

Psychological aspects in family mediation

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Family and mediation

- Separation and divorce
- Family business disputes
- Family inheritance
- Family member's health care issues
- Special education
- Parents and adolescent children
- Guardians/foster parents and children, etc.



To consider...

- Who should participate in mediation – «parties» or those who are impacted?
- People in the «background» affecting the process and decision
- Emotions in family mediation



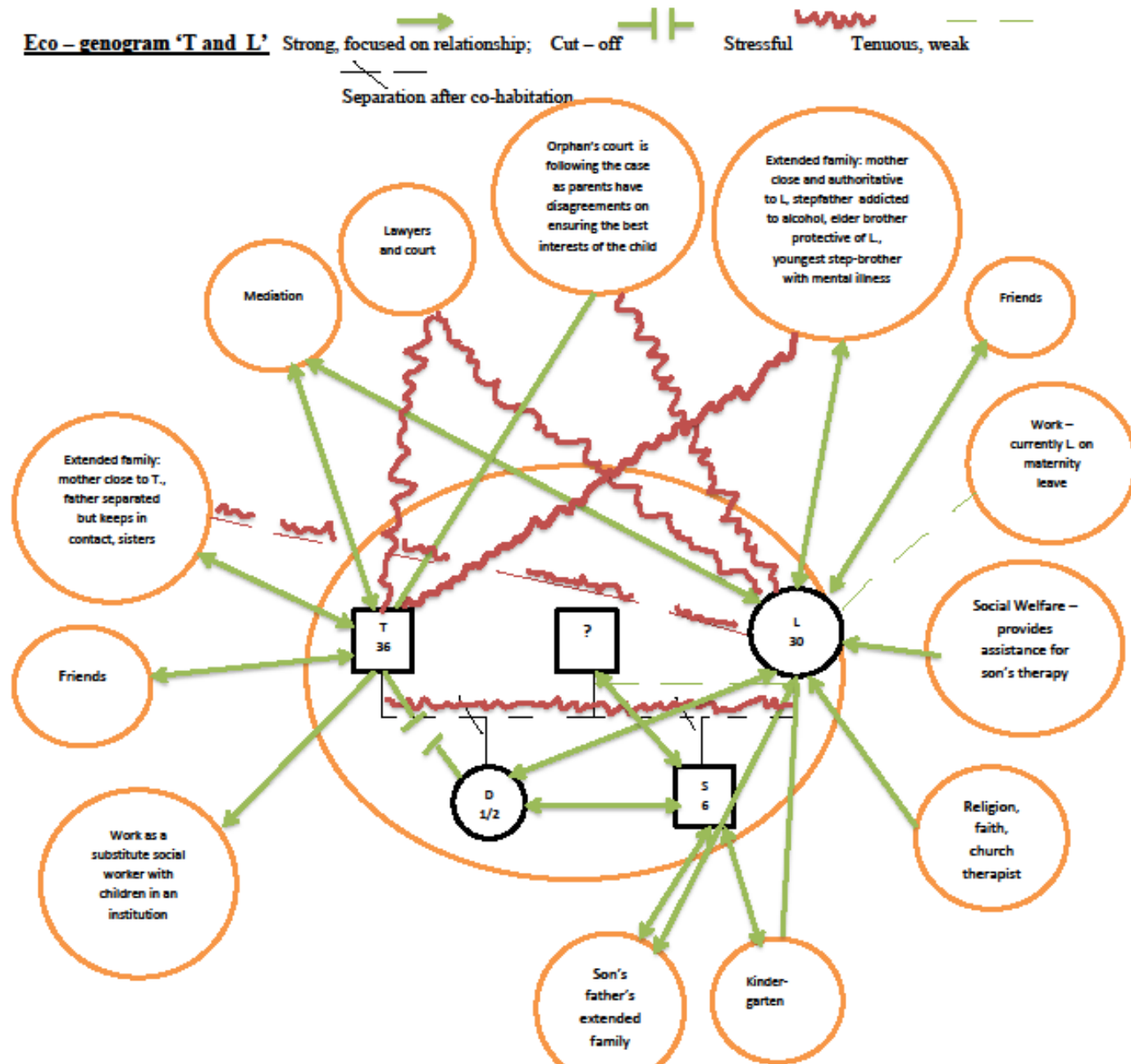
Tools for case analysis

- Systems theory and approach
- Conflict analysis grid
- Eco-genogram



Eco-genogram

Eco-genogram 'T and L'



International family mediation and «the Hague cases»

*Based on 80-hour intensive course «Training for Trainers in International Family Mediation»
(2012) by MIKK e.V., Child Focus Belgium un KU Leuven University, funded by the European Union.*



Background

- International couples in the EU – in 2010 around 16 million (citizens of different EU countries or of EU citizens and third-country nationals)
- International dimension (family relationships and family conflicts)
- Child abductions world-wide estimated more than 100,000 each year
- Who abducts the children?



