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Dissertation Submission

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COURSE	MA. in Dispute Resolution
DISSERTATION TOPIC	Mediation as an alternative dispute resolution in regard to the custody of a child: An analysis of perspectives in Ireland
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WORD COUNT	15,095
DUE DATE	30/08/2019

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Acknowledgements

First of all, I would like to thank my parents who have been there to support and encourage me to research this increasing common issue.

I extend my thanks to those people that engaged with me to provide information to develop this research and for those who encouraged me to stay focused on this study.

Thank you so much to Anthony O'Riordan for his support, love and encouragement while writing this dissertation

Abstract

The present study deals with the process that an Irish person has to pass through in a dispute over the custody of a child. The aim of this research is to review how the legal system works in Ireland and analyse under what circumstances the law is applied in specific terms for a mother or a father. To achieve this goal, objectives had been set out to study the legal framework in Ireland in which a mother or father has to comply with to have access to the child. Examine the rights, obligations and responsibilities of the parents in respect to a child, study deeply the procedure of child abduction and analyse how mediation can help a couple after child abduction as an alternative of going to Court. This research locates the scope of dispute over the custody of a child within the context of the existing legislation and the gaps in it.

This study is interpretivism and mixed methods are used to gather information from different sources and explore the associated phenomenon by collecting data.

Keywords: Legal requirements, Legislative Framework in Ireland, Legal System, Mediation, Child abduction.

1. INTRODUCTION

Family conflict can occur when family members have different points of view or contrasting beliefs. Sometimes problems occur when people misunderstand each other and this leads people to choose the wrong conclusion. Issues of conflict that are not resolved peacefully can lead to serious conflict and resentment.

It is normal to disagree with another person and more common to disagree with a family member from time to time. Occasional conflict is part of family life. However, conflict can destroy relationships and results in a lot of stress. Some people find it difficult to manage their feelings and emotions and become intentionally hurtful, aggressive or even violent. When people communicate with each other in a positive way it can help to reduce such issues so both parties can reach a resolution without the conflict escalating further. This usually means that all parties will either agree to a compromise or agrees to disagree. Sometimes, strong emotions or the power imbalances which can be present in relationships are difficult to resolve and can only be addressed with a counselling situation.

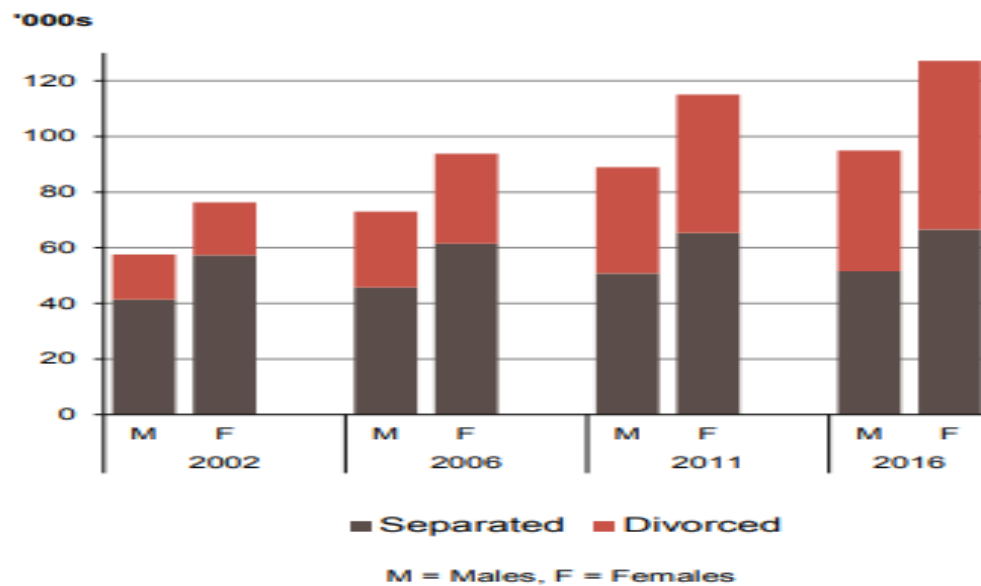
Parents are the most important people to a child that is why it is important for adults to think before expanding a family and take the correct decision regarding a child. The role of a parent is to protect, care and promote well-being. This chapter includes analyses of literature from a number of resources such as academic, articles, books, the Irish constitution and organisation's websites. The rapidly changing context of family law and its focus on children's rights makes it important to have relevant knowledge of the family law in Ireland.

