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In the case of union dissolution of couples with children. Who decides to avoid the courts and why?

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Abstract

Thoroughgoing changes in western countries over the last decades have led to increased self-regulation of intimacy, thus avoiding judicialization of union formation or dissolution. However, when children were born to a couple, legal proceedings would seem to be crucial in reaching or formalizing agreements between parents regarding custody and alimony, among other aspects. Despite these benefits, almost 20% of couples with children avoid resorting to legal proceedings, according to the results of a survey conducted in six Spanish Autonomous Communities. The article analyses this data with the aim of addressing a gap in the literature on the determinants of reaching out-of-court agreements. The results indicate that upper-class individuals, immigrants in cohabiting relationships, and couples with just one child and currently not in a relationship are more likely to reach out-of-court agreements. The implications of these findings are discussed.

Introduction

In the last 50 years, western countries have been changing their legislation in response to emerging family dynamics. As a result, different states have produced laws aiming at ruling on union dissolution and new forms of family organization. Despite these official regulatory efforts, part of the population prefers to remain outside the legal system and to deal with both union formation and union dissolution themselves. As a result, self-regulation of intimacy has come to be used on a massive scale as a way of dealing with union formation (Kierman, 2004). Until the end of the last century, marriage was the

conventional framework for having children in most European countries, but this was gradually changing owing to a growing incidence of parenthood within cohabiting unions (Kiernan 2004; Kennedy & Bumpass 2008; Perelli-Harris et al., 2010). Furthermore, both marriage and cohabiting unions were showing rising levels of instability, with union dissolution rates continuously increasing over time (Thomson, Winkler-Dworak & Beaujouan, 2012).

Although there is no point in opting for legal proceedings for childless cohabiting couples facing union dissolution, when children are born as a result of the relationship, the legal system may be perceived as the best way of dealing with this situation. In these latter cases when children are involved, western legal systems provide an adequate framework for both conflictive or agreed-upon union dissolutions, helping to regulate children's custody, visits, alimony, and other essential aspects. No matter what the type of union formation, when there are children involved, legal proceedings seem to provide benefits that outweigh drawbacks. Despite these advantages, not every couple with children opts to turn to the legal system when dealing with their union dissolution, which raises questions about who is avoiding this option and why.

Scholars have thrown light on the determinants of divorce and union dissolution as more data have become available from surveys. As a result, union dissolution became a main line of research, exploring the role of a wide range of aspects such as educational attainment, employment and income, gender values, and children, among other factors (Lyngstad & Jalovaara, 2010). Nonetheless, to our knowledge, no previous studies have addressed the determinants of reaching out-of-court agreements for both married and cohabiting couples as a way of dealing with union dissolution when children are involved.

This paper offers an empirical analysis in pursuit of a three-fold objective: first, to ascertain the proportion of population reaching out-of-court agreements; second, to

provide empirical results on the factors contributing to reaching out-of-court agreements after union dissolution when children are involved; and, third, to discuss the reasons why couples avoid the legal system and what this might mean.

The research objectives required survey data that is not currently included in the available surveys in Spain. We therefore designed a specific survey to be conducted in six Spanish Autonomous Communities in 2019: Balearic Islands, Catalonia, Valencia, Aragon, Navarre, and the Basque Country. A total of 750 respondents who have at least one child born into a heterosexual relationship that has undergone union dissolution between the years 2010 and 2017 answered the survey. We conduct a logistic regression on the probabilities of reaching out-of-court agreements.

In the next section, we briefly describe the Spanish context, which involves a review of previous research and the legal proceedings dealing with union dissolution currently in force in the country. Next, we present the theoretical framework and discuss previous research on union dissolution, aiming to shape a hypothesis on the determinants of avoiding legal proceedings. We then describe the data and methodology in order to present the empirical results and, finally, we discuss their implications.

