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Out-of-Court Custody Dispute Resolution in Sweden—A Journey Without Destination

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7.1 Introduction

The Swedish system for the adjudication of custody disputes[1] was introduced at the beginning of the twentieth century and reflected the views and values of those times regarding children, parenthood, and family. When parents divorced, which at the time was rare, custody was usually granted to the mother.[2] Since then, divorce rates in Sweden have increased dramatically; both the values and understanding of parenthood, parental responsibility, and children have changed. Nowadays, custody is determined in accordance with the child's best interests, which

[1] Swedish law still differentiates between custody—which concerns the child's personal matters—and guardianship—which concerns economic matters. Usually, a child's parents are both custodians and guardians. Throughout this chapter, the term "custody dispute" is used. The dispute between parents could concern custody but also residence and contact.

[2] The child's father retained guardianship. Starting in 1949, mothers could also become guardians.

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A. Kaldal et al. (eds.), *Children in Custody Disputes*,
https://doi.org/10.1007/978-3-031-46301-3_7

in a Swedish context, is often defined as having two parents with joint parental responsibility. Joint custody for separated parents is the main rule and can even be decided against the will of both parents if it is considered the best option for the child.[3]

Despite profound changes in the societal view of parenthood, children, and custody, the rules governing court procedure concerning custody disputes have undergone only limited reforms. Instead, alternative methods for dispute resolution have been established to facilitate the fulfilment of the best interests of the child and to keep the parents out of court. This started with the introduction of cooperation talks (*samarbetssamtal*) in the 1970s. Nevertheless, evidence exists that shows cooperation talks have not been able to provide solutions in custody disputes to the desired extent, nor have subsequent reforms proven adequate. As will be discussed, both in and out-of-court alternatives display a number of shortcomings in terms of their procedural organization. It is clear that the current system for resolving custody disputes in Sweden is not the best tool for the task.

This statement prompts several questions: What are the shortcomings? Why has the system not been developed to address them? Are there alternatives to the existing legal framework? These questions will be addressed from a development perspective, through which some of the key historical events and legal amendments will be identified. While the analysis focuses on Swedish law, it also deals with issues and challenges that are common to many countries and legal systems.[4]

[3] Swedish Government Bill 2020/21:150 Ett stärkt barnrättsperspektiv i vårdnadstvister [A Strengthened Child Rights Perspective in Custody Disputes].

[4] In her contribution to the present anthology, Anna Nylund, 'Scandinavian Family Mediation: Towards a System of Differentiated Services?' in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023), Anna Nylund offers a general overview of the Scandinavian systems for custody-dispute resolution.

7.2 Joint Custody as a Way to Keep Parents Out of Court

It is well documented that, in many cases, the conflicts underlying custody disputes and the associated court proceedings are detrimental to the children involved.[5] Custody disputes are also matters that are inherently difficult for courts to solve. Hence, for the past 50 years, legal development in Sweden concerning the adjudication of custody disputes has focused on how to keep divorcing parents out of the courts by reaching out-of-court agreements on custody-related issues.

One way to achieve this has been continuous reform of the material rules on custody, in order to underline the importance of cooperation between parents after separation, while at the same time emphasizing that the best interests of the child should always come first. Joint custody for parents not living together has been brought forward as a significant step in that direction.

When the first rules on custody were introduced in 1920, it was considered self-evident that only the parent living with the child should have the right to make decisions on the child's behalf and hence should be the sole custodian. As divorce rates increased mid-century, many children stayed with their mothers and often lost contact with their fathers. The only way the fathers could become custodians was through a court decision. In 1976, it became possible for separated (and unmarried cohabiting) parents to agree on joint custody. Joint custody thus became a way to prevent conflicts. The preparatory work states that in many cases, one parent could accept that the other parent would provide physical care for the child if he (*sic*) could remain custodian together with the other parent.[6] The result of the reform of 1976 was that children whose parents had joint custody after separation had better contact with

[5] See for example, Anna Norlén, 'Children's Health Matters in Custody Conflicts—What do we know?'; Maria Eriksson, 'Children's Participation and Perspectives in Family Disputes', all in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023).

