



# EMNI

## European Mediation Network Initiative

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## Conference: Bratislava – 20-22 September 2012

The theme for the conference is: Mediation – Help Paving the Way out of Crisis.

### Introducing EMNI Local Coordinators

In the first in a series of articles, Mrs Vivien Pengel- Calmez talks about her role as Local Coordinator for the Netherlands.

#### **What is mediation to you?**

Mediation to me is a way to help people in conflict move from sticking into merely one's own point of views to options enabling them to think and act in terms of interest and, by doing so, also to consider the interest of the other party and or other parties involved.

Simply because by doing this parties involved in conflict realize that there is always a solution. The key words to reach this is one's own will whether it concerns a short or long term solution, to the issue and or the conflict to be resolved. The will is the way to see mean full alternatives and possibilities to reach a win / win result for all parties involved. Being part of this process as a mediator, and helping conflicting people come in motion to reach their goals to end a conflict, gives me satisfaction in my role of mediator.

#### **Importance of EMNI?**

I believe that the EMNI is an important vehicle which enables individuals, organizations and associations of different countries in Europe and internationally to interact, exchange information and experiences with mediation in the broad sense of the word. It also contributes to the development and the use of Mediation. EMNI enables also sharing what is going on in the "Mediation arena" in Europe and elsewhere in the world. I believe that EMNI creates also the possibility to interact and network via several communication channels and opportunities, allowing members and potential members to learn from each other and from the different way to practice mediation, also viewed from the perspective of mediation in different



countries and cultures.

### **How do you see your role as local coordinator?**

I hope I can be a useful assistant to EMNI in reaching other mediators in the Netherlands so they can join EMNI and become a pro-active member who shares their knowledge, information and experience with other members of EMNI.

In the past few months I have already helped the organization in collecting data on mediation in the Netherlands. I also assisted in organizing the 2011 board meeting,

which took place in The Hague in May this year. In order to further concretize the role of coordinator, earlier this year in April, I had a very constructive meeting with the director of the Netherlands Mediation Institute (the NMI), which was followed by a meeting in June together with the President of the EMNI, Linda Reijkerk, in which we discussed several possible areas in which NMI can be of support to EMNI. Furthermore I am taking my bearings on what else I can offer as a local coordinator and, how I could be of further added value to EMNI and possible new members, in particular from the Nederland's.

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### **Mrs. Vivien V. Pengel-Calmez**



Born: 25 March 1956 in Willemstad, Curacao

An Innovative, all around, service minded Lawyer, Certified NMI & IMI Mediator & Life Coach, with more than thirty five years of international professional experience in legal, financial, commercial, economic, supervisory and social fields. Last twenty years in managerial and executive positions, as strategic and policy co- decision-maker and advisor on; corporate law and international /EU (trade) preferential treatment regulations, estate planning,



I would like to end this interview by stating that I am convinced that mediation can mean a lot as an alternative dispute resolution. It is much more effective than the traditional conflict resolving ways and traditional tools used to resolve conflicts; it can bring peace in a conflicted situation, bearing in mind that everything can be bridged tide over.

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## **Children in Mediation by Linda Reijerkerk**

Mediators in International Child Abduction cases often speak with the children during mediation. Also, in other family mediation cases the children are listened to during a mediation session. Some experiences are outlined below.

In the Netherlands (as well as in other countries, such as the UK and Germany) mediation will be offered to the parties in international child abduction cases (The Hague Convention on International Child Abduction). In these mediations, the children are often involved in the mediation. The why and how are discussed below.

The Convention on the rights of the child was adopted on 20 November 1989 and came into force on September 2<sup>nd</sup> 1990. It states in Article 12 that:

1. Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

A divorce is a stressful event for children. Even more when parents are not capable to settle their disputes and vent their anger to the other partner via the children. Mediation helps the parents to make contact arrangements for their children. The mediator should take into account the interests of all parties involved in the mediation. This means – in our view – also the interests of the children.



In the Netherlands, Mrs Annelies Hendriks, is known for her interesting work on the role of children in mediation.<sup>1</sup>

### **Why involve the children?**

Children are involved in the divorce of their parents. Already at an early age, they will feel the impact of their parents divorcing. In view of this and the above-mentioned convention it would be strange not to involve the children in a mediation, especially if there are no contra indications.

Contra indications would be such as a too complex mediation, a psychological disorder of one of the parents, and developmental disorder with the child.

