Co-funded by the European Union

JUST-2024-JCOO
Action grants to promote judicial cooperation in civil and criminal matters
JUSTICE PROGRAMME
GA No. 101192457

Better judicial cooperation and family mediation in international child abduction cases
iCare2

National Report on Italy

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.

Project co-funded by the European Commission with the JUST Programme		
Dissemination Level:		
PU		X
CO		
EU-RES		
EU-CON		
EU-SEC		
Document version control		
Version	Author	Date
Version 1	Laura Carpaneto and Francesca Maoli	15.4.2025
Version 2	Laura Carpaneto and Francesca Maoli	20.6.2025

Table of content

1. Introduction

In an increasingly interconnected Europe, cross-border family disputes have become more frequent. In the context of separation, divorce and necessary arrangements concerning parental responsibility, the risk of international child abduction is still present[1]. These complex situations often involve more than one legal system, face cultural differences, and, most importantly, affect the rights and well-being of children. International (or cross-border) family mediation has emerged as a valuable tool to address international child abduction disputes, offering a structured yet flexible process aimed at facilitating mutual understanding and sustainable agreements between parents residing in different countries[2].

The potential positive effects of international family mediation have been acknowledged by the EU lawmaker: the regulation (EU) No. 2019/1111 (Brussels II-ter), in its Article 25, has introduced the express obligation for the judge in child abduction proceedings to invite the parties to consider the possibility of undergoing mediation.

This report presents the result of the national research on the Italian legal system, undertaken within the activities of the EU co-funded project "iCare2"[3]. The research evaluates how the Brussels II-ter regulation has been applied in Italy, identifying challenges in its enforcement, and assessing its success in improving judicial cooperation, resolving international child abduction cases, and promoting family mediation.

International family mediation is still largely underdeveloped in Italy. While family mediation is slowly becoming a valid tool which parents and legal professionals acknowledge and activate with increasing frequency, there still is a relatively low number of cases which undergo this alternative dispute

[1] According to the statistics of the Italian Central Authority in the context of the application of the Hague Conference of 25 October 1980 on the civil aspects of international child abduction, in 2024 the Central Authority has received 204 applications, among which 170 concerning return proceedings. The full report is available here: https://www.giustizia.it/cmsresources/cms/documents/Rapporto_Sottrazione_internazionale_minori_2024_G.pdf.

[2] See S. VIGERS, *Mediating International Child Abduction Cases: The Hague Convention*, Oxford, 2011.

[3] For more information see the official website of the project: https://project-icare.eu/.

resolution mechanism. It is only with the most recent legislative reforms[4] – addressing the overall Italian justice system – that family mediation has found its way, as a structured instrument, in the civil code and in the code of civil procedure.

Those novelties are the last passage of a long and fragmented process, through which mediation is making its way in the national legal system and in the practice of the legal professionals involved in family conflicts and, ultimately, in the protection of children in those contexts. The development of a 'culture' of mediation, together with a consistent and concrete integration of the principle of the best interests of the child in the overall process, is being identified as a key need in order for mediation to be offered as an effective tool for the resolution of family conflicts, in line with international and EU standards.

As part of the methodology applied to the present research, interviews have been conducted to gather the perspective and experience of practitioners (judges, lawyers, certified mediators). The authors – who remain the only responsible for the content of this report – are grateful to the above professionals for their precious cooperation.

2. International family mediation in Italy: the legal framework

In the context of international child abductions, the 1980 Hague Convention promotes alternative methods of dispute resolutions to search an amicable solution[5]. This possibility has been valorized over time by different initiatives at the international level, and has found its way in other legislative instruments which, many years later, have introduced provisions aimed at encouraging the recourse to family mediation in cross-border disputes: at the EU level, reference is made to the Brussels II-ter regulation[6], which – as it will be examined – has strengthened the role of family mediation in cross-border disputes and explicitly

[4] D. Lgs. 10 October 2022, No. 149, the so-called "Cartabia reform", whose impact on family mediation will be examined in the course of the present report.

[5] Article 7 of the 1980 Hague Convention on the civil aspects of international child abduction establishes that Central Authorities "*[s]hall take all appropriate measures … c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues*".

[6] Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIb regulation).

promotes it during proceedings for the return of a child in cases of international abduction.

Despite the momentum provided at supranational level[7], the practical implementation of this instrument has been uneven across different national legal systems. In Italy, family mediation, although recognized in principle and sometimes encouraged, has encountered difficulties in establishing itself as an effective and widespread practice for the management of cross-border family disputes. Only in recent years has there been a partial change of course, with growing attention to mediation in national legislation.

It is barely worth noticing that one of the first centers offering family mediation services was created in 1987[8]. The very first normative references to family mediation are to be traced back to 1997, with the law No. 285: Article 4, para. 1, lett. i) instituted the financing and promotion of family mediation and consultancy services for families and children.

The first professional associations of family mediators were created in the 1990s: in particular, 1995 saw the birth of SIMeF (*Società Italiana Mediatori Familiari*) and AIMS (*Associazione Internazionale Mediatori Sistemici*); in 1999, AIMeF (*Associazione Italiana Mediatori Familiari*) was created. Those professional associations followed the development of a body of legislation which introduced a progressive regulation of the profession of family mediator, which remains, even today, a profession non organized in professional associations or boards, in the technical terms of Italian legislation: the mediators are under the management of voluntary private associations which are authorized by the Ministry of Enterprises and Made in Italy according to the Law No. 4/2013[9].

The Law No. 328/2000 (on social services) and the Law No. 154/2001 (on family violence and protection orders) briefly mentioned the possibility to accede to family mediation centers to deal with family conflicts. These interventions merely arranged for the creation of public family mediation services, without, however, offering detailed regulations on the tasks and functioning of these figures.

---

[7] See C.C. PAUL, S. KIESEWETTER, I. KHALAF-NEWSOME, *Cross-border Family Mediation. International Parental Child Abduction, Custody and Access Cases*, Frankfurt am Main, 2023; S. FENN, A.M. HUTCHINSON, A. LAKE-CARROL, *Mediation in children's cases with a cross-border element – in particular, international child abduction, leave to remove and international contact*, in M. ROBERTS, M. MOSCATI (eds), *Family Mediation. Contemporary Issues*, Dublin, 2020, p. 203.

[8] Reference is made to the association "GeA" (*Genitori Ancora*), which created a public civic centre in collaboration with the municipality of Milan, offering mediation services.

[9] The database is available at https://portaledati.mimit.gov.it/banca-dati/assoc_prof.

Family mediation found its way in the civil code through the Law No. 54/2006, which established the possibility for the parties in separation proceedings to attempt mediation "in order to reach an agreement, with particular reference to the protection of the moral and material interests of the children". (Article 155 *sexies* c.c.). In that case, the judge could postpone the adoption of the measures on parental responsibility, but only if deemed advisable, after hearing the parties and having obtained their consent. This amendment was an indicator of the ongoing process of including family mediation as an instrument for the management of family conflicts in separation or divorce, probably inspired also by the recent ratification of the European Convention on the Exercise of Children's Rights of 25 January 1996[10], which in Article 13 provides for mediation as a means of preventing and resolving conflicts and avoiding any court proceedings concerning the child.

2.1. The Brussels II-ter regulation and the Cartabia reform

The recent years have shown an accelerated effort for the strengthening of mediation within the proceedings dealing with any family conflict involving children[11].

