

MEDIATION IN THE ABDUCTION OF MINORS

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Definition of mediation:

Mediation is a process in which a qualified and impartial third party -the mediator- helps the parties to negotiate, directly or indirectly on matters that have to be resolved and to reach decisions that are considered to be mutually acceptable and which encourage cooperation.

From the cross border point of view, it would be described by the fact that the mediator helps people in dispute who live in two different states to re-establish communication and to come to agreements themselves during the course of confidential interviews.

There are numerous voices in the countries which consider this means of resolving conflicts as acceptable and recommendable in the International Abduction of Minors.

The Hague Convention contains this mention of mediation in an implicit manner when it says: "Article 7. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children" and in point c) **to secure the voluntary return of the child or to bring about an amicable resolution of the issues.**

Article 10 of the Convention says that "The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child".

All of the international meetings of the Hague Conference have highlighted the need for real mediation: (recommendation of April 2002, Malta Declarations of March 2004 and March 2006). At the 5th meeting of the Special Commission to review the operation of the 1980 Hague Child Abduction Convention and the practical implementation of the 1996 Hague Protection of Children Convention, with special reference to the Appendix to the document dated November 2006 where the modification of national processes is suggested for various reasons. The first measure to be highlighted was:

"Attempt by mediation or conciliation to obtain the voluntary return of the child or the amicable resolution of the issues, in a manner that does not delay the return of the child".

However, none of these texts provides the manner or the modalities for implementing international family mediation.

The recourse to mediation in the matter of the abduction of minors is an initiative that was tried in Great Britain highlighting the pilot trials of REUNITE and has subsequently been followed by other countries such as France with the structure of "Mission d'Aide à la Médiation International pour les Familles" (MAMIF) (The Mission of Aid from International Mediation for Families) and on a bilateral level the Franco-German Parliamentary Commission, the bi-national German-United States mediation for international disputes that involve father and children, for which the first meeting of experts took place in Berlin in February 2006, the BUNDES-ARBEITSGEMEINSCHAFT FÜR FAMILIEN-MEDIATION or Federal Association for Family Mediation Matters (BAFM) (more information on the web page www.bafm-mediation.de). The European Mediation Network

Initiative (EMNI) www.mediationeurope.net a European work group that is made up of 47 countries and which emerged in September 2007 after the conferences in Switzerland, Denmark and Finland, the German-Polish bi-national mediation work group and the Berlin/Wroclaw declaration dated 24.10.2007.

Likewise, the "Mediation binationale familiale en Europe (MFBE)" (Bi-national family mediation in Europe) an association whose web page is www.mfbe.eu and the web page of the French Ministry of Justice which offers information on abduction and mediation www.enlevement-parental.justice.gouv.fr

The role of the European Parliament mediator for these cases must also be highlighted. For further information, please refer to the web page of the European Parliament.

However, no international structure has been set up to put mediation into practice and there is still distrust in this matter.

Hence, William Duncan, the chairman of the Hague Conference on International Private Law at the 2004 Malta Conference stated: "It is necessary to allow time so that the existing mediation mechanisms produce results. Delays in the rulings of proceedings in regard to custody and visitation rights affect the higher interests of the minor... Time plays in favour of the parent that has abducted the minor and undoubtedly complicates the re-establishment of the status quo. It is not a question of rejecting mediation, but it must be implemented and supported by a solid legal structure that guarantees the equality of the parties, that prevents undue delays and that guarantees the application of the solutions reached."

Although mediation in family cases has substantial acceptance, it does not happen with the same frequency in

the abduction of minors. The reason for this is that there are great barriers that still have to be pulled down.

In abduction cases, as stated by Flora Calvo Babio, Professor of International Law, on occasions different types of "mediation" have been resorted to, this being understood in the broad sense as including negotiation, conciliation, arbitration and mediation in the strict sense.

1. Negotiations carried out by the governments of the countries involved. When a case becomes news in the media, negotiation at high level is often attempted for this specific situation, but on occasions this leads to the realisation that it is necessary to sign agreements or conventions so as to prevent these situations from occurring in the future or drafting instruments so as to solve them.

Abduction of Franco-Russian minor Elise aged 3 in Arles (France) in March 2009. Two abduction proceedings; one by the mother in Russia and the other by the father in France. Found near Budapest (Hungary). The Consul General of Russia to France, the Ministry of Justice and Foreign Affairs, and the Secretary of State for Human Rights, were involved. Now the case is in mediation. The latest news is that an agreement may be reached; the mother has proposed alternating custody.

