

**Case study in ADR**

Mediation within the framework of a German-English child abduction

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Any mediation with regard to child abduction is subject to an enormous pressure: the abducting parent is afraid 'to lose' the child, while the parent left behind hopes to work out alternatives for the child's repatriation during the mediation sessions.¹

Preparation

In this case the contact with the mediator was established through the list (published on the internet) available for international conflicts involving parents and children (<www.bafm-mediation.de/international>).

The father who lived in England had sought advice through the Advice-Line of REUNITE in London. There he had been informed about the possibility of involving the central authorities in Great Britain and in Germany (Federal Public Prosecutor), along with the possibility of mediation proceedings.

A staff member working for the Federal Public Prosecutor provided information that, almost a year previously, the German mother had travelled to Germany together with the child (which by then was about two years old) and that the English father had not had any contact with the mother for quite some time. The father who lived near London had agreed to a mediation. Through the Federal Public Prosecutor the mediator received the email addresses of the father and of the mother's lawyer.

The first contact was established by telephone to the father and to the mother's lawyer; both were offered the possibility of a mediation along with some information material.

In view of the expiry of the one-year period (compare art 12.1 Hague Convention on Abduction (HCA)²), the central authority had advised

the father to make an application for repatriation in terms of the HCA with the competent family court in Berlin. Thereupon the father instructed a lawyer, who made the relevant application. The judge at the family court in Berlin had immediately fixed the first hearing and summoned both the parties and the child. At this court hearing the father was able to meet his son for the first time in almost a year. On the date of the hearing the judge had also recommended to the parents and their lawyers the implementation of mediation proceedings, which both parents accepted.

Prior to this the father had declared that he was only prepared to pay for *one* mediator. This meant the exclusion of a second mediator within the framework of the usual practice.³ However, to ensure the principles of co-mediation in such proceedings, the mediator called in a 'Rechtsreferendarin' (person receiving practical training in judicial work after having passed the first state examination) who had studied psychology in London and was currently working for him. By involving this 'assistant', the female, psychological and English participation in the mediation proceedings was at least marginally ensured.

Three mediation sessions were agreed with both parents via email. Everyone agreed to conduct the mediation exclusively in English. Prior to this the parents were asked to arrange for their lawyers' availability on the telephone during the entire mediation to be able to seek immediate legal advice if necessary.

Sunday afternoon — Mediation phases I and II

When the parents appeared for the first agreed session, the cultural



difference between the parents (which their names had not revealed initially) became visible. The mother was a central-European-looking woman, while the father could easily be identified as a British citizen of Asian descent.

Before mediation began, the parents, who were sitting in the waiting room, remained extremely aloof and silent towards each other. Initially, both parents did not want to make use of an offer to conduct separate sessions if needed. The parents reported on the current family situation as follows:

The parents had come to know each other in a student hostel during their studies in England. After one year they had moved in together, and after another year (both of them are single) their son Simon had been born. Being an only child, the mother had been closely integrated into her original family. The birth (which the father had attended personally) had taken place in Germany, and after about seven weeks the family had returned to England.

Subsequently the mother had regularly travelled with Simon to see her parents in Germany. From her visit in the summer of 2005 she had not returned to England. The father had visited the mother and Simon in Berlin once before losing contact with the mother.

At this point the parents' accounts differ:

The mother reported that the relationship between the two of them had reached zero level and that she had clearly wanted a separation. When she had communicated this to the father, he had not wanted any contact with her or Simon.

The father, however, reported that he had frequently tried to make contact with the mother, by telephone or by email, in order to keep in touch. His emails had not been answered, he had had no current address for the mother, and even the parents of the mother had not cooperated in this matter. After trying in vain for several months to build up contact, he had turned to REUNITE and asked for advice at the beginning of 2006.

In order to clearly define the frame of mediation, the 'Agreement to Mediate' which had been used in similar

cases⁴ was presented to the parents. Both parents were asked to read this agreement after the mediation session and to return it, with their signatures, on the following day. The father declared that he wanted to sign the agreement only after seeking advice from REUNITE.

Subsequently, there was a discussion on the costs of mediation and the necessity to reach an agreement on this matter. The mother offered to pay 25 per cent of the costs of mediation, and the father agreed to pay the remaining 75 per cent.

Initially the range of topics included issues familiar in these proceedings, for example the child's residence, contacts with the other parent, arrangements for vacations, birthdays and holidays, ensuring language instruction, religion,

that the central and most important issue for the parents was the question who Simon was going to live with in the future.

To clarify this issue, four options were worked out and recorded on the flipchart:

1. Simon travels to England with his father and the mother stays in Berlin.
2. Both parents travel jointly to England and work out, in peace, how they want to deal with Simon's residence.
3. Simon stays in Berlin with his mother and the father returns to London and visits his son in Berlin.
4. The father follows the mother and his son to Berlin. This last option was quickly dismissed by the parents, as the father does not speak German.

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travel expenses and child support for Simon.

The range of topics ended with the issue of 'trust' which was introduced by the father. Both parents were given the 'homework' of thinking about suitable ways to regain their mutual trust.

Monday morning — Mediation phase III

At the beginning of the session the father asked some questions about the 'Agreement to Mediate' with regard to the obligation for mutual disclosure of financial resources. This question raised the central issue of 'trust'. Proceeding from here, the parents' interests and needs were carefully worked out and the topics were weighted. It became clear

With regard to the first three options, the parents were asked to work out mutually what they could possibly offer to the other parent.

The flipchart carefully recorded a large number of 'offers' which soon revealed that both parents were prepared to ensure generous contacts between Simon and the other parent. Identical positions became quickly visible, for instance, with regard to regular trips and school education. The mother offered to the father that his large family (Simon's paternal grandparents have more than 10 brothers and sisters each) could also have regular contact with Simon. The travel expenses were discussed, and the mother declared that, in view of the