At the EU level, the Brussels II-ter regulation (amending the precedent Brussels II-bis regulation), has introduced specific provisions dedicated to family mediation – other than registering a decisive attention towards the rights of children and their best interests[12]. As known, the regulation operates in synergy with the 1980 Hague Convention on the civil aspects of international child abduction. In the Chapter dedicated to international child abduction[13], the regulation confirms the immediate return principle (as well as the exceptions to this principle provided in Articles 12, 13 and 20 of the Convention). At the same

[10] Law 20 March 2003, No 77.

[11] Reference should be made also to the Law 11 July 2011, No. 112, which instituted the Italian Authority for Children and Adolescents. Article 3, lett. o) attributed to AGIA the mandate to "Favour the development of the culture of mediation and of every institute for preventing and solving through an agreement any conflict involving children, fostering the training of legal professionals".

[12] It is well known that international child abduction is regulated by different instruments of cross-border judicial cooperation, such as the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1996 Hague Convention on parental responsibility and the protection of children, the regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels II-bis regulation), which as of 1 August 2022 has replaced the regulation (EC) No. 2201/2003 (Brussels II-ter regulation).

[13] Articles from 22 to 29 Brussels II-ter regulation.

time, in line with the preceding Brussels II-bis regulation, the so-called "trumping order" is also maintained: a decision on the merits of the court of the State of the child's former habitual residence is able to trump and, therefore, overturn the non-return order of the court of the State to which the child was wrongfully removed[14].
The Brussels II-ter regulation has introduced a specific provision dedicated to family mediation[15]:

Article 25 "*Alternative dispute resolution - As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings*[16]."

It should be highlighted that the Brussels II-ter regulation (in line with Article 2 of the 1980 Hague Convention) provides for a tight time-frame of six weeks[17] for return proceedings, in which to concentrate the invite to undergo mediation as well.

---

[14] Article 29, para. 6, Brussels II-ter regulation. The trumping order is immediately enforceable in the EU Member State in which the child is present.
[15] See T. KRUGER, *Article 25*, in C. GONZÁLEZ BEILFUSS, L. CARPANETO, T. KRUGER, I. PRETELLI, M. ŽUPAN, *Jurisdiction, Recognition and Enforcement in Matrimonial and Parental Responsibility Matters. A Commentary on Regulation 2019/1111 (Brussels IIb)*, Cheltenham, 2023, p. 258.
[16] Some guidance on the application of Article 25 is provided by Recital 43, stating that: "*(I)n all cases concerning children, and in particular in cases of international child abduction, courts should consider the possibility of achieving solutions through mediation and other appropriate means, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes. Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention. Moreover, mediation might not always be appropriate, especially in cases of domestic violence. Where in the course of return proceedings under the 1980 Hague Convention, parents reach agreement on the return or non-return of the child, and also on matters of parental responsibility, this Regulation should, under certain circumstances, make it possible for them to agree that the court seised under the 1980 Hague Convention should have jurisdiction to give binding legal effect to their agreement, either by incorporating it into a decision, approving it or by using any other form provided by national law and procedure. Member States which have concentrated jurisdiction should therefore consider enabling the court seised with the return proceedings under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of those return proceedings*".
[17] Article 24, para. 2 Brussels II-ter regulation.

At the national level, it was the so-called "Cartabia reform", within a wide-ranging intervention on the Italian civil procedure, which effectively expanded the regulatory framework of family mediation[18]. More specifically, the Law No. 206 of 26 November 2021 delegated to the Government the adoption of measures for the revision of the civil procedure and of the alternative dispute resolution methods, as well as of urgent measures for the rationalization of proceedings in the area of the rights of individuals and families.

Accordingly, the Legislative Decree No. 149 of 10 October 2022[19] has introduced a single procedure applicable to all proceedings relating to the status of persons, minors, and families, initiated from 28 February 2023[20]. An important specification concerns the procedures disciplined by special laws, which will not be subject to the new procedure[21]: among those, the return proceedings in international child abduction cases[22]. Nevertheless – and despite the aforementioned exclusion – there are many aspects of the Reform which have an (at least indirect) impact over international child abduction proceedings, starting from mediation.

Among the measures of the Reform, the Decree modified Article 316 c.c., para. 3, which now recites that "The judge, having heard the parents and arranged for the minor child who has reached the age of twelve, or younger if capable of discernment, to be heard, shall attempt to reach an agreed solution and, where this is not possible, shall adopt the solution he or she considers most appropriate to the interests of the child".

In the context of the new proceedings concerning persons, children and family matters ("*procedimento in materia di persone, minorenni e famiglie*"), the new Art. 473.bis.10 cpc provides that the judge may invite the parties to family mediation. In particular, "The judge may inform the parties of the possibility of family mediation and invite them to contact a mediator [...] in order to obtain information on the objectives, content and procedures of the process and to

---

[18] F. Danovi, *Il presente e il futuro della mediazione familiare in Italia*, in *Giustizia consensuale*, 2024, p. 659 ff.

[19] *Attuazione della legge 26 novembre 2021, n. 206, recante delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata*.

[20] The amendments have taken effect on 28 February 2023, and apply to proceedings initiated after that date: see Article 7, para. 1, of the Legislative Decree 31 October 2024, No. 164

[21] Art. 473-bis code of civil procedure, as amended by Article 3, para. 33 of the Legislative Decree 149/2022. On the scope of application of the new rules, see G. Buffone, *Le nuove norme processuali in materia di persone, minorenni e famiglia (d.lgs. n. 149/2022): prime letture sintetiche*, in Giustizia Insieme, 8 February 2023.

[22] Those proceedings are disciplined in Italy by the Law 64 of 15 January 1994 (Article 7).

consider whether to undertake it". In the eventuality that the parents decide to pursue mediation, the judge ("if deemed appropriate") may postpone the adoption of the provisional and urgent measures on the regulation of parental responsibility, which would define the rights of children and parents during the course of the proceedings[23]. The postponement is functional to allowing parents to effectively pursue mediation and reach an agreement, which (with a punctual specification) should be "in the moral and material interests of children".

A slightly different tone concerns Article 473-*bis*.14 c.p.c., which specifies that the information about the possibility to undergo mediation shall also be included in the decree fixing the date of the hearing: this means that the parties should receive those information already in the very first stage of the proceedings (provided that the judge may decide to come back to this possibility again at a later stage).

Importance should be given to the invite of the judge, which is in line with the universally accepted principle that family mediation should never be imposed on the parties[24]. At the same time, the invite should not be reduced to an abstract and cold communication. The judge should take care of the credibility of its communication, which should also be tailored to the concrete case, other than informed by the necessary details. Since the invite of the judge intervenes in the course of a proceedings, the judge could also search for the collaboration of the lawyers of the parties, with whom the latter holds a relationship of trust. At the same time, following the inputs given by professionals and partially deviating from the provisions of the Law No. 206/2001, it has been provided that it would be the mediator (and not the judge) to provide the information on the objectives, content and procedures of family mediation[25].

Most importantly, the provision specifies that the mediators with which the parties may be put in contact should be one of the professionals included in a list formed according to Article 12-*bis* ff. of the implementing provisions to the code of civil procedure. The list is kept by the President of the Court and is

[23] Article 473-*bis*.22 cpc.

[24] It is interesting to notice that a current proposal for reform of Article 473-*bis*.10 c.p.c. (Article 13 of the D.d.L. No. 832 of 1 August 2023) aims at introducing a mandatory pre-mediation stage, providing that "In all cases of disagreement in the phase of elaborating a shared custody, the parties are obliged, before referring the matter to the judge and except in cases of urgency or of serious and imminent harm to the children, to turn to a public or private family mediation body or to a freelance family mediator to acquire information on the advisability of a possible family mediation path. The first meeting is in any case free of charge and may also be held individually at the request of even only one of the parties. If one of the parties fails to comply, the proceedings are started anyway at the initiative of the other party" (authors' translation).