Case "Shaban-Arias" (minors residing in Guatemala, Argentinean catholic mother, Jordanian Muslim father. Involvement of the President of the Argentine Republic, King Hussein of Jordan, The President of Guatemala, the Secretary General of the United Nations, the Secretary General of the Organisation of American States, the commission for the rights of children, UNICEF, the family judge Dr. Carlos Antonio Romano. Thanks to the legal-

political course that was taken, the bilateral agreement that was not signed in the end, in practice is applied by Al-Tamimi (currently a Senator in Jordan), who acts as mediator in cases of international abduction or international retention of children between Jordan and other countries, especially European countries. More information at www.foundchild.org.ar

2. Bilateral negotiations when the minor is taken to a non-member state of the Hague Agreement and especially when dealing with Islamic countries. France, aware of the problem, was a pioneer in bi-lateral agreements with Islamic countries with whom it was connected in a special way for historical reasons; hence, the agreement with Morocco Franco-Moroccan Convention of 10/8/1981, the Franco-Egyptian Convention of 15/3/1982 and subsequently with Tunisia, Algeria and the Lebanon which provision for the return of minors and the recognition of orders; however, the application continues to be difficult and the cultural, political and religious differences make the agreements ineffective.

It does not entail mediation between parents; it is a negotiation-mediation in which governments are involved and in some cases NGOs or international organisations.

International organisations are working on this amongst which REUNITE must be highlighted. Reunite is a non-profit making organisation that started in the United Kingdom, specialised in the international abduction of minors whose basic aims are:

- To provide information and support to parents and relatives whose children may suffer, or have suffered, an international abduction

- To provide legal information about different countries, investigation and cooperation in the Muslim countries
- To offer mediation in cases of the international abduction of minors, both to cooperate in solving the case and to prevent its occurrence so as to guarantee the scheme of visits with a cross border element
- It works to generate awareness amongst citizens in regard to the damaging consequences of international abduction and about how to prevent its occurrence
- It carried out a significant pilot project in regard to mediation in International Abduction of Minors in 2006
- It offers a 24-hour telephone help line. Telephone +44 (0) 116 2555 345, Fax +44 (0) 116 2556 370 and web page www.reunite.org

In Spain we are starting to see the number of abduction cases growing, particularly towards Morocco where in spite of there being an agreement, in practice it is not very effective, and towards other African countries.

GERONA case: Abduction of a Spanish minor who was taken to Gambia to live with the father's family in a village. The members of the institutional Commission intervened for the follow up of the Gerona province protocols in matters of integral protection of the victim and the protocols for aggression against minors. The result was the reintegration of the minor with the mother in Gerona.

3. Intra-judicial mediation in the course of Hague Convention proceedings

Abduction in principle does not seem to be a matter that is suitable for solution by mediation as the level of dispute between the parties is significant, the geographical distance between the countries makes holding sessions

difficult, there may be cultural and religious differences, there may be different legal systems, and the different languages make communication difficult, but there are multiple reasons to resort to it.

REASONS THAT DRIVE US TO RESORT TO MEDIATION

Studies have been carried out; in particular I will refer to the pilot scheme carried out on mediation in these types of cases and the conclusions that Reunite have come to in regard to minors that have been abducted and specifically the conclusions of Marilyn Freeman, Head of the Reunite Research Unit and Senior Family Law Lecturer at London Metropolitan University: (more information in the web page www.reunite.org). To sum up they are:

Exceedingly high stress factors are involved in abduction: breach of the personal relationship, fear of losing the emotional ties, financial worries, the need to take vital personal and family decisions. The parent that takes the child cannot be classified as "the bad one", who only wants to hurt to the other and who does not take the rights of the minor into account to be with his/her two parents; on occasions the retention or illegal departure is caused as a result of desperation or for the firm conviction that the minor will be better off without the father. In some cases a situation of lack of information or mistaken information has occurred: Some parents regret the consequences that their actions have had. They say that they were absolutely convinced that they could travel with the minor without problems, and that they had even consulted with lawyers. In other cases it is the applicants for the return who, once having commenced the process for the return as under the Hague Convention, complain about it; their intention was not to apply for the compulsory return of the minor but perhaps only to maintain contact with their children. The

parents start to feel that they have lost control over their lives.

