



Child-centred approaches to accompanying and supporting families in conflict situations, sepa- ration processes and divorce proceedings:

Report on the ICCFR and AGF
international webinar series and
the AGF national expert meeting
in November 2020

Content

- Content..... 1
- Background 2
- Support for families in the separation process: cooperation instead of confrontation – International experiences 4
 - 1st session 4.11.2020 4
 - Psychosocial interventions for conflict resolution in families and for support in separation/divorce: structures, use, challenges..... 4
 - Challenges for cooperation and communication between parents after divorce and good examples for improvement..... 5
 - Successful strategies in family law proceedings to reduce family conflict 6
 - 2nd Session 11.11.2020..... 7
 - Conflict-reducing interview techniques in high-conflict family court proceedings..... 7
 - Alternative dispute resolution in the Hong Kong family court to deal with children’s issue 7
 - Making children’s interests more visible: experiences in Australia 8
 - 3rd webinar 18.11.2020..... 9
 - Resolving family court conflicts in social communities and not just in court: What we have learned and what do children tell us? 9
 - Divorce and separation in South Africa 10
 - “Gruppi di parola” – Support groups for children in families undergoing separation or divorce..... 11
- Summary..... 12
 - Topics and open questions of the three ICCFR webinars..... 12
- Child-centredness and family support in conflict situations, separation processes and divorce proceedings: spotlights on the German situation 14
 - Presentations 14
 - Separation and divorce in Germany: frequency, conflicts, child welfare..... 14
 - Four dimensions of separation conflicts: reflections on custom-made measures..... 16
 - Child- and parent-oriented child law procedures?..... 17
 - Discussion and summary of the expert discussion..... 18

Background

Conflicts are part of family life. In about one third of marriages in Germany, the conflicts seem so serious to the partners that they are dissolved by divorce. This also affects about 125,000 underage children every year. In addition, there are about 200,000 children who are confronted with the separation of their non-married parents. Separation and divorce is usually a process that takes a long time to play out, often accompanied by severe conflicts and high stress for the separating (ex-)partners and their children. Even after separation or divorce has been formalised, the ex-partners, who are now independent of each other, remain parents. They are expected to take care of all that is involved in the separate/joint care and raising of the children immediately after the separation in a rational way, even if personal hurts and disappointments are still very fresh. This task of separate/joint care and childrearing can remain with them for many years, depending on the age of the children.

Practice shows that separated parents succeed in very different ways in settling their joint care and childrearing tasks as amicably and with as little conflict as possible. The conference series in November 2020 asked which structural factors and types of assistance available can support families in separation and divorce processes in such a way that conflicts and the resulting psychological stress for parents and children are reduced or at least not increased. How can parents be supported in the separation process so that they remain capable of acting effectively in the best interests of the children? How can children and their interests be involved and heard in these processes?

The Association of German Family Organizations (AGF) had already dealt with the topic of "Care arrangements after divorce / separation – an international comparison" in an European Expert meeting in 2019.¹ It was shown there that the meanings and tasks of judicial and pre-court conflict resolution / mediation are very

differently structured internationally. In some countries, there are very distinctive mediation structures for pre-court conflict resolution in divorce cases and for accompanying shared parental responsibility. Germany, on the other hand, is characterized by a particularly high use of courts to resolve divorce conflicts. In the expert discussion, the impression arose that the separation and divorce processes in Germany, which are very much centered on court decisions, are possibly more conflictual than needed.

Various psychosocial counselling services, therapeutic interventions and educational measures exist to support parents and children in family conflict and separation situations. One of the principal aims of these is to safeguard the interests of the children in the separation process and to minimise their stress. Similarly, the parents should be assisted to negotiate the separation process with the lowest possible level of conflict and to find mutually agreeable solutions to the questions of custody, access and the upbringing of the children they share. However, the support structures themselves and the cultures of cooperation between family courts and such support structures differ greatly from one country to another.

In the webinar series, jointly organised by the International Commission on Couple and Family Relations (ICCFR) and AGF, experts from Europe, the USA, Africa and Asia presented how families in the course of separation are supported by judicial and mediation measures as well as psychosocial counselling services against the background of their specific legal structures. The webinars took place on 4 November, 11 November and 18 November 2020.

In another AGF expert seminar on 30 November 2020, professionals from the law, education and psychology discussed the current situation, future challenges and the essential further development of appropriate structures in Germany.

¹ See report https://www.agf-familie.de/media/docs19/agf_childcare_expert.pdf

The following guiding questions were discussed in the four events:

- What structures and measures of psychosocial support services and court proceedings exist for child-centred approaches to conflict reduction in the separation process? How successful are these structures?
- How well does the cooperation between professional extrajudicial and judicial actors work? What consequences does this have for the families concerned? Where is there a need for further development?
- How well are the existing supportive measures suited to specifically dealing with different levels or types of conflict in separation processes? What needs to be done?
- How are the interests of children adequately taken into account, not only in judicial proceedings but also in mediation and counselling?
- What political imperatives can be derived from the findings?

A summary of the results of the international webinar series can be found in the chapter "Summary - Topics and open questions of the webinar series" on page 12). Results of the expert discussion on the situation in Germany are summarized in the chapter "Discussion and summary of the expert discussion" starting on page 18)

Support for families in the separation process: cooperation instead of confrontation – International experiences

The ICCFR and AGF Webinar Series, November 2020

The webinar series, which also served as ICCFR 66th annual conference was jointly organised by ICCFR and AGF. It included three sessions each with three presentations by speakers from all five continents. The presenters took the specific legal and support cultures in

their countries as the starting point for their reflections. In addition, the speakers had different professional backgrounds and spoke from various legal, socio-pedagogical or sociological perspectives on the challenges of supporting families in separation and divorce.

