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Family mediation

 Germany

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European Judicial Network
(in civil and commercial
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A brief introduction to family mediation in Germany

Extract from the 'Marriage Law' ('*Eherecht*') pamphlet published by the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz), p. 73:

'6.2.5 Family mediation

Couples who are going through a separation or divorce often want to manage their family relationships in an amicable way. In cases like this, mediation is an excellent alternative to court proceedings.

The legal framework for mediation was created by the Mediation Act (*Mediationsgesetz*), which came into effect on 26 July 2012.

Mediation helps the parties find an amicable solution to their conflict with the help of a neutral person (the mediator). The parties take responsibility for the solution and the mediator does not have the power to make decisions.

This means that, unlike in a court case, the real interests and needs of those involved can be determined and used as the basis for a solution which is tailored to the individual conflict. Court decisions are less likely to take the interests of those involved into account. Mediation is therefore more readily accepted by those involved and are generally more effective in the long term. It can lead to contractual agreements being drawn up relating to, for example, maintenance, assets, property, parental responsibility or access rights.

As part of divorce proceedings, the court can order the spouses, either individually or together, to take part in a free information session on mediation or another form of out-of-court dispute settlement for pending related matters [1] with the help of a person or body nominated by the court, and to confirm of their participation (Section 135 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction - *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG). This order cannot legally be enforced. However, the court can take failure to comply with the order into account when deciding on how to apportion costs (Section 150(4) FamFG).'

The same applies to child matters concerning parental custody under sentences three and five of Section 156(1) and point 5 of Section 81(2) FamFG: in cases like these, the court can also order the parents to take part in an information session on mediation or another form of out-of-court dispute settlement. This order cannot legally be enforced, but the court can take failure to comply with the order into account when deciding on how to apportion costs relating to the case.

Links for German websites where you can find mediators for family matters

- Internationales Mediationszentrum für Familienkonflikte und Kindesentführung (MiKK e. V.), Fasanenstraße 12, 10623 Berlin, Germany (international mediation for family disputes and child abduction)

<http://www.mikk-ev.de/>

- Zentrale Anlaufstelle für grenzüberschreitende Kindschaftskonflikte beim Internationalen Sozialdienst im Deutschen Verein (ZAnK), Michaelkirchstraße 17/18, 10179 Berlin, Germany (mediation for cross-border cases involving children)

<http://www.zank.de/>

Links for German websites where you can find information about family mediation or mediation in general

- Bundesverband Mediation e.V. (BM), Wittestr. (mediation association) 30 K, 13509 Berlin, Germany

<http://www.bmev.de/>

- Bundes-Arbeitsgemeinschaft für Familien-Mediation e.V. (BAFM), Spichernstraße 11, 10777 Berlin, Germany (association for family mediation)

<http://www.bafm-mediation.de/>

Links for German legislation on family mediation

- Bundesministerium der Justiz und für Verbraucherschutz, Mohrenstraße 37, 10117 Berlin, Germany (Federal Ministry of Justice and Consumer Protection)

Information on mediation:

https://www.bmj.de/DE/themen/wege_zum_recht/aussergerichtliche_streitbeilegung/mediation/mediation_node.html

- Act on the Promotion of Mediation and Other Forms of Out-of-Court Dispute Settlement (*Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung*) (Federal Law Gazette (BGBl.) 2012 Part I No 35 of 25 July 2012)

https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/BGBl/Gesetz_zur_Foerderung_der_Mediation_und_anderer_Verfahren_der_aussergerichtlichen_Konfliktbeilegung.pdf

[1] Related matters include disputes relating to matrimonial property regimes, pension rights adjustments, maintenance payments, the marital home and household items.

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