[6] Swedish Government Bill 1975/76:170 Faderskap och vårdnad [Paternity and Custody] 143; The same reasoning is found in subsequent government bills, for example, Swedish Government Bill 1990/91:8 om vårdnad och umgänge [on Custody and Contact] 32; Swedish Government Bill 1997/98:7 Vårdnad, boende och umgänge [Custody, Residence and Contact] 51.

both parents than children with parents where one had sole custody.[7] Thus, joint custody became a universal solution to several problems—a solution that was also applied in cases where the parents did not agree.

Joint custody for parents living apart, when first introduced, required the consent of both parents.[8] Over the years, this has changed; today the court can order joint custody against the will of both parents if this solution is considered to be in the best interests of the child.[9] However, before deciding on custody, the court should pay particular attention to the parents' ability to put the child's best interests first and take shared responsibility in matters concerning the child.[10] Parents who have joint custody have the same rights and responsibilities to make decisions about the child's personal matters and should come to a mutual decision. The parent living with the child does not have any formal right to decide alone. However, in practice, a parent with whom a child resides must make independent decisions without the consent of the other parent. This is a source of conflict between many parents and results in custody disputes; when parents have joint custody, one of them may want sole custody to be able to make child-related decisions alone, and a parent with no custody may want joint custody to gain the right to participate in the decision-making.[11] There are no possibilities of conflict resolution within joint custody, apart from decisions about with whom the child should reside and time spent with the non-residential parent. Suggestions to give the resident parent certain rights to decide as a way to

[7] Ministry memorandum 1989:52 Vårdnad och umgänge [Custody and Contact] 48–49.

[8] Swedish Government Bill 1975/76:170 Faderskap och vårdnad (n 6); Swedish Government Bill 1981/82:168 om vårdnad och umgänge m.m. [on Custody and Contact etc.], joint custody is the main rule for married parents after divorce, unless one parent is opposed to joint custody; Swedish Government Bill 1990/91:8 om vårdnad och umgänge (n 6), joint custody even if one parent would prefer sole custody; Government Bill 1997/98:7 Vårdnad, boende och umgänge (n 6), joint custody even if one parent is opposed.

[9] Swedish Government Bill 2020/21:150 Ett stärkt barnrättsperspektiv i vårdnadstvister (n 3) 73–76.

[10] Swedish Government Bill 2020/21:150 Ett stärkt barnrättsperspektiv i vårdnadstvister (n 3) 70–73. Before 1 July 2021, the law stated that the court should pay particular attention to the parents' ability to cooperate, Swedish Government Bill 2005/06:99 Nya vårdnadsregler [New custody rules]. The practical effect of this was that in court, parents focused on the other parent's inability to cooperate.

[11] Ann-Sofie Bergman and Annika Rejmer, 'Parents in Child Custody Disputes: Why are they Disputing?' (2017) 14(2–3) *Journal of Child Custody* 134–150, 140, 141.

prevent conflicts have been rejected, based on the argument that doing so would undermine the very idea behind joint custody.[12] From the argumentation, a view emerges of the family, in some sense, as a protected zone, populated by mature, rational individuals who can resolve conflicts on their own—at least if forced to do so. If the parents still cannot reach a solution, the only recourse is for the court to give one parent sole custody. However, the courts are reluctant to do so, with reference to joint custody being in the best interests of the child. The result is repeated court proceedings concerning custody.[13]

7.3 A Growing Number of Custody Disputes in Sweden

In Sweden, the parents of some 40,000–45,000 children separate every year.[14] According to available statistics, most parents agree on custody, residence, and contact after a separation, sometimes with the assistance of the social services (*socialtjänsten*) and cooperation talks. Nevertheless, in some cases parents will not reach a consensus, and they need help from others—and as a last resort, the court—to reach a solution.