How hard must it be for both parents going through a divorce or just splitting up? But it must be a lot harder when there are children involved. What happens if parents are from different countries and one

of them decides to take the kids with them to another country? It must be extremely difficult trying to reach an agreement regarding the best terms for the children, whether it is easy or not for the parents to accept the outcome of the negotiation. Children involved in this situation must be affected by this scenario, they are not mature enough to understand the changes in their life and the reasons why their lives are being disrupted and how to handle it. When a couple decides to split up, they face a process which in most cases is not easy. Sometimes parents are not well psychologically, which makes them vulnerable on many occasions, parents, by their own pain, avoid paying attention to the suffering of their children which causes stress, anxiety, sadness and anger depending on their age and personality, they transmit it in their behaviour. Fatma Esra Güzeloğlu (2016) wrote “Parents of different nationalities”: certain legal aspects to consider before expanding your family where she advises parents, in particular those with different nationalities, that they should consider certain legal aspects before and after they decide to expand their family in order to have a say on various important matters, avoiding any unpleasant surprises and protecting the best interests of their children.

According to CSO (2019), there were 21,053 marriages in 2018 including 664 same-sex marriages of which 372 were male unions and 292 were female unions. Datos macro (2019), In 2018, 60,973 children were born in Ireland. In 2018, 851 less children were born than in 2017, bringing the number of births down 1.37%. And according to CSO the number of divorced people in Ireland has increased from 87,770 in 2011 to 103,895 in 2016, In contrast, the number of people identified as separated has leveled off and stood at 118,178, up marginally from 116,194 five years earlier.

Figure 1. Separated and divorced by sex, 2002-2016



Source: https://www.cso.ie/en/media/csoie/releasespublications/documents/population/2017/Chapter_4_Households_and_families.pdf

The present research examines the implementation of legislation and divorce, and their implications for children's lives. This study is also in the sense that there is a growing awareness of children's rights of access to their parents after split up. All stakeholders should try to keep good terms and maintain positive relations with both parents except when a child is in danger or contrary to the child's best interests. It provides a basis of how these issues are being addressed in Family Law. The study assesses the international children's law related to abduction, the implications and legal procedures involved to resecure possession of the child. The research also included perspectives of both genders in Ireland related to Irish Law and mediation as an alternative dispute resolution to solve a conflict of a dispute of a child's custody according to their experience.

The dissertation consists of seven chapters. Chapter one, Introduction, introduces the topic of the research and outlines all the following chapters in the study. Chapter two, Aims and Objectives, shows the aims of the study and the objectives that this research hopes to meet. Research questions are the guide to the researcher to get an answer for her investigations, a hypothesis proposed to contribute to the research. Chapter three, Literature Review, introduces the review of the legal framework in Ireland and International Law to address a dispute relating to the custody of a child, rights over a child for both parents, child abduction and mediation as an alternative dispute resolution. Chapter four, presents and justifies the Methodology and Methods that will be used to develop the investigations, it shows the techniques used to gather information and analyse it. Chapter five presents the methods used to collect data and justifies why it is important to the study.. Chapter six shows data collected through interviews with people that were facing similar issues, a questionnaire survey was used to get information about their perceptions according to their experience. Chapter seven presents a discussion regarding all the data collected during the previous chapters. Conclusion and recommendations provides concluding thoughts that were drawn from the study, supported by all the previous chapters and by the argumentations. Reflection is included as part of my experience as a researcher doing this dissertation.

There were some limitations in the development of the research such as limited time to carry out the research and a lack of more in-depth interviews which would have helped gather more information, however, the people involved in the data collection were engaged to help as much as they could to develop this study.

2. AIMS AND OBJECTIVES

The research may begin with a general focus research question that then generates more detailed research questions, or you may use your general focus research question as a base from which you write a set of research objectives (Saunders pl at 2009, p.34).

