (regardless of outcome), those judges invoked to substantiate refusal in the 28 such cases, and the relationships between these two sets of arguments. Although caution is in order due to the small numbers of cases examined, we find these data interesting in that they resonate with those from the first part of the questionnaire, as well as the family judges' perspectives analysed in the following section.

The arguments put forward by the lawyers of parents opposing ex-partners' JPC applications—overwhelmingly mothers—were very diverse (Figure 3). In this section of the survey, the criteria available to respondents included those appearing in Figures 1 and 2—the child's age, inter-parental conflict, significant geographical distance between parents, the child's opposition, JPC not being the first custody arrangement established after separation, and the applicant's temporal unavailability—and also the applicant's capacity to accommodate the child (which may be assimilated to their economic situation), too great a difference between ex-partners in parenting styles, violence perpetrated by the ex-partner, the applicant's flagrant lack of parenting skills, and the applicant's evident disinterest in the child.

Four principal arguments were invoked by more than 30% of lawyers of parents opposing JPC applications. Two of these—the applicant's temporal unavailability and the child's age—were consistent with the criteria that lawyers considered unfavourable in their advisory role, but two additional arguments—the applicant's evident lack of interest in the child and lack of parenting skills—were invoked with the same frequency as the child's age. Inter-parental conflict was the next most frequent argument, invoked in nearly a third of cases.

In the 28 cases resulting in refusal of JPC, the arguments that judges invoked to substantiate their rulings were also more varied than those respondents reported using in their advisory role (Figure 4). Indeed, none of the judges' arguments figured in more than 30% of cases. The most frequent—each invoked in 28.6% of cases—were those that emerged as a consensus throughout the survey: the child's young age, significant geographical distance between parents, and the applicant's temporal unavailability. The child's opposition was invoked in one in five cases, particularly those involving older children.

We then attempted to determine to what extent the judges in these 28 cases took up lawyers' arguments against JPC to substantiate their refusals (Table 1). Although these findings must be interpreted very cautiously due to small numbers, judges took up lawyers' arguments concerning geographical distance in all six cases where these were invoked. The child's opposition was taken up in four out of six cases, and the child's age and the applicant's capacity to accommodate the child were each taken up in half the relevant cases.

Of the arguments that lawyers invoked most frequently, that of the child's age was taken up by judges in six out of 12 cases and the applicant's temporal unavailability in five out of

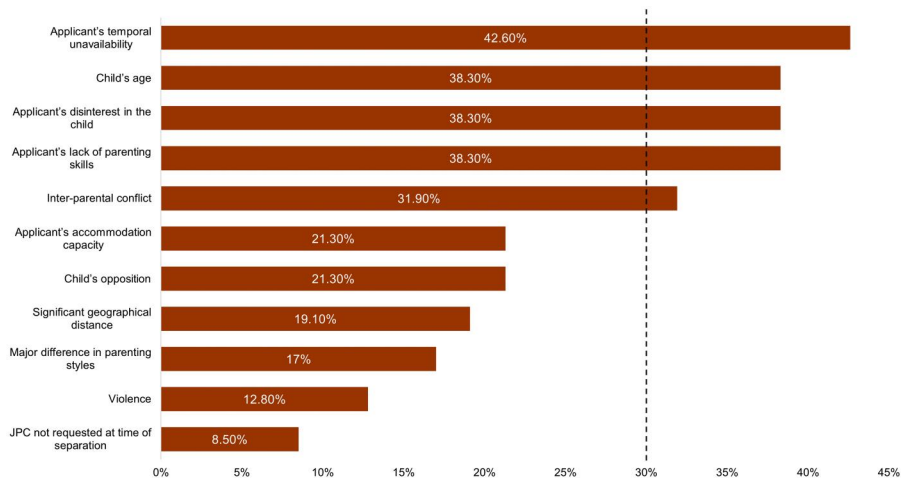


Figure 3. Criteria invoked by lawyers representing parents opposing JPC.

