

Abstract NFBO 2023

Custody disputes - Matching legal proceedings to the problem

Custody disputes represent a risk factor for children's and parents' health. Underlying causes such as abuse, neglect or domestic violence can be the reason behind a dispute. Custody disputes concern deeply emotional and personal matters, and relationships that continue long after the legal proceeding. This illustrates the complexity. Children's rights and perspectives put requirements on legal proceedings, such as standard of investigation, assessment of the best interest of the child and the child's right to participation.

This project explores how legal proceedings can be matched to the complexity of custody disputes. Based on the nature of custody disputes and children's rights, the law, how it is applied is analyzed through the lens of procedural and preventive law. The project is interdisciplinary and includes sociology, sociology of law and psychology as well as family law, child law and social law. The project takes an international and Nordic approach, with Sweden as a case.

Custody disputes are private law proceedings. Therefore, the parties (the parents) have a great influence over the frame and the content of the proceeding. There is also a tradition of striving to reach an agreement between the parents and keep parents out of court. Exiting in and out-of-court proceedings come with difficulties, such as prolonged and reoccurring legal proceedings and underestimate the risk of domestic violence.

To reach an outcome in the best interest of the child the proceeding must be designed according to the individual circumstances. In some cases, the investigative aspects are dominating and sometimes there is a need of a long-term treatment. In others mediation is the best solution. In all cases the child's right to participate needs to be secured. This raises the question if custody proceedings are suited to be accusatory at all or if a whole new approach is needed.

Authors:

Anna Kaldal, Professor of Procedural Law, Faculty of Law, Stockholm University

Titti Matsson, Professor of Public Law, Faculty of Law, Lund University

Agnes Hellner, Senior Lecturer of Procedural Law, Faculty of Law, Stockholm University