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The importance of mediation on divorce proceedings

by

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Abstract

This dissertation demonstrates the importance of mediation as a self-composition method applicable to family relationships, especially in divorce proceedings. It is through the challenge of resolving controversies that emotional and affective bonds are treated more appropriately and quickly, seeking the satisfaction of all. The study also studies the feasibility and applicability of this institute and its importance, highlighting the informal character, the willingness, the duration of the procedure, and its simplicity as some of its main characteristics, as well as its practical benefits with an emphasis on family law.

Mediation is a technique in search of understanding between people in a relationship of continuity is increasingly necessary as necessary in the extrajudicial and judicial spheres, since, observing the principles of the family, first respecting the dignity of the human person who is part of that nucleus, making with which both parties and the mediator leave a satisfactory session, with the solution of the conflict and not only with the problem clear, without winners or losers.

Also, the whole effective issue, which a judicial process does not resolve, tends to be mitigated, since the dialogue between all reigns in the measurement, still allowing the relationship to continue.

First, the general objective of the research was to analyse the perception of families about the effectiveness of family mediation in resolving legal demands arising from divorce proceedings. The methodology was developed based on the theoretical framework in which the family is viewed systemically, and considering communication and interrelationships, where the evolution of the family and its important issues are identified, including also its principles as the basis of this structure. After, they are the types of family formation were identified, this enabling a better understanding of the constitution of marital bonds and the reasons for their end. Soon after, mediation is treated as the self-composition method most applicable to family

relationships, explaining its concept, principles, and extending its effect on the divorce. Thus, mediation is an important alternative means capable of dealing with conflicts arising from the end of family relationships, reducing the damage caused by the end of the marriage relationship and promoting social pacification through this method which, in addition to giving autonomy to the parties in the search for resolution of their conflicts, it also allows the continuation of these relationships.

Introduction

Mediation is seen as an appropriate method of conflict resolution that aims to lessen the impacts caused by disagreements that carry a strong emotional charge. It is in this way that the judiciary determines the application of this institute as a means of seeking efficiency, ease and better assistance family conflicts by promoting the autonomy of the parties. Demonstrates itself that this autonomy given to the parties to the conflict is a main feature of the mediation that, through conversations guided by trained professionals, they explore the dispute and try to resolve it by consensus through peaceful dialogue. Thus, the present study emphasizes the importance of applying mediation family in judicial divorce, divided into four chapters.

In this sense, each with a different approach to the subject. Regarding the first topic, we analyse the Family Law and briefly its history, starting at the time when the nucleus family was formed through marriage and for purely patrimonial purposes, with the man in the centre of the family and all other members of his subordinates, and also the ways of dissolving family nucleus after the passage of the divorce law, and the recognition of other family models.

The second chapter addresses the means of dealing with existing conflicts and differentiates. It deals specifically with Mediation, presenting a brief history of it, its concepts and characteristics, as well as the principles that guide it. The family is based on affection, and when there is a conflict, the feelings of affection, love, affection, are harmed. Thus, it is important to observe these peculiarities so that the problem can be treated appropriately among the family.

In the third chapter, we will see the connection between the results of the family mediation and the repercussion of the mediation in the nucleus of the family that has just legally disbanded mediation, so that one can understand how it unfolds.

In the fourth topic, we will see the comparison of the effects of mediation with the resolution of family conflicts was demonstrated, especially in divorce proceedings between countries that

do not use the rules-based mediation method and especially Brazil. In these terms, it will be shown how innovative are the contributions that mediation can offer to its participants and the Judiciary of each country.

In Chapter 5, the literature review, surveys of books, magazines, and government websites for surveying official data about divorce.

This research brings some comparisons between countries that use the Civil Law and Common Law legal system and the benefits of the mediation institute in both systems.

Aims and objectives

The research aims to show the practical benefits of mediation in specific family law in divorce proceedings.

The research will have as a general aim to analyse the perception of families about the effectiveness of mediation resolution of demands arising from divorce proceedings specifically.

It is known that the imbalances arising from the divorce process can be identified in judicial disputes that await compensation from the State for the inability of the parties to resolve their family conflicts. In this scenario, Mediation as a form of Conflict Resolution has been a valuable tool.

The dissertation will aim to discuss essentially the divorce law in Ireland - Family Law – Divorce Act of 1996 - and the alternative means of conflict resolution and Family Law, specifically dealing with the Mediation Institute as a means of conflict resolution, aiming to analyse the feasibility, applicability and practical results of using mediation in family conflicts. The proposal will initially be to show the evolution of the family institute and family law in Ireland, relevant issues, its transformations, its principles, and its legal protection over the years in Irish law. Then, it is proposed to identify the means of solving conflicts, making a brief report on each one of them, thus making possible their delimitation and understanding about the main differences between them. Finally, it will be addressed mediation specifically in family conflict, demonstrating its peculiarities, its concept, its principles and characteristics, passing, still through the phases of the process of mediation and the figure of the mediator, to conclude by its applicability and feasibility in specific cases of family law, such as custody, maintenance, dissolution family entities, and parental alienation.

Mediation is important whereas after the divorce, due to the strategy of dialogue, the parties

manage to maintain a dialogue capable of overcoming and resolving the daily demands, before these become a problem or a conflict. Well because after mediation the parties are aware of the care, they need to take during communication to face the needs brought by the dynamics of the family system.

The research will aim to analyse by simple statistical methods and through content analysis, the parties' satisfaction with the results of the mediation of the divorce process. If the result expected by the parties in the mediation was the realization of the agreement and how.

CHAPTER 1- The review of literature

1.Introduction

The main objective of this literature review is to demonstrate the importance of the implementation of mediation in divorce proceedings, as a more comprehensive and mild way to resolve conflicts of this nature that bring psychological and often traumatic stress to the family nucleus as well as to demonstrate its implementation in the legal systems of the countries.

This research aims to address the issue of mediation as a method of consensual resolution of conflicts in problems involving the family nucleus. That in addition to seeking resolution of the dispute involving people from the same family, seeks to resolve the sentimental issue in the face of conflict.

The study is extremely relevant, since, with the application of this method, several cases that are being processed in the Court and awaiting a solution can be solved in a peaceful, without losers or winners, in addition to the possibility for the parties to dialogue, assisted by an impartial third party - the mediator - and decide a solution to the conflict, that is acceptable to everyone. It should be noted that by the traditional means of resolving disputes, in the Court there is only a solution to the divergence, with no resolution of the issue affective, sentimental, psychological between the parties, and with mediation, the goal is to understanding between those involved, in all senses: litigious, sentimental, emotional, affective, etc.

1.1. The problem and its importance

1.1.2. Contextualization of the problem

In our society, it is common for marriage to be justified by the desire of people to unite with one another to enjoy the pleasures of shared life and expand their development as a member of the family unit. In this perspective, families based on balanced marital relationships seek to

maintain the quality of life, as well as the relationship between spouses and between them and their children, through dialogue and forms of conflict solutions that are less harmful to the development of family relationships (FARIAS, ROSENVALD, 2010).

Marriage also includes individuals' desire for self-fulfilment. This process that transfers the responsibility for balance and satisfaction to the other, in the conception of Maldonado (2000), can be a factor that contributes to the emergence of disappointments and frustrations. However, paradoxically to the fact that this bond presents itself as an effective tool in the development of the spouses, its superficiality and fluidity are increasingly evident in contemporary society (BAUMAN, 2004).

In other words, traditional marriage, marked by an indefinite commitment, can give rise to relationships established in more fragile bonds, in which those involved are available for new opportunities and it is the decrease of the commitment in favour of the partner that seems to make the relationships based on love and building long-term projects (DINIZ, 2007).

It turns out that the fragility of the unions does not rule out the possibility of an outcome without suffering and emotional wear and tear. Unsatisfactory marital relationships, which in turn come to an end through a divorce, can increase the risk that spouses will suffer from mental imbalances, illnesses, and disorders, and such family dysfunctions may directly affect the behaviour of any family member.

Often, the separation exists even before the consolidation of judicial decisions that put an end to existing legal bonds, which makes it difficult for family members (father, mother, and children) to adopt collaborative behaviours to resolve losses in the family reorganization phase. In this step, the damages of traumatic separations will not be limited to the time of their occurrence, but will also reach the life that follows aggravating pain and problems.

In this way, the risks for a relationship that ends without adequate resolution are numerous, such as parental alienation, custody, pension, property disputes, among others.

In this context, it is possible to perceive the family as a relational plot, in which conflicts, incongruities, and ambiguities are revealed by its members. However, not all couples reach satisfactory solutions in the face of these situations, allowing for frustration and anger to arise due to poorly resolved conflicts and triggering discord. In this reality, it is understood that dialogue is an indispensable element for the resolution of conflicts in family life, in an imbalance.

In this sense, divorce can reveal complex social contexts and relationships that need a model for resolving conflicts and emotions, capable of showing the path of dialogue between the parties, as well as bringing Law closer to society. Family mediation appears, therefore, as an appropriate alternative for this approach since it seeks to help the parties to resolve their dilemmas related to the exercise of parental responsibility, division of assets and others arising from divorce, dispensing with direct judicial intervention minimizing conflicts, for through more appropriate processes and reducing time to resolve dilemmas.

According to Santos (2012), mediation can be understood as the self-composition practice of conflict resolution, whose objective is to help those involved in conflictual relationships, to resolve or prevent them from respecting the interests and needs of all those mediated. For that, the process must happen in a voluntary, consensual, autonomous, confidential, informal, and flexible way.

This is because mediation comprises an innovation of the Brazilian judicial system and presupposes, in addition to the participation of parties in conflict - mediators - the intervention of an impartial third party, called mediator, who, although without decision-making powers, manages the development of dialogue between the parties so that they reach most appropriate solutions to existing conflicts.

Analysing this context from the perspective of family law, there is a dispersion of conflicts arising from the dissatisfaction of those involved with the traditional processes of divorce and

dissolution of a stable union, in which the decision to end the legal bond is given by a third party - judge of law - who, in deciding, takes into account, in most cases, only equity and available aspects (GABBAY, 2013).

But authors like Dias (2007) emphasize that:

(...) Regardless of the end of the judicial process, the feeling of powerlessness of the components of family litigation remains beyond legal limits. The comforting sense of justice and mission accomplished by the professionals when they reach an agreement gives rise to the feeling of dissatisfaction given the unfolding of conflicting relationships.

With the innovative objective and in an attempt to minimize the dissatisfaction and suffering of citizens who need to use the State's legal services, methods of consensual resolution of conflicts arise, among these methods, mediation stands out mainly. It is understood as an instrument used to try to settle family developments resulting from non-consensual divorce, facilitating dialogue between the parties.

Given this, spouses in the stage of divorce see mediation as an opportunity to resolve their conflicts, to establish a new durable and balanced relationship, based on an agreement signed voluntarily and trustworthy to the wishes of the parties. The mediator, to peacefully resolve conflicts of interest resulting from the experience of divorce and increase the possibility of preserving parental relationships, will ask successive questions that will lead the parties to reflect on their interests, creating opportunities for discoveries and self-reflection.

It is problematized, therefore, that the decree of divorce and the dissolution of a stable union cannot be considered simple processes, the solution of which occurs only with the application of the law by the judiciary. There is a need to present to the jurisdiction organized social support that helps him to go through this process, whose inadequate resolution can contribute to the

multiplication of family conflicts and their negative consequences (ROSA, 2012).

There is also a need for the judiciary to know how citizens, who needed to use this public service, perceive the mediation process, the activity of the professionals involved (their ability to manage the development of dialogue between the mediated to achieve the objective of mediation, what the conflict resolution is. It is also emphasized that the relevance of the research lies in the perception that the level of parental conflict will significantly influence the family's daily life, and the lack of dialogue and non-compliance with the agreements signed are aspects which will directly influence the quality of parenting and the social environment in which those involved are inserted (SOUZA, 2015).

1.1.3. Justification

The State, to guarantee the social and, above all, family order, adopts, when necessary, interventionist conduct, through public policies. Due to sociological struggles arising from processes of dissolution of legal bonds arising from the marriage or stable union and the inability of those involved to maintain their parental and conjugal relationships, the State is compelled to present mechanisms to assist them in resolving their conflicts and minimize emotional and psychological impacts.

In this context, stated Azambuja (2006), many of the actions distributed in the judiciary demonstrate the needs of citizens, especially those that translate human suffering, when issues are related to family law. This fact may justify the family disputes that last for years in the courts, triggering the development of the “lose-win syndrome” conceived due to an imposing judicial decision, which in Serpa's (1999) conception, promotes a devastating impact on families who have their marital bonds extinct.

The daily lives of spouses involved in the divorce process are often marked by anger, disputes over property, and custody of children that can last for many years and never end. The impacts of this dispute are also perceived on young children, who are often manipulated as if they were

mere objects, having to submit to forced relationships that disregard them as subjects of law.

It should be noted that children are more susceptible to changes brought about by parental divorce, given their diminished ability to understand family events, and adolescents, although more aware of the situation experienced, still exhibit symptoms of resentment, loneliness, as well as inability to seek support on other fronts. The perceptions of adolescents between 14 and 18 years of age about divorce, clarify that the departure of one of the parental figures from home and, mainly, the absence of this in everyday family events are the main sources of suffering (SOUZA, 2015).

For this reason, parental divorce can create a situation of vulnerability for children, which leads to the premature development of their autonomy and a feeling of abandonment and helplessness that fosters maladjusted behaviours such as substance use, decreased school performance, inappropriate sexual conduct, depression, aggression and delinquent behaviour (COHEN, 2002).

According to Morais and Spengler (2008), the bonds broken during a divorce process cannot be compensated financially through the values stipulated in a sentence. The maintenance of previously existing human relationships will only occur through a broad debate about the problem and the questions that, perhaps due to their specificities, cannot be translated into words and, therefore, hardly understood by the judge of the law, who in the process is responsible for resolving the divorce process and family conflicts.

1.2. The family, marriage, and divorce

1.2.1. The family

The family is responsible for the establishment of interpersonal and social relationships in which human sexuality will be present or not, playing a role in helping the relationships of the human people that make up a certain nucleus. This description is not cast, not so much,

absolute, on the contrary, it must be understood as changeable, dependent on a context. And that is why it is necessary to understand its origin and conceptual derivations.

