



FACULTY OF LAW

University of Lund

Torun Franzén

Mandatory Mediation
in the Best Interest
of the Child

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Gudmundur Alfredsson

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Summary

“One of the gravest responsibilities that can be placed upon the court, and one of the most heart searching, is to determine the proper custodian of a child”¹

At least 30 000 parental couples separate every year in Sweden.² Together those parents are responsible for about 55 000 children, which means that at least 25 % of today’s 17-year old youngsters have experienced a separation between their parents.³ Most of the parents manage to, assisted by the “Family Court” of the social services’ cooperative dialogues (samarbetssamtal) or family counselling, make own arrangements for their new family situation. However, about 6000 children every year go through court litigation on custody. Changed family patterns and parents in a constant fighting may leave serious psychological traces within the child and the future adult.

The 1st of July 2006 (Law 2006:459) new custody rules were implemented in the Children and Parents Code (CPC) and in the Proceeding Code. One of the most significant amendments was the expanded possibility for the court to appoint parents at an early stage of the process, to try to cooperate⁴ on child custody, in a time-limited and less expensive alternative, in a mediation procedure. The lawmaker approved for this provision in the best interest of the child. Before 2006 it was only possible for the court to appoint a mediator for the parties in a custody dispute according to Section 21 Article 1 in the Children and Parents Code in the county administrative court. The provision, still in use, is applied to only when custody already is decided on and has to be executed by a new court judgement, for the parents who do not subject themselves to the prior judgement on custody, residence and/or contact rights. This regulation has no actual significance in this paper and will not be further investigated, although mentioned.

This study of mandatory mediation in custody disputes introduces the reader to the parental obligation of mediation at an early stage of the custody dispute. Current mediation (voluntary), legislation⁵ in the Swedish Children and Parents Code (Föräldrabalken (1949:381)), is a time- limited regulation, probably positive on the child when mediation in custody disputes works satisfactorily. Within four weeks, sometimes with some expanded time, the mediator has to try to reach an understanding between the parties, an effort that may take years in court litigation.⁶ Unfortunately, the court rarely

¹ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peebles; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, part II of the article.

² Annika Rejmer, Vårdnadstvister 2003, p 16; Statistiska Centralbyrån (SCB) 1995:1 p.7-11

³ Ibid. p. 16; SCB 2000:2 p 97

⁴ The Proceeding Code, Section 42 Article 6 and Section 42 Article 17

⁵ The Children and Parents Code, Section 6 Article 18a

⁶ Ibid. Section 6 article 18a

applies to the new rule. The aim of mandating mediation is to facilitate for the children in their parents' separation process considering *economizing to the aspect of time* to shorten the many hours of anxieties for all parties involved, consequently reducing damages in the family relationships in the best interest of the child. Such changes by law should probably diminish the courts' workloads, the queues to the remaining child custody litigations, and, reduced costs for the society.

The mediation regulation from 2006 has rarely been applied to at an early stage in child custody cases in Sweden. Obviously, the intended result from the legislatures, in creating these new rules (New Child Custody Rules (SOU 2005:43)), did not reach their goals through the new legislation. Judges that I have spoken to currently, have said they would like to see mandatory mediation in law, taking into consideration the efficiency included when parents are no longer able to escape cooperation before they head off for a court litigation.

Critics on mandatory mediation, made by mandatory adversaries concerning child custody disputes in the United States emerges in the study as well as researcher's comments and reply to the critics. Among all, the American feminists' perspective of mothers not being granted physical custody as often in a mediation process as in a court litigation seem not to be adequate according to the research laid down. The angle of how mediation in case of a history of domestic violence should be conducted is introduced as deviant from other family mediation, demanding specifically cautious measures. Among several states in the United States, the state of California has, since 1981, had mandatory mediation in custody disputes by the recommendation of federal law. Research on some favours and disadvantages of this mandatory dispute resolution form is investigated in this study. Critic presented by the Swedish doctrines is among all that mandatory mediation concerning cooperation not should be effective at the same extent as voluntary mediation. Though, one should bear in mind that trying to cooperate ought to work better via a mandatory regulation than doing no attempt at all. Besides, law and the societal information in mandatory mediation would probably not lead to negative reactions from parents. An obligation to mediate and to cooperate, consequently, for all separated parents, is in the best interest of the child, and a surrender should become easier with a clear provision to lean on.

Sammanfattning

“Något av det mest hjärteknipande som domstolen måste ta ansvar för, är att avgöra vem som ska bli den rätta vårdnadshavaren åt barnet [i en vårdnadstvist].”⁷

Under ett år separerar minst 30 000 föräldrapar i Sverige⁸, vilka tillsammans har ansvar för mer än 55 000 barn. Detta innebär att minst en fjärdedel av alla 17-åringar i Sverige i dag har genomlevt en föräldrasedskiljning.⁹ De flesta föräldrar klarar själva av att dela vårdnaden om barnen och att arrangera sin nya tillvaro med barnen utan att behöva stämma varandra i domstol. Många föräldrar får dessutom assistans genom familjerådgivning och/eller samarbetsamtal i familjerättens och socialtjänstens regi. Trots positiva siffror i sin helhet är det ca. 6000 barn som varje år genomlever domstolsprövning med anledning av en vårdnadstvist. En sådan slitsam tvist torde i många fall påverka barnet till det sämre, då förändrade familjemönster och familjeogräl troligtvis lämnar spår, i negativ mening, hos det växande barnet.

1 juli 2006 ändrades vårdnadsreglerna i föräldrabalken (FB) samt även i rättegångsbalken (Lag 2006:459). En av de mest betydelsefulla ändringarna var de utökade möjligheterna för domstolen att förelägga föräldrar medling i ett tidigt skede av processen¹⁰ för barnets bästa. Medling i ett tidigt skede för föräldrar som inte kommer överens kan vara ett bättre och även billigare alternativ till domstolsprövning. Före 2006 fanns möjlighet att förelägga om medling i vårdnadsmål, dock endast i s.k. verkställighetsmål enligt FB 21:1 i länsrätten. Dessa mål förs fortfarande, numera i tingsrätt och inträder först efter att dom om vårdnad meddelats och endast om någon av parterna inte anpassat sig till den tidigare domen om vårdnad och/eller umgänge. Denna regel har ingen egentlig betydelse för uppsatsen och kommer ej att utredas vidare.

Denna studie rörande obligatorisk medling i vårdnadsmål ger en introduktion till förpliktande medling för föräldrar i ett tidigt skede av vårdnadsprocessen för barnets bästa. Dagens lagstadgade möjligheter till

⁷ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peebles; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, part II of the article.

⁸ Annika Rejmer, Vårdnadstvister 2003, p 16; Statistiska Centralbyrån (SCB)1995:1 p.7-11
⁹ Ibid. p.16; SCB 2000:2 p. 97

¹⁰ The Proceeding Code, Section 42 Article 6 and Section 42 Article 17; when the court is preparing a case, it has to elucidate if there has to be an extended investigation made (Section, 42 Article 6 point 4) , and the court has to work towards , if appropriate according to all circumstances within the case, the parties to conciliate or in another way reach an understanding. If the court so orders, mediation can take place with a certain mediator appointed by the court.

medling i svensk rätt (FB 6:18a) är en tidsbegränsad, och troligtvis fördelaktig reglering för barnet, i de fall medlingen i en vårdnadstvist fungerar tillfredsställande. Inom fyra veckor måste medlaren nämligen ha kunnat förmå föräldrarna att uppnå en överenskommelse, ibland dock med förlängd tid. Samma procedur i domstol kan ta flera år i anspråk. Tyvärr tillämpas inte reglerna. Målet med obligatorisk medling är att underlätta för barn i föräldrarnas separation med hänsyn till *tidsaspekten*, för att förkorta den långa tiden av oro för alla inblandade parter, för att följaktligen minska skador i familjrelationen och framförallt en insats för barnets bästa.

En lagändring till obligatorisk medling i vårdnadsfall skulle förmodligen innebära minskad arbetsbelastning för domstolarna, kortare köer i resterande vårdnadsfall, med mer tid för varje mål som följd samt lägre samhällkostnader. Idag tillämpas medlingsinstitutet nästan aldrig på ett tidigt stadium i vårdnadsfall och resultatet av vårdnadsutredningen för Nya Vårdnadsregler (SOU 2005:43) tillämpas med andra ord inte som tänkt. Domare jag talat med efterlyser i stället obligatorisk medling genom lag med tanke på den effektivitet som det skulle innebära då föräldrar och domstolar först måste uttömma alla möjligheter att komma överens utanför domstolen först.

Kritik som framlagts av motståndare till obligatorisk medling i vårdnadstvister i U.S.A. framkommer i studien liksom forskares kommentarer till kritiken. Bland annat framläggs ett feministiskt perspektiv springande ur tron att mödrar som är del av en medlingsprocess i mindre mån kan få vårdnaden om barnet, vilket inte verkar vara en realistisk farhåga med tanke på de forskningsresultat som läggs fram. Medling då någon av parterna tidigare varit våldsam mot den andra parten är inte lik annan medling i vårdnadsfall utan kräver vissa försiktighetsåtgärder. Bland andra delstater i U.S.A. har Kalifornien sedan 1981 haft lagstadgad obligatorisk medling i vårdnadsfall genom en rekommendation i den federala lagen gällande för alla stater. Forskning på både fördelar och nackdelar med denna kommunikationsform i obligatorisk form utvecklas i uppsatsen.

Kritik som framlagts i svensk doktrin är bland annat att ett obligatorium rörande samarbete inte skulle fungera så bra som vid frivillig medling. Dock bör man då betänka att ett försök, torde genom det obligatoriska institutet vara bättre än inget försök alls. Dessutom torde man kunna säga att dylik lag i sig, samt tillkommande samhällsinformation, inte torde ge något utrymme för personlig negativ bedömning varvid föräldrar i vårdnadstvist troligtvis underkastar sig medlingsinstitutet för barnets bästa om regeln finns där och är tydlig och klar.

Preface

*“Conflict is an inescapable part of our daily lives, an inevitable result of our highly complex, competitive, and often litigious society. Whether it be in our personal relationships or our business interactions, each of us has our own ideas, opinions, and needs, and how we deal with our differences with others can determine the quality of our lives.”*¹¹

Conflict could be a source of personal growth and productive development and a source of making changes and to clarify expectations, but we need tools to resolve the dispute in order to go on with our lives. Changes often create conflicts, as for instance when parents decide to leave the common home and to share their children in a new family pattern. A current fixed situation, which has meant personal safety for the involved persons, is now deranged and a whole new situation with hopes, fears and duties comes towards every family member. The scenery often changes rapidly in a parental divorce even if the quarrels have been going on for a while, and, most people are not prepared to meet changes and conflicts. Consequently, many parents act towards the other parent through anger and confusion, making a chaotic situation even more chaotic, not mention how a child experiences the battle. Society changes quickly and the needs of a preparing mentality for conflict solutions are at growth.¹²

Researchers realizes, at least according to sources chosen for this work, that the early stage of the conflict is where there is better to put efforts in helping the family arranging their new situation and that a neutral mediator in the parental dispute concerning the child custody, is for the best interest of the child, by assisting parents to cooperate.

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interest of the child shall be a primary consideration*”, as are the wordings of the most basic and important Child Convention’s third article, yelling out to the world and its jurisdictions to make it a better place for children to grow up and develop.

Australia were first to legislate on mediation in custody disputes 1971 and close behind came the United States and they have had child custody mediation in their statutes for more than thirty years. The Family Code of California requires, since 1981, that if there is a contested issue regarding children, the parties have to make a serious attempt to resolve their child

¹¹ Dudley Weeks (1994) in the preface of his book “Conflict Resolution” and, Jan Norman, Medling och andra typer av konfliktlösning, p. 15

¹² Jan Norman, Medling och andra typer av konfliktlösning, p. 16

custody dispute through mediation before the court makes orders in a litigated hearing.

