

# Joint physical custody in the Czech Republic

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## The legal regulation

- **Joint physical/shared custody concepts in the foreign literature more or less correspond to the Czech concepts of **ALTERNATING CUSTODY** and **JOINT CUSTODY**.**
- **Both arrangements were first introduced into Czech legislation in 1998 via the amendment of the then valid Act No. 94/1963 Coll., the Family Act. Since 2014, it has been regulated by Act No. 89/2012, the Civil Code.**
- **The only fundamental change in the legislative regulation of alternating custody since its introduction is that the Civil Code, in contrast to the Family Act, equalised the status of alternating and sole custody – it no longer entrusts the child to alternating custody on the condition that it will better provide for the child’s needs than sole custody.**

## Decision making

- According to section 906 et seq. of the Civil Code, prior to the separation of the child's parents, the court is first required to determine how the child will be cared for after the separation. *“The court may entrust the child to the **custody of one of the parents, to alternating custody or to joint custody**; the court may also entrust the child to the custody of a person other than the parents if this is deemed necessary in the interests of the child. If the child is to be entrusted to joint custody, the parents must provide their agreement.”* (Section 907 paragraph 1 of the Civil Code)
- When making its decision, the court must consider primarily the best interests of the child. If the opinions of the parents are in accordance, or if they submit a joint agreement, the court may deviate from such opinions or agreements only if the child's interest requires it.

# Best interests of the child

The court shall take into account:

- *the child's personality, in particular his/her aptitudes and abilities in relation to his/her future development,*
- *the living conditions of the parents,*
- *the emotional orientation and background of the child,*
- *the child-raising abilities of the parents*
- *the existing and expected stability of the child-raising environment in which the child will live in the future*
- *the child's emotional ties to his/her siblings, grandparents and, in some cases, other relatives and non-relatives*
- *which of the parents has, to date, primarily taken care of the child and cared for his/her emotional, intellectual and moral upbringing,*
- *which of the parents is more likely to provide the prerequisites for the child's healthy and successful development*
- *the child's right to receive care from both parents and to maintain regular personal contact with them,*
- *the right of the other parent, to whom the child will not be entrusted, to receive regular information on the child,*
- *the ability of the parents to agree to the raising of the child.*

(Section 907 paragraphs 2 and 3 of the Civil Code)

# Alternating custody: changes in the interpretation of legislation (1)

- The legal regulation of the issue of alternating custody is (intentionally) very general and relatively brief; the main decision-making authority in terms of its interpretation and when assessing the appropriateness of alternating custody (the best interests of the child) is the jurisprudence of the courts, especially the Constitutional Court.
- Decisions of the Constitutional Court are binding for all institutions and persons.
- A significant shift has occurred in terms of the jurisprudence of the courts, especially the Constitutional Court.
- Initially jurisprudence considered the consent of both parents to be a prerequisite for alternating custody - this approach was changed via a decision of the Constitutional Court.

# Alternating custody: changes in the interpretation of legislation (2)

- **The judicial system is divided in terms of how to address alternating custody:**
  - if the parents are unable to communicate,
  - if the parents live long distances from each other,
  - if the child's education should be provided in different schools on an alternating basis, etc.
- **Several fundamental decisions of the Constitutional Court have received a mixed response from wider society – especially the interpretation in the media that entrusting the child to alternating custody should be the rule, whereas other solutions are considered to be the exception that require evidence that they are in the best interests of the child. (*Finding of the Constitutional Court of 26 May 2014, no. 2482/13*)**

# Alternating custody: changes in the interpretation of legislation (3)

- The Constitutional Court, via subsequent decisions, clarified this rule by declaring that alternating custody is not the automatic solution in the event of parental separation, and set out the basic criteria that courts must consider when assessing alternating custody (the so-called **four-step test of the suitability of alternating custody**) as well as a range of circumstances that should influence the final decision.
- It is necessary to determine the attitudes of the parents before applying the four-step test. If the parents fulfil these four criteria approximately to the same extent, it is concluded that it is in the best interests of the child to be placed in the custody of both parents (the so-called presumption of the appropriateness of alternating custody), and the court must investigate whether or not the circumstances in a given case meet the criteria (which would exclude the suitability of alternating custody).

