

## A Courageous Fight for Joint Custody and Legislative Change

*By Borja Brañanova*

MY NAME IS Borja Brañanova. I am a Spanish father from the Asturias region. I was born in Oviedo, the capital city, in 1973. I grew up within a multidisciplinary family who positively influenced my development. The best I absorbed from all of them was a sense of altruism, respect for all and their personal contributions to others in connection with their careers, not expecting anything in return.

With the same social spirit and with a vision to contribute to major changes in the field of children's rights, I became a member of PASG, CEMIN (Spain) and later Regional Ambassador for Contemporary Family Magazine (USA). By doing so, I wish to encourage individuals globally to actively participate in a necessary respectful revolution in family laws wherever possible, with hope and without expectations. Currently, 60% of the world's population is under 15 years of age. Therefore, our goal and best interest is to benefit minors while supporting the contemporary emotional development of the larger portion of humanity and so on humanity's future.

For those interested in CEMIN, it is a Spanish interdisciplinary organization of social initiative. CEMIN offers interpretative and indicative criteria from an independent vision of what constitutes the best interests of children and teenagers in the different scenarios of professional intervention that condition their well-being: social, judicial, training, educational, and health areas. Web: <https://cemin.org/>

The motivation to join CEMIN and PASG is rooted in the fact that I faced a divorce in Dubai, UAE, where I live and work. Unfortunately, I had to learn like anyone else, the hard way, and before I came to know I was facing a divorce in an Islamic-Sharia Family Court, I began to experience many strange actions and behaviours in my family that directed me to request advice in the fields of psychology and psychiatry. I commenced to learn about cognitive behavioural therapies, and mental health issues, in particular depression and bipolar disorder.

The divorce proceedings started in 2016 and ended in 2020 (5 years). I learnt in the very beginning of 2015 that the possibility for me to be with my children from there on was legally almost impossible as our son was less than 2 years old and our daughter a few months old. The reason for that is the local jurisprudence and regulations, that assign different roles for men (guardian) and women (custodian). The usual is to assign sole custody to a woman till minors reach certain ages, and in the case of girls, till they marry a new man who will be the new guardian, shifting the guardianship from the father to the husband. In the case of family disputes and marriage dissolution, where families choose not to maintain ties, the children are assigned solely to one parent and are insulated from the other parent and their family with very few short visitations per month. Family counselling and guidance are unavailable.

As an expat in a Middle Eastern country, I found this situation unbearable, and seeing clearly that our children would lose the opportunity to grow as I had, I began to seek advice on how to deal with the situation and how to pursue a logical change, at least for the non-Muslim community. In Dubai, society is very diverse, so I did understand the complexity of having a common legal umbrella for all the residents and nationals. Polygamy and other cultural elements have an impact on family structure and the effects of dissolutions, so the legal system has mechanisms in place to ensure minors are assigned to a liable party and financial support is always assigned to the minors' guardians.

Due to the age of the children, the legal framework, and the lack of supportive jurisprudence in this regard, I had to perform differently, and I made the best decision of my life. I refuted to litigate confrontationally to apply for sole custody and I worked to demonstrate to the court system that it was not in the best interest of the children to be removed from either parent. In joint custody, all become winners, where in sole custody, many

losers arise and the most impacted are the children. When I took the stand to support my own descendants to be raised as I have been raised, I kept aside emotional elements and commenced to work out the case as if I was performing a professional project, being tactful to avoid offending local authorities.

I am a mining engineer specialized in energy and fuels by degree, however I never worked in the field. Professionally I have been working in managing projects and services for the last two decades and now I have entered the field of megaprojects. Luckily, I have interacted always with great interdisciplinary professionals that have also influenced my understanding. Furthermore, they showed me the path to pursue big achievements through long-term plans and to deal with complex pathways.

At the beginning of the case, I had to set a strategy, budget, and financing, so I decided to convert what I had on hand into resources to sustain a long-term litigation that I envisioned for 2-3 years assisted by a rationalized team. I always assumed that I needed to assemble the best possible team if I wanted to have a minimum chance of achieving anything, no matter how small it was. My motivation was the conviction that my children would benefit more from my presence in their lives than from me being just a financial supporter. Also, I found it evident that the court and authorities would never identify that there was a social issue by discriminating roles or assigning children to one parent only which is the standard procedure, if no one previously took the stand to substantiate all formally following precise legalisation procedures and referring to United Nations, International, European, Spanish, South African and UAE laws and procedural laws presented by senior professionals in their respective fields.

With a vision, mission, and strategy, I begun to research for outstanding professionals. It was not easy however after several months I got in touch with Isabel Winkels in Spain (a renowned expert in Spanish family law) and her associated Dr Flora Calvo (expert in private international law). They worked hard to submit the entire civil code from 1889, the Spanish Law explained and contemporary Jurisprudence in front of the Dubai Courts. Isabel always played the main role with regards to defending joint custody and through her other important team members gradually joined including Pilar Bueno a well-known family law attorney. Our main challenge was always to achieve submissions targets being fully compliant with legalisation processes passing through bar associations, ministries, embassies, and legal translations.