Union dissolution of couples with children in the Spanish context

In Spain, divorce became legal in 1981, which made it a latecomer in this regard in Europe. Although divorce rates have traditionally been low compared with other European countries, recent data shows that there are cohort patterns showing higher divorce rates among the youngest cohorts (Bernardi & Martínez-Pastor, 2011). The numbers for cohabitation have also risen in Spain. A study conducted using data from 2006 indicates that 13.9% of women born in the 1950s have cohabited while, for women

born in the 1970s, the figure rises to 37.1% (Domínguez-Folgueras & Castro-Martín, 2013). However, while cohabitation was becoming increasingly common, Spain differed from other European countries in that this did not automatically occur at the expense of marriage (González-Ferrer, Hannemann & Castro-Martín, 2016).

One of the main reasons why individuals form coresidential unions is having and raising children (Lyngstad & Jalovaara, 2010). In Spain, previous studies (Domínguez-Folgueras & Casto Martín, 2013) have indicated that pregnancy increases the probability of coresidential union, especially marriage. Nevertheless, in 2014, 31% of births occurred in the framework of cohabiting couples (González-Ferrer, Hannemann & Castro-Martín, 2016), which the authors consider to be an indication of social acceptance of cohabitation as an adequate setting for childbearing.

Union dissolution of couples with children who have not yet reached the age of majority presents challenges on how to organize life after the break-up. The Spanish legal system envisages similar proceedings for married and cohabiting partners when it comes to reaching agreement on custody, alimony, and other aspects, including housing decisions, and so on. Both cohabiting and married couples have the options of coming to a mutual agreement or contentious proceedings. On the one hand, when the couple or the partners' lawyers have concurred in the terms of the separation, the mutual agreement procedure is followed. The agreement is ratified by the judge, who rarely introduces changes to the agreement reached by the partners. On the other hand, when partners do not reach an agreement, the procedure will be contentious and the judge decides on the disputed aspects. Hence, the legal resort seems to have several advantages. For partners who do not agree on the terms of separation, it provides a final resolution. For those who have reached an agreement, the judicial system offers legal backing, making clear the rights and obligations of both partners.

In the six Spanish Autonomous Communities studied in this article, despite the benefits of the legal procedure when a couple has a child or children, one out of five couples with underage children at the time of the union dissolution does not take the legal option. This considerable proportion of population avoiding the legal system calls for analysis. In Spain, previous research on union dissolution has mainly focused on divorce (Solsona & Simó-Noguera, 2007; Bernardi & Martínez-Pastor, 2011) and union dissolution outside marriage (Coppola & Di Cesare, 2008; Domínguez-Folgueras & Castro-Martín, 2013; González-Ferrer, Hannemann & Castro-Martín, 2016). In recent years, heated debate on the increasing rates of joint physical custody has given rise to a growing body of literature on how couples with children organize their lives after union dissolution (Solsona et al., 2019; Solsona & Ajenjo, 2017; Solsona, Spijker & Ajenjo, 2017; Solsona & Spijker, 2016; Catalán et al., 2008; Ajenjo-Cosp & García-Saladrigas, 2016). Attempts to focus on family processes after union dissolution are hampered by the problem of the scant availability of data sources, which has led Spanish scholars to focus on available judicial data, which *per se* excludes out-of-court agreements.

Contributing factors of reaching out-of-court agreements

The literature addressing the factors that contribute to avoidance of the legal option is almost non-existent and mainly consists of qualitative studies conducted in countries where legal procedures coexist with other informal strategies regulating union formation and dissolution (Brickell & Platt, 2015). We therefore present a review of the literature that examines the role of certain factors contributing to union dissolution in shaping couples' decisions to avoid legal proceedings. Here, we focus on the economic and cultural determinants, and also the question of how the characteristics of children and current partner status influence the decision to opt for an out-of-court agreement.