1st session 4.11.2020.

Chair: Sven Iversen, Managing Director of AGF,
Chair of the International Commission on Couple and Family Relations [ICCFR]

Psychosocial interventions for conflict resolution in families and for support in separation/divorce: structures, use, challenges

Ulrich Hoffmann, Germany, Marriage, Family and Life Counsellor, President of the Federation of Catholic Families, Vice-Chair of the AGF²



In his contribution, Ulrich Hoffmann highlighted questions of high-conflict parenthood. He began by stating that, in such situations, there are clear developmental risks for the children involved. These often lead to actual risks to the wellbeing of the children. At the same time, he said, neither judicial nor extrajudicial interventions could completely resolve these conflicts in practice. Against this backdrop, he posed the question of what the ideal psychosocial services could look like. He

named six characteristics and behavioural traits in high-conflict separation and divorce families (according to the research project Child Protection in Highly Contentious Parenting), which are typically very pronounced in at least one of the parents: 1. reduced openness to new experiences, 2. reduced tolerance, 3. low experienced self-efficacy, 4. inflexible thinking structures, 5. distorted perceptions, and 6. limited ability to regulate emotions.

Overall, separations/divorces entail high developmental risks for children. Particularly high-conflict separations tend more often to exhibit the following characteristics. Children feel called upon to share the emotional burdens of their parents; moreover, sometimes this support is demanded from the children. Parents are

² See presentation (https://iccf.org/download/conference_2020/Hoffmann_final_ICCFR-Seminar.pdf)

more often experienced as inconsistent in their parenting behaviour and there are stronger tendencies towards the parentification of children (reversal of social roles between parents and children). This can lead to feelings of being undervalued and low self-esteem in the children, as well as fear of loss and symptoms of stress. They may also lose sight of their own needs while at the same time acquiring the power to manipulate their parents.

What can prove helpful for children in this situation? According to Mr Hoffmann, family counselling sessions are less appropriate because children often experience a repetition of their parents' destructive behaviour in the conflict. Instead, children need services that are personally directed towards them, which strengthen their resilience and self-efficacy and in which their own ideas for solutions are taken seriously.

Mr Hoffmann emphasised that parent counselling should start very early in highly contentious separation conflicts. In particular, a setting with mixed-gender co-counselling seems to make sense. A counselling mandate supported by the parents, as well as the rules of contact and the consequences of non-compliance, must be clearly formulated and binding. Rules that are formulated by the parents themselves are (usually) experienced as more satisfactory than those that are imposed from outside. In addition, the counsellor's appreciation of the parents' efforts and understanding of the pressure they are under are of great importance for successful counselling relationships. Finally, he pointed out that parents experience even interim relief as helpful. Counsellors should take a neutral to impartial role.

Challenges for cooperation and communication between parents after divorce and good examples for improvement



**Anna Nagy, Hungary,
Single Parent Families'
Foundation**

Anna Nagy reported that close to 10% of the Hungarian population live in single-parent families. This number has doubled in the last 40 years, but it is not a uniquely Hungarian phenomenon.

Living in a single-parent family also means a high risk of poverty. She pointed out that the legal situation for parents in divorce has changed with a reform in 2014. The guiding principles of the reform are the joint responsibility of the parents. When the law was amended, parents were charged with the task of making amicable arrangements. Courts are now supposed to intervene only in cases where an agreement between the parents is impossible.

The first and so far only Single Parent Centre in Hungary was founded in 2018, and since then more than 13,000 families have found support there. There are

more than 70 services, including mediation, family therapy and workshops for single parents. The aim is to accompany parents as they transition from being partners to being co-parents. An important tool is the concept of business divorce, which introduces families to conflict-reducing forms of communication. In terms of content, three annual meetings are held to discuss school, the children's hobbies, their health, holiday plans, etc. The parents' relationship and the past are not permitted topics in these discussions.

Ms Nagy reported that only 10% of the children live mainly in the father's home after a separation. In order to focus more on the situation of fathers, she said, father-child programmes, such as accompanied weekends, were planned. However, these new measures could not yet be implemented because of the coronavirus pandemic.

Likewise, an initiative is to be launched to the legislator on how parents who have abandoned their children and responsibility for them should be reminded of their parental responsibility.

Successful strategies in family law proceedings to reduce family conflict



Tom Wolfrum (San Francisco-based family lawyer) and Laura Morgan (Boston-based family lawyer), USA³

As Tom Wolfrum and Laura Morgan reported, different institutions and procedures exist in the USA to resolve the problems of separation and divorce, for example courts, arbitration, mediation or recourse to other authorities (e.g. clergy). Within these frameworks, judicial proceedings are more likely to be used in high-intensity conflicts. This often leads to the parties involved feeling like either winners or losers.

The speakers assessed mediation as more suitable for moderate levels of conflict. Overall, they note that there is a clear imbalance in access to courts and mediation, which is mainly defined by social status and financial possibilities. In addition, they noted that the services provided by the courts are an issue, both materially and qualitatively. The situation varies from state to state: in some states there are specific family courts with specially trained family judges and socio-educational staff, while in other states hearings take place in general courts.

According to the speakers, mediation should start as early as possible, so as to maximise the possibility that both parties will gain an appreciation and recognition of their situation from the other partner. However, there is a danger of losing sight of the children's needs, as mediation focuses on the balance between the par-

ents. Morgan and Wolfrum referred to various techniques and approaches that can have a de-escalating effect. For example, they mentioned the use of transformative language, the insights of Minuchin's structural family therapy (SFT) and the BIFF (brief, informative, friendly and firm) communication method, which is supposed to help deal with aggressive and hurtful forms of communication. Both see the strongest support for children in separation situations coming from psychotherapists and the representation of the children's interests in legal proceedings.