On the other hand, the parents that were involved in the transfer fear that they are not going to get appropriate legal treatment in the country of the abduction and this is especially clear when they are not nationals of the country of departure, but the other parent is.

However, if we speak about minors, the consequences in the great majority of cases are irreparable.

In the REUNITE conclusions it is stated that the minors lost trust in their parents and in other adults and they remembered the experience for years.

- Difficulties to pick up the relationship with the other parent which became more serious as time passed after the abduction, and these may be summed up in:
- Difficulties to keep up the language of the relationship which makes the emotional ties more difficult and this occurs even more so in minors of a young age. If at a very young age the minor is transferred from one place to another with a different language and the parent that has the custody does not keep up the language of the initial place of residence, the minor loses an essential vehicle for the relationship: the language itself.
- The greater the geographical distance between the parents the more difficult it is to exercise the co-parenting, especially in the case of minors that cannot travel alone, or in the case of families with a financial situation that does not allow these journeys to be made.

What can mediation achieve?

Even though the Hague Convention has a clear usefulness to prevent abductions and to end them, it works as an automatic mechanism that many times is implacable. The return of a minor is especially traumatic in what French senior judges call "retour guillotine" (guillotine return); a child is taken from his/her parent and sent to the other from one day to the next without any type of preparation. This on its own should be a valid reason to start mediation but there are other reasons:

- To seek cooperation instead of confrontation and the relationship of winner and loser that generates greater aggressiveness.
- Make the parents aware that it is they who are responsible for the decision making in regard to their children and their lives and focus on the needs and feelings of the minor.
- To free the minor from the conflict of loyalty towards one or other parent which helps to generate safety and relief on seeing their parents reach agreements.
- To value the position of the other and in some cases the multi-cultural inheritance.
- To avoid the costs of the proceedings
- To prevent the stress of litigation in two different countries.
- It can prevent the loss of the ties during the processing and management of the visits.
- It helps to truly know the interests of each one of those involved and to empathise with them, and to carry out non-violent actions, that is re-establishing dialogue to find a solution that suits them best, which is known as "made to measure suit".

REQUIREMENTS for implementation:

- For it to be set in motion as a complementary process to the legal return process before the court, and provided that the latter has not finished. The minor must be easy to find in that country and it must ensure that advantage is not to be taken of the circumstances of the commencement of mediation so as to be taken off to a third country, or counter-abducted by the victim parent as revenge.

- **To examine its appropriateness.** A question that must be asked by the family judge who must assess the occurrence of gender violence factors, the so-called PAS - "Parental alienation syndrome" defined by Gardner in 1985, the SAID syndrome - "sexual allegations in divorce" - defined by Blush and Ross in 1987 (false allegation of sexual abuse), and malicious mother syndrome defined by Turket in 1994 (custodial parent who wants revenge and without justification interferes in the visitation scheme with a stable pattern of malicious acts against the other without proof being justified by another mental disorder).

There is no legal impediment to resorting to it. In regard to gender violence, it has to be taken into account that in Spain Organic Law 1/2004, of 28 December, on integral protection measures against gender violence in which article 44 establishes "*in all of these cases, family mediation is prohibited*".

In the survey which the parents who participated in the Reunite mediation pilot scheme answered, question 15, they considered in the majority of cases that it had not posed a disadvantage. "In a small number of cases one parent was agitated on meeting the other (due to domestic violence) but once the mediation had

commenced, safety was felt and from that moment on was capable of speaking freely so as to search for the best for the child."

In my opinion prohibiting the possibility of mediation should, in general, be reviewed. Mediators must be specifically trained so as to assess the inadequacy of the mediation proceedings when there are circumstances of imbalance between the parties and close it.

- It must be carried out **quickly**. The period of six weeks must be fulfilled. Mediation must start as soon as possible and the mediator and the parties involved must carry out the sessions in an intense manner trying to finish them in a shorter period of time. The sessions in other family processes last approximately an hour, an hour and a half; in these cases it is usual to extend them for approximately three hours so as to carry out more intensive work in fewer days (two or three days).