In the most primitive families, the roles of women and men were defined to facilitate the development of an economic group, so that the bonds formed were indifferent to feelings and emotions, the bonds were built as a support in the acquisition of heritage.

In modern society, the family presents itself as a necessary institution for social maintenance. In it, marital/marital ties began to be formed more by the individual will of those involved than by restricted ties in the interests of the extended family. However, this love that started to justify the union between spouses was also responsible for the increase in the number of divorces, as suggested by Bruckner (2013), first altercation, while interest marriage, giving rise to little illusion, presents less risk of disappointment”.

Thus, the family model conceived by bourgeois society, as a unit centred on marriage, with a patriarchal and hierarchical character coexists with the emergence of the modern family, in which there is a decrease in the hierarchy and increasing freedom of choice. The family, therefore, becomes the place where private life can be lived to its fullest, allowing its members to perceive themselves as individuals, expressing their desires, feelings, and dreams (SINGLY, 2007).

From different points of view, which are sociological, anthropological, and psychological, but which have a converging point about the family, it is possible to affirm that it has several functions, which can be studied and defined in different ways. The family is defined by Bourdieu (1993) as “a set of related individuals linked together by the alliance (marriage), either by affiliation, or more exceptionally, by adoption (kinship), and living under the same roof (cohabitation)”. Nowadays, given the growing individualization and pluralization of family forms, Donati (2008) emphasizes that the family starts to be defined “in a tautological way (it becomes everything that is to be or feel together)”, losing the meaning of marriage.

Zambram (2001) elucidates the challenge of conceptualizing family, since “family does not encompass a single meaning”, its conceptualization being not possible, but the description of its various modalities and structures assumed today.

Meanwhile, Donati (2008,) adds that the difficulties of defining a family are due to their “supra-functional” characteristic; because it does not exist to serve one or some specific functions, but a range of indefinite functions; because when considered "a full social relationship", it implies all dimensions of human life, ranging from biological to legal, including the economic, social, political and religious spheres.

Also considered as a precursor in the process of realization, education, and training of the individual, through the construction of interpersonal and social bonds, the family as an instrument of socialization and not only considered as a form of procreation and maintenance of the species, has become essential for the survival of human beings as individuals, in the social world (RIBEIRO, 2015).

Besides, this author highlights the need for harmony and respect among its members given the importance that the family system exercises over each one and due to its susceptibility to the social transformations with which family members interact and that lead to adaptations of the system familiar. And it is in this sense that Zambram (2001) states that the family proved to be a privileged space so that the opposites could become complementary.

In these terms, it is seen that the family can be perceived as a complex system due to the different phases of the development cycle, which reflect the cultural transformations resulting from the religious, economic, and socio-cultural changes of a certain period (SIQUEIRA, 2010).

Therefore, family groups and kinship relationships as a social phenomenon do not have the same characteristics, rules, and conventions, manifesting in peculiar ways depending on the customs of a specific people or society.

The behavioural patterns of family systems will reflect the moral and cultural codes built by society during a certain period, which may indicate changes in the family organization within the same culture (RIBEIRO, 2015).

1.2.3. The construction of conjugal bonds

In general, from antiquity to the middle ages, marriage was not a union based on love, but rather on the desire of parents, who promoted arrangements among their children, according to their interests. In this sense, the feeling of the spouses was not considered relevant to the realization of the marriage, since the primary function is to promote family interests and well-being. The love relationship between spouses becomes part of the decision to marry, along with sexuality with the advent of the bourgeois revolution and the ideas of individual freedom, but it only consolidated itself from the 18th century (ARAÚJO, 2002).

From a sociological point of view, marriage plays an important role in bringing order to the lives of individuals by giving them a certain meaning, since they naturally live in an anomie situation. Thus, at first, marriage was justified by romantic love, capable of establishing lasting emotional bonds. To this end, it presupposed equality of emotional involvement between spouses, which for a long time was maintained at the expense of the woman's submission by the man. Only domestic duties were reserved for them, further asserting the macho ideals that marked modern society (FÉRES-CARNEIRO, 1998).

With the sexual emancipation and the search for female autonomy, it was necessary to start the fragmentation of the ideals of romantic love, as presented, so that marriages were restructured based on new values that would make the democratization of the interpersonal domain via valorisation possible companionship and friendship as a prerequisite for intimacy between spouses (FÉRES-CARNEIRO, 1998; GIDDENS apud ARAÚJO, 2002).

Therefore, they started to conceive of sexual love and passion love as a condition of conjugality, since they believed that their expectations and idealizations about happiness would

be achieved through marriage. Since then, sexuality has also had its function expanded beyond reproduction, to please those involved, occupying, for this purpose, a prominent place within marriage.

It turns out that the expectations of happiness deposited in these relationships based on love and, consubstantiated through marriage, gave rise to contradictions and consequences for the spouses, since they increased the idealizations and thus, the conflicts resulting from the frustrations of not meeting expectations.

This is because, the ideal of contemporary marriage is justified in the desire of the spouses to fully penetrate the intimacy of the other to have them completely and thus, achieve satisfaction. Therefore, individuals have become inexhaustible sources of psychological content in search of satisfaction through total surrender, which could cause a feeling of emptiness. The consequences of increasing expectations and demands too much with oneself are an increase in tension in relationships and the multiplication of marital conflicts (SIMMEL apud FÉRES-CARNEIRO, 1998).

The marital relationship made it possible for men and women to outsource their needs and dissatisfactions from an affective point of view (COSTA, 2007). In this way, the marriage institution started to be identified in various ways, as it reflects the economic, social, cultural, gender, and class determinations that, in turn, are constantly changing, to satisfy the demands of society. Traditional marriage, marked by male domination, gives rise to a new type of marriage, in which the negotiation between the interests of the spouses takes place, daily. And, it is in this context, that a paradox arises between the valorisation of the ideals of growth and development of each spouse and the need to experience conjugality, that is, their common projects and desires (FÉRES-CARNEIRO, 1998).

Thus, from the earliest times of law and remaining today, in contemporary law, the family is a fertile field for doctrinal and jurisdictional discussions, given its constancy in human history

(SIQUEIRA, 2010).

Thus, once the importance of the family has been elucidated, it is important to clarify that family relationships were only brought into the rule of law through civil marriage and in remote times before civil law by religion. Over the centuries, we had changes in the family's defining concepts.

Given this, it is necessary to understand the different forms of family composition existing in society, in its various spheres, since the concept of “fundamental family” still exists in the social imaginary, which represents the happiness built through marital ties, in the realization of romantic love, in the satisfaction of personal desires by living together and contacting the desired and loved partner (CHECCHIN, 2009).

It is worth mentioning that, in the evolution of family law, patrimonial issues have been dissociated from personal relationships. This is because the family nucleus has long ceased to be identified as an environment for the reproduction and maintenance of heritage to become the place where affection and assistance among members prevail (COSTA; SIMÕES, 2011).

The contemporary family, therefore, can be recognized by the affective bonds that unite people about life projects and common purposes, which generate mutual commitment. In this way, the family has been moving away from the original social paradigms, that is, the structure of marriage, sex, and procreation.

Under this analysis, it is noticed that the family bonds that permeate the constitution of a family are not built rationally, through the logic of exchange and the convenience of relationships in which the bonds of affection and affinity capable of guaranteeing the existence of the system family and economic cooperation. Accepted in this way, its relevance persists even with the loss of importance of its main foundation: marriage (SIQUEIRA, 2010).

It is believed that, for this reason, there is a need to admit different forms of family formation. All of these advances in society have made the family more inclusive and less prejudiced,

recognizing the equal rights and duties of spouses, divorce, autonomy over family planning, the right of children, inside or outside, of marriage or through adoption, guaranteeing the rights of children and adolescents to family and community life, as well as inhibiting violence, within the family (ZAMBERLAM, 2001).

1.2.4 The divorce

In Ireland, divorce was only instituted in 1996, by the Divorce Act of 1996, since the aforementioned marital status was not recognized or accepted socially and officially in the 1996 Constitutional texts. The law came into force on 27 February 1997. Faced with the need to regularize the civil situation of married people, however, separated, the Joint Legislative Commission (Oireachtas), presented the society a referendum in April 1985 for the population to decide on the possibility of allowing divorce in the legal regiment, however, the referendum was rejected by the majority of the population. As a legal alternative to the situation of these families already separated in fact, the Judicial Separation and Reform of Family Law of 1989 was approved, however, divorce and the possibility of contracting a new marriage were not allowed.

However, the need to regularize the marital status of legally married people, but already in fact separated, continued, and this would only be possible with the authorization of divorce, which was only approved in 1995 when the Irish Government proposed a second referendum on the theme. On this date, the divorce was approved with a very tight difference because society was still resistant to the idea. Thus, the law on divorce (Divorce Act of 1996, Family Law – Divorce) was approved and came into force in 1997 when couples already separated were able to regularize their true marital status before society. However, to get a divorce under Irish law, the path to be followed by claimants is not an easy one, as claimants need to prove that they are separated for 4 of the last 5 years, as well as present that there is no reasonable prospect reconciliation, in addition to having to prove that they have their financial conditions to support

themselves.

Considering that the Law needs to reflect the dynamics experienced by society, in 2017 the racial implications of the Mediation Law of 2017 came to light, which started to cover Family Law, which was initiated on January 1, 2018, the Law of Mediation, began to encourage cases related to the resolution of disputes about family law, such as legal separation, divorce, and the child's private law, to seriously consider the use of mediation as an alternative to resolving conflicts of this nature without the need to raise the issue case to Corte for the solution.

Thus, with the application of mediation to resolve the divorce, the path to the achievement of the institution has become more accessible, quickly consensual. and less traumatic and litigious. The reasons for divorce are generally not predictable, and it is impossible to identify just one reason that leads to the dissolution of unions, demonstrating the multifactorial nature of the separation, which includes personal, contextual, and family variables.

Some spouses attribute the presence of an extramarital relationship, sexual cooling, constant fights, interference from in-laws, lack of dedication to marriage, others simply claim the loss of love.

The results for the causes also point to the rise of female status, the fact that both spouses can be equally successful, and also the differences in aspects of family and personal life, such as values, habits, interests, exercise family roles, break with the extended family and social isolation.

If the crises that lead to divorce are unpredictable and their development in the complex family system is notorious, the suffering and difficulties that mark this period, both for the parties as well as for the children. Overcoming this phase, reducing negative symptoms, such as stress and frustrations, will depend on the posture, positive or negative, adopted by the ex-couple in the resolution of family conflicts (FONKERT, 2014).

When the spouses, in the divorce process, have difficulties to differentiate the marital roles

from the parents, thus causing the multiplication of conflicts, the children can feel involved and responsible for the conflicts experienced by the parents. Thus, in the event of marital dissolution, parental roles should be given priority over marital roles, in the perspective that children's interest and well-being prevail (SINGLY, 2007). The parents must not prevent the child's direct contact with the other parent, nor should they manipulate the children to create emotional obstacles in the parent-child relationship, to avoid the configuration of parental alienation, where the most affected will be the children.

For this reason, divorce is considered a complex, multi-dimensional process that occurs differently in each family, affecting all its members individually. Therefore, it should be considered as a unique process, given that it will have a greater or lesser impact on the lives of the people involved depending on the economic, social, cultural, religious factors and, also, the support networks established. At any stage of the family's evolutionary cycle, it will always be considered painful, as it generates feelings of loss in those involved. However, it can have constructive effects restructuring the personal lives of those involved and the patterns of interaction between family members.

This, it is perceived that the stress generated in this process by the whole family is responsible for profound changes, requiring that its subsystems be reorganized and adapt to the new conditions. The changes, however, will depend on the characteristics of this system in the constancy of marriage, to outline new forms of balance for family members. The reasons that justify the end of relationships are difficult to be perceived or identified, given that most couples do not seek specialized help, family therapy, which help them to identify the causes that cause conflicts (ZORDAN et al., 2012).

1.2.5. The consequences of the extinction of the marital bond

For an analysis of the unfolding of family relationships, after the divorce or the dissolution of the stable union, it is reasonable to understand the interdependence of parental and conjugal

relationships (BRAZ et al., 2005). Marital relationships are conjunctions of personal characteristics, the environment in which they are inserted, and the processes of adaptation, and it is true to say that divorce is also born from these interactions.

In this step, it is important to investigate the underlying reasons, which give rise to the different reasons pointed out by couples for the break of the bond (ZORDAN, 2012). It is known that families, based on balanced marital relationships, guarantee the maintenance of the quality of life of their members, especially about the relationship between parents and children, using dialogue and ways to resolve their conflicts of interest. less damaging to children's development.

On the other hand, unsatisfactory marital relationships, which evolve to divorce and separation, can increase the risk that spouses will be affected by illnesses and emotional disorders, and such family dysfunctions affect the children's behaviour.

Therefore, when the relationship comes to an end, the children who are the living memory of that, are taken to face the end of the parents' conjugal life. They become, therefore, victims of marital conflicts and not of distancing from their parents (MOUSNIER, 2002). These children are often removed from the condition of legal subjects, to be placed at the centre of the dispute by the parents, a fact that can be translated by the propositions of endless custody actions, in which these are merely objects in a forced relationship of coexistence. This reality, verified through interdisciplinary studies, can be confirmed, observing the difficulty found by couples to jointly and consensually reach solutions that meet the interests of the children and their own without necessarily having to activate the judicial power (MOUSNIER, 2002).

From the perspective of adolescent children, in addition to dealing with their crises, they also have to adapt to the constant sociocultural and family structure changes in the context of contemporary society. This delicate phase can be aggravated, especially when the adolescent is inserted in a multifaceted family environment (FÉRES-CARNEIRO, 1998). For Carneiro,

the relevance of healthy parental relationships, reflects both on the relationships between parents and children, as well as on the development of the family system, given that unbalanced marital relationships can destabilize parental relationships.

Considering that, according to data from the Central Statistics Office (CSO) in Ireland, in 2015, 0.7% divorces were recorded for every 1,000 people living in the country.

The considerable increase in divorce has a legal, economic and psychosocial impact since with the increase in the number of divorces there has been the emergence of new and varied family nuclei, formed by traditional families made up of legitimate or adopted parents and children, single-parent families where there is the presence of a single parent and descendants, extended or extended families with the presence of a new spouse and their children from previous marriages, binuclear and home parental families.

