

**COORDINATED AND INTERDISCIPLINARY COOPERATION
IN PARENTAL CONFLICT RESOLUTION**

THE EXPERIENCE OF THE COURT OF DE COCHEM-ZELL

António José Fialho

FAMILY JUDGE

Translation by Bláthnaid Deeny

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In the central region of the German Federal State of Rhineland-Palatinate lies the fertile valley of the Moselle River, situated in the District of Cochem-Zell.

It is bound to the north by the Eifel mountains and to the south by the Hunsrück mountains, in an area of 719.42 square kilometers and around 64,863 inhabitants (90 inhabitants/km²).

It is a region covered by vines from the foot of the mountains to the river valley on top of those hills medieval castles have been protecting the region for centuries.



During the year 1979, the Cochem-Zell Family Court was called upon to decide on the exercise of parental responsibilities relative to two young people aged 15 and 16.

The divorce of the parents still had not been decreed by the competent regional tribunal and the process regarding parental responsibilities was submitted for consideration by Family Judge Jürgen Rudolph who, for some years, had been responsible for the Cochem-Zell Family Court.

At that time, the legal standard (§ 1671th IV Part 1 of BGB - German Civil Code) established that, in the case of divorce, "parental authority is attributed to only one of the parents".

The parents of these children consistently rejected the attribution of parental authority to only one parent and agreed upon joint custody.

This intention of the parents was understandable but could not be considered given the law, hence the judge escalated to the Federal Constitutional Court for constitutional examination of this rule.

This request had been similarly escalated by two other family judges, in similar circumstances, so that, on 3 November 1982, the Federal Constitutional Court declared the unconstitutionality of

this prevailing rule, adopting a similar solution to one which already existed in France in Denmark where parents could determine how to exercise parental responsibilities, after separation or divorce.

For Judge Jürgen Rudolph, the decision of the Federal Constitutional Court highlighted the need to take into account that decisions on how to exercise parental responsibilities over children in the case of divorce or separation should be left to the parents.

This collection of reflections and discussions on assessment criteria for the well-being of the child drove the creation of a "Working Group on Separation/Divorce" in Cochem-Zell, which involved magistrates from the Family Court and Youth Court, technical assistants from these tribunals, experts and mediators, as well as lawyers based in the jurisdiction of Cochem-Zell.

During the first three years, this Working Group met somewhat regularly (every three months) but, in 1999, began to meet monthly, becoming a representative entity of relevant entities and professionals.

However, the first meetings were driven by participants' individual proposals; while much discussion took place, they were focussed on their own activities and individual interests.

None of the participants guessed that, through this manner of working, they would achieve a higher quality of professional relationship and performance. Their efforts were directed only towards an exchange of experience and thought.

This was clearest in relation to lawyers who, several times, debated an attempt to define the best interests of the child and engaged in contentious discussions - between themselves - on the defence of parties involved in the process.

Some lawyers stated their readiness to resign if their defence of one of the parents conflicted, according to them, with the interests of the child; others invoked the mandate which represented the interests of one of the parents and not the child.

However, these different positions led to the development of a collaboration for the future, while respecting these differing points of view.

A shared commitment began to be made by all the lawyers involved: - **assembling the discussion and arguments into documents which showed they would not adopt a strategy of conflict.**

As a result of this commitment, lawyers began to make sure, even before the initial filing of a court application and in particular in the most relevant cases, to direct parents toward counselling or mediation services available to the court and to advise them to adopt appropriate behaviour in their relationship with their children.

On the other hand, this compromise came to be established as a code of conduct which runs along these general lines:

CODE OF CONDUCT FOR LAWYERS

Preamble

Due to its complex psychological dynamics, Family Law imposes on lawyers, in relation to each family in the process of separation or divorce, certain requirements.

For families with young children, it is essential to be aware of their interests.

General provisions

1.1. - The lawyer shall guide his technical-legal advice and oral and written arguments in such a way that parties are encouraged to restrict their differences of opinion and and supported in this.

1.2. - The lawyer shall prioritise the principle that the judicial process of parental separation is not a fight where there is a winner and a loser but, rather, a search for fair solutions.

1.3. - Wherever possible, the lawyer shall direct the parents to provide truthful and honest information which drives frank discussion.

1.4. - The lawyer shall use one language directed towards and for agreement, taking care to exercise self-control and seeking to express respect for the other party's point of view.

The lawyer shall be especially attentive to his choice of words in his written pieces in order to ensure this.