- Mediation must be a mechanism **which governments, judges and citizens trust**. In Canada, Australia or England mediation is well accepted, but it is not so in all countries, as in many it is unknown or very little used, and in others it is more discredited than the judicial system. The way we make the mediation approach to the citizen is very important: They must be made to understand that it is not a way of putting off the proceedings, and that we do not want them to abandon their aim of recovering their child; the proceedings are in progress but the interests of their child are worth the attempt.

In the REUNITE survey, the replies to Question 13 - How helpful was mediation in resolving the dispute about the child/ren? 54% replied - very helpful, 32% helpful and even in the cases in which an agreement was not reached they replied as follows: "Helpful, this did not work for us but ordinarily I would say that it would work for many couples."

The work of the judge is to offer the possibility encouraging them to follow his/her recommendation but without pressure; mediation is a process characterised by its voluntary nature. The way may be different depending on the cases but, in general, it has to be made clear that the return of the minor, in the event of this occurring, is not going to mean the end of the legal conflicts in progress, or the commencement of a family process with a high degree of conflict and, because of this, mediation can be used to solve everything en masse.

I believe that the following considerations must be made:

1. The parent that has been deprived of the child and who has normally been advised not to speak to or negotiate with the parent that has the child so as to prevent the judge from considering it as acceptance, it must be explained that he/she still keeps his/her rights to apply for the return in accordance with the agreement, the judge will not take the attempt at mediation into account, and that nothing that is said during the sessions will reach the court.

2. It is important to make it clear to the parent that has abducted the child that The Hague Convention process is in force, that he/she still keeps his/her rights to oppose the return.

3. To both: - that if finally an agreement is not reached they can go back to the court to obtain a ruling, and that the mediation can only be commenced with the consent of both parents and that the non-acceptance of one of them will not have any consequences in the Convention proceedings.

It would be good for judges to receive training in communication techniques applied to the consequences of mediation. The derivation must be an informative session not at the commencement of the sessions. I consider that the derivation to the informative session is absolutely advisable in these types of processes as a choice cannot be made on what is not known. At this point the mediator who carries out the information plays a very important role. In the replies to the Reunite survey, those who took part in mediation replied that they had no knowledge of mediation the way it came out and that it would be better for it to be more widely known.

- **It must be within the reach of those who need it:** I consider the cost free status to be fundamental for mediation in these cases, and also to rely on the assistance of translators and interpreters for those involved so that at all times they can know exactly what is happening which will increase trust in the process. The system of video-conferencing, Skype and e-mails could be used so as to avoid travelling, or a system of co-mediation (one mediator from each country who work together, but in whichever case the parties must finally meet, because of the importance that the pedagogic function of the mediation plays in improving communication and avoiding future litigation. The sessions may be individual but, in my opinion, in the

end they must meet. They could be carried out on one or several weekends so as to avoid problems of work, unnecessary travelling expenses, having to leave the minor in the care of third parties.

- Qualification and Professionalism:

Under these words in the first place I am referring to the lawyers of the parties, who must advise their clients in regard to the decision to commence the mediation process or not and then they must give their approval to the agreements reached. The qualification of the mediators is fundamental: As a minimum they must have experience in family mediation and preferably they must be familiar with these types of cases, they must know the legislation of at least the country where the process is being dealt with and preferably that of the two countries involved, and they should be bi-lingual or know several languages. In the models of bi-national cooperation followed by Germany the existence of co-mediation is considered as ideal, in two senses: Intervention of one mediator from the legal sphere and another from the psychological sphere and, on the other hand, for the purpose of generating the trust of the parties, each mediator must come from the country of origin of one of the parties.

In the contributions from the parents who answered the Reunite survey it emerged that there should be a mediator of each sex.

In my opinion, it is fundamental to make a list of duly qualified international mediators with experience whose services can be quickly required. I think that GEMME (European Association of Judges for Mediation) www.gemme.eu could do a good job in this point.

- The parties **must be listened to** at the sessions with respect for their customs and traditions and, in some cases, the involvement of the minor can be interesting so as to be heard in regard to the traditions that he/she has accepted more, about his/her environment, although in no circumstances will it be up to him/her to decide. The hearing of the minor could equally be carried out by the mediator or teams of psychologists and social workers from the family court.

The principles of mediation must be fulfilled: The voluntary nature, confidentiality, balance of the parties.