Thus, the perception that the family subsists even with the extinction of the marital bond, which is why the State, in creating the law of divorce, also created a legal apparatus to regulate, not only the relationship between the ex-spouses but also between parents and children (Article 5 (2) Divorce Act of 1996 - Family Law - Divorce).

Furthermore, certainly, parental responsibility does not end with the end of a marriage, so that the disagreements that arise, along the affective walk, cannot compromise the relationship between them and also affect the development of the children, of that relationship.

1.2.6. Outlines and objectives of public judicial policy for conflict resolution

From an analysis of the functioning of the proceedings in the court, it is clear that every citizen seeks the judiciary, bringing any type of conflict and remains impatiently awaiting the decision made by a judge of the law, representing the State to enforce the application of the law. This wait generates emotional wear on the parts, as it is necessary to wait for a long time and economic expense, and this is because, when there is a dispute, in most cases, whether it is familiar or not, the rule is that most conflicts are taken to the judiciary, even before the parties

attempt any kind of negotiation or dialogue. It is perceived, in this way, the need for education of the population in the jurisdictions for the culture of the agreement.

In this sense, we seek the effectiveness of procedural rights and the exemption from the jurisdiction of the State, through alternative forms of conflict resolution, namely: mediation, conciliation, negotiation, and arbitration.

Through these institutes, the State seeks to promote the inclusion of the parties directly in the process of resolving their conflicts and the adequacy of the processes used to resolve the issues presented, given that this provision significantly increases the perception of justice, since the parties can be part of the negotiation.

Citizen satisfaction with jurisdictional protection is directly linked to the perception that the procedure used to resolve the demand was fair. Because of this, the State has encouraged the use of conflict resolution methods whose scope is not only linked to the result but also the intended function, namely: the active participation of the citizen, part of the process, in the course of the procedural relationship. The incorporation of these independent and parallel dispute resolution mechanisms is an important factor in increasing confidence in the alternative conflict resolution in the sphere of family law.

In this sense, the 2017 mediation law brought mechanisms that help the parties to replace the litigation paradigm, that is, conflict resolution through court battles where there are a winner and loser, for the cooperation paradigm, in which the parties are taken to change their perception of the conflict and of the need for changes that contribute to the reorganization of the family system, minimizing the negative effects for all involved.

Notably, mediation today has been of great value to the courts, reducing delays and court costs for claimants, as well as for the parties that guarantee the provision of a more balanced, swift, and effective justice (UWAZIE, 2011).

The mediation law of 2017 brought the practice of mediation and reconciliation in family law,

as a way of expanding access to justice. The objective of this law is not limited to preventing the demands from being taken solely to the court, but to make it possible for the jurisdictional members who are facing a conflict to make it possible to resolve their conflicts, stimulating them through self-composition processes capable of enabling improvement of pre-existing social relations. What is sought, therefore, is a paradigm shift in the provision of jurisdiction to achieve the real interests and needs of individuals and, not only to say the law, or simply apply the law.

Lawmakers and legal operators have long sought, through systematic studies, alternative mechanisms that guarantee the resolution of citizens' social and legal demands, in an appropriate and timely manner to increase the level of user satisfaction, as well as social pacification

In this sense, it is noted that the policy of conflict resolution in an alternative way, aims to allow the citizen, part of a dispute, to opt for the possibility of resolving their conflicts, with their full participation from the conduction to the final result, based on satisfaction and conflict resolution.

Therefore, it is also verified that alternative procedures are not limited to guaranteeing access to justice differently from the traditional ones, but also to clarify that self-composition methods, notably mediation when used properly, are an auxiliary instrument in a reduction in the judicialization of conflicts of interest, and consequently the number of proceedings and appeals.

It is not, therefore, simply a matter of avoiding that the Judiciary Power needs to make a decision, but rather to dismantle conflicts to guarantee the maintenance of relations and the satisfaction of citizens (RESTA, 2004).

Accordingly, the Mediation Act 2017 and the new Irish Court Rules increase the protection of those who intend to initiate proceedings following the Family Law, Divorce Act of 1996 the

lawyer of the parties must provide further information on the possibility of resolving family conflicts through mediation before starting the process. Also, the additional information that must be provided to the parties by the lawyers refers to the confidentiality of mediation agreements and their enforceability by sections 10 and 11 of the Mediation Law, as a way of guaranteeing the exercise by citizens of their rights. fundamental, namely, access to justice more effectively and adequately in the resolution of conflicts.

CHAPTER 2 – Research Methodology and Methods

Mediation is a technique in search of understanding between people with a relationship of continuity is increasingly necessary as necessary in the extrajudicial and judicial spheres, because, observing family principles, it respects in the first place the dignity of the person human, making both parties and the mediator leaves a session the solution of the conflict and not just the apparent problem, without winners or losers.

Furthermore, the whole effective issue, which a judicial process does not resolve, tends to be eased, because the dialogue between all reigns in the measurement, still allowing the continuity of the relationship.

The methodology approaches alternative ways to solve Family Law disputes based on Mediation as the main conflict resolution. The fundamentals aim for a better and more efficient study at each case knowing what, when, and how to proceed in every case.

The ease of access to information and knowledge of their rights and duties has enabled people dissatisfied with their relationships to seek solutions such as divorce for their relationships. However, the possibility of the parties to find themselves in a lengthy and so unsatisfactory judicial dispute by both parties, with endless fights and disputes and the possibility of there being obstacles to a decision that enables the solution of the conflict, many times, these families, postpone this moment.

In this context, from the perspective of family law, there is a polarization of conflicts resulting from the dissatisfaction of those involved with the processes of a traditional divorce, in which the decision that ends the legal bond is given by a third party - judge of law - who, in deciding, takes into account, in most cases, only available patrimonial aspects, without any attempt to resolve the internal, human conflict that exists there, has made families, in a phase of divorce, see mediation as an opportunity to resolve their conflicts, in a way to establish a new durable and balanced relationship, based on an agreement signed voluntarily and trustworthy to the

wishes of the parties.

The methods of quantitative research studying cases and analysing the final result of the impact of mediation. Based on this result take an action to improve the effectiveness of divorce proceedings.

The dissertation will be structured as exploratory-descriptive, as it aims to demonstrate the importance that Social and Human Sciences studies are in the fact of the inexhaustible contribution to the construction of knowledge about the studied phenomenon, namely, in this study, the alternative paths developed by society and by the Justice of the countries to resolve conflicts between family members who experience the dissolution of relationships, marriages or a stable union. The production of knowledge about mediation is still inaugural in some countries and requires contributions from all areas to consolidate a necessary framework for the organization of the institutes of justice.

It is necessary to clarify that this study takes on the characteristics of an exploratory study of existing cases in its quantitative and / or qualitative form.

Also, the research has the characteristics of a descriptive study to make the entire mediation procedure public, such as its nature, composition, and mediation methods, and also because descriptive studies appear in various forms.

The method to be used for this dissertation proposal aims to know the factors that cause the success or failure of the procedure, impacts on groups and individuals, as well as the results for the parties involved are indispensable for its evaluation as a service available to society.

2.1. Mediation as an alternative way to access justice

The idea of full access to justice for all citizens, regardless of race, gender, and social class, and the object of study and investigation of proceduralists from all over the world. In general, when thinking about access to justice, as a guarantee of a fundamental right, it can be seen that it translates into the search for ways to guarantee the effectiveness of judicial protection

through the resolution of conflicts in a definitive way.

Considering that, the judicial power is regularly activated by the citizen when the communication channels have already been interrupted, or have never existed or been exercised, it is possible to perceive that the conflicts resulting from these relationships, where dialogue is scarce, translate situations of relationships that unfold in mutual offenses and lack of respect. The legislator then began to seek alternative solutions to the judicial process, for the resolution of conflicts, given that, in it, there is no room for discussion of the underlying issues, thus moving away from the primary purpose of jurisdiction, which be it social pacification. In this step, the adequate solution of conflicts arising from interpersonal relationships must be built and elaborated by those involved in such a way that everyone feels satisfied with the provision of the jurisdictional service, excluding themselves from the perception of winner and loser.

Although the jurisdictional process represents an insurmountable social achievement, the development of alternative ways to the traditional process has become essential in contemporary times, since the Justice sector, in any part of the world, and marked by the slowness, cost, bureaucratization in the management of cases, procedural complexity the lack of information and guidance for holders of conflicting interests; deficiencies in free sponsorship have led to a distance between the jurisdiction and the judiciary.

These complications, in addition to overloading judges in the exercise of their functions, incited the litigation already latent in modern society, through the outbreak of social conflicts and the use of violence as a way to enforce their interests in a coercive way. In this way, alternative ways of resolving conflicts do not have an interest in excluding the traditional process, but rather shortening or avoiding it when possible (GRINOVER, 2011).

In this step, participatory democracy has become salutary for the legitimacy of jurisdictional exercise, as it allows the creation of new rules by society itself, increasing its participation and

entertainment, in addition to seeking the elimination of complex procedures and rigid requirements that hinder the access to Justice. This social context, perceived after the Industrial Revolution, started to foster the culture of conciliation, which in developing countries, presented itself as an important tool in promoting political awareness, in addition to promoting the institutionalization of new forms of participation in justice, which that is: the rational management of public and private interests (GRINOVER, 2011).

As a rule, social pacification is not achieved through a judicial sentence, the adjudicative nature of which generates the dissatisfaction of the unsuccessful party. However, many judges prefer to use the judicial sentence instead of seeking a self-composition solution, encouraging the construction of an agreement by the parties themselves. Such a choice can be justified by the circumstances that make an imposing solution the quickest response.

By limiting the analysis of issues brought to the process, without investigating the real interests and needs underlying the requests made, judicial decisions can promote the intensification of conflicts. The conciliatory channels, whose social foundation consists in the pacification of the sociological or underlying issues, are based on conciliation and mediation to resolve conflicts in a prospective and participatory way, preventing situations of tensions and ruptures, in cases where coexistence is essential for the balanced development of those involved (GRINOVER, 2011).

2.2. Concept of mediation and some considerations

In the conception of Álvarez (2003), mediation is “a flexible and non-binding dispute resolution procedure, including a neutral third party - the mediator - facilitates negotiations between the parties to help them reach an agreement”.

Under a more pragmatic approach, Goldberg et al. (2003) state that “mediation is negotiation carried out with the assistance of a third party”.

Simply and directly, Professor Pinho (2015) defined that: “mediation is the procedure through

which litigants seek the help of an impartial third party who will contribute to the search for the solution of the conflict”.

In this regard, the agreement of both parties with the way chosen to resolve the conflict is fundamental to the successful development of the mediation process. Mediation is seen as a form of dispute resolution capable of avoiding judicialization or in cases where the process already exists, reducing its duration. Seeking social pacification, mediation is a self-composition method, consensual, which, through techniques, fosters dialogue between the parties and deconstructs polarization, that is, the position of winner and loser.

Thus, while the judicial process is presented in a formal manner, established under strict rules and norms, mediation is a more flexible procedure in which a third facilitator, identified as a mediator, facilitates the negotiation of the litigating parties and is focused on their interests in detriment of the positions they occupy in the negotiation. In this way, it is an opportunity for the parties involved to expose their points of view and jointly build an acceptable outcome for the process.

During the mediation process, the parties must feel heard to interact and participate actively. It is believed that this procedure facilitates the acceptance of the resolutions presented and increases the perception of justice making the process itself as valued, as the result (UWAZIE, 2011).

As for the procedural legal order, mediation comprises a self-composition method (in addition to helping the parties to resolve their conflicts with a high degree of satisfaction), it plays an educational role not verified in the traditional heterocompositive process.

Therefore, the three basic elements for a mediation process to take place, as suggested by Professor Pinho (2014): a) existence of the conflicting parties; b) a clear opposition of interests; c) a neutral third party capable of facilitating the search for the agreement. Besides, it is necessary to understand aspects related to the parties involved in the process. In this sense, it

is necessary to express its characteristics and participation.

2.3. Of those involved in the process

The parties involved in the mediation process can be individuals or legal entities, who may or may not be represented. The process must reflect the wishes of the parties so that those involved have the option of not speaking during the sessions or participating and discuss their issues with the other party. In this sense, any agreement built by the parties during the process will only contain the provisions with which the parties have jointly agreed.

The mediator is a trained professional who performs the function of helping the parties to resolve their conflicts to achieve social pacification. It shall exercise its activity impartially, clarifying to those involved that it will under no circumstances represent the interests of one party about the other. The mediator must respect the confidentiality of the process. For this reason, the mediator has legal protection so that he does not have to give testimony, as a witness, on issues raised during the mediation process.

From a practical point of view, the mediator must be a neutral person, endowed with credibility and impartial towards the people involved in the conflict. It should also have the ability to interact with them, in addition to being reliable and able to assist them in the process of solving the demand (PINHO, 2014). The minimum required training has the scope of enabling the professional to deepen knowledge about the conflict, explicit or underlying, as well as the gradual learning of all the necessary mediation techniques to help the parties to improve or re-establish the dialogue between themselves, in addition to clarifying the issues and, above all, enabling creative options to resolve conflict.

It is noticed that these objectives are achieved through the establishment of a new, more constructive communication, which allows those involved to re-establish bonds and new reflections. From this perspective, one of the mediator's tasks is to allow the parties to develop an open and objective dialogue and to demonstrate the reasons that could encourage the parties

to overcome obstacles imposed by themselves, making it impossible, thus, to negotiate directly or to restore a new balance in the relationship (PINHO, 2014).

Knowing the parts, it is necessary to pay attention to other aspects related to the development of the mediation process, such as time and guiding principles.

2.4. Conciliation and mediation: main differences

The main difference between conciliation and mediation is whether or not there is a relationship between the parties. The practice of conciliation is aimed at resolving circumstantial situations where there is no interest in maintaining or deepening the relationship (BALERA, 2013). That is, this activity is appropriate to deal with specific issues, such as those arising from a consumer relationship or casual relationships in which there is no common interest on the part of the parties involved in maintaining any type of relationship, in addition to the materials.

For this reason, considering the inexistence of a continued relationship between the parties, it is unnecessary to deepen the clarification of conflicts. The dealings are limited to the problems presented, so that interpersonal bonds are not pursued, giving the conciliator greater freedom to generate different types of agreements, given the superficiality of the questions presented (DEMARCHI, 2013). The conciliation procedure is quicker and more effective, given that its focus is on achieving the agreement.

