

PIA DELEURAN (ed.)

WHAT HAPPENED TO “THE CHILD’S BEST INTERESTS” IN DENMARK?



DJØF PUBLISHING

What Happened to “The Child’s Best Interests” ?

This is a mosaic of texts that many people helped produce.

The book has been written in order to illustrate the serious problems caused by the Danish Act on Parental Responsibility 2007 revised in 2012. Now finally changed in December 2018.

It is a warning for other countries not to follow in the footsteps of the Danish experiment in the family law field.

It is also an SOS to the international society to get help for those affected, since there seems to be no receptivity to the issues on a national level. The legislators have, on a regular basis, been informed about the serious conditions caused by the legislation in the field hurting people. Despite this, the legislators in the period between 2007 and 2018 have introduced new legislation that further enhance the system's violations.

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Shouts, Illustrations and
Documentation from Denmark



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Preface and a View from Abroad

This year, 2019, The Danish Act on Parental Responsibility turns 12 years old. Since the law was adopted by a unanimous Parliament in 2007, children and women's organisations and networks have been pointing out that these groups can be vulnerable.

Denmark has often been a role model for equality initiatives alongside the other Nordic countries.

Through this publication we aim to give countries abroad access to the Danish family experiment, for which the Act on Parental Responsibility laid the foundation, and also to shed light on some of the serious consequences that the Act has caused especially for women and children in difficult cases regarding custody and visitation.

The background to the law was a wish to change the family structure in Denmark so that more fathers could share or have full parental custody of children they had in common or more visitation in divided families.

The legislative paradigm shift also took as its starting point that virtually all parents were obliged to work together to find solutions to conflictual situations.

However, the legislators did not take account of women's unique role in reproduction and motherhood – carrying, giving birth to and breastfeeding the new-born and very young children.

Nor did the law reflect that research has factually shown that it is predominantly women who are subjected to violence by a spouse or cohabiting partner.

Insufficient account was taken of the fact that about 10 percent of family cases regarding custody and visitation involve problems such as drug or alcohol abuse, psychological problems, illness, impaired parenting ability, violence and abuse, criminality, harassing behaviour, and the like. Conditions that arise identically in many of these difficult cases.

It did not turn out to be in the child's best interests when legislators demanded as an inflexible policy that the parents must cooperate and negotiate a solution regarding visitation and custody of the child irrespective of individual circumstances. The administration of the Act in these cases had very serious consequences and it was difficult to protect against abuse, both in the case of the children and the protective parent.

This led to dangerous situations. In some cases, the children became hostages in the legal game of custody and visitation. Unfortunately, their lives and well-being were experimented with.

Some child experts and some judges went down this path where parents had to cooperate: they believed that this was almost always in the child's best interests. And because professionals – counsellors and others – who had the role of the child's watchdog also to some extent adopted this new paradigm and therefore also went down the path of requiring cooperation in the most difficult cases regarding custody and visitation, there was previously no political will to change the legal situation.

However, from April 1, 2019, crucial changes came into force based on the Danish Parliament's recognition of the above-mentioned conditions: The Danish Act on Parental Responsibility did not adequately address the child's welfare and need for protection.

"... There must never be any doubt about the possibility of protecting the child and the obligation to make consideration for the child a top priority when a parent has committed very serious, perilous criminality."

This was said by the Minister of Children and Social Affairs, Mai Mercado, at the first reading of proposed amendments to The Danish Act on Parental Responsibility, on January 15, 2019.

With this legislative amendment, it was acknowledged that the family experiment was a failure.

This amendment must be understood as being a political desire once again to put the child's well-being and need for protection back at the centre.

By inserting children's right to protection into the Act's preamble, the first important step away from the paradigm shift established in 2007 has been taken. The next important change is to adjust both administrative practice and legal practice in the field.

These changes have not come out of the blue. Over the past 12 years, a network of professionals in the field of family law has documented and described the consequences of the distortions in the law through lectures, meetings, lobbying, information material and debates, just as there has been social research into the consequences of the Act.

This professional network has also sought assistance from abroad to raise awareness of the Danish family experiment's fatal consequences, among other things through consultation responses to the UN and a shadow report to the Council of Europe's group of experts, GREVIO, which looks into whether nations live up to the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence. This last aspect because in the

vast majority of difficult custody and visitation cases there has been talk of violence and abuse of women and children.

Back in November, 2017, GREVIO also strongly criticised the Danish conditions concerning The Danish Act on Parental Responsibility and its consequences for women and children. The GREVIO criticism was an important lever in making the Danish Parliament aware of the fact that the Act needed to be changed.

For further information, see the section on “Further Reading”.

Copenhagen, June, 2019

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A View from Abroad: The Emperor Has No Clothes

by Henry Brown

As a young child growing up in Muizenberg, a seaside suburb of Cape Town, in the 1940s I loved reading stories, especially Aesop's fables and Hans Christian Andersen's tales. Could I have imagined that one day I would personally watch a Hans Christian Andersen story actually being played out before my eyes in his home country, Denmark?

Like many children all around the world, I well remember the story of the Emperor who was misled into believing he was dressed in finery invisible to anyone stupid and unfit for office, when in fact he was naked and left by his whole population in that distorted belief until a little, innocent child cried out "The Emperor has no clothes!"

Why had nobody spoken out about the Emperor's nakedness before this? Fear that by speaking the truth in the face of a belief system to which everyone appeared to subscribe, from the Emperor downwards, they would expose themselves to ridicule and alienation, and to appearing stupid – and perhaps even to retribution from the Emperor. When all the wise and powerful people in the country have joined together with one voice to identify a state of affairs, it takes huge courage – or naïveté – to say "But the Emperor has no clothes!"

Although I do not claim to be a family law expert, I do know enough about family law and practice and about couples' relationship breakdown, to see that something is very wrong with family practice in the State of Denmark. What I see, and what has been powerfully reinforced by working on this book and reading about the experiences of parents going through the Danish family system is that a fundamentally misconceived ideology has been set up by the Danish Parliament, which is now supported by lawyers, psychologists and other professionals apparently unconscious of or indifferent to the harm that this is causing. It seems as though a collective delusion has afflicted the lawmakers and the professional services, and that they are so caught up in it – no doubt with the best of intentions – that they cannot see the flawed nature of their thinking and the hugely damaging effects that this is having.

The book speaks for itself, but I would like to make some of my own observations.

The ideological principle underlying the Danish Act on Parental Responsibility and the way the whole system of courts and State Administrations implement and enforce it, is that a child should have a relationship with both of his or her natural, biological parents. As a broad principle and aspiration, this is entirely reasonable and enlightened and I have no quarrel with it, on the basis