As mediation in custody cases was introduced in Sweden in 1998 the hopeful proponents were welcoming mediation in child custody disputes on the cause of the long waiting time for custody cases and in the best interest of the child. Despite the current rule in CPC Section 6 Article 18a, for the court to appoint a mediator assisting custody fighting parents to cooperation through mediation at an early stage of the dispute, the rule has almost never been applied to. Judges from Lund and Malmö district courts has made statements, interviewed by telephone, that these rules were so recently changed, explaining why courts have not become used to the application. At least in the Malmö District Court, there had not been one single case were the rule had been applied to, since the new provision was stipulated in 2006.¹³

Not all parents dare to or wish to be investigated by the Social Service's authority the "Family Court" conducting the cooperative dialogues. When a parent subject him -or herself to the dialogues they may at times also surrender to arbitrary treatment by the "court", followed by a confidentiality¹⁴ allowing the social worker to transfer the information within the authorities in the municipality and to the court. When there is a risk for arbitrary treatment in the "Family Court", there is also risk for this treatment to transfer to the court, as the judges will listen to the social workers having investigated the parents.

I hope this paper will contribute to a continuing mediation development in custody disputes in Sweden. I wish for amendments in law on mandatory mediation of at least 6-10 mediation sessions as a complement to the cooperative dialogues by the social services, exhausting the possibilities to mutual parental understanding until a court litigation is unavoidable.

Thanks to my supervisor Gudmundur for the support, and to my family; My children Myrra, Vide and Esmeralda as well as my fiancé Janne for every minute of patience during almost five years of education to a Bachelor of Law Degree!

¹³ From dialogues with two judges in Lund and Malmö

¹⁴ The Official Secrets Act, Section 14 Article 5 Para 2

Abbreviations

ADR	Alternative Dispute Resolution
CPC	The Children and Parents Code
ECHR	European Convention of Human Rights
FB	Föräldrabalken (The Children and Parents Code)
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Convention of Economic, Social and Cultural Rights
JT	Juridisk Tidskrift
RWI	Raoul Wallenberg Institutet
Skr	Svenska kronor (Swedish Crowns)
SOU	Statens offentliga utredningar (Public investigation conducted by the state)
SvJT	Svensk Juristtidning
UDHR	Universal Declaration of Human Rights
UNCRC (CRC)	The United Nation Convention of the Rights of the Child
U.S.A.	United States of America

1 Introduction

1.1 Problem and Purpose

1.1.1 The question of research

Would mandatory mediation at an early stage of the child custody dispute improve the child's situation and well-being in the parental conflict, by making the procedure more effective and quicker on the contrary to the current voluntary mediation in the Children and Parents Code, rarely applied to by the Swedish courts of today?

1.1.2 Purpose

This thesis introduces to mandatory mediation in child custody disputes and the international ongoing discussion on favours and disadvantages of the obligation concerning parents and children in conflictous family relationships. The purpose of the study is an attempt to influence the Swedish lawmaker to consider further amendments of the Swedish Children and Parents Code through the discussed international experiences and the interest for mandatory mediation, as form and tool for a time-saving, more peaceful way of solving conflicts in child custody disputes. Unresolved parental relationships affect children negatively and may leave the child with a psychological damage. It may be decisive, and in the child's best interest, to assist the families in conflict at an early stage of divorce and custody issues. The thesis focuses on the issue to effectuate the procedure in favour of the child. North American research will elucidate the mandatory mediation procedure in general and clarify differences and similarities to the Swedish system. Thus, the thesis will show that the Swedish system further needs improvements in the domestic child custody process to facilitate for children with parents involved in custody disputes.

1.2 Contents and Delimitations

The main issue and the content of the text in whole is the mandatory mediation process in child custody disputes concerning the best interest of the child. The paper focuses on family mediation at an early stage of the child custody procedure. The executive judgements applied to in a stage when the child custody decision is already made will not be a part of the discussion.

A “parent” in the thesis by means the ordinary biologically child-parent relationship, but could hypothetically also mean a custodian not related to the child by the blood. A “child” means a biological child or legally adopted children, the same legal rights as the biological child under the age of 18¹⁵. The concept of “divorce” in a child custody dispute, in the meaning of divorced by law, is synonymous with the separation of non-married couples living together with at least one child. The expression ‘cooperative dialogues’ occurring in the text is the author’s own expression. The meaning of the expression is the Swedish social services working in the “Family Court”, which is not a court, although supplying families with a certain kind of parental mediation (in parallel with a family investigation). The Swedish expression is ‘samarbetssamtal’. Another explanation will be the system for the Swedish ‘kapitel’, ‘paragraf’, ‘stycke’ and ‘punkt’ (the Swedish notion ‘mening’ in the meaning of ‘sentence’ has not occurred in this work) which I have found in dictionaries and translated into English as; ‘Section’, ‘Article’, ‘Paragraph’ (‘Para’) and ‘Point’.

There will be a study of the North American and the Swedish view of the mandatory mediation in custody disputes in the almost universal consensus of the best interest of the child. Demarcations have been made as for any other country’s domestic laws and systems outside the United States and Sweden. There will be no focus on regular custody dispute cases.

1.3 Disposition

At first, there will be a short summary of the problem and the research in a few summarized conclusions. The preface supplies with a more personal view of the subject connected to research made and the referring to interviews made with judges in Malmö and Lund. The introduction in chapter 1 gives the reader a slight overview of the problem and the purpose of the thesis. Further, the contents and delimitation illustrates what is included in the context and on the contrast what is left out. Chapter 2 informs about child custody notions and what they mean in Sweden and internationally. Chapter 3 introduces the reader to the human rights perspective. In this chapter there will be a survey of the notion of ‘the best interest of the child’ in an international human right perspective in law as

¹⁵ See Definition in the Convention of the Rights of the Child, Chapter 3

well as, further through the European convention of human rights and the domestic family law provisions of Sweden. The best interest of the child view will be investigated through doctrine of the subject. The fourth chapter will supply with the parental conflict and its consequences for the child. Further, chapter 5 is highlighting the legal custody dispute process in Sweden. The sixth chapter shows the reader various forms of ADR techniques and the seventh chapter gives an introduction to mediation more thoroughly, highlighting when the method is advisable to use, for couples in child custody disputes followed by a discussion of favours and disadvantages about mandatory mediation. In chapter 8 there will be an overview of mediation may develop into the future in the United States and in Sweden. The final discussion in chapter 9 will link the facts, the opinions and the discussions from the chapters above together with the author's own views of the issue of mandatory mediation.

1.4 Methods and Materials

The method used in this thesis is the method of dogmatics in law, in other words; examining and establishing current rules of the jurisdictions. The international human rights law, European human rights law and domestic law will constitute the basis of the materials for this assessment. Doctrines and researches concerning the best interest of the child and mandatory mediation will be a main part of the survey.

I have had dialogues on telephone with judges of the district city courts in Malmö and Lund respectively, concerning child custody litigation and at what stage in the process the court usually appoint mediators to negotiate between parents. The result of the dialogues will be declared for in the Preface of the paper.

2 Child Custody notions

Child custody and guardianship are legal terms describing the legal and practical relationship between a custodian/parent and his or her child. Legal rights of the parent could for instance be to make decisions for the child and the parents' duties to care for the child.¹⁶ In Sweden there are two legal forms of custody, sole and joint custody. Since 1977 the law about joint custody¹⁷ was introduced, meaning for the parents to agree to continue having joint custody after the divorce. The decision should be voluntary. This reform made it possible for not married couples only living together, to have joint custody if they agreed on it, giving notice to the court. Currently the parents only need to give notice to the Social Insurance Office. The law of joint custody expanded 1983 and became compulsory.¹⁸ 1998 an amendment even more focused on the child's best interest introduced on the purpose for the court to decide to whom the custody may be granted against a parent's will, and for the social services to assist parents to establish and approve to the parents own custody agreement. In 2006, the Government proposed that the core principal for the court to decide joint custody would be parents' abilities to cooperate on the childcare.

2.1.1 Sole Custody

Sole custody is an arrangement whereby only one parent has physical and legal custody of a child and the other parent has the contact rights.¹⁹ With current Swedish legislation, sole custody is difficult to be granted, and it usually occurs when the father has threatened or behaved abusive towards the mother. The reason to such a decision is that the mother under such circumstances sometimes has a great fear for the abusive party, having difficulties to cooperate with the father. A parent with sole custody decide for the child's residence, in what school or kindergarten the child are going to, if the child need surgery, what doctor or psychologist the child will attend and if the child is going to receive a passport.²⁰

2.1.2 Joint custody

Joint or shared custody is the opposite to sole custody and a court order whereby custody of a child is granted both of the parents. Many states recognize two forms of joint custody; joint physical custody and joint legal custody. Joint physical custody (joint physical care), means that actual lodging and care of the child is shared according to a court-ordered custody

¹⁶ Öberg & Öberg, "Skiljas men inte från barnen", p. 26

¹⁷ The Children and Parents Code, Section 6 Article 5

¹⁸ Öberg & Öberg, "Skiljas men inte från barnen", p. 27

¹⁹ Ibid, p. 28

²⁰ The Swedish Proposition 97/98:7, p. 40

schedule. In many cases, the term visitation is no longer used in these circumstances. Joint legal custody includes that both parents share the ability having access to educational, health, and other records, and have equal decision-making status where the welfare of the child is concerned. It is important to note that joint physical custody and joint legal custody are different aspects of custody and determination is often made separately in many divorce courts. E.g., it is possible to have joint legal custody, but for one parent to have primary physical custody.²¹ The legal joint custody's conditions vary in different jurisdictions.²²

2.1.3 Split custody²³ and “Bird’s Nest Custody”²⁴

There are two more rare custody forms, which one is split custody, a less popular option, in which each parent takes custody of a different child and the also the “Bird’s Nest Custody” allowing the children to remain in the pre-divorced family home while parents take turns moving in and out.

2.1.4 Residence and contact rights

The United Nations Convention on the Rights of the Child are ratified in most countries and terms like “*residence*” and “*contact*” have superseded the previous concepts of “*custody*” and “*access*”. Residence and contact issues typically arises in proceedings involving divorce (dissolution of marriage), annulment and other legal proceedings where children may be involved. In most jurisdictions the best interest of the child standard will determine with which parent the child will reside.²⁵

²¹ Öberg & Öberg, ”Skiljas men inte från barnen”, p. 27

²² Johanna Schiratzki, ”Vårdnad och vårdnadstvisiter” 1997, p. 60

²³ Carol Rogerson, Canadian Journal of Family Law, Vol. 15, No. 2, 1998, article; “Child Support Under The Guidelines In Cases Of Split And Shared Custody”, definition in part II. Westlaw Web page 080213

²⁴ Michael T. Flannery, SMU Law Review, Spring 2004, article; “Is Birds Nesting In The Best Interest of Children?” See definition in part I.Introduction.Westlaw website 080213.

²⁵ See the Convention on the Rights of the Child

3 The best interest of the child in custody disputes

3.1 International standards

Most jurisdictions of the world have adopted the standard of the best interest of the child. Important sources of the international family law and the best interest of the child are mainly found in the United Nations Convention of the Rights of the Child, 1989 (UNCRC). The Convention was the first multilateral instrument on a wide range of children's rights, establishing binding international standards. The Convention covers civil, political, social, economic, and cultural rights, containing normative standards of many issues, including parental responsibility concerning divorce and custody matters on the child. Practically all the members of the United Nations have ratified the Convention, which constitutes a near-universal consensus on a broad range of children's rights and is increasingly referred to in domestic judgements.²⁶

3.1.1 Family protection

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.²⁷²⁸ “States Parties to the International Covenant of Civil and Political Rights (ICCPR) shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.” In the case of dissolution, provision shall be made for the necessary protection of any children.²⁹ In order to be able to ensure the necessary conditions for full development of the family the member States ensure the promotion of the economic, legal and social protection of family life.³⁰

3.1.2 Children

Article 3 of the Convention on the Rights of the Child governs all actions concerning children and Sweden has implemented the Convention.³¹ ”In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative

²⁶ Sonia Harris-Short and Joanna Miles, Family Law, Texts cases and materials, p. 8.

