

Cross-border Family Mediation: Mediation integrated in child abduction procedures

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LEPCA

Lawyers in Europe on Parental **Child** Abduction



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Introduction

- Annette Olland (Liaison Judge Netherlands, district court the Hague)
- Mathijs Storm (Lawyer & mediator, Center IKO)
- Participants?

Poll Question 1

Are you a

- A. Lawyer
- B. Mediator
- C. Both a Lawyer **and** a Mediator
- D. Other

What are we going to do today?

- the process a parent will go through when his or her child has been abducted to the Netherlands

Case Anna and Damian

- Anna is Dutch, 24 years old
- Damian is Greek, 26 years old
- They met in the Netherlands



Case Anna and Damian

- Anna gets a job at the University of London as a research assistant in archeology
- Damian manages to find a job in an international shipping company in the UK.



Case Anna and Damian

- Anna gets pregnant
- no marriage



Case Anna and Damian

- Pelagia is born in the UK



Case Anna and Damian

they move to Greece

- Anna → research in Greece



- Damian → work in the company of his father.



Case Anna and Damian

- Anna gets pregnant again.



- Their son, Ilias, is born prematurely and has health problems.



Case Anna and Damian

- Anna suffers from depression and wants to move back to the Netherlands
- Damian does not want to move away from Greece
- Relationship is deteriorating
- Poor communication



Case Anna and Damian

- Anne visits the Netherlands for a holiday with the children
- Anna consults a Dutch lawyer to hear if she is allowed to move to the Netherlands with the children



Poll Question 2

As a lawyer, what would be your advice to Anna ?

- A. You are allowed to stay with the children in the Netherlands, you are the mother
- B. You are allowed to stay with the children in the Netherlands, you've got sole custody
- C. You are not allowed to stay, you've got shared custody, explaining the risk of staying in the Netherlands
- D. Advice to start a relocation procedure in Greece
- E. Advice to ask for permission to stay, when she is with the children in the Netherlands

Case Anna and Damian

- After consulting the lawyer in the Netherlands she decides to stay in the Netherlands with the children



Poll Question 3

As a lawyer, what would be your advice to Damian to do first?

- A. Start a procedure in Greece, requesting sole custody
- B. File an application for return of the children to Greece under the Hague Convention 1980
- C. Travel to the Netherlands and pick up the children himself
- D. Try to talk with Anna to convince her to bring the children back or find another solution
- E. File criminal charges against Anna in Greece

Case Anna and Damian

- File an application for the return of the children at the Greek Central Authority
- Netherlands Central Authority: option for mediation
- Contact Center IKO
- Find a lawyer in the Netherlands in order to seize the Dutch Courts for a return-order

Poll Question 4

How do you find a lawyer abroad, specialised in Hague abduction cases for your client, the left behind parent?

- A. Via the-LEPCA network
- B. Via the Central Authority
- C. Via an NGO like Center International Child Abduction in Holland or MiKK e.V. in Germany
- D. Via the Embassy
- E. Don't know

International Child Abduction Proceedings in the Netherlands

- Concentration of jurisdiction: all incoming Hague Abduction cases are handled by the family division of the District Court of the Hague
- Small group of about 15 specialised and experienced judges handling these cases
- Thus building up knowledge, experience and ‘feeling’ with the cases
- Both juridical aspects as context of these cases: international family in trouble

New proceedings from 1 January 2012: the 'six weeks-scheme'

Three stages of two weeks

- **Stage 1. Filing of the request**

Maximum two weeks until pre-trial hearing

New proceedings from 1 January 2012: the 'six weeks-scheme'