- They must be allowed to **speak about the problems related to** the abduction, how the visits are to be, who will pay for the travelling costs, the monthly maintenance for the minor, the taking of decisions in regard to the education of the minor. In this way the existence of other subsequent disputes can be prevented.
- If an agreement is reached it must be **accepted by the public prosecutor and by the judge** and there must be no obstacles to make it part of a ruling that brings the proceedings to a close. The agreement must be clear and very precise, so that it cannot be reinterpreted in a different manner in another country and, therefore, not applied and so as to prevent one of the parents from wanting to make a different interpretation in the future, which would mean starting again with the dispute.
- Finally, I believe that **a follow up of the cases** must be made for the purpose of learning from the initiatives taken and to see the weak points to as to solve them in the future.

Procedural phase to introduce mediation

In general mediation has greater possibilities of success when the parties resort to it before commencing proceedings. In Catalonia the ratio of agreements is 7 out of 10 cases when it is before the family proceedings and below 5.5 when the legal proceedings are in progress.

In the abduction of minors it would be admissible both prior to the departure of the minor occurring and equally after commencing legal proceedings for the return of the minor but it can also play an important role:

- To comply with the judicial order for the return and to help to make the co-parenting and the communication easier after the dispute. Likewise, to comply with such orders quicker, more appropriately, and as voluntarily as possible. In addition, also to channel the basic question before the corresponding court. An agreement for voluntary return can be achieved by means of mediation.

I believe that, once the judge has received the petition from the legal representative of the State, this possibility must be introduced with the appearance of the parent that has abducted the minor. The legal representative of the State must be in agreement and must make contact with the petitioning parent in the event that he/she did not appear in court, for the purpose of knowing his/her position on mediation. It is important for the Public Prosecutor's office to trust this complementary method of dispute resolution.

- Specific experiences

- In the court under my charge I dealt with a case whose development I am going to comment on and at the present time we are waiting for a case in which the mother who has abducted the minors after divorce proceedings in Switzerland accepted mediation; we are awaiting the answer from the legal representative of the State in regard to the position of the father on mediation.

A case conducted by me personally in the Family Court No 18 under my responsibility.

Background information:

Father with nationality of the United States with Cypriot origin.

Mother with Spanish nationality.

Married in Cyprus in 2001 having made it official in a civil manner in a probate court in a county in the State of Alabama (USA).

Children: Twin boys born in 2003. Aged 2.

Family residence: The United States

Method of abduction: The mother moved to a small town near to Barcelona with the minors and did not want to return to the USA.

The family lived together normally without there having been a divorce or separation although the mother applied to a court in a town in Barcelona for provisional measures and they had been granted without the appearance of the father.

The father turned to the competent court of the State of Alabama requesting the custody of the children be restored to him and the judge agreed that the minors be returned as soon as they could travel and that neither party could take the children out of the state without the authorisation of the court.

For the purpose of achieving the return the father presented an application for the return before the Central Authority of his country under the Hague Convention.

Mediators Toni Vidal (lawyer and mediator) and Nuria Villanueva (psychologist and mediator)

Place of the sessions: Barcelona, at first the possibility of a video conference was put forward but finally the father travelled to Barcelona.

Development of the sessions.

1. They were reminded what role the mediator plays, not to give answers, only to help them find their answers and the parties must find the content.

Various sessions were carried out.

Result. Agreement. The mother will have custody of the minors with a scheme of visits with the father. It gave rise to a family process by mutual agreement in the court of the Province of Barcelona where the mother is residing.

The legal representative of the State withdrew the proceedings from my court.

Another case.

It was published in the American Journal of Family Law, spring 2008 - volume 22 number 1 and was prepared by Christoph C. Paul - German lawyer and mediator and spokesperson of the BAFM (German Association of Family Mediation) and by Dr. Jamie Walker, an American and resident in Germany, mediator and mediator trainer.

It has all the classic elements of a dispute: Different states, existence of an international agreement, differences in the internal legislations, different languages, geographical distance and young age of the minor.

Initial situation.

In 2003, a German couple moved to the USA for reasons of work. The couple went through a crisis and the wife -Sabine- fell in love with an American -Daniel- with whom she went to live. Sabine became pregnant but, before the birth of the baby, the relationship broke up. Sabine left Daniel's home to set up her own home. In April 2004 their son, Phil was born. With the consent of Sabine, Daniel registered him as his son and this is as shown on the birth certificate.