²⁷ ICCPR, Article 23.1

²⁸ UDHR, Article 16 point 3

²⁹ ICCPR, Article 23.4

³⁰ ECHR, Article 16

³¹ The UNCRC has 192 states parties with only the United States and Somalia yet to ratify.

bodies, the best interest of the child shall be a primary consideration”.³² In article 3 para 2 of the present Convention States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being. The State has to take into account the rights and duties of parents or legal guardians, or other individuals legally responsible for him or her, obliged to take all appropriate legislative and administrative measures. Paragraph 3 of the article regulates for the States Parties to ensure that the institutions, services and facilities responsible for the care of protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of the staff, as well as competent supervision.³³

The International Covenant of Civil and Political Rights stipulates that every child shall have, without any discrimination, the right to protection required by his status as a minor, on the part of his family, society and the State.³⁴ Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions is.³⁵

The Declaration on Social and Legal Principles relating to the Protection and Welfare of the Children recommends that State Parties shall give priority to the family and the child’s welfare, and that the child’s welfare depends upon a good family welfare, that the most important thing is for the child to be cared for by his or her own parents. Governments should involve and determine in the national welfare services considering appropriate measures³⁶

State Parties shall ensure that a child shall not be separated from his or her parents against their will, making exceptions when competent authorities, in accordance with applicable law and procedures, recommend such separation in the best interest of the child. Such determination may be necessary, for instance when abuse or neglect of the child by the parents is suspected, or where the parents are living separately and a decision must be made as to the child’s place of residence.³⁷ In any proceedings pursuant to paragraph 1 of Article 9, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.³⁸ States Parties shall respect the right of the child who is separated from one or both parents and give the child opportunity to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.³⁹ Thus, the Convention appears to promote the importance of

³²UNCRC, Article 3

³³ Ibid, Article 3.3

³⁴ ICCPR, Article 24.1

³⁵ ICESCR, Article 10.3

³⁶ Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally, 1986, Article 1-3 and 7,

³⁷UNCRC, Article 9.1,

³⁸ Ibid, Article 9.2

³⁹ Ibid, Article 9.3,

the child's relationship with both its parents, regardless of the marital status.⁴⁰ States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.⁴¹ For this purpose, the child shall in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in manner consistent with the procedural rules of national law.⁴²

3.1.3 Parental Responsibility

States Parties shall use their best efforts to ensure recognition of the principle that *both parents have common responsibilities for the upbringing and development of the child*. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. *The best interest of the child will be their basic concerns*. Provided the existence of de facto family ties can be established as the Article 8 of the ECHR protects both the child's and the father's right to legal recognition and support for their relationship⁴³ For the purpose of guaranteeing and promoting the rights set forth in the present Convention, State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.⁴⁴ States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.⁴⁵

3.1.3.1 European Human Rights Act and Family Law

The European Convention of Human Rights is an international treaty imposing human rights obligations in the member states of the Council of Europe. 'Family rights' had been included in the EU Charter of Fundamental rights, the rights to respect for private and family life, to marry and found a family, the rights of the child, and the right of the family to legal, economic, and social protection.⁴⁶

⁴⁰ Sonia Harris-Short and Joanna Miles, Family Law, Texts cases and materials, p. 757.

⁴¹ UNCRC, Article 12.1

⁴² Ibid., Article 12.2

⁴³ Ibid., Article 18.1

⁴⁴ Ibid., Article 18.2

⁴⁵ Ibid., Article 18.3,

⁴⁶ European Convention of Human Rights, Articles 8, 12 and European Social Charter 1961, Articles 7, 16,

3.2 Human Rights violations

State Parties, which do not apply to the international standards that they have signed, may be violating certain human rights. Every individual could complain through communication in international committees connected to certain conventions, mostly on the condition that all domestic remedies are exhausted.

3.2.1 State obligations and complaints

Treaties are binding to the parties to them and a violation of a treaty rule may occur as the state party neglect to act on and implement a treaty in accordance with the purpose of an international standard, signed by the state. Individuals can make complaints in international human rights issues when all domestic remedies have been exhausted except for in the European Convention of Human Rights, which has a direct effect in the individuals' jurisdiction in the member states. Further, Article 1 of the ECHR obligates the states to all statutory material in family law, including the interpretation of for instance the Children Act 1989, and is in other words susceptible to revision in light of the requirements of the ECHR, just as much as new legislation.⁴⁷

3.3 The Children and Parents Code

Conditions concerning children and their parents are settled in the Swedish Children and Parents Code (Föräldrabalken 1949:381). Since the seventies the Swedish family law, with the exception of executive and transferring rules, has been considerably changed, developed on the purpose to provide for the best interest of the child. No-fault provision in a divorce replaced the fault law in 1973 and the possibility for fathers to be granted joint custody was increased. In 1976 unmarried partners to, through a litigation be granted joint custody and child within marriage and extramarital law since 1920 became obsolete and in 1983 the contingency to, after a divorce, be granted joint custody without the approval of a court.⁴⁸

In 1991 amendments aiming to facilitate for parents to cooperate themselves, for child custody, residence and contact rights and the Cooperative Dialogues were introduced. Parents were offered the dialogues for free and assisted by social workers with competence on the matter, trying to reach unity on custody issues. The court were entitled to initiate the cooperative dialogues. Two years later a provision was

⁴⁷ Sonia Harris-Short and Joanna Miles; Family Law, Texts cases and materials, , p. 14.

⁴⁸ The Swedish Government Proposition. 2005/06:99, p. 34

introduced about the court's responsibility to pay attention to the risks of abuse or unlawful abductions of the child. In 1996 the law had reforms done about the child's right to speak in custody disputes and for the court to consider the child's age and maturity on the matter concerned. Two years later, in 1998, the reforms aimed to further emphasize cooperative solutions and further concentrate on the Social Committee's work, the regulations are still in use. Parents who cooperate are able to settle their own agreements, when approved by the Committee. The agreement is valid enforceable and legally binding just as a court judgement. When parents enter into such an agreement they also may be assisted by the municipality. The child's best interest must be the determining factor for all decisions made in all questions related to custody, living and family relations. In judgments of what is in the best interest of the child, particular attention is decisive; the risk of abuse of the child or for anyone else in the family exposed of abuse or that the child is unlawfully abducted or retained or else comes to harm, and, the child's need of a close contact with both parents. The child's will, taking into consideration the child's age and maturity, shall be recognized.⁴⁹ Further, the judge may decide on joint custody even if one of the parents oppose to the decision.⁵⁰

3.3.1 Improved child custody rights

Amendments from the 1st of July 2006 in the best interest of the child have been settled in the provisions related to the custody and access in the Children and Parents Code (1949:381). The new rules are based on the Swedish Governments' Proposition (2005/06:99), New Rules for the custody of children. Previously, a legible child perspective was applied through the Code based on the international human right provision, article 3 in the Convention of the Right of the Child. The Children and Parents Code is from July 2006 explicitly stipulated in the child's best interest, making it the determining factor in every decision concerning the Swedish child custody.

The purpose of the changes is to "further emphasize the importance of the consideration given the best interest of the child and to improve the child's right to be heard"⁵¹. An emphasis of the risk of the child coming into harm is provided for in the current Code and particular attention has been given to family abuse or of the child being unlawfully abducted or retained. Assessments of what are the best interests of the child requires knowledge, proven experience and the child's own view and the account has to relate to both physical and mental well-being and development. *The parental abilities to cooperate is hereinafter essential* to deserve joint custody and it is as well of importance for a parent who oppose to the joint custody to be heard and to seriously acknowledge his or her opinion. The district court (previously, the county administrative court) is today responsible for the

⁴⁹ The Children and Parents Code, Section 6 Article 2a,

⁵⁰ The Swedish Government Proposition 2005/06:99, p 35

⁵¹ Ministry of Justice in Sweden, www.regeringskansliet.se collected 071012

executive custody lawsuits. *The court is allowed to designate a mediator in child custody cases.*⁵² The possibility for a parent to be granted temporary custody has become diminished, and will only be applied “when needed”⁵³ The joint custody rules have been straightened up. Special attention will also be given the risk for the child or someone else in the family to be exposed to abuse of any kind. The Social Committee’s responsibility during the investigation upon a decision of temporary custody has increased by the amendments made in 2006, which means that the Committee, if appropriate, shall hear the parents and the children.⁵⁴ There has been an extension of the Committee’s right to act in order to comprise the right to speak for contact rights⁵⁵⁵⁶

3.4 Doctrine of the Child’s Best Interest

The best interest of the child doctrine derive from *Parens Patriae*, a doctrine, first recorded in 1610 by King James I, who referred to himself as *Pater Patriae*, the father of the people and ‘the general guardian of all infants, idiots, and lunatics’ and first applied to within the English common law, that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. In the United States *Parens Patriae* has had its greatest application in the treatment of children and other individuals incompetent to manage their own affairs.⁵⁷

3.4.1 An active and a passive child’s best interest

A passive best interest of the child is, partly, found in CPC Section 6 Article 7, meaning that the child will be awarded a basic protection towards an abusive parent, who is neglecting the child care in a way that could mean a consistent danger to the child. The same protection is granted all community members through social and penalty legislation. Thus, a passive best interest of the child is limited, rendering the child protection under certain circumstances in conformity with all other groups in society, including the inherent protection to any criminal action, which render general penalty or are comprised by protective law. An active best interest means that the child must be approved of rights and protection in addition to the other societal groups. The regulation is made clear by the principle declaration in section 6 article 1 of the Code. The child is entitled to good care, safety, a good upbringing, respect for the individual and finally the right not to be exposed to physical punishment or other insulting treatment. There must be notified

⁵² The Children and Parents Code ,Section 6 Article 18

⁵³ Ibid.,Section 6 Article 20, See also; Sole custody in Chapter 2.1.1

⁵⁴ Ibid.,Section 6 Article 20 Para 2

⁵⁵ Ibid.,Section 6 Article 15a

⁵⁶ Johanna Schiratzki, *Ny Juridik* 3:06, page 53, Artikelsök Elin Homepage 071211

⁵⁷ Lisa Moscati Hawkes; *Cornell International Law Journal* Winter 1988; article;”*Parens Patriae And The Union Carbide Case: The Disaster At Bhopal Continues*” Part B. Westlaw 080225.

that the system of law lack to support this kind of diversification of the best interest, although the theory seem to clarify the unspoken words.⁵⁸

3.4.2 Presumption of the best interest of the child in custody issues

The child's best interest presumption has varied much over the times. It seems unclear how presumptions have been assisting the child's best interest, applying to a review of older presumptions. Family law and child custody in a historical perspective previously meant the pure status functionalities, while the individuals personal needs and wishes were of less importance. During the seventies, internationally and in Sweden, the meaning that the best interest of the child should be synonymous to joint legal custody was introduced.⁵⁹

3.4.3 A child's worth and the Rule of Law

"The best interest of the child" is the legal standard (strong moral meaning) in child custody disputes and in t he same time it is also the mental health standard in psychiatry (warm relationship). However, the standard of the best interest of the child vary within the two disciplines. The impression that courts would implement the recommendations of the experts is not likely. The court adds own facts in its determination of the best interest of the child. For instance is a kidnapping of a child by the law not at all permissible and must be punished. However within the psychiatric discipline, a parental kidnapping could be necessary to protect a child from an abusive parent, which would stipulate the best interest of the child in that discipline.⁶⁰ Researchers found that children not seldom are seen as "human becomings" –developing adults "not yet quite human". New Zealanders, in society as well representing developed society, valuing the child as a not fully human being is a current issue. Section 59 of their Crimes Act allowed parents to practise physical punishment. During the investigation, the researchers experienced a great opinion of seeing children as impervious to logic or reasoning, only able to learn through pain, and, some of the submitters in the amendment of the law said that children are bad, wilful, and sinful, and some, that they have no cognitive ability nor possible to reason with. They were putting them in a "human becoming" category. However, the UN have stated the child's worth giving the child a human rights standard in a written form as well as has the European Union.⁶¹ Still the child's rights is a subject that constantly needs to be watched over, guarded and defended as the children themselves cannot do that.