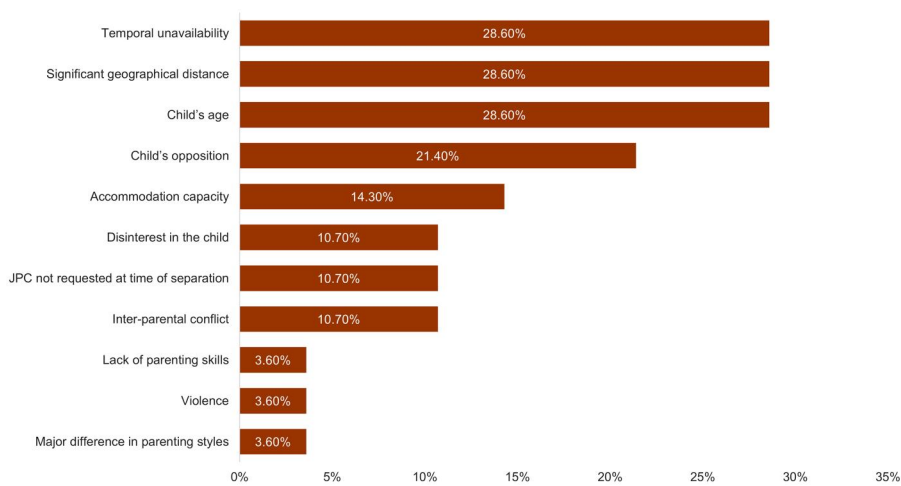


Figure 4. Criteria invoked by judges refusing JPC.

13. The applicant's lack of parenting skills and/or lack of interest in the child, invoked in 12 and 13 cases respectively, figured only rarely among judges' arguments, and major differences in parenting styles—invoked in five cases—were never used to substantiate a judge's ruling.

In summary, three criteria would appear to argue transversally against JPC. The first two, the child's young age (under 3 years—or even under 6 years) and the applicant's temporal unavailability, were widely cited by lawyers in their roles of advising their clients in general and representing their client opposing an ex-partner's application for JPC in court, and by judges substantiating a decision not to grant JPC. The third, significant geographical distance between parents, was often emphasized by lawyers in their advisory role and was among the three main arguments used by judges to substantiate an unfavourable ruling. Moreover, when lawyers invoked this argument in conflictual cases in court, it was

Table 1. Arguments invoked by lawyers representing parents opposing JPC and judges' responses.

	Invoked by lawyers representing a parent opposing JPC	Taken up by judge
Significant geographical distance	6	6
Child's opposition	6	4
Child's age	12	6
Applicant's accommodation capacity	8	4
Applicant's temporal unavailability	13	5
JPC not established at time of separation	3	1
Inter-parental conflict	7	2
Violence	4	1
Applicant's disinterest in the child	12	3
Applicant's lack of parenting skills	13	1
Major difference in parenting styles	5	0

systematically taken up by the judge to justify refusal. However, this finding requires further investigation, given the very small number of cases concerned.

2. Family judges' perspective

The interviews we conducted with family judges enable us to see, beyond the figures, how different criteria are considered in practice and what normative visions of parental roles and parental separation emerge from this discourse.

A. A 'case-by-case' approach, but with three preponderant criteria: the child's age, geographical distance, and capacity to accommodate the child

All eight of the judges we interviewed confirmed the findings of our survey, in that they agreed that it was necessary to evaluate applications for JPC on a case-by-case basis. In their view, this type of custody arrangement should not be granted automatically, and obstacles invoked by one of the parents must be considered in light of a broad range of parameters such as the child's age, the child's relationship with the parent, the parents' behaviour, expert advice, and the custody arrangement established previously.

Nevertheless, the judges appeared to be unanimous about two criteria being unfavourable to JPC—specifically, the child's age and significant geographical distance between parents, which is consistent with the findings of our survey of family lawyers. We will now take a closer look at how these criteria are assessed.

In case of disagreement between parents, the judges agreed that JPC would not be appropriate for **very young children**, but they differed concerning the pivotal age. Two of the eight judges considered 3 years to be the minimum age for establishing JPC; for the six others, 3 years would be too young and 6 years would be ideal. These six judges said their opinions were based on psychological studies of attachment as well as on jurisprudence, explaining that a young child needs stability and a primary carer for healthy development. While they were familiar with the diversity and the evolution of studies on this subject, they preferred to adopt a cautious approach and to opt for what they currently considered to be the 'least bad' solution for the child. However, they noted that exceptions were possible, if parents were able to find ways to facilitate the child's mobility (living close to one another, or alternating for short periods—e.g., every 2 days). Nevertheless, some judges were very uncomfortable with the idea of short alternation periods for young children, arguing that this

would involve too much movement and instability for them. For the majority, the ideal would be for a young child's primary carer—the parent responsible for most of the child's care since birth—to have primary custody, but for the child to have very regular contact with the other parent—for a few hours several times a week—and for this time to increase as the child matured.