# The criteria for the four-step test

1. the existence of a **blood relationship between the child and the person(s) seeking custody;**
2. **the degree of the preservation of the child's identity and his/her family ties** in the case of his/her being entrusted to the custody of a given parent;
3. **the parent's ability to provide** for the child's development and physical, educational, emotional, material and other needs;
4. **the wishes of the child.**



# The first group of circumstances that result in the non-fulfilment of the conditions of the four-step test:

- one of the parents has served a term **in prison** in the recent past;
- one of the parents has committed **physical or psychological violence against the child** in question;
- one of the parents has demonstrably committed **violence against other children**;
- one of the parents has demonstrably committed **domestic violence against the other parent**;
- one of the parents is **addicted to drugs, alcohol or strong medications** that reduce his/her motor or psychological abilities;
- one of the parents leads a **debauched lifestyle**;
- one of the parents has been diagnosed with **serious psychological problems**;
- **the child is still being breastfed.**

# The second group of circumstances that result in the non-fulfilment of the presumption of the suitability of AC:

- **the child's physical or psychological condition** would represent an unreasonable burden for which alternating custody would be unsuitable;
- there is **a very long distance between the parents' places of residence**, especially if this factor would disrupt the child's attendance at school;
- **in very exceptional cases, inappropriate communication between the parents.**

## Important circumstances in practise

- The conflict between the parents may be reinforced by the **stereotypes associated with the basic legally-defined post-separation childcare options** (sole, alternating and joint custody), which is also related to their factual ignorance of the respective legislation;
- **Non-uniformity of the decision-making process** in practice - the perceptions of the judge;
- All this significantly increases the level of **uncertainty of parents concerning how the court will decide their case**, which may encourage the adopting of conflict (combative) strategies by the parents in the litigation process.
- **The legislation** on alternating custody/joint custody is very brief and **practically offers no guidance as to how it should work.**

## Sole custody with extended contact

- Interaction with the non-resident parent may be modified so that **the degree of contact is close to or equal to that of alternating custody.**