On the other hand, mediation is a private activity, the exercise of which is not restricted to the structure of any of the Public Powers. Besides, mediation is recommended for resolving conflicts arising from multiple relationships, such as family, friendship, neighbourhood, commercial, and labor relations, as its objective is aimed at maintaining pre-existing social relations. It is observed that the mediation process enables the prospective interaction of the parties so that the bonds continue to develop naturally during and after the conflict resolution (BACELLAR, 2011).

It should be noted, however, that there is no absolute rule for recommending conciliation for

objective conflicts and mediation for subjective ones since there is the possibility of using both processes together. Considering that conciliators and mediators are trained to identify interests and encourage the creation of an agreement in the hypothesis of conciliation and, it uses communication techniques and reflection on subjective aspects together with the parties, in the case of mediation (DEMARCHI, 2013).

The conciliator, too, is an impartial third party, whose scope is to assist the parties to reach a win-win agreement for all involved. This professional is not able to judge or decide the interests and proposals of the parties. In this step, it is clear that the fundamental role to be developed is to promote dialogue, and not to issue opinions on the issues presented (FABRETTI, 2013). The conciliator can function as a “factory of ideas”, capable of evaluating risks and devising strategies to increase the success of the parties through inquiries about the proposals presented about adequacy and satisfaction, to achieve a viable solution.

It should be noted that for the formation of the conciliator, the same path should be followed for the training of the mediator, so that this practice should not be presented intuitively, without the use of the relevant techniques, conciliation.

CHAPTER 3. Theoretical Framework: Interface of Mediation Resulting from Conflict with the Family System

3.1. The systemic view of the family

The family system, created or not by marriage, is responsible for promoting the interaction of its members through the formation of marital, parental, and affinity bonds. These parental (father, mother, and children), conjugal (husband and wife), and fraternal (between siblings) relationships, common in the same social context, may or may not be part of the same physical space, but imply the functional and social interdependence of their members (COMMALLE, 1997; ALMEIDA, 2015).

Dias (2011) conceptualized family according to the systemic perspective as “a system, that is, a set of elements linked by a set of relationships in a continuous relationship with the outside and maintaining their balance throughout a process of development traversed through diversified states of evolution”. In this way, with the presence of children, families become sources of social growth for these subjects who, in turn, expand through their experiences the bonds of coexistence and interdependence of the family system. Thus, the scenario that the individual receives after his birth will be responsible for his socialization process, throughout his life, making it salutary to observe with caution, the repercussions of the interventions that occur during the family cycle, under the subjects in training and about the other members (ALMEIDA, 2015).

The family, then, presents itself as an intermediary between the individual and the community; and it becomes a vehicle for social models, in promoting the socialization of new generations, according to the values and norms of the community (SANTOS, 1969). That is why it is essential to consider that the family project goes through different stages and cycles, adapting to the different needs presented at different times in the life of family members (ALMEIDA, 2015). This whole process of transformation resulting from the interaction of family members,

or not, makes the family an active system, and for that reason, it must be analysed, from a systemic perspective (SUDBRACK apud PRATTA; SANTOS, 2007).

It is worth remembering that the Bioecological Theory of Human Development, formulated by Urie Bronfenbrenner at the end of the 70s, presents possibilities to analyse aspects of the individual, the context in which he lives and the interactive processes that influence human development itself, in certain periods and understand the aspects that involve family functioning. In other words, it presents an ecological proposal for human development, whose objective is to analyse the family taking into account the context in which it is inserted.

In this perspective, the analysis of the individual in development within a restricted and static environment is considered limited, without considering the multiple influences of the contexts in which they were inserted (BRONFENBRENNER, 1996 apud MARTINS; SZYMANSKI, 2004). For this reason, human development must also be considered in the author's conception, namely: "the set of processes through which the particularities of the person and the environment interact to produce constancy and change in the person's characteristics in the course of his life" (BRONFENBRENNER, 1989).

The bioecological model predicts the existence of several systems that influence each other and establish an inclusive relationship between them. It is essential to consider that the family development context is influenced and influences multiple elements that are part of a social whole (MARTINS; SZYMANSKI, 2004).

According to Figure 1, the family system is composed of several subsystems, including the individual, which is the role played by the individual in the private sphere, that is, in the family, as well as in the other systems that coexist in parallel; the parental, with executive functions, with responsibility for the youngest members; the conjugal: that is the relationship established by the couple and the fraternal that comprises the brothers.

Observing the interactions between the systems, the subsystems, and the environment, it is

possible to understand how the family is a permeable system and plays a healthy role in influencing and being influenced by the constituent elements of the social whole, so that the phenomena arising from the real-life may change over time, due to different forms of influence (BRONFENBRENNER, 1996 apud MARTINS; SZYMANSKI, 2004; ALARCÃO, 2006).

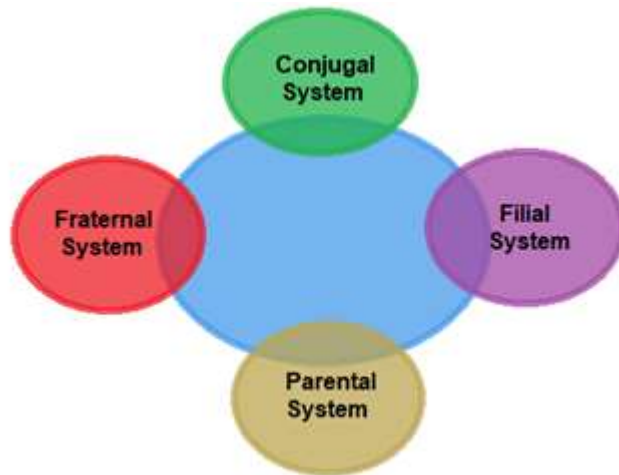


Figure 1- Family system and subsystems.

This dynamic occurs through the internalization of consolidated values when crises arise. Therefore, the family must achieve its internal and external objectives, in the terms proposed by Dias (2011), the first being: “psychosocial protection of its members” and the second: “accommodation to a culture and transmission of this same culture”.

3.2. The communication process in the family system

As the family is a communicational system, it is perceived that it stands out in the construction of solutions that reflect the interests of all family members. Communication, in the context of family relationships, fulfils the role of removing human beings from isolation and making them an essential component in the life of each individual and general in the family. In this sense, communication must be considered a contributing element for social adaptation, whose inefficiency can make family relationships and system integration unsustainable (DIAS, 2011). It should be clarified that the family structure will be determined by the organization of the

different subsystems that integrate it so that the balance desired by the system will be achieved through dialogue between family members, whose role is to promote the adjustment of the different points of view that coexist in the same environment. In this step, the communication and information brought to the system are responsible for promoting the formation of that family's identity (ALARCÃO, 2006).

If the family is like a dynamic and open system in constant interaction with the social system, it is observed that both systems will sometimes allow continuity, sometimes change (DIAS, 2011). It is the communication that will promote the building of links between family members and between them and the social system, enabling the coexistence and support of the family system, thanks to the construction of integrated solutions to the dilemmas experienced, daily. Also, it will be responsible for facilitating family interaction with the social environment (DIAS, 2011).

Observing this communication system, it is noticed that the message emitted is often perceived by the recipient in a different way than intended. This is due to obstacles and barriers in communication, which in the process of family communication can trigger instability and imbalance. It is noteworthy, however, that such difficulties may be due to the limited communication skills of the sender or the receiver, or both, given the noises that affect the contents of the messages (DIAS, 2011) as illustrated by **Figure 2**:

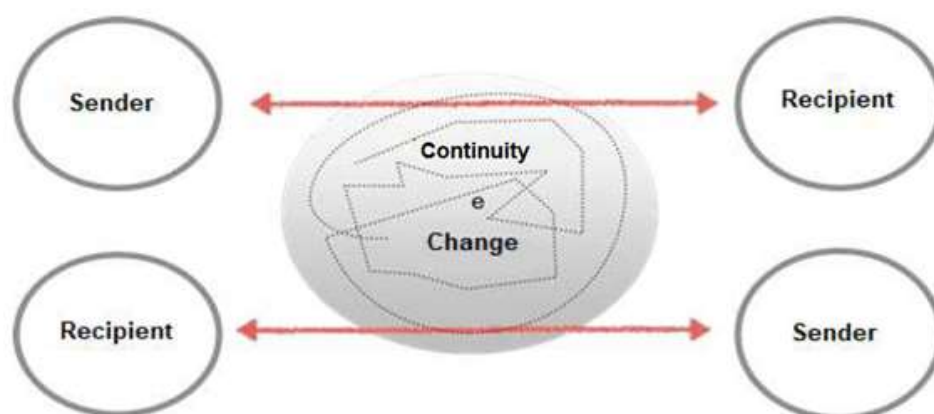


Figure 2- Communication process in the family system.

The importance of a quality communicative practice among all family members is due to the repercussion of this in the moral education of children, new members of the system, mainly in the parent-child relationship (DIAS, 2011). In this way, family health is closely linked to the quality of family exchanges and, with the social environment to which they belong, since the harmony and quality of parental, marital, and affinity relationships, have an important influence on the children's evolutionary cycle, which can influence the appearance, including psycho-affective disorders (TALLON; COLS apud PRATTA; SANTOS, 2007).

Satisfactory levels of family communication can promote the reduction of family conflicts and, consequently, the behavioural problems that mark youth (WAGNER et al., 2005). Besides, the socialization of the child is directly linked to the development of his personality, whose formation takes place through the establishment of channels of communication, emission, and reception of messages, with the other family members and with the community in which he is inserted. In this step, it is clear that the communicative process combined with the interaction promoted by the family system is a determining factor for each individual to become a factor and product of the other's behaviour so that the elements resulting from this interaction process can become responsible for consistency. family relationships and also possible changes (DIAS, 2011).

Thus, according to the content of the dialogues between parents and children and the evolution of family dynamics, communication can be characterized as open, when family members feel free to express their emotions and doubts, or closed, when the dialogue is marked by over-authority of older people about younger people, so that they feel embarrassed to present their demands, restricting family conversations to everyday matters. In this step, the better the quality of the conversation between family members, the more successful the development of family relationships will be (RIOS-GONZALEZ apud WAGNER et al., 2005).

3.3. Conflict and its relationship with the family system

As already presented, culturally, it is expected that the family is a continuous social relationship, whose dissolution of affective or functional links causes strangeness to its members because they are walking against social customs (ALMEIDA, 2015). The dysfunctions that emerge from developmental crises, throughout the different phases of the family cycle, are justified by the difficulty faced by the family to fulfil its stabilizing role (RELVAS apud DIAS, 2011).

The discomfort brought by family frustrations and disagreements, resulting from the loss of the bond, can trigger an emotional turmoil, arousing in the parties the desire to resolve issues through litigation.

In other words, family conflicts are characterized by promoting a discharge of emotions in the parties, and in parallel, they arouse in individuals the need to maintain the parental relationship, in the hypothesis of the existence of children, even after the end of the relationship. Such concern is reasonable, given that the emotional damage caused by a litigious and unbalanced separation, will not only have momentary repercussions, and may extend throughout life, especially about children (ROSA, 2012)

As a result, it is necessary to have an understanding of how conflicting situations develop in family environments, notably in the unbalanced. (BRUNESS; BERNARD apud TRINDADE et al., 2012). And it is in this sense, that one realizes that the uncertainties and risks of conflicts are justified by unexpected attitudes of human intelligence that create new situations and responds to them. For this reason, there is also a transfer of the frustrations generated, throughout life and, mainly during the divorce process to the procedural acts, a fact that for Trindade et al. (2012) is “an indication and a catalyst for obstacles to resolving the conflict between the parties amicably”, so that the parties tend to adopt increasingly litigious behaviours.

Given the different interfaces of the family system, it is clear that multidisciplinary interventions are more appropriate, given that their repercussions will not be limited to a single member of the group, but will reach everyone, each in their way, and also because none question will be limited to a single theme, legal, economic, social or emotional. So, any analysis on family issues is carried out from a multidisciplinary perspective, especially in the case of controversies, so that it is possible to identify its different aspects, as well as to outline better strategies for building a solution. The identification of the peculiarities of the controversies will allow a more appropriate approach by the specialists in choosing the best way to resolve the demands presented by that family system (ALMEIDA, 2015).

Therefore, the use of mediation as an option to resolve family conflicts is encouraged, to provide new alternatives for actors in family life to resolve their disputes or conflicts through the development of an appropriate dialogue (ROSA, 2012) as illustrated in **Figure 3**.

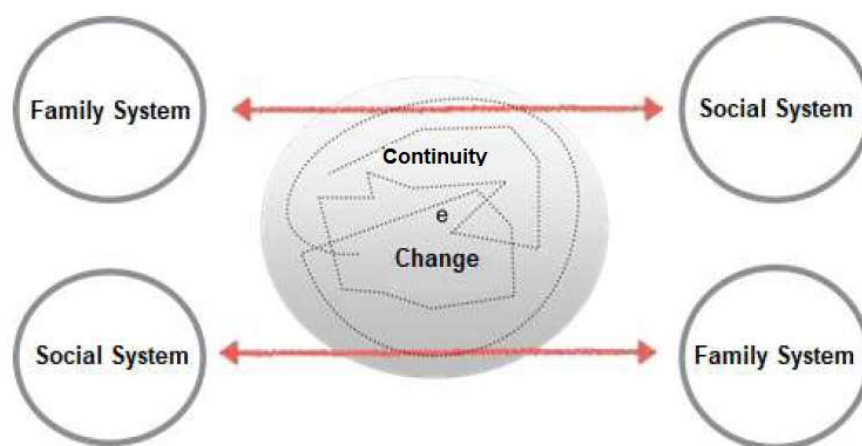


Figure 3- Process of interaction between the social and family systems.

It should be noted that the need to resolve family conflicts for social promotion does not detract from their importance for the progress of society. As an essentially cultural phenomenon, it promotes the insertion of characters with different characteristics in the same discussion plan.

From this social interaction, the necessary changes for the pacification of conflicts and the evolution of a certain family system will emerge (LUCENA FILHO, 2016).

It is noteworthy that this sense of peace is not limited to relations between States, but relations between groups and people extend. Thus, the positive perception of the conflict was healthy for the implementation of the ideals of the culture of peace, in the search for satisfactory solutions to family conflicts, thus promoting the reduction of litigation and increased cooperation (VAZ, 2012).