[25] F. Scaparro, *La forza della mediazione familiare*, in C. Vendramini (ed), *La mediazione familiare nella Riforma Cartabia: comporre i conflitti e ritessere le relazioni*, Milano, 2022, p. 104.

formed by a committee chaired by him and composed of the Public Prosecutor and a family mediator. The committee decides on applications for registration and appeals against its decisions may be lodged within five days of notification. More specifically, the list may include those who have been registered for at least five years with one of the professional associations of mediators included in the list kept at the Ministry of Economic Development and who demonstrate adequate training and specific expertise in family matters, child protection, and violence.

Indeed, other than the aforementioned list, the implementing provisions to the code of civile procedure now contain a whole Chapter dedicated to family mediators (Title II, Chapter I-*bis*). Article 12-*sexies* has provided for the adoption of a comprehensive discipline on the professional activity of family mediators, including a better specification of rules of conduct, mandatory training and tariffs. The provision was implemented with the enactment of the Ministerial Decree No. 151 of 27 October 2023 (by the Italian Ministry of Enterprises and Made in Italy, in collaboration with the Ministries of Justice and Economy and Finance), which adopted the regulations on the professional conduct of family mediators.

2.2. The Ministerial Decree No. 151/2023

The Ministerial Decree No. 151/2023 introduced a new comprehensive discipline on professional family mediators. It represents a significant step in the formal recognition and standardization of family mediation within the Italian legal system.

It is worth mentioning that, despite the rationalization introduced by the recent legislative reforms, family mediators are under the management of voluntary private associations which are authorized by the Ministry of Enterprises and Made in Italy according to the Law No. 4/2013. Therefore, there is no public professional association for family mediators, nor do they have to pass a public exam to be registered: family mediators are members of private, voluntarily associations following the attendance of courses and the successful performance of a final exam, in accordance with the "*norma tecnica* UNI 11644/2016" and with the internal regulations of the aforementioned associations, on which the Ministerial Decree No. 151/2023 has introduced common standards.

The Decree contains a definition of "family mediator", qualified as an impartial professional figure with specific training, who intervenes in cases of termination or objective relational difficulties in a couple's relationship, before, during or

after the separation event. Hence, the mediator facilitates the parties involved in the elaboration of a pathway for the reorganization of the relationship, also by reaching a negotiated agreement. The final objective is the preservation of family and parental relations, where present: this means that – even if no direct reference is made to the best interests of the children involved – the separation of the couple should not impede the pacific continuation of their parental responsibility duties and rights.

Articles 3, 4 and 5 set specific requisites for the exercise of the profession of family mediator.

Other than specific requirements of integrity (Article 3), the acquisition of the professional title of family mediator is subject to the successful completion of a training course meeting the characteristics outlined in the Decree (Article 5)[26]. The training programs are delivered by institutions recognized by professional associations in accordance with Law No. 4 of 2013. The decree also specifies the requirements that must be met by those who carry out training activities. The course must consist of no fewer than 240 hours, including both theoretical instruction and practical exercises, with at least 80 hours dedicated to guided practice with a trainer with many years' experiences as a family mediator, of which at least 40 hours of practical mediation activities under supervision.

The curriculum of the course must address psychological, legal, and communicative aspects pertinent to family relationships and conflict management. It is expressly provided that a specific training module must be dedicated to "the protection of persons of minor age" (Article 5, para. 5, lett. g)).

The final exam shall consist of i) a multiple choice written test; ii) a practical test carried out using the 'role playing' technique; iii) an oral colloquium consisting of an assessment interview, preceded by the presentation of a written paper relating to the training course undertaken and the guided practice.

Article 6 establishes the ethical rules governing the professional conduct of family mediators, whose respect is necessary in order to exercise the profession. Family mediation must be carried out freely, based on autonomy, competence, and intellectual and technical independence. The family mediator must adhere to the principles of good faith, client trust, fairness, professional responsibility, and confidentiality. He or she is required to act impartially, neutrally, and

[26] Article 4, para. 2 provides that "the activity of family mediator is also permitted to those who, on the date of entry into force of this Decree, already hold the certificate of family mediator, obtained by attending a course of at least two hundred and twenty hours and passing the final examination, and document the performance of family mediation activities in the previous two years. This is without prejudice to the continuous training obligations referred to in Article 5, para. 6 to be fulfilled annually as from 31 December 2023".

without judgment toward the parties, fostering a balanced process and encouraging constructive dialogue.

The mediator is prohibited from intervening in mediations where there are conflicts of interest, such as personal involvement or close relationships with the parties, or financial and legal ties. Mediators may not provide services outside the scope of family mediation, exert pressure to impose solutions, deliver professional services reserved for regulated professions during mediation, or accept or offer gifts and favors connected to the mediation process. The mediator is bound by confidentiality, regarding the mediation process and its outcomes. This obligation extends to anyone present during the mediation sessions, unless both parties expressly and in writing waive confidentiality, or in cases where the law provides exceptions.

In their interactions with clients, mediators must disclose their professional qualifications, insurance coverage if applicable, and provide clear information about the mediation process, its objectives, modalities, and costs. They must also ensure compliance with European and national data protection regulations and inform clients about the existence of consumer protection offices in professional associations.

When mediation occurs during pending judicial proceedings, mediators must preliminarily and free of charge inform the parties about the mediation's purpose, modalities, and costs. They must inform the parties of their right to choose a mediator listed in the court register and of their right to have legal assistance during mediation meetings, particularly regarding economic and financial issues. Family mediators must terminate the mediation process if requested by either party, if continuation is not feasible, or if neutrality or impartiality can no longer be guaranteed.

Regarding self-promotion, mediators must be truthful and correct, avoiding misleading advertising and refraining from claiming qualifications or competencies they do not possess. Deceptive commercial practices, as defined by legislative decree No. 206 of 2005, are strictly prohibited.

The Ministerial Decree provides clear parameters for the definition of the fee for family mediation services. In particular, each party undertakes to pay the family mediator for each meeting actually held the sum of €40.00, plus statutory charges. This sum is multiplied according to coefficients (from 1 to 2) based on the complexity parameters communicated and predefined at the beginning of the assignment. While the fee includes activities "ancillary to the professional service", lump-sum expenses or charges and contributions due under any title are excluded. For unfinished assignments, the work actually performed is taken into account.

2.3. Domestic or gender-based violence

In introducing family mediation as a valid path in the resolution of family conflicts, the Cartabia Reform has also provided some specific measures for cases of family violence.

The general, well-known principle is that the presence of violence in a family relationship (as well as any circumstance which may induce at ascertaining a disparity of powers between the parties) precludes mediation. Those conflicts are considered "not mediable", since any agreement eventually reached may not be the fruit of a co-decision, but may reflect a relationship of psychological subordination.

This approach partially derives from the international obligations to which Italy is bound following the ratification[27] of the Istanbul Convention of 2011[28]. Indeed, the Convention does not prevent mediation *tour court*, but only mandatory mediation (Article 48) in cases involving violence, including domestic violence, to protect victims from secondary victimization.

The Cartabia Reform has introduced six specific provisions within the new proceedings concerning persons, children and family matters (from Article 473-*bis*.40 to Article 473-*bis*.46), which assign to the judge new powers aimed at protecting victims of violence. The scope of application of those discipline is indeed broad: it may be activated within any judicial proceedings in which family abuses, as well as domestic or gender-based violence allegations are presented (being it committed by one party against the other or against minor children). The term "party allegations" is not limited to situations in which a criminal proceedings has already been initiated, as it results from Article 473-*bis*.41.

