

ANOTHER WAY TO HELP FAMILIES

THE FAMILY MEDIATION : BELGIAN EXPERIENCE

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I. Evolution of the family

In his parental functions analysis(2) Louis Roussel proposes the hypothesis according which mentalities changes induced modifications at the parents/children relationships level with consequent impacts on fecundity , wedding customs and households structure and therefore on demographic behaviours.

Thus ,modifications of the marriage concept provokes changes of the parental functions and of the children situation, in fact their number clearly decreased. Parental functions, quite limited in time, in the past, are presently increasing. Duties are still heavier and concern more psychological needs than material ones.

Formerly, the family was in charge of its members survival, the part played in society as in marriage was dependent on sex and not on aptitudes. Domestic work and education were exclusive responsibilities of the women. As for the men, the guaranteed the family economical well being. The marriage being obviously the result of two associations : an economical one and an affective one.

Presently, the State gives aids to parents and assumes various functions which up to now were of family concern , for instance school as educational relay...Moreover, today men and women try to marry in a collaboration context by considering the aptitudes and the gifts of everyone. This relationship implies negotiations between individuals.

The couple is looking forwards to a life in which the complementary character (right to be different) is completed by the search for equality . The couple is looking for new behaviours and aspires after autonomy in association. Most often, a child is the fruit of love between two persons. It comes behind parents pleasure and freedom.

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(2) ROUSSELL.L. " The practice of parental functions and their demographic consequences in industrial societies" in 'Cahiers des sciences familiales et sexologiques' 1982/6

New values do appear : agreement, autonomy, greater demands for personal achievement, sensitivity... with consequences the elimination of non desired situations, non commitment in a long term affective relationship, relation insecurity, greater loneliness. as well as the appearance of new family entities, the mono-parental family, the bi-parental family.

Everybody will agree to assert that we presently live an important evolution of society. For instance, if we compare divorce levels in various countries, we have to observe that, in countries such as Belgium, the Great Dukedom of Luxembourg, Austria, Switzerland : 1 divorce is pronounced to 3 weddings. In Germany, France, Netherlands and United Kingdom, we get to 1 divorce to 3 or even 2 weddings in large cities. In countries such as Sweden and Denmark , 1 wedding out of 2 ends with divorce.

Nevertheless, the family (parents, lineages...) remains the natural surrounding for a child. Its role is determining in the development, the training of personality and the affective growth of the child.

As a matter of fact, a child as to be given the opportunity to identify itself to its parents by behaviours and relationship between them, to be listen to, to be recognized by them and to be granted a place within the family. But, alas, when family dissolution occurs the child fate, place and its relationship with its parents are questioned.

II. About “parental authority” !

Obviously everyone agrees that a respected equality between parents is of main benefit to a child, i.e. a joint responsibility of the parents in front of the child and this concerning the educative, relational, caring fields as well as others.

But what is the real situation in Belgium ?

We observe how difficult it is for a magistrate to have equality to be respected when settling upon “child care”

Some favour a mono parental authority which means necessity to evaluate , together with a psycho-social expert, which parent will suit child the best . They discern and elaborate criteria concerning the child needs and how parents are able to answer them.

By settling of mono-parental authority, the other parent is held as “un-responsible” and the conflict persists between both partners with the child as stake.- “the good parent versus the bad one”. The parent evicted of “care”,

although he keeps his right to personal relationship with his child (the famous “visit right”), is alas considered as a “parent in dots”.

Other magistrates fortunately consider that the best criteria in settling the parental authority is not to maintain a conflict situation but to obtain the “parents agreement”. They work hard at setting up this agreement. Parents may ask for the help of a FAMILIAL MEDIATOR . Judges consider a joint parental authority as well as alternated accommodation for children. Spouses are led to consider their parental relationship independently from their conjugal relationship. Thus, the child keeps up both its parents and is no longer at the centre of the conjugal conflict or object of manipulation.

Since 1995, the legislator set as basic principle the joint parental settling up even in case of separated spouses (Law 13/04/95)

III . The family mediation : an alternative ?