In 2004, the German husband of Sabine returned to Germany, meanwhile, Daniel kept up a very occasional relationship with Phil. In September 2004 Sabine decided to return to Germany and resumed her relationship and went to live with her husband who, according to German law, is the legal father of the minor Phil.

Daniel opposed the move of the minor and commenced the application of the Hague Convention of 1980 before the competent jurisdictions. These legal proceedings are characterised by the bitter and reciprocal accusations. However, in the first instance, the German courts rejected the application for the return, two years after the departure of Sabine from the USA; the Regional High Court (*Oberlandesgericht*) ordered the return of the minor for judgement on the merits of the matter in the USA. In spite of this, at the same time, the Court urged the parents to attempt to reach a solution by means of mediation.

Thanks to the intervention of the group 'Child', which operates under the Berlin Ministry of Justice, the parents accepted the submission to mediation. The

intervention of the Ministry was essential in order to convince the American lawyers that, in the situation of a failure of the mediation, it would not have any repercussions on the legal proceedings. According to German law -and Spanish law establishes the same principle- the legal proceedings suspended for submission of the parties to mediation can be resumed at any time without any consequence over them. The lawyers of both Sabine and Daniel finally gave their consent for submission to a mediation process. The search for appropriate mediators began at that moment for the intervention in said situation.

This type of mediation demands a very detailed logistical preparation. The matters agreed before actually starting the mediation sessions were as follows:

a) The place of the meeting: The meetings must be carried out in the country of the residence of the minor at that moment and, specifically, in a town in which neither of the parties has their residence so as to preserve the maximum neutrality.

b) Availability: Both parents and mediators must guarantee total availability for some days; specifically they agreed on 4 consecutive days and a total of 23 hours of effective mediation. This brought with it that Daniel had to organise his flights and Sabine had to organise the care of the minor for those days.

c) First meeting with the minor; a first visit was agreed between the minor and the father with the attendance of a social worker.

d) The contents of the mediation and the financial costs were agreed with the intervention of the respective lawyers.

e) The language of the mediation sessions: It was agreed to use English, although some specific discussions about the minor were to be in German with the mother.

f) The number of mediators: two

The mediation process has different phases:

1 - Commencement phase: The first meetings are held under great tension and profound and trivial matters are discussed. Individual sessions of each mediator are held with each one of the parents. These sessions allow the parents to feel individually listened to and to provide much more detailed knowledge of the situation and the emotions surrounding them to the mediators. In addition, they are used to clarify fears, anxieties, hopes and alternatives in case no agreement is reached in mediation. Likewise, mediators carry out the so called 'reality checks' - confronting the consequences of certain decisions or behaviours.

2nd Phase: "reflecting team": The mediators change their points of view in the presence of the parties; they show the most aggressive aspects and dynamics for introducing their own point of view. The use of sense of humour is an essential de-stressing factor.

The second day of intense mediation a first agreement is reached that has an effect on the visits of the father and the minor after the father leaves. It was

agreed to have a day off; this is used to reduce tension and facilitate dialogue between the parents.

During this day off the next meeting occurred between the father and the minor, organised by the mother herself and at which the presence of the social worker was not necessary. Phil is only two and a half years old and does not speak English. The mother encourages the relationship and this has a very important effect on the whole process. Daniel became aware of the difficulties of attention and constant care of a child of such a young age and the work that Sabine has had to do.

3rd Phase: agreements: On the third day some agreements were then reached that were passed to their respective lawyers who gave their recommendations which were integrated into it.

The agreement reached in this specific case was as follows:

- To suspend the return of the child to the USA for one year
- To arrange a trip for the child to the USA with the mother so as to be with his father for one week
- Regular ordinary visits by the father in Germany
- To guarantee the study of English by the child
- To guarantee the financial contribution by the father
- To continue the mediation the following summer

The following elements must be highlighted as having had an essential effect:

- The attitude and professionalism of the mediators; it is essential for the mediators to have had specific training and that they always keep an open mind without being influenced by the first impression.

- The role of the lawyers themselves that lay down the legal framework well (especially taking into account the legal differences between the two countries) and that they were constantly in contact with their clients.

- The willingness of the courts - in this case the German courts - to bring about and accept an agreement that will affect the judicial ruling.

At the end of the process everyone involved recognised that the legal proceedings had increased the conflict and that mediation had become the only way possible to solve the basis of the problem.

Conclusion

I am resorting to some figures provided by Lisa Parkinson (family mediator in the UK).