Relation with clients and constituents

2.1. - The lawyer shall establish and maintain a relationship with the client which allows him/her, while following all aspects of the client's viewpoint, to guarantee the independence of his opinions and technical-legal judgements.

The lawyer shall avoid allowing himself/herself to become involved in conduct where personal feelings may endanger the independence of his decisions.

2.2. - The lawyer should encourage the potential and capacity of the clients to collaborate in solving family conflicts.

2.3. - The lawyer should demonstrate to his clients the advantages to the family in choosing a mediated and consensual solution instead of endless conflicts in court.

Even during the process, the client should be encouraged to use extra-judicial family conflict resolution models.

The lawyer shall explain to his clients that, each time children are involved in conflict, the behaviour of his clients will have consequences for the family as a whole and for the behaviour of the children towards their parents.

Relationship with other lawyers

3. - During debates and conversations with other representatives, the lawyer shall always demonstrate perfect fellowship with and respect for his peers, demonstrating a conciliatory and non-combative spirit.

In some particular cases, the exchange of written petitions can be substituted with direct conversation.

Children

4.1. - During all his activities in the process or intervention with either parent, the lawyer shall encourage his clients or constituents, as well as any other stakeholder, in the view that that the primary consideration of the will of the child is the most important point of view.

As such, the will of the child must be understood as integrating a set of situations like the need to be loved, accepted, protected, allowed interests, prioritised and valued and his development guaranteed as an individual personality and, in particular, his need for a steady parent-child relationship.

The lawyer should clearly advise his client or constituent that it is essential for the healthy development of the child that his relationship with the other parent is permitted.

4.2. - The lawyer shall not forget that the interests of the child do not necessarily correspond with those of both parents. In this case, the lawyer shall remind his client or constituent of his technical-legal support oriented towards the best interest of the child, and direct and encourage the parents to modify their behaviour towards the child.

4.3. - When, during the judicial process of regulating parental responsibilities, the interests of the child and parents differ, the lawyer shall encourage the parents to resort to the immediate assistance of mediators or family counsellors.

4.4. - The lawyer must be prepared to collaborate with all other professionals involved in the resolution of family conflict (psychologists, social workers, mediators and family counsellors).

4.5. - Issues of custody and access rights, on one hand, and financial issues (alimony and sustenance of the child), on the other hand, shall be strictly separated by the lawyers and treated in separate findings or pleadings.

This Code of Conduct represents the objectives and recommendations that lawyers wish to follow during the representation of their clients and constituents.

The Advocacy Statute of Germany (Law no. 8.906, 4 July 1994) does not preclude the adoption of conciliatory conduct on the part of the lawyer.

Indeed, Article 2 of this Statute states that "the lawyer, necessary to the administration of Justice, is a defender of the democratic State of Law, of the citizen, of public morality, of Justice and social peace, elevating the work of his private office to the level of public function that he/she performs".

In relation to the section dealing with the general duties of the lawyer, it is stated that "it is the duty of the lawyer to stimulate conciliation between litigants, preventing, where possible, the initiation of litigation, and to advise the client not to enter into a legal adventure" (Article 2, items VI and VII).

Article 3 of the same Statute also states that "the lawyer must be aware that the Law is a means of reducing inequality in order to find just solutions and that the law is an instrument to guarantee the equality of all".

It is "prohibited for lawyers to present facts in court which deliberately misrepresent the truth or are grounded in bad faith" (Article 6).

In turn, "the lack or absence, in this Statute, of definition or direction on the issue of professional ethics, which are relevant to the exercise of law, must be decided by the Court of Ethics and Discipline" (Article 47).

The Lawyer Code of Conduct adopted by those under the Cochem Model came to demand that the traditional practice of law take up another position or behaviour, not to diminish the playing field for lawyers (which remains unchanged) but that professionals working in the area of parental conflict resolution submit themselves to new ethics rules.

This Code of Conduct was found to be consistent with the deontological rules of the Law Statute, without affecting the independence of the lawyer's actions (before the reinforcement), and guiding the profession to a higher interest, in other words the incorporation of the best interest of the child in his parents' separation processes or familiar disassociation and in disputes over custody, regulation of personal contact or food.

Thus, without impairing vigorous action in defending the interests of the parent who hired the lawyer (since this is reconcilable with a more important interest and a conciliatory position), the lawyer does not give in to "the whims" of the client or constituent and, in this manner, does not forgo independent action and the vital social role of instrument of Justice and social peace, ceasing

to be a "mere agent of the client's disorder and imbalances" in assuming the function of technical-legal advisor.