³ See presentation https://iccf.org/download/conference_2020/20201104_ICCFR_AGF_Wolfrum_Morgan.pdf

2nd Session 11.11.2020.

Chair: Anne Berger, Family lawyer and member of ICCFR

Co-Chair: Claire Barnes, Educator and Board member of ICCFR

Conflict-reducing interview techniques in high-conflict family court proceedings

Ron Nelson, USA, family law attorney, Kansas⁴



In his contribution, Ron Nelson dealt with de-escalating forms of communication in high-conflict separation proceedings. He assumed that the conflictual nature of a separation is less determined by the relationship than by one of the partners who drives and determines the dynamics. High-conflict personalities have the following characteristics: they blame others; they think in "all or nothing" categories; they have limited ability to regulate their emotions; and they exhibit extreme behaviours involving patterns that fuel conflict rather than reducing or resolving it. Conflictual issues in separation disputes, therefore, provide opportunities for confrontations, although they are not the original cause.. Nelson pointed out that the high-conflict personality is not

a clinical personality disorder, although it has distinct similarities with various personality disorders.

Mr Nelson presented three conversation techniques that promote de-escalation in dealing with high-conflict personalities:

E.A.R. method: Show empathy, show attention, show respect (even if the other person apparently does not deserve it).

C.A.R.S. method: Connect (listen carefully), Respond (respond with empathy), Analyse (grasp problems, opportunities, tasks), Set limits (set boundaries, avoid personal confrontation).

B.I.F.F. method (brief, informative, friendly and firm): Communicate briefly (keep it short; long answers tend to trigger conflict or confusion), informatively (focus on information, not on arguments, opinions, feelings or defence), friendly (use a friendly greeting, even if it is difficult), firm (short and to the point, answer yes, no, I will think about it; give two or three options, set time limits, be non-confrontational).

Alternative dispute resolution in the Hong Kong family court to deal with children's issue



Dennis Ho, Hong Kong, Family law attorney, Chairman of the Family Law Committee⁵

Dennis Ho explained that there was proposal for reform on dealing with children matters since 2005. The proposal involved a paradigm shift from the historical custody concept to parental responsibility. In 2015, the Hong Kong Government has prepared a Children Proceedings (Parental Responsibility) Bill, which is yet to

⁴ See presentation https://iccf.org/download/conference_2020/Ron_Nelson_ICCFR_AGF_WebinarSeries2020_Session2_111120_kl.pdf

⁵ See presentation https://iccf.org/download/conference_2020/Dennis_Ho_WebinarSeries2020_Session2_111120.pdf

go through the legislation council to make it as law to follow such changes as in England and Wales, Scotland, Australia and New Zealand. Hence, the issues on children for the court to determine are still based on custody, care and control and access of the child.

In the meantime, the Hong Kong Judiciary has introduced a pilot scheme as an alternative dispute resolution on children issues in 2012. This pilot scheme is called "Children Dispute Resolution" ("CDR") and is now become a permanent practice since 1 April 2016. There are two stages for the CDR which are the Children Appointment and CDR Hearing. At the Children Appointment, the Court will give directions for the parties to file and obtain such professional reports such as psychologist report to assist the court.

During the Children Appointment hearing, psychological reports can be adduced, parties may try mediation or parent training programs can be ordered and a report from the Social Welfare Department can be requested. Of particular interest is a written form (Form J), in which each parent has to provide information on the current situation (relationship to the child, living circumstances, schooling, health, finances) and proposed future arrangements (whether the child will be living with the person completing the form, living with the former partner or living with a third party). In answering these

questions, no accusations against the other parent are allowed and, if the form is completed improperly, the parties involved are obliged to re-do it. In the last part of the Form J, other important circumstances concerning the child could be set out, for example physical, mental or emotional illness, abuse and incidents of domestic violence.

When all the necessary information and documents are ready it will proceed to the CDR Hearing. At the CDR Hearing, the Judge will assist the parties by giving his or her views on the arguments from the parents so that may reach a compromise between the parents. If the parents are not able to settle their issues on children, the judge will set down the case for trial. This CDR Judge will be the trial judge so that anything said at the CDR Hearing may also be taken into account.

It is also possible for the judge to talk to the child concerned. Furthermore, a child's own representative can be appointed to ensure exercise of the child's rights. As a matter of principle, questions of maintenance are dealt with only later, after the legal questions of residence have been settled.

Mr Ho reported that the success rate of the CDR was quite high, but that the procedure often took a long time, which meant that the suffering of the parents and children involved was extended.

Making children's interests more visible: experiences in Australia



**Robin Purvis, Australia,
Social worker ⁶**

Robin Purvis began her presentation with an overview of the development of Australian family law since the 1970s. In the 1980s, she said, mandatory counselling sessions were introduced to support the court divorce

process. In the 1990s, counselling and mediation became preferred alternatives to court decisions in the separation process.

During the same period, the number of dysfunctional families greatly increased and higher numbers of domestic violence and child abuse cases were reported. Dysfunctional families formed a high percentage of court proceedings in the area of separation/divorce.

⁶ See presentation https://iccf.org/download/conference_2020/Robin_Purvis_ICCFR_Webinar-Series_Session2_111120.pdf

Around 2008, approximately 70% of separating Australian couples resolved separation without external assistance. Of those families who used the courts, 70–80% were families with complex problems. Since then, efforts have been made to develop more appropriate services for these families.

One approach, for example, is independent child advocates and counselling centres. Robin Purvis highlighted

two projects in particular: "parenting coordination", a child-centred clarification process in which parents involved in serious conflicts are supported; the other is child-inclusive mediation, which aims to get parents to embrace co-parenting.

