Family mediation

Francija

International family mediation is provided for under the instruments of international cooperation in family matters (Hague Convention of 25 October 1980 and Brussels IIb Regulation), in order to facilitate amicable solutions for the return of a child in cases of international abduction, or agreement on the exercise of parental visiting rights.

Cross-border family mediation is promoted by international and European cooperation instruments in order to facilitate smooth and rapid dispute settlements. The Department for mutual assistance, private international law and EU law (Département de l'entraide, du droit international privé et européen – DEDIPE), the central authority for the application of international conventions on family cooperation matters, makes available a list of international family mediators (*médiateurs familiaux*) in order to facilitate the use of mediation in cross-border cases. It is also important to present the national rules on mediation applicable in cross-border cases.

National legal framework:

Court-appointed mediation in France was enshrined under Law No 95-125 of 8 February 1995, followed by Decree No 2012-66 of 22 July 1996. Any court hearing a dispute may, with the agreement of the parties, appoint a qualified, impartial and independent third-party mediator.

Order No 2011-1540 of 16 November 2011, transposing Directive 2008/52/EC of 21 May 2008, amended the Law of 8 February 1995. This law defines mediation as any structured process by which two or more parties attempt to reach an agreement, with the aim of amicably resolving their dispute with the assistance of a third party. It establishes a common system for all mediation.

For family mediation, there is a State diploma created by the Decree of 2 December 2003 (Articles R.451-66 et seq. of the Social Action and Families Code) (*Code de l'Action Sociale et des Familles*) and the judgments of 12 February 2004 and 19 March 2012. However, at the present time, this diploma is not mandatory in order to be able to practise as a family mediator, since family mediation is not a regulated profession.

Family mediation may take place:

1) without legal intervention: in 'conventional' family mediation cases there is direct mediator referral by the parties;

2) during legal proceedings (Article 1071 of the French Code of Civil Procedure (C*ode de procédure civile*), Article 255 and Article 373(2)(10) of the French Civil Code (C*ode civil*):

the family judge (*juge aux affaires familiales* – JAF) may propose mediation to the parties and, once they agree, appoint a family mediator to proceed.

The JAF may instruct the parties to meet with a family mediator who will inform them of the purpose of family mediation and how it is conducted.

In cases not involving divorce or after divorce, an attempt at compulsory prior family mediation (*tentative de médiation familiale préalable obligatoire* – TMFPO) was introduced by Law No 2016-1547 of 18 November 2016 on modernising the justice system for the 21st century, for a period of three years from its promulgation, in 11 courts. This trial was extended until 31 December 2024. TMFPO entails attempting family mediation before submitting certain applications; in the absence of any such attempt at mediation, the court may issue a ruling of inadmissibility of its own motion. These are applications that seek to amend a previous JAF decision or a provision in an agreement approved by the court, and those relating to the habitual residence of the child or children, visiting and accommodation rights, contributions to the education and upkeep of minors, and decisions on the exercise of parental authority. However, this obligation to attempt mediation is waived in the event of violence or in cases in which one parent is clearly under the influence of the other.

The agreement obtained following family mediation may be approved by the family judge (Articles 1534 and 1565 et seq. of the Code of Civil Procedure). The judge approves the agreement unless they find that the agreement does not sufficiently safeguard the interests of the child or that the parents' consent has not been given freely (Article 373-2-7 (2) of the Civil Code), or more generally that it may jeopardise public policy.

Link to the Ministry of Justice's information page on family mediation.

Link to lists of mediators: to find the family mediation service closest to you, you can search for 'family mediation' in the 'categories' tab on the Justice in the region website.

International family mediation:

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The parties involved can contact mediators who work in private practice or in the voluntary sector. The Ministry of Justice's list of international family mediators is publicly available free of charge. This list includes professionals satisfying criteria in terms of experience of family matters, bilingualism and multicultural skills.

Ministry of Justice website on international family mediation: Justice / Portail / La médiation familiale internationale

List of mediators: http://www.justice.gouv.fr/art_pix/liste_mediateurs_familiaux_internationaux.pdf

In order to engage in mediation, at least one of the parents must reside in France and the other abroad, irrespective of their nationality. The mediator, hearing an application for international family mediation from one parent, conveys the proposal to the other parent. The initiative must be **voluntary: there can be no coercion in an international family mediation process.** Mediators perform their duties impartially and diligently, and mediation is subject to the principle of confidentiality.

Mediators are free to set their own fees. Some apply a Family Allowances Fund (*Caisse d'Allocations Familiales*) scale, which adjusts the fee to the parents' income.

Persons interested in international family mediation in the context of an international dispute can contact the French central authority by email: entraide-civile-internationale@justice.gouv.fr

Last update: 06/12/2023

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