## Alternating custody

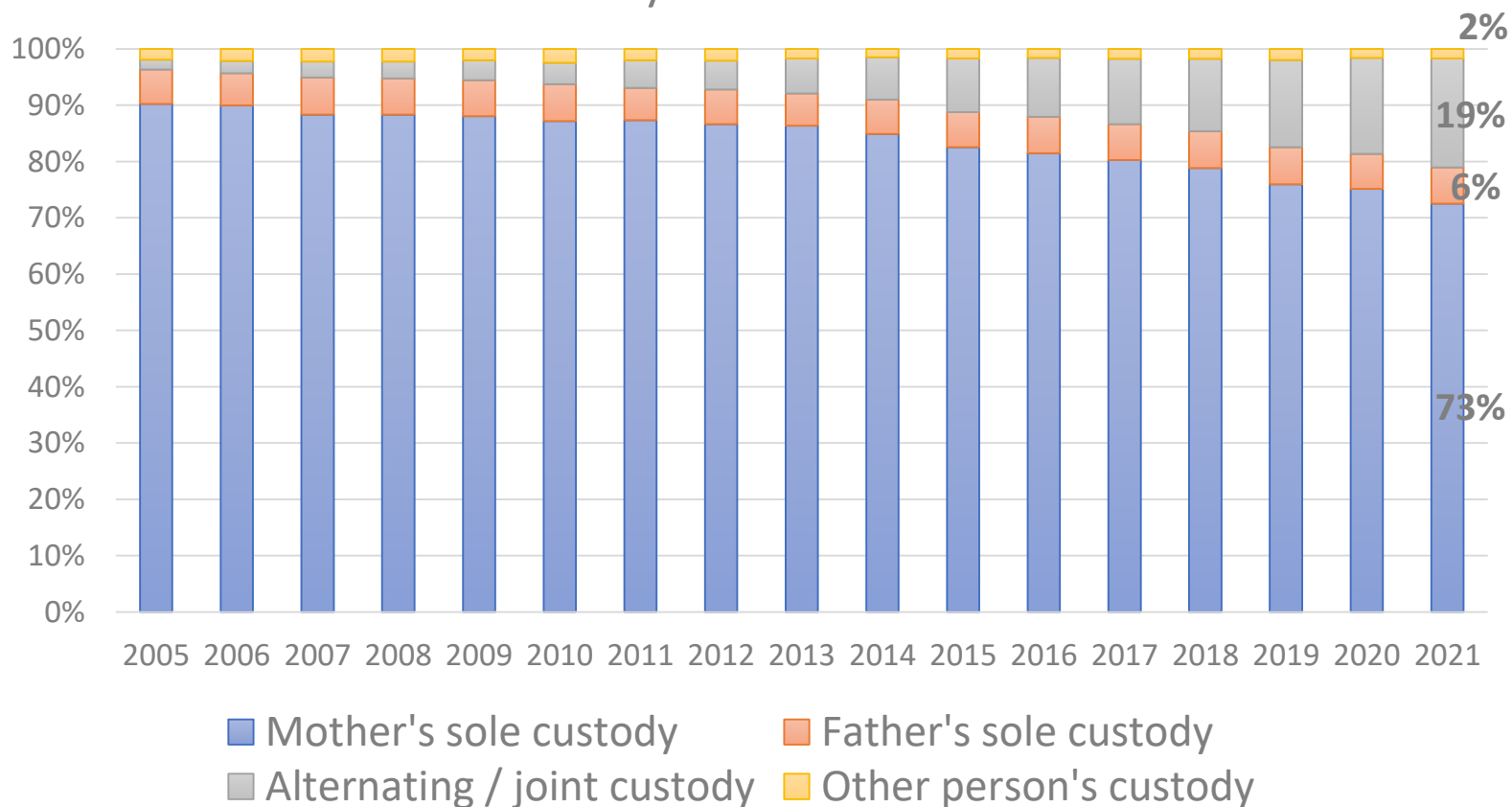
- If the child is entrusted to alternating custody, he/she remains in the custody of both parents, with the fact that after certain time intervals the child alternates his/her place of residence, or the parents may even alternate in the same household as that of the child.
- The most common system involves weekly rotation, for younger children (especially pre-school age children) usually every few days; however, the irregular distribution of custody is not excluded. The periods of time that the child spends with each of the parents do not have to be the same (asymmetric alternating custody).
- **The rules concerning the organisation of custody and the payment of costs are usually specified via a court decision, or in an agreement between the parents that may be formalised with the approval of the court.**

## Joint custody

- **Court does not regulate when each of the parents takes care of the child, with which of them the child lives, or who contributes and in what amount to his/her maintenance.**
- **This places a high degree of emphasis on the parents' ability to communicate and to cooperate.**
- **Courts can entrust a child to joint custody only if both parents agree.**
- **Although experts usually report good experience with joint custody, its sporadic occurrence and the associated low awareness of it among the general and professional public prevent its application on a larger scale.**

# Prevalence of the JPC?

First court decision in proceedings on the physical custody of a minor child



# Recent research findings

- **Project *Impacts of the rate of parental conflict on children and the role played by post-divorce care arrangements***
- **Data / Information sources:**
  - **Consultations, interviews and focus groups with experts**
  - **Literature review**
  - **Secondary data analysis**
  - **Qualitative interviews (parents, young adults)**
  - **Public opinion research**
  - **Questionnaire survey with parents caring for minors after the break-up**



# Public opinion on care arrangements

Representative sample 18 – 65 years (N = 1691)

Opinions on:

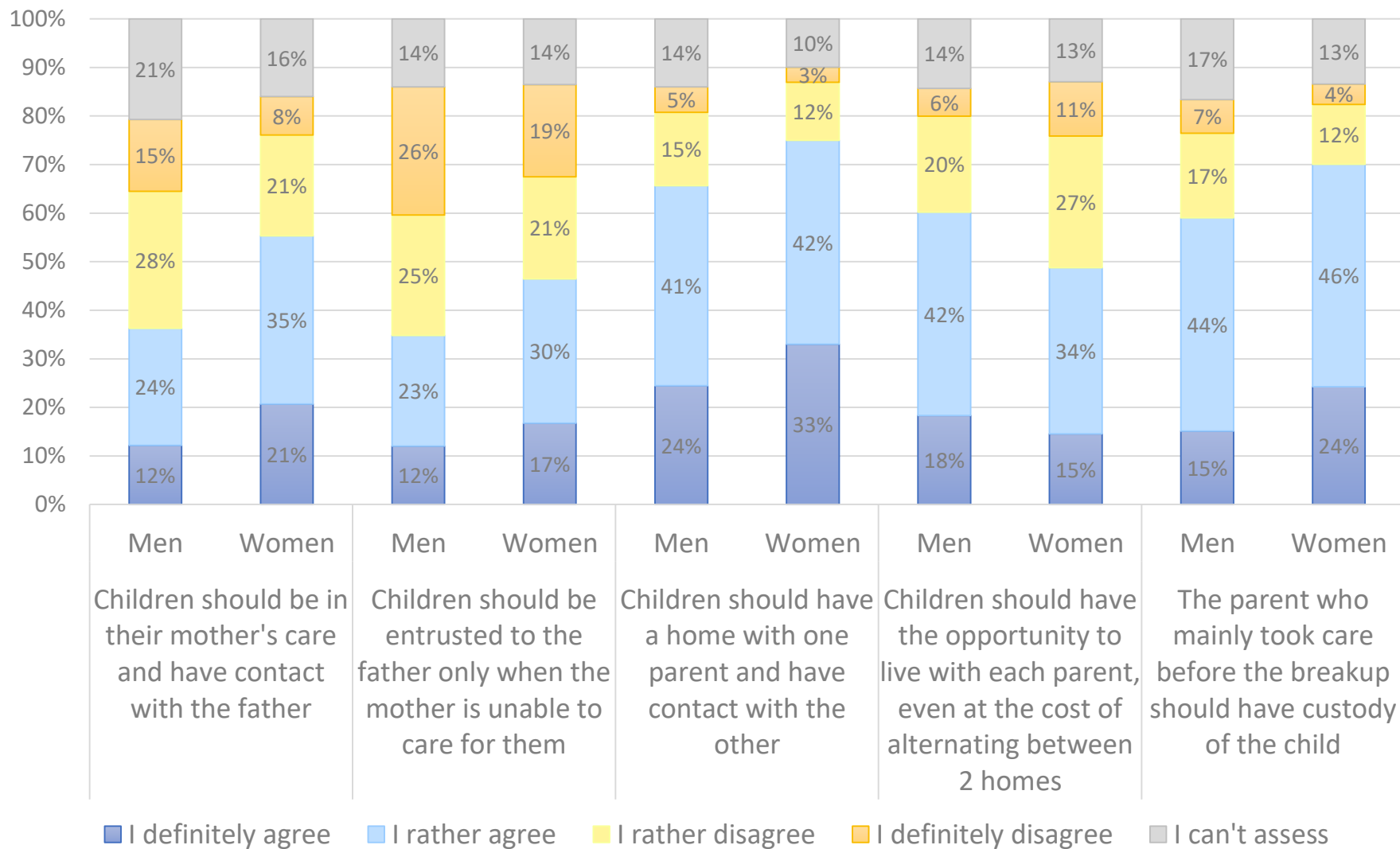
1. Family and its stability, partnership, separation / divorce
2. Importance of professional services
3. Post-separation / post-divorce care arrangements
4. Allimony

Data collection: end of 2020

Knowledge of terms:

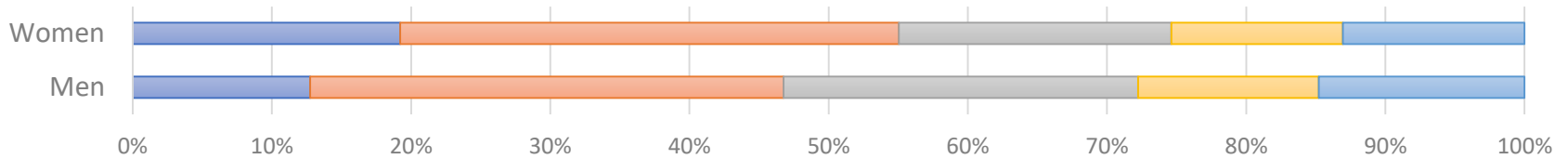
- Public most aware of „alternating custody“ (60% knows exactly what it means)
- Least familiar with „sole custody“ (30% knows exactly what it means, the same proportion has never heard it)

## Attitudes to different care arrangements

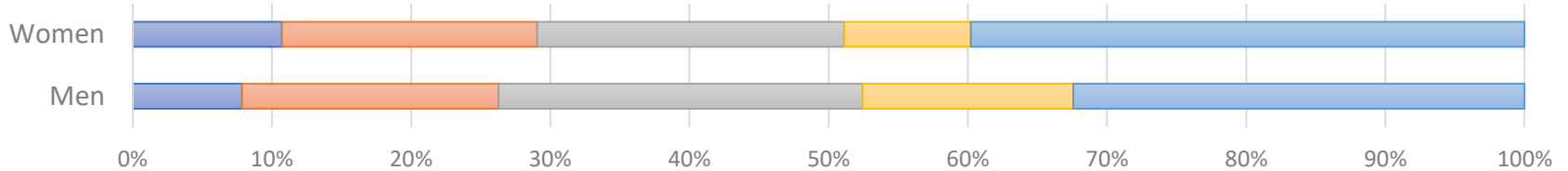


## Public opinion on alternating custody

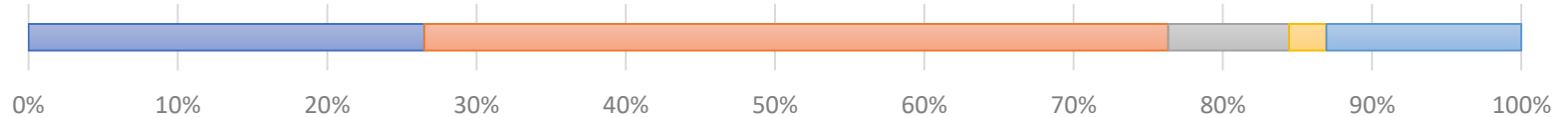
### A child in alternating custody is a "backpacker" without a real home



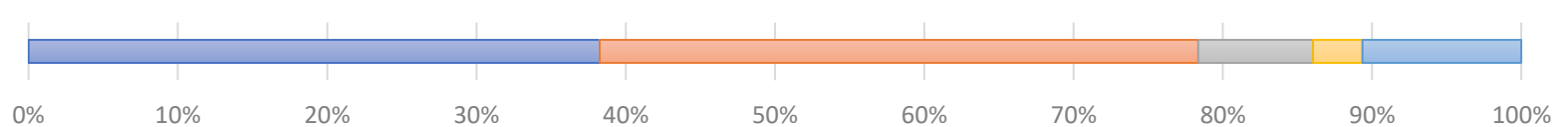
### Alternating custody is always worse for a child than sole custody



### Alternating custody is fair to both parents



### Alternating custody benefits children only if the parents are able to come to an agreement



■ Definitely yes  
 ■ Rather yes  
 ■ Rather not  
 ■ Definitely not  
 ■ I don't know

# Questionnaire survey

## 1982 respondents

- 985 men and 997 women who have a minor child
- lived with his/her biological father/mother in the same household for at least 3 months
- at least 12 months have passed since their divorce / breakup
- they take care of this child or have regular contact with him/her