Economic determinants

Scholars have amply studied the question of how socioeconomic status (hereafter SES) influences union dissolution (see, for example, Lyngstad & Jalovaara, 2010) and how union dissolution affects the economic situation of the partners (Andreß et al., 2006). Despite the scarcity of studies of out-of-court agreements between both cohabiting and married couples with underage children, we can establish some parallels with studies addressing the transition from marital separation to divorce. In the context of the United States, Bramlett & Mosher (2002) conducted a study on the transitions from marital separation to divorce using data from the US National Survey of Family Growth. They found that poorer, lower educated, African American women with children showed longer transitions from separation to divorce. Roeper & Bennett (2014) found similar results for lower educated, lower-income and especially African American couples, using data from the United States Panel Study of Income Dynamics to survey the length of time between marital separation and legal divorce. Tumin & Qian (2017), using data from the US National Longitudinal Survey of Youth, found that men's unemployment during separation, but not women's, reduces the odds of divorce. While we should be cautious about extrapolating empirical evidence from such a different sample, and such a different context from that of Spain, it is plausible to base our hypotheses on these previous empirical contributions. We therefore expect higher rates of out-of-court agreements among lower SES respondents.

Cultural determinants

We identify three different culturally bound motivations for avoiding the legal option. First, some couples might balk at the judicialization of their intimacy. The main expression of this rejection is high rates of cohabitation. As a result, some couples would be reluctant to engage in judicial proceedings either when they are entering the union or breaking up.

Second, most cooperating couples trust that they can manage the union dissolution themselves. They prefer to reach an agreement than to face the judicial proceeding, which involves the intervention at least of lawyers, even in the less litigious cases.

Third, immigrants would be less likely to take the legal option because of a wide range of reasons which include the greater difficulties of achieving legal union dissolution when the couples married in a country other than Spain; the implications of these proceedings for native-immigrant couples when the immigrant partner is in the midst of a regularization process leading to becoming a Spanish citizen or having the right to be a Spanish resident; and, culturally shaped perceptions regarding judicialization of union formation and dissolution.

The immigration boom of the beginning of the century had an impact on the somewhat traditional Spanish marriage market dynamics. One factor was the incorporation of women coming from places where cohabitation is more common than in Spain, for example, some countries of Latin America (Castro-Martín 2002; Cortina Trilla, Garcia & Castro-Martín 2010) and the EU-15 (Sánchez Gassen & Perelli-Harris 2015). Apart from their higher rates of cohabitation, these immigrant women are also at greater risk of dissolution than their Spanish counterparts, especially in the case of cohabiting unions (González-Ferrer, Hannemann & Castro-Martín, 2016). These different patterns between

immigrant and Spanish women account for divergent culturally shaped behavior and attitudes towards union formation and dissolution. For instance, in Latin America, cohabitation is widespread and has been culturally rooted since the colonial period, when the Catholic marriage failed to become the prevailing model due to cultural diversity (Castro-Martín, 2002). As a result, immigrants would be more prone to reaching out-of-court agreements.

Children

Children, especially small children, are a protective factor working against union dissolution (Walke, 2002; Wagner & Weiß 2006, Xu, Yu & Qui, 2015; Waite & Lillard, 1991). Children are regarded as a couple's specific capital (Becker, Landes, & Michael, 1977), and the capital benefits are higher if the couple stays together. Some studies find that the birth of a new child is negatively associated with divorce (Knoester & Booth, 2000), and Bernardi & Martínez-Pastor (2011) present evidence for the Spanish context, highlighting the fact that having children, particularly when there are two or more, has a negative impact on divorce for women married after 1981. Although they did not present significant results regarding the age of the children, other findings indicate that younger children increase union stability and this effect decreases when they grow older (Waite & Lillard 1991). We expect that the number of children would not have a significant effect on reaching out-of-court agreements. On the other hand, older children would lead to avoidance of legal proceedings because the separating partners consider that the situation they are facing is temporary and will soon be over or modified when older children become adults.

Current partner status

Although the relationship between infidelity and divorce has been addressed from different perspectives (see for example Adamopoulou, 2013, Allen & Atkins, 2012), not much has been said about the role of the current partner status in judicialization of union dissolution. Solsona's (2011) conclusions from a qualitative study indicate that infidelity is not so much a determinant as a trigger of union dissolution. In our analysis, we do not account for infidelity itself, but we consider current partner status as leading to judicialization, as the new relationship would lead to increased expectations of formal dissolution of the previous relationship, by both the current and the former partner.