⁵⁸ Johanna Schiratzki, *Vårdnad och vårdnadstvister* 1997, p 56

⁵⁹ Ibid.

⁶⁰ Glenn H. Miller, MD ; *The Journal of the American Academy of Psychiatry and the Law* 30:196-200, 2002, , "The Psychological Best Interest of the Child Is Not the Legal Best Interest", Westlaw 071123

⁶¹http://www.savethechildren.org.nz/new_zealand/071211

3.4.4 Considering to subjective and objective in the Child's Best Interest

The Swedish government recommends⁶² that the subjective perspective in the child's best interest -the child's own perspective of what is in its best interest- is a "detached circumstance which can become a determining factor for the judge in certain cases involving children". The objective in the child's best interest is defined in the phrase; "decision-makers make judgements concerning the child's best interest, based on science and well-tried experience". The objective perspective has been questioned by the government, arguing about the almost impossible task in laying down the child's best interest.⁶³ The Swedish Child's Committee⁶⁴ has in contrast to the government the view that the objective perspective must be considered as well as the subjective view. When revoking a parents right to contact rights with the child, the European Court of Human Rights has laid down that both the subjective and the objective must be observed in consideration to the parent's rights.⁶⁵

Note:

The only actual area of law where the child's best interest is decisive on the result of a litigation, are custody, residence and contact rights disputes in accordance with the Children and Parents Code (and in some issues in accordance with the Name Law (Namnlag 1982:670). Other regulations in the best -interest -of -the -child -spirit on custody in the Swedish rights systems are transmission of custody in CPC section 6 article 5-10, execution of custody and contact rights CPC section 21 article 1-8, recognition and execution of custody judgements article 6-7 the Execution Law (Verkställighet av domar (1935:596)), Social Services Law (Socialtjänstlagen (2001:453)) are all characterized by the best interest of the child.⁶⁶

⁶² The Swedish proposition 1997/1998:7 Vårdnad, boende och umgänge,

⁶³ Ibid, p. 104

⁶⁴ The Swedish Child's Committee, 1996,; Explaining the purpose of the Convention on the Rights of the Child manifested in Swedish domestic laws and practices.

⁶⁵ Johanna Schiratzki, Barnrättens grunder, p 30

⁶⁶ Johanna Schiratzki, Vårdnad och vårdnadstvist 1997, p 62

4 The parental conflict

Parents normally collaborate well when it comes to sharing their children, but far from all do. The parents that engage in litigation often seem to have few limits and many family law proceedings involving issues of *residence* and *contact*⁶⁷ often generates the most acrimonious disputes. Court filings quickly fill with mutual accusations by one parent against the other, including sexual, physical and emotional abuse, brainwashing, parental alienation syndrome, sabotage and manipulation. The fewer enraged custody battles yet influence and sometimes distort the public's perception as to the prevalence of such disputes and adequacy of the court's response.⁶⁸

4.1 The dispute's effects on the child

A young child is like a green plant; its growth to maturity and good character depends on the provision of nourishment without all too much of grown-up problematic infecting their child-hood. For many couples the procedure of the divorce has been described like a typical crisis. This crisis, when not worked on, can create permanent or long-term conflicts between the parents, affecting the children during their entire growth. Various scientific researches has shown that children can experience severe loyalty conflicts when forced to be in between to fighting parents. The child's development of the identity and the self-esteem can decrease if the child is not able to love and appreciate both its parents. A denial of one of the parents is a denial of a part of the child itself.⁶⁹

Children feel bad when their parents do not feel good and a way to help the children is helping the parents.⁷⁰ Gathered research on children with social disturbances and psychic problems show unambiguously that the divorce per se does not create disturbances on a child, but an inferior relation between the parents may influence the child negatively, affect the child profoundly creating psychiatric problems for the young person⁷¹, which argues for a quick custody procedure.

There are no specific family courts in Sweden and, consequently, no legal advisor in court to look for the child's best interest. The lawmaker means that this constitutes a shortage in the system. However the lawmaker has made clear, that establishing close contact with both of the parents is decisive for a child's development⁷². This goal to a close contact seems to be dependent of the parents' abilities to cooperate on all circumstances

⁶⁷ See The Convention of the Rights of the Child.

⁶⁸ Öberg & Öberg, *Skiljas - men inte från barnen*, p 21

⁶⁹ *Ibid.*, p 47

⁷⁰ *Ibid.*, p 20

⁷¹ *Ibid.*, p 21

⁷² The Children and Parents Code, Section 6 Article 2a Para 2

concerning the child. The court always strives for mutual understanding, which is important to try before one of the parents introduces any legal action against the other parent. The parent's municipality have social workers available to assist the parents to reach peaceful solutions through Cooperative Dialogues, free of charge. Litigations concerning the child should be avoided to prevent for the conflict to escalate, because of the harm it does to the child.⁷³

4.2 To avoid a legal custodial dispute

A child custody dispute is a great example of how easy it is for the parents to become and remain enemies, which affects the child over a long period of time, which, subsequently, may create disturbances of the child's psyche in a permanent way.⁷⁴

4.2.1 Parental cooperation after the divorce

To cooperate makes sense for most of the divorced couples with children. It is essential for children to have a close and meaningful relationship with both the parents. Ending up in hard quarrels or non-communication from the parents is bad for the child's development and well-being. A sufficient cooperation demands respect from one parent to the other, having a generous attitude towards each other. Joint custody demands of the parents the willingness to cooperate about all the little things concerning the child.. They should have talked about how the joint responsibility is going to work on a daily life basis and the parents also need to be prepared to keep a continuing dialogue about the child's care, upbringing on a long-term basis, child-minding and its education.⁷⁵

A parent who appreciates and care for its relation with its ex-partner and, not least the child and, always need to be aware of entering a courtroom to dispute and compete about who is the best parent. The nature of the legal court process in custody litigations sooner or later contributes to the dragging of each other through the mud in order to score the "bestparentbattle". The contrary, is the parent who separates (not having experienced violence or abuse from the other parent) and then pays attention to the other parent's caring for the child. The parent who show the child the acceptance of the other parent, establish a friendship and a true and honest cooperation on the joint child custody care. Always trying to refrain from speaking disparaging of the other parent in front of the child, although at the moment feeling furious at the other parent, is to show the child that they care for the child's right to love and appreciate both its parents. No matter

⁷³ The Swedish Proposition 1997/98: p. 36 and p. 80, and Lars Heuman; Specialprocess, utsökning och konkurs, p 76

⁷⁴ Öberg & Öberg, Skiljas men inte från barnen, p 60

⁷⁵ <http://www.socialstyrelsen.se>, internet 071129

the other parent's behaviour (of course, within reasonable limits). There are innumerable examples of bigger and smaller opportunities to turn the negative behaviour pattern into a good one, and to, stop insulting each other.⁷⁶

⁷⁶ Öberg & Öberg, Skiljas men inte från barnen, p 60

5 The court litigation

Custody questions concerns mainly with which parent the child shall reside and which parent will get certain contact rights to the child. The Swedish law proclaims that all of the decisions must be determined in the best interest of the child.^{77 78} A civil rights process concerns any human activity and to go to court to solve custody dispute is still the most common procedure in Sweden. The court process means that the parties trust the rights system to decide the litigation and the decision made through a judgement by the court.⁷⁹ The court cannot stop family conflicts but through offering different forms of dispute resolution the court is able to mitigate the effects. The judge shall not have to solve the parental custody disputes. The custody cases are not going to completely disappear from the courtrooms, despite the decreasing of litigations in relationship to separations and divorces among parents.⁸⁰

5.1 Legal action in custody cases

A litigation in child custody disputes in Sweden starts when a parent, via a representative, sends an application for a summons to the district court. Mostly, the court immediately sends a circulation for comments (a quick request) to the Social Services Committee according to CPC Section 6 Article 19 Para 2, concerning the family situation. The Social Services are obliged to, after 3-5 weeks, reply to the request. Within this time, the social officers have to conduct an investigation and to communicate with both the parents and the children involved. In some cases, a Cooperative Dialogue has already been conducted successfully.⁸¹ Thus, if an agreement between the parents is decided and approved on, the procedure is completed⁸², and there is no need for a further litigation and the parents cannot appeal to a higher court on the contract made, only reconsider and redo the agreement or go to court, which are entitled to change the agreement.

⁷⁷ The Children and Parents Code, Section 6 article 2a para 1

⁷⁸ The Swedish Proposition 1997/98: p. 36 and p. 80, and Lars Heuman; Specialprocess, utsökning och konkurs, p

⁷⁹ Jan Norman; Medling och andra typer av alternativ konfliktlösning, page 41f

⁸⁰ Stiftelsen allmänna Barnhuset och Socialstyrelsen, Att dela ett barn-tvistiga vårdnadsmål p. 12

⁸¹ See more in chapter 6

⁸² According to CPC Section 6 Article 6, The parents can make an own contract between them on the legal child custody, and CPC Section 6 Article 14a Para 2 can parents with legal joint custody make agreements about the residence of the child, and through CPC Section 6 Article 15a Para 3 can parents with legal joint custody make agreements on the contact rights. In Section 6 Article 17a the Social Services are, according to Section 5 Article 3 The Social Services Law (Socialtjänstlag 2001:453) entitled to act independently from the court, and to, contribute to and they have to approve of a written agreement.

If parents have not been able or willing to agree within the investigation procedure, the parents, their representatives and the judge meet at court for a preparatory hearing. Here occurs no evidence and the parties are heard although not under oath. A preliminary decision can sometimes be made on the basic data from the social services' investigation about custody, residence and contact rights. This preparatory hearing is often decisive for the main hearing within the litigation. The judge can, during the preparatory hearing ask the parents to try to agree by themselves or via cooperative dialogues. The judge can also demand from the "Family Court" to make an investigation for custody. When custody and residence is decided for the family it is nearly impossible to change the residence if there are no arguments carrying great weight, like for instance abusive behaviour from one or both of the parents.⁸³

An agreement between the parents concerning certain issues can be made and sometimes the agreement has to be signed by the Social Services Board to become binding and the board conducts a trial. Some issues must be brought before the court but if the parties apply together and are agreed, legal action is no longer needed. This handling by the authorities lacks any parallel in the Swedish civil law system, usually demanding that a defendant must have the opportunity to oppose to the application for summons, even if he or she has declared himself willing to accept the described claim. If one party has initiated a trial since the parties have differing opinions in several questions it is possible to solve the issues together in a mutual agreement. Even in these cases it is possible to go through a simplified trial.⁸⁴

5.1.1 The court's decision

Very long-term/deep conflicts or other reasons of the parents' unwillingness to cooperate do probably lead to legal action in order to reach a decision for the custody of the child. These litigations often endure for a long time, which may further damage the relationship between the parents. The courts determine the litigations by the custody investigation made by two social workers from the Social Services' Board and the courts are often forced to deal with very difficult problems. The court may decide against a parent's will⁸⁵ which contributes to that the parents will have to accept the custody decided even if none of them agree to the decision and even if both of the parents agree that the form of custody will not work out for neither of them in a daily life, rather creating conflicts. The court is not entitled to deal with little daily life matters concerning the child's food, clothing and sleep and the certain parent who has the child at his or her home must decide on these issues themselves⁸⁶. In times there are disadvantages for the court not

