How it works

This page has information on particular aspects of family related cross-border mediation.

Timeframes

Although mediation can be started at any time, it is recommended to start mediation as soon as possible, preferably before any judicial process is initiated.
Considering the effectiveness of the recourse to mediation as a preventive system to solve the problems arising from the cross-border change of the child's residence, mediation should be highly recommended in all cross-border family conflicts and in particular in international child relocation disputes. However, as mediation is certainly not suitable in every abduction case it would be good practice to introduce a screening interview into the procedure. This could also help to lessen any concerns of the parents and to enhance their understanding of mediation.
Mediation should never serve as an excuse for one party to postpone the resolution of the conflict. This is of particular importance in child abduction cases where timing is crucial.
Mediators must inform the parties explicitly about this during the information phase or at the beginning of the mediation.
After the relocation of an abducted child to the country of his habitual residence, mediation should also be considered in order to avoid further litigation.

Close co-operation with administrative/judicial authorities

In child abduction cases where central authorities and/or judicial authorities are seised, the mediator should explain to the parties the effects of the mediation in the framework of the on-going procedure.
In some countries, the central authorities have trained in-house mediators.
On this page you will find a list of the central authorities.

Enforceability of the agreement in all jurisdictions concerned (access to relevant legal information)

To be effective, the mediated agreement must receive legal effects and must be enforceable in all the relevant jurisdictions.
Access to information on the relevant procedures in the jurisdictions concerned can be facilitated by central authorities or central contact points for international family mediation.
More information on enforceability in the Member States can be obtained on the page Mediation in EU countries.

Language difficulties and modern means of communication

Generally speaking, the physical presence of the parties during the mediation is important. In this regard, appropriate measures to facilitate the provision of necessary travel documents such as a visa, should be taken by countries where the mediation should take place.
Where appropriate and possible bi-national co-mediation should be used.
It is an important advantage for the mediator to speak the language of both parties, or at least the common language (if the couple has one). In cases of bi-cultural co- mediation it might be sufficient for a mediator to speak the language of one party and understand the other if no other solution can be found.
Parties must be able to understand all legal terms. The point of finding a mediator who speaks the language of the parties is not just that of limiting costs because interpretation is not required. There is also the psychological aspect and the need for the parties to understand what they are agreeing to.
The mediator should also be sensitive with the cultural background of the parties and should be aware of the cultural diversity.
The introduction of modern means of communication (telephone, (online) videoconferencing, webcams, etc.) helps to reduce costs and organise mediation if physical presence of the parties is not possible. Such technical instruments should be available in every Member State and "long distance" mediation should be tested.
Secure interactive software for mediation should be set up to support mediation.
Moreover, whatever language is used for mediation, it is important that everybody involved understands the language and the terminology used by the mediator(s).

Relationship between mediation and the child related proceedings

Several international instruments generally promote a search for amicable solutions:
- Brussels IIa Regulation: art. 46 (mechanism to give effect to mediated agreement)
- 1980 Hague convention: art. 7 c) (appropriate measures by the CA to secure the voluntary return of the child or to bring about any amicable resolution), 10 (appropriate measures in order to obtain the voluntary return of the child), 16 (no decision on the merits of rights of custody in the requested State).
- 1996 Hague Convention: art. 31 (appropriate steps by the CA to facilitate agreed solution by mediation), art. 23 and 26 (recognition and execution), art. 16 (applicable law = law of the state of the habitual residence of the child), art. 7 (jurisdiction of the State of the child's habitual residence immediately before the abduction will retain jurisdiction to take measures for the protection of the child), art. 24 ("advance recognition").
- 2007 Hague Convention: art.19 à 31(decision also includes a settlement or agreement)

Impact of criminal proceedings

Criminal proceedings should be taken into consideration. Judicial and administrative bodies such as central authorities should be able to provide the necessary general information on the relevant laws governing the initiation and termination of criminal proceedings to the parties.
Information on central authority/the central contact point for international family mediation.

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