

# Long-term impact and mediation Mediation in the Courtroom a Judge's Perspective

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# To give you an example...

- Marcel (French) and Nadia (Russian)
  - he 40, she 37, living together in Marseille with their 3-year-old daughter Sophie,
  - hefty conflicts including eviction by the police and allegations of theft
  - Nadia moves from Marseille to Berlin without Marcel's consent,
  - Marcel files a 1980 Hague Convention case in Berlin
  - Marcel files criminal charges against Nadia
  - Marcel files an application for sole custody in France
  - .....

And what about Sophie?

May Mediation help to focus  
again on the child?

# Mediation in cross- border family cases

- **Recommendation of mediation by the judge**
- **Cooperation with specialised mediators of MiKK**
- **What is MiKK?**
- A German NGO specialized in providing
  - Mediation in International Conflicts Involving Parents and Children (and especially in cross-border child abduction cases)as well as
  - Training in cross-border mediation and related areas for mediators, judges, lawyers, guardians *ad litem* and other relevant bodies in Germany and other countries
  - MiKK collaborates closely with the German Central Authority and all relevant institutions and
  - is a cooperation partner in EU projects for training and networking in mediation in cross-border child abduction cases

# Written Information about Mediation for the Parties Involved

➤ Standardized information in 1980 Hague Convention cases ( abduction)

➤ sent by the court

➤ for parents and their lawyers

➤ in various languages:

German, English, French, Polish, Russian, Spanish,  
Turkish

• Available : <http://www.mikk-ev.de>

➤ Individual information in other international family conflicts

What works best?  
Personal information  
about the benefits of mediation

**The Berlin Pilot Project – MiC ( Mediators in Court)**  
**A mediator attends the first hearing in return proceedings**  
**in accordance with the 1980 Hague Convention**

developed by Judge Sabine Brieger in collaboration with MiKK

- Summons for both parties for 2 hearings within the 6-week target
- A first court hearing within 2 - 4 weeks: possibility to make contact arrangements, information about mediation, checking whether documents are needed, an arrest warrant exists...
- A second court hearing is immediately scheduled for 7 - 10 days later
- A mediator attends the first hearing of a Hague Convention case
- In the meantime there is time for mediation

## Advantages of the MiC Berlin Pilot Project (1)

- The benefits of mediation can be explained directly to the parents
- Questions can be answered
- The 6-week deadline of Art. II of Brussels II bis can be optimally utilized ( Art. 2 1980 HC)
- No delays in the proceedings
- The judge's authority can be put to good use
- The left-behind parent can spend time with the child (often the first contact after a longer time)

## Advantages of the MiC Berlin Pilot Project (2)

- Parents come into direct contact with the mediator
- Mediation becomes a concrete and realistic option in the emotionally charged and challenging situation
- The likelihood of reaching agreement increases
- All the parties involved are in the picture (greater transparency): parents, lawyers, guardian *ad litem*, youth office staff, interpreters from the hearing, if required

# Relocation and cross border contact cases

- Relocation is extremely difficult to decide for the court
- A parent may accept relocation when contact to the child is regulated in advance
- A mediated agreement will last longer than a contradictory court order
- A mediation agreement approved by the court or a court decision based on a mediated agreement will be recognised and enforceable in all other contracting states of the 1996 HC (Art. 23, 28)

# 2nd Court Hearing

## Documentation of mediation agreement

- Parties have to inform the court whether a solution could be found
- No exchange between mediators and the court
- The court reviews the agreement
- In the case of return of the child: with the reservation of fulfillment?
- Approval by the judge?
- Mirror order? Art. 23 1996 HC
- Enforcement problems? → Art. 28 1996 HC

# Advantages for Children

## (and parents)

- Parents take back their own personal and joint responsibility for their child
- Elder children can be heard during the mediation
- The mediation process has changed the parents' attitude
- Communication has improved
- The parents have listened to each other and to the other's perspective
- Parents are clearer about the different ways of resolving the conflicts and understand better the consequences for the family and the child
- Parents are beginning to trust each other again
- They want to solve their problems without a court ruling

Finally...

Court decision based on  
the mediation agreement  
is in the best interests of  
the child

## And what happens if the parents haven't reached an agreement by the end of the mediation?

- The court hearing takes place as usual
- Communication between the parents has improved
- The circumstances of the case have to be clarified by the court
- The onus of proof can become important
- The focus has to be re-focused on the child
- Negotiations are carried on
- Mutual resolution or final adversarial court decision

# MiC Berlin Pilot Project - Challenges

- Tremendous organizational effort beforehand on the part of MiKK and the mediators
- Finding a suitable co-mediator team with the relevant cultural background and languages and with sufficient time to conduct the mediation at short notice
- Clarification regarding who will cover the costs
- The parent who has travelled from abroad to the court hearing must be willing to stay on longer or come back for the mediation
- Possibility of contact between the child/children and the visiting parent must be guaranteed and must be coordinated with the mediation
- Mediators receive no payment for attending the court hearing; they are paid only if the parties decide on mediation

Thanks for your attention!  
Any questions?

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