⁸³ Lars Heuman; Specialprocess, utsökning och konkurs, p 76

⁸⁴ Ibid., p. 77f

⁸⁵ The Children and Parents Code, Section 6 article 5

⁸⁶ Ibid., Section 6 article 13 para 2

having possibility to influence in certain questions of importance, for instance to what school the child shall go.⁸⁷

Concerning more important questions both custodians need to unify in order to reach cooperative decisions. When the child alternately lives with one parent and then to the other, and one parent may have to move far away to start a new job, there is a breeding ground for a problem to come up. Thus, a decision from the court in the best interest of the child is impossible to obtain, the court lacking power to stop the moving parent in order to facilitate the parental cooperation. Sometimes the above-discussed limitations create a problem and there may be a shortage of the system.⁸⁸

Note: A parent in the custody dispute, realizing that an agreement between the parties gives an opportunity to claim to the court about temporary custody in order to be tactic. The parent granted temporary custody would easier be granted permanent custody. This is a proceeding tactic action, which can harm the child, and the lawyer should not request this action from any parent whom he or she represents. The court should, as far as possible, prevent to decide in conformity with this kind of sabotage. This includes preventing the child from meeting the other parent before the proceedings in court. The judge needs also to look through falsarious like the sudden decrease of a parents income just before the proceedings, in order to seem more poor than he or she is to make the court reach a decision in his or her favour on false grounds.⁸⁹

5.1.2 Legal representatives

Parents who cannot afford a legal representative or insurance (in order to pay for a future lawyer) by his or her own, is entitled to legal aid, partly provided from the community. Under certain conditions, a lawyer, the legal aid authority or the district city court, grants legal aid to the parent. The granted economical support do not cover the whole amount of the dispute's costs, and a parent who has an income of more than 260 000 Skr. is considered having enough money, i.e. cannot receive any legal aid. Hence, the result of the paying for a home insurance is a good economic resource in times of a custody dispute.⁹⁰

5.1.2.1 Good custom by the lawyer

The lawyer works under an oath of 'good custom' and he or she shall not reveal the information of a client and has to remain loyal towards the client.

⁸⁷ Johanna Schiratzki JT 1998-99 p. 1049, and Lars Heuman, Specialprocess, utsökning och konkurs, p 77

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Rättshjälp; att få hjälp i en tvist, <http://www.boende.konsumentverket.se> Collected 080220

The lawyer must decline any commission if he or she are at risk to become disqualified, for instance being related to the opponent.⁹¹

When the parliament in may 2006 decided upon the new custody rules they also decided that every child in a child custody case should be entitled to a legal representative by his or her own. The government was commissioned by the parliament to produce a government proposal about this.⁹²

5.1.3 Appealing to a higher court

The district courts judgements are not always satisfactory and in order to receive permission to the next court is combined with certain obligations. A party who wants to appeal the judgement from the district court shall write an appeal to the district court within three weeks after the judgement.⁹³ The other side can make a countermove within one week when the first time limit has gone out and the court can deny all appeals if they are delayed.⁹⁴ If the parties, in a written contract, have agreed not to appeal, the agreement is valid if conciliation in the certain case is permitted.⁹⁵ Other terms and obstacles for the appeal are to be found in the Proceeding Code Section 50. An appeal to the Supreme Court is regulated in Section 54 of the Code and contents the same conditions for conciliated contracts as for the appeal to the Court of Appeals, the only difference is that the first party has four weeks to make the written appeal and if delayed to the Court of Appeal the court must deny the appeal although whether the appeal has been sent to the Supreme Court, the appeal shall not be rejected.⁹⁶

5.1.4 Confidentiality

5.1.4.1 Secrecy; the court

In Sweden court cases connected to the Children and Parents Code are confidential, on a party's request, and if it is assumable that the information could mean harm or injury by the party or someone else closely related to the party.⁹⁷ There are limits on confidential personal information if the task is submitted to the Government or other authorities, or if the authority is required by law to deliver the information.⁹⁸ Secrecy by law is not applicable if the information will be needed in trial, preliminary investigation, reconsideration of a decision by the authority were the

⁹¹ [http://www.boende.konsumentverket.se Rättshjälp:att få hjälp i en tvist collected 080220](http://www.boende.konsumentverket.se/Rattshjalp:att_fa_hjalp_i_en_tvist_collected_080220)

⁹² [http://www.advokatsamfundet.se collected 080220](http://www.advokatsamfundet.se_collected_080220)

⁹³ The Proceeding Code, Section 50 Article 1

⁹⁴ Ibid., Section 50 Article 2-3

⁹⁵ Ibid., Section 49 Article 2

⁹⁶ Ibid., Section 55 Article 1-2

⁹⁷ The Official Secrets Act Section 9 Article 15

⁹⁸ Ibid Section 14 Article 1

information occurs. There is also a limitation in secrecy if there is any suspicion of a crime committed with a prescribed penalty of one year or more or if the parent has tried to commit a crime with a prescribed penalty for two years or more.⁹⁹

5.1.4.2 Secrecy; the Social Services

The Official Secrets Act requires secrecy from the social services officer according to any information about a the personal conditions if it is not obvious that the information can be revealed without any risk that the individual or someone else closely related can become harmed from the delivery of information.¹⁰⁰ The parties have to be aware of that there are two different secrecy regulations that have differing meaning if the parents and the social worker call the conversation an investigation (cooperative dialogue) or family counselling. When the discussion is defined a cooperative dialogue Section 7 Article 4 Para 1 The Official Secrets Act is applicable and the social officer working with parents are able to share the information from the dialogue with other employees within the municipality, for instance can the information be used in a custody litigation in court, and within health care.¹⁰¹ If the social worker acts under Section 7 Article 4 Para. 2, the social worker cannot reveal any information to anybody else within the social service or else within the community and the information can not be used in a custody litigation. A parent should be able to decide the kind of dialogue he or she wants to be a part of. According to The Social and Welfare Law the social service's employees have a duty to inform the parents about its activities¹⁰², consider the the child's right to speak¹⁰³ and act in the best interest of the child.¹⁰⁴

5.1.4.3 Secrecy obligation by the other parent

The party of a case always has the right to take part of a judgement or decision and all the circumstances involved regarding the case¹⁰⁵ and he or she is, for instance, entitled to take part of a document connected to the case. Though, the information in such a document must not be revealed or delivered if it is of extreme importance to keep the issue confidential. If that is required, the authority has to inform the party about the case in a way that the confidential part of the information remains secret.¹⁰⁶¹⁰⁷ There is no confidentiality obligation for somebody under suspicion of a crime or similarly, revealing information to his or her representative or other in order

⁹⁹ The Official Secrets Act Section 14 Article 2 Para 1-5

¹⁰⁰ Ibid.,Section 7 Article 4 Para 2

¹⁰¹ Ibid.,Section 7 Article 4 Para 6 point 1

¹⁰² The Social and Welfare Law Section 3 Article 1 and Article 4

¹⁰³ Ibid. Section 3 Article 5 Para 2

¹⁰⁴ Ibid. Section 1 Article 2

¹⁰⁵ The Official Secrets Act Section 14 Article 5 Para 2

¹⁰⁶ Ibid.Section 14 Article 5 Para1

¹⁰⁷ The first and the second paragraph is not applicable when there is written differently by regulations in law. The Official Secrets Act Section 14 Article 5 Para3

to get a fair trial. The information can be delivered to the lawyer according to regulations in the Code of Proceedings.¹⁰⁸

¹⁰⁸ The Official Secrets Act Section 14 Article 6

6 Alternatives to litigation

6.1 ADR methods

ADR is a free dispute resolution assisted by a third neutral party with professional experience of dispute resolution and a mediator is appointed and paid by the court. Private mediators do not seem to exist in Sweden. When a party would have the need for an external mediator there would probably only be a coincidental meeting with such a person.¹⁰⁹ The different ADR-techniques below include the parties' free will and own wishes to resolve the conflict in common.

6.1.1 Hybrides between mediation and arbitration

6.1.1.1 High-Low

In between conciliation and arbitration exists this hybrid and the parties make, in the agreeable parts, an agreement of their own, transferring the judgement to an arbitrator in the not-agreeable part of the dispute. An example is a dispute of damages caused by one of the parties, when the damage is possible to reckon but the question about responsibility is unclear. The parties agree on the sum to be paid if the responsibility of the damage can be proved. The result is an ordinary arbitration award.

6.1.1.2 Med-Arb

“Mediationarbitration” is a combination of mediation and arbitration and if the parties cannot agree in a conciliation/understanding the procedure will change into a conciliation process. The favour of this procedure is that the dispute will be definite, while the disadvantage is that the parties, by the knowledge of the mediator/conciliators' ability to turn the material against them, and hence the parties are not as openly cooperative towards the mediator, making the procedure less effective.

6.1.1.3 Advisory Arbitration

This procedure is similar to an ordinary conciliation procedure, only differing in that the result does not bind the parties. Summary Jury Trials belong to this category as well but the parties claim their causes before a jury. In this category there is also Early Neutral Evaluation or Expert Finding; the procedure is conducted in the presence of an outside expert, letting the parties know his or her opinion.¹¹⁰

¹⁰⁹ Annika Rejmer, Ny Juridik 3:95 p 14

¹¹⁰ Ibid.,p. 15

6.1.1.4 Mini-trial

The form of ADR is mostly utilized in business disputes. The proceedings are shorter, with almost all of the moments connected to an ordinary litigation in court.

6.1.1.5 Conciliation

The conciliator activates the parties to find the solutions by themselves and in separate dialogues. The conciliator may give own proposals and act actively in the discussions and as well share his or her opinions in the questions of rights itself. The proposals from the conciliator are non-binding for the parties as he is neutral in the relations with the parties. He or she is entitled to transfer information from one part to the other.

6.1.1.6 Mediation

The mediator acts almost like a “midwife”, leaving the dispute up to the parties, trusting them with their own abilities to resolve the dispute.¹¹¹ Mediation will be further investigated in chapter seven below.

6.1.1.7 Cooperative Dialogues

The Social Services and Welfare Law stipulates that the community shall ensure the parents cooperative dialogues (samarbetssamtal) by expert lead for the purpose to reach unity in issues concerning child custody, residence and contact rights.¹¹² These dialogues are entirely voluntary, although a common alternative to try and overlook the contradictions between the parents. The important thing here is the focus on the child and the child’s best interest during the cooperative dialogues.¹¹³ About 70-80 % of the custody disputes are resolved during the method. The dialogue is similar to mediation in parts. The dialogues are free of charge and assisted by two social workers in the same room as the two parents. The parents are entitled to demand that the professionals are of both sexes.

When the divorce causes disagreements about who will keep the children at their home, the parents can receive help from the municipality to enter into a written agreement about legal custody, residence and contact rights. The agreement emanating from the cooperative dialogues before a social worker is an alternative to the legal custody procedure. The written agreement is approved by the social welfare board (CPC Section 6 Article 17a) and becomes legally binding. If some of the parties do not follow the agreements, for instance impeding the other parent his or her contact rights, enforcement could be demanded for in the district city court. Before the amendment 2006, that was a task for the county administrative court.

¹¹¹ Annika Rejmer, Ny Juridik 3:95 p 17

¹¹² The Social Services and Welfare Law Section 5 article 3 para 1,

¹¹³ Ibid.,Section 1 article 2

The cooperative dialogues are more likely to succeed if there has been no legal action in history between the parents. Thus, the parents can avoid the costs of lawyers, adding a lawyer to the procedure could assist to limit future damages for the parent he or she represents, in a detailed agreement.