We will now see if the adoption of a similar code of conduct in Portugal would be compatible with the Bar Association Statute (Law no. 15/2005, 26 January).

Article 76, No. 1 of the Bar Association Statute states that "the lawyer exercises the defence of rights and interests entrusted to him/her with full technical autonomy and in an impartial, independent and responsible manner".

The lawyer is essential to the administration of justice and, as such, must maintain public and professional conduct appropriate to the dignity and responsibility of the role he/she plays, punctually and scrupulously complying with statutory and legal duties, or requirements of customs, practices and traditions, fulfilling the professional obligations of honesty, probity, rectitude, loyalty, courtesy and sincerity (Article 83 of the Statute).

In professional practice, the lawyer always maintains, in whatever circumstances, his independence, and must act free of any pressure, especially that which comes from his own interests or outside influences, abstaining from neglect of professional ethics in order to please the client, colleagues, court or third parties (Article 84 of the same document).

Within the scope of duties to the community, the lawyer is obligated to defend rights, liberty and guarantees, to strive for good law enforcement, the rapid administration of justice and the improvement of the culture and institutions of the legal system, never advocating against the law, using illegal means or devices or promoting steps known to be time-wasting, useless or harmful to the correct application of the law or the discovery of the truth and refusing representations considered unjust (Article 85, No. 1 and 2, paragraphs *a*) and *b*) of the Statute).

It is still the duty of the lawyer to proceed with courtesy in the exercise of his profession, notably towards colleagues, magistrates, arbitrators, experts, witnesses and other stakeholders involved in the processes, and even court officials, registry office notaries, other departments or public or private entities (Article 90).

In relationships with clients, the lawyer must act to defend the legitimate interests of the client, without prejudicing the fulfilment of legal and deontological rules, conscientiously giving his opinion on the merit of the right or claim that the client invokes and advising in full the composition which he/she thinks just and fair (Article 95, No. 1, paragraphs *a*) and *c*) of the Statute).

In addition, in relations with the courts, the lawyer must, in all circumstances, act with diligence and loyalty in conducting the process, and it is forbidden to resort to disloyal means to defend the interests of the parties, exercising representation within the limits of both law and courtesy and preventing his clients from exercising any reprisals against the opposition (Articles 103 and 105, No. 1, both from the Statute).

It is also the duty of lawyers, in relations with each other, to proceed with the utmost propriety and courtesy, refraining from any personal attack, offensive reference or uncivil criticism, in substance or form, imposing a relationship of trust and cooperation between lawyers, so as to avoid needless litigation, reconciling, where possible, the interests of the profession with those of justice or those who seek it (Articles 106 and 107, No, 1, subsection *a*), of the abovementioned Statute).

In summary, the adoption of a similar code of conduct would not conflict with ethical and deontological obligations which guide the exercise of the activity of the lawyer.



Due to the activity of the Separation/Divorce Working Group, "joint custody" decisions of the two parents reached 60% after 1995 and, later, after 1998, 100%, with custody-related issues decided in around two weeks.

At the same time, litigation between parents began to focus solely on the issue of how to regulate parental responsibilities.

From 1994, the Working Group suggested that, during parent conferences, advisors would be present. When, during a negotiation attempt, the parents could not reach a level of understanding that enabled a consensual solution, the process was suspended and mediation or advisory services began to monitor the situation.

The success rate is unusually high since, to date, not a single case has arisen that has not been resolved by an agreement by both parents.

For some, this success results from the intervention of lawyers whereas, for others, it was the result of the impact of the Working Group that led lawyers to moderate the attitude of the parents and actively involve them in the process of consensual resolution.

On the other hand, the need to resort to the assessment and expert services was drastically reduced.

The monthly meetings of the Working Group started at 6pm in order to allow the participation of lawyers and were held alternately in court, at the office of a lawyer and at the court support services (mediation or counselling), with the host chairing each meeting.

The Working Group also developed the treatment of various topics related to issues of divorce and separation and parental responsibility, collaborating with other institutions as an example of interdisciplinary cooperation.

In much of Germany, professions involved in the resolution of parental conflicts (magistrates, lawyers, technical advisory bodies, family mediation offices and expert), continue to work, essentially, in isolation.

In situations of extreme conflict, the family tribunal - and respective court of appeal - is the "final stop" of the process.

On the other hand, after the judicial decision, if monitoring or control is not carried out, it often means that decisions are the object of violation by the father or mother on which the obligations were imposed.

