

# Protecting Children in Family Separation from a Psychological Perspective

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Today' s topics:

1. Background information about children and divorce in Japan
  2. The status of visitation in Japan
  3. Psychological research showing the impact of divorce on a child
  4. Mediation at MiKK
  5. Hearing the children and mediation
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# 1. Background Information

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Over 207,000 marital couples got divorced in 2018, and 60% of all divorcing couples have children. In Japan, about 230,000 children experienced their parents' divorce. Additionally in 2017, there were 21,457 international marriages between a Japanese person and a foreigner and 11,679 international divorces.


As Japan has implemented sole custody after divorce, there are many parental disputes over child custody and visitation.

# 1. Background Information (Continued)

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90% of divorces in Japan are filed by submitting the divorce declaration at the city office without court involvement. Conditions for access to the child by the non-custodial parent and child support payments are determined by the parents.

Therefore, only one third of children with divorced parents can access their non-custodial parent, and only a quarter of children get child support payments from non-custodial parents. Neither access nor payments are readily enforced in Japan.



## 2. The Status of Visitation in Japan

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The Japanese courts have recognized that it is theoretically best for a child to receive continued love and support from both parents following divorce.

A similar view is expressed in Article 9 of the Convention on the Rights of the Child, to which Japan is a signatory. It reads, “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relationship and direct contact with both parents on a regular basis, except if it is contrary to the best interest of the child.”

The problem is that this ideal can not be realized when the custodial parent strongly protests visitation.

### 3. Psychological Research Showing the Impact of Divorce on a Child—Children's Mental Health

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Much research, including longitudinal studies shows that divorce is a risk factor during children's formative period along with other adverse life experiences such as poverty, parental death, child abuse, and domestic violence and divorce could have a long-term effect on physical and psychological health to children. (Hetherington, 1993 : Wallerstein et al, 1998 : Amato,2010).

Children growing up without contact with non-residential parent after divorce are more likely to fail to access education and experience economic hardship.

Additionally, negative life events related to divorce cause low self-esteem, reduce coping skills, and hinder social adjustment.

### 3. Psychological Research Showing the Impact of Divorce on a Child—Parental Divorce and Parent-Child Relationships

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In a summary of 60 studies (Nielsen, 2018), most joint physical custody parents don't mutually or voluntarily agree to the joint physical custody plan at the outset. They compromised as a result of legal negotiations, mediation, or court orders.

Joint physical custody still had better outcomes than sole physical custody for children.

Research showed that when children are raised only by their mothers, fathers have less contact with their children because majority of mothers are not willing to do visitation. In the case when mothers support visitation, the visitation is going well. In short, mothers play the role of gatekeeper for visitation.

### 3. The impact of divorce on children from psychological research - new findings about shared parenting and overnighting

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Warshak (2018) refutes assertions that children cannot benefit from shared parenting and overnighting arrangements.

The results of social science studies supported the position that most children needed and wanted more contact with their fathers after divorce than they were having.

His meta-analysis reported better emotional, behavioral and academic functioning for children in joint physical custody compared to children in sole custody, regardless of the level of parental conflict.

Nielsen (2018) also found high parental conflict did not override benefits of shared parenting.



### 3. Psychological Research Showing the Impact of Divorce on a Child —New Findings about Shared Parenting and Overnighting (Continued)

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When parents are labeled as high conflict, courts in Japan often rule that visitation should be suspended because parental conflict leads to negative impact on their children.

From these findings, a policy of automatic restricting children's time with non-residential parents brings drawbacks and destroys a nurturing relationship with children and their non-residential parents.

Instead of suspending visitation, we propose mediation to parents in order to reduce parental conflict.

## 4. Mediation at MiKK

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MiKK e.V stands for International Mediation Centre for Family Conflict and Child Abduction.

It is a non-profit organization providing multi-lingual and free-of-charge support, advice and referrals to mediation for parents in cases of cross-border contact, custody and relocation conflicts, as well as in cases of international parental child abduction.

It launched as a project of the Federal Family Mediators Groups (BAFM) in 2002 in Germany.

It organizes bilingual and bi-cultural mediations worldwide for parents in accordance with its internationally renowned mediation model using mediators who have been specially trained by MiKK.