An ideal model is identified, in which the rights and interests of the other are recognized as legitimate and the enjoyment over the goods of life exercised without questioning or obstacles (LUCENA FILHO, 2016). In other words, the promotion of a collaborative culture helps the parties to develop a more effective dialogue, enabling the solution of conflicts through built decisions that benefit everyone (VAZ, 2012).

The conflict is characterized by opposition to cooperation, that is, it presents itself as an institute marked by the divergence of opinions and claims (LUCENA FILHO, 2016). The competitive culture, in these terms, is marked by deficient communication, which favours litigation and mutual hostility (VAZ, 2012).

3.4. Transforming family conflict into litigation

From the dissemination of the Culture of Peace ideas by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations, the search for the development of new practices that would allow a new look at conflicts have become if eminent. The Culture of Peace as defined by the United Nations - UN (2015) is “a set of values, attitudes, ways of behaviour and life that reject violence, and that bet on dialogue and negotiation to prevent and resolve conflicts, acting on its causes”.

It should be noted, however, that it was a long journey for the conflict to be recognized as a positive element in human relations. During a period of history, it was considered as something

pathological, because it causes obstacles and disturbances to social groups. The sociological study of conflict illustrates the different Schools and theories presented by philosophers of Social Sciences, throughout history. In general, it is worth highlighting three distinct periods, in the formation of classical theories about conflicts. The first, defended by Thomas Hobbes and Augusto Comte, clarified the need for the existence of a Sovereign as a way to neutralize the tensions, contradictions, and divergences inherent to the human condition and, thus, avoid chaos. Thus, avoiding conflict was a condition for guaranteeing order Social.

In a second moment, the functionalist current, sees the conflict as an abnormality or pathology, given that if social structures were formed by common values and ideals, the unstable nature of the conflict considered as an element external to society itself and should be eliminated, even though domination and exploitation were elements that guarantee social pacification.

The third, known as theories of social conflict, is composed of several subcategories, which defend that it is through the conflictual nature of social relations that society evolves and, in this way, reaches social cohesion. According to this perception, conflict is fuelled by antagonisms of feelings and behaviours, which pave the way for progress (LUCENA FILHO, 2016). Thus, the importance of social conflicts must be highlighted due to their prevalence in social interactions. Conflict, from a positive perspective, is a constituent element of a context capable of including characters with different characteristics, in the same situational plane, imposing a levelling situation for them. In this way, it presents itself as an institute capable of establishing a social space, in which confrontation alone, becomes an instrument capable of generating metamorphism between interactions and social relations, which allow overcoming the dissimilarities of the litigants themselves.

In this step, a careful analysis of social conflicts will remove any negative perception, considering their contribution to the development of civilization, by recreating or maintaining certain conditions necessary for the re-establishment of balance in communities

(ALCÂNTARA JÚNIOR, 2005).

Based on these premises, the Modern Theory of Conflict, presents a positive perception of the conflict, considering the naturalness with which it manifests itself in the daily life of social characters (AZEVEDO, 2015). And also for being responsible as it presents the discomforts and imbalances of relationships to everyone, the conflict must be understood as an agent that promotes changes capable of arousing in the parties the interest in seeking a new balance point and, thus, the reestablishment of the relationship. From this perspective, in the hypothesis of family relationships, the conflict resolution process will not be limited to ending it, but also, by promoting the transformation of family members through the development of dialogue, trust, and humility (VAZ, 2012).

To this end, the construction of positive forms of conflict resolution, such as mediation, can generate a sense of belonging in this process in the parties, thus providing personal, professional, and organizational growth (AZEVEDO, 2015). It is noteworthy that this perception requires more than the use of common sense by the parties, giving rise to the search for the development of skills and technical improvements capable of transforming the conflict into an opportunity (PAIVA, 2013). On the other hand, it must be noted that the use of inappropriate forms of dispute resolution can cause the erosion of pre-existing social relations and the multiplication of conflicts. This fact can be perceived when the State is called upon to respond to conflicts and, having only a response model based on a logical legal-procedural system, it provides an unsatisfactory answer to the daily questions of relations, such as the case of the countries that use the Civil Law system (AZEVEDO, 2015).

In the light of traditional justice, from the judicialization of conflicts, what is observed is the transfer of frustrations, hurts, and excesses resulting from a certain fact to the procedural records. The judicial process then becomes the mechanism used by the parties to express their contained and poorly resolved feelings. This way of conducting the resolution of issues makes

it difficult for the parties to seek to resolve conflicts collaboratively, further intensifying the conflict. This fact occurs because, from the merited judgment that ends the process and, consequently, elects a winner among the parties involved, there is a response to the dispute that is limited to legal effects, which in many cases does not resolve internal conflicts. related to the process (TRINDADE, 2012).

It should be clarified that some characteristics determine the type of conflict to be brought to the judiciary. In this sense, it is highlighted that the conflict can be divided, according to its origin, into three categories, namely: psychological, it concerns the internal conflicts of the individual, whose resolution will be found with the help of professionals through psychoanalysis or therapy; sociological, it is characterized by conflicts arising from social relations, so that its management can be carried out by the judiciary, through mediation; psychosociological, whose genesis of the conflict is due to the interaction between the individual and the different systems, and mediation is also an appropriate method for the management of these conflicts (DIAS, 2011).

In the hypothesis of family relationships, the repercussions of resolving conflicts in the life and functioning of family systems seeking to pacify social relations, recognize the need for action by professionals from other areas to expand conflict resolution techniques, to guarantee the maintenance of pre-existing relationships, even with the dissolution of the legal bond, making mediation as an effective solution for this type of conflict (VAZ, 2012).

3.5. Family mediation and its contribution to the legal and family system

Considering that mediation emerges as an option that allows family conflicts to be resolved in a faster, individualized, informal and less dichotomous, and bureaucratic way since its objective is to resolve conflicts in its various aspects, legal, emotional, social, and economic since it manages to reach the aspects immersed in the demands presented, and I note that mediation fulfils the role it is proposed to avoid by multiplying conflicts and generating in the

participants a sense of belonging to the process of building solutions, once through of the dialogue, at the end of the process, there is no premise of winner or loser, because, through dialogue, everyone has the opportunity to reach common sense (VAZ, 2012). Thus, it is clear that the scope of family mediation is to thoroughly investigate the real conflict, promoting the deconstruction of the conflictual situation until those involved can perceive the motivations of the real ones of their disputes and, thus, seek more adequate and satisfactory solutions (PRUDENTE apud PINHEIRO, 2012).

This is because the mediation process is based on the use of techniques that foster dialogue between the parties, enabling those involved to discover the real reasons for the conflict, that is, their peripheral controversies, so that once the solutions are presented, they will reach all the demands and not only the apparent ones. This treatment of the conflict allows the parties to reconnect, restore respect, to reduce the suffering, insecurities, and anxieties of the parties (VAZ, 2012). This smooth transposition of family imbalances occurs because family mediation presents itself as an assisted contractual extension, which helps the parties to find a way of collaboration and not of competition in the solution of their demands (LASCoux apud PINHEIRO, 2012).

Notably, characterized by the principles of impartiality and confidentiality, family mediation as a self-composition means of conflict resolution that promotes the integration of family members, must always obey three criteria in the terms suggested by Professor Pinheiro (2012) "must initially produce a sensible agreement; it must be efficient and, it must aim to improve the relationship of the interested parties, or at least not harm it".

Mediation can also be an effective instrument in reviving the exercise of citizenship, given that it returns the parties a sense of responsibility about the need and decision-making capacity of their dilemmas (ALMEIDA, 2015). In this sense, mediation will give family members the possibility of a dialogue that favours the resolution of misunderstandings and, perhaps, avoid

unnecessary ruptures in relationships that need to be maintained, even if in another format.

The importance of this opportunity is given, for example, in the hypothesis of relationships that come to an end, but whose children still exist. The use of children in the foolish game is recurrent, reflecting the little ability of the parties to resolve their demands and frustrations. The marital dispute must be perceived as a signalling element that some important factor for the couple has not yet been resolved. This stage of the marital relationship can be characterized by endless discussions about child custody, alimony, division of assets, etc. (ROSA, 2012).

Objectively, Fonkert (2014) presented some advantages that can be extracted from the use of mediation to resolve family conflicts: “i) the cost emotional, financial and time are always less than in the litigation process; ii) emotions and feelings are welcomed and worked on as the focus on the situation to be treated; iii) the financial cost; iv) the time spent with them is also usually much less than in the common model used by the Judiciary ”.

These factors enable faster treatment of emotional issues, reducing suffering for parents and children, and ensuring the quality of post-divorce family relationships. Already, from the point of view of the judiciary, the repercussions can be identified, mainly, in the reduction of the number of lawsuits and in the pedagogical power capable of preparing the parties for the prevention and resolution of future conflicts (FONKERT, 2014).

3.6. The repercussions of dysfunctions in family systems from the perspective of Systemic Theory

Under the perspective of the Systemic Theory, all the events that permeate family relationships, even if they directly affect the life of one of the members, will also bring changes to the others (DIAS, 2011). The family, therefore, as a complex and integrated system, is inserted in the social system and is responsible for promoting constant adaptations between family networks and the changes undergone in the family environment as a result of critical events, predictable or not, that affect the system causing disorganization and, in some cases, compromising the

development of its members (SUDBRACK et al. apud PRATTA; SANTOS, 2007). And yet for these authors, these crises that influence the functioning of the family, when poorly managed, can compromise the family evolutionary cycle, triggering dysfunctions that affect, directly or indirectly, family members, especially those of young age who experience a phase marked by relational transformations with other family members.

This is because aspects of the individual, the environment, and the processes that occur within and between them must be considered as interdependent. Considering, therefore, that each part depends on the other, and the influence of one on the other varies in degree, quality, and from context, to context since each individual has his characteristics and distinct needs, the possibility of the emergence of conflicting situations is imminent (TEIXEIRA, 2005).

The emergence of family conflicts becomes natural, due to the coexistence of different personalities in the same family system. The manifestation of the individualities of family members, over time, is growing reflecting the lack of interest in giving up what is particular to them in favor of the family group. This fact is evident in families that have adolescent members who, in the transition from childhood to adulthood, are more critical about the values that are part of their family system (RIBEIRO, 2015).

Also, it is necessary to consider that society has its social, economic, and cultural plan changed at all times, placing the family in a panorama of constant change (TRINDADE et al., 2012). These clashes of generations are natural and the conflicts arising therefrom, as a rule, are not responsible for the permanent destabilization of the family (RIBEIRO, 2015). This is because healthy families are those characterized by their flexibility and, therefore, can evolve as much as necessary in the face of difficulties. On the other hand, families with little capacity to deal with adversities and, thus, overcome stressful situations, end up in a situation of dysfunction, causing the appearance of pathologies in one or more members of the family system (DIAS, 2011).

In this sense, as already explained, the bonds built through marriage have long ceased to be perpetual, although it should be noted that the end of a relationship does not invalidate the grandeur and beauty of the journey (BOFF; ARRUDA, 2000). According to Bruckner (2013), “Brevity is not a crime, just as persistence is not always a virtue: certain fleeting encounters can be a masterpiece of conciseness, leaving marks forever, and living together for half a century. reveal, sometimes boredom tortures and resignations”.

This is because, although the marital bonds came to an end through a divorce or the dissolution of a stable union, their unfolding will be perpetuated indefinitely when there are children. In this hypothesis, although the marital bond, whose relationship involves only husband and wife, remains the parental relationship formed by the figures of the father, mother, and son. In an ideal family situation, these relationships coexist simultaneously. Families based on balanced marital relationships that for this reason guarantee the maintenance of the quality of life of their members, especially about the relationship between parents and children, using dialogue and ways to resolve their conflicts for this purpose. less harmful to youth development (BRAZ et al., 2005).

However, unsatisfactory marital relationships, as well as divorce, may increase the risk that the spouses will be affected by illness and psychopathy's, and such family dysfunctions may affect the children's behaviour (BRAZ et al., 2005). Often, the separation exists even before the consolidation of the judicial decisions that put an end to the existing legal bonds, which makes it difficult for family members to act to resolve the losses in the family reorganization phase. In this step, the damages of traumatic separations will not be limited to the time of their occurrence, they will also reach the life that continues aggravating pain and problems (ALVES, 2014).

This whole panorama maybe even more important from the perspective of adolescent children, who, according to SARTI (2004): “is characterized precisely by the search for other references

for the construction of their indemnity outside the family”. Adolescence is considered a peculiar phase in the development of the individual in the period marked by the transition between the children's world and the adult world. Known as the period in which the adolescent's main objective is to seek emotional independence from parents, young people start to adopt behaviours of rebellious independence and aggressive dependence, to form their personality and find their place in society.

This oscillating behaviour of adolescents requires more attention and care from parents since children's bonds will transform into adults, with healthy parental relationships as a way to ensure healthy maturation. This is because the hypothesis of parental divorce creates a situation of vulnerability for adolescents, which leads to the premature development of their autonomy. This fact occurs because adolescents, although aware of the situation experienced, at the time of divorce and dissolution of a stable union, still exhibit symptoms of resentment, loneliness, as well as inability to seek support on other fronts (SOUZA, 1999). Thus, these young people who become prematurely independent may experience a feeling of abandonment and helplessness that will foster maladjusted behaviours such as substance use, decreased school performance, inappropriate sexual conduct, depression, aggression, and delinquent behaviour (COHEN, 2002).

Although there are many adversities faced between parents and children when the marriage comes to an end, it is possible to observe that despite all the situations, vulnerability and imbalances, arising from this path do not prevent children from facing and even overcoming the separation of especially when the family environment was hostile to the time of cohabitation. Therefore, the quality of the relationships between parents and between them and their children is essential, regardless of how they present themselves socially (FÉRES-CARNEIRO, 1998).

Bearing in mind the importance of the unfolding of parental relationships researchers over the

past decade, they defend the idea that the lives of children, adolescents, and young people can be better if there is the possibility of maintaining relationships with adults of both sexes (GREEMBERG; O'NEIL, 1990). This is because, according to Dias (2011), “what you receive when you are a child is no longer extinguished”, so that the maintenance of the family and, especially, of parental relationships can have positive repercussions, as they are institutes that play an important role in guiding values throughout the different human development cycles. The family presents itself in this opportunity as a privileged space, which allows children to learn significant dimensions, such as what is prohibited, accepted, and how they should behave in the face of everyday situations. Also, the importance of the quality of family relationships is emphasized, since the child first learns to identify the other, only then to identify himself (SANTOS, 1969).