Most of the judges we encountered also considered the kind of custody arrangement that the parents had established initially and the distribution of parental roles before separation. The majority said they would be more likely to rule in favour of JPC if the parents had established this kind of arrangement immediately after separation and it had worked relatively well, or if they had been equitably involved in the child's care from a very early age.

Notably, the majority of judges considered that JPC was not always suitable for **adolescents**. The ideal age for establishing JPC would appear to be from 6-8 years to 12-14 years—a consensus in the legal world, according to our interviewees. Before 6 years, a child would need a single, stable point of attachment, and after 12-14 years, an adolescent would need a 'refuge,' would feel better with one parent than with the other, or would no longer wish to make the journeys back and forth:

When I listen to children more than 12 years old, I realise that they also need to have a living space, a home base, to centre themselves a little—because otherwise they just spin out of control. So, for an adolescent, it's a refuge. (Judge 8)

Judges' positions can sometimes shift in case of agreement between parents. The judges we encountered would very rarely refuse JPC for a young child in such cases, favouring the parental agreement in the interests of the child; they thus considered the parents to be the best judges of their situation and of their child's well-being. However, this did not prevent them from occasionally calling parents' attention to a very young child's age and asking them to reconsider their decision: 'Come back in 4 months, and tell me how it's working' (Judge 8). They also asked parents to be attentive to the child's reactions—possibly including consulting an expert—and to envisage changing the custody arrangement if it turned out to be unsuitable for the child.

Who am I to refuse an agreement? After all, the parents are the first link in the chain of Justice. But my lens is still the International Convention on the Rights of the Child; I need to focus on the child's interests. So I wanted to be sure that that agreement [JPC with 7/7 alternation, for a 9-month-old child] was reached through reflection, and not on the spur of the moment—to make someone happy, or maybe as the price of forgiveness. I didn't want the parents to see it that way. So I told them, 'I'm going to postpone for a fortnight; go and see a child psychiatrist, a paediatrician, whoever you want so you'll be really sure that this arrangement is in your child's best interests.' They'd already been applying this since their child was 6 months old, okay, so now the child was 9 months. They came back with a nice doctor's certificate saying the child was doing very well. So I approved the agreement—pointing out the exceptional nature of this arrangement, which considered the specificity of this parental couple, outside the court's remit. But the court had to call the parents' attention to the need for regular re-evaluation of how this arrangement was affecting their child's development, considering the medical literature on the subject (Judge 8).

The second counter-indication on which the judges agreed was significant **geographical distance** between parents, regardless of the child's age. They did not consider a commute of an hour or more to school to be in the child's interests and regretted the fact that some

parents would consider moving far from their ex-partners precisely for this reason, to render JPC impossible.

The importance of geographical proximity between living environments is strongly linked to the notion of **stability of the child's social environment**, to which judges would refer in case of significant distance to determine which parent should be granted primary custody. The house where the child had grown up, nearness to the child's school, and the child's social network and activities all contributed to this decision. For example, most judges attached great importance to continuation of the child's extracurricular activities, and were unlikely to grant JPC to applicants who were unwilling to transport the child to these activities while the child was residing with them. However, the case-by-case approach prevailed here as well. In case of agreement between parents, the judges would very rarely refuse JPC, but would call the adults' attention to the difficulty that the distance might imply for the child.

Continuity of the child's social environment also encompassed **sibling relationships**. Most of the judges we interviewed agreed on the importance of establishing similar custody arrangements for siblings³⁴: age was a consideration here as well, as the wish to keep siblings together might imply waiting until the youngest was deemed old enough to begin JPC. Others considered that experiencing alternation at the same rhythm as older siblings could provide continuity for a young child. Nevertheless, interviewees again stressed the importance of evaluating each case on its own merits, even if this might mean establishing different custody arrangements within a sibling group if JPC was unsuitable for a particular child.