<https://www.mikk-ev.de/en/about-us/>



## 4. Mediation at MiKK (Continued)

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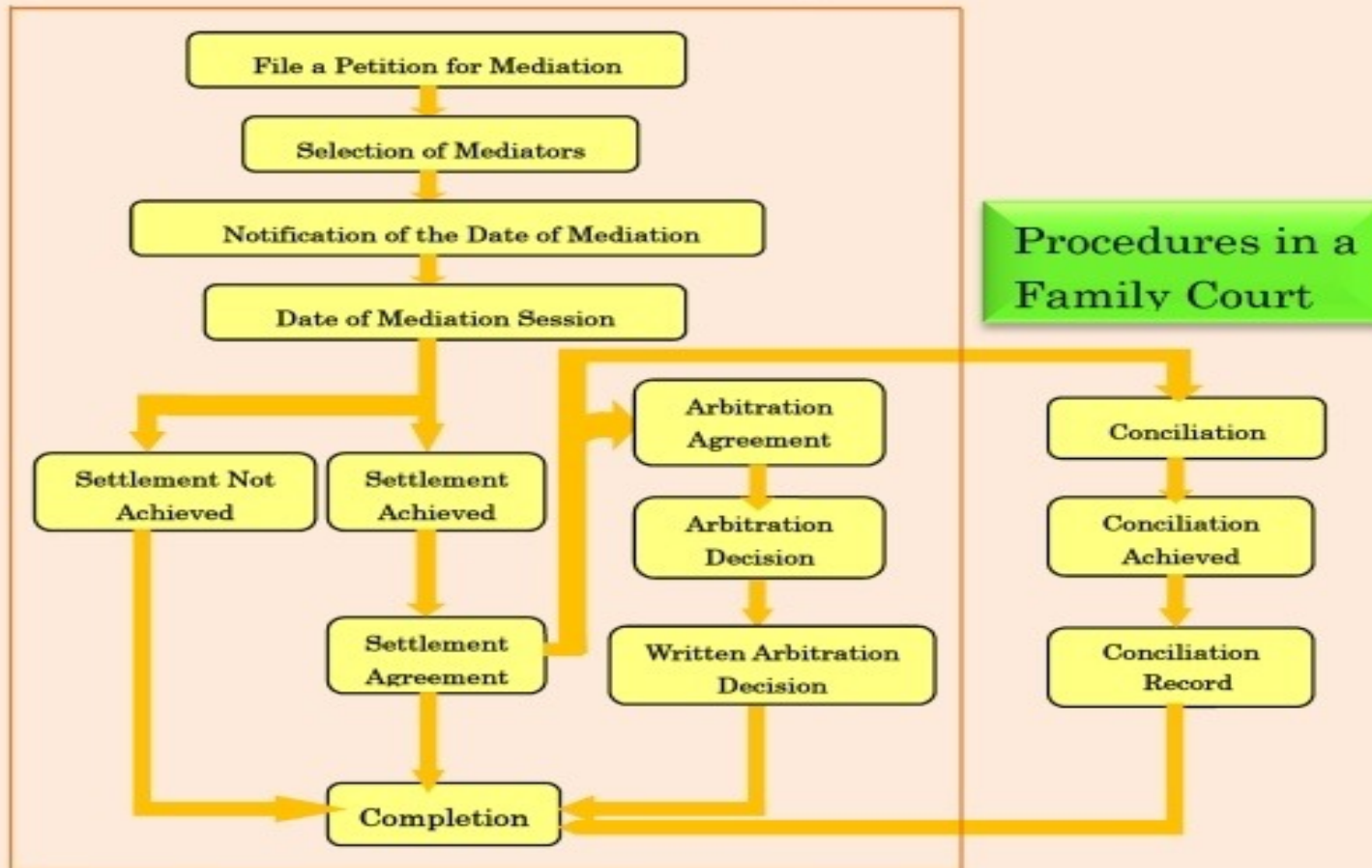
### Definition of mediation

“[Mediation is] a structured process...whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.”

*European Directive on Mediation, 2008/52/EC of 2nd May 2008,  
Art.3(a)*




## Alternative Dispute Resolution



## 4. Mediation at MiKK (Continued)

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### Purpose of Mediation in International Custody Conflicts

- Re-establishes direct communication between the parents
  - Puts the child back into the parents' focus
  - Provides an opportunity to hear and be heard
  - De-escalates the dispute
  - Avoids adversarial proceedings in court
  - Agreements are more sustainable than court-imposed solution
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## 5. Hearing the Child and Mediation

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Why would a mediator want to hear the child?

- To get to know the child
  - To relieve the child of the burden of having to make a decision
  - To encourage the child to give ideas for a solution or partial solution
  - To focus the parents on the needs and well-being of their child
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## 5. Hearing the Child and Mediation (Continued)

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Involving children in mediation differs from judicial procedures.

- The mediator draws parents' attention to the child's views so that the parents can decide
  - Mediator does not make a decision on the basis of the child's views
  - Meetings should be supportive and remove any burden of decision-making from the child
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## 5. Hearing the Child and Mediation (Continued)

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### Germany

- Hearing the child is increasingly common, if time allows
  - Often just one mediator—it can be overwhelming for the child to be with two mediators during the interview
  - The parents may be present, or else the child's views are fed back to parents by the mediator after the interview
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## 5. Hearing the Child and Mediation (Continued)

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### United Kingdom



- Mediators require a criminal record clearance and specialized qualification in hearing the child
- Non-binding presumption that children aged 10 years and above should be heard in mediation: Advisory Group of the Ministry of Justice, 2014
- In practice, Reunite International (UK-based NGO) rarely hears the children during mediation

## 5. Hearing the Child and Mediation (Continued)

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### **The Netherlands**



- The child's views may be incorporated into the mediation in a number of ways
- A third mediator/child consultant conducts an interview and prepares a report for the parents/other mediators
- The child can write a letter to the parents that will be read-out by the mediators

### ■ **Japan**



- A mediator does not hear the child in mediation
- If needed, a child psychologist or a child representative (an attorney) is appointed to hear the child.

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Thank you !

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