Control variables

We control the results by the number of years since the union dissolution occurred. We also consider the age of the respondent at the time of the union dissolution because this may be shaping decisions on whether it is worth facing a judicial proceeding or not. Moreover, our analysis considers the gender of the respondent because the responses vary significantly when this variable is considered.

Data and Methods

We base this study on the results of the survey designed by our research team in January 2019 (*Encuesta sobre Custodia Compartida en seis comunidades autónomas españolas* – Survey on Shared Custody in Six Autonomous Communities of Spain, CUCO 2019). The survey explores the union dissolution process and decisions on the distribution of childcare time in six Spanish Autonomous Communities: Balearic Islands, Catalonia, Valencia, Aragon, Navarre, and the Basque Country. The final sample consists of 750

respondents, 375 women and 375 men aged from 35 to 55 who had at least one child of under 16 when the union dissolution occurred. This child was (or children were) born in the framework of a heterosexual relationship, and the union dissolution occurred in the period 2010-2017.

The survey was conducted by Netquest (www.netquest.com), which uses quota sampling and recruits respondents to join a panel if they match quotas. Respondents cannot apply to be recruited. Netquest invites them. The increasingly widespread use of panel data to conduct surveys raises questions on its representativeness and comparability with surveys using sampling methods that differ from the traditional ones. In response to this question, survey methodology experts are studying Netquest's panel robustness by comparison with other surveys. We highlight a study conducted in 2015, indicating that the Netquest online panel in Spain can obtain results of a quality that is comparable with those of the face-to-face European Social Survey (Revilla, Saris, Loewe & Ochoa, 2015).

In this paper, we focus on the probabilities of reaching out-of-court agreements, represented in a variable with a binary outcome. Any action that did not involve opting for a judicial proceeding was considered to be an out-of-court agreement. There are five sets of independent variables stated in the theoretical framework. The first seeks to capture SES using a new system of socioeconomic classification developed in 2015, namely EGM (General Media Study, AIMC, ANEIMO, AEDEMO 2015). This new indicator is more sensitive for capturing SES in the Spanish context and is based on educational attainment, occupation, the household breadwinner's economic activity, size of the household, and number of individuals with earnings. As a result, the EGM 2015 classification provides estimates that better correlate with earnings and enhance the SES measures by avoiding missing values resulting from the respondents' reluctance to disclose their earnings. EGM 2015 classifies SES into seven categories, which we

organized into three main groups. We expect that low SES individuals will be more prone to avoiding the judicial system.

We study the reluctance of couples to expose their intimacy to judicialization by looking at the type of union and find that cohabiting couples are more likely to reach out-of-court agreements. We consider that the most cooperative couples are more egalitarian in terms of the distribution of caregiving time, which ranges from 40% to 60% for each partner. These couples would be more predisposed to avoid judicialization. It is expected that couples in which at least one partner is an immigrant would be more likely to opt for out-of-court agreements. No significant effects are expected as a result of the number of children, but teenagers and younger offspring are expected to have a significant negative effect on judicialization. We anticipated a significant positive effect on judicialization when a partner is involved in a new relationship. We present a descriptive analysis in Table 1.

[[Insert Table 1 about here]]

Results

First, we present the results regarding the proportion of respondents reaching out-of-court agreements in the six Spanish Autonomous Communities that were studied. We found that almost a fifth (19.6%) of the respondents did not opt for a judicial proceeding after union dissolution. While 14.0% declared they had reached a verbal agreement, 4.4% stated their intention to decide in favor of a judicial proceeding in future, and 1.2% declare that they have not reached any agreement. A vast majority of the respondents stated that they had reached agreement through the judicial procedure and 63.5% say that this was

by mutual agreement, while 16.9% indicate that it was contentious. Among the contentious cases, 6.3% declared conflicts related to child custody, while a proportion of slightly over 10% declared problems other than that of custody.