3rd webinar 18.11.2020.

**Moderator: Francesco Belletti, Vice-Chair of ICCFR,
Director of the International Centre for Family Studies [CISF], Milan
Co-Chair: Sven Iversen (Managing Director of AGF, Chair of ICCFR)**

Resolving family court conflicts in social communities and not just in court: What we have learned and what do children tell us?



**Anne Hollonds, Australia
Australia's National Children's
Commissioner⁷**

Anne Hollonds introduced her presentation by posing the question of whether courts can provide a good setting for children to have their perspectives adequately considered in separation processes or whether in general other procedures and measures are necessary.

She gave a brief outline of Australian family law history. In 1975, a specific family court system was established in Australia. Between 2006 and 2012, there were further reforms, which meant that custody issues no longer had to be resolved directly through the court and that mediation services were established in communities and in family centres.

Family centres follow a non-stigmatising and family-friendly approach. Mediation processes here are generally less contentious than in court proceedings. Hollonds quoted from a study that evaluated the family law

reform which found that in 2015 only 3% of parents resolved their separation or divorce disputes in (Experiences of Separated Parents 2015, p.71). These were primarily cases involving domestic violence, abuse or emotional or mental disability. The decisions resulting from court cases were very often subjectively experienced as victories or defeats. Six percent of separation cases were resolved out of court, but with the support of a lawyer, 10% of cases were settled in mediation-based procedures and in 80% of cases the parties involved worked out a solution on their own. Hollonds sees this as a clear cultural change towards more focus on the interests of the children.

However, this positive picture of a particularly progressive development in terms of the children would be qualified if children were asked how they felt about these procedures. In 2018, a first survey of children was conducted, with the following results. Many children felt betrayed by lawyers and counsellors. They felt they were not being treated with respect and felt unprotected. In cases with the most difficult problems

⁷ See presentation https://iccf.org/download/conference_2020/Hollonds_ICCFR_webinar_2020.pdf

(abuse/violence), they were sometimes not believed. In some cases, children/adolescents did not feel seen by "their" experts. They would like to see a child-integrative approach, in which other children/young people act as peer counsellors and the adult experts involved

listen to them seriously. Hollonds's conclusion was therefore: "We thought we had come a long way; now we know we are at the very beginning".

Divorce and separation in South Africa



Imelda Diouf, South Africa
Director of the Sekwele Centre
for Family Studies⁸

Imelda Diouf explained the background to separation processes in South Africa. She said that the concept of alienation was important in this context, because in many cases the fathers were absent from the children's lives for various reasons and there was never a "family unit" as understood in the American, European or Australian contexts. On the other hand, it is important to remember that in some cultures the family is defined much more broadly than the "Western nuclear family". Moreover, family life in South Africa cannot be separated from the history of the country, especially apartheid. During the apartheid years civil marriages had to operate within the framework of restrictive racial legislation. Post 1994 there was a recognition of customary marriages including polygamous relationships. In 2006, another reform formalised same-sex partnerships. Imelda Diouf mentioned some figures relating to the social structure in South Africa: More than half of the population is chronically poor, unemployment is 42%, 25% of the population survive on social security. Twenty-six percent of couples marry, and 40% of first marriages end in divorce. Fifty-six percent of children are born out of wedlock; 62% of birth certificates do not record the name of the father and almost 60% of children do not have a relationship with their biological father. Sixty-five percent of children do not grow up with their biological parents, but more often with uncles, aunts or grandparents.

South African society is still characterised by the division into two economic sectors. On the one hand, there is access to the private sector. This is considered efficient but expensive and is used mainly by White people. On the other hand, the public sector is considered inefficient, but it is cheap and is mainly used by Black people. This division is also reflected in the support measures for separation and divorce. Even the Black middle class has hardly any access to counselling and therapeutic services in the private sector.

Another division is the existence of two "legal systems" in South Africa: ordinary state courts and traditional systems of conflict resolution. Ms Diouf reported that the formal legislation is very progressive, but its judicial implementation is weak and not accessible to all; moreover, it has a problem with corruption. Against this background, issues of separation/divorce would first depend on whether those affected had access to the private sector (20%) or the public sector (80%). In the public sector, social workers often handle so many cases that they have to refer families to NGOs because of overload. In the public sector courts, victims encounter a lack of training and cooperation, as well as little professional knowledge and few counselling services. Outside of government services, self-help, civil society, faith-based and traditional support systems are available. Faith-based counselling centres and NGOs offer quick support and counselling. However, they usually have little collaborative relationship with the official legal system and are characterised by reactive rather than problem-solving approaches.

⁸ See presentation https://iccf.org/download/conference_2020/Diouf_ICCFR_AGF_WebinarSeries2020.pdf

When asked about special forms of care and problem situations, Ms Diouf emphasised that the concept of shared care though a legal concept, does not exist be-

cause of absent fathers. Domestic violence can be considered the most substantial and serious problem within family life and marriage.

“Gruppi di parola” – Support groups for children in families undergoing separation or divorce

Ilaria Montanari, Italy
Psychologist and family
counsellor, Centro di Ateneo
Studies and Research on the
Family, Catholic University,
Milan⁹



Ilaria Monanari presented the "Gruppi di parola". These are structured discussion groups for children and young people who are affected by the separation or divorce of their parents. The discussion groups are characteristically preceded by a preliminary meeting with all parents whose children are to participate in the group. The consent of both parents is required for participation. The pre-meeting is followed by four weekly group meetings of 6–10 children or young people, led by two professionals and lasting two hours. The age ranges in the groups are 6–10 years or 12–17 years. In the second hour of the fourth meeting, parents are invited to attend. The group work is followed by a meeting with the individual pairs of parents.