Finally, all of the judges agreed that parents who applied for JPC should be able to prove their **capacity to physically accommodate the child**, and the availability of enough bedrooms for everyone:

I think the last obstacle to establishment of JPC was the fact that he didn't have his own place—he'd stay with a friend when he worked in X, and at the weekend he'd go to another house out in the country, I don't know where. So I said, 'That's not all right with me, sir.' ... He's come back now; he says, 'I have my house.' So all right, I'm going to grant him JPC (Judge 7).

The judges we interviewed were divided on the question of a parent's **temporal unavailability**—although in the conflictual cases we analysed above, this was one of the arguments that judges invoked most often to substantiate a negative ruling. Nevertheless, they agreed that the exercise of a professional activity did not constitute an obstacle to JPC:

... and I shouldn't refuse, either, when a parent applies for JPC and has a professional activity, while the other one doesn't. After all, this is real life, you know? In real life, children aren't necessarily with their parents 24 hours a day (Judge 6).

Certain judges favoured parents who were more available to care for a child themselves over those who proposed alternative solutions (daycare, babysitting, family members, new partners), so the child would not be alone in their absence. The call to order could be scathing: 'It's up to you to take care of your child, not your new wife or your girlfriend or your mother' (Judge 1).

However, other judges considered that JPC implied not only the equality of each parent's time with their child, but also an occasion for the child to experience two different styles of

³⁴ In 2021, three years after these interviews took place, art. 374 §2 of the Civil Code was amended to emphasize the importance of considering similar custody arrangements for siblings. It now states: 'Where parents have several children, the court shall tend towards the adoption of the same regime for all brothers and sisters'.

parenting. They therefore saw time spent with the extended family, the parent's new partner, or a third party like a daycare worker or babysitter as an opportunity for the child to be exposed to other ways of doing things, raising children, and seeing the world.

B. Harmful behaviours and inter-parental conflict: criteria to be considered and acted on with caution

Although the judges we interviewed agreed that **violence, addiction, or parental unreliability** would constitute obstacles to the establishment of JPC, their responses would be different if these behaviours were not confirmed by a social worker's report or a judicial ruling. Some judges would disregard these criteria in case of uncertainty, while others, unwilling to take any risk, would refuse to grant JPC—particularly if the child was against it:

Until I feel completely reassured, I don't grant it. ... I will listen to the child, anyway, and if there are real problems with the relationship, there's no point in setting it up and [then] having aggressive or negative behaviour. So, you see, I tell myself that it's better to preserve a relationship—which might improve if they see one another a bit less—than to impose something (Judge 5).

All interviewees agreed that conflict between parents was not necessarily a reason to refuse an application for JPC:

Conflict [between] parents—that just makes me laugh, because if they come before a judge, it's because they don't get along! For me it's not a counter-indication—otherwise we'd never be able to do it [establish JPC] (Judge 8).

Nevertheless, several judges said they were wary of applications for JPC that appeared to be instrumental in nature—made for the sole purpose of taking revenge on an ex-partner or avoiding child support payments, or as a kind of blackmail: 'It's JPC or nothing' (Judge 4).

These judges explained that children can also be strongly influenced by a parent's discourse 'against' their other parent, leading them to oppose JPC. For some judges, it would be against the interests of the child—and the relationship between parent and child—to impose JPC in such cases. They therefore considered it preferable for the child not to be constantly 'torn' between the two parents, even if this would mean having to re-establish contact with the maligned parent later—as an adult—after realizing that things were not as the custodial parent had described. They recognized that this situation could be very frustrating for the parent who was 'sidelined,' and a strong consensus emerged that the relationship between the child and the 'sidelined' parent should not be broken. All of our interviewees tried to maintain and reinforce this relationship through occasional short periods of custody, court-ordered encounters in spaces intended for this purpose, and/or expert consultations focused on parental collaboration in case of alienation.

In contrast, when one parent constantly maligned the other without convincing proof of their accusations, other judges would sometimes decide to grant the other parent's application for JPC—even if the child opposed it—in order to reduce an influence that could prove harmful to the child: 'If there's parental alienation, you should go for JPC right away, to minimize the alienating parent's influence' (Judge 3). However, our interviewees appeared to find the concept of parental alienation in general difficult to apprehend, and struggled to define it or find solid proof of its existence: 'We know that parental alienation exists, but it's really not an easy thing to identify. In any case, it's hard to be sure about it' (Judge 5).