The social worker conducting the cooperative dialogue between the parents must try to reconcile the conflicts with the purpose to persuade the parents to agree with each other. The leader of the discussion has in some way a dispute solving function, in order to see to that the cooperative solutions can be accepted in the spirit of the child's best interest. Thus, there are no full rights for the parents to make agreements as they wish. To succeed in the cooperative dialogues, all questions concerning the child's custody must be reflected on, like residence and the other parents contact rights. Questions on alimony or distribution of marital property should not be discussed during the dialogues. The first issue is taken care of by the Social Insurance Office, and the second is too complicated for the social worker to handle. Neither should the question about who is going to stay in the matrimonial home until the distribution will be launched.¹¹⁴ Travel costs for the child concerning trips to and from a parent living far away could be discussed within the dialogue (CPC Section 6 Article 15b) since the issue is closely related to the child custody questions on residence and contact rights. The agreement on the child custody, residence and relation to the other parent can be valid for a limited time, for example if the parents want to try the agreement in reality. Child contact rights are more suitable on a time – limited contract than residence and custody. A time - limited agreement includes lack of safety and consistency and new problems can come up when it is time to make the changes. A running, not limited agreement, accepted by the Social Services Board could be re-agreed with a new content without problems, only that the board must accept the agreement.¹¹⁵

¹¹⁴ Specialprocess, utsökning och konkurs, Lars Heuman, p 81

¹¹⁵ Ibid., p. 83

7 Mediation-ADR

Thousands of years ago the, from the ancient China to the New Testament, mediation has been a mechanism for resolving conflicts. Roots of adherents of certain faiths, like Jews and Quakers have utilized the method for a long time. In family law mediation is relatively new. Researchers in the states have traced mediation in the family law setting to the early 1960's when court personnel began experimenting with informal methods of addressing conflicts between divorcing couples.¹¹⁶

Contemporary ADR or mediation is an internationally growing method, which often contributes to an increased preventive and alternative dispute resolution, both publicly and privately for the future.¹¹⁷ In Europe the ADR is coming strongly, well established in England, Germany and France. In the Northern part of Europe the most interest of the method is to be found in Norway and Denmark. Outside Europe the U.S. and Australia are forerunners. Already in the early seventies Australia legislated mediation as an alternative to court litigation in custody disputes. The costs only, both for the individuals and for the state, should be a good reason for the increase of mediation settlements in Sweden. The normal individual costs on the engagement of an attorney in a litigation, are about 50 000 Skr. or more.

In Sweden the professional mediator connected to the court is still rarely connected to, although the amendment towards extensive mediation of the CPC in 2006, allowing the court to appoint parents to an external mediator in child custody disputes. Causes are, the habit to proceed as before on custody matters since the regulation is not mandatory. Secondly, the courts seem to have the opinion that the social security system is working well enough, directing most parents, a number of 70-80% to cooperate well after the divorce. Mediation is mostly applied to when the process has stopped in court and is not moving on, in other words mainly in the executive child custody cases, i.e. when custody is already a matter of the court and a decision on custody has been taken some time ago.

7.1 Goal and purpose

Alternative dispute resolution (ADR) methods are extra-judicial procedures used for resolving civil or commercial disputes. These usually involve the collaboration of disputing parties in finding a solution to their dispute with the help of a neutral third-party. As there are numerous types of ADR

¹¹⁶ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the Introduction. Westlaw 080226.

¹¹⁷ Jan Norman; Medling och andra typer av alternativ konfliktlösning, p. 12

methods available, they can be applied and adapted to a variety of areas whether civil or commercial in nature.¹¹⁸

In Sweden, mediation in custody disputes in most cases is an option, and not mandatory, to a legal court process. Lots of parents seek help in the “Family Court” which is handled within the Swedish social security system with the purpose to help parents to cooperate through a series of cooperative dialogues (mediation by social services), sometimes forced on by the court. In some cases the court appoints the parents to cooperate through mediation with an experienced external mediator, a self-employed enterpriser, connected to the court.

Mediation is an alternative way of solving a conflict, a process where skilled helpers assists people to communicate, negotiate and in making decisions. Not often does a mediator fit into one particular mediation practise but it is essential that he or she is aware of the differences in order to help referring clients to the right services. Several facts make mediation particularly worth considering. If the disputants are business associates having an ongoing relationship or fear publicity, if they have reasonable communication skills or have access to skilled mediators, or if they have used mediation successfully in the past, or have several issues in dispute, or are experiencing strong emotions and yet have a rational and constructive attitudes.¹¹⁹

7.2 Why and when to use ADR

The alternative dispute resolution is generally used in several fields. Business associates, legal costs, an overhead expense, are sizeable for many companies and predictable for most. ADR is a catch phrase for the various means and methods for resolving disputes outside the court system.¹²⁰

7.2.1 Diagnostic criterias

Just like a physician within the medical profession using checklists when trying to decide what treatment to give a certain person it is necessary in a conflict between parties to list and weigh when it is proper to act in various senses or perhaps not to act at all.¹²¹ All conflicts may be suitable for mediation and many courts send every litigant to mandatory mediation. Skilled mediation is always “appropriate” to reach successful solving.

¹¹⁸ http://ec.europa.eu/justice_home/fsj/civil/dispute/wai/fsj_civil_dispute_en.htm, collected from the Internet 071211

¹¹⁹ John Wade; SvJT 2001 s 57; article; “Mediation –Seven Fundamental Questions”

¹²⁰ Yadon Lawrence; Journal, The business Owner; 2004, volume 28, Issue 6 , Pages 1,13, collected from jur.lu.se 080213

¹²¹ John Wade; SvJT 2001 s 57; article; “Mediation –Seven Fundamental Questions”

Almost all mediation take place after unassisted negotiations have failed. The disputants need skilled help. In Australia over the last 15 years, there has been a cultural change with many lawyers dramatically improved their communication and problem solving skills and they are now able to prevent and settle more conflicts without the assistance of a mediator. The process of mediation demands timing for either negotiation, doing nothing, mediation, yielding, filing in a court, judicial decision, arbitration, or therapy. In parts of Australia and the United States of America, school mediation services have been growing for the last decade. A generation of young adults are now trained as mediators since they have practised resolving conflicts at school. There is a reluctance among lawyers to use mediation as they prefer to continue making money from client service, sometimes over servicing with traditional lawyer behaviours.¹²²

7.2.2 The roll of the mediator

A competent mediator needs to be patience, having a strong emphasis on an easily understandable process, a reluctance to give advise until trust has developed, persistence, emphasis on visuals and whiteboards, reframing and summarizing, listening, preparation, and expanding the presenting “monetary” problems to include a wider range of interests and emotions.

Many judges and arbitrators, often as a post-retirement job, aspire to be mediators as instead engineers, managers, counsellors are able to make the transition more readily.¹²³ It is a rule that a case stands and falls with evidence and that the duty of evidence and a judge or a lawyer in court should be the best mediator. To valuate the facts and judge in the case is just as difficult as to come forth with a decent proposal in the mediation process. It is important to understand the legal process and have the ability and experience to deem about its effects, which demands both experience and intuition from the mediator.¹²⁴ He or she seeks common denominators within the parties, normally not leaving any proposals to the parties. Mediation is built upon psychological methods that active listening creates new thoughts and perspectives, leaving all biases behind, letting the parties create ideas, even if they may seem irrelevant to the case. Secrecy and the open-minded atmosphere is working in the same direction. The mediators are using certain questioning tactics, structuring the dialogue and the goal is an acceptable and realistic solution, based on the parties interests. The parties may have bring their legal representatives, although they normally are active themselves in this kind of procedure. Viewing both the parties whole picture, the mediator is able to realize the common lines and the open doors. In a litigation the parties would have concealed a lots of information in order to be tactic. The mediator finally assist the parties to elucidate the angles, make conclusions and structure new guidelines without giving a proposal, followed by a final contract made by the parties.¹²⁵

¹²² John Wade; SvJT 2001 s 57;article:” Mediation –Seven Fundamental Questions”

¹²³ Ibid. p. 56

¹²⁴ Annika Rejmer; Ny Juridik 3:95 p. 53

¹²⁵ Annika Rejmer, Ny Juridik 3:95 p 17

In the United States and in the state of California, the mediators are court employees, required to have a master's degree in social science and five years post-masters experience working with families and children. In reality, most mediators exceed the minimum requirements and mostly they have licenses in clinical social work or marriage, family and child counselling. The standards for conducting mediation are set in California Rules of Court 5.210.

7.2.3 A method to settle

It is not one person's fault that two argue and mostly it is not only one of the parties being right. The court has to dig out contrasts from this grey zone and only one of the parties leaves as a winner. The mediator can get closer to reality in letting grey remain grey giving both of the parties right in different issues concerning for example child custody. There are plenty of examples about conflicts that have been solved outside the courtroom despite earlier and deep conflicts between parties. On the contrary to legal litigation in court a mediator can sift and spend his or her time to the core issue since a settlement demands plenty of mutual concessions.¹²⁶ The mediator has to adjust him or herself to the parties to whom he or she is committed. For instance one party yielded into a settlement because the mediator spoke friendly to his dear dog. A mediator needs to do his or her homework well, acquire confidential communication from the parties and be ready to listen to what the parties have to say. Hence, the parties have to be present at the time of the mediation. The strive to reach a peaceful solution or not is a battle of consciousness that the parties have to fight all by themselves.¹²⁷ Personal understanding is decisive for a mediator, to obtain this state of position, the mediator has to create a good negotiation atmosphere between the parties and win their confidence not using a fawning attitude. A limiting fact is the factious parties involved in the procedure. Are the custodians suitable for a mediation process? Mentally ill custodians, or persons addicted to drugs or alcohol are not likely to cooperate good enough to be part of a mediation process.¹²⁸ The sessions are lead by a competent and neutral chairperson, taking the active lead although does not interfere as much in the disputed matter. He or she shall have fully confidence by the parties working under a complete confidentiality, if the parties do not agree otherwise. The parties' results are at their own disposal. The parties' real interests can, openly, influence the process and the result more than in court litigation where there is less time for those wishes. Mediation can take place before, during or instead of a court procedure or arbitration. A neutral chairperson in a negotiation contributes to great favours viewing the efficiencies and the costs.

¹²⁶ Annika Rejmer, Ny Juridik 3:95 p. 53

¹²⁷ Ibid. p. 56

¹²⁸ John Wade; SvJT 2001 s 57; article: "Mediation – Seven Fundamental Questions"

Alone with a mediator the party is free to communicate all his or her real wishes, that would be impossible to do in front of the opponent, by strategy causes within the process.¹²⁹ The procedure starts regularly with a contract where the directories for the chosen form are established and the parties bind themselves to fully secrecy. The neutral part is normally not playing the role of a witness about the contents of the procedure if the mediation would fail and a court proceeding is impossible to avoid. The goal is to reach a binding and final conciliation contract between the parties.¹³⁰

7.3 Common law developing ADR

Mediation is more developed in the common law countries than in countries with statutory law. The Common Law system may be more malleable than the statutory law system as the legislatures do act not until a situation is totally intolerable concerning case law studies in a certain case.¹³¹ The common law system derives from the universal consent and immemorial practice of the people. In Old England there were two types of Courts – law and equity. In the law court the Judge applied statutes and as times went on the Judges ‘created’ law through deciding individual disputes or cases, which is common law. Hence, the system of jurisprudence originated in England and was later adopted in the U.S. The common law regulations are based on precedent instead of statutory laws. The body of law including both the unwritten law of England and the statutes passed before the settlement of the United States. In all states except Louisiana (based on the French civil code) the common law was adopted.