On behalf of the interest of the child or even of the parents, the Cochem-Zell Working Group sought to create a network of professionals who interact in this area. The parents will be released from this network only when they have reached acceptable levels of consensus on the needs of the children, and are able to implement them in practice, or when they definitively refuse to reach them. In the latter case, this will jeopardise the award of custody and of exercise of parental responsibilities.

Thus, the Cochem Model implies a structural reform of the decision processes of parental conflicts.

Today it is known that the traditional model of parental conflict resolution incentivates parents to maintain an attitude of conflict and to perpetuate immature behaviour so that it is the judge who resolves their issues, thus escaping the full assumption of their parental responsibilities.

In summary the Cochem Model is based on orderly and interdisciplinary cooperation between the the various professionals working for the resolution of parental conflicts.

Orderly cooperation implies that all the professional stakeholders should participate in the family conflict in an assertive manner so that parental responsibility is reinforced and neither parent can find in these professionals any echo of the adversarial model or an attitude of destruction in relation to the other.

This method of cooperation can only work when the professionals involved are willing to allow the development of a process of settings modification based on mutual respect and acceptance, letting go of a state of distrust or falsified understanding and rejecting the predominant winner-loser mode of thought.

On the other hand, all the information and content of the conversations are immediately put into practice, by all participants, in the work they carry out.

Each representative entity or professional invests and sets as the objective the guarantee that parents will regain full awareness of their parental responsibilities.

With these objectives, an appreciable gain for the child and parents and, consequently, for the whole community, is made.

In turn, **interdisciplinary cooperation** demands that all the professionals involved (magistrates, lawyers, technical advisors, mediators and parental advisors) accept each other and seek the same objective, through the adoption of regular meetings involving all these professionals, elimination of prejudices and mutual acceptance of diverse methods in relation to the objective to be reached - the resolution of parental conflict.

The Cochem Model is an action model for interdisciplinary cooperation in parental conflict and has been working since 1992, with an enormous success rate, in particular demonstrating high levels of respect for the decisions of the personal contact system between child and the non-accompanied parent (in some cases, time periods of one hundred per cent), an aspect where parental conflicts were more evident and stressful for the best interest of the child.

The advantages of this model indicated are: -

a) - interdisciplinary cooperation is not an end in itself (from the legal, psychological or social work perspective) but a new, stimulating global and inter-professional perspective;

b) - the costs and use of appeals are further reduced, whether by the people involved, or by State services and the Judicial Power itself;

c) - professionals work with the parties involved in the sense of resources and not of shortfalls, reinforcing the capacity to assume parental responsibility;

d) - psychological stress to the parents and children involved is avoided, creating a preventative effect on mental and physical health that, in the future, yields economic dividends in terms of community resources;

e) - satisfaction is high among the people involved because the solutions worked out are generally solid, as well as among professionals because they do not become worn out with useless conflict and tension;

f) - thanks to this form of cooperation, professionals represent, from the point of view of the parties involved, an example of **conflict management**.

In fact, this model institutionalised a work practice which acts as an example for the learning of all people involved.

The potential for conflict among couples is reduced because they are presented with a peaceful form of cooperation between judges, lawyers and other professionals and, for this practice of

cooperation, they demonstrate to the parents how they can work out a common solution despite divergent positions.

In this way, orderly and interdisciplinary cooperation was adopted as a work concept for all the parties.

With this process, as stated, decisions on joint exercise of parental responsibilities reached 100% and, between 1996 and 1999, no dispute occurred in relation to visitation rights.

How do the proceedings and process in this model of cooperation happen?

1. - Parents (or one of them) are, at the beginning, advised by lawyers¹, with an indication of the possibility of recourse to mediation services or parental counselling²;

2. - The initial application is introduced (in court) containing a factual, objective description free from personal commentary or criticism about the other parent³;

3. - The tribunal schedules the session for the soonest possible date (normally between two and three weeks away);

4. - Failure to reply by the other party regarding the content of the initial application;

5. - Immediate intervention of mediation or counselling services who participated in the first judicial session and who had held previous conversations with the parents and child;

6. - In the first judicial session, the court tries to devise, in conjunction with the lawyers and parties, consensual regulation of custody and visiting rights;

7. - If consensus is not reached, a possibility of recourse to mediation or counselling is made available to the parents at the soonest possible date;

8. - In the first judicial session, the tribunal will schedule a second session, in which the success of the mediation or counselling will be verified and monitored and which could be reduced to writing up the solution adopted;

9. - In the case of one of the parents interrupting mediation or counselling, a new judicial session will be held immediately;

10. - When interrupting mediation or counselling, without direct intervention, one of the parents (or both) informs his lawyer and the lawyer informs the tribunal;

11. - In the judicial session, mediation or counselling will be attempted again in a more assertive manner; if consensus is still not reached, the tribunal will appoint an expert, whose

1 One factor considered positive is that, in the area of parental conflict resolution, and though the law does not require it, the parties appoint a lawyer whose has been involved since the beginning of the conflict.