In those cases, the judge has many instruments at disposal to protect the alleged victim during the course of the proceedings, such as those aiming at avoiding any direct contact with the alleged perpetrator. Among those, it is provided that the decree fixing the date of the hearing shall not contain the invite to undergo family mediation (which is obviously not formulated in any other stage or during the hearing).

Article 473-*bis*.43 introduces the prohibition to initiate family mediation in the following, specific circumstances: i) a conviction or sentence has already been

[27] Law 27 June 2013, No. 77.

[28] Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 11 May 2011, entered into force on 1st August 2014, CETS No. 2010.

handed down for family abuses, domestic violence or gender-based violence; ii) criminal proceedings are pending for the aforementioned acts committed by one party against the other or against minor children; iii) conducts of family abuses, domestic violence or gender-based violence violence have been alleged during the proceedings. It is also provided that, if allegations or information concerning family abuses or domestic/gender-based violence emerge during a mediation that has already begun, the mediator must immediately terminate the process.

3. International family mediation in Italy: the practice

3.1. The lack of a specific legal framework and the persistent needs in practice

The role of international family mediation in Italy is still fragmented as concerns its practical implementation, with reference to both cases in which a judicial proceeding is ongoing and to out-of-court situations (including preventive mediation).

According to the statistical data available (and referring to the years 2019-2021) it results that married couples facing separation made recourse to family mediation in less than 10% of the cases. No data is available for non-married couples, which nevertheless represent a significant share in the overall picture.

Although not directly impacting proceedings which are disciplined by special laws (such as international child abduction), the Cartabia Reform may have the potential to indirectly affect the practice of mediation in return proceedings. This, in the light of the persisting importance of a specialized legal framework for international family mediation: as already highlighted by the legal literature, Article 25 of the Brussels II-ter regulation may be accompanied by a (not mandatory, but nevertheless) useful set of domestic rules aiming at recognizing the specificities of introducing family mediation in the context of cross-border proceedings, child abductions included[29].

[29] See E. di Napoli, *La mediazione familiare nel contesto transfrontaliero: uno sguardo d'insieme*, in C. Honorati, E. di Napoli, *Guida alla mediazione familiare internazionale*, Pisa, 2025, p. 7 ff.

In this context, the real impact of the Cartabia Reform, which is effectively applicable from 28 February 2023[30], is still to be appreciated, while the application of international family mediation in Italy is still quite rare.

In the Italian legal system, there is not consistent availability of mediation services in the country with the necessary expertise to manage the specificities of the concerned cases. On the other hand, as resulting from recent surveys, there is a nation-wide absence, in public services dedicated to the family, of specific operational and planning guidelines aimed at introducing family mediation as a possible tool. This results in an absence of protocols, guidelines or good practices which are consistent at the local level. Family mediation services are therefore available through public services (rarely) and provided by private operators (most frequently) only on an *ad hoc* basis, with no effective coordination between the professionals involved[31]. It has already been stressed the need of comprehensive protocols designing a common methodology on pre-mediation and mediation, including a coordination among all the professionals which may play a role, either because they are in contact with the family (e.g. family doctors, schools, educators) or by reason of the qualified role they may have in proceedings involving parental responsibility matters (lawyers, judges, social services).

The interviews with professionals (lawyers, family mediators and judges) have consistently shown the absence of an established prototype. There is no consolidated practice on how a dispute may find its way to international family mediation (with or without going through judicial proceedings). An interviewed judge has explained that, as concerns its professional experience, the parents may reach an agreement because of a proactive role of the judges and/or the lawyers and/or the social services involved[32]. In those cases, the social services may verify that parents may be open for an agreement, or – most frequently – the judge may try to conciliate the position of the parties during the first hearing. An interviewed judge has explained that the physical presence of the parties (hence, in most situations, both the abducting and the left-behind parents) is considered a very important element for this purpose. Given the geographical distance and the logistic problems which may be encountered, some judges use

[30] See above, subsection "The Brussels IIb regulation and the Cartabia reform".

[31] See the study of the Italian Authority for Children and Adolescents, *La mediazione familiare in Italia. Documento di Studio e di proposta*, 2025, which will be available in open access on https://www.garanteinfanzia.org/pubblicazioni.

[32] In Italy, social services may be involved in "passive" child abduction cases (where the child is illicitly conducted or retained in Italy) to check and monitor the situation of the child.

video-conferences, with the understanding that it may not allow for the same involvement as an in-person meeting.

As an additional obstacle to the participation of the parents to the hearing, mention should be made to the fact that international child abduction is criminally sanctioned in Italy. Article 574-*bis* of the criminal code establishes the penalty of imprisonment from one to four years (or from six months to three years, if the minor has reached the age of 14 and has given his consent). The crime is prosecutable *ex officio*. This means that the abducting parent may refrain from participating to a hearing in the very same State in which he/she risks to be prosecuted. Most importantly, criminal proceedings may negatively impact over the return of the child in his/her habitual residence and even on the possibility itself to try cross-border family mediation.

An interviewed lawyer explained that the threat of criminal prosecution in practice has not worked as a real obstacle: if the parties to the dispute reach an agreement, it is likely that the crime is not prosecuted in the end.

It is worth noting that the above-mentioned examples do not derive from the application by judges of a specific regulatory framework, but rather from the proactivity of some of them in trying to channel the parties towards an amicable resolution of the dispute.

As it will be examined, the lack of consistent practice is not only due to the absence of a specific normative framework, but also to the subsequent lack of specialization as concerns the training requirements and qualifications to exercise the profession of international family mediator, in the light of the specificities of the situations characterized by cross-border elements.

Complexity requires a more articulated approach than 'classical' mediation, which usually takes place within a legally, linguistically and culturally homogeneous national context. The interaction between national legal systems, as well as the applicable supranational conventions and EU regulations, implies that the mediator must possess not only relational and psychological skills, but also a sound knowledge of private international law and the rules of jurisdiction and recognition of foreign decisions. This is the reason why most of the organisms specialized in international family mediation adopt co-mediation as the main method, with the presence of one mediator with a legal background and another mediator with psychological skills[33]. This practice is not always

[33] Similarly, see the model contained in the Wroclaw Declaration of 8 October 2007 on Mediation of Bi-national Disputes over Parents' and Children's issues, available at https://www.europarl.europa.eu/pdf/agora/20071008_breslau_en.pdf.

shared by other models, which are also characterized by an approach to mediation which tends to exclude the legal side of the dispute, in order to concentrate on managing the conflict and re-building the relationship between the parties.

A further element of specificity is the management of linguistic and cultural diversity[34]. The parties involved may express themselves in different languages and have divergent views on child rearing, parental roles, or family structure. The mediator, in these cases, has to ensure a communicative balance between the parties, fostering mutual understanding and ensuring that each can freely express their needs and expectations. This may require the assistance of interpreters or the presence of adjunct mediators with specific linguistic and cultural competences.

International child abduction cases, in particular, are also characterized by severe time constraints. The time factor is crucial in return proceedings and is reflected in the precise timeframes which characterize each procedural stage, as results both from the international and national legal instruments[35]. This obviously impact the organization of mediation, since the mediator should be able to the procedural framework and should be aware of the impact of time over the wellbeing of the child and over the good outcome of the entire procedure[36].