[[Insert Table 2 about here]]

Further results regarding the determinants of opting for an out-of-court agreement are displayed in Table 2, which shows the regression coefficient (β) and the odds ratio (OR). The results show that low SES has a significant negative effect on out-of-court agreements (OR=0.420; p-value <0.05), indicating that economic cost is not a barrier to the judicial procedure. This result leads us to refute the hypothesis suggesting that there are no significant SES effects.

As expected, cohabiting couples are more likely to avoid the legal process (OR=4.438; p-value<0.01). These results suggest that couples want to avoid judicialization of their intimacy when dealing with their union formation or dissolution.

The couples in which at least one partner is an immigrant show a positive and statistically significant effect on out-of-court agreements (OR=2.021; p-value <0.01). This result was expected because of immigrants' more progressive cultural patterns regarding union formation and dissolution, the increased difficulties entailed in a judicial proceeding when the couple got married in the country of origin, and the role that union formation might have in the citizenship or regularization process.

There are no significant results on how egalitarian the couples are regarding the distribution of care activities. Hence, this outcome fails to support the hypothesis stating

that the more cooperative couples prefer to reach their own agreements without further intervention.

An unexpected result was that having two children or more has a negative and statistically significant effect on reaching out-of-court agreements (OR=0.617; p-value<0.05). As hypothesized, when the younger child is aged between 10 and 15, the probability of circumventing the legal system increases. Conversely, the bivariate analysis indicates no significant effects for teenagers, while children aged between 4 and 9 have a significant negative effect on out-of-court agreements (OR=0.669; p-value<0.05). The underlying explanation for the results provided by the multivariate analysis is that, by contrast with parents of smaller children, those with teenage children consider that their agreement will soon be over or changed when their children reach the age of majority.

When either partner initiates a new union there is a positive, statistically significant effect on judicialized union dissolution. Interestingly, the effect is similar for both cohabiting (OR=0.498; p-value<0.05) or non-cohabiting current partner status (OR=0.500; p-value<0.05). Control variables such as gender or age of the respondent when the union dissolution occurred, and years since the union dissolution are not significant.

Discussion and conclusion

This study provides the first results on the proportion of couples with children that have dealt with their union dissolution outside the judicial system in six Spanish Autonomous Communities. We find that 19.6% of couples with at least one child aged under 16 at the time of break-up have not opted for judicial proceedings. Although the sources are different, these are similar findings to those of a study conducted in France, where 20% of couples decided against a judicial proceeding (Hachet, 2018). Furthermore, the present study has inquired into the determinants of avoiding a judicial proceeding when dealing

with union dissolution. It therefore addresses a gap in the literature on judicialized and informal strategies for dealing with caregiving responsibilities after union dissolution, a key aspect that calls for further research in the framework of the increasingly plural trajectories of family formation in the western countries. First, we will discuss the implications of out-of-court agreements and other aspects that will be helpful for putting into context the evidence we present here in order to discuss the main results.

Our study shows several different reasons as to why couples avoid the judicial system, ranging from those who have not reached any agreement (1.2%), to those who are planning to take this option but are not yet proceeding (4.4%), to those who have actually reached verbal agreements (14%). Whatever the reasons why they are avoiding the legal system, these are per se out-of-court agreements because any parent has the right to unilaterally initiate judicial proceedings, no matter what the opinion of the other partner is. Although our survey does not let us know if the couples who have reached agreements have done so as a result of legal intervention, we must point out that agreements signed with private lawyers have no legal enforcement. These agreements gain legal validity after a judge ratifies them, although they can be modified if it is considered that they are not in the best interests of children. The rationale behind this is that, in Spain, legislation in this regard has been designed to protect children and to guarantee their best interests while making it easier for parenting partners to come up with their own agreements on how to manage their future life.