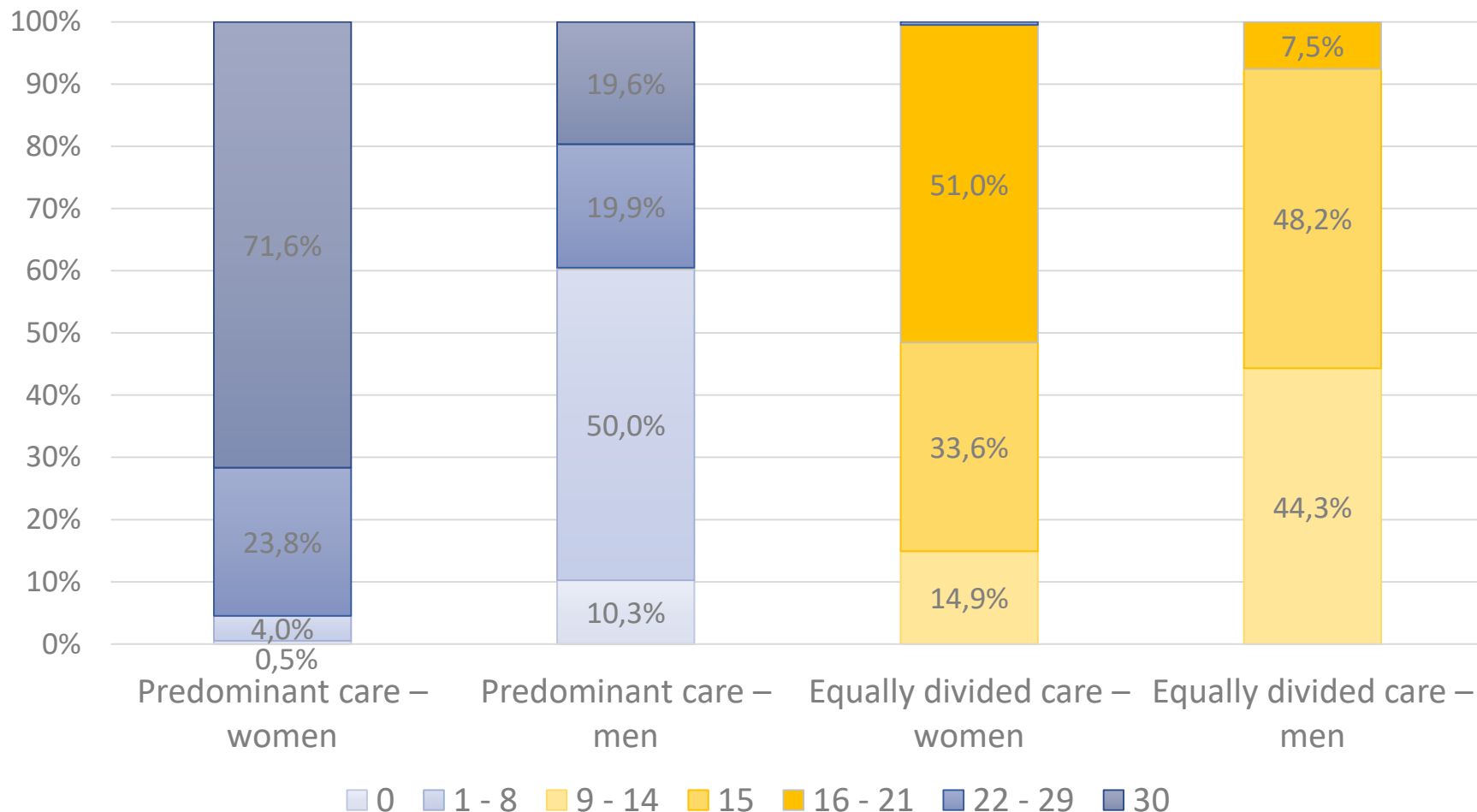
**53% predominant care and 47% equally divided care**