Finally, cross-border mediation is distinguished by the particular sensitivity of the situations that often arise there, such as the transnational enforcement of agreements reached or the difficulty of maintaining family relationships at a distance. In this context, mediation assumes a fundamental role not only to prevent or resolve conflicts, but also to foster stable, sustainable solutions that respect the best interests of the child by enhancing cooperation between authorities and professionals from the different countries involved. As highlighted by one of the interviewed professionals, international child

[34] See M. Blasi, *La mediazione familiare internazionale: la ricerca del linguaggio universale nell'incontro tra culture*, in *Rivista AIAF*, 2015, available at https://www.aiafrivista.it/mediazione_familiare_internazionale_incontro_tra_culture.

[35] According to the 1980 Hague Convention, return proceedings should not last more than six weeks. The Regulation No. 2019/1111 has confirmed this, specifying the duration of each phase of the entire procedure up to return: six weeks for the first instance proceedings before the Juvenile Court (Article 24, para. 2), six weeks for the proceedings before the *Corte di cassazione* (Article 24, para. 3) and six weeks for the enforcement phase (Article 28).

[36] See E. di Napoli, C. Honorati, *Il procedimento di mediazione familiare nei casi di responsabilità genitoriale e di sottrazione internazionale*, in E. di Napoli, C. Honorati, *Guida alla mediazione familiare internazionale*, cit., p. 71 ff.

abductions are particularly characterized by a high degree of tension and conflict between the parties: being the abduction a usually unexpected event in the life of a parent, he or she may suddenly find himself/herself alone, "in an empty home", facing a considerable amount of grief which may only be satisfied by the promise of a fast reaction by the competent judicial authorities. This is the reason why it may be very difficult to accompany both parents towards the possibility to voluntarily mediate their conflict.

A well-rounded and integrated legislative framework and methodology, aimed at integrating international family mediation with the needs and the timing of child abduction proceedings, is necessary in order to "build mediation around the case flow"[37]. Any attempt to mediation should not prejudice the rights of the parties to access justice and to obtain a judicial remedy, if mediation fails[38].

3.2. The training and qualification standards for (international) family mediators in Italy

As mentioned, the Cartabia Reform and in particular the Presidential Decree No. 151/2023 have defined the requisites to exercise the profession of family mediator in Italy. The legal requirements are specified in Articles 3 (Requirements of integrity), 4 (Certified professionalism) and 5 (Initial and continuous training), as explained above[39].

The Decree does not contain any indication of certified specializations (such as international family mediation), which nevertheless form part of the training programmes of many schools which refer to the main professional associations of family mediators[40]. However, despite this specialization being indicated in the

[37] T. Kruger, *Article 25*, cit., p. 262, citing as an example of good practice the Dutch Model.

[38] See the *Italian Best Practice Model: Specialised mediation in international child abduction cases in connection with return proceedings under the 1980 Hague Convention*, developed within the EU co-funded project AMICABLE, available at https://amicable-eu.org/amicable-eng/mediation.html.

[39] See above, subsection "The Ministerial Decree No. 151/2023".

[40] On this aspect, there is a relevant difference with the discipline of the profession of civil and commercial mediator, regulated by the Ministerial Decree No. 150/2023: other than providing a specific subsection of the register of civil and commercial mediators, dedicated to mediators who are experts in international matters and cross-border disputes (Section B), the Decree defines the training requirements that must be met by those who wish to register in this special section (Article 25).

statute and regulations defining the educational offerings of the associations, in practice very few specialised courses have been activated in recent years[41].

Compared to cross-border family mediation, the training offer on intercultural mediation is not particularly extensive in the Italian panorama, if one looks at the courses offered within the auspices of the main professional associations of mediators and affiliated schools[42].

3.3. The key actors and the different approaches in the light of a persisting lack of specialization

While international family mediation is not subject to a specific regulation in Italy, the Cartabia Reform and in particular the application of Article 25 of the Brussels IIb regulation have raised the need to acknowledge the mediation services currently available.

An important part of the organization of the profession of family mediator is represented by the professional associations, who also play a relevant role in the monitoring and offering of specialization courses. As mentioned, family mediators are under the management of voluntary private associations which are authorized by the Ministry of Enterprises and Made in Italy according to the Law No. 4/2013 and whose role has been confirmed by the Ministerial Decree No. 151/2023.

Among the most representative associations there are:

- SIMeF (*Società Italiana Mediatori Familiari*)
- AIMS (*Associazione Internazionale Mediatori Sistemici*);
- AIMeF (*Associazione Italiana Mediatori Familiari*)
- MEDEF (*Mediatori della Famiglia – Italia*).

[41] See for instance the advanced training course on Cross-Border Family Mediation organized in 2023/2024 by International Child Abduction Lawyers Italy (ICALI), the International Child Abduction Centre (REUNITE), Defence for Children International Italy (DCI Italy), the University of Genova and the University of Milan in collaboration with the Italian Central Authority: https://www.defenceforchildren.it/it/news-376/corso-di-alta-formazione-in-mediazione.

[42] See for instance the specialized courses in intercultural family mediation offered by SHINUI - *Centro di Consulenza sulla Relazione* (https://www.shinui.it/it/specialistica-in-mediazione-familiare-interculturale.html?utm_source=chatgpt.com). The *Associazione Internazionale Mediatori Sistemici (AIMS)* provides in its website the general requisites for the erogation of a specialized courses in intercultural family mediation under the auspices of the association *https://www.mediazionesistemica.it/Site/Page?pID=30&AspxAutoDetectCookieSupport=1*.

Other associations – limited to the ones resulting in the database of the Ministry of Enterprises and Made in Italy – are ENAMEF, AIMeA, ItaliaConcilia, MediaCoor, AssoMef, AEMEF.

The FIAMeF (*Federazione Italiana delle Associazioni di Mediatori Familiari*) is a federation who aggregates the abovementioned professional associations and has the role to collect the needs and requests of the professional category, to bring them before the competent institutions. In fact, FIAMeF has closely followed the legislative procedure which led to the adoption of the Cartabia Reform and has given its contribution to implementation.

While there are some family mediation services offered by Social Services, municipalities, sanitary services, etc., those experience reflect initiatives which do not seems to be rationalized and regulated at the national level. Even in that case, it is necessary to highlight that, even when the Social Service can assist the family in going through the conflict and "conduct" them towards family mediation, the mediator who takes up the case grants his or her service as a private professional. All in all, the efficiency and accessibility of those centres is jeopardized.

Some courts and municipalities have effectively played a role in its promotion by the institution of information desks, while the parties can gather information about the modalities and advantages of mediation. Those "information points" or "information spaces" on family mediation entrusted to volunteer mediators who explain to users all the information they need to know about family mediation and indicate to users the public and private centres dealing with family mediation existing in the metropolitan area, then freely chosen by the couples concerned[43].

In this context, it should be noted that, within the 1980 Hague Convention cooperation system, some countries have appointed a Central Contact Point for family mediation: this is not the case of Italy[44].

The Cartabia Reform has introduced an institutionalized list of qualified family mediators, to be instituted in each first instance court[45] in order to facilitate the

[43] Information points for family mediation exist, for instance, in the courts of Genova, Parma, Isernia, Torino, Milano, Paola, Ancona, Varese, Ascoli Piceno, Verona, Lecco, Trani, Imola, Trani, Brescia. Some information points are instituted in the municipalities or by the local Bar Associations.

[44] The list of the Central Contact Points for family mediation is available on the website of the Hague Conference on Private International Law: https://www.hcch.net/en/publications-and-studies/details4/?pid=5360&dtid=52.