When we focus on the most egalitarian forms of childcare distribution, namely those parents spending a proportion of 40%-60% of nights with their children, we notice that this form of joint physical custody is higher among couples reaching verbal agreements (33.3%) and those who have come to a mutual agreement in court (34.9%). Conversely, joint physical custody is lower among couples when the judicial proceeding has been

contentious (10.2%). Although it could be argued that this kind of arrangement would not be sustainable among couples who have opted for out-of-court agreements, the results show that joint physical custody tends to increase after the first change in the agreements, rising to 43.4% for verbal agreements. At the same time, joint physical custody also increases for judicial proceedings by mutual agreement (40.2%), and for contentious proceedings as well (24%). Although our survey does not provide evidence in other matters, the results for childcare distribution indicate that agreements tend to become more cooperative as time progresses, either with or without judicial resolutions that could make matters easier.

As for the implications of out-of-court agreements, the results could be detrimental for children as there are no legal consequences if one of the parents decides not to abide by the agreement. For instance, legally speaking, when couples opt to go to court, the judge can issue a garnishee order on the salary (or other assets) of parents refusing to pay alimony. Besides, the judge can also intervene in case where a parent refuses to allow children to meet the other parent, as well as ruling in any situation regarding childcare arrangements, visits, or co-parenting. Even decisions such as which school children should attend, after-school activities, and travel permission can be ruled on through court orders. As a result, legal agreements protect not only children but also partners. However, if partners have reached any other verbal agreement that is unilaterally broken afterwards, it is possible for the affected partner to initiate a judicial proceeding. Apart from the guarantees of court proceedings, the parents' good will is a crucial aspect in the whole process, as children face the most damaging consequences when parents' attitudes are not in the children's best interests, whether they have opted for judicial proceedings or not. As these are time consuming, slow, and involve paying lawyers' fees, a parent might become quite tolerant to his or her partner's non-compliance with the agreements. Hence,

the parents' cooperative attitude is crucial for guaranteeing the children's welfare regardless of the proceeding they might decide on.

Now, to proceed to the discussion of the main results of the article, our findings on cohabitation indicate rejection of the legal procedure which persists even when decisions involving children must be taken. As for SES, our results mirror the findings of García-Pereiro, Pace & Didonna (2014) regarding union formation. Their results indicate that higher the SES the more likely women are to prefer a cohabiting union to marriage, while women in the low SES group are more likely to get married. Our results indicate that high SES increases the probabilities of avoiding the judicial system. The fact that lower SES individuals were increasingly likely to opt for a judicialized process are convincingly explained by the fact that court orders allow them to become eligible for certain social benefits such as subsidized housing, or being able to enroll children in primary or secondary schools closer to the new address, among other benefits. Moreover, we should also note that SES influences reasons for seeking divorce. According to Amato & Previti (2003), higher SES individuals are more likely to cite relationship difficulties as a reason for the breakup, for example incompatibility and personality problems. Lower SES individuals, however, are more likely to break up because of problematic behavior such as physical or emotional abuse, drug use, gambling, criminal activity, or instrumental reasons such as financial problems. Consequently, upper-class individuals would be more hesitant about going to court as this might be seen as an irreversible step leading to the end of a relationship, when there are no explicit reasons, such as those cited by lower SES individuals, that would make life with their partners unbearable. At the same time, higher SES individuals can afford any concomitant financial burden brought about by this non-judicialized situation. Further research is needed in this regard for the Spanish context.

Moreover, the economic factors leading the low SES group to opt for judicialization could also be better understood when legal proceedings are seen as a resource that makes it possible to avoid improvised, unstable agreements while also allowing the development of strategies for coping with the financial implications of union dissolution. Court enforcement may be perceived as providing firm, long-lasting agreements on alimony and custody, and this entails not only the partners' financial situation but also organization in terms of time availability for finding a workable balance between employment and caregiving activities. Consequently, out-of-court decisions could be a type of agreement that the poorer couples cannot afford. On the other hand, better-off individuals can afford to cushion themselves and ease the situation since they can pay the increased costs of not opting for judicial proceedings, but less privileged individuals —no matter how emotionally tough the resulting process may be— would pay the price because, for financial reasons, they need agreements. This hypothesis should be tested in future studies.

