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Family mediation

Germany

#### A brief introduction to family mediation in Germany

Extract from the 'Marriage Law' ('*Eherecht*') pamphlet published by the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*), p. 73:

##### '6.2.5 Family Mediation

Couples who are going through a separation or divorce often want to manage their family relationships in an amicable way. In cases like this, mediation is an excellent alternative to court proceedings.

The legal framework for mediation was created by the Mediation Act (*Mediationsgesetz*), which came into effect on 26 July 2012.

Mediation helps the parties find an amicable solution to their conflict with the help of a neutral person (the mediator). The participants take responsibility for the solution and the mediator does not have the power to make decisions.

This means that, unlike in a court case, the real interests and needs of those involved can be determined and used as the basis for a solution which is tailored to the individual conflict. Court decisions are less likely to take the interests of those involved into account. Such solutions are therefore more readily accepted by those involved and are generally more effective in the long term. Mediation can lead to contractual agreements being drawn up relating to, for example, maintenance, assets, property, parental responsibility or access rights.

As part of divorce proceedings, the court can order that the spouses, either individually or together, attend a free information session on mediation, or take part in another form of out-of-court dispute settlement for pending related matters<sup>[1]</sup> with the help of a person or body nominated by the court, and that they provide confirmation of their participation (Section 135 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction – *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG). This order cannot legally be enforced. However, the court can take failure to comply with the order into account when deciding on how to apportion costs (Section 150(4) FamFG).'

The same applies for matters relating to children pursuant to Section 156( 1), sentences 3 and 5, and Section 81(2), No 5 FamFG. In cases like these, the court can also order the parents to attend an information session on mediation or take part in another form of out-of-court dispute settlement. This order cannot legally be enforced, but the court can take failure to comply with the order into account when deciding on how to apportion costs relating to the case.

#### Links for German websites where you can find mediators for family matters

Mediation bei internationalen Kindschaftskonflikten (MiKK e. V.), Fasanenstraße 12, 10623 Berlin, Germany (mediation for international cases involving children)

<http://www.mikk-ev.de/>

- Zentrale Anlaufstelle für grenzüberschreitende Kindschaftskonflikte beim Internationalen Sozialdienst im Deutschen Verein (ZAnK), Michaelkirchstraße 17 /18, 10179 Berlin, Germany (mediation for cross-border cases involving children)

<http://www.zank.de/>

#### Links for German websites where you can find information about family mediation or mediation in general

- Bundesverband Mediation e.V. (BM), Wittestr. 30 K, 13509 Berlin

<http://www.bmev.de/>

- Bundes-Arbeitsgemeinschaft für Familien-Mediation e.V. (BAFM), Spichernstraße 11, 10777 Berlin

<http://www.bafm-mediation.de/>

#### Links for German legislation on family mediation

- Federal Ministry of Justice and Consumer Protection, Mohrenstraße 37, 10117 Berlin

<http://www.bmjv.de/>

- Act on the Promotion of Mediation and Other Forms of Out-of-Court Dispute Settlement (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung*) (BGBl. (*Bundesgesetzblatt*, Federal Law Gazette) 2012 Part I No 35 of 25 July 2012)

[https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Archiv/Gesetz\\_zur\\_Foerderung\\_der\\_Mediation\\_und\\_anderer\\_Verfahren\\_der\\_au%C3%9Fgerichtlichen\\_Konfliktbeilegung.html](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Archiv/Gesetz_zur_Foerderung_der_Mediation_und_anderer_Verfahren_der_au%C3%9Fgerichtlichen_Konfliktbeilegung.html)

[1] Related matters include disputes relating to matrimonial property regimes, pension rights adjustments, maintenance payments, the marital home and household costs.

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