The objective of having a session with the child is to get an image of its life situation. It should by no means be psychological testing. The mediator gets an idea of the life situation and how the children themselves perceive their lives.<sup>2</sup>

The basis of the child interview will be the parental plan in which parents have come to (some) agreement about the contact arrangements with their children. In this plan the most important issues of a child's life are dealt with and about which the divorced parents make an arrangement. Issues are addressed such as daily caretaking, school, medical issues, holidays, etc.

Children are positive about their involvement in a mediation: they felt relieved that they could talk and they felt listened too. The youngest child in one of my mediations was 4 years old; the oldest 'child' was 22 of age.

### **How to involve the children in the mediation?**

The session with the child should only take place when the parents have given their consent and are ready for this. Also they should have shown some preparedness to solve their issues in the mediation. The parents need to be aware that also less pleasant information may come to the open.

A good preparation of the child session is imperative. Parents should inform their children about the children's session. The mediator will talk to the children individually (or sometimes start with all the children together).

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<sup>1</sup> This short article is partly based on discussions with Mrs Hendriks and her book *The child in mediation*, 3rd edition, 2006.

<sup>2</sup> Read i.e. the book of Mrs Hendriks for her argumentation why children should be involved in mediation.



The mediator should well prepare the mediation session with the child for which he or she uses information gathered from former sessions with the parents. Information such as: family structure, development of the family, social and cultural background, development of the child and the divorce process.

The meeting with the child should be as relaxed as possible. This can be achieved by proper management of expectations and by making the room and atmosphere as pleasant as possible. The mediator therefore, starts the interview with the children by pointing out what the objective of the session is, i.e. a better idea of the life situation of the child. Also the mediator explains to the child that he or she understands that the divorce is a difficult situation and that all interests should be included including that of the child. Its interests will be taking into account, but the parents decide. The responsibility always stays with the parents.

First of all, the room should be pleasant and have the right atmosphere for receiving children. I normally use different items, depending on the age of the children. Sometimes, these materials are deliberately used as a communication means for them. For little children (youngest was 4 years of age) I have used drawing paper (A4) or flip over paper and colour pencils or markers. While they are drawing, I talk to the children. Sometimes, I start making a drawing too, just to make it easier for them. I ask children to draw their home, or school, their friends, etc. Questions I pose are such as: “How does it go when you go to school?”

Of course, for children who are older other means should be used. For children between 10 and 16 years of age I use post-its on which they may express their interests. I take care that the things they are saying are reformulated into needs and interests (instead of positions). In one international child abduction case I used soccer decals for the 10 and 12-year-old sons of a divorced couple. The two children loved soccer and a rather relaxed mediation session took place as we talked about the different soccer players, meanwhile addressing the issues, which are of importance for the mediation. In this case the materials were rather used to create an atmosphere where it was easier to talk, than as a means of getting information (as with a drawing).

While interviewing, the mediator should have an open and relaxed attitude towards the children and have regular eye contact with the child. I take care that I use mainly open questions. Suggestive questions are – of course – ‘forbidden’ as this will put the children’s loyalty to both parents under pressure. At all times the mediator should refrain from actions and questions that bring this loyalty at stake.



At the end of the session the mediator will agree with the children what will be told and what not to the parents. Often, a plenary session is held next, where children tell what they have been telling to the mediator. It helps the child to see his parents sitting together in one room without any quarrel or dispute, where at the same time it is clear that the parents will not live together any more.

It is my conclusion and that of my colleagues that, both parents as well as their children (and the mediator) evaluate the involvement of children in the mediation as positive and valuable.

## **ICC 7th Mediation Competition: February 2012**

The ICC International Centre for ADR announces ICC Mediation Week (2 – 8 February 2012) which will include the 3rd Annual ICC International Mediation Conference and the 7th ICC International Commercial Mediation Competition in Paris, France.

Now in its third year, the Conference series has become one of the leading annual events in commercial dispute resolution. The aim of the Conference is to provide practical, hands-on advice and effective methods to companies seeking to efficiently prepare and set-up mediation sessions to increase their chances for a successful settlement. First-rate speakers from large sophisticated multinational companies provide real-world insight on the strategic, financial and logistical aspects of dispute resolution along with speakers from the world's leading international dispute resolution law firms. The 2012 Conference, entitled "Make Mediation Happen! Getting your commercial dispute to successful mediation" is scheduled to take place on 2 February 2012.