In 2021, the parents of 20,931 children in the age group 0–17 years participated in cooperation talks organized by the social services.[15] Approximately, three out of ten children whose parents separate, are the objects of the parents' disputes in court about custody or custody-related matters. In 2021, at least 12,612 children had parents involved in court proceedings since the social services gave courts retrieval orders for these

[12] Swedish Government Official Report 1995:79 Vårdnad, boende och umgänge [Custody, Residence and Contact] 87–88; Swedish Government Bill 1997/98:7 Vårdnad, boende och umgänge (n 6) 53.

[13] Swedish Government Official Report 2017:6 Se barnet! [See the Child!] 149–151.

[14] This only includes children who are living with their legal parents. If separation between an original parent and a stepparent were to be included in the statistics, it is estimated that around 60,000 children experience a separation between the adults in the family. In the latter case, however, the separation will not result in a custody dispute.

[15] Family Law and Parental Support Authority, Statistics on Family Law 2021. This corresponds to 95 children per 10,000 in this age group, which is the same as 2020. Statistics for the last five-year period show that the number of children per 10,000 has decreased in the last two years, www.mfof.se accessed 13 January 2023.

children.[16] The same year, 6,973 children were subject to social-services investigations regarding custody, residence, or contact; these statistics indicate a high conflict level between parents.[17]

It has been estimated that from 2006 to 2015, the number of court custody disputes in Sweden increased by almost 50%.[18] There are several possible explanations for this dramatic increase. Since 2008, the Court of Appeal must grant leave to appeal,[19] and this might have made repeat proceedings more common.[20] An increased incidence of cases with a foreign connection—where one parent is in Sweden and the other is outside the country—is pointed out as another likely reason for the increase in cases.[21] In 2006, a new provision was introduced in the Children and Parent Code. It stated that, when deciding on custody matters, the court should pay particular attention to the parents' ability to cooperate. In practice, this made it easier for one parent to obtain sole custody by demonstrating the other parent's difficulties in cooperating, thus increasing the number of court cases. More equal parenting is another explanation, meaning that fathers are now more interested in taking on their parental role, implying of course that mothers are less inclined to share custody with fathers. It is also believed that a greater propensity for conflict among parents has contributed to the increased number of cases.

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[16] Family Law and Parental Support Authority, Statistics on Family Law 2021. This corresponds with 57 children per 10,000 in this age group.

[17] Family Law and Parental Support Authority, Statistics on Family Law 2021, https://www.mfof.se/download/18.e9eaab18120d9a7fa298e5/1655443358465/Statistics%20on%20family%20law%202021_Fact%20sheet.pdf accessed 10 May 2023.

[18] Swedish Government Official Report 2017:6 Se barnet! (n 13) 135–136.

[19] Swedish Government Bill 2007/08:139 En modernare rättegång—några ytterligare frågor [A more modern trial—some additional questions].

[20] Decisions concerning custody-related matters never become *res judicata* because a decision must always be in the best interests of a child; hence, it must be continually possible to adjust to the child's current situation. The 2014 Custody Inquiry found that around 40% of parties had previously been involved in a dispute concerning children, Swedish Government Official Report 2017:6 (n 14) 44.

[21] When a sole parent arrives in Sweden with children and specifies his or her civil status as married, joint custody is registered for the parents. Because of the joint right to decide, it becomes difficult for the parent living with the children in Sweden to take formal decisions concerning the children without the consent of the other. If the whereabouts of the other parent are unknown, the only way to resolve this situation is for the parent in Sweden to apply to the court for sole custody.

Finally, another explanation for the increase in court custody cases could be deficiencies in the preventive work.[22] The help that separating parents need cannot be provided by the court; it must be found elsewhere.