- **Stage 2. Pre-trial hearing and Cross-border Mediation**

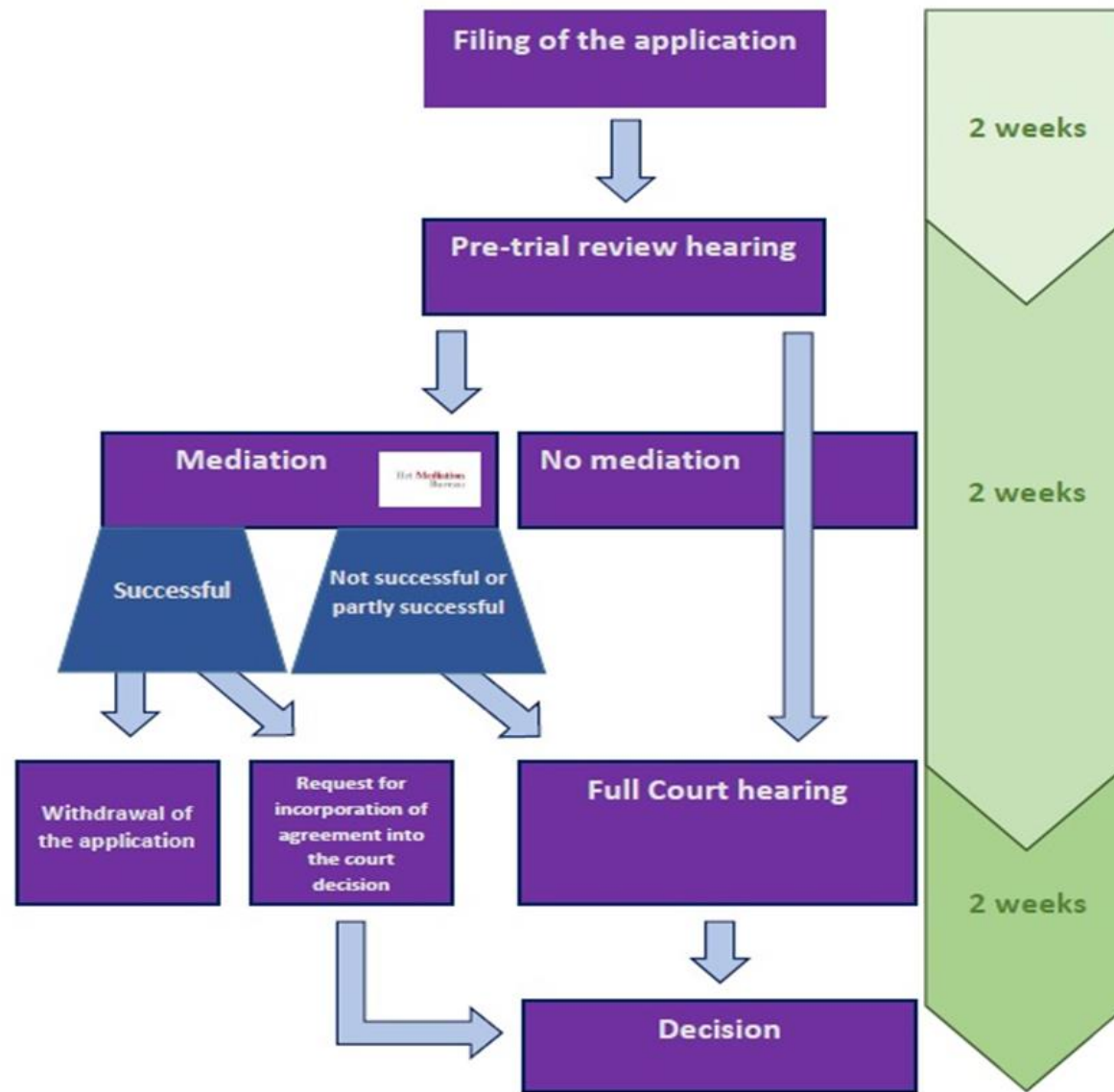
Maximum two weeks after the filing of the request.

New proceedings from 1 January 2012: the 'six weeks-scheme'

Stage 3. Hearing by a Full Court

Maximum two weeks after pre trial hearing

Followed by a Court decision within two weeks.



Pre-trial hearing: referral to mediation

- As soon as the pre-trial hearing has been scheduled, BLIK contacts Centrum IKO
- A mediation officer from Centrum IKO is present outside the court room during the pre-trial hearing
- If parties decide to mediate, they have a meeting with mediation officer directly after pre-trial hearing (mostly on Thursday)

Mediation Bureau

- Coordinates:
 - *before* Cross-border mediations
 - *during* Cross-border mediations
 - & *after* Cross-border mediations

Organization of Cross-border Mediators

Part I

- Informing legal representatives and parents
- The Mediation Bureau organizes in advance of the mediation
 - mediators
 - location
 - finance
 - etc.