The schedule for the group sessions comprises five steps: 1. The participants get to know one another 2. The participants' feelings about their initial situation are expressed. 3. Conflict dimensions are explored in greater depth. 4. An anonymous letter is written jointly by the group to the group of parents, in the hope of enabling the children to have a new dialogue with the parents. 5. The parents' answers are collected and discussed.

The group work has a very rapid and positive dynamic. A sense of belonging to the group and emotional trust in the other group members and the group develops very quickly. This enables the children and young people to experience security, hone their ability to listen to others and learn to better express their own emotions, conflicts and experiences verbally and non-verbally. They are enabled to overcome shame, and their confidence in their ability to talk to their parents is strengthened. In addition, they learn new strategies for dealing with the separation/divorce of their parents: this becomes something they can talk about, which contributes significantly to the development of successful individual coping strategies.

Ms Monanari reported that another effect of the group work was that families were more willing to participate in mediation and psychological counselling. Through the group, parents learned to listen to their children again and to give their needs higher priority in separation disputes.

⁹ See presentation https://iccfr.org/download/conference_2020/Ilaria_Montanari_ICCFR-AGF_18Nov2020_final.pdf

Summary

Topics and open questions of the three ICCFR webinars

The webinar series addressed a wide range of international corresponding experiences as well as country-specific problems and solutions. Open questions that still need to be discussed were also raised:

- Separations/divorces are associated with high levels of conflict in all countries that participated in the webinar series. Psychological stress and consequent physical risks and ailments afflict not only the separating parents but also, to a large extent, the children. In many societies, young people in separating families appear to be at particular risk of having their specific needs overlooked by both parents and professional and informal support systems.
- In addition to the psychological burdens, separation and divorce represent a high risk of falling into poverty in all countries. This applies to both parents. However, mothers are generally more at risk of poverty after divorce than fathers.
- The international differences in dealing with separation and divorce conflicts do not lie only in the nationally specific family law regulations and the specific welfare state intervention regimes. The culture-specific ideas of family, marriage and partnership also influence the individual handling of separation and divorce, as well as the measures taken by the state and society to support or sanction separations. An interesting question for further discussion in ICCFR and AGF could be how social norms are reflected in separation/divorce law, legal practice and support systems in cultural environments not included in the webinars, for example in countries with a strong Muslim influence.
- In all countries presented in the webinar series, the experts differentiated between degrees or types of conflict in the separation process. In particular, high-conflict separations are uniformly seen as particularly stressful for children.
- Almost all speakers reported on support models with graduated, differentiated measures tailored to the level of conflict. An important question in this context is how conflict levels or types can be recognised at an early stage in order to put appropriate legal and counselling interventions in place.
- The participants agreed unanimously that, for all levels of conflict, intervention as early as possible through counselling or mediation is desirable to reduce conflict. According to the experts, early counselling and mediation helps the separating parents to maintain understanding for the "other side" in the conflict, despite the disputes, and to keep the best interests of the child in mind throughout the separation process.
- Several speakers expressed the view that the decisions of judicial divorce proceedings, in contrast to mediation and counselling, tend to produce "winners" and "losers" in the subjective perception of the litigants and can thus have the effect of aggravating conflict.
- There was no consensus on the effectiveness of counselling that is ordered by the state and acts as a gatekeeper/prerequisite for access to family court conflict resolution. Opponents of mandated counselling/mediation pointed out that viable solutions in separation conflicts can only be reached if engagement is voluntary and represents inner conviction on the part of the mediation partners. The proponents pointed to the advantage that, with such "compulsory counselling", de-escalating interventions in the separation process reach families at a very early stage. Moreover, methodological approaches for such settings have already been developed and tested.
- Speakers from all countries in the webinar series stressed the essential child-centredness of family

court proceedings, as well as counselling and mediation measures. However, it became clear that there is a discrepancy between aspiration and reality in this respect. In order to make court proceedings and psychosocial support child-friendly, high professional competences are needed in courts and in counselling centres. In order to be able to talk to children and adolescents of different ages in a way that is appropriate to their age and personality and to perceive their needs, specific training for judges, therapists and social workers exists in some countries. In some cases, such training is a mandatory prerequisite for work in this field.

- In all societies involved, domestic violence is considered a particularly vile act that must be prosecuted. At the same time, shame and taboos often prevent it from being disclosed. This applies not only in separation processes but also has a special significance in family court proceedings and counselling and mediation settings. In all the countries discussed in the webinars, there was discussion on how children and other victims of domestic violence (usually women) can be better protected. In addition, different methods are being tested in counselling and mediation for protecting victims of violence from re-traumatisation and pressure by perpetrators.
- Professionals involved in separation processes must have a special awareness of the situation of children and adolescents, since court proceedings as well as mediation processes are aimed at balancing the interests of the parents. Specific methods geared to the interests of children and adolescents should also be used.
- Cooperation between judicial and non-judicial professional actors is generally regarded as an important prerequisite for the success of de-escalating legal and counselling processes. How this cooperation is structurally anchored in the different countries turns out to be very different. A systematic comparison of international examples of good practice is deemed to be a worthwhile task for the ICCFR and the AGF in future.
- Experience from Australia and South Africa suggests that the majority of couples who separate make the

essential separation related arrangements themselves. How do people resolve the problems that arise in separation/divorce without resorting to court proceedings, mediation and counselling? Here, a systematisation of the research situation by the ICCFR on the questions of what these agreements look like, what role informal actors play within them, how they come about and what advantages and disadvantages are associated with them would be interesting.