Parental disaccord also raises the question of the place given to **the child's wishes** in evaluation of a case.³⁵ All of the judges stated that they would consider a child's wishes when that child was 15, 16, or 17 years old, notably because they found it complicated to oblige adolescents to respect a custody arrangement contrary to their wishes. Nevertheless, they explained that they would always make it clear that the decision was not the child's to make. As one judge put it, 'I'm going to have to decide according to the child's best interests, and that may not correspond to their wishes, but they understand that' (Judge 3). Indeed, the judges stressed the importance of lifting the weight of the decision from the child's shoulders, noting that children were often relieved to hear it stated clearly—particularly those distressed by the prospect of having to choose between their parents' conflicting wishes.

Nevertheless, the judges struggled to identify what guided them in their evaluation of a child's wishes:

I find that in some cases children don't know, have no idea what they're talking about, and in other cases I say, 'Okay, they've convinced me.' That depends on the child ... it's very difficult to say (Judge 2).

The two extracts below illustrate how perception of a child's testimony appears to be influenced by concern for identifying the child's 'true' feelings (as opposed to those of the parents) and for distinguishing between what the child wants 'with their heart,' in one judge's words, and what they say out loud.

If I have the impression that what they're saying is true, that that's how they feel—which is usually the case, okay?—if I really have the impression that it's how they feel and not what their mother or their father wanted them to say, I think I take it into account. Now, I'm not necessarily going to do what they want, but I take it into account. And I'll try to nuance things if necessary, because I say to myself that if a child is frightened, let's say, or doesn't feel comfortable in a parent's home, putting them there a lot isn't going to help the relationship with that parent go well. So maybe I'll give them 5-9 [alternation] rather than 7-7 (Judge 5).

Sometimes they don't want to alternate any more, they're 14 years old ... they're going to try to find some objective facts, but in fact they don't want it with their hearts ... (Judge 1).

In such cases, tension emerges between the child's wish to reduce or interrupt contact with one parent and the need to ensure that parent-child relationships are maintained.

It's difficult, because there's family law that says that the child has the right to have contact with the two parents. And it's the State's responsibility, and therefore ours, to see to that (Judge 1).

C. In the background: the transversal normative model of the nuclear family, combined with two gender models in tension

It is striking to observe that the model of the nuclear family, with parents and minor children all residing under the same roof, remains the transversal model of reference for the judges

³⁵ In Belgium, Article 1004/1 of the Judicial Code stipulates that 'Every minor has the right to be heard by a judge in matters that concern him or her relative to the exercise of parental authority or custody, as well as the right to personal relations.'

who shared their thoughts with us. For most of these judges, in fact, parental separation is in itself detrimental to the child's interests, as one of them confided:

[What's in] the best interests of the child, first of all, is for the parents to stay together, first of all, and for them to love one another. That's [what's in] the best interests of the child—to grow up in an environment where there's peace (Judge 1).

In case of parental separation, it is therefore a question of finding the 'least bad' solution possible in the interests of the child. The ideal of the nuclear family is associated with a vision of family relations governed by warmth, love, peace, communication, and benevolence:³⁶ 'The ideal is [to provide a family environment that is]: warm, fulfilling, positive, and adequately structured. But without being too ... sometimes we do what we can, too, you know?' (Judge 5). It is therefore important for parents to get along well and to communicate well with one another, to 'manage to agree about raising a child, so one doesn't sabotage the other' (Judge 8), and for children to be able to develop a relationship with each of their parents, to identify with them in order to know their roots, and ideally to feel comfortable with each of them. Finally, within this ideal, children must be considered as people in their own right. It should be noted that the criteria that form a consensus among our judges reflect a wish to reproduce conditions resembling those of an idealized nuclear family—a stable social environment, geographical proximity of the parental couple, and preservation of the sibling group.