Pre-trial hearing (1)

- Within two weeks of the filing of return application
- Experienced single judge who will not decide on the case
- Aims of the pre-trial hearing:
 - Visiting arrangements/contact between child and left behind parent?
 - Referral to mediation?
 - Identification of issues being disputed
 - Make sure all information needed is available for a potential full court hearing at a later stage

Pre-trial hearing(2): visiting arrangements

- Possibilities of contact on a short notice
- Relief for the left-behind parent
- Change the view of the abducting parent
- Open the minds for amicable solutions

Pre-trial hearing (3): discussing cross-border mediation

- Risk of 100% loss for both parties
- ‘What if’ - questions
- Parties keep their faith in their own hands
- All possible “shades of grey”
- 65-70% referred to mediation

Organization of Cross-border Mediators

Part II

- The coordinator of the Mediation Bureau present at the court during the hearing
- Formal intake conversation
 - Explanation of the mediation process
 - Signing the mediation agreement
 - Parents and lawyers

Organization of Cross-border Mediators

Part III

- Intake conversation by one of the cross-border mediators
 - Case suitable for mediation?
 - Saving time
 - Encourage parents to think in a constructive way

What is cross-border mediation? (A quick reminder)

- Parties or Parents?
- The mediator is impartial and neutral
- The mediation is in a safe environment, all information during the mediation is confidential
- Mediation offers parents the possibility to find a solution together.
- Parents can find better solutions than a judge can

Who are the mediators?

Specialized Cross-border Mediators

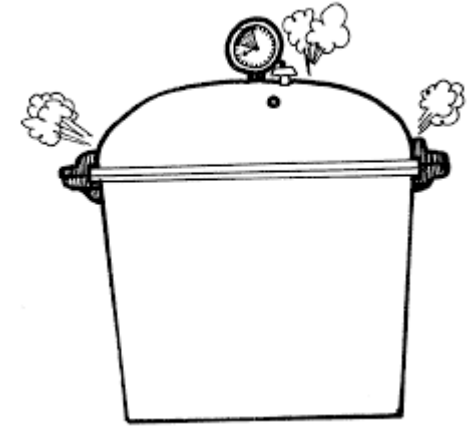
- Mediation Bureau has organized a specialized education in 2009 and 2011 for experienced family-mediators: master cross-border mediation
- Total of 17 cross-border mediators: 9 lawyer-mediators and 8 behaviourist-mediators
- Cross-border mediation is co-mediation;
always with a lawyer-mediator and a behaviourist-mediator together

Pressure cooker method I

- maximum of three sessions of three hours
- within 2 (weekend)days

agreement on:

- the habitual residence of their children
- and/or
- international care and contact-arrangements



Voice of the child

- An independent “third” cross-border mediator (child-specialist) talks separately to the child(ren) aged 3 years and up
- Permission of both parents is needed
 - Report of the child conversation is read during the 2nd session of the cross-border mediation:
- Often an emotional eye-opener for parents

Poll Question 5

Is the voice of the child involved in cross-border *mediations* in your country?

- A. We do not have cross border mediation in Hague cases
- B. No it's not
- C. Yes it's done by the mediator him/her self
- D. Yes it's done by a "third" mediator?
- E. Yes it's done by another institute like a social worker or cafcass officer

Pressure cooker method II

- Neutral location
- 1st session: 3 hours – preliminary talks – caucus
- 2nd session: 3 hours – striving for solutions / drafting concept agreement
- 3rd session finalizing agreement and signing

Mediation: Results (1)

- Full Mediation Agreement
 - including arrangements on the child's habitual residence and visiting rights of the non-residing parent → agreements are inserted into court decision
- Mirror Agreement
 - No arrangements on the child's habitual residence (court will decide), arrangements on visiting rights of both parents, depending on the child's habitual residence → a full court hearing is scheduled within two weeks after the mediation

Mediation: results (2)

- No agreement between the parents →
a full court hearing is scheduled within two weeks after the mediation

Full Court Hearing (1)

- Three experienced judges, assisted by an experienced legal staff-member
- Decision upon the return or non-return of the child(ren) within two weeks after the full court hearing
- The full court will hear the children before the actual hearing with the parents and the lawyers



Poll Question 6

From what age should a child be heard by the judge(s) in Hague court proceedings?

- A) From 3 or 4 years old
- B) From 5 or 6 years old
- C) from 7 or 8 years old
- D) from 9/10/11 years old
- E) from 12 years old

Full Court hearing (2)

- The pre-trial judge is not sitting at the full court hearing
- Parents and their lawyers are present
- Decision based on the facts and the legal merits of the case
- Decision within two weeks after the full court hearing



Poll question 6

- Do you think it is wise that the Court decides upon the case within 6 weeks from the hearing?
 - A) Yes, the sooner the better for the Child not to live in insecurity
 - B) No, the Court should take more time to think and balance the arguments and merits of the case and conduct an indepth-investigation on the best interest of the child.

Thank you very much for your attention

Contact details:

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Mediation Bureau:

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District Court of the Hague:

www.rechtspraak.nl

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