2 It is known that a mediated agreement is more consistent and lasting because the parties feel they have given their valuable contribution to the solutions chosen, given that, within the scope of the interest of the child, neither parent can be a substitute for the function that the other fulfills and parental-filial relationships are on a different level to marital relations.

3 As Helena Bolieiro and Paulo Guerra point out, it is possible to obtain "a decent divorce or separation, replacing, at times, poorly-chosen words such as "the marriage failed" and "I visit my child", with more tactful words such as "the marriage ended" and "I am with my child" (The Child and the Family - A Matter of Right(s), Coimbra Editora, pg. 277).

objective is to set out an appropriate solution for the case (draw up a written consensual regulation⁴ or, alternatively, an opinion);

12. - In 98% of cases, following this procedure a consensual and lasting solution is achieved.

Finally, although starting out as the initial idea of exchanging views and experiences, the Working Group gained a momentum of its own, becoming an functional institution, with the following objectives: -

a) - to establish a dialogue between institutions and individuals involved in conflicts arising from separation or divorce, with the aim of discovering together ways of proceeding and existing offers of help;

b) - to practise and develop forms of cooperation;

c) - to inform the public.

At present, this Cochem-Zell Separation/Divorce Working Group has evolved into the Institute for Interdisciplinary Training (www.ak-cochem.de), which develops its training activity along with professionals involved in the resolution of parental conflicts.

Nevertheless, the model in question has given rise to some controversy over its specialised means of dealing with issues of family and children, pointing out that some of the effort of obtaining consensus does not always take into account the best interest of the child.

It is frequently countered that this model of cooperation will not be transferable to other regions or countries, which does not seem to be true as some countries or states have expressed interest in this solution (for example, the Czech Republic or State of California).

It seems that the institutionalisation of a similar practice is more a question of mentality and not a mere geographical projection⁵.

The objective pursued and achieved, to bring parents in situations of extreme conflict to dialogue again, has proved durable and consistent.

In addition, a significant number of cases was found where the consensus reached was projected to other fields of conflict related to separation, triggering a true "domino effect".

The Association for Parental Equality and Children's Rights (www.igualdadeparental.org), in collaboration with the Centre of Judiciary Studies and the Bar Association District Councils of Lisbon and Porto, have held two conferences (in Lisbon and Porto) with the theme "Orderly and Interdisciplinary Cooperation in Family Conflict Resolution - the Experience of the Cochem-Zell Court", with, as sole speaker, the principal driving force of the so-called "Cochem Model", Judge

⁴ The expert is given an important role in the formulation of a negotiated solution as it is understood that, during assessments, parents try to conceal their problems and weaknesses, seeking to create as positive an impression as possible, with the aim of emerging winner in judicial debates. Thus, the expert seeks to use his knowledge to build, with the involved parties, a relationship of trust which drives consensus.

⁵ In Helena Bolieiro and Paulo Guerra's happy and expressive words "no-one applauds with only one hand" (ob. cit., pg. 260) and this is a reality inherent to the area of family and children).

of the Family Court of Cochem (now retired) Dr. Jürgen Rudolph, to talk about this practice which has been an example of effectiveness in the resolution of parental conflicts.

The main objective at these conferences was the promotion of interdisciplinary cooperation (involving judges, prosecutors, lawyers, psychologists, mediators and other experts) for the early resolution of parental conflicts applied at the Family Court of Cochem. It is a methodology which allows contextualised assessment of parental conflicts and evidence-based judicial decision-making, in favour of balanced development of the children in the case of their parents' separation and divorce and reduces the process time, thereby being more effective for all parties involved. It is hoped that a serious subsequent discussion will be initiated on the reform of the Family and Juvenile Courts in Portugal.

An ambitious objective in that, like in much of Germany, in Portugal professionals involved in parental conflict decisions continue to act alone and separately, despite the positive experiences which have demanded of professionals involved something similar to interdisciplinary cooperation.

ANTÓNIO JOSÉ FIALHO
Family Judge

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