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Institutionen för socialt arbete

Barns röster i vårdnadstvister

- om verkställighet och professionellas riskbedömningar

av

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Akademisk avhandling

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Opponent är professor Gunilla Halldén, tema Barn vid Linköpings universitet

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Abstract

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This thesis examines social and legal constructions of children, childhood and children's best interests. The overall aim of this thesis is to study *how professionals construct their argumentation in assessments and decisions about children and their situation, in the enforcement of contested custody, residence and contact cases*. The empirical material is comprised of two studies on the enforcement of family law court orders in Sweden, and consists of all judgments from a court during 2001 and 2007, respectively. The first study also combines the document study with semi-structured interviews of professional judges, mediators and social workers.

Paper I, **Constructing Children's Views in the Enforcement of Contact Orders**, uses findings from the first study, and focuses on how professionals recognize and account for children's views in the legal proceedings. Children's level of participation is theoretically discussed. Constructions of what are the children's 'real' views; protecting children from negative responsibility; and chronological age, can be used to subordinate children's participation in court. Further, children's accounts of risk are sometimes invalidated. The reason for involving children in decision-making in family law is consequently not only to uphold children's rights, but to promote children's protection.

Paper II, **Children's Best Interest in Contested Contact Cases**, provides an in depth analysis of three cases, where violence or alcohol abuse is, or has been, part of the child's experience in contact with the non-resident parent. Focus is how the professionals account for and understand children's best interests, children's reported views, and risks for children. Risks might be easier to overlook if the court seeks only a durable and not a short-term solution of the legal dispute. Constructions of children appear to be important for the court's decision whether or not to enforce a contact order. Arguably, and paradoxically, when children talk about their vulnerability in a competent way, this may make it more difficult for the court to view them as in need of protection.

Paper III, **Children in the enforcement of contact disputes – changed argumentation about time, participation and protection**, analyze how the argumentation in the judgments has changed since the 2006 legislative reform, based on the fact that more cases are dismissed with reference to children's views and best interests. Reports of children's view only marginally increased, but the court seems to give more consideration to children's participation and protection in a changed perspective on time. It is argued that this increases the possibility to combine discourses of care and rights of children.

Paper IV, **State regulation of children's families after parental separation**, discusses, based on both studies, the court orders as normative examples of how different family models and parenting practices relate to the management of children and parents in family law disputes. The court uses gender-neutral words, but address questions about liability almost exclusively to mothers. In cases involving violence or abuse, it may be more appropriate to govern towards a complementary parenting model, and not to use a general rhetoric of two equal parents who are expected to do the same things or to have equal responsibilities.

The results of the thesis indicate that the increased general emphasis on risks and children's views supports safety and agency of individual children. Hence, it increases the possibility for children to be a "protected actor", and to combine discourses of care and rights of children.