From this healthy perspective, develop mechanisms that help family members to resolve their conflicts, inherent in the lack of dialogue and the non-length of the combinations, and thus guarantee the maintenance of quality parental bonds. This is because, as already explained above, the level of parental conflict will significantly influence the daily lives of young people, as well as their development (SOUZA, 1999).

CHAPTER 4. Comparison of the use of mediation in countries with a Civil Law system

4.1. The divorce in Brazil according to the Civil Procedure Code

To talk about divorce in Brazil, initially, a brief explanation about the Civil Law system is necessary, this system was developed with the end of feudalism and after the discovery of texts compiled from Roman law from the times of the Roman empire.

The law was based on the interpretation of the sacred Roman texts, and the jurists of the time acted as teachers and cleared all doubts regarding the books for the resolution of the societal legal conflicts at that time.

Thus, with the establishment of modern states after the bourgeois revolutions (mainly in France) in the 18th and 19th centuries, absolutist states were overthrown (in which state authority was centralized in monarchs). With that, a new regime was established, from the creation of a legal system based on codes.

With the elaboration of the law, it was transferred from the sacred texts (*corpus juris*) to the codes, the role of teachers who “interpreted” the compiled texts was transferred to the legislators who started to elaborate the law. The certainty of the sophistication of codified law was so great that the role of judges was restricted to applying the prescribed law.

It is difficult to find common law characteristics in Brazil, due to the strong tradition based on written law. There are in the country: Federal Constitution, Codes, Statutes, Ordinary Laws, Decrees, Ordinances, Condominium Statutes, etc. All of this is an inheritance based on the Civil Law system, different from the Common Law system, in which the legal system in these countries is based on judgments (case law), while in Civil Law, the laws stipulated in the codes and the judiciary are studied and opine on the rules in force, to apply them to the specific case. Over the years, Family Law is considered one of the branches of law where there is greater State intervention, judging by the public interest in protecting the family. Such intervention, historically, has always taken place from the impact of the public order rules that regulated and

still regulate the institute, but today in a different way, as will be determined.

In Brazil, this situation can be perceived by observing the laws that were in force before the advent of the Federal Constitution since 1988, mainly with the promulgation of the old Civil Code of 1916 that recognized only one type of family, the matrimonial and the patrimonial family, excluding jurisdictional protection other family entities and children who have not been conceived in the context of marriage (ALVES, 2010).

In this circumstance, marriage was the only form of constitution of the so-called legitimate family, which could not be extinguished since the divorce was prohibited, which allowed the State to assume the responsibility of the relationships originating from qualification. Thus, the state entity-imposed rules on relations considered to be of public order, practically ruling out the possibility of surrendering private autonomy in these relations, which occurs only in situations explicitly considered patrimonial, such as, for example, the choice of the marital property regime (ALVES, 2010).

Due to this interventionist treatment of Family Law by the 1916 Code, a considerable part of civilist doctrine came to maintain that this branch of law would belong to Public Law and not Private Law (RODRIGUES, 2002).

This whole scenario of deep State intervention in Family Law changed with the development of the Social Security State and, especially, with the advent of the 1988 Federal Constitution. Once again, the family cell was remodelled, starting to emphasize the principles and rights conquered by society.

This new structure introduced by the Federal Constitution, operates the constitutionalizing effect of Civil Law, responsible, among other effects, for the direct interference of principles in the scope of private relations, such as equality, human dignity, freedom in building families, solidarity among family members, equality between spouses and children, family pluralism, affectivity, single-parent family, among others, who will be served in due course. These

principles were carried over to the area of Family Law, and from them, a new concept of family was conceived, based on the union by mutual love and affection.

Given this, the Federal Constitution of 1988 brought about a profound change in Family Law, leaving aside the idea that the family was constituted solely by marriage, in a patriarchal and hierarchical way, following what already happened at the time through doctrines and jurisprudential, giving space to more open models, as foreseen in the 1988 Constitution (GONCALVES, 2010), more specifically to recognize the stable union, the single-parent family as a family entity, the equality between the spouses, the facilitation of the divorce, the equality of the children. Besides, although the constitutional text does not directly mention the topic, there is the jurisprudential treatment of the homoffective union, to complete the diversity of legitimate family entities.

As a result of this paradigm shift in the family, a large part of the doctrine came to support the existence of the principle of minimal state intervention in the family member, a principle that materializes from the consecration expressed in the Civil Code of 2002, more precisely in article 1.513, according to which "It is forbidden to anyone, under public or private law, to interfere in the communion of life instituted by the family". According to the aforementioned principle, the State should only use Family Law when its rules imply a real improvement in the personal situation of family members (ALVES, 2010).

Thus, the progress concerning social ideas and customs, especially about the formation of the family, brought several changes concerning the concept of indissolubility. Currently, freedom within marriage is preserved and legislation has adapted to the best social interest also about the formation and dissolution of marriage.

Despite the old Civil Code of 1916 being edited according to the customs and traditions of the time, there was a period when the legislative imposition was at variance with the reality of the population. Thus, even if the recognition of the marriage should be through the established

rules and there was the imposition of its indissolubility, it could be dissolved through the divorce. Thus, there was the possibility of separating the couple and the assets belonging to them, but it was not possible to dissolve the marriage bond.

In 1977, Law number 6.515/77 (Judicial Separation Law) became effective, which transformed the figure of the deceased into judicial separation and included divorce in the Brazilian legal system.

From this moment on, spouses could opt for a marriage breakthrough separation or divorce (DIAS, 2017).

The state figure still tried to control relations and preserve the family figure. However, it was possible to notice a large number of separations and divorces and the legal system started to be at odds with the reality of the time. It can be said that despite frustration with the lack of a law that would fully regulate the marriage institution and the new forms of family, Constitutional Amendment number 66 of 2010 innovated article 226 of the Federal Constitution in the sense that it requires more prior legal separation as a requirement for divorce to have its legal effects. The previously stipulated deadlines are no longer needed and, in this way, the divorce alone would break the marriage bond (DIAS, 2017).

In this sense, it is understood that the matrimonial bond starts at the moment of marriage and is considered as the union between the spouses. The conjugal society, on the other hand, is the rights and duties inherent to the parts of this relationship when they choose to live together.

It appears that the institution of separation and divorce brought a challenge in its application since divorce breaks the marriage bond, but separation does not. Since separation was only a requirement for declaring the end of a marriage, it only dissolves the conjugal society. In this way, the spouses still owed each other fidelity, respect, assistance, etc.

After Law 6.515/77(Judicial Separation) came into force regulating the dissolution of marriage and conjugal society through divorce and separation, the Civil Code of 2002 reproduced these

rules in its legal diploma through article 1571:

Art. 1571. The conjugal partnership ends:

I - for the death of one of the spouses;

II - for the nullity or annulment of the marriage;

III - by judicial separation;

IV - for divorce.

Contrary to the indissoluble form of marriage imposed in the legislation of the year 1916, marriage gained new guidelines that could be broken through the will of the parties.

Although judicial separation is considered a form of marital dissolution, there is no way to break the marriage bond between the parties. This institute ensures the possibility of retraction and reconciliation in the marriage, without requiring that the parties need to remarry to have recognition under the law.

Divorce, on the other hand, was an important legal amendment aimed at facilitating the dissolution of marriages. Thus, the marital bond and also the conjugal society is broken, destroying the relations arising from the union. Former spouses can contract new marriages and are no longer linked to each other.

This can be divided into consensual or litigious divorce. The first is characterized by the agreement of both parties on the dissolution of the marriage and its terms. This type of divorce is usually characterized by ease and speed, both judicial and extrajudicial. Besides, it can be facilitated if the couple does not have minor and incapacitated descendants, and does not need representation or the intervention of the Public Ministry.

In turn, there is also the existence of litigious divorce, defined by the divergence of opinions between the spouses when it comes to the break of the marriage or some issues pertinent to the dissolution such as the division of assets, custody of children, etc. (DIAS, 2017). One of the most important characteristics about divorce is that in this form of dissolution, there is no need

to talk about the guilt of the spouses, the responsibility for ending the marriage is not discussed or acknowledged, regardless of whether there is consensus between the parties (DIAS, 2017).

In addition to these two divisions, before Constitutional Amendment 66/2010, divorce could also be direct or indirect.

Direct divorce was one that did not depend on judicial separation, but it needed proof of the factual separation for more than two years (NADER, 2016). Indirect divorce, also called divorce by conversion, had as a requirement the *res judicata* of separation sentence for more than one year. Thus, only if these requirements are met, could the separation be converted into a divorce.

With the advent of Constitutional Amendment 66/2010, there is no longer any need to talk about direct to indirect divorce, given that the deadlines for postulating the divorce through the judicial system are no longer necessary and there is no need for prior separation for conversion. In this sense, the only requirement became the presentation of the marriage certificate, facilitating the dissolution and enabling the spouses to decide to dissolve the marriage soon after the marriage, extinguishing any obligation between them.

The majority doctrine understands that the figure of the separation ceased to exist after the institution of the divorce since it is supported in one of its arguments that by Constitutional Amendment 66/2010 being considered a Major Law, another alteration that supports the existence of the separation institute does not can be maintained. This statement is based on the idea that the *infraconstitutional* legislation cannot be stronger than our Constitution.

The Fourth Panel of the Superior Court of Justice in Brazil decided in a Special Appeal judgment that there was no extinction of the figure of judicial separation and that it remains an option for spouses who remain in doubt about the dissolution of the marriage. Thus, separation continues in our legal system as one of the alternatives to couples, with this option and also that of divorce.

In this way, it is understood that the institute of judicial separation has not been revoked and remains an option for spouses who have uncertainty about the maintenance or disruption of the conjugal society. Thus, it becomes a way for the State to preserve the family, giving the parties freedom of choice regardless of the intention to resume the marriage or convert the separation into a divorce.

4.2. The problem of access to Justice in Brazil

In Brazil, access to justice is guaranteed by the Federal Constitution of 1988, in the chapter of fundamental rights and guarantees, which is only the beginning of an egalitarian democratic regime for the Brazilian population, but it is known that there is a long way to go.

Fernanda Tartuce (2015) points out that the assumption of the idea of justice for the Law is the existence of a social consensus on the fundamental ideas of justice, such as, for example, respect and protection of human life and the dignity of man, the prohibition the transformation of man into an object, the right to free personality formation and the protection of free will and equal treatment are the basis for access to justice and its realization.

It is important to warn that the interpretation of access to justice should not be restricted to simple entry into the Judiciary. It must harbour its broad view, that is, that justice can be performed in a way that includes the parties, similarly, taking into account the principles of equality, due process, among others, producing equally fair results.

In this sense, an important consideration made by Aldenucci (2012):

In this guideline, the ideal response in mediation is not just to solve the problem, but to help transform individuals committed to moral growth.

The value prioritized by this conception is transformation and deals with the issue of individual satisfaction and collective well-being as fundamental.

Some obstacles surround judicial procedures in Brazil, which hinder access to the distribution

of justice, such as excessive formality, slowness, high costs, difficult access, and even more, inserted in the context brought here, often unequal and which it does not serve real social interests, they end up not providing access to justice in its ideal terms (TARTUCE, 2015).

The Brazilian Judiciary Power has been facing numerous crises that are prolonged over time, mainly due to bureaucracy in responding to citizen demands. Added to this is the growing political awareness of society, which, today, seeks much more its legitimate rights, which ends up making the number of demands brought to the resolution of the Judiciary in a dizzying way. As a consequence of contemporary reality, there is a natural increase in demands brought to the Judiciary. According to the survey carried out by the National Council of Justice, called Justice in Numbers, which gathered data related to the year 2016, Family Law issues (family and food), in Brazil, characterize the 6th (sixth) place in the ranking, totalling 836,634 (eight hundred and thirty-six thousand, six hundred and thirty-four) demands in 2016, corresponding to 1.97% (one point ninety-seven percent) of the actions filed in the country.

This figure is alarming and, despite all the efforts made by magistrates to appreciate the demands, it demonstrates that society is still very much linked to the culture of litigation, which is stuck in the traditional method of settling conflicts based on adversarial logic, in that the parts are little heard, in which there is only one winner. The State has understood that the paradigm of this excessive search for the Judiciary, as the only instance capable of resolving conflicts, must change, therefore, it has been assuming a movement to build a new culture of the consensual resolution, through a legal stimulus to consensually.

The judicial decision is sometimes not able to reach the real interests of the parties, only limited to legal subsumption. Therefore, it remains unsatisfactory, hampering its compliance and, still, producing more impasses. In this context, it is emphasized the importance of means of conflict composition, especially mediation, which is based on the concept of collaboration, by reducing the distance between the parties and listening to what they have to bring to the resolution of

the dispute. the problem, and therefore presents a new paradigm.

Thus, in adopting this method, there is no win-win, but win-win. With the democratic construction of an agreement, everyone can end the conflict with their needs met, it is enough that, for that, they commit themselves to the purpose of the technique. Add to this the visible possibility of success in complying with these agreements, after all the parties themselves built them, so they are prepared to comply with them.

This new paradigm goes against the culture of litigation, extolling conduct of cooperation, and not a competition between the parties involved in a dispute. The important thing is to develop a dialogue in which there is not a single truth, but that contemplates several possibilities (SALES; VASCONCELOS, 2006)

According to Fernanda Tartuce (2015), however, one should not attribute to this mechanism and to the others of conflict composition the understanding that these are the only and definitive answer to the solution of the worrying problem of access to justice, since it is a complement to the conflict approach, with the search for a solution composed of multiple changes.

Therefore, the very manifestation of the will of the parties that culminate in an agreement, in a mediation, consists of true justice. The Judiciary and other means of conflict resolution must go hand in hand to assist society in solving its problems.

4.3. Introduction of family Mediation in the Civil Process Code

The new Brazilian Civil Procedure Code, which came into force in March 2016, shows notorious attention to self-composition means. This time, it is possible to perceive the legislator's concern in stimulating the use of consensual methods, which can occur at any stage of the process, whenever the parties are interested.

Right in the first articles of the aforementioned diploma, it is possible to verify such provision expressed in Article 3 Civil Procedure Code that “the proposal of the new Civil Procedure Code is not to make mediation or conciliation mandatory but to encourage it. And such an incentive

must be the task of all Law operators, even when the lawsuit has already been filed” (Spengler 2017).