Beyond this transversal ideal of family relations, the question of custody arrangements after separation is suffused in the judges' discourse by a tension between two gendered normative models of parenting—one based on a more traditional concept, with the mother taking more responsibility for care of (young) children and the father for financial matters, and the other based on equality between women and men. The ideal vision of nuclear and post-separation families described above is not automatically associated with gender equality, particularly where young children are concerned. Several judges subscribed to a traditional and essentialist view of motherhood, believing that mothers would find it particularly difficult to detach themselves from their young children—that they would *need them* in some way—and must therefore be allowed to proceed at their own pace. Some referred to an animal instinct that characterized mothers' relationships to their children—'I think that mums, and I'm one myself, we're too much like she-wolves' (Judge 7)—or evoked the image of a 'good' mother who should be able to let go and a 'good' father who should be able to wait, to avoid rushing his ex-partner, in the interests of their children:

If I see that there's a parent who is more reluctant and who has more misgivings about JPC, I'll go slowly; I'll respect that. I always say—well, often to the father—'let's do it; that's our objective.' But often the reluctance comes from it being a younger child, so I say, 'We'll also respect the child's pace.' And maybe the mum's, sometimes, who's not ready to let go and who needs to learn ... The problem is that there's no point in showing up with a cleaver like that, because in any case it's the child who will suffer, seeing the mother cry and all. So I'll often go for a 9-5 (Judge 3).

³⁶ This ideal is, however, far from the reality of many non-separated families. A survey of 1600 young people in the Wallonia-Brussels Federation's school system showed that inter-parental conflict occurs in all family configurations, including nuclear families (see L. Merla and J. Dedonder *Configurations familiales post-divorce/séparation en Fédération Wallonie-Bruxelles: le point de vue des adolescent-es*. (Rapport MobileKids. Louvain-la-neuve: CIRFASE, 2019)).

A single judge among those we interviewed prioritized the mother-child relationship, explaining that fathers should understand that the relationship between a mother and her child was 'different' from that of a father and child, and should therefore, in the interests of the child, be willing to renounce JPC if the mother strongly opposed it.

In contrast, others pointed out that applications for JPC originate not only from fathers who are (or wish to be) more involved in parenting, but also—and increasingly—from mothers wanting their ex-partners to be more involved, or wanting more time for themselves, particularly for their professional activities. Five of the eight judges we interviewed saw the Law of 2006 as an important advance for equality between women and men, as it places parents on an equal footing in matters of child custody while preserving the judge's discretionary powers.

I find that we have a very, very good law. Because, on the one hand, the parents are on an equal footing. That's really important for me. That the parents, in the law, in principle, are equal. And, at the same time, the judge's power of discretion is finally pretty much the same, in that we can come up with 'bespoke' solutions (Judge 3).

This coexistence of—or competition between—normative models blurs the lines permitting definition of 'good practice' in the matter of child custody, in a context where debate over the positive and negative effects of JPC is far from over (particularly for young children) and where parenting practices can evolve slowly. Our interviewees observed that some fathers remained largely uninvolved in caring for young children when parents lived together, because they were unwilling to assume this role and/or because the mothers did not allow them to. Consequently, some judges were unconvinced by the prospect of granting these fathers JPC straight away for young children. This reluctance was reinforced by what they perceived as a consensus emerging from the legal community—as we have noted—that the ideal age for setting up JPC would be from 6 to 14 years.³⁷ Based on the interviews, this consensus would appear to have formed through a conjunction of word of mouth, the scientific literature—with which the judges were not always conversant—and legal precedent, as well as the interviewees' own personal and professional experiences. Faced with uncertainty about how to handle parents' conflicting wishes, most judges tended to rely on what had worked relatively well up to that point in their professional practice.

The following extract reveals the tension between the two gender models (traditional and egalitarian), which can coexist within the same person.

The lady is French, ... she's completely isolated because she's been there in Belgium for nearly 10 years. But it's not because of the dad that she's thinking to leave the country, it's to reconnect with herself. She's looking for a job, she's already applied over there, and the children are still ... they're still 5 and 8 years old. My tendency would be to allow her to leave [with the children], because after all she's so isolated in Belgium, while he's rebuilt his life. For him, it's heartbreaking (Judge 8).