7.4 The Emergence of Alternative Dispute Resolution in Custody Cases

7.4.1 The Inadequacy of Court Proceedings in Custody Cases

The inadequacies of the court as a place for resolving custody disputes, has been known for a long time. Previous research has revealed several shortcomings in the Swedish system.[23] Proceedings in court are typically adversarial. The applicant must prove the claim, which means, for instance, that in principle, anyone who wants sole custody must show that the respondent—the other parent—is unfit in this regard. This automatically promotes conflict, not consensus. Furthermore, the court procedure was established at a time when only one of the separated parents could have custody. Yet today, with joint custody as a starting point, the process is insufficient. A court should settle a legal dispute based on the legal arguments. Lady Justice is blindfolded for a reason; she should not remove her blindfold to become involved in parents' conflicts. Even if it is accepted that the court should promote consensus solutions in the course of its proceedings, the court has very limited means to do so. It should also be noted that, as a legal criterion, the best interests of the child is hardly suitable for judicial review. The courts have very limited knowledge of these children and their living conditions, and one can reasonably question whether courts should or even could have such knowledge. Equally, even if a court *does* know what the 'best'

[22] Swedish Government Official Report 2017:6 *Se barnet!* (n 13) 136–142.

[23] See, for example, Annika Rejmer and Anna Singer, Vårdnadstvister och barnets bästa. Alternativa modeller för konfliktlösning på familjerättens område (2003) 26(102) *Retfærd* 63–72.

outcome is for a particular child, its decision-making options to achieve such a solution are very limited. The more recent requirements regarding children's participation cannot be met within the framework of Sweden's current system. Finally, research shows that parents involved in custody disputes often have specific problems.[24] In many cases, the dispute is not really about the child; instead—however inadequate it may be as a solution—parents approach it as a way of dealing with a life crisis.

All of these features have been recognized for a long time. Cooperation talks under the auspices of the social services have been used from as early as the 1970s. In addition to cooperation talks, procedures have been introduced in recent years to facilitate or achieve consensus solutions: the courts are responsible for mediation between the parties and can appoint an independent mediator. The latest innovation is the introduction of obligatory information talks (*informationssamtal*) as a prerequisite in custody cases. There is no lack of initiative, but one may ask: to what avail?

7.4.2 Cooperation Talks Offered by the Social Services

Social services, as mentioned above, have offered cooperation talks since the 1970s as a method for solving custody-related conflicts. From 1991, municipalities were required to provide cooperation talks; after the 1998 reform, these talks can also concern conflicts over the child's residence or maintenance.[25] Today, approximately 50% of separating parents participate in such talks.[26] Any agreement that is reached can be documented in a written contract confirmed by the social services. Contracts are as binding as court decisions and can be executed.

Cooperation talks are usually described as structured talks with parents who disagree over custody, residence, or contact, in connection with or

[24] See, for example, Bergman and Rejmer (n 1) 134–150.

[25] Swedish Government Bill 1990/91:8 om vårdnad och umgänge (n 6); Swedish Government Bill 1997/98:7 Vårdnad, boende och umgänge (n 6); Social Services Act [Socialtjänstlagen] (2001:453) Chapter 5, Section 7.3.

[26] Social Services Act Chapter 5 Section 7.3.

after a separation. The purpose is to help parents, with the guidance of a counsellor, to make arrangements for the child based on the child's needs and wishes.[27] The goal is to offer parents cooperation talks as soon as possible, and ideally two to four weeks from the initial contact.[28]

In its follow-up of parents' experiences from participation in mediation talks for 2014–2015, the Family Law and Parental Support Agency (MFoF) analysed and mapped the results of the talks to determine whether these talks contributed to agreements and kept parents out-of-court.[29] The survey showed that many of the parents who participated in the study were, 'very' or 'fairly satisfied' with the talks—even parents who had severe conflicts.[30] A follow-up study indicated that only 10% of the parents had initiated court proceedings or continued their court process four to six months after the conclusion of the talks.[31] The results from the MFoF survey indicated the cooperation talks had helped a large group of parents reach consensus solutions and that court proceedings might thus have been avoided. At the same time, the survey noted a need for continued support for many parents and their children, and it is not clear whether they continued to stay out-of-court.[32]

Unfortunately, knowledge is limited regarding the effects of cooperation talks in the longer term. One aspect of particular interest is to determine the durability of resulting agreements over time and the prerequisites that make it easier for an agreement to be reached. The MFoF survey also indicates that the moderators for cooperation talks lack training and that no specific models, methods, tools, or assessment instruments are used during the talks. The children concerned are seldom

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[27] National Board of Health and Welfare, Vårdnad, boende och umgänge [Custody, Residence and Visitation] 155.