2.1 Aims

The main aim of this research is to assess the Irish Law in regard to the rights over a child and the analysis procedures within the current legal framework for solving disputes over the custody of a child.

2.2 Objectives

The objectives set out in this dissertation are listed below:

1. - Review the legal framework relating to the rights of both parents over a child if they split up
2. - Explain mediation as an alternative dispute resolution in regard of the custody of a child
3. - Examine the implementation of legislation if a parent takes a child to another country without authorization of the other parent.

2.3 Research questions

It is convenient to study the state of the issues through research questions. According to Kumar (2011) research is one of the ways to find answers to your questions while Saunders pl at (2009) says it is often a useful starting point in the writing of research questions to begin with one general focus research question that flows from your research idea. This may lead to several more detailed questions or the definition of research objectives.

The research questions for this study follow:

1. What is the legal framework in Ireland in regard to a child if a couple split up?
2. How Mediation works as an alternative dispute resolution to solve a conflict in regard of a child's custody?
3. What is the procedure to follow and the implications in a situation where one partner takes a child to another country without permission from the other partner?

2.4 Hypothesis

Kumar (2011) defines a hypothesis as a statement of assumptions about the prevalence of a phenomenon or about a relationship between two variables that you plan to test within the framework of the study. This research will use is a Qualitative study to make emphasis on exploring the phenomenon going further to understand what is causing it through data collection. Kumar (2011) mentions that construction of hypotheses is neither advocated nor practised.

The hypothesis formulated for this study is:

Disputes over the custody of a child are increasing, this mainly affects the children involved and as a result one of the parents involved in the dispute has to accept the best outcome for the child, which most of the time, means less benefits for one or both parents. This dissertation seeks to verify whether or not Irish Law has procedures in place to solve conflicts relating to a child's custody and if it is totally impartial for both parties. In particular, this study intends to analyse mediation as an alternative dispute resolution to solve conflicts and maintain good relationships.

3. LITERATURE REVIEW

Hart (2018) establishes the literature review has a role and purpose that provide evidence for the rationale and research problem, supplies a methodological frames of reference and guide selection of data collection methods. This chapter revises a range of information on Family Law to develop and contribute to an awareness of the current state of knowledge and understanding of the matter is being investigated. Hart (1998) the purposes of the review are to gaining a new perspective and identifying relationships between ideas and practice.

The main aim of the literature review is define and explain different themes related to the research topic. Each theme has an objective, explain and inform important subjects in regard to legal aspects to be considered in case a couple is thinking of expanding their family. Lately has been distinguished that custody has not a static figure so the research focuses on studying the status of children's custody after parents split up and analyse the legal framework related to each party. The study considers the international abduction consequences and the alternative dispute resolution to mediate issues in regard to the research. Hence, it becomes an important legal frame to address and the importance of solving a family dispute mainly when children are involved.

3.1 Registering birth

Citizens Information (2019) refers that registration of a child is a legal requirement in Ireland which has to be done within three months after his/her birth. It is important because you will need a birth certificate to enroll your child in school, to apply for a passport and for many other purposes.

Citizens Information (2019) establishes that children of parents who are married to each other are presumed in law to be the child of their mother's husband. Irish Statute Book (2015), Section 88 of the Children and Family Relationships Act 2015 amended the Status of Children Act 1987 so that the presumption that a woman's husband is the father of the child no longer applies if the child is born more than 10 months after they separated unless is proved.

Department of Employment Affairs and Social Protection (2017), mentions if the parents are in a recognized marriage only one parent need attend, however, if both wish to sign the register they should both attend. If the parents were married in another country, they should bring the original marriage certificate and a translation if required.