**62% married, 38% unmarried**

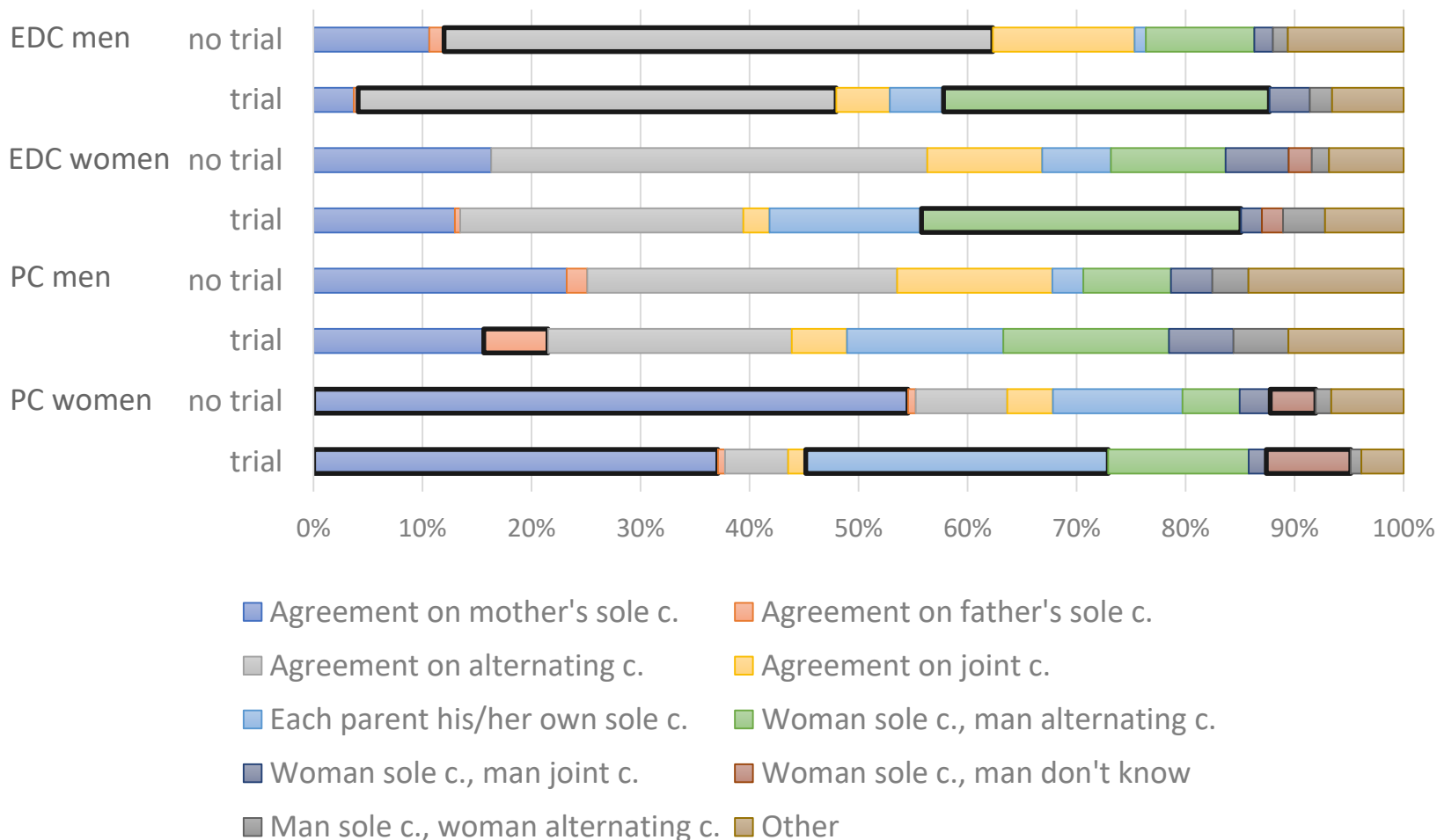
**Care arrangement defined based on the number of nights per month spent by respondent**