[45] Article 12-*bis* ff. of the implementing provisions to the code of civil procedure.

families in search for a mediator. As mentioned, a committee chaired by the President of the Court and composed by the Public Prosecutor and a family mediator decides on applications for registration, which is open to family mediators who have been registered for at least five years with one of the professional associations of mediators and who demonstrate adequate training and specific expertise in family matters, child protection, and violence.

It should be highlighted that the existence of those registers does not result in the assimilation of the mediator with a court's consultant: even if the professionals in the list are subject to the same disciplinary proceedings applicable to a court-appointed technical advisor[46], the family mediators are chosen by the parties and do not have the duty to report the result of their work to the judge[47].

As concerns the effective implementation of the lists, it results from different sources that not all courts have effectively instituted the committees or adopted the necessary regulations[48]. A recent study conducted by the Italian Authority for Children and Adolescents, with questionnaires submitted to first instance courts, has highlighted that 50 tribunals have declared the formal institution of the register of family mediators[49].

Being the family mediator a profession not organized in professional orders in Italy – although informed by clear requisites and rules provided by the law – an important role is played by the associations of family mediators, which also holds the responsibility for continuous training of professionals.

Since, as mentioned, there are many organizations and professionals involved in family mediation in Italy, a fully agreed approach does not always exist as concerns the operational models or specific technical procedures. These may differ in terms of the nature of the issues addressed and the approach and methodology used in planning and managing the intervention. An overview of the most diffused models is provided here[50]:

- The first family mediation model (developed by Irving and Benjamin) is the one **centred on relational processes**, on the premise that the

[46] Article 12-*ter* of the implementing provisions to the code of civil procedure.
[47] See Article 473-*bis*.10 of the code of civil procedure.
[48] See also an interview to the presidents of AIMeF, MEDEF and SImEF of 17 April 2024: https://www.istitutohfc.it/decreto-151-mediazione-familiare-bilancio.
[49] Italian Authority for Children and Adolescents, *La mediazione familiare in Italia. Documento di Studio e di proposta*, cit.
[50] See I. Buzzi, J.Haynes, *Introduzione alla mediazione familiare*, Milano, 2012, p. 13 ff.

mediation process in certain situations can only have lasting effects over time if emotional and relational issues are resolved.

- **Negotiated mediation** is a model directed at facilitative agreement, which aims to achieve the best possible outcome in terms of the couple's self-determination. Its use is not only aimed at separation and divorce, but is open to various family issues.
- The **structured family mediation** model takes place according to a precise structuring of the negotiation process and uses a task-oriented methodology. The underlying assumption of the model is that only a well-defined framework protects against the irrationality of emotions. It is a model that aims to re-establish communication between the parties, leaving ample room for self-determination.
- The **transformative model** defines mediation as a process in which a third person helps the parties to redefine the quality of their relational dynamics by transforming conflict from negative and destructive to positive and constructive through the observation and discussion of issues and possible solutions. The two key objectives are empowerment (making the parties able to define their own issues and seek solutions by themselves) and recognition (making the parties able to see and understand the other person's point of view).
- **Intra-judicial mediation** occurs in the context of separation, divorce or parental responsibility proceedings, where the court suggests mediation to resolve disputes over custody and visitation rights. Mediators are mostly psychologists, psychiatrists and social workers.
- **Therapeutic family mediation** focuses on the emotional aspects of crises in emotional relationships, attempting to resolve the knots of communication digression and all the variations produced by the couple's possible interactions. The theoretical-methodological frame of reference is the clinical reading of the relationship within the parental couple. The mediator must neutralise or modify the dysfunctional models that are an obstacle, in order to lead the subjects to restructure their relational and communicative competences. The agreement is usually reached through the intervention of other professionals, i.e. the lawyer.
- The **systemic model** of family mediation, also called "family-centred mediation", aims to take into account the entire family system, adopting a complex reading of the relational dynamics that gravitate around the conflict, encouraging synergy between professional figures who operate in different fields: psychological, legal and social. It takes into account the entire family system and the broader context: the family, more than the couple, constitutes the pivot and is also taken into consideration in its intergenerational history (grandparents, children, extended families). Children are involved either directly or indirectly. The task of the mediator

is to re-establish a minimum of family harmony, to create a conflict-free atmosphere, to protect children from the disputes of the adults. Among the main tools are the genogram, reframing and circular questions.

- In **integrated mediation**, ample space is given to the emotional-affective dimension and mediation adapts to the needs of the couple: the parties themselves define the process. The focus is on the future and on redefining the relationship between the partners rather than obtaining agreements on legal rights. Different mediators with different backgrounds are usually involved. The term "integrated" refers to the relationship between the mediator and the legal consultant who collaborate in managing the conflict in the couple. Very close to the integrated model there is **interdisciplinary family mediation**, which provides for a synergic management between a lawyer and a social worker: the first deals with technical financial and legal issues, while the second with communication and conflict management and reduction. The difference compared to the integrated model is that both experts are present at the sessions.
- The **relational-symbolic model** of family mediation is particularly interested in the foundation of family relationships beyond historical changes, that is, it wants to recognize the value of the family bond. Family mediation is intended as a "ritualized" experience of transition from the crisis of the couple. The mediator plays the role of an equidistant professional who tries to promote the achievement of harmony between the parties and an agreement in the case of separation, but he/she may also offer the possibility of a reconsideration of the marital pact that goes beyond its term.
- The **eclectic model** of family mediation does not contain models that can be ascribed to clinical or therapeutic mediation: if specialist support is deemed appropriate, the work of a therapist will be referred to alongside the mediation process, which may continue in parallel or be temporarily suspended. The mediator will help the parties develop understanding, will let the parties own the conflict, will allow the necessary tension but only if it is bearable for the parties and will go below the apparent problem.

Among the various differences which characterize the different models, all approaches recognize the need for a pre-mediation stage, finalize to create the setting to the substantial work. While some models adhere to co-mediation, with two mediators are present in the room[51], other models provide for one mediator. There are some systemic approaches in which one of the mediators

[51] Often the two mediators have different backgrounds, legal and psychological.

observes the meetings through a one-way mirror (with the informed consent of the parties) and is consulted by the mediator effectively conducting the process.

Since **international family mediation** requires a specific expertise and should be structured according to the peculiarities of cross-border situations, the different methodologies are to be tailored on those needs. Mediation in international child abduction cases should be considered in its further specificities, at least for the high degree of tension and conflict which may characterize the situation and for the time constraints characterizing the procedures.

Cross-border disputes may obviously be characterized by geographical distance, which may require the use of videoconference instead of in-person meetings and may also require the condensation of mediation in a short timeframe, such as one or more weekends. According to some approaches, mediation could also be "indirect", meaning that the parties do not participate together to the same session (in presence or online), but separate sessions are organized or the parties are in different rooms. This technique – which is particularly useful in high-tension scenarios – is also called "shuttle mediation", since the mediator may hold separate meetings with the parents, going back and forth and conveying messages, proposals, and counterproposals[52].

As mentioned, the lack of a consolidated practice in Italy has not made it possible to build a consistent, "national" methodology. While in some EU member States (such as Germany, The Netherlands and United Kingdom) best practices models are in force[53], there is no analogous instrument in Italy. At the same time, there has been an initiative aimed at disseminating and adapting those methodologies, to explore whether and how specialised mediation in international child abduction cases could be introduced in the course of return proceedings[54].

