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Response from Denmark

COMPARATIVE COVID-19 REPORTS

Holdgaard, Marianne

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INTERNATIONAL SOCIETY OF FAMILY LAW



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COMPARATIVE COVID-19 REPORTS

Thanks to Robin Fretwell Wilson for generating this question for response:

How has the coronavirus and COVID-19 epidemic continued to affect straining family law systems (e.g., courts, departments of social services, families that have shared custody) and/or continued to affect families and children in your country?



RESPONSE FROM CHINA

1. Judicial System

Under the impact of the epidemic, people need to make an appointment in advance before going to the court, and Chinese courts urged to promote online services.

In February 2020, the Supreme People's Court (SPC) issued the “Circular on Strengthening and Regulating Online Litigation During COVID-19 Epidemic Prevention and Control.” The Circular demands courts at all levels make good use of mobile and online litigation service platforms and move their work online, including case filing, mediation, evidence exchange, court hearing, sentencing and document delivery. The SPC called on courts to upgrade and increase functions of online service platforms to ensure that people can access various litigation services at home.

2. Social Problems

The main social problems caused by the epidemic include: (1) a surge in domestic violence; (2) lack of guardianship of minors whose parents or guardians are not around; (3) the psychological anxiety of family members, the increased family conflicts and the parent-child relationship tension caused by the government restriction of activities in public places; (4) the rapid reduce of family savings due to the rising unemployment and declining incomes with the economic downturn, especially for women, and the continuous increase of family expenditure; (5) the increased burden of caregivers as family members' stay at home for a long time; (6) the soaring divorce rate, and; (7) the potential problems exposed in nursing homes, such as insufficient capacity to cope with emergencies, lack of professional ability of personnel, etc. Especially during the full-close management due to the epidemic, most of the nursing homes in China lack medical treatment capacity, leading to a sharp increase in the human demands for the integration of elderly care medical care.

3. Relevant Policies

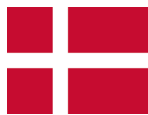
During the period of epidemic, the Chinese government introduced a number of policies to deal with emergencies and protect people's safety and legitimate rights and interests.

For example, The State Council’s joint prevention and control mechanism for the novel coronavirus (COVID-19) epidemic issued the Circular on the Novel Coronavirus Epidemic Prevention and Control for Children and Pregnant Women, the Circular on Strengthening Disease Treatment and Safe

Midwifery for Pregnant and Lying-in Woman during COVID-19 prevention and control, the Circular on Issuing Guidelines on Medical Treatment for Elderly People in Nursing Institutions during COVID-19 Prevention and Control, and the Circular on Issuing the Programme of Work for the Care and Protection of Children without Guardianship due to the Impact of COVID-19 etc.

In addition, China's Ministry of Civil Affairs has issued a circular demanding community-level childcare workers find and help children whose parents or guardians are not around amid the novel coronavirus outbreak and the Circular on Strengthening Care Services for the Elderly with Special Difficulties during COVID-19 Prevention and Control.

Xia (Lisa) Li
Lisa_1@163.com



RESPONSE FROM DENMARK

Through legislation and administrative measures political authorities offer an explanation on what is considered “normal” or proper family practices that are giving legal rights and protection. Since families are key sites for the accumulation of economic, cultural, and social capital, the privilege of belonging to an officially and socially acceptable family formation may be considerable. The question of whether or not one belongs to a legally protected family relation is of great importance in general and in particular during pandemics.

Due to the pandemic the government closed down Denmark for the first time March 11, 2020. All public, legal and administrative authorities including authorities deciding on custody, contact rights, and residence were closed down. The courts were restricted to deal with only specific cases by order of the Danish Court Administration. Thereby specifying when and how critical and urgent cases, for instance, dealing with children in family law cases could be decided on. In this regard the courts apparently gradually re-opened April 25.

This has given rise to more fundamental issues: The constitutional independence of the judiciary is put under pressure. The Court’s right to decide for themselves which cases to prioritize was set aside. This has been broadly criticized by legal scholars and several presidents in city courts chose to deal with e.g., custody and contact rights cases – despite the opposing instructions.

The constitutional issues have been a topic in the media, along with as the problems for children living full time in households with domestic violence or abuse. Cases on custody and contact rights should be decided on speedily in order to help and protect children being in a vulnerable situation. The administrative authorities handling these cases have for a longer period of time had problems to decide on a case within a reasonable time and the pandemic has not surprisingly worsened the situation which the press also have noticed.

However, restrictions potential causing harm for individual being part of other family forms than the nuclear family – the children living in two family households especially – seem to be unnoticed. The

public policy appears on the website of the administrative authority deciding on custody, contact and residence. It is stated that the legal regulation on these matters generally is still applicable. However, it is stated that the parent as an outset must follow the current decisions by the authority or agreements decided by the parents – but the authority requests that the restriction decided by the Government must be followed. These statements seem to be conflicting.

The children living in both mom's and dad's family households including stepparents, stepsiblings, and step-grandparents. As an example, there is a ban on having contact circle of acquaintances including maximum 10 people (and preferably less). For a child having a small, selected group of friends, a sibling, mum's, and dad's new family members it is difficult and probably seldomly possible to manage. This will open up for conflict among the parents.

If dad has remarried and living in an extended family with two new joint children with his current wife who also has two children from a previous relationship that family alone include nine persons.

There is a ban on gatherings more than 10 people on one specific day, Christmas Eve where you are allowed to be with maximum 10 people including member of the absolute nearest family who are outside of "your own normal group" of 10 people. The children living in two family households will be valuable. No matter what being with both mom's and dad's family on a row will often not be possible.

The child with one sibling, their dad and stepmother, two halfsiblings, and two stepsiblings will on Christmas Eve the child's father has to choose his two children from his first marriage and then rule out his current wife's family but, for instance, one parent. So maybe the siblings will have to stay with their mother and her new family. Either way the two siblings are caught in the middle risking to be excluded from the close family members from, for instance, their mother's new family. And the siblings will probably not in many situations either be able to keep within each of the siblings' "social group" plus family members without their own social group of ten persons.

A most likely situation will be that the parents disagree on which family members are the most important for the child to be with during Christmas. The same situation will afflict children in a rainbow family including two mothers and a father.

It is plausible, to conclude that the underlying and implied concepts of family, and the perceptions of the family life (proper family) have influenced the legislation, bans and instructions given by the prime minister and other ministers and the implementations thereof. The members of a nuclear family are most likely not in position where the bans, dealt with above, will be difficult to keep. As mentioned in the beginning the privilege of belonging to an officially and socially acceptable family formation may be considerable. Whether or not one belongs to a legally protected family relation is of great importance in general but in particular during pandemics.

Marianne Holdgaard
marianne@law.aau.dk