Mediation in Latvia and Scandinavian countries

Riga, 4 October 2013

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Cross Border Family Mediation in the Scandinavian countries

- What is Cross Border Family Mediation?
Family Mediation

- When to use Family Mediation?

A) Disputes on custody, living and/or visitation rights.

Extensive and time consuming process.
Both parents expect the other one to keep the agreements.

B) Enforcement cases

When the parents have agreed on custody, living and/or visitation rights but one parent breaks the agreement.

The dispute is centred around whether the agreement/court decision shall be honoured or not.
Family Mediation

What does it look like in Scandinavia?

<table>
<thead>
<tr>
<th>Mediation outside of the court</th>
<th>Mediation in court</th>
</tr>
</thead>
<tbody>
<tr>
<td>By themselves, friends, relatives, private therapists, mediators</td>
<td>&quot;Mandatory&quot; in Norway and Denmark</td>
</tr>
<tr>
<td>NGOs, churches etc.</td>
<td>Voluntary in Sweden and Finland</td>
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<tr>
<td>Social services, municipalities</td>
<td></td>
</tr>
</tbody>
</table>
Family Mediation
vs.
Cross Border Family Mediation

- Family Mediation is mediation between parents who live in the same country.
- Cross Border Family Mediation is mediation between parents who do not live in the same country, or at least disagree about where the child should live.
Cross Border Family Mediation

- Just like in Family Mediation there are two main situations:
  A) Disputes on custody, living and/or visitation rights
  B) Enforcement
Cross Border Family Mediation

A) Child abduction cases – enforcement

A) Disputes on custody, living and/or visitation rights
Cross Border Family Mediation

- Just like in Family Mediation, agreements and/or mediation can take place:

  Outside of the courts;

  In court.
Cross Border Family Mediation

Outside of the courts

- Several organisations in Europe, e.g.:
  - MiKK (German association)
  - Reunite (British foundation)
  - IKO (Dutch child abduction center)

- Rare in Scandinavia.
Cross Border Family Mediation
in the Scandinavian Countries

Mediation in court

- Similar legislation in the Scandinavian countries.
- It is possible to appoint mediation in both types of situations without any cost for either party.
Cross Border Family Mediation in the Scandinavian Countries

Mediation in court

Custody cases.

• Cases in Swedish courts to settle cases where one parent wants to move abroad with the child.

• Such mediation is somewhere in between Cross Border Family Mediation and Family Mediation.
Cross Border Family Mediation in the Scandinavian Countries

Mediation in court

Enforcement cases

- No or very rare mediation in Sweden, Norway and Finland.
Number of cases in total during the last 6 years:

<table>
<thead>
<tr>
<th>Year</th>
<th>No of cases received</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>105</td>
</tr>
<tr>
<td>2009</td>
<td>99</td>
</tr>
<tr>
<td>2010</td>
<td>108</td>
</tr>
<tr>
<td>2011</td>
<td>146</td>
</tr>
<tr>
<td>2012</td>
<td>134</td>
</tr>
<tr>
<td>2013</td>
<td>87 (31 August 2013)</td>
</tr>
</tbody>
</table>
Statistics,
Ministry for Foreign Affairs, Sweden

- Distribution of cases received in 2012 (134 cases)

<table>
<thead>
<tr>
<th>Cause</th>
<th>Total</th>
<th>To Sweden</th>
<th>From Sweden</th>
</tr>
</thead>
<tbody>
<tr>
<td>Haag convention reunification</td>
<td>73</td>
<td>44</td>
<td>29</td>
</tr>
<tr>
<td>Haag convention visitation</td>
<td>12</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Non-convention cases</td>
<td>16</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>Brussels II Regulation art. 55</td>
<td>21</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>9</td>
<td>3</td>
</tr>
</tbody>
</table>
Cross Border Family Mediation
in the Scandinavian Countries

- Statistics:

According to new statistics mediation in compliance with the Act concerning Recognition and Enforcement of Foreign Decisions relating to Custody etc and concerning the Return of Children (1989:14) was only appointed in one case out of 49 between January 2012 until today.
Cross Border Family Mediation

- My own experience of Cross Border Family Mediation is approx. 10 cases in 15 years.

- In practice, we (the Scandinavian countries) have very little experience to share but many years of experience of mediation in both custody and enforcement cases.
Cross Border Family Mediation

"Problem areas"

- The language, both between the parties and between the parties and the mediator;
- Culture, values, different opinions of mediation;
- Religion
- Legislation "there are no obligations only possible consequences"

As a mediator I need to explain to the parties the possible outcome in compliance with each country’s legislation;

- "Presence", physically present or mediation by Skype
- Time, Cross Border Family Mediation is often undertaken during a shorter period of time.
Cross Border Family Mediation

If you are a good family mediator you have good chances of doing a good job in Cross Border Family Mediation
A fresh start...

- Latvia is just beginning to start with mediation – a good position to avoid repeating our mistakes

1. Take your time to listen to and reflect on other countries’ experiences.

2. Be open minded towards a different kind of organisation than the one we have in Scandinavia.
Training and education

- A central question we have missed, specially in Sweden, is the training of mediators.
  - In Sweden there is no such training;
  - No training is required to work as a mediator.
- This has at least two consequences:
  - The standard varies dramatically;
  - We find ourselves in a situation of competition, as England has before us, between various professions, social workers, psychologists, behaviour analysists and lawyers.
Mediator – a profession?

- Professional status
  - Education/training
  - Experience
  - Aptitude.
Family Mediation

- Family mediation vs. other mediation:
  - Continued relationship between the parties.
  - Enable the parties to have a parenting relationship without too many unsatisfied needs.
Family Mediation

- Parents who end up in court are those with the biggest need to be seen and listened to.
  - They need help to see and express their needs.
The how and the why

- The why: The core essence of mediation

"I have no conflict with her. She has a conflict with me!"
The core essence of mediation

- All conflicts basically depend on the unsatisfied needs of the parties.
- Very simplified, the most important need is to reach the feeling of shared reality.
- The reality that needs to be shared can be anything from deep emotions to economic issues.
- Even if the parties have different and more or less strong needs, both parties needs are equally important to bring to the surface.
Use of different methods to bring the parties’ needs to the surface.

Focus on the conflict enables the mediator to choose the most effective method for each unique situation.

Shallow needs, such as money, times etc. – negotiation.

Deep emotional – more therapeutic.
AHA-moments and their power
The art of listening...

- The more I try to make the other one listen to me and to understand me, the more I bang on the closed doors to the other one’s ears, and the more I bang the more closed those doors/ears remain.

- The key to reviving the relationship is to start listening and make it easier for the other person to push open the door.
Forgiveness
Focus on creating a space for the interpersonal meeting

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