---

[52] In systemic (traditional) family mediation, a similar technique is the one of "fluctuant therapies" which is also use in family therapy (G. Gaspari, L. Mastropaolo, *Le terapie individuali, le terapie "fluttuanti". Riflessioni di due psicoterapeute sistemiche sulla loro pratica clinica*, in *Connessioni*, 2008, p. 107 ss.

[53] Reference is made to the so-called "*Mediators in Court Model*": see the European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI)), P9_TA(2022)0104, p. 10, available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0104_EN.pdf.

[54] Reference is made to the EU co-funded project "AMICABLE", which had the aim of improving the situation of children in cross-border parental responsibility disputes and child abduction cases within the EU, providing assistance for the cross-border recognition and enforceability of

Also in light of the recent novelties in the regulation of the profession of family mediator, the grounding principles and rules on family mediation apply *mutatis mutandis* to cross-border family mediation. This applies to the voluntary nature of the mediation process (also determining that parties should be aware that the mediation process can be interrupted at any time), as well as to the circumstance according to which the mediator is bound to confidentiality and cannot share anything about the content of the meetings, which may also not shared within the judicial proceedings, unless both parties agree. As in purely internal family mediation, the mediator shall be independent, impartial and neutral. Accordingly, cross- border family mediation aims at managing the conflict and re-building the relationship between the parties in the light of the best interests of the children involved: the mediator does not suggest a solution to the parties, but facilitates the communication between them.

In Italy, there are no specific rules as concerns information and participation of children in the mediation process. As concerns the practice, the various mediation models differ. The large majority excludes direct participation of children, and therefore no contact is foreseen between them and the mediator. The reason is that children are seen as constantly "present" in the mediation room: the mediator actively contributes to recreating the virtual presence of the child[55].

Some models actually include children in mediation, at different stages. There are mediators adhering to the systemic model which invite the child at the first or second meeting, together with the parents. There are multiple reasons sustaining the opportunity of this participation[56]: *i)* to let the parents acknowledge the resonance of the conflict on the children, with possible effects of mitigation of the tension between them; *ii)* to enable the mediator to gain a better knowledge of the family context; *iii)* to enable the children to listen to the story of their parents, acknowledging a "before" and "after" the crisis and acquiring a sense of evolution of the family; *iv)* most importantly, to give the children some information about the mediation and to relieve children from the role of third parties in the conflict between parents. For instance – as concerns this last aspect – the mediator may tell the child that the parents have decided

mediated family agreements in the EU and promoting a tried-and-tested model for incorporating mediation into international child abduction proceedings. The Best Practices Model is available at https://www.amicable-eu.org/amicable-eng/mediation.html.

[55] This may be supported by the use of techniques such as an empty chair present in the room.

[56] L. Mastropaolo, *Crisi e conflitto: mediazione familiare, "intervento per il cambiamento" e terapia. Percorsi differenti della Scuola Genovese*, in P. Chianura et al, *Manuale clinico di terapia familiare*, vol. II, Milano, 2010, p. 105 ss.

to address the disputes between them by undertaking a mediation process and that, from this moment on, the child does not have any responsibility in managing this conflict.

3.4. Access to information about international family mediation: a focus on the role of judges and of the Central Authority in cases of international child abduction

The way in which the parents may acknowledge the possibility to undergo mediation and the availability of IFM services in the territory may vary consistently, depending on the fact that the issue under consideration is brought to the attention of the judge or not.

In that case, Article 25 of the Brussels II-ter regulation has introduced a specific obligation for the judge, which must inform the parties about the possibility to undergo mediation[57]. A joint reading of the provision, together with recital No. 43, suggests that this obligation is upon any judge of a Member State bound by the regulation and seized for the return of the child in international child abduction proceedings, but also in any case on parental responsibility (being it or not in the context of divorce, separation or marriage annulment)[58]. Therefore, as concerns Italy, this obligation concerns not only juvenile courts, but also ordinary courts.

The obligation to inform the parties may be performed directly by the judge, or through the assistance of the Central Authorities: in Italy, it is the *Dipartimento per la Giustizia Minorile e di Comunità* within the Italian Ministry of Justice (Bureau II).

The Central Authority has recently published on its official website the Guidelines for the transmission of requests under Articles 25, 27, 29, 80 e 82 of the Brussels II-ter regulation[59]. As concerns international family mediation, the Guidelines explain that Article 25 "is applicable at any stage - introductory, pre-trial, pre-trial, executive - of child return proceedings brought before the Juvenile

[57] T. KRUGER, *Article 25*, cit., p. 261: "Regulation 2019/1111 does not go as far as granting the power to judges do *order* litigants to mediation or even to a single information session on mediation (although this might exist under national law). The Regulation simply requires judges (by the use of the word 'shall') to *invite* the parties to consider ADR. This seems to mean that judges should always have the possibility of ADR at the back of their minds".

[58] E. DI NAPOLI, *La mediazione familiare nel contesto transfrontaliero*, cit.

[59] https://www.giustizia.it/giustizia/page/it/richieste_alle_autorita_centrali.

Courts - in cases of intra-European international abduction - and, more generally, during any other proceedings concerning parental responsibility issues characterized by one or more cross-border elements".

The Central Authority may, in particular, play a role in promoting "preventive" family mediation, before judicial proceedings are initiated and notwithstanding the possibility that an application for the return of the child may be presented before the competent authorities[60]. The Central Authority may provide indications on the objectives and modalities of IFM, as well as on the legal effects of the agreement and on its enforcement. Nevertheless, the Guidelines provide that "Judges who see the preconditions for mediation may apply to the Central Authority to receive information to be forwarded to the parties and to request the availability of a cross-border family mediator who can facilitate the reaching of an agreement, even a partial one, on the disputed issues", provided that the request may be supplemented by "any useful elements to identify the most suitable cross-border family mediator to deal with the case".

The Brussels II-ter Regulation does not specify whether the Central Authority may also transmit to the parties the contact of a cross-border family mediator. The abovementioned Guidelines specify that "The peculiar figure of the cross-border family mediator, the bearer of a specific professionalism, is not yet contemplated by our legal system nor is it referred to by Ministerial Decree No. 151/2023, containing regulations on the professional discipline of family mediators". Since there is no official register of certified cross-border family mediators in Italy (being this specific qualification not disciplined by the current normative framework), there are currently no official registers or lists of mediators, provided by the law, to be put at the disposal of the parties. At the same time, reference is made in the Guidelines to a first, recent initiative in the form of an advanced training course on Cross-Border Family Mediation organized under the auspices of the Central Authority itself. Currently, a protocol is under signature between the Central Authority, the Italian Federation of Family Mediators' Associations (FIAMEF – *Federazione Italiana delle Associazioni di Mediatori Familiari*), International Child Abduction Lawyers Italy (ICALI) and the charity REUNITE (International Child Abduction Centre).

[60] This notwithstanding the fact that the juvenile court may invite the parties to consider mediation even after a return order has been issued, in order for the parents to resolve for the future the conflict concerning the residence of the child and the associated exercise of parental responsibility: see, for instance, Corte di Cassazione, Sez. I, decision of 7 May 2025, No. 12035, reporting the Decree of the Juvenile Court of Venice of 3/6 May 2024, No. 1325.

According to the relevant supranational and national case law, mediation agreements do not rely on a comprehensive discipline. The new proceedings concerning persons, children and family matters, disciplined by the Italian civil code following the amendments introduced by the Cartabia Reform, provides that the judge shall acknowledge the agreements concluded by the parents, if their content is not contrary to the interests of the children, "in particular when reached as a result of a family mediation process"[61]. A similar provision is not to be found in the discipline of proceedings for the return of the child following an international child abduction, contained in Article 7 of the Law 64/1994.

