

From the "Practice of Cochem" to the "Consensus Model"

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Background

In the small town of Cochem, Germany, a judge (Jurgen Rudolph) decided to stop the kind of family law that means endless suffering for parents and children. The result has been called the 'Cochem model'. After some years, the family law reforms of Aug 2008 and Sept 2009 have seen most its features entered into legislation. It may take another generation though to get that change of paradigm into people's heads and practice all over the country.

That judge, the author herself (representing the psycho-social professions), and a lawyer spent ten years on a marathon cross-Germany interdisciplinary development project with judges, lawyers, psychologists, counsellors, evaluators and social workers. The core group provided these professionals with the basic knowledge of family dynamics and what it's like for children in the middle of divorce and separation. Other issues covered were the legal system, conflict analysis and resolution, and the use of mediation and de-escalating communication skills.

Building on this, interdisciplinary working groups were established in every court district, meeting once a month to deepen their knowledge and to keep exchanging ideas and experiences.

Good networking requires respect for the competence of other professions, an awareness of the way they work and why, and of the knowledge and beliefs they hold – prejudices included.

Changed rules

The rules have changed: the 'winner' used to be the parent who best succeeded in denigrating the other parent with the support of their lawyer – a negative competition between adversarial parents. The losers were the children.

Now the winner and best parent is the one who respects and promotes the children's relationship with the other parent – a positive competition between cooperative parents. The winners are the children.

A lot of traditional views had to be addressed and overcome. Germans are socialized and still educated in a rather authoritarian belief system in inflexible hierarchical institutions. To put social workers, judges, psychologists and lawyers at the same level and then add the parents as well – all from diverse backgrounds – that is a strange new

experience for everyone. The higher your status, the more the disturbance to your sense of prestige.

A judge has always been an intimidating figure for a social worker. Now we are expecting them to mutually respect each other and make use of their different knowledge. That is kind of tough. Some judges love their power to take decisions and they don't want to let that go. Some other professionals do not want to be 'upgraded' this way.

Networking is another unusual way for the professionals to deal with each other. It takes confidence in your own way of working, not fearing that someone else will take a closer look and discuss it with you. You need to know about proper feedback instead of destructive criticism. ... A social worker will call a judge on the phone? How strange! ... A judge from Germany calls a French judge? Even stranger! ... Round-table conferences out of the courtroom with just the evaluator, the parents, and the lawyers? Good Lord! ... Shouldn't we stick to the good old rules that have always regulated professional contact until now?!

Important Parts of the Consensus Model

Let me give you the most important parts of the reformed law, now called the Consensus Model.

The paramount task for all professions is to work towards a consensus between the parents in the best interest of their children. The common aims all the professionals have to pursue are:

1. All children have the right to undisturbed access to both parents and to an ongoing relationship with the parent living outside the family and their extended family.
2. The parents have to get all the support they need to (re)establish responsible, autonomous parenthood so they can take the proper decisions on behalf of their children together. They are obliged to participate in whatever intervention is necessary.
3. Another important factor is the acceleration of the legal proceedings: 'early intervention is the best prevention' of detrimental developments like alienation or loss of contact and family relations.
4. A win-win solution for the whole family, especially for the children, needs to be worked out on an interdisciplinary basis with the cooperation of all the parties involved.

Everyone has to put the children's best interests in the middle.

Change of roles

The lawyers:

The lawyers have to give their clients all the information they have about the children's situation, needs, and interests. They will advise them that it is useless to file for sole custody since that is not in the best interest of the child and the judge will not grant it anyway.

The lawyer does not write disgraceful long letters to the court denigrating the other parent's personality. Washing dirty laundry in court is not wanted. Instead, they submit a short reasonably explained application. Those are the lawyer's primary tasks concerning residence and contact.

In the hearing the lawyer lets the parent speak. The lawyer tells the parents in advance in detail what is going to happen in the courtroom. The lawyer can reassure them that no one is going to lose the child.

The judges:

When a parent's file for residence or contact reaches the family court, the judge sets the date for the hearing in no more than 4 weeks. (There is just the ONE court for all family, children's and juveniles' affairs.) To avoid the usual delaying tactics, no lawyer's application for a change of date is accepted.

