

Juin / June 2009



**Groupe de travail sur la médiation dans le cadre du processus de Malte  
Questionnaire**

*établi par le Bureau Permanent*

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**Working Party on Mediation in the Context of the Malta Process  
Questionnaire**

*drawn up by the Permanent Bureau*

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Questionnaire**

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**Identification**

State: Germany\_\_\_\_\_

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The Permanent Bureau kindly requests responses to the Questionnaire to be sent to < secretariat@hcch.net > by 20 July 2009 at the latest.

| I – EXISTING STRUCTURES  |   |
|--|---|
| 1. Are there existing mediation services / structures in your country for <b>international</b> family disputes involving children? | <input type="checkbox"/> No<br><input checked="" type="checkbox"/> Yes  |
| 2. If so, are the mediation services / structures provided:  | <input type="checkbox"/> No<br><input type="checkbox"/> Yes. Please specify:  |
| a) within the judicial or administrative system?   |   |
| b) by NGOs?  | <input type="checkbox"/> No<br><input checked="" type="checkbox"/> Yes. Please name them and give details of the services they provide:<br><br>MiKK e.V. (Mediation bei internationalen Kindschaftskonflikten, mediation in international conflicts involving parents and children, <a href="http://www.mikk-ev.de">www.mikk-ev.de</a><br><br>MIKK e.V. is a consortium of two large German associations of mediation. Since a few years it establishes contact with skilled mediators, who are additionally trained to mediate international conflicts involving children.<br><br>Internationaler Sozialdienst (ISD, international social service, German department, <a href="http://www.issger.de">www.issger.de</a> |

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|   | <p>The German part of ISD serves as liaison body between German and foreign private agencies of social work, between social and youth authorities as well as family courts of Germany and foreign countries. ISD advises these private agencies and authorities and provides social reports from abroad.</p> <p>iaf (Verband binationaler Familien und Partnerschaften; association of binational families and partnerships, <a href="http://www.verband-binationaler.de">www.verband-binationaler.de</a>)</p> <p>The iaf represents the interests of binational families and partnerships throughout Germany. Counselling women and men regarding all issues of binational marriages and relationships is one focus of its work.</p> |
| <p>3. If there are mediation services / structures in your country for <b>international</b> family disputes, how can parties to such disputes access mediation?</p> | <p><input checked="" type="checkbox"/> The parties can apply to participate in mediation services.</p> <p><input checked="" type="checkbox"/> A referral to mediation by a judicial or administrative authority is possible.</p> <p><input type="checkbox"/> Other. Please specify:</p> <p>The referral by the court is not binding</p>   |

**II – SCENARIO – CURRENT APPROACH IN NON-HAGUE CONVENTION CASES**

How would the following scenario currently be approached in your country?

Parents with shared custody of their minor child split up, and one parent takes the child to your country with the intention of settling there without the permission and contrary to the wishes of the other parent. The left-behind parent would like the child to be returned or to have regular contact with the child. (The Hague Child Abduction Convention is not in force between the States involved.)

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| <p>1. What course of action would currently be recommended to the left-behind parent in your country (being that to which the child has been taken) in such a situation?</p> | <p>Please specify:</p> <p>Depending on the facts of the case and the attitude of the parents involved, as far as it is known: court proceedings in the State of origin could be recommended, additionally recognition and enforcement of the resulting judgment in Germany and/or information on NGOs and institutions able to assist the parties in an amicable settlement.</p>   |
| <p>2. Would your country, being that to which the child has been taken, assist the left-behind parent in any way?</p>  | <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes, by facilitating contact with information-giving bodies</p> <p><input checked="" type="checkbox"/> Yes, by referring the left-behind parent to existing mediation services for international family disputes</p> <p><input type="checkbox"/> Yes, by giving legal advice</p> <p><input type="checkbox"/> Yes, by giving practical assistance to the parent</p> <p><input type="checkbox"/> Yes, by taking other measures. Please specify:</p>  |
| <p>3. Does a central contact point exist in your country for such cases?</p>   | <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes. Please specify:</p> <p>.....</p> <p>Although mainly responsible for dealing with cases under the 1980 Hague Convention, the European Custody Convention and the Brussels II a Regulation, the German Central Authority also provides information to foreign left-behind parents from non-Hague States on legal and non-legal options available in Germany. This service is effected within the limits set by the CA's resources in light of the huge case-load under the instruments mentioned before.</p> <p>[</p> |
| <p>4. Are there NGOs in your country</p>   | <p><input type="checkbox"/> No</p>   |

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| <p>that help parents in such situations?</p> | <p><input checked="" type="checkbox"/> Yes. Please specify:<br/>.....</p> <p>MiKK e.V. (Mediation bei internationalen Kindschaftskonflikten, mediation in international conflicts involving parents and children, <a href="http://www.mikk-ev.de">www.mikk-ev.de</a>)</p> <p>Internationaler Sozialdienst (ISD, international social service, German departement, <a href="http://www.issger.de">www.issger.de</a>)</p> <p>iaf (Verband binationaler Familien und Partnerschaften; association of binational families and partnerships, <a href="http://www.verband-binationaler.de">www.verband-binationaler.de</a>)</p> |
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| <p>5. If you were to identify the main problems that the left-behind parent might have to face in your country (being that to which the child has been taken) with her / his wish to have contact with the child / to have the child returned, what would they be?</p> | <p><input type="checkbox"/> Lack of specific structures for international family disputes</p> <p><input type="checkbox"/> Inefficiency of existing structures</p> <p><input type="checkbox"/> Lengthy processes under the existing structures</p> <p><input checked="" type="checkbox"/> Language problems</p> <p><input type="checkbox"/> Legal obstacles to agreed solutions</p> <p><input type="checkbox"/> Problems because of parallel asylum procedures regarding the other parent and child</p> <p><input type="checkbox"/> Difficulties in obtaining information on your legal system</p> <p><input type="checkbox"/> Problems locating the child within your country</p> <p><input type="checkbox"/> High costs of available mediation services</p> <p>The reason why one or both parties decide against mediation is often the amount of costs. If a foreign parent lives in a country with a lower level of prices, the accumulation of travel costs and mediation charges can create a prohibitive effect – even if German mediation charges are, compared to the charges in other countries (e. g. USA or Belgium) rather low.</p> <p><input checked="" type="checkbox"/> Other. Please specify:</p> <p>Like in every other country left behind parents have no or little knowledge of the legal system of the other parent. They often fear that courts and authorities of this other country will prefer the native parent. However, this is also often true vice versa in relation to abducting parents.</p> <p>.....</p> |
| <b>III – EXISTING RULES / LEGISLATION ON FAMILY MEDIATION</b>  |   |
| <p>Is family mediation regulated in your country?</p>  | <p><input type="checkbox"/> No.</p> <p><input type="checkbox"/> Yes, there is general legislation on mediation, which also applies to family mediation. Please specify:</p> <p><input checked="" type="checkbox"/> Yes, there is specific legislation on family mediation. Please specify:</p> <p>Up from September 1<sup>st</sup> 2009 in family court proceedings regarding matrimonial and related parental responsibility cases the judge can order the parties to go to a mediator to be <b>informed</b> about the mediation process</p> <p><input checked="" type="checkbox"/> Other. Please specify:</p>   |

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|--------------------------------|---|
|                                | .....<br>Germany is preparing a law to implement the EU-Directive on certain aspects of mediation in civil and commercial matters |
| <b>IV - ADDITIONAL REMARKS</b> |   |
| Further remarks or questions:  |   |

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Thank you.