As the Sharia Court only functions in Arabic, I searched for a Dubai attorney, aiming for the best in town. After meeting several professionals and meeting him, I immediately knew he was perfect, so I asked him if he was willing to work on promoting a change beyond the standards, collaborating with an international team located overseas. He immediately accepted. Thus, I joined efforts with Mukhtar Al Gharib, an outstanding professional in 2005 UAE Federal family law. We joined his entire team, a great group of people. Ahmed Al Rahoud (Syrian) was our main support in merging local and overseas information and presenting the case in an acceptable form and content in front of the Islamic judges. Mukhtar litigated as lead, representing the case with passion and courage. They both promoted a research book compiled by Ahmed "Provisions of custody in the Arabic and Foreign Laws" put together to show the main gaps between Middle East family laws and other internationally accepted family laws aiming to promote local changes in the UAE Federal Law and procedures either for locals or non-locals.

As our children are also South African nationals, we worked with Ferdi Herzenberg, an excellent family law professional. He added to the team other South African psychologists and multidisciplinary professionals to assist with demonstrating that child family laws in both nations pursue the same thing, the child's best interest, and so joint custody is the most preferred option.

In Spain, we also worked with Dr. Alvaro Rivera, a fantastic professional that supported us throughout the entire case with reports and risk assessments substantiating many aspects in the field of psychology and

psychiatry. Dr Rivera helped me to understand the many strange things that I was experiencing in the family before and during the proceedings. From this, I came to get in touch with another PASG member, Dr Jose Manuel Aguilar Blanco. Dr. Aguilar generously supported me, and as a result, I took the step with several Dubai psychologists and a great friend from France to request approval to establish the NGO named PASA (Parental Alienation Syndrome Association). Approval was granted, but only to provide social services and not to be a consulting or educating body for local authorities and entities related to children's affairs. Fortunately, Dubai Community Development Authority "CDA" Human Rights took the lead in performing this activity, and thus children's rights and all the precepts available in the UN convention on the child were listened to.

Returning to our case, we requested through UAE Federal Law the application of Spanish law and so we introduced gender equality, joint custody as per Spanish Constitution and Jurisprudence, South African Law to show a legal alignment with the children national laws, UN Convention of the Children and Wadeema, the UAE Law of the Children to explain in full children's best interests, plus many psychological and psychiatric reports showing issues with regards to emotional development. Additionally, we submitted many more documents to demonstrate the major interest of the father in raising the children in joint custody together with the mandatory defence in a conflicting litigation process. The UAE System follows a confrontation model to demonstrate culpability and damages to the divorcing party because divorce is not automatically granted. Our process started in 2016 and our divorced was granted in 2019.

The first instance judgement (April 2017) came out full of defects and due to a lack of jurisprudence in the UAE, sole custody was given to the mother and I was declared culpable. This decision boosted many alienation tactics and undermined my role as father. I became just a provider in front of the legal system. Fortunately, due to a dispute over the household usage and ownership, we remained living all together in separate rooms during all the proceedings giving me the opportunity to be near the children for the next four (4) years before we finally split and joint custody was granted. My commitment to be close to the children was visible in the hearings. The judges saw my strong commitment to stand still even under great pressure and with almost no possibility to succeed. We faced proceedings every week or every three weeks for more than 50 consecutive months of our lives.

The first instance ruling was strongly appealed by two very well-known Spanish supreme court judges Xavier O'Callaghan and Jose Almagro, plus international law attorneys and human rights attorneys. So, by joining the forces of a large multidisciplinary team together with the local team aligning the matters, we really called to attention the entire UAE judiciary system and leadership. The appealing judgment came out in November 2018.

**This was the first joint custody declared in a litigation procedure in an Islamic Sharia Court. This is an unprecedented historical decision.**

Fortunately, the Court of Appeals panel consisted of reasonable judges who declared joint custody and also decided a fair approach to child support. However, it was raised to cassation by the parties with different objectives, so the Court of Cassation issued an unprecedent Legal Doctrine that mixed the Appeal judgement with UAE Federal Law and issued a new judgement that exempted the mother from support obligations in full as it is standard in Sharia. The most significant event was the declaration of the joint custody as accepted after confirming that there was no clash with Islam, Sharia, and Prophet teachings, and so **became the first legal doctrine on the joint custody subject for Dubai and UAE**. Since then, joint custodies are accepted in Dubai.

The whole case became well known by the media and by the Spanish government. In 2018, the Court system accepted a petition by the mother to issue a travel ban and so the children could not travel to Spain with me. The Spanish Embassy was supportive and requested UAE MOFA to look into this as it was considered not rational to keep children insulated from their home country and ties due to cultural or Islamic legal effects.

Later in 2019, the whole case, the team, the immediate effects, and the potential positive future effects on children, was proposed for the Princess of Asturias nomination in the category of Concorde 2019 by CEMIN. That year the winner was the candidacy presented by the President of the European Union, the Polish city of Gdansk, “2019 Princess of Asturias Award for Concord.” <https://www.fpa.es/interactives/the-city-of-Gdansk>

In 2021, Abu Dhabi has decided to go ahead with a very innovative family law for non-Muslim legalising joint custody.

My children and I are currently preparing our first visit to Spain this Christmas after following a Court procedure to temporarily lift the travel ban that will be reset after our return. ■



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