As globalization progresses and migration increases, the number of international family disputes and divorce cases is growing. This brings new challenges and difficulties for those involved, but can also bring new opportunities for mediators. One of the biggest challenges is the need to build a network of international family mediators. A big thank you to all TIM organisers, trainers and participants!

The first stage of the project has not only been an enormous learning experience for me personally, but has also resulted in the realisation of a dream of working in the international field.

I must admit to being wary, when I first heard about the project, that mediation could possibly work in an area as sensitive and complex as child abduction. From the basic premise that mediation could work, many different topics, legal, ethical, family, social and so on, could be brought about. But how could the approach of this project be successful and result in a change in the current law?

I have now discovered that mediation is not only possible in these cases, but very much desirable. It offers specific advantages to parents which traditional legal mechanisms cannot offer. Some of these advantages are referred to as ‘family friendly’. The general aim is to avoid conflict, to reach a solution that is acceptable to both parties, and to ensure that the children are not caught in the middle.

Mediation however often offers a number of specific advantages to parties in the context of child abduction cases. One of these is the involvement of the child. In general, in cases taken under the Hague Convention on the Civil Aspects of Child Abduction, (Hague Convention), to which the countries are parties, the only issue that can be decided is whether the child should be returned to the country of origin or not. All other arrangements can be made, or can only be made, in the country of origin, even though both parties and the child may be in another country.

The second advantage is that mediation can offer a certain structure in order to be successful and workable. In the current legal systems, it is generally assumed that the legal process for return is an easier one. In mediation, the real needs and interests of the parties can be addressed. In practical terms this means that the parents can address not only where the child or children will live, but all other arrangements such as contact with the non-resident parent, a parenting plan, and financial arrangements.

Another potential advantage of mediation in child abduction cases, particularly when early in the process, is that it can enable parents to work through all the issues involved, even if such issues are dealt with, because of ‘an out-of-court-fall’ – the child stays with the abducting parent in the new country, as returns to the left behind parent in the other country. In many cases, the parents creating agreement for the return of the child (statistically more often the father), would in fact be satisfied with the legal process for return of the child being stayed or suspended.

The third advantage is that mediation can be familiar. Then there are the issues of working in different languages, and most importantly, with different cultures, variegated religious beliefs and traditions, all of which have their impact on the dispute and add to the complexity of the case. Perhaps the most important difference is knowing who, in different cultures, has a stake in and may need to be a part of the mediation. Knowing who, in different cultures, has a stake in and may need to be a part of the mediation is essential, as it is knowing under what circumstances such a mediation would not be appropriate or should be discontinued. Last and by no means least such mediations require a certain structure in order to be successful and available within any legal framework. Mediation existing in this area too, must be adapted to the local laws and conditions with working within those structures.

In the future, it is likely that a new framework for mediation in cross-border cases will be established. This framework will be based on the Hague Convention and its implementing legislation, as well as other international instruments.

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New Frontiers in Cross Border Family Mediation

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