Thanks to customs evolution, spouses are trying, more often than previously, to choose a conciliatory procedure : mutual consent . Their ideal is a separation without tear, harmony on agreements, quite and reassuring ambiance present in any negotiation.

But very often war bursts again, disillusion, bitter “victories” and desertions. They are looking for a winner, never there is! Often an important part of the decision making or even the all of it, has been abandoned to others (attorneys, judge, notaries, experts, psycho-social advisers...). They organized the accommodation system for children, the repartition of parental responsibilities, the division of patrimony, the participation in children costs and/or the other spouse’s ones... These decisions, with an impact on the future, finally escape of the most concerned persons: ex-spouses and their children.

Nevertheless, even separated, the family lives on. Parents are aware they have to keep contact on order to , for instance, share the costs, meet when changing accommodations...During this difficult period, FAMILY MEDIATION helps partners to re-establish a dialogue, a direct negotiation, equal to equal and to find answers for difficulties (parents, children, widened family relationships).

Family mediation renders both parties the responsibility of conflict settling. Both parents are recognized to have the right, themselves, to decide their family future and not the judge to cut short. Family mediation may be an alternative to contentious procedures.

IV. Having recourse to mediations services !

Partners can have recourse to the service of mediation at anytime when facing a conflict situation (assistance with decision-making, assistance with amicably settling questions concerning children, separation...parents-children-grandparents difficulties...).

The experience shows that ideal time to envisage mediation is as soon as possible, before both parts have crystallized their positions.

Various factors can influence the success or sometimes the failure of the mediation process: procedure length, parts dispositions for negotiation, aptitudes for face to face dialogue and also the attitude and the collaboration type of other actors : judges, attorneys, barristers, social workers, psychologists...

Family mediation : a man and woman story !

Mediation humanizes the separation and divorce process. It is a tool which reduces the suffered conflict to its right dimensions.. While exacerbated in front of court, the conflict is verbalized by both spouses in front of a technician in communication without any power except that given by the persons and who gives back to persons the utterance they had lost during judicial procedures.

Opposite to barristers whose role is very often to find out the adversary faults. The family mediator, being conscious that almost any couple succeeded something during its common life, enables partners not to ruin that experience. He emphasizes the essential point that the best interest for children is to attend at a serene separation and certainly not an endless war with “ a winner and a loser “ inevitably.

From there on, constructive solutions can be considered and equitable arrangements can be found in a short delay.

V. Family mediation : also a child story !

Mediation restores equal power to both spouses by keeping intact the part as parent. It installs a climate of communication. Avoiding to emphasize the past, it considers present and future and gives back to everyone his self-esteem, which, alone, allows to respect the other. In this climate, the child gets respect of its right for growing under the safeguard and responsibility of both its parents while preserving both its lineages and their cultures. Children discover there is a beyond for affronting and aggressiveness.

Mediation can be extended to children (children/parents mediation, children/grandparents...). It allows also to attend only some sessions. This approach leads to a better consideration of children wishes and allows them to notice that, despite difficulties, their parents are cooperating ,find out agreements, a new functioning, a new relationship. The child understand that its parents agree to him and that, as an individual, he can also be heard by them. When a child attends mediation, the interview is prepared by the parents : principles, structure and limitations are specified, clarified and defined.

The child can give love to each of its parents and be loved by them while maintaining relationship with both its father and its mother.

VI. The Belgian experience.

Since 1987, several initiatives exist in Belgium. These practices, initiated by associations of separated parents and professionals...., are organized in different departments. They are local initiatives integrated in private departments and subsidized or not by public welfare. Indeed, it is the case for the mediation consultations , subsidized by the same right as therapy , conjugal advice ... or judicial advice consultations in the bosom of “family planning” centres , or also for the Social Aid Public Centres which propose free mediation consultations to its customers. These departments are functioning outside courts and independently. Interviews are paid by partners. A consultation costs from 0 to 30 Euros/a person, varying in function of the department subsidies .

Individual practice or in co-mediation

Most regularly mediation is practiced individually or in co-mediation. Both mediators (sometimes from different professional origin) take part in mediation since the first interview. This professional practice allows a work of collaboration, cooperation, reflection, back thinking for one of the mediators while the other one is in action, the roles are complementary.