Child-centredness and family support in conflict situations, separation processes and divorce proceedings: spotlights on the German situation

An online expert meeting on 30 November 2020

**Moderator: Ulrich Hoffmann, Marriage, Family and Life Counsellor,
President of the Catholic Family Federation, Vice-Chairman of the AGF**

On 30 November 2020, the AGF held an expert discussion entitled "Child-centeredness and family support in conflict situations, separation processes and divorce proceedings". Scientists, family lawyers, representatives of youth welfare offices, counselling centres and family associations took part.

In the first part of the event, three presentations shed light on the topic from a scientific, advisory and law-

yer's perspective. The second part consisted of exchanges between the experts. The focus was on how successful the structures and measures of psychosocial support services and court proceedings are with regard to conflict reduction and child-centredness in the separation process. Further, the professional and structural challenges specific to Germany were discussed.

Presentations

Separation and divorce in Germany: frequency, conflicts, child welfare



Dr. Stefan Rucker,
psychologist, head of the
research group PETRA and the
working group Child Welfare
in Bremen

Stefan Rucker first presented the developments in Germany. The number of divorces has been decreasing continuously since about 2005 (down approximately 24%). In 2017, the divorce rate, which has also fallen in recent years, was around 38%. However, the number of children affected by separation and divorce can only be estimated. Those affected by divorce number around 125,000 per year. The number of unmarried, cohabiting couples who separate and the number of their

children thereby affected are not recorded in the official statistics. Mr. Rucker deduced from the number of births in Germany that about a third of children were born to unmarried parents. He estimated (conservatively) that the number of separations among unmarried couples would be the same as among married couples. This, he said, would give a total of about 200,000 affected children per year.

Mr Rucker then turned to the question of how children experience and respond to parental separation. Children between 0 and 2 years of age react primarily physiologically: difficulty falling asleep and sleeping through the night, anxiety and limited exploration of the environment are common reactions. In preschool children between 2 and 5 years, regression in terms of learning hygiene and cleanliness habits, clinging be-

behaviour, separation anxiety and feelings of guilt are observed. Regarding the latter, Mr Rucker explained that the separation of parents is far outside children's normal world of experience. Thus, children can often make sense of their parents' separation only by wrongly blaming themselves. In older children and adolescents, anger, feelings of abandonment, doubt and, in some cases, the development of mistrust of social relationships and attachments can be observed.

In addition, gender-specific differences become apparent in children's processing of parental separation: boys tend to show challenging, difficult social behaviour, physical responses and, in some cases, delinquency. In girls, internalised stresses, such as signs of depression with symptoms such as headaches, vomiting, eating disorders and self-harm were more common. Because girls' responses are less outwardly visible, girls are often wrongly assessed as being less stressed.

However, severe stress among children is not an inevitable consequence of separation. The extent of family support is decisive. It is important to relieve children of any feelings of guilt, to reassure them (and to let them experience this in practice) that both parents will remain in their lives. However, such reassurances are often not given in the context of the high negative dynamics of separation conflicts and the pressures on the adults concerned.

In addition, children's own individual resilience plays an important role in coping with the stress caused by the separation or divorce of the parents. Overall, the stresses caused by the separation/divorce abate over time in seven out of 10 children, but in the other three they shape their entire lives.

Mr Rucker then raised the question of the best models for separating parents and their children from a scientific point of view. There have been no research results from Germany on this yet. A study by the Federal Ministry for Family Affairs was currently being carried out. International studies on the "alternating model" from northern Europe show that the children suffer less

stress than in other arrangements. Other studies found little or no evidence to substantiate these results, so further research seems to be necessary. It should be noted that, in Germany, the term "alternating model" would be understood to mean an exactly equal division of responsibilities and time spent with the children, whereas internationally it usually means a more flexible division.

Regarding the influence of separation and divorce on the child's well-being, Stefan Rucker emphasised that, in his view, the chosen care model is less decisive than factors such as:

- the level of conflict between the parents
- the parents' mental health
- the socio-economic status of the family
- the family's parenting style.

He concluded, therefore, that parental characteristics influenced the child's well-being more than the chosen model of custody and access.

Finally, Stefan Rucker looked at what would help sharpen the focus on the well-being of the children.

- Age-appropriate conversation techniques and intervention methods for children need to be better developed, communicated to actors and practised.
- The financial security of separated families should be enhanced in order to enable all families to live individually appropriate arrangements for care and upbringing. The alternating model, for example, is currently more feasible for well-off families. Separating families that are less well off need more financial support, e.g. through tax relief.
- Families going through divorce and separation need stronger counselling support structures. It is not only the children but also the parents who suffer greatly from separation. They need support to gain control of their emotions, among other things.

Four dimensions of separation conflicts: reflections on custom-made measures



**Gesine Götting, psychologist,
head of the counselling centre
for parents, children and
young people in the Peine
district**

Gesine Götting's presentation drew on her practice in the parent counselling centre in Peine. In 2007, the Youth Welfare Office transferred the entire area of separation/divorce (counselling according to §17/18 SGB VIII, participation in family court proceedings) to this centre. Thus, it is the central counselling centre for this issue in the Peine district.

Mrs Götting identified four dimensions / phases of separation and divorce conflicts:

1. **Separation crisis:** The aim of counselling here is to take as much "steam" out of the situation as possible. Appointments should be offered quickly without being overwhelmed by the dynamics. In her experience, the separation crisis lasts up to about two years. After that, the parties usually begin to emotionally detach from the separation issue. However, ambivalence conflicts often arise among the parents concerned during the separation crisis.

On the counsellor's side, couple counselling skills are very important, as there may sometimes be a chance to solve the conflicts without a separation. The counselling centres should be able to offer separate services for parents and for children and young people. In terms of the counselling, there can be a danger of misinterpreting the crisis as a high-level conflict or of losing sight of the children/adolescents because of the high dynamics between the parents.