The Competition is the only international moot devoted exclusively to international commercial mediation and is open to law and business schools worldwide. As ICC's biggest educational event, 66 teams from universities all over the world have already been selected and over 120 professional mediators will participate in this special event, taking place from 3 – 8 February 2012. The Competition is currently in its 7th year and provides an excellent opportunity for the next generation of international lawyers and business professionals to hone their skills as they embark on their professional careers. For further information, please take a look at the website [www.iccmediationcompetition.org](http://www.iccmediationcompetition.org).

## **Train to be a Workplace Mediator in Venice, Italy: March 2012**

This non residential course will take place from 26-30 March 2012 and it is an OCN accredited Certificate 'Mediation in the Workplace' Units 1 & 2. The venue will be St Mark's Square, Venice, Italy and the usual cost is £1600 (No VAT). **EMNI members will receive a discount of 15% off the course fee - that is a significant saving of £240 - making the course fee £1360 (and this includes all**



**the accreditation fees and OCN certificate).** Participants will receive a FREE copy of our DVD 'Workplace Mediation' - worth up to £300.

The tutor is Nora Doherty, Director of PMR and you are encouraged to book as soon as possible as the course is booking up very quickly . You can book your place on: [www.workplacemediation.co.uk](http://www.workplacemediation.co.uk)

## Cross-Border Legal Disputes

Brussels, 24 November 2011 – The European Commission has today stepped up legal action against six countries for failing to notify national measures to implement EU rules easing access to justice in cross-border legal disputes. The Mediation Directive applies when two parties involved in a cross-border dispute voluntarily agree to settle their dispute using an impartial mediator. The deadline for transposing the Directive into national law was 21 May 2011. The Commission will send reasoned opinions to Cyprus, the Czech Republic, Spain, France, Luxembourg and the Netherlands for failing to meet this deadline. Meanwhile, the Commission has closed infringement proceedings against Finland, Slovakia and the United Kingdom after they informed the Commission of their relevant national rules.

Settling disputes and disagreements through courts is often costly and timeconsuming. Cross-border cases are particularly complex due to different national laws and practical matters like costs or language. Mediation is an important alternative to going to court in cross-border disputes and can help parties find an amicable settlement. It saves time, money and spares parties involved in already emotional family cases the additional trauma of going to court.

Under the rules of the Directive, Member States have to make sure mediated agreements can be enforced. According to an EU-funded study, the time wasted by not using mediation is estimated at an average of between 331 and 446 extra days in the EU, with extra legal costs ranging from €12,471 to €13,738 per case.

## Update from Lawyers for Better Business

Adrienne Margolis, Founder and Editor invites EMNI members to take a look at the following:





Authentic Leadership: The Lawyer's Role in Corporate Social Responsibility, Business and Human Rights on the L4BB website [www.l4bb.org](http://www.l4bb.org)

Managing corporate conflicts: from threat to opportunity for sustainable business At the Peace Palace, The Hague, Netherlands Registration and details: [www.worldlegalforum.org](http://www.worldlegalforum.org)

Lawyers for Better Business is a not for profit community interest company who need corporate and individual donations to fund their services and keep the website free to use. If you are interested in making a donation, please contact [adrienne@l4bb.org](mailto:adrienne@l4bb.org).  
donation

## IMI Update

We are pleased to announce that the following Qualifying Assessment Program(QAP) has been approved by the Independent Standards Commission to qualify mediators for IMI Certification:

[International ADR Register](#) (The Netherlands)

From now on, this institution is empowered to qualify mediators via its QAP for IMI Certification.

For further details on IMI Qualifying Assessment Programs, go to: <http://imimediation.org/find-a-qualifying-assessment-program>

For information on becoming an IMI Qualifying Assessment Program (QAP), go to: <http://imimediation.org/how-to-become-a-qualifying-assessment-program>

## Developments on the EMNI website

Please take some time to visit our website. New information has been added recently which will be of interest to everyone involved in mediation in Europe.



## Christmas 2011 and New Year 2012

We would like to take this opportunity to wish all members of EMNI the very best for Christmas 2011 and a mediation-filled New Year.

We look forward to seeing you on 2x/2x September 2012 at the Conference in Bratislava.

Kind regards,

*Linda Reijkerkerk*

*Patricia Malbosc*

*Cristina Lenz*

*Smilja Gavric*

*Treasa Kenny*