In this case, the mother remained the primary attachment figure for the young children. The judge did not perceive her as being motivated by revenge—which he would not have tolerated. He was moved by her isolation, made worse by the father's having found a new partner. While he would usually prioritize the stability of the children's social environment

³⁷ This 'consensus' is reflected to some extent by the statistics: in 2021, the proportion of children in Belgium living in JPC was highest among children aged 6–15 years—34.5%, compared to 19.4% and 22.5%, respectively, among those aged 0–6 and 16–17 years (see Hakovirta, Meyer, Salin, Lindroos and Haapanen (n 3)).

(and thus avoid making them change schools, find new friends, and so on), he recognized the mother's need to leave and worried that the younger child might be too young to be separated from her. This led him to favour granting the mother sole custody.

Nevertheless, this judge immediately added that he had favoured primary custody for the father in another similar case, underscoring his view of the importance of evaluating each case on its own merits, and of rulings not establishing precedence of the mother-child bond as a principle. Beyond the question of the child's age, the wish to preserve a mother-child bond, which some consider fundamental, thus coexists with the ideal of encouraging greater equality between women and men—an objective that interviewees have in mind, and to which they say they are favourable. The model of five days with one parent and nine with the other thus represents a clear compromise, a kind of transition between these two positions.

Why should we want to set up a 7-7 at any cost, if a 5-9 works? ... We prefer to work towards egalitarian JPC gently, in stages. But that's our goal (Judge 8).

The judges were unanimous about the importance of reaching a consensus between parents. They found it essential that the parents agree with the final ruling, saying that they tried to favour **a compromise that would satisfy both parties to some degree**. In their view, this model of consensus established parents as actors in their familial choices, tending to transform the 'winner/loser' logic of legal proceedings into a process of reconciliation of all parties' interests.

V. DISCUSSION AND CONCLUSIONS

This study has permitted a better understanding of the criteria considered in Belgium by family lawyers in their role of advising and representing their clients, and by judges when evaluating applications for JPC—criteria largely echoing those mentioned explicitly in the legislation of other states and/or the scientific literature, such as the child's age, the distance between parents' homes, material conditions, the parents' temporal availability, and the degree of inter-parental conflict (or violence).³⁸ Our study confirms Van Roy's observation that, in the absence of a clearly predefined list by the legislator, judges and lawyers have themselves identified a series of criteria deemed relevant.³⁹ However, our study also shows that these criteria are not applied automatically, but are indeed subject to case-by-case assessment, thus confirming that the flexibility left to Belgian judges in evaluating these applications encourages such case-by-case logic. This approach is consistent with the philosophical basis of the notion of BIC, according to which these interests cannot be determined based on standardized application of fixed criteria, as each situation must be examined in view of its own specific context and characteristics. Belgian family judges appear to be reluctant to rule automatically against JPC based on predefined criteria—including those defined by jurisprudence. When they do make use of commonly-used criteria, such as a child's young age or a parent's temporal unavailability, they are careful to examine the context before deciding whether or not these elements constitute obstacles to the establishment of JPC.

Our study has also highlighted the importance of understanding the normative visions of the family that form the basis for evaluation of an application. It is striking to observe that

³⁸ Bernardi and Mortelmans (n 2).

³⁹ Van Roy (n 29)

the model of the nuclear family remains predominant in the minds of family judges, in a country where parental separation is common and widely accepted.⁴⁰ Evidently, the significant increase in divorces and separations in Belgium over the last few decades—reflected by equally significant increases in monoparental and blended families—has not yet led to a firm redefinition of the contemporary family's normative contours. Familial pluralism and the resulting plurality of familial norms come into conflict with negative representations of divorce and separation, seen as detrimental to the child's interests in and of themselves. These interests are themselves derived from the normative model of the nuclear family—stable, sedentary (with parents and children living permanently under one roof), and based on negotiation and communication.⁴¹ The dyad of mother-caregiver and father-breadwinner in this idealized model is being gradually replaced by a more egalitarian division of productive and reproductive labour, but without calling into question the mother's precedence in the care and upbringing of young children. Although conflictual applications for JPC are evaluated case by case, this evaluation is based on a vision of the post-separation family that we apparently expect to approach the normative model as closely as possible. However, JPC implies that children will move between two different households—sometimes far apart—and co-parents with potentially conflictual relations, who must take turns caring for their offspring. This custody arrangement raises the questions of how family ties can be constructed and maintained when parent and child are co-present only intermittently, and how stability, continuity, and points of reference can be created in movement within, and across, two family homes.⁴² In short, it obliges us to think outside the framework of the united, sedentary nuclear family—although it is within this cultural framework that the child's needs and well-being have been largely defined, notably by psychology and child psychiatry. Family judges and lawyers are thus confronted with a major challenge, and must devise new frames of reference based on elements such as jurisprudence, their own personal and professional experience, and expert opinion.