Mediation and other professionals

The mediator encourages search for specific information by competent professionals (barristers, fiscal advisers...) who will nourish the mediation work.

Sometimes , it may be necessary for one of the partners to call in an individual therapist's aid (sorrow for conjugal couple...) in parallel with

mediation. In certain cases, mediator refers the couple to another professional (familial therapist, conjugal adviser...) whenever , after the first interviews, the couple wants to go on with living together on new bases.

The couples can be referred to mediator by therapists when the separation modalities have to be organized, by barristers in search for amicable arrangements for their customer and this in case of competition between two barristers, or by the magistrate who suggests to parts to find an amicable arrangement before being assigned a final solution. The mediator is a partner cooperating to a better solution for the family, watching over the child's word would be listened to, its needs voiced.

Profile of the mediator

In the global approach of mediation, mediator helps to negotiate not only questions of parental responsibility, residence and domicile, children relationships with both their parents... but also questions of financial responsibilities, patrimony division.

By us, the mediator has to be able to approach the psychological dimension of a situation (feelings of rejection, insecurity, of autonomy search, desire of revenge, bond feeling/money/asset ...) as well as the family social and judicial reality (procedures progression, finances, domicile, employment, assets...). Mediator is thus a professional trained to psycho-social and judicial approaches. Obviously he may come from various professional backgrounds (social worker, psychologist, conjugal adviser, jurist...) and/or have attended specific trainings (systemic...) before attending a mediation training. When acting as mediator, he will renounce to use his fundamental education. Thus, for instance a jurist/mediator could not act as mediator between two partners when being or having been the confident, the support, the adviser and/or the representative of one part. In the same way, the individual therapist will not be mediator between both partners of a couple without questioning its role as impartial mediator...

Mediators benefit also of a deontology code establishing the ethics and rules to be observed when practicing the profession. Since 1990 an association regroups professionals, mediators or not. This association has set up the deontology code, criteria for mediators accreditation and organizes different actions in order to promote this new professional practice. Really recently the Association for Family Mediation (asbl – 3) has been concerned with the interests of mediation professionals and users by settling the new legislation on family mediation in the judicial world. Decrees of application are under discussion.

The training as mediator

First trainings for mediation were organized prior in the private (1989), then by the State (1991). Mediation is developing as specific profession at the familial level as well as the school, penal, neighbourhood one... Mediation gets its letters of nobility in Belgium. Today, the training is ratified by an official diploma (4). Indeed, from 1991 high tuition for social promotion (750 h classes, 160 h probation and memoir) has been organized by the French Community . After two years training (7 capitalizable modules) a mediator's diploma is granted (mediation post-graduate).

Mediation is making its way

The introduction of family mediation in legislation and its subsidizing were settled since 1993... This mode of action develops in various field as we observe a neighbourhood , an educational, a penal, an inter-cultural mediation practice. This action arises more responsibilities and a more citizen-like implication in the concerned problems.

Family mediation can occur when relational difficulties between children/grandchildren/parents/grandparents, but also between welcome families and extraction families, between brothers... It aims at helping, encouraging cooperation, negotiating equitable and pacifying agreements to meet children and family needs.

Since 1994, aware of the necessary harmonization of all the existing legislations, of the importance of the psychological impact on the judicial and versus and of the unceasingly increasing interest for this new discipline..., the EEC partners observe with us that Mediation is no more an utopia. Mere perspectives become reality. Recommendations by the European Council were brought to light (Strasbourg 5/02/98, recommendation n° R (98)) soon followed by new legislations : Belgian law on family mediation in the bounds of a judicial procedure (law 19/02/01 effective on 1/10/01) setting up the opportunity for the judge, in some family litigations, to call for a family mediator's intervention. Other legislations allow the use of mediation in the penal bounds (law 10/02/94).

Mediation is developing.

Could the future enables today children, tomorrow adults, to discover there is a beyond to confrontation and aggressiveness.

Could a child, coming from a dissociated family, go on keeping up both its parents, go on looking at a positive parental image and getting the best opening, thanks to reforms of laws and family mediation

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