[28] Family Law and Parental Support Authority, Regulation and general advice (HSLF-FS) 2017:51, https://www.mfof.se/sarskilda-innehallssidor/foreskrifter-och-allmanna-rad.html accessed 9 May 2023.

[29] Family Law and Parental Support Authority, *Samarbetssamtal. Kartläggning av föräldrars och samtalsledares erfarenheter*, https://www.mfof.se/download/18.7a15f94516e8e25421b18716/1574925630064/samarbetssamtal-kartlaggning.pdf accessed 10 May 2023.

[30] Family Law and Parental Support Authority, *Samarbetssamtal* (n 29) 32.

[31] Family Law and Parental Support Authority, *Samarbetssamtal* (n 29) 32–33. The follow-up included only those parents who agreed to participate and not all parents in the first study.

[32] Family Law and Parental Support Authority, *Samarbetssamtal* (n 29) 7.

involved in the talks. Another possible disadvantage with cooperation talks is, when parents are engaged in a high level of conflict, they have no real incentive to reach an agreement. The option of going to court is always available and the foreseeability of a court decision is limited. There is always a chance for a 'better' solution in court and many want to take that chance.

7.4.3 Court-Initiated Cooperation Talks

Cooperation talks can also be ordered by the court, after the parents have initiated court proceedings. Any previous talks that the parents may have had are not an obstacle. Court-initiated cooperation talks do not require the consent of the parents, but will most likely be in vain if one or both parents object. An order for talks should be given as soon as it can be assumed to serve any purpose; every aspect that parents can agree on is beneficial to the child.

No statistics are available regarding the number of court-initiated cooperation talks that have been ordered; there is reason to believe that the courts have seldom taken this approach. If parents have turned to the court, their conflict level is usually high, and it is less likely that cooperation talks will result in an agreement. Cooperation talks can prolong the conflict between the parents and delay a ruling by the court. Furthermore, as an alternative, the court can try to mediate between the parents.[33]

7.4.4 Mediation in Court

In 2006, the courts were given increased opportunities to promote consensus solutions between parents. A provision in the Code of Judicial Procedure states that in the initial stages of proceedings, the court should clarify the possibilities for the parties to reach a consensus solution; this provision also became applicable in custody cases.[34] Furthermore, a new

[33] Code of Judicial Procedure [Rättegångsbalken] (1942:740) Chapter 42 Section 17.

[34] Ibid Chapter 42 Section 6.

provision states that the court has the duty, if appropriate in view of the nature of the case and other circumstances, to act for the parties to reconcile or for them to otherwise achieve a consensus solution.[35] The methods of doing this varies between the courts.[36] No uniform model is used.

However, a party who does not want to discuss a consensus solution cannot be forced to participate; the parties have a legitimate right to have their dispute resolved and settled by the court if they so wish.[37] It is emphasized that any efforts to reconcile the parties in custody disputes should be exercised with caution. If the court concludes that an agreement between the parties is incompatible with the best interests of the child, that agreement should not be the basis for the court's decision. The court should be particularly careful about accepting—or advocating for—a consensual solution in cases where one parent has committed violence or other abuse against the other parent, the child, or any sibling of the child.[38]

It is worth noting that a majority of custody-related court decisions are based on the parents' agreement.[39] Whether this is the result of the courts' mediation or simply process fatigue is unknown.

7.4.5 Court Appointed Mediator

If the court is unsuccessful in reconciling the parents but believes for some reason that reconciliation could still be possible, the court can appoint a mediator to help the parents reach a consensus solution in the best interests of the child.[40] This possibility was introduced in

[35] Ibid Chapter 42 Section 17.

[36] Swedish Government Official Report 2017:6 Se barnet! (n 13) 219–222.

[37] Swedish Government Bill 2005/06:99 Nya vårdnadsregler (n 10) 104.