7.4 ADR in the United States

Almost thirty years ago the pivotal American Bar Association-sponsored Pound Conference heralded the modern era of alternative dispute resolution ADR in the courts. Currently the methods of ADR are increasingly an accepted tool of the practitioner both within and outside the court system. Attorneys market their services in dispute resolution and not solely in trial, practice and litigation. Pressure to offer litigation alternatives came initially from clients, but now pressure also comes from overwhelmed court systems and legislative mandates. There is currently a rapid expansion of ADR in the United States.¹³²

¹²⁹ Annika Rejmer, *Ny Juridik* 3:95 p 14

¹³⁰ *Ibid.*

¹³¹ E.g. *Ex parte Holt*, 19 USPQ2d 1211 (Bd. Patent App. & Interf. 1991) –explaining the hierarchy of precedent binding on tribunals of the U.S. Patent Office <http://www.scribd.com/doc/2090868/Prashan-Tank-Common-Law->

¹³² Ettie Ward, *Mandatory Court-Annexed alternative dispute resolution in the United States Federal Courts: Panacea or Pandemic?*, *St John’s Law Review*; Winter, 2007; 81, ½; ABI/Inform Global, collected on Artikelpost Elin, RWI Website

The standards, when deciding custody are in the best interest of the child and each state has specific guidelines. Though, the court takes into consideration what parents want, what the child wants, if old or mature enough to decide. The court considers which parent has been the primary caretaker, the parenting abilities of each parent and whether there is a history of abuse. There are a host of issues involved in determining the custody case, as for parental nurturing, parental alienation, bonding, and parental movement and grandparents and their rights when they have been the primary caretakers of the child.¹³³

Many states within the United States currently require that parties in a contested divorce attempt mediation; divorcing couples work with a specially trained neutral third party in an attempt to resolve their disagreements. Couples determining custody arrangements through mediation can include a provision in their final divorce agreement making it mandatory to return first to the mediation process to resolve future residence and contact disputes.

Whether the parties show themselves unable to reach an agreement regarding custody, most courts will order a custody evaluation prior to trial. In the early days of custody mediation the mediator was also the evaluator who made recommendations to the court on how to resolve custody disputes when the mediation failed to result in agreement.¹³⁴ Today there is a court-appointed mental health professional such as a psychologist or a social worker usually who does the custody evaluation, including interviews with both parents and the children; observation of the children; conversation with teachers; and possible psychological testing of both parents and children. It can take four or twelve weeks to conclude a custody evaluation. When ordered, the evaluation, the court usually will not enter a final custody determination until the evaluation has been completed.

Trial; every state has statutes and procedures for the legal resolution of disputed child custody. While specific standards differ from state to state most courts decide contested custody cases based upon a determination of what arrangement is in the best interest of the child. Considering includes review of the child's age and attachment to the parent who has been the primary caretaker; parental physical and mental health; any history of domestic violence; the child's wishes, depending upon the age of the child and motivation for the preference.

Modifications; once custody had been established through arrangement or court order, parents may seek court involvement to modify but the most show a substantial change in the circumstances. If within two years of the original custody determination, some states will only consider it if the child is endangered by the custody arrangement. Additionally, states that follow

¹³³ Child Custody Information Center, Illinois, The United States. Internet 080128

¹³⁴ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the Introduction. Westlaw 080226.

the Uniform Child Custody Act will only consider requests for modification if they occur in the state in which a child has an established residence, in order to prevent forum shopping and custody –motivated child removals.

7.4.1 Secrecy

In Los Angeles County for instance, mediation is confidential, and information told within the session, except for the agreements that is sent over to the court in the end, is secret. Though, if there are child abuse allegations or suspected child abuse, if a party does not appear to the mediation session or if the parties cannot agree and if a party threatens to harm himself or others, the mediator is required to report this to the court.¹³⁵

7.5 Mandatory mediation

In the seventies when no-fault divorces replaced fault-based divorces proponents for mediation convinced courts and legislatures of the benefits of mediation in custody disputes. In 1981, states in the United States began to respond with statutes requiring parties of custody disputes to mediate before bringing their custody disputes to litigation. Feminist scholars warned that the mandatory mediation would lead to an increase of joint physical custody, as the mediators would view this arrangement easier to reach.

7.5.1 Mandatory mediation in California

Mandatory mediation in California has persisted for over two decades and as a no-fault divorce replaced fault-based divorce in the late 1970's, proponents of alternative dispute resolution convinced courts and legislatures that mediation promised significant benefits for family law, especially for disputes about child custody. In 1981, states began to respond with statutes requiring the parties to mediate before bringing their custody disputes to the courtroom.¹³⁶ The American Law Institute's Principles of the Law of Family Dissolution, for example encourage the parties to reach their own "parenting plans"¹³⁷

¹³⁵ Stanley Mosk Courthouse (Central) Los Angeles.
www.familycourtservicesmediation.com

¹³⁶ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the introduction, collected westlaw 080220

¹³⁷ Ibid.,Part II D

Massachusetts and Connecticut became the first states to mandate custody mediation followed by California in 1981.¹³⁸ A custody dispute the Family Code of California requires that if there is a contested issue regarding children, the parties have to attempt to resolve their dispute through mediation before the court makes orders in a litigated hearing.¹³⁹ That means that the mediation is mandatory but the parties are not forced to reach an agreement, they need only to try hard.

7.5.1.1 Los Angeles; California mandatory mediation

Through arrangements made by the County of Los Angeles and the Stanley Mosk Courthouse (Central) in Los Angeles, parents in a child custody dispute at first need an appointment after having completed and signed an information form, in which the mediator, who is a mental health professional, reviews to obtain basic information of the family. Subsequently, the mediator meets with the parties individually and/or together. When domestic violence is involved in the family there are individual sessions available. The mediator asks questions to the development of the understanding of the family history. The parties and the professional determine together the issues needed to be resolved and, when safe and appropriate, the mediator will assist the parties to temporarily set aside their adult disputes and focus on developing arrangements that are in the best interest of the children. The parties consider all the options in order to resolve all, some or none of these issues. Mediators never ask a child with whom of the parents he or she wants to live, although sometimes the interviewing of the child by the skilled professional can assist parents in developing their plans. The parties' attorneys may participate, which may help the parties reaching a appropriate parenting plan. If both the parties have attorneys, both the attorneys have to be present in order for either attorney to participate in the mediation process. Sometimes they are available by telephone.¹⁴⁰

The agreement is a detailed description of when the children will be with each parent. Once the parents and the mediator sign an agreement, it is signed by a judicial officer and becomes a court order. Sometimes the custody issues are all resolved by mediation, sometimes only a part of them. The mediator encourages the parties to resolve as many issues as possible to carry out and drafts of agreements has to be accepted by both the parents. The parties may return at a future date to discuss unresolved issues or modify agreements. Further, the draft must be in the best interest of the children. An agreement may be changed or cancelled if a party wishes to. The request of a cancelled agreement must be in writing and received by the Family Court Services Mediation Office before the next court hearing or

¹³⁸Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the introduction, collected westlaw 080220 end of part I

¹³⁹ www.leginfo.ca.gov, Family Code of California § 3170

¹⁴⁰ Ibid.

within 10 days of signing the agreement, whichever occurs first and the parties may make a new appointment and reconsider the options. If it is impossible to reach an understanding, the mediator notifies the court that the parents have participated unable to obtain an agreement.¹⁴¹

7.5.2 Critics of the mandatory mediation

Because of the critics, relatively few states passed statutes requiring mediation of custody disputes. The study analyses custody outcomes in an entire population North Carolina 2002. Not satisfied with how the custody disputes are resolved in United States and the elusive goal to serve is “the best interest of the child”¹⁴²

Opponents to mandatory mediation in United States research studies.

Mothers would not dare to claim custody as primary physical custody caretakers; mediators would push towards joint custody and the mothers would be the weaker party and the loser of what has been earlier primary care taking.¹⁴³ In the study mothers did not routinely agree to joint physical custody and neither did this custody form emerge as a norm in either mediation or litigation¹⁴⁴

A fear that mandatory mediation created artificial incentives for parties, to agree to joint physical custody or the significant sharing of parenting of both parents, was another cause of critics. Joint custody should not be granted parents in high conflict relations making it difficult to coordinate the child’s living arrangements in separate households. Most dramatically, domestic violence may make joint custody not only ill advised but dangerous, continued physical abuse. When mandatory mediation is conducted in parental relations with a history of violence (sometimes, the victim cannot express the factor of violence as he or she has been a victim for a long time and sometimes the mediator is neglecting the fact of violence) the mediator shall be prepared and have taken measures to escape with the victim or to have access to guards helping in a threatening situation, that should be a guarantee for the victim.¹⁴⁵ The law should not force spouses who suffered abuse at home to mediate custody disputes with their abusers.¹⁴⁶ Some critics feared that lawyers would have no role in the future custody

¹⁴¹ www.leginfo.ca.gov, Family Code of California § 3170

¹⁴² Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the introduction. Westlaw 080216

¹⁴³ Ibid.

¹⁴⁴ Ibid. End of introduction

¹⁴⁵ Lauri Boxer-Macomber, Revisiting the impact of California’s mandatory custody mediation program on victims of domestic violence through a feminist positionality lens, Saint Thomas Law Review by Westlaw 080220

¹⁴⁶ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the Introduction. Westlaw 080226.

mediations was not much of a realistic fear, as many mediators encourage the parties to engage lawyers before the agreement is executed.¹⁴⁷

Courts could in most counties within the states, require mediators to make recommendations and everything what happened in the mediation formed basis for the mediators recommendation, which the judge usually followed. Parents with any knowledge of human behaviour could understand that if the mediator has suggested to the parties what custody arrangement was the best, that suggestion would appear in the mediator's recommendation to the court¹⁴⁸

A conclusion of the main study was that joint legal custody has become a norm in the American society. Further, states keeping or adopting mandatory mediation should protect the participant's freedom to walk away from it, especially if there is a risk of abuse from a violent party. The study emphasizes the importance of a close and continuous study of the process of mandatory mediation, to develop and make necessary changes within the routine. A study from 2000 declares that lawyers, on contrary to what psychologists and sociologists had proclaimed, positively affect custody mediation and should not be left out, and they are often even suitable as a mediator him- or herself. To remain vigilant about the qualifications of mediators is an ongoing movement and necessary to secure the quality of the mandatory mediation sessions.¹⁴⁹

An attempted mediation appears through differing studies to increase the likelihood that the parties will resolve the dispute by agreement. With no attempt at mediation first custody resolution events occurred by court order in 50% of the cases, and only 38,2 % of cases where the parents attempted to mediate. Finally, the study encloses with words that many researchers in the field could agree on, namely that conflict at the time of the separation is painful although not by far as important as the long-term post-separation relationship of the parents, speaking for an early action in custody cases, even if against the parties' willingness.

¹⁴⁷ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the Introduction. Westlaw 080226.

¹⁴⁸ Ibid. Part III;end

¹⁴⁹ Ibid. Conclusion.

8 Developing mediation –back to the future

For family law in the developed part of the world, ADR is a relatively new occurrence. As parties were coming to court filing their lawsuits, clerks and other officers conducted informal sessions aiming on reducing the conflict between the fighting parents and these efforts started already in the late 1960's in the United States. In Sweden the same movement started almost 30 years later, although the efforts to assist parents in waiting rooms to the courts probably occurred much earlier. The American system seem to head towards family courts although parties will still need counselling within the frame of the courts. The authors of the main research article proposes for law and lawyers to play a more collaborative role than there has been in the past, "continuing to bring the substantive law to bear on the resolving of the disputes". A parenting coordinator, a court official, helping the parties resolve conflicts is already a reality in parts of the United States. Such a coordinator may decide certain issues pending the court review.¹⁵⁰ Though, the activity of a family court and lawyers and coordinators are highly costly denominators, which convey the impression that mediators will remain important actors within the American system.¹⁵¹

In 1998 mediation in custody cases was introduced in the Swedish law system. The initiative at first came from England, and was introduced within the family law system to assist the court in execution of child custody cases whereby the court had already reached a decision for the custody matters. In July 2006 the amendments in the Children and Parents Code opened up for the occurrence of ordering a mediator to assist parents that had yet not reached an understanding or agreement.