1980 Hague Convention *on the Civil Aspects of International Child Abduction:*

- To protect children from the harmful effects of their wrongful removal accross borders
- To ensure their prompt return to the State of their habitual residence
- To secure protection for rights of access



- Other international instruments
- Co-operation initiatives with states not parties to the Hague Convention
- Bilateral agreements, declarations



EU Legal Framework for Mediation

- Brussels II bis Regulation (Art. 55 (2)(e)) and the 1980 Hague Convention (Art. 7 (2)(c)) foresee the possibility of mediation in family proceedings and encourage central authorities to work towards an amicable settlement
- EU Parliament Mediator on International Child Abduction
- EU Directive No. 2008/52/EC - the Mediation Directive
Art. 5 gives judges the right to invite parties to try mediation first, Art. 6 ensures the enforceability of settlement agreements)
- European Code of Conduct for Mediators



How mediation can help?

- Mediation – an opportunity for the parents to find and agree on a mutually acceptable solution
- The mediator's role (neutral, assists in communication between the parties and structures the process)
- Mediation is confidential and voluntary
- Practical aspects of mediation sessions (time, venue, language etc.)



Issues in Mediation

- Return of the child, future living arrangements
- Custody, visitation, contact to absent parent
- Holidays and birthdays
- Religious and cultural / bilingual upbringing
- Child support, alimony, division of assets
- Separation and divorce
- Contact to absent parent during mediation



Framework of the mediation

- Can be initiated by parties, lawyers, judge, Central Authority, Ministry of Justice or consular staff
- Timeframe: short notice, often just before court hearing
- Characteristics of child abduction cases:
 - Time-consuming preparation, travel, contact to lawyers
 - Long, sometimes open-ended sessions, usually 2 to 3 days
 - Highly escalated conflict dynamics, lack of trust, fear of losing child, feelings of anger and betrayal, pressure to make far-reaching decisions at short notice, influence of likely outcome of court case, high level of insecurity, very intense



Preferable Model

- Co-mediation according to 2007 Wroclaw Declaration on Mediation of Bi-national Disputes over Parents' and Children's Issues:
by mediators from:
 - both cultures
 - both languages
 - both genders
 - the legal and the psychosocial professions
- Focus on the child, facilitate contact to absent parent, separate sessions, developing scenarios for possible solutions



Stages of Mediation

1. Preparation
2. Defining the issues
3. Exploring the conflict
4. Generating and clarifying options
5. Finalizing agreement



When to mediate?

- As soon as possible
- Before a case is brought to court
- When a case is pending
- After first hearing but before decision
- Between court cases, e.g. first instance and appellate court hearing
- After court decision, e.g. return of the child



Role of Lawyers and Courts

- Lawyers – support, legal advice, finalizing agreement so it becomes binding in both jurisdictions
- Court can render legally binding agreement



Opportunities and Limits

- Mediation can be useful to help explore the issues and conflicts, to find mutually acceptable and realistic options, to reach agreements
- Mediation might not be suitable in all cases (lack of motivation, other factors)



Psychological aspects

- Cultural differences become threatening during breakdown
- Both parents want to be active in their children's lives
- One parent feels trapped and wishes to return home after a separation or divorce
- Reaction of left-behind parent: anger, disbelief, feelings of helplessness and powerlessness
- Danger of re-abduction
- Both parents are afraid of losing their children
- The children are caught in the middle



Psychological impact

Source: Child Focus Belgium, Prevention Guide 2010

- For children:
 - in reality denied contact with the left behind parent and with familiar environment (“home”, toys, neighbours, friends, family)
 - emotional importance of children’s relationship with both parents does not change with a divorce (exceptions – child abuse)
 - reactions – aggressions, withdrawal, depression, difficulties in expressing affection, problems in school and with friends, can lead to drug abuse
 - feels abandoned, develops low self-esteem, problems with trust
 - long-term consequences into adulthood



Psychological impact

- **For parents:**

Difficulties in maintaining regular contact (obstacles in communication, telephone calls, unclear messages)

Even many years later feel anger towards the other parent, feelings of revenge, depression and anxiety

Abducting parent may experience difficulties in contact after the abduction is over

Dramatic changes after abduction (residence, access), long-term effects



The documentary film
Role play
Reflection and de-briefing



Questions to mediators

- How did your co-mediation work?
- What do you consider went well in mediation, what did you do well as a mediator?
- What were the main challenges?
- What would you do differently the next time?



Questions to parties

- In your perspective, how did mediation work?
- What do you consider went well in mediation, what do you appreciate?
- What would you expect differently the next time?



Questions to observers

- How did mediators open the mediation session? What basic principles mediators explained to the clients?
- What communication techniques mediators applied?
- What emotions did you observe in the process and how did mediators respond?
- Other observations / constructive feedback that you feel mediators should hear



Useful links

- <https://www.hcch.net/en/publications-and-studies/details4/?pid=5568>
- www.crossbordermediator.eu
- <http://www.mikk-ev.de/english/englisch/>
- <http://www.reunite.org/>
- www.missingchildreneurope.eu



Thank you!

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