[38] Ibid.

[39] In an investigation by the 2014 Custody Inquiry, it was noted that in 256 out of 412 lower court cases (62%) the decision was based on the parents' agreement, Swedish Government Official Report 2017:6 Se barnet! (n 13).

[40] Children and Parent Code [Föräldrabalken] (1949:381) Chapter 6 Section 18 a.

2006 taking inspiration from successful mediation previously used for enforcement of judgements.[41]

The underlying idea is that a special mediator, independent of the court, can go further than a judge in efforts to reconcile the parties. Nevertheless, the prospect of reaching a consensus solution between parents who have already taken a dispute to court, might be limited. Yet in cases where there is even the smallest chance that parents can reach a consensus solution, this approach was considered a desirable way to provide additional support for reaching an agreement.[42]

A prerequisite for success in mediation efforts is that the appointed mediator has experience and/or is appropriately qualified. According to the law, a mediator should have relevant education and professional experience and be suitable for the task.[43] However, no formal educational requirement for mediators has been established. The individual judge who appoints the mediator must ensure that the competence and suitability requirements are met. The mediation procedure is subject to confidentiality because this is typically conducive to achieving a solution.[44] Information that a party has given to a mediator regarding personal or economic matters remains confidential if the party wishes it.[45] The mediator can be heard as a witness about what has been said during mediation, but only when this is allowed by law or with permission of the person who gave the information.

Court-appointed mediators are not frequently used. An investigation by the 2014 Custody Inquiry indicated that mediators had been appointed in 1–3% of custody cases, and this limited data made it difficult to evaluate whether the mediation process had had the desired effect.[46]

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[41] Ibid Chapter 21 Section 7.2.

[42] Swedish Government Bill 2005/06:99 Nya vårdnadsregler (n 10) 64.

[43] Children and Parent Code Chapter 6 Section 18 a; Swedish Government Official Report 2017:6 *Se barnet!* (n 13) 61–264; Swedish Government Bill 2020/21:150 Ett stärkt barnrättsperspektiv i vårdnadstvister (n 3) 78–79. There is no special education for mediators available in Sweden.

[44] Swedish Government Official Report 2017:6 Se barnet! (n 13) 264.

[45] Public Access to Information and Secrecy Act [Offentlighets- och sekretesslagen] (2009:400) Chapter 36 Section 7.3 a.

[46] Swedish Government Official Report 2017:6 Se barnet! (n 13) 259.

7.4.6 Obligatory Information Meetings to Precede Court Proceedings

The latest (but probably not the last) initiative to help separating parents stay out of court, is the law on obligatory information meetings, in force from 1 March 2022.[47] Again, the objective is to help parents reach an out-of-court settlement concerning custody-related matters. It is believed that some custody disputes taken to court result from the parties' lack of knowledge regarding what can actually be achieved through a court decision.[48] Therefore, as a general rule, before initiating court proceedings concerning custody, residence, or contact, parents must present a valid certificate proving that they have attended an obligatory information meeting. If no certificate is submitted—despite a subsequent court injunction to do so—the court will dismiss the case.

At the meetings, parents who are considering court proceedings concerning a custody-related matter should receive information about finding the best solution for the child—this includes information about the limitations of the court process. When appropriate, parents should also be offered cooperation talks and, unless inappropriate, they should be offered support or given guidance in finding other forms of assistance.

The municipalities are responsible for the information meetings, within the framework of their social-services provision. Information meetings should be held at the earliest opportunity and within four weeks of a request for them. The social welfare committee will issue a certificate to parents who have attended information meetings.

7.5 Conclusions and Further Thoughts

It can be said that there has been no lack of ambition in Sweden to establish an order for custody dispute settlements outside of court. The question is, whether these efforts have borne fruit. Despite long-standing

[47] The law entered into force 1 March 2022.