2. **Flash in the pan:** In this scenario, the separation has taken place and there are already good examples of cooperation after the separation. However, external changes (such as moving house, losing one's job, a new partnership) can threaten to lead to strong conflicts. In this situation, too, it is useful

to be able to offer support quickly. Mediation is often a helpful procedure in these phases. Work with the family should be strictly solution-oriented and the counsellor can play a useful role by actively promoting decision-making. However, children and adolescents should not necessarily be involved immediately. Depending on the reason for the impending change (e.g. the birth of a step-sibling), they may need their own counselling services. Experience shows that it can be useful to fall back on counselling methods that have already been successfully used in the respective family. Flash-in-the-pan conflicts often end up in court, where they are often misinterpreted as high conflicts.

3. **Multiple stresses:** In youth welfare services, these families are sometimes labelled "multi-problem families". They are families in precarious situations, often experiencing several stress factors at the same time (e.g. addiction, mental illness, generational conflicts). In counselling, superficial conflicts should be considered as triggers, rather than causes. If counsellors focus exclusively on these triggers, there is a danger that the general situation of the children will be lost from view. With multi-problem families, very close cooperation with the youth welfare office, sometimes joint counselling and a focus on child protection are essential. Counselling should concentrate on the hidden conflicts and less on the superficial problems. In these cases, there is the danger that the problems may become chronic if new cycles of counselling repeatedly follow unfinished counselling goals.
4. **Wars of the Roses:** These are the actual high-conflict separation problems. The separation conflict cannot be overcome (at least by one of the parties). As a result, the conflict tends to become chronic and to reproduce itself repeatedly. Bitter hostility and irreconcilability are characteristic of Wars of the Roses. Joint discussions with both parents usually prove successful in such cases for diagnostic purposes only. Otherwise, separate talks are the method of choice. In particular, getting the parties

to gain control of their emotions is more likely to succeed in individual discussions.

Wars of the Roses potentially endanger the children's psychological well-being. Therefore, both parents and children need psychological education. Three factors have to be dealt with in this context: stress, parentification of the children and demonisation of the partners.

The conflict dynamics in wars between the parties that are already very pronounced will be promoted if the courts repeatedly suggest attempts at mediation without also making judicial decisions after previous attempts have failed. Court decisions are

necessary if the parents involved have repeatedly failed to reach and adhere to voluntary agreements.

Children often over-adapt in wars between the parties. Thus, their suffering can easily be overlooked and they will prove unable to cope with their own developmental problems. In Wars of the Roses, prescribed counselling according to § 156 FamFG has often proved successful.

On the counsellor's side, too, dealing with families in a War of the Roses leads to high stress levels and an increased need for supervision.

Child- and parent-oriented child law procedures?



Dr. Kerstin Niethammer-Jürgens, family law specialist, lecturer in international family and child law

Kerstin Niethammer-Jürgens explained that lawyers in separation and divorce proceedings are often confronted with accusations from other professionals, specifically of exacerbating conflicts in the wrong situations, not striking the right tone and not contributing to the joint success of such proceedings.

By contrast, she emphasised that, since the procedural law reform of 2009, lawyers have been required to contribute to the de-escalation and acceleration of proceedings. In addition, they are required to encourage the parents involved to make use of counselling services.

The lawyer's initial consultation would include the important duties both of pointing out de-escalating counselling and mediation options and making it clear to the client that the interests of the child/children must be at the centre of the family court proceedings. This view of family lawyers would be perceived by some parents as running contra to the classic client relationship. Conveying these perspectives is a challenge for lawyers.

In addition, there is often a fundamental need for parents to be informed about the basics of family law provisions. Many parents believe that the youth welfare

office decides on custody, right of residence, placement and access issues, while in fact these decisions are in the hands of the family courts. The task of the specialist lawyer is to inform the client, to instruct him or her about family law issues and to prepare and represent him or her at the oral hearing. The client is also made aware of the special role of the children's guardian ad litem.

From her experience in international family law, Kerstin Niethammer-Jürgens referred to the special procedures in Germany: a personal hearing for the parents and a personal hearing for children, even young children, directly before the family court is a unique feature of German law.

In conclusion, she emphasised the special need for further training and professional qualifications for all participants in the family court process in view of the challenges described. She referred to the current draft law that would oblige family court judges to undergo further training in conducting conversations with children and pleaded for corresponding further training for all professional participants in the proceedings. Prospective specialist family law lawyers are already being trained for this special role in specialist lawyer training courses.

Discussion and summary of the expert discussion

The discussion took up, among other things, questions of how to evaluate current structures and measures for conflict reduction, what role the quality of cooperation between professionals plays and how the interests of children are taken into account in court proceedings, mediation and counselling. The controversial topic of "mandatory counselling" for parents in separation proceedings emerged as a key point. It became apparent that there was a clear need to continue the professional discussion, to conduct further research and to evaluate experiences against existing national and international concepts.

In general, the experts noted that in addition to the fair design of maintenance and custody laws, the psychosocial support structures – such as counselling and mediation – are a very important factor in reducing the conflictual nature of separation and divorce processes. Successful cooperation between counselling and support services for families and courts also seems to be of great importance to ensure processes that are as conflict-free as possible.

The professional discourse on the further development of support in separation and divorce must include both judicial and extrajudicial structures and measures, as well as the necessary competences and attitudes of the legal, socio-educational and psychological actors.

It was noted that the professions had already developed differentiated methodological approaches for different types of conflicts. However, these must also be used in a professional manner. Not all counsellors and therapists, and especially not all judges and lawyers, are clear about how they can recognise different types of conflict, assess how the conflict may develop and select appropriate ways of dealing with it. This is why inadequate counselling measures are often prescribed and used. Cooperation between professionals must therefore be improved so that more understanding and knowledge about different methods and interventions can be communicated between the professions.

