

Spanish magistrate's ruling on joint custody is a landmark in fight for children's rights

Court opens door to divorced fathers

A SPANISH magistrate, Angeles Barreiro Avellaneda, has opened the door for thousands of divorced Spanish fathers to apply for shared custody of their children. Last week she decided that parents fighting for custody of their six-year-old girl should bring her up in two-year shifts in the matrimonial home. The legal right to the use of the home will reside with the girl and not with the parents.

The girl's father is a teacher and her mother a secretary. His lawyer, Maria Teresa Fernandez, argued that his shorter working day allowed him more time for parenting than the mother. She works the full Spanish office day - 8am to 8pm - and cannot take the child to school or pick her up from it.

"The decision arose out of specific circumstances," said Fernandez. "Not to have given shared custody would have been sexual discrimination." But the mother is appealing against the decision.

The press has commented widely on the case, but its full impact will not be clear until the result of an appeal is known.

"I think you could find 60 or 70 per cent of separations, other than those by mutual consent, going back to court," predicted Fernandez, a divorce specialist. "You have to remember that in Spain when one person does something, everyone wants to do it."

The media have welcomed the formula as a way of balancing the Spanish courts' traditional bias against fathers. Studies suggest that in 92 per cent of separations, the mother receives sole custody, the home and child support (fixed

at 30 to 40 per cent of earnings). Problems are caused by denial of visiting rights - not a specific offence under current laws. In a recent Madrid case, a father had not seen his child for seven years.

The media have made little comment, though, on the implicit recognition of children's rights.

"The decision takes into account all three parties' emotional needs," said Luis Ratia, a psychologist specialising in separations and divorce. "This is an important shift. In the 1980s the courts' decisions were based almost entirely on economic and sociological grounds."

The decision came shortly after

the publication of a book advocating shared custody, in the light of its positive effects in the US. Psychologist Ana Domenech found that both parents and children preferred it, and that adaptation problems and cases of unpaid child support almost vanished.

Nobody, though, has missed the golden opportunity to reflect on the speed of social change. Divorce was legalised in Spain only in 1981, but by 1990 one in eight married couples was separated or divorced. In the same decade the birth rate dropped to 1.4 children per couple, the lowest in Europe, and the number of women in the job market rose sharply.

Perhaps most surprising of all in a country usually associated with machismo is the discovery that, as one journalist put it, many a would-be mother now lurks behind a Spanish beard.

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