As expected, couples in which at least one partner is an immigrant are more likely to avoid judicialization as a way of dealing with union dissolution. Our results mirror previous findings by González-Ferrer, Hannemann & Castro-Martín (2016) which state that rates of cohabitation for immigrant women in Spain, especially for those coming from Latin America and EU-15, are higher than those for natives. Our results are consistent with these previous findings and raise questions about the extent to which couples in which at least one partner is an immigrant avoid judicial proceedings for one reason or another. This aspect of union dissolution requires further exploration.

So far, we have approached the matter of out-of-court agreements as something permanent, illustrated by the fact that among the fifth of the population avoiding the judicial system, 14% stated that they had reached non-temporary verbal agreements. But

what if we consider that any out-of-court agreement is inherently transitional, as a previous step leading to the definitive decision or a chance for reconciliation? According to a study conducted by Winebreg & McCarthy (1994) based on the US National Survey of Families and Households, 14.3% of black and 9.2% of white married woman at the time of the survey declared that they had been separated and reconciled at least once. According to Binstock and Thornton (2003), who analysed a sample of individuals in cohabitation, only one out of ten adults reconciles within a four-year period after separation. A more recent study conducted by Doherty, Willoughby, and Peterson (2011) among divorcing parents found that one in four individual parents believed that reconciliation was possible, and both partners believed this in one out of nine cases.

Previous research indicates that having two or more children decreases the likelihood of marital dissolution for women married after 1981 (Bernardi & Martínez-Pastor, 2011). Incorporating this evidence into the analysis, leads us to propose the following hypothesis to be tested in future: the first child's birth leads to a crisis that couples tend to deal with by means of a form of dissolution that leaves the way open for reconciliation. However, when the second child is born, there is no room for second chances and partners do not hesitate to opt for the judicial proceeding.

Similarly, when introducing this new perspective on out-of-court agreements as an opportunity for further thoughts about the union dissolution, the results concerning the current partner seem to indicate that the presence of a new partner marks the real end of the former relationship. When any partner starts a new relationship, the expectation of a second chance disappears, thus giving way to judicialization as an expression of the definitive procedure for union dissolution. This is in line with previous insights (Solsona, 2011) on the role of new relationships as a trigger rather than a determinant of union dissolution.

Our conclusions concerning out-of-court agreements mirror those of Morgan (1988) on marital separation when she claims that they could lead to divorce, reconciliation, or an unresolved separation. Out-of-court agreements also show the transitional and ambiguous characteristics raised by Amato (2010) who outlines the socially ambiguous status of people in the process of marital separation. This condition is clearly portrayed as a "limbo" by Roeper & Bennett (2014). The transitional feature of this "limbo" is expressed in different ways according to the specific characteristics of the situation. First, those respondents stating their intentions to opt for judicial proceedings in the future (4.4% of the sample) are *per se* declaring the transitional condition of their situation. Second, those who failed to reach any agreement (1.2%) acknowledge the transitional nature of the situation in the fact that neither partner is initiating a judicial proceeding even when they can do this. Finally, when analyzing the case of those reaching a verbal agreement (14%), we should distinguish between cohabiting and married couples. Agreements reached by cohabiting couples would be over when the children reach the age of majority, although they may provide economic support for several more years. Out-of-court agreements may also be transitional for married couples due to legal obligations and unresolved situations regarding shared assets and properties, among other matters. New partners could trigger judicialization, not only because of the sociocultural and emotional implications of union formation with married partners, but also their legal implications. Apart from the financial aspects, medical practitioners in Spain must contact the legal spouse in case of an accident, and this spouse has the final say in life-and-death situations. These legal implications to which partners have turned a blind eye would be a concern for the new partner, thus causing a postponed transition.

