

THE RIGHT TO PARENTHOOD
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Four years of struggle to adopt

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What my wife Dorothee and I experienced is a long and sad story. I will try to make it as short and entertaining as possible. So I'll start at the wrong end and I'm pleased to tell you that we have a 13-month-old baby girl. We have just returned from a 10 month stay in Costa Rica. I was a visiting professor there and at the same time we had the great opportunity to adopt Katharina. We adopted her under Costa Rican law. The process was finalized in July this year. The three of us have been together now for over 10 months and are getting along very well.

The decision to have a child was a long process. What helped us come to the decision was the personal assistance system that STIL had made possible. The other thing that helped us take the plunge was our role models. We have a number of good friends with disabilities in the US who had adopted children.

We sought the consent of the local authority for adoption. That was in spring 1990. We had to wait a very long time for the home study. After almost a year, we saw the first draft, which said that I could not provide the physical closeness and warmth that a child needs. When I protested loudly, the wording was changed to:

"In the case of the applicants, the child is to some extent deprived of physical contact with one of the parents"

When we started the home study, the municipality requested an opinion on my suitability from the Legal Council of the National Board of Health and Welfare (*Rättsliga Rådet* in Swedish or RR for short). The Legal Council's response consists of two sentences:

"AR is severely disabled and needs respiratory assistance/respirator at night and also during the day due to polio sequelae. The Board finds that AR is not medically fit to receive adopted children."

The social services' civil servants recommended rejection and so it was. That was in November 1991. We appealed to the County Court (*Länsrätten*). At the trial, the municipality's lawyer argued, among other things, that I would not be able to change nappies, which would mean that I was not fit to be a father.

We won in the County Court. The municipality appealed to the Court of Appeal (*Kammarrätten*). The Court of Appeal obtained two expert opinions from a social counsellor from the County Administrative Board (*Länsstyrelsen*), who was positive, and from a professor of Child and Adolescent Psychiatry, who wrote, among other things, that we were

"psychologically, socially and psychiatrically well prepared to be parents, and in that respect rather more prepared than prospective parents in general".

We won in the Court of Appeal and the municipality appealed to the Government Court (*Regeringsrätten*). In March 1993, the Government Court decided not to take up the case for testing. Since that decision cannot be appealed in a higher court the judgment of the Court of Appeal was confirmed and we had won.

So now we had consent but we still didn't have a child. Most people who adopt in Sweden join an adoption association which then looks around the world for a child. As early as 1990 we had tried to become members of Adoptivcentrum, one of the adoption associations. They told us on the first phone call that we would never be able to get a child through them because of my disability. We received a friendly letter from another association with the same content.

If you do not get help from an adoption agency, you can look for an adoptive child yourself through so-called private contacts. Doro and I have travelled extensively especially in Central America, and we asked our friends there to help us.

A consent is valid for one country and one year and during this year our friends in Costa Rica and Costa Rica could not find a child. So we applied for a renewal, which is usually a routine matter. Not in our case. The municipality rejected our application and so the whole process started from scratch. Again the municipality chased us up to the government court which again refused the right of testing and thus we had won once again. It was August 1994 and in October we went to Costa Rica.

Our experience points to some flaws in the system:

Competence of the municipality

The social workers who did the home study had obvious problems dealing with the situation: they mostly talked to Doro, I had to make an effort to remind them that I was in the room. They hardly ever looked me in the eye. Obviously, they had never been around people with disabilities. The same was true of the district social committee (*Sociala distriktsnämnden*). When we presented our case at their meeting, we did not make eye contact. Only the chairman asked some general polite questions. In a TV interview, the chairman admitted that it had been difficult and that they had never been involved in such a case. Thus he admitted that the members of the social committee lacked the competence to decide the case.

To help them in their assessments, the social services have the "Handbook for Social Boards on International Adoptions" published by the NIA, the National Board for International Adoption. The book may perhaps make sense, but it is interpreted by people. For example, the book says that if a couple seeks consent to adoption, both must be able to cope. This was interpreted by the social services as follows:

Firstly, it is automatically assumed that those who have an extensive disability like me don't have much stamina. This conclusion must have been based on their preconceived notions because they never asked me what I had been able to do in my life. At the same time, it was automatically assumed that Doro was already busy "taking care of me" and would not be able to cope with a child - even though we talked and wrote a lot about how STIL and personal assistance works. But that was too new for them.