Internationally, an Alternative Dispute Resolution (ADR) protocol is to be adopted as part of the Hague Convention on the Civil Aspects of International Child Abduction to facilitate the amicable resolution of cross-border child custody cases. The treaty examines mediation and arbitration systems employed in the United States, Europe, and Australia and how these can be transposed on the international scale. A healthy ADR mechanism would alleviate the unfortunate conditions of children trapped in long and destructive international child custody battles.¹⁵²

¹⁵⁰ Suzanne Reynolds, Catherine T. Harris, Ralph A. Peeples; Back to the future: an empirical study of child custody outcomes; North Carolina Law Review, September, the Introduction. Westlaw 080226.Conclusion

¹⁵¹ Ibid.

¹⁵² Ministry of Justice in Sweden www.regeringskansliet.se, the internet 071012.

9 Final discussion

The child

A child custody dispute may be a horrifying episode in life for many divorcing couples, and for a child with much less of life experience, it may be unbearable. Parents, previously attached to family life, seemingly existing and working together, supplying their children with basic security and needs, during a custody dispute act like enemies, suddenly dispute about who is the best caretaker, dragging each other through the mud. Custodians in a custody dispute often seem to forget about the child standing in the middle of the dispute, suffering from inner loyalty conflicts, affecting the daily life. Parents in this kind of crisis of their lives seem not to be aware of the consequences of their child abuse. Various research show that children feel responsible for the adults' divorce as well as for the custody battles between the parents. The long-term custody dispute seem to affect the child's psyche in a permanent way. If a child denies one parent, that is also a denial of the child itself and the lawmaker has made clear that establishing a close contact with both the parents is decisive for a normal child development. Although, the goal to a close contact between the parents seems to be dependent of the parents' abilities to cooperate on all circumstances concerning the child. The authorities need to step in and assist parents at an early stage of the child custody dispute, in order to fulfil the goals and standards of the best interests of the child, even if the procedure has to be legislated with clear obligations adressed to the parents.

Court litigation in custody cases

There are no specific family courts in Sweden facilitating the child's situation, limiting the custody procedure on the aspect of time and pain. Court litigations concerning the child sometimes endure for years and should be avoided. During the litigation the conflict often escalate, which consequently harm the child. The courts' rare application to the mediation provision at an early of the child custody dispute may be a failure for the legislatures. Courts often seem to ignore the new mediation rule, "resolving" the dispute through the litigation procedure, perhaps assisted with a minor mediating service by the judge him or herself. Judges have expressed the wish of a mandatory mediation rule in Sweden in order to avoid the most dreadful conflict when the custody case has shown up in court. Mandatory mediation thus, may be of great significance for the best interest of the courts (and the child) at an early stage of the child custody dispute.

Cooperative dialogues and family counselling

The Social Securities within the communities are available for parents, conducting cooperative dialogues within the family counselling in the "Family Court". Still there are many children in Sweden every year, that suffer because of the parents' incapability of cooperation. The Social

Committee's are responsible of assisting parents to a decision of temporary custody and both the Committees' possibilities and duties to involve have increased by the amendments made in 2006, which means that the Committee, if appropriate, shall hear the parents and the children. Many child custody disputes are resolved at the social service's office with social workers educated to assist the family. Despite the help from the authorities mentioned, about 6000 children every year experience a child custody litigation. The cooperative dialogues are meant to be child custody investigations with the goal to cooperate towards a written agreement and, at the same time, offering a therapeutic function. Also, the social services have the right and the duty to inform among others the court, about the investigation made. This procedure could bear an inherited risk of partiality and a possible assessment to one of the parents. Hence, information and any biases from the social worker may be transferred to the court with a custody judgement resting on that personal opinion. According to these Swedish secrecy rules, parents may hesitate taking part in cooperative dialogues, being afraid to be judged on unfounded allegations or biases.

Mediation

Mediation is built upon psychological methods whereby active listening creates new thoughts and perspectives, leaving all biases behind, letting the parties create ideas, even if they may seem irrelevant to the case. Secrecy and the open-minded atmosphere are working in the same direction. The mediators are using certain questioning tactics, structuring the dialogue and the goal is an acceptable and realistic solution, based on the parties' interests. Studies prove that couples in a dispute, except for parents with a history of violence between themselves or similarly, are often in favour of making agreements and contracts on custody issues when assisted by a professional mediator. A mediator works under almost complete confidentiality, having dialogues with both of the parents together alternately with one of the parents to receive all available information to assist parents create a fair agreement.

Mandatory mediation

Experiences in the Swedish doctrine indicate that mandating mediation for parents in child custody disputes should restrain parents' abilities to cooperate. According to the American research in the study, mandatory mediation in general should have all possibilities to be successful, perhaps with the exception for when one of the parents are threatening or scaring the other one or if there is a history of violence between the parties. The reason that mediation should become mandatory in Sweden is the child's obvious need to refrain from being exposed to confused and angry or hateful parents. The community should, via the authorities, consistently remind the parents of the child perspective of the conflict, not giving the disputing parties any opportunity whatsoever to forget about the child's aspects of the custody issue. Further, the purpose to force parents to try to cooperate may interrupt the escalating negative spiral and the risk that parents will remain enemies on the expense of the child's best interest. If mediation would become mandatory in Sweden, all separated couples with children *should at least*

have the obligation to try hard to cooperate, either in cooperative dialogues through the “Family Courts” or via the court connected mediators. In California the law requires that couples submit themselves to mandatory mediation for several sessions in order to start cooperate. If parents do not try fully to cooperate, they lose their right to take the custody dispute into a courtroom for child custody litigation. Some kind of penalty or consequence for not contributing to the parental cooperation is of importance, with the exception for a family with a history of violence or similarly.

The comparison Sweden-the United States

For Sweden, as for the United States, the norm for child custody is currently set at joint legal custody, on purpose to make parents cooperate better. In a Swedish perspective, mandatory mediation in the best interest of the child, as for the American study above, is as well representative for the Swedish people. According to many similarities in the both societies made in the American research and other experiences from the Swedish doctrines, the study in this paper may in the main parts, represent Sweden as well.

Conclusion

International studies and Swedish domestic research of the best interest of the child standard claim that parents should reach an understanding at an early stage of the child custody process. A child’s childhood infected by parental disagreements may risk the individual’s self-confidence severely, possibly developing psychiatric illness for the future. Judges have complained to the fact that the uttermost torn up family cases end up in court litigations, mostly lacking no first serious attempt of cooperation. Despite this, courts seem not to have adopted their lawful rights to connect parents with a court mediator making it clear that a law amendment to mandatory mediation could improve the efficiency of the rule. Many children suffer from parents’ divorces lacking power to affect or change the course of event. Hence, society has a far-reaching responsibility to make changes in the best interest of the child. The characterizing intrinsic weak position of a child is an international ongoing matter and although the United States I one of few states not implemented the most important international child standards in the Convention of the Child, the state presents research as developed as the Swedish doctrine in how to care about our children. The study shows that attitudes towards child custody matters in the United States do not seem to diverge much from the Swedish. Apart from the development of mediation, the American system seem to reach almost the same conclusions as the Swedish, facing the best interest of the child standards, although the standards may differ throughout the states. The matter of time is perhaps the most important denominator in a custody dispute in my opinion. Every minute in a child’s life is precious and a long-term dispute is of course devastating for the young human being. To show respect to the growing generation, the community should never fear costs or efforts in measures favouring the best interest of the child. A step towards mandatory mediation may be a courageous step in family law as there will be critics. Critics though, are valuable and decisive for the development of

parental cooperation and mediation in trying to find the core of the most important part of the problem of children feeling bad because of child custody matters. It is important for a mediator to understand the legal process and therefore being able to deem about its effects. The American main study in this work shows that the legal representatives may be as good as a mediators compared to mediators from other professions, such as the social workers. Specific family courts, with a legal advisor in court to look for the child's best interest may develop in Sweden as well as in the United States. The steps towards every child's right to experience a childhood based on understanding from the adult world hopefully develop further and better the sooner than than the later.

Bibliography

International Law

Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally

European Convention of Human Rights

European Social Charter

International Covenant of Civil and Political Rights

International Covenant of Economic Social and Cultural Rights

United Nations Convention of the Rights of the Child

Domestic Law

Children and Parents Code (Föräldrabalken (1949:381))

Execution Law (Verkställighet av domar (1935:596))

Name Law (Namnlagen (1982:670))

Official Secrets Act (SekreSSLagen (1980:100))

Social Services Law (Socialtjänstlagen (2001:453))

Official Publications

The Swedish Proposition 1997/1998:7 Vårdnad, boende och umgänge.

The Swedish Proposition 2005/06:99, Nya vårdnadsregler.

Internet articles collected from Westlaw Homepage

Boxer-Macomber, Lauri	Journal; Saint Thomas Law Review
Flannery, Michael T.	Journal; SMU Law Review, Spring 2004.
Lawrence, Yadon	Journal; The business Owner; 2004, volume 28, Issue 6
Lowenstein, L.F.	Journal; Justice of the Peace, Vol. 166, 2000
Miller, Glenn.H. MD	The Journal of the American Academy of Psychiatry and the Law, 30
Moscatti Hawkes, Lisa	Cornell International Law Journal Winter 1988;
Rejmer, Annika	Journal; Ny Juridik 3:95
Reynolds, Suzanne Harris, Catherine T., Peeples, Ralph A.	Journal; North Carolina Law Review, September
Rogerson, Carol,	Canadian Journal of Family Law
Schiratzki, Johanna	Journal; Ny Juridik 3:06
Schiratzki, Johanna	Journal; Juridisk Tidskrift 1998-99
Wade, John	Journal; Svensk Jurist Tidning 2001
Ward, Ettie	Saint John's Law Review; Winter, 2007; 81, ½; ABI/Inform Global

Public Information

<http://www.advokatsamfundet.se>

<http://www.boende.konsumentverket.se> Rättshjälp: att få hjälp i en tvist

http://ec.europa.eu/justice_home/fsj/civil/dispute/wai/fsj_civil_dispute_en.htm

<http://www.familycourtservicemediation.com> : Stanley Mosk Courthouse (Central) Los Angeles.

<http://www.leginfo.ca.gov>: Family Code of California

<http://www.regeringskansliet.se> Ministry of Justice in Sweden

The Swedish Child's Committee, 1996,; explaining the purpose of the Convention on the Rights of the Child manifested in Swedish domestic laws and practices.

http://www.savethechildren.org.nz/new_zealand/nz_programme/section_59.html

<http://www.socialstyrelsen.se>

Other Internet Sources

<http://www.answers.com/topic/parens-patriae?cat=biz-fin>

<http://peacemakers.ca.etherwork.net/bulletins/?p=1358>

<http://www.scribd.com/doc/2090868/Prashan-Tank-Common-Law->

Literature

- | | |
|---|--|
| Harris-Short, Sonia and Miles, Joanna | Family Law Texts cases and materials, |
| Heuman, Lars | Specialprocess, utsökning och konkurs, 2000, 5th edition |
| Norman, Jan | Medling och andra typer av konfliktlösning, 1999 |
| Rejmer, Annika | Vårdnadstvister, 2003 |
| Schiratzki, Johanna | Vårdnad och vårdnadstvister, 1997 |
| Schiratzki, Johanna | Barnrättens grunder, 2002 |
| Stiftelsen Allmänna Barnhuset och Socialstyrelsen | Att dela ett barn-tvistiga vårdnads mål, 1998 |
| Weeks, Dudley. Ph.D. Los Angeles | The Eight Essential Steps to Conflict Resolution, 1994 |
| Öberg & Öberg | Skiljas -men inte från barnen, 2004 |