Avoiding judicial proceedings could also be the expression of a coping mechanism to deal with the stressful situation of going through the process of union dissolution, as is

widely acknowledged in the literature (Booth and Amato, 1991; Strizzi et al., 2021). From this perspective, avoiding the judicial system would also be perceived as a strategy for de-escalating conflict. Unlike coping mechanisms for reducing the emotional impact on an individual, for example the religious-psychological adaptative strategies surveyed by Krumrei, Mahoney & Pargament (2009), avoiding the judicial system would be a strategy for managing both the objective situation (dealing with and reducing the conflict) and also for buffering the psychological impact on an individual.

While classical studies on decisions to divorce from the microeconomic perspective—namely Becker et al (1977) and Levinger & Moles (1979)—ontologically portray a fully rational individual carefully weighing possibilities, our research on the question of whether to opt for a judicial proceeding enables us to raise the performative side of union dissolution. This performative condition accounts for the continuous negotiations and adjustment by ex-partners, not only considering their rights and responsibility but also children's needs, as a process embedded in a wider context of inequalities.

Despite the limitations of this study, which are mostly related with the sample, these results could perhaps initiate discussion about the determinants of judicialization, thus encouraging further studies in different contexts on the determinants of reaching out-of-court agreements. Further qualitative study is also needed in order to examine the reasons behind the option of a judicial proceeding. Besides, it would also be useful to test different decisions regarding union dissolution using longitudinal data. Despite these limitations, our analysis presents interesting results suggesting that further discussion is needed in future studies aiming at accounting for plural family paths and heterogeneous strategies for dealing with union dissolution and its symbolic and psychological implications for those involved.

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Table 1. Descriptive statistics

Sample	N	% Out-of-court agreements
Socioeconomic Status		
High	164	23.2%
Medium	487	19.9%
Low	99	12.1%
Type of union		
Marriage	518	10.8%
Cohabitation	232	39.2%
Time distribution of care activities		
Women > 60%	329	16.1%
Egalitarian (40%-60%)	78	21.6%
Women < 40%	60	19.6%
Migration		
Both Spanish	632	16.9%
At least one partner is an immigrant	118	33.9%
Children		
1	412	25.7%
2 or more	338	12.1%
Age of the younger child at union dissolution		
0-3	280	22.9%
4-9	355	16.6%
10-15	750	20.9%
Current partner status		
Both single	126	28.6%
At least one has a non-cohabiting partner	182	15.9%
At least one has a cohabiting partner	383	17.8%
Gender of respondent		
Female	375	17.1%
Male	375	22.1%

	N	Mean	SD
Age of respondent when union dissolution occurred	742	38.9	5.2
Years since union dissolution	742	5.6	2.4

Source: CUCO, 2019

Table 2. Logistic Regression estimating out-of-court agreements versus court agreements (base category: court agreements)

	β		SE	OR
Socioeconomic Status (Ref: High)				
Medium	-0.202		0.256	0.817
Low	-0.867	**	0.439	0.420
Type of union (Ref: Marriage)				
Cohabitation	1.490	***	0.229	4.438
Time distribution of care activities (Ref: Women > 60%)				
Egalitarian (40%-60%)	0.282		0.306	1.326
Women < 40%	0.623		0.462	1.864
Migration (Ref: both Spanish)				
At least one partner is an immigrant	0.703	***	0.271	2.021
Children (Ref: 1)				
2 or more	-0.483	**	0.241	0.617
Age of younger child at union dissolution (Ref: 0-3)				
4-9	0.040		0.240	1.041
10-15	0.582	*	0.346	1.790
Current partner status (Ref: single)				
At least one has a non-cohabiting partner	-0.692	**	0.314	0.500
At least one has a cohabiting partner	-0.696	**	0.285	0.498
Gender of respondent (Ref: male)				
Female	-0.262		0.312	0.769
Age of respondent when union dissolution occurred	-0.018		0.024	0.982
Years since union dissolution	-0.018		0.048	0.982
Constant	-0.627		1.165	0.534
Nagelkerke R square	0.217			

Notes: * p<0.1; ** p<0.05; *** p<0.01

Source: CUCO, 2019