During the home study, it was suggested that Doro who does not have a disability would not encounter major problems if she were to seek consent as a single parent. So we would have to get a divorce. That bit offended me. The conclusion one must draw is that society's representatives believe that I am not fit to be a father - and even worse - that it is better for a child to grow up with no father at all than with me. So I can't contribute anything at all, I'm even harmful to a child!

The medicalization of disability

In public, Sweden is very proud of its environmental concept of disability - you know, an impairment only becomes a disability if there are attitudinal or physical barriers in the environment. But with the municipality requesting an opinion from the Legal Council of the National Board of Health and Welfare, my disability became a disease and we are at least 20 years back in time again.

The Legal Council is not allowed to meet the people they are supposed to assess. The Council only has access to medical records. Parenthood is reduced to a medical phenomenon despite the fact that the Social Services Act requires

the so-called holistic approach!

The medical view of disability leads to surprising results: in 1991, the Legal Council or RR replied to the municipality's request that it found me unsuitable on medical grounds. In 1994, the Court of Appeal asked the same question again. At that time, the Council found that there were no medical obstacles to consent, as my state of health had remained unchanged since the first opinion.

Are you with me? In 1991 I was too ill to be a father. In 1994, the RR found me suitable because my state of health had not changed. One has to wonder what kind of intelligence the government demands of RR's members. Last year RR had to decide whether the serial killer Flink could be considered ill. You can imagine how honored I am to be included in the same league as a mass murderer.

Legal security

The Legal Council or RR only makes recommendations. As recommendations, they cannot be appealed. The municipality's practice is almost always to follow the Council's advice.

The deputy chairman of the district social welfare board said in a newspaper interview that the board should not give consent if there is the slightest doubt that the placement is in the best interests of the adopted child. This directly opens the way for all kinds of prejudice. Otherwise, in the legal context, there is the principle of "*In dubio pro reo*" - that is, "if there is doubt, judge in the accused's favor".

The deputy chairman also said in the press that I was too deviant to be an adoptive father. Apparently, only those who fit her image of an average Swede should be allowed to adopt.

The current order puts the burden of proof on me. The municipality has never had to provide evidence for its loose claims about why I would not be suitable as an adoptive father. We presented research from the US showing that children of disabled fathers do not differ in their development from other children. The council chose to ignore these facts and rely on their preconceived notions instead.

Here we must also mention that we had the enormous support of an experienced and dedicated lawyer in the person of Stefan Käll. It is not possible to try to fight alone against the massive resources that the municipality used against us.

How to improve the current system ?

In all humility, it must be acknowledged that it is not possible to construct a completely fair system. Of course, not all who want a child should be considered suitable adoptive parents solely for that reason.

The change we would like to see is the possibility of choosing between several different agencies or institutions to carry out the home study. It is secondary whether they are private or public. Sure, already now, you can choose another civil servant if you do not have a good relationship with the first one. But, in any case, it will be someone again who sits at the same coffee table and it is naive to underestimate the loyalty between colleagues, which means that the second assessment is very much influenced by the first.

Our American friends tell us about how private adoption agencies, under government accreditation and supervision, are allowed to assess adoptive parents' suitability and place children. That might be worth studying.

Another problem is that the municipality can now legally block a higher court's decision, as our case shows. Although we were eventually vindicated, it took time. And an adoption case is often a race against time. We were 38 and 47 respectively when we started and had time to turn 42 and 51 before we had Katharina. If the municipality had managed to delay the case even longer, we would have given up ourselves because of our age. Adoption cases should be given top priority in the courts for that very reason.

The main problem with the current system is that a social work degree or a party affiliation in itself does not automatically free a person from prejudices. We all have our prejudices against groups with which we have not had much contact. Especially if these groups are considered deviant, whether they are immigrants, homosexuals or people with disabilities.

In the end, it has to be said that we finally got the consent to adoption after all. Katharina is so wonderful that we think it was worth waiting four years for just her. The four years of uncertainty, humiliation and bitterness are almost forgotten. Today we have other things to think about.

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translated from the Swedish original by Adolf Ratzka