[48] Government Bill 2020/21:150 Ett stärkt barnrättsperspektiv i vårdnadstvister (n 3). The evidence for this assumption is weak and based on anecdotal evidence, Swedish Government Official Report 2017:6 Se barnet! (n 13).

efforts to create systems that can help parents reach an out-of-court settlement on issues related to custody, residence, or visitation, too many parents still go to court—often to the detriment of the children involved.[49] The problems identified above are not unique to the Swedish system. While out-of-court procedures differ between legal systems, it appears they all have similar challenges that must be dealt with.[50]

Several intersecting features explain why the current system for handling parental custody conflicts out-of-court has not enjoyed the success that was hoped for. One is the unclear purpose of alternative solutions. The primary function of Sweden's system of alternative dispute resolution is to keep parents out of court, and not necessarily to *resolve* their conflict, illustrated by the recent addition of obligatory information meetings.

Furthermore, the possibilities to follow up the results of alternative dispute resolution are notably limited. This is exacerbated by what can be described as a clear lack of interest in investigating the extent that, for example, cooperation talks really lead to sustainable solutions or even determining whether a conflict remains out of court. Therefore, cooperation talks seemingly appear to be sufficient in themselves and disconnected from custody conflict resolution. Even if the ambition for cooperation talks is to help the parents reach an agreement, it is unclear how this can be achieved. The methods for cooperation talks and especially for mediation are undeveloped and lack a scientific basis.

It is notable that Lady Justice also seems to be blindfolded when it comes to out-of-court handling of custody disputes. A clear approach to solving these problems, using the various methods referred to here, is often absent. The system of alternative custody-dispute procedures is based on the assumption that parents are rational and, when given sufficient information about child-related needs, laws, and procedures, they will resolve their differences out-of-court. Some parents will certainly fit this model, but not all; parents who do not fit this pattern—owing to

[49] See for example, Swedish Government Official Report 2017:6 Se barnet! (n 13) 229–234.

[50] See for example, Nylund (n 4); Anne Barlow, Rosemary Hunter and Jan Ewing 'Mapping paths to family justice: Resolving family disputes involving children in neoliberal times' in Anna Kaldal, Agnes Hellner and Titti Mattsson (eds), *Children in Custody Disputes: Matching Legal Proceedings to Problems* (Palgrave 2023).

the custody conflict, the overarching life crisis of separation, or other problems—are not served by this model for conflict resolution.

We know from research that parents in custody disputes have problems that do not fit with the image of parents that formed the basis of the design for the custody dispute process.[51] The system lacks what could be described as diagnostic tools. We simply know too little about those whom we are supposed to help. The Swedish out-of-court processes are too rigid in the sense that they only fit some of the families targeted, and are not sufficiently adapted to the varying and often complex needs of the specific family. As Anna Nylund points out in her contribution to this anthology, a more nuanced understanding and consideration of the specific needs of different families would contribute to a more balanced, well-functioning system of out-of-court procedures.

Finally, the children concerned do not have a given place in the proceedings. If giving children a place is considered desirable, then the current arrangement is not satisfactory. Ensuring the child's right to participation in the context of the complex legal structure described in this chapter is a challenge that the Swedish legal system shares with other countries.[52]

As long as we strive to help parents achieve a cooperative state with equal responsibility for the child, and joint custody is the goal, it can be questioned whether court decisions are at all relevant in instances other than when one parent is deemed unfit and should not have custody responsibility. While the possibility remains for parents to take their dispute to court, measures to keep custody disputes out-of-court by providing information, ordering cooperative talks, and appointing mediators will have little impact. The ability to predict the outcome of a case is limited when the matter involves custody—it is always possible to win. Even more important is the fact that many separating parents are in a life crisis; cooperation or obligatory information meetings cannot necessarily help them resolve this problem.

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[51] See, for example, Annika Rejmer, *Vårdnadstvister: En rättssociologisk studie av tingsrätts funktion vid handläggning av vårdnadskonflikter med utgångspunkt från barnets bästa* (Lund University 2003).

[52] Barlow, Hunter and Ewing (n 50).

If we want to help parents reach a lasting solution to their conflict and protect the rights of the child, different methods are called for. In short, differentiated and family-specific services are required.

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