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

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Introduction

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• 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 Mediations

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 Mediation

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 Mediations
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 cafcaff 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
Mediation
naast
Rechtspraak
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:

Center IKO: 0031 (0) 88 – 800 9000
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Mediation Bureau: 0031 (0) 88 – 800 9009
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District Court of the Hague: www.rechtspraak.nl