



International Peacemakers Mediating Cross-Border Child Custody Disputes in Europe: MiKK Blazes The Trail

By Walter A. Wright

This article focuses on child abduction and other child-related issues that often arise when parents are (or want to be) located in different countries while issues regarding children are adjudicated. It also highlights MiKK (German acronym for “Mediation in International Conflicts involving Parents and Children”), a European organization dedicated to helping parents resolve those issues through mediation.

International Legal Framework for Resolving Cross-Border Child Custody Disputes

The Hague Conference on Private International Law proposed the Hague Convention on Civil Aspects of International Child Abduction (hereinafter, the “Convention”) in 1980. Since that time, eighty-seven countries, including the United States, have become parties (known as “Contracting States”) to this international treaty. The purposes of the Convention are (1) to secure the prompt return of children wrongfully removed to or retained in any Contracting State, and (2) to ensure custody and access rights under the law of one Contracting State are upheld in other Contracting States. The Convention applies to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights, and it ceases to apply when the child attains the age of 16 years.

Each Contracting State designates a government office to act as a Central Authority that carries out the Contracting State’s duties under the Convention. Central Authorities cooperate with each other and assist parents in filing applications for return of (or access to) their children under the Convention. The Convention requires the judicial and administrative authorities of Contracting States to act expeditiously in proceedings for the return of (or access to) children, and it sets a target date of six weeks from the date a parent files an application for the return of (or access to) a child.

Cross-Border Child Custody Disputes in Europe and MiKK’s Response

The Council of the European Union (“EU”) adopted Council Regulation (EC) 2201/2003 on November 27, 2003. Known as the “Brussels II bis Regulation,” it provided support for the Convention in the EU and issued guidance for the Convention’s operation in EU countries. European Directive 2008/52/EG, adopted in 2008, required every EU Member State to adopt framework legislation to implement mediation in cross-border commercial and civil cases, including

family cases, by 2011. The European Commission for the Efficiency of Justice adopted guidelines for the better implementation of family mediation in the EU, but there currently is no European standard for training regarding international family mediation.

Each year in the EU, there are more than 147,000 bi-national divorces. The Central Authorities of EU countries are processing growing numbers of cross-border child custody disputes, which often involve high levels of conflict and great geographical distances between parents. The cases can be politically sensitive with potential for media coverage. Because of the Convention’s goal of deciding all applications within six weeks of filing, parents are subject to a great deal of stress, and they can incur large amounts of attorney’s fees in a relatively short period of time.

In 2002, the German organization BAFM (German acronym for “Federal Association for Family Mediation”) began a project entitled “Mediation in International Disputes Involving Parents and Children” to resolve international conflicts involving parents and

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MiKK e.V. - Mediation bei internationalen Kindschaftskonflikten

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children in connection with proceedings under the Convention and the Brussels II bis Regulation. In 2007, another German organization, BM (German acronym for “Federal Mediation Association”), began cooperating with the BAFM project. In 2008, the two organizations founded MiKK as an independent non-governmental organization to continue and further their efforts within a new framework. In 2007, at a meeting of a working group between MiKK’s German mediators and some Polish mediators, the project adopted a “Wroclaw Declaration on Mediation of Bi-national Disputes over Parents’ and Children’s Issues,” which established recommendations for mediating these distinctive disputes. MiKK conducts its mediations pursuant to those recommendations.

MiKK’s Mediation Process

While MiKK’s mediation process relies on traditional concepts such as voluntary participation, mediator impartiality, and confidentiality, it does distinguish itself from other types of mediation. Because of the complexity of the issues involved, MiKK believes knowledge of the law and its application is essential; therefore, MiKK strongly recommends that each parent consult an attorney during the process. MiKK also advises the parties that voluntary participation in mediation does not imply that the parent claiming an abduction approves the other parent’s behavior; the parents’ written agreement to mediate expressly stipulates this point. MiKK encourages parties to negotiate directly with each other during the mediation process; any attorneys who participate are asked to assist their clients in an advisory role. There are two mediators, a male and a female, one of whom has a legal background; the other has a psychology, social work, or education background. The mediators are selected from a roster of experienced family mediators speaking twenty-eight different languages. Ideally the mediators come

from the same countries as the parents; therefore, they share the parents’ cultural and linguistic backgrounds. In addition to general mediation training, the mediators have training on the specific dynamics and legal framework of abduction cases.

MiKK reminds the parties that any court hearing conducted pursuant to the Hague Convention will focus exclusively on whether the subject children will return to their home countries. In a mediation organized by MiKK, however, the parents can negotiate additional issues such as the children’s contact with both parents, visitation arrangements, agreements concerning the children’s support, school education, and bicultural upbringing. Mediations can last several hours or several days, depending on the complexity of the issues and the level of conflict. If the parties reach an agreement, the mediators draw up a written agreement, which is then checked by the parties’ lawyers. The parents are expected to pay all mediation costs and mediator fees.

Multinational Roster, Bi-national Projects, and International Training

Most of the mediators on MiKK’s roster live and work in Germany, but the roster also includes mediators who live and work in other European countries, including Belgium, France, Greece, Ireland, Latvia, Luxembourg, Poland, Portugal, Sweden, and the United Kingdom. In addition, MiKK engages in bi-national projects with mediators from France, Poland, Spain, the United Kingdom and the United States that heighten participants’ awareness of current issues and develop best practices for the field. The bi-national projects also make it possible for mediators to offer each other mutual support and build co-mediator teams.

In cooperation with Child Focus, the Katholieke Universiteit van Leuven, and with the support of the Dutch Centre for International Child Abduction, MiKK has created a training program for international family mediation. In 2011, MiKK conducted a sixty-hour training for twenty-one mediators from twenty-one countries, and in 2012,

the organization conducted an eighty-hour training for mediators from twenty-six EU countries, Croatia, and Turkey. As a result, a network of international family mediators in Europe was created (www.crossbordermediator.eu). MiKK has since been invited to do training in Australia and Japan and also offers specialized training in Berlin; thus MiKK has set a standard of training in this field.

Awards and Website

Recently, MiKK has been the recipient of several important awards. In 2009, Christoph C. Paul, MiKK’s first Chairman, was awarded the Cross of the Order of Merit of the Federal Republic of Germany for his voluntary efforts in implementing mediation in international conflicts involving children. The Association for Conflict Resolution awarded MiKK the 2012 Outstanding Leadership Award in recognition of its efforts in the field of international conflict resolution. Also in 2012, MiKK won the Jugend WinWinno Award, and the initiative “Germany—Land of Ideas” chose MiKK as a laureate in the competition “365 Places in the Land of Ideas.”

MiKK has an excellent website with many resources on the subject of cross-border custody disputes and the mediation of those disputes. The website is published in five languages (English, French, German, Polish, and Spanish). You can visit the English-language site at <http://www.mikk-ev.de/english/english/>.



Walter A. Wright is an Associate Professor in the Legal Studies Program of the Department of Political Science at Texas State University in San Marcos. He is a former

President of TAM.