In the hearing, the judge makes it clear to the parents that they have to get to an agreement and that the judge is not going to allow the children to suffer from any prolonged dispute between the parents. (Any parental conflict that goes on for years is considered violence against children.) The judge will protect the children's right – each parent's right too – to an ongoing relationship with both their parents.

The judge explains that parents have an obligation to dialogue, to talk with each other in a constructive way. This obligation is what they owe to their children.

The judge makes clear that s/he will not accept broken relationships between a parent and their children. Parents need to cooperate – or learn to cooperate. Judge Rudolph would say: "You can't put your children here on my table and ask me to make decisions about their future life".

The social workers:

After the incoming case has been filed, the judge immediately informs the child care system, using quick emails or fax. They then set a date to see the parents and children in their home to get a full picture of the family's situation.

The professionals within the child care system inform the parents what they think are the children's needs and they discuss possible solutions. At the hearing, they show up well-informed, to report their impressions and findings.

The parents:

At the hearing the parents describe their problems. Everyone can explain their point of view – they all get the time they need to do this. The lawyers don't speak for them. They speak for themselves!

The hearing:

Parents, judge, social workers and lawyers then seek to find a solution together, negotiating the problems during the hearing. The hearing is open-ended and may take up to three hours. Over 50% of couples reach a mutual agreement there and then – that's within four weeks of the case file reaching the court. For this 50%, the case is closed.

The counsellors:

For other cases where parents cannot agree at the first hearing, the parents are required to go for counselling or mediation. The judge makes the first appointment with the counselling institution direct from the courtroom. The counselling and mediation will be confidential but the results are communicated back to the judge.

Before ending the hearing, the judge fixes the next hearing in three months time. This is the Sword of Damocles. At that next hearing, the parents will have to report on how they actively contributed to sorting out their situation during that time.

The counselors get the court's orders detailing the main issues to deal with – things like communication skills, creating a parenting plan etc. The counsellors must report:

1. that the first session has taken place, and also
2. immediately if one of the parents drops out of the counselling or mediation, saying who dropped out.

If that happens, there is another hearing within two weeks ... unless the parents can send a mutual agreement to the court that they have worked out together. In those cases, that can be the end of the court proceedings.

The evaluators:

If the parents still cannot agree, or if it is a high conflict case, an evaluator is appointed. The evaluator has two tasks to complete:

- 1) an evaluation of the family situation, as usual, but not proposing any 'solutions' or recommendation; and
- 2) working with the parents to help them negotiate their problems with their family while the case stays pending in court.

This work may include evaluating trials of various possible interventions with the family. For example, they may try out alternate residence over a 2-3 month period. Or they may await the result of clinical therapy for a parent. If an agreement results, the evaluator sends that to the court. Again, that may be the end of court proceedings. If not, there will be a written report and a hearing to follow.

High conflict cases

There are 5-10% high conflict cases where no cooperative or consensus approach works whatsoever. Those parents may never have learned through their life experiences to respect or listen to another person's point of view, to recognise another person's good intentions, or to negotiate problems in a fair manner. So some people tend to fight the whole way through their lives, people with personality disorders, with ongoing violence, people who are unwilling to do something about alcohol and drug abuse etc. In these cases, the involved professionals discuss and agree at some point that this family needs a clear cut court decision.

Child abuse cases

In cases where active or passive child abuse is happening, the protection of the child has absolute priority. The abuse situation is carefully evaluated over the necessary period of time. The experts cooperate with the other professions in decision-making for either suspended contact or supervised visits.

In the meantime, the abusive parent/s undergo treatment such as therapy, anti-aggression training or whatever intervention seems appropriate to change the abusive behavior. That parent has to show they have engaged in the court-ordered treatment.

Non-abusive parents are expected to undergo treatment as well if they live with their children in a violent or abusive family situation and thus expose their children to violence or abuse over a long period of time.

Effect on the professionals

The effect of networking and interprofessional cooperation is to bring relief for lawyers, judges and the psycho-social professionals. Sharing the tremendous responsibility reduces stress and it enhances the satisfaction with the work as it ends in a consensus between the parents that protects the children from further harm.

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