However, as several authors have stressed,⁴³ there have been few studies of JPC to date—mainly from the perspective of psychology, using quantitative methods based on parents' points of view—often only mothers'—and with frequently contradictory results. Qualitative studies based on parents' and children's concrete experiences of JPC are emerging progressively in the social sciences, but remain rare and little-known. These studies highlight the practical organization of JPC, with its new routines and points of friction; the new ways of maintaining relationships, negotiating one's place and 'doing family' that are developed; the anchors and points of reference on which family members rely from day to day; and more broadly, the new cultural and normative constructions of family relations that are emerging in this context.⁴⁴ We find it important for works of this kind, combined with more robust

⁴⁰ Merla and Nobels (n 11).

⁴¹ F. de Singly, *Sociologie de la famille contemporaine* (5ème édition) (Armand Colin, 2017).

⁴² On this topic, see Merla and Nobels 2025 (n 11).

⁴³ R. E. Emery, 'Psychological Perspectives on Joint Physical Custody', in L. Bernardi and D. Mortelmans (eds.), *Shared Physical Custody: Interdisciplinary Insights in Child Custody Arrangements* (Springer International, 2021) pp. 37–50; R. Berman and K. Daneback, 'Children in Dual-Residence Arrangements: A Literature Review' (2020) 28 (4) *Journal of Family Studies* 1448–1465.

⁴⁴ See notably R. Berman, 'Children's Influence on Dual Residence Arrangements: Exploring Decision-Making Practices' (2018) 91 *Children and Youth Services Review* 105–114; M. Campo, B. Fehlberg, K. Natalier, and B. Smyth, 'The Meaning of Home for Children and Young People after Separation' (2020) 42 (3) *Journal of Social Welfare and Family Law* 299–318; L. Merla, B. Nobels, S. Murru and C. Theys, 'Dossier thématique: Transformations familiales et mobilités résidentielles. Les enjeux du « faire famille » dans et par l'espace' (2021) 52 (1) *Recherches sociologiques et anthropologiques* 1–197; M. Naldini, A. Santero, and E. Mercuri, 'Co-Parenting Styles as Family Practices after Parental Break-Up in Italy' (2021) 4 *Rassegna Italiana di Sociologia* 933–983; Merla and Nobels (n 11); C. Palludan and I. W. Winther, '“Having My Own Room Would Be Really Cool”: Children's Rooms as the Social and Material Organizing of Siblings' (2016) 22 (1) *Journal of Material Culture* 34–50.

quantitative studies, to be developed and brought to the attention of the legal community in order to support family judges and lawyers in the delicate exercise of their profession.

To conclude, we would like to highlight the importance of expanding our focus to a wider range of values and prejudices that potentially affect how cases are evaluated, not only in Belgium but also in other countries. In her study of the application of family law in France and Quebec, Biland noted that judges are often guided by normative visions of parenting that reinforce inequalities of race and class as well as of gender.⁴⁵ In particular, paternal involvement is often assessed according to the norms of the (white) middle class, where investment in education and culture is highly valued. In this context, immigrant and/or working-class fathers can find it difficult to demonstrate adequate investment in their children's upbringing—indeed, these fathers are less frequently encouraged to apply for JPC. It would thus appear that cultural, racial, and class biases can also impact how a judge evaluates a custody case.⁴⁶ An intersectional perspective, combining gender with other social markers such as class or race/ethnicity, would appear to be essential in future research on the treatment of applications for JPC.

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⁴⁵ E. Biland, *Family Law in Action: Divorce and Inequality in Quebec and France* (UBC Press, 2023).

⁴⁶ S. Maldonado, 'Bias in the Family: Race, Ethnicity, and Culture in Custody Disputes' (2017) 55 (2) *Family Court Review* 213–242

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