Indeed, important innovations have occurred in the legal context of family actions in the face of significant procedural changes that bring mediation into various devices.

The current legislation establishes that the sessions take place preferably in the judicial centres created by the courts, with the participation of mediators and conciliators.

Alert Tartuce (2016,) "especially when the judge is the protagonist of the attempt to reach a consensual approach, the situation may become even more dangerous due to the authority he holds". The author also points out that the judge's role as mediator or conciliator will interfere in his decision, in cases where the agreement is not reached and the dispute is submitted to the jurisdiction, following the contentious logic.

Since the content of the mediation, the proposals, the revelations cannot be used as arguments in the judicial sphere. Thus, as the magistrate is the mediator, it is impossible to ensure its neutrality.

The parties may choose, by mutual agreement, the conciliator, the mediator, or the private chamber for conciliation and mediation, as provided for in article 168, Paragraph 3 of the referred article provides mediator or conciliator. In this way, through interdisciplinarity, professionals with different knowledge will act to guide the mediators.

In this way, it is intended to offer an informal and appropriate environment, where the mediators feel free to express their anxieties, away from the pre-defined rites and the decision imposed by the judge (SPENGLER, 2017).

The Mediation Law in article 3 establishes that the conflict that deals with available rights or with unavailable rights that admit a transaction can be mediated. Procedural law indicates that this is an appropriate compositional method to resolve family disagreements.

Thus, Chapter X of the Mediation Law does not review the treatment given to family actions,

as well as the incentive to a consensual solution, as observed in article 694:

Article 694: In family actions, every effort will be made to reach a consensual solution to the dispute, and the judge must have the assistance of professionals from other areas of knowledge for mediation and conciliation.

Single paragraph: At the request of the parties, the judge may order the suspension of the case while the litigants undergo extrajudicial mediation or multidisciplinary assistance.

These actions take care of continued relationships, which involve too much effective load, thus, mediation seeks to transform the conflictive posture into the participative posture, in which those involved are not adversaries, which means that there is no winner x loser, since, the win-win system is adopted (SPENGLER, 2017).

Following law 13.140, Law of Mediation, and following the same wording of National Council of Justice (CNJ) Resolution 125, the Civil Procedure Code establishes in article 166 that conciliation and mediation are guided by the principles of independence, impartiality, the autonomy of will, confidentiality, orality, informality, and informed decision.

These principles contribute to the smooth running of the procedure and consolidation of the results produced by the parties based on their feelings and interests.

As regards the divorce procedure, Parizatto (2016) teaches that the lawsuit is filed, it is up to the judge to analyse the granting of provisional guardianship and designate the conciliation or mediation session. The summons warrant will be in the person of the defendant and should contain only the essential information for the meeting, without a copy of the initial petition.

Also, it is necessary to observe 15 days in advance of the established date. In family actions, the citation deals only with attendance at the session (Code of Civil Procedure, article 695).

For Spengler (2017): “Mediation in Brazil is voluntary, that is, the conflicting ones have the

autonomy to accept or reject it”, therefore, it is impossible to predict any type of penalty for those who do not wish to participate.

However, the procedural rule stipulates that mediation will not take place if both parties have expressly refused, so the plaintiff is required to make a statement in the initial petition and the requested party must present its refusal in the petition within 10 days before the session.

The unjustified failure of the plaintiff or defendant to attend the conciliation hearing, on the other hand, is considered an act that violates the dignity of justice.

Furthermore, the author reflects that measures that encourage the imposition of mediation may generate effects different from those desired, such as:

- a) ill will and lack of cooperation, wasting precious time that could be invested in another conflict;
- b) mediation becomes a procedural stage (such as the old conciliation hearing provided for in the Civil Procedure Code 1973 in which the citizen participated only to comply with what was legally determined;
- c) if by chance it results in an agreement, the chance of non-compliance is greater since it is common knowledge that the more imposed the decision/solution, the greater the chances of non-compliance;
- d) the abandonment of the basic principles of mediation (SPENGLER, 2017).

Once the session is appointed, the parties must appear accompanied by lawyers or public defenders. In contrast, it occurs in extrajudicial mediation when one of the parties appears unaccompanied by a prosecutor, the mediator must suspend the procedure, due to the imbalance between the parties and advise the unassisted mediator to seek the Public Defender's Office or appoint a lawyer (PARIZATTO, 2016).

In this logic, if no agreement is reached between the parties, the rules of the common procedure will be adopted (Civil Procedure Code, article 697). Thus, the contestation period will start

from the date of the conciliation or mediation hearing, or the last conciliation session, when any party does not appear or, appearing, there is no self-composition (Civil Procedure Code, article 335, I).

Given the complexity of family relationships, a praiseworthy possibility is established in Article 696 that allows the fractionation of the mediation and conciliation audience, in so many that are necessary for the construction of a consensual response, without prejudice to jurisdictional measures to avoid the perishing of the law.

Satisfactory mediation occurs through the re-establishment of dialogue between the parties, even if consensus is not reached at first.

However, when agreements are drawn up, these will be reduced to term, once approved by the judge, they will gain the force of an extrajudicial enforcement order (Civil Procedure Code, article. 784, IV).

The Civil Procedure Code determines that the procedural acts are public, except those that are being processed in secret, as they deal with family matters (Civil Procedure Code, article. 189, II).

In these cases, the Public Ministry will intervene before the approval of the agreement, if there is a minor or incapacitated interest (Civil Procedure Code, article. 698).

In this sense, ponderous reflection Spengler (2017):

a) The Judiciary remains the protagonist and controller of the agreements made in mediation sessions, saying the last word, when they involve non-negotiable rights and has, for that, the supervision of the Public Ministry. This fact does not contribute to the decrease in the volume of lawsuits and does not assist in decongesting the judicial structure since, in the form of an agreement, the conflict goes to the Judiciary to be ratified.

On the other hand, it is understood the prudence of the homologation determined therein especially due to the type of conflict and rights discussed therein as well as the possibility of

participation of the disabled. Evident caution with the principle of the best interest of the child and adolescent is found in Article 699, which provides that when the process involves a discussion of a fact related to abuse or parental alienation, the judge when taking the testimony of the incapacitated person, must be accompanied by a specialist.

The judicial process may be suspended while the litigants undergo extrajudicial mediation or multidisciplinary assistance (Civil Procedure Code, article 694, sole paragraph).

Such a measure is necessary, considering that the progress of the process or the decision handed down by the judge may go against the negotiation under development in the alternative treatment. Parizatto orientates (2016): in this case, it is up to the parties to petition the judge, requesting the suspension of the process for a certain period, which may be extended, being necessary, upon a new request, to enable both an extrajudicial mediation to resolve the pending issues between the divorcing couple or even to enable multidisciplinary care.

Such a species denotes a group of specialists, working as a team, in search of a common objective, in this case, to assist the parties in conflict, and may refer to the evidence in psychological care. Given the above, it is observed that the current civil procedural diploma is concerned with bringing the Judiciary closer to the citizen, making the process more humane. Also, mediation and conciliation are considered innovative practices in the legal system with great potential for social transformation and dissemination of the culture of peace.

In this tuning fork, the benefits of the mediated procedure are immeasurable, as they pervade the financial sphere, affecting not only the parties but also all the members of the family arrangement, the judiciary, and society.

4.4. Parentality Workshops: pioneering help in family conflicts

The parenting workshop was inspired by techniques used in other countries such as Canada and the United States, to bring together, in monthly or fortnightly meetings, families involved in marital breakup lawsuits, disputes over child custody and payment of child support, among

other disputes, to help parents and children (adolescents and children) to deal, more peacefully and positively, with the consequences of divorce, including avoiding parental alienation.

The project was brought to Brazil by Judge Vanessa Aufiero da Rocha, at the time coordinator of CEJUSC (Judicial Center for Conflict Resolution) in the city of São Vicente in the State of São Paulo, where it was implemented for the first time, with the support of a multidisciplinary team.

Due to the positive result, the project took shape and started to be taken over by the National Council of Justice (CNJ), which adopted it as an institutional policy, according to Recommendation number 50 of 05/08/2014, and offers a distance course for officials and judges, so that they can train methodologically and adopt a more attentive and peaceful approach to problems possibly arising from a troubled litigious divorce. The idea, whose character is preventive and educational, has as main objective to lead parents and children to understand that the divorce is only of the parents and that the family bond is not broken with the end of the marriage.

On the contrary, the link between those people remains, in favour of raising children and good coexistence between all, that is, the end of the marital relationship should not be treated as a dispute or revenge, but as a new phase in the couple's life, a continuation, since everyone will remain a family, only with different training and daily dynamics.

The importance of the project is demonstrated from the perception that the valorisation of dialogue and family ties is essential for the understanding that parents should prioritize the well-being of their children. Depending on how the end of a relationship is perceived, the consequences for the formation of children are unpredictable, as they can become introspective, or even withdrawn and aggressive, for blaming themselves for the end of the parents' relationship or even suffering parental alienation.

Thus, parents must preserve the tranquillity of the home, just understanding the new family

dynamics and adjusting to the new configuration experience. The didactic material made available by the National Council of Justice (CNJ) consists of booklets, videos, and recorded statements, which are used during the workshops.

Through the dynamics carried out with the parties, it is intended to stimulate a reflection on the understanding of the conflict experienced and the importance of dialogue, as well as the search for a new movement, of pacification and family understanding. Due to the positive feedback, the parents and children workshop project was spreading throughout the state of São Paulo and, later, throughout Brazil. Currently, it is held in several Courts around the country. Since the implementation of the meetings, they are held every two weeks in the Forums of each city, and in front of the meetings is a team formed by psychologists, pedagogues, social workers, and legal professionals.

The workshops are divided between parents (men and women), adolescents and children so that the approach is made more appropriate to each of the perceptions experienced. As the initiative seeks to help parents establish a constructive relationship and transmit it to their children, it uses activities aimed at parents and other different ones for children, always allowing them to express their feelings and thoughts.

As children find it easier to express feelings through play, books are read, puppets and paintings are made with them.

For teenagers, music, conversations, and writing are used, and adults attend lectures, testimonies and read, since the model adopted has a more preventive and educational bias, since it is aimed at clarifying the causes and consequences of unnecessary inclusion of the child in the conflict, such as parental alienation (CNJ, 2017).

The main intention is to transmit to parents the appropriate communication techniques in the family, to provide teachings about the consequences of conflicts for their children, information about what is parental alienation, custody, visits, and food, as well as the understanding that

the relationship may have. come to an end, but that the parenting relationship with the children will always remain.

As for children, the workshop seeks to clarify the most common feelings experienced by children and adolescents, such as the consequences of the end of their parents' relationship, when the father or mother asks excessive questions at the end of each visit when used as a messenger between parents, and especially when they feel guilty for continuing to like the parent who left home.

They also feel guilty for not taking sides with their parents, who often demand this attitude, and, finally, for not seeing their parents' discussions, among others. As the family demands are numerous, the project prioritizes attending the processes sent by the family judges who understand the most litigious conflicts, being this summons based on the constitutional principles of the best interest of the child and human dignity.

The parties thus, who become aware of the project and want to participate, may request, on the very branch in which the process is going, to send the process to CEJUSC, for inclusion in the workshop meeting. The valorisation of the preventive and educational character of the conflict is part of a public policy for the transformation of a conflictive and violent society, through the valorisation of the family. Instruments such as the workshop have great potential to guarantee citizens a stable home for their full and healthy development.

In this context, the public policy of prevention and resolution of family conflicts, instituted by the National Council of Justice through Parenting Workshops, is extremely important, as the themes dealt with in these matters imply essential guidelines and alerts for parents in the process of the rupture. Also, the project provides children with a reliable environment to expose their natural anxieties arising from the separation of parents and gives these strategies to better cope with this phase. (SILVA, 2015).

About the judicial process, there are several benefits, as the lawsuits tend to drag on for many

years without trial, thus, many people are dissatisfied, lose hope, not to mention that a simple divorce can give rise to other actions, such as alimony, among others.

The situation lasts over time and, many times, when delivering a sentence and applying the law, the judge fails to achieve what the parties want. On the contrary, when there is a possibility of openness for dialogue between the parties, they open up to other possibilities, think about the future and test the reality that they will live, listen to and empathize with each other, which greatly facilitates the construction of an agreement in the seat of the conciliation hearing.

Faced with the trend of judicialization currently experienced in Brazil, people tend to hand over to the Judiciary the competence to solve their problems, troubles, and hurts. Through the parenting workshop, it is possible to understand that they can, when putting themselves in the other's place, take the first step in the journey towards resolving their conflicts, through dialogue and communication, concretizing access to justice in its most genuine form.

CHAPTER 5 – Discussions

The dissertation presented sought to present the importance of changes in the realization of the divorce after the use of mediation as an alternative to the solution of family conflicts.

It is known that the rupture in the family relationship causes suffering in everyone involved in the dispute and the possibilities of using conflict mediation to a great extent, to assist in the dialogue in troubled divorces and the application of the use of mediation has brought an improvement in the dialogue in the family nucleus in the process of divorce.

As advocated by the Modern Theory of Conflict, one of the reasons that led to the growth of conflict resolution in family law, may be the time spent to resolve it (AZEVEDO, 2015), because as is known, a conflict when dealt with in a As soon as it is perceived, it can be resolved before the parties mark their positions and set out for a litigious divorce.

In addition, it should be noted that judicial decisions, imposed by a judge of law can also aggravate a conflict situation, since the parties may be compelled to comply with determinations that do not assess their economic and emotional capacity, which can be reason for the emergence of a new litigious conflict.

As such, it is well known that mediation as a self-composition method of conflict fulfils its role by allowing as its own parties how to resolve the conflict over time and according to their best understanding (DIAS, 2011).

Regarding the time allocated to the mediation process, it is clear that mediation is a process geared to the interests of the parties and, as such, flexible to adapt to the characteristics of the parties involved. In this sense, the variation of time can vary according to the performance of each couple, during a media session, since you must remember that the conflicts arising from the divorce derive from family relationships, either or from continued relationships, and your repercussion is not limited to the discussion of legal aspects, but it is also necessary to discuss emotional, affective, psychological and relational aspects arising from the constancy of the

relationship or during mediation in (PRUDENTE, 2008).

In this sense, Azevedo (2015) states that “a conflict has a much broader scope than simply the legal issues on which the parties are discussing in judges”.