**Data collection August – October 2021**

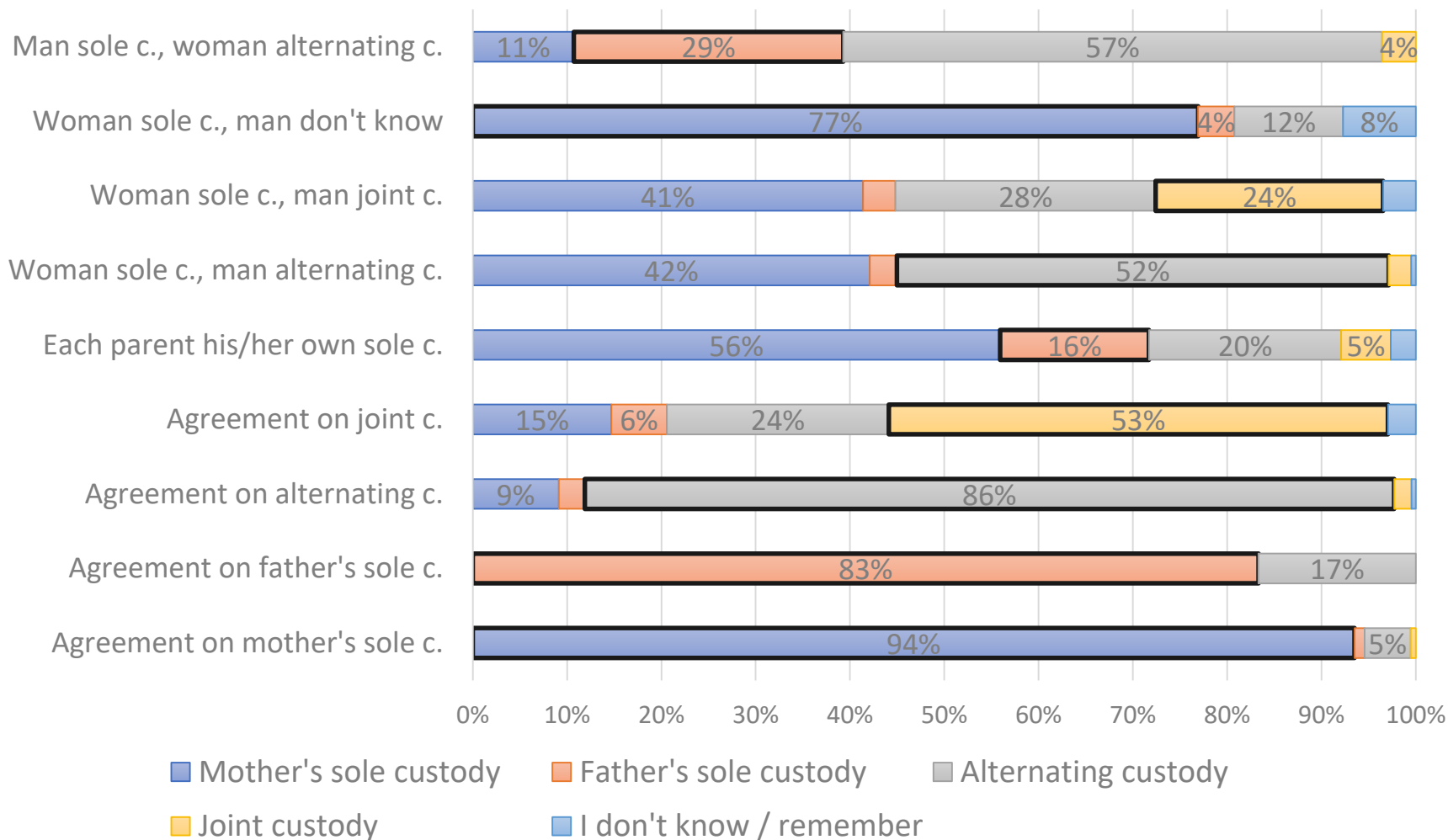
## Usual number of nights per month that the child spends with the respondent (in %)



## Care arrangement that both parents preferred at the time of separation (in %)



## Courts' decisions in relation to parents' preferences (in %)



# Literature and other sources

*Act No. 94/1963 Coll., the Family Act*

*Act No. 89/2012, the Civil Code*

*Finding of the Constitutional Court of 26 May 2014, no. 2482/13*



# Thank you for your attention!

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