Not every major short-term conflict makes a separation highly contentious. However, where there is a high

level of conflict, the limits of the effectiveness of certain interventions must be recognised and, if necessary, courts must decide on certain thorny issues.

However, parents should not be pathologised in cases of high conflict. It is crucial that the counsellors remain open to cooperative decision-making. They must continue to trust the parents to break destructive conflict patterns. Where it is professionally appropriate, family networks should be included in the work.

Highly contentious parents often have a strong tendency to repress their own part in the conflicts. This is accompanied by an overly positive self-image, in which one party sees him- or herself as a victim and the ex-partner as the "disruptive element" that needs to be fought. Changing this dynamic is often only possible in individual discussions and requires a certain degree of willingness to reflect. If this is not the case, the courts must make clear rules that leave as little room for interpretation as possible. Furthermore, it is important to prevent children from being instrumentalised in the development of this dynamic.

The experts agreed that, as a rule, supportive intervention at the earliest possible date would be helpful for the separating parents. Whether mandatory counselling in divorce and custody proceedings could be a useful tool was disputed.

Some of the experts argued against compulsory counselling services:

- Success in counselling settings is based on the fact that the counselees have a vested interest in the counselling and feel supported by it. Successful counselling processes cannot be designed against the resistance of the counselees.
- It must be accepted that not all people can be tempted by offers of separation and divorce counselling.
- If people are generally required to seek counselling, there is a risk that those who had wanted to seek counselling of their own free will will resist it.

- Direct access to a court decision is an important legal right that can only be sidestepped for very significant reasons.

Other experts presented arguments in favour of compulsory counselling services:

- Early intervention could guarantee the de-escalating interventions for a large proportion of separating parents.
- In general, early mandatory counselling could be helpful, offering guidance and support to parents at a time when the conflict is not yet characterised by negative crisis dynamics and has not taken firm hold. Early intervention would also seem to offer greater opportunity for motivating the parents to put the interests and needs of their children in the center. This would result in better chances of counteracting the instrumentalisation of the children – up to and including clear threats to the best interests of the children owing to the parents' involvement in the conflict.
- There are methods that offer opportunities in compulsory counselling settings to link up with people's interests and to enter into a working alliance with them. Internationally, there are interesting positive experiences with compulsory counselling and the methods used there.

There was agreement that, in principle, the earliest possible support for separating parents through counselling or mediation should be sought.

Despite the different assessments of compulsory counselling in divorce proceedings, there was consensus that international experiences with compulsory counselling should be evaluated more closely and compared with the advantages and disadvantages of the structures and regulations in Germany. It became clear that internationally and nationally there was a wide range of professional assessments of mandatory counselling and that this was not always reflected in political discussion.

Participants also unanimously agreed that an adequate counselling structure has to be secured in the first instance. Until the quality of counselling in separation/divorce is developed to a reliably high level, it does not

seem appropriate to force parents in the separation process to receive counselling.

Under no circumstances should there be any external compulsion for joint counselling or mediation in the case of family separations where violence or abuse have occurred.

Furthermore, the connection between counselling/mediation and the best interests of the child was discussed. Counselling in the circumstances of separation or divorce always contributes to keeping the child's interests in mind and minimising potential risks. This requires the uncompromising and joint efforts of all parties involved, both judicial and non-judicial.

It is important to take a closer look at when and how to involve children in counselling and when it is advisable to conduct counselling with the parents first. Children and adolescents should be offered their own specific services, which should be directly related to them, their interests and difficulties. Overall, more attention should be paid to developing the quality of age-appropriate counselling services.

Also, with regard to the interests of children and young people, it is not only structures that have to be further developed, but also the necessary skills and attitudes of the legal, educational and psychological professionals.

In the discussion, the experts also offered suggestions to the AGF as to which family policy demands should be made. These included the following points:

- Section 16 of Book VIII of the Social Code should be made more specific with regard to the scope, quality and needs-based equipment of the services. There is a clear need for improvement, especially with regard to preventive services. Overall, family organisations should exert more influence on the reform of Social Code Book VIII in order to strengthen prevention and make the provisions binding. Family education could be an important factor in developing a productive culture for handling conflict in families and should be expanded with this goal in mind.
- Research into the different pathways of separation should be stepped up. The question of how to protect children from an escalation of conflict should be of high priority in this research.

- There should be more evaluative studies in this field. Projects such as "Kinder im Blick" (Children in view) have shown, for example, that parents who were obliged to participate in the project by a court decision experienced stronger positive outcomes than parents who participated voluntarily. Such outcomes would have to be scientifically verified. This research would require more funding.
- It is important to provide evidence-based and differentiated information online about the opportunities for counselling and mediation in separation and divorce and about access to these services. The services offered by individual counselling centres should also be easier to find via social media platforms.
- Last but not least, the work with highly stressed people and escalating dynamics in separation processes places extremely high demands on professional staff. The high demands on the competences of counselling centres, the growing demand and the necessity for networking and cooperation beyond their own professional boundaries require improved design of services in order to meet high quality standards.

Editors:

Uwe Sasse, Dipl. Sozialwissenschaftler
Arbeitsgemeinschaft der deutschen Familienorganisationen (AGF)
Translation: Ingrid Cranfield

Contact and Information:

Association of German Family Organisations (AGF) e.V.
Karl-Heinrich-Ulrichs-Straße 14
10785 Berlin
Germany
Fon: + 49 (0) 30 2902825-70
Fax: + 49 (0) 30 2902825-89
Email: info@ag-familie.de
Web: www.ag-familie.de

The AGF is supported by