The importance of discussing subjective issues arising from family relationships at the time of mediation of a divorce conflict was demonstrated. For this reason, mediation, as it facilitates and promotes dialogue between those involved, presents itself as an appropriate method for solving these conflicts that will contribute to reducing the strain on family relationships (PRUDENTE, 2008).

The conflict, according to Fernanda Tartuce (2015), is defined as a crisis in human interaction, it is inherent to the human person, because each individual has its particularity, lives in its context and its reality.

Conflicts can be simple or complex, depending on the context. To resolve or manage it, it is necessary to understand its main causes (Jeong, 2010).

Conflict, in itself, is not something negative, but rather constructive, but, many times, managed in a wrong way, carries a negative connotation. Well managed, it can promote satisfaction and improve the quality of life of those involved. (SALES, 2007).

Thus, it is certain that human relations are subject to conflicts, and it is necessary, in the face of the circumstances of each conflict, that the parties can choose a method that can effectively guarantee the solution of the conflict and bring them confidence and efficiency.

5.1. Conclusion

This dissertation had as objective to demonstrate the importance of the use in the mediation in the divorce processes and the difference of the application of the method in parents governed by the Civil Law system. The family, divorce and media concept were explained, the elements

and evolution were explained previously family history, of divorce in society, as well as how mediation started to be inserted in family law the benefits brought by the procedure, considering that families, when inserted in a conflict, the parties in their majority they assume a stiffening position, competition, frustration and anger, among other negative factors, precisely because they do not know how to deal with the instabilities that daily changes cause in their lives.

It was shown that family mediation is important in that, a divorce is carried out by an alternative method, in a consensual way and through dialogue, it offers the parties involved the possibility to observe the conflict in a more positive, cooperative way and with a view to future, bringing the opportunity to build an agreement that is satisfactory to all parties affected by the conflict. It has been shown that mediation is the most applicable method to family law because it is a procedure that aims to recover the dialogue between the parties that usually have previous ties or relationships because the focus is not only on resolving the controversial, but also the restoration of relationships damaged by the marriage breakdown.

It was also shown that in countries governed by the civil law system, especially Brazil., Although the legislator has established the figure of mediation through the Civil Procedure Code / 2015 and Law number 13.140 / 15 (Law of Mediation), it is it is possible to verify the attempt to change the culture of litigation rooted in society, which understands that the “win-lose” rule is efficient and that all disagreements must be transformed into legal processes in order to be concretely resolved, still has a long way to go, even though the implementation of parenting workshops has already achieved positive returns throughout Brazil.,

Finally, a field survey was carried out to assist in the analysis and data collection in order to demonstrate the importance of mediation in divorce proceedings, and it was concluded that mediation is the process acceptable by the majority of the current society for the solution of a conflict involving a divorce.

5.2. Reflections

Doing this dissertation was a challenge in every way. Dealing with a different legal system than what you are used to requires patience, concentration and a lot of research. It took a long time because understanding the application of the law is very difficult. Although the topic is easily accessible, the fact that it had had little previous contact with an area before, made it difficult to begin its explanation, but little by little, research began to clarify the information and arguments of this dissertation.

Another factor that influenced the realization of this dissertation was the difference of legal systems Civil Law and Common Law. In Ireland, the legal system the legal system and the common law, a totally different system from the one I studied in my country of origin, which adopts Civil Law. Even though Family Law is a very studied area, its changes are constant, as the family follows the evolution of society, making the laws and the ways of solving conflicts always in search of improvement.

Being able to study a law application in a different way was really enriching both as a professional and personal experience. As an international student, having contact with different laws, practices and culture is a cause for great satisfaction.

Finally, although it was a very long and laborious process that required leaving aside the way in which I saw the application of family law to learn and understand in a new way, it was a great learning and growth experience.

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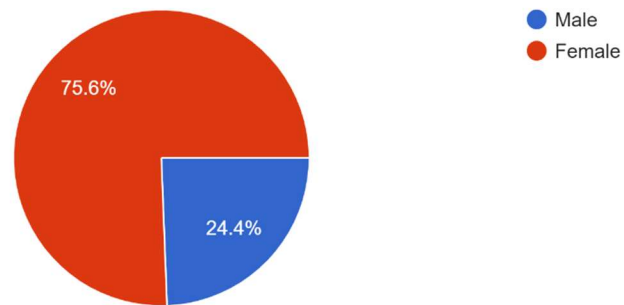
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Appendix

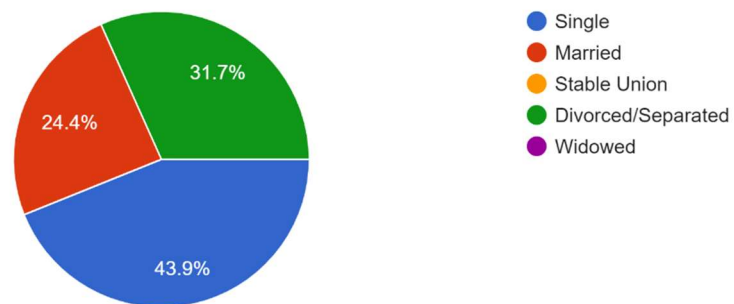
Gender

41 responses



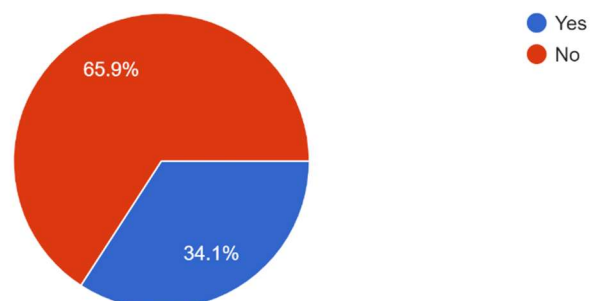
Civil status

41 responses

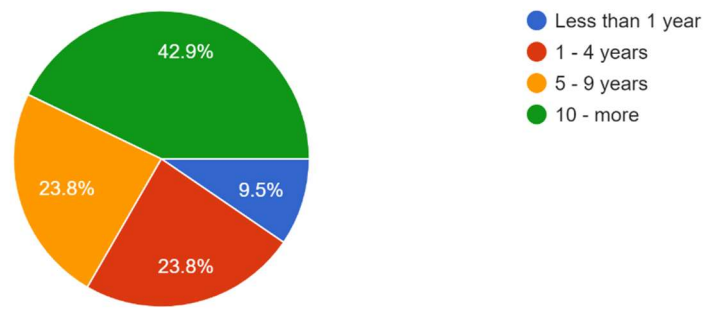


Do you have children?

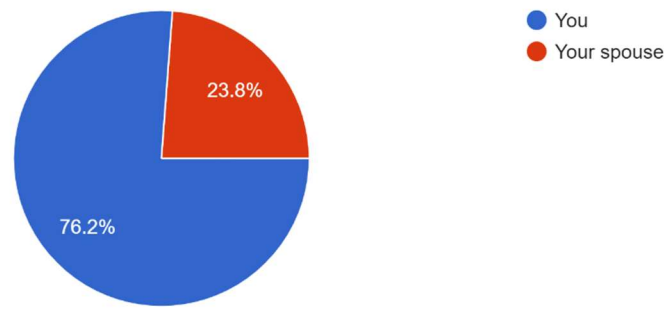
41 responses



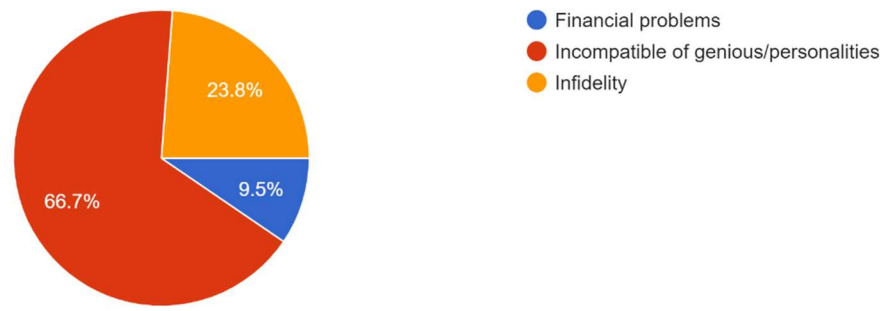
If you had divorce, how long did you stay married?
21 responses



Who requested the divorce?
21 responses

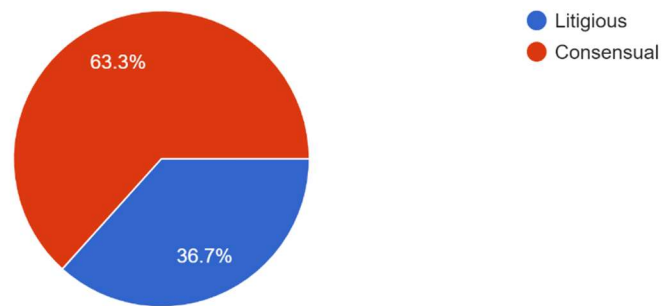


What was the motivation?
21 responses



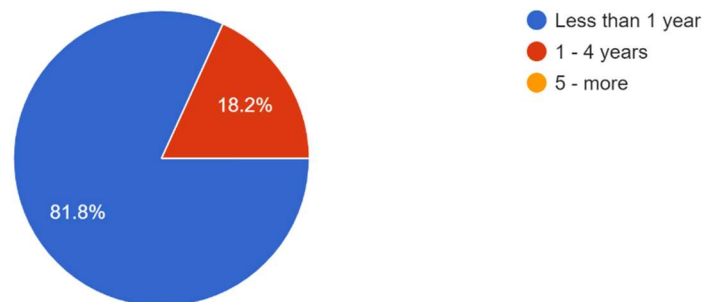
How would you define couple's understanding about a divorce?

30 responses



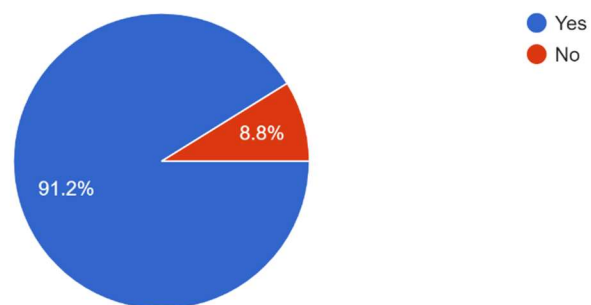
How long do you think a divorce procedure can take after a court?

33 responses



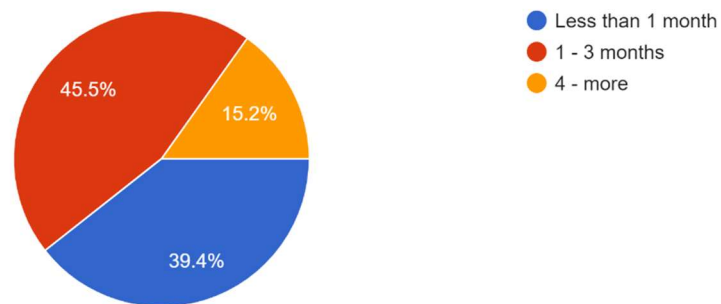
Do you think it is possible for a divorce to be solved by a mediation?

34 responses



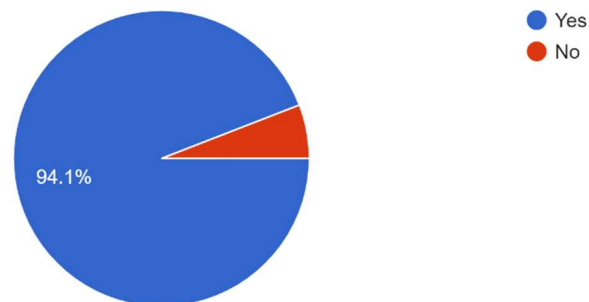
How long do you think that a mediation can take in a divorce procedure?

33 responses



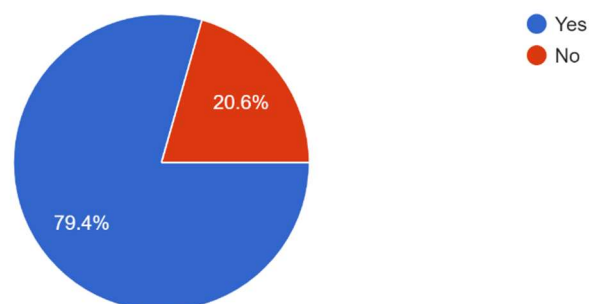
Do you think that a mediation could be more affordable in a divorce procedure?

34 responses



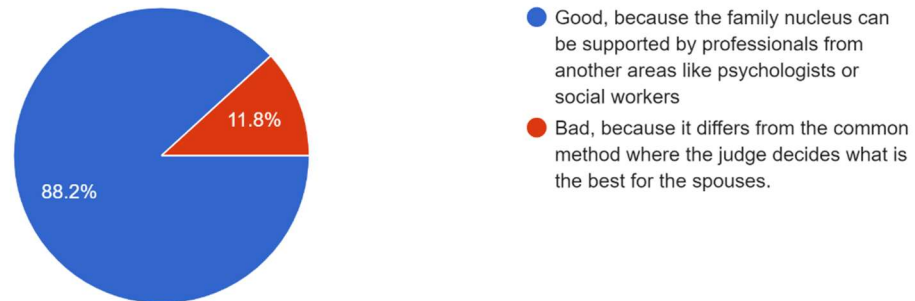
Do you think that an alternative divorce could help in the relationship of spouses after the mediation?

34 responses



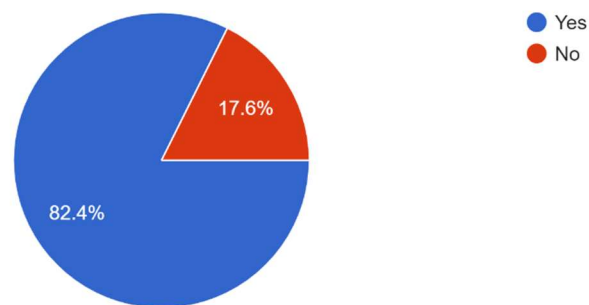
How do you evaluate the possibility of divorce mediation being carried by professionals out of the legal area?

34 responses



Do you think that a divorce mediation terms have legal validity?

34 responses



Do you think that a private family mediate have more advantages compared to the procedural divorce?

34 responses