Nevertheless – as mentioned by an interviewed judge – in practice the agreement concluded by the parties is taken into account in child abduction cases as well, by taking note of this circumstance in the decree which declares the "*non luogo a procedere*" (no case to answer). Therefore, the procedure is closed when left-behind parent and the abducting parents have found a common solution and, possibly, have provided enough guarantees on the effective respect of the agreement.

If the agreement provides for the return of the child (and the child effectively comes back to his/her habitual residence), it will be for the competent courts to define any aspect concerning the substance of parental responsibility.

If the agreement provides for the non-return of the child, it could be possible for the court to activate the monitoring of social services over the well-being of the child in the long term. In this case, there is nevertheless a substantial difference between "intra-EU" and "extra-EU" cases.

If the situation falls within the scope of application of the Regulation No. 2019/1111, the judicial authorities of the former habitual residence of the child may activate the so-called "trumping order", overturning the decision of Italian courts within a ruling on the merits of parental responsibility[62]. It would therefore be necessary for the mediation agreement to reach the competent foreign court, in order for it to acknowledge the existence of the settlement.

[61] Article 337-*ter* c.c.

[62] Article 29 Regulation No. 2019/1111.

On the contrary, if the situation is not subject to EU law, the 1980 Hague Convention regime applies exclusively[63]. The non-return of the child determines a shift in his/her habitual residence.

Nevertheless, the aforementioned scheme does not always reflect the reality of family mediation: in most cases, even when it occurs in the particular and difficult context of a child abduction, mediation represents the opportunity for the parents to address the overall family situation and all the aspects concerning their present and future lives (without limiting to the issue of return/non-return)[64]. The various content of those "**package agreements**" may be subject to one or another applicable law, and its effects may depend on different rules. Moreover, those agreements would possibly include the regulation of rights and duties on parental responsibility, which are normally not at disposal of the parties and may need to be subject to a judicial control/homologation. On the other hand, agreements concerning patrimonial aspects (such as maintenance) would need to be enforceable. In the hypothesis of cross-border disputes, there is the additional issue of the recognition and enforcement abroad.

As concerns parental responsibility matters, Italy is bound both by the Regulation No. 2019/1111 – as concerns the relationships with other EU Member States (with the exception of Denmark) – and by the 1996 Hague Convention. Matters which do not fall within the scope of application of those instruments are subject to domestic private international law rules, contained in the Law No. 218/1995.

Regulation No. 2019/1111 does not allow for circulation of "private" agreements, different from authentic instruments and decisions (recital 44). For the agreement to be recognizable and enforceable in another Member State, it needs to be registered by a public authority. Member States shall communicate to the European Commission the list of public authorities with the competence to register private agreements (Article 103). Italy has provided a broad communication, stating that "public authorities holding the competence to register an agreement according to Article 2, para .2, No. 3) of the Regulation

[63] As it is known, the1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (eventually applicable between the ratifying countries), does not provide for a mechanism similar to the trumping order. Moreover, the third situation to be considered is the one in which the 1980 Hague Convention does not apply at all and recourse to diplomatic channels is necessary.

[64] For a in-depth analysis of the issue, see C. Honorati, *La circolazione dell'accordo di mediazione familiare negli Stati UE*, in E. di Napoli, C. Honorati, *Guida alla mediazione familiare internazionale*, cit., p. 83 ff.

are the civil status registrar or the judicial authority (Tribunal, Court of Appeal and *Corte di cassazione*)"[65]. However, on the basis of the ambiguous distinction between decisions and agreements adopted by the Regulation, each time the public authority exercises a control on the merits, the registered agreement will be considered a "decision" for the purpose of the Regulation[66]. According to Italian Law, a control by the judicial authority is necessary for agreements concerning parental responsibility, in order to be sure that the best interests of children are preserved. Therefore, any agreement of this kind would necessarily be incorporated in a judicial decision, which is recognised and enforced in all Member States (except Denmark) according to the regime of the Regulation No. 2019/1111.

In child abduction cases, it would be particularly advisable for the parties to incorporate the agreement in a judicial decision. Here, the choice is between the courts of the child's habitual residence before the abduction, the courts of the State of refugee and/or the courts of a third State (for instance, the country in which the parents agree to transfer the child's new habitual residence). Since, as mentioned, package agreements may define different issues – return, parental responsibility, maintenance, etc. ... – for the decision to circulate according to the relevant international or EU regime it would, in principle, be necessary for the court to have jurisdiction on all the matters included in the agreement.

4. Pre-mediation services in Italy

In Italy, there is no specific legislation dedicated to pre-mediation, whose definition is also not consistent in the general practice. Although most of the family mediation models[67] acknowledge the need for a pre-mediation stage, no formally recognized or legally codified stage of this kind exists within the Italian family mediation process.

---

[65] Information available at https://e-justice.europa.eu/topics/taking-legal-action/european-judicial-atlas-civil-matters/brussels-iib-regulation-matrimonial-matters-and-matters-parental-responsibility-recast/it_en.

[66] For an in-depth analysis, see S. Bernasconi, C. Honorati, *L'efficacia cross-border degli accordi stragiudiziali in materia familiare tra i regolamenti Bruxelles II-bis e Bruxelles II-ter*, in *Freedom, Security and Justice – European Legal Studies*, 2021, p. 1 ff.

[67] See above, para. 3.3 "The key actors and the different approaches in the light of a persisting lack of specialization".

Pre-mediation should be defined as a preparatory phase where parties are informed and prepared for mediation. It precedes the opening of mediation and it may concur to the evaluation of possibility to mediate the case. It is also the phase in which a suitable mediator is identified for the specific case.

In practice, if there are services at disposal at the local level – such as informative points in courts or in municipalities – the parties may acquire information about family mediation and in this stage some first, preliminary steps to convey them to mediation may be performed.

When the judge invites the parties to consider the possibility to undergo mediation[68], it is possible that the judge may perform a first evaluation of the situation, other than providing information to the parties and assuming a proactive role in promoting mediation.

In general, this preliminary information and preparation phase differs from the introductory stage of mediation, where the mediation conducts a full evaluation on the possibility to mediate of the case.

A proposal for the introduction of a mandatory pre-mediation stage in family proceedings is currently ongoing, within a possible reform of Article 473-*bis*.10 c.p.c.[69]. If approved, the new provision would provide that "In all cases of disagreement in the phase of elaborating a shared custody, the parties are obliged, before referring the matter to the judge and except in cases of urgency or of serious and imminent harm to the children, to turn to a public or private family mediation body or to a freelance family mediator to acquire information on the advisability of a possible family mediation path. The first meeting is in any case free of charge and may also be held individually at the request of even only one of the parties. If one of the parties fails to comply, the proceedings are started anyway at the initiative of the other party".

This would represent a significant shift from the current framework, which merely requires the judge to inform the parties about the possibility of mediation. Instead, the bill introduces a binding obligation for the parties themselves, serving as a procedural prerequisite to the initiation of judicial proceedings.

Such a development warrants careful consideration. A core principle of mediation is the voluntary nature of participation, which underpins its

[68] Article 25 Regulation No. 2019/1111 and – albeit not in return proceedings following an international child abduction – Article 473-bis.10 c.p.c.
[69] Article 13 of the Draft Law No. 832 of 1 August 2023.

effectiveness and legitimacy. While the bill imposes an obligation only with respect to the preliminary pre-mediation phase—and not the mediation process in its entirety—it remains essential to ensure that the parties' freedom to choose whether to proceed with actual mediation is fully respected and preserved.