Of the 875,000 divorces that take place every year in Europe, almost one in five (170,000) has a cross border element.

Therefore, cross border conflicts will exist and probably will increase with globalisation. The question is how we are going to tackle them.

Resorting to mediation as a complementary means that is not only an alternative, for solving conflicts, will depend a great deal on the trust that we the

judges place in them, and their success in the medium term will depend on the quality of the mediators.

The publication of the Community Directive on mediation in civil matters has been very important.

(DIRECTIVE 2008/52/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008 published in the Official Journal of the European Union on 24/5/2008.

In the Whereas section it states that access to justice by citizens must be improved, understanding this as the affordability of a 'fair resolution' in a reasonable time by means of the insertion of mediation into the conflict resolution system.

The Directive is a framework law of minimums that specifies the most relevant aspects of mediation to which the legislation of each state must be adapted. Specifically:

The definition of mediation, the definition of 'mediator', the quality demanded of the mediation services making a reference to the principles established as ethical rules for consumer disputes mediation in Commission Recommendation of 4 April 2001 in which mention is made of the principles of impartiality, transparency, effectiveness and fairness.

The voluntary nature of mediation highlighting the Directive that the courts can invite the parties to receive an informative session, but without preventing the internal legislations to introduce systems for diverting to mediation with a certain coercive nature. Under no circumstances can mediation prevent either direct or indirect access to justice or be a system for the replacement of same.

The confidentiality of mediation demands that the mediator will not be able to be called before the courts in his/her capacity as a witness or expert witness nor can the documents or information obtained in the sphere of mediation be used.

The suspension of the time limits and being statute barred during the mediation process, remaining pending determination from the day on which the mediation is considered as commenced and from that moment can be understood as having finished.

The need for the Member States to assume the need to advertise access to mediation in all media.

The enforceability of the agreements reached in mediation in all Member States whose contents have been declared as enforceable by the court or by another competent authority or by an appropriate instrument in accordance with the law of the Member State that carries out the demand. In the sphere of recognition and enforcement, the first difficulty that emerges is the intelligibility of the agreements, so as not to present serious interpretive problems, which reinforces the role of the lawyers, so that respect for the elemental legal principles can be ensured and that there can be guarantees in a clear and precise manner. When the decisions that have a legal significance are the object of agreements it is necessary for such agreements to be adapted to the legal requirements enforceable and that fiscal significance is taken into account of certain legal transactions. The intervention by a lawyer will authorise the act with his/her signature and he/she will assume the corresponding amount of

responsibility, with which the quality of the agreement is strengthened when dealing with giving it effectiveness abroad, without prejudice to those agreements which, on belonging to the sphere of public order, need judicial approval.

The work carried out by GEMME must likewise be highlighted.

It is a European and pro-European association whose aims are to encourage the alternative systems of conflict resolution and especially that of mediation from the sphere of the Courts of Justice themselves.

Started in France in 2004, its prime mover and first chairperson was the 'Presidente de la Cour de Cassation francesa' (President of the French Appeal Court), Guy Ganivet and currently chaired by Ivan Verougstraete of the Belgian Appeal Court. Today there are sections in Spain, the United Kingdom, Germany, Belgium, France, Holland, Italy, Portugal, Bulgaria, Hungary and Switzerland. There are associate members in Norway, Great Britain, Greece, Slovenia, Romania, Poland and Lithuania.

It is an association that has the status of observer in the Council of Europe and has recently been linked to the European Network for Judicial Cooperation.

It is of a non-governmental nature, to join absolutely voluntarily, that at its heart respects the ideological pluralism of its members and which attempts to be a meeting point for professionals from different origins and roles in the judiciary.

In addition to judges there is a reduced number of people from the legal profession, mediators or from teaching who have an acknowledged reputation as a result of their work in favour of alternative forms of conflict resolution and who work in the sphere of the courts of justice.

It actively works for the spreading and introduction of mediation in all the fields in which the lives of the citizens is developed.

At the next GEMME conference that will take place here in Barcelona next week, on 19th June, the paper will deal with "Cross border mediation and conflicts, experiences" the speakers on this question being our colleague Joaquin Bayo, the German Senior Judge Cristoph Strecker, Paulino Fajardo, and a representative from Reunite. I hope to be able to offer you the conclusions on another occasion.

Many thanks.