Where the parents do not register the birth, or it is not possible for them to do it, the following individuals can also act as qualified informants: A designated member of the staff of the hospital (or other institution, organisation or enterprise) where the birth took place, any person present at the birth, any person present in the dwelling where the birth occurred, any person who has charge of the child, a person appointed guardian of the child or a person found to be the parent of the child by order of the courts

If unmarried fathers, you need to think If the father's name will be on the child's birth certificate. Citizens Information (2019) establishes if the parents of a child are not married to each other, there is no presumption in laws as to who is the father of the child, unless the father's name is on the birth certificate while Irish Book Statute (2004) declares in the Civil Registrations Act 2004, Section 22, (1) The father of a child who was not married to the mother of the child at the date of his or her birth or at any time during the period of 10 months before such birth shall not be required to give information under this Act about the birth but if the mother decides to enter in the register the name of

a person as the father of a child on Section 22, (subject 2) subsection (1) applies: a) if the mother of the child (“the mother”) and the person jointly so request the registrar in writing and give to him or her a declaration in writing of the person that he is the father of the child. However, Civil Registration (Amendment) Act 2014 the commencement of this Act will place a duty on unmarried parents to register the father’s name on the birth certificate of his child. Following the commencement of this new legislation, if a mother attends without the father to register her child’s birth the Registrar will register the birth without a surname for the child and without the father’s details. The mother will be asked for the contact details of the father and the Registrar will then make ‘all reasonable efforts’ to contact the father and invite him to attend the Registrar’s Office within 28 days in order to complete the registration. Only in exceptional cases, where ‘compelling reasons’ are provided, will the father’s name be omitted.

Irish Statute Book (2014), Civil Registration (Amendment) Act 2014, Section 22 of Principal Act, 1D, establishes that a mother may furnish to a registrar a statutory declaration made by her and relied on by her to satisfy the registrar that one or more than one of the following compelling reasons exists so as to exempt her from her duty to furnish to the registrar required particulars in so far as they relate to the father of the child: (a) she does not know the identity of the father of the child; (b) she does not know the whereabouts of the father of the child; (c) she believes that providing the information is not in the best interests of the safety of the child and in that case the statutory declaration shall contain and, as necessary, exhibit information, particulars and evidence relating to that belief.

3.2 Parental Responsibility in regarding to a child

The introduction of parental responsibility¹ is a legal term used in jurisdictions which operates in a different manner under the Children Law. It has as concept to make decision in relation to a child in charge. Many unmarried fathers assume they have joint guardianship rights if their names are on their child's birth certificate. The legal framework in Ireland applies different rules for each party in regard to the rights over a child depending on the status of the issue, if the couple is married or unmarried, taking into consideration every part of the case, the law needs to seek for the best interest of the child.

3.2.1Guardianship

European Justice (2016) describes the legal term “parental responsibility” as “guardianship”, it refers to the possession of all rights and duties relating to a child which have been given under law or by the court, or by virtue of legal agreement. The holder of parental responsibility possesses rights of custody and access amongst others pertaining to the welfare of the child. Courts Service of Ireland (2017) describes guardianship as the rights and duties of parents in respect of the upbringing of their children. A guardian has the right to make all major decisions affecting the child's upbringing, including choice of school, medical treatment, religious matters, health requirements and decisions about leaving the country. Guardians are responsible for the welfare of the child. Welfare includes the moral, intellectual and physical wellbeing of the child and where there is property held on behalf of the child, it includes the proper administration of such property.

¹ Parental Responsibility is a key concept that was introduced by the Children (Guernsey and Alderney) Law 2008 ("the Law"). It broadly replaces the Guernsey and Alderney concept of 'custody': the parental rights and obligations involved in the raising of children.

3.2.2 Guardianship married parents

Courts Service Ireland (2017) establishes that the custody is the right of a parent to exercise physical care and control in respect of the upbringing of his or her child on a day-to-day basis. The married parents of a child are automatically joint guardians and custodians of their child.

Married parents of a child are joint guardians and have equal rights in relation to the child. The married mother and father of a child are the most common guardians and they are so entitled by virtue of section 6(1) of the Guardianship of Infants Act, 1964. However, for the father to have guardianship status, the parties must be married at the time of the birth of the child. Alternatively, he can acquire guardianship status if the parties marry after the birth of the child.

3.2.3 Guardianship unmarried parents

European Justice (2016) explains where parents are not married the mother is the general holder of parental responsibility but the natural father may be appointed as a guardian by agreement between the parents or by the court while Courts service Ireland (2017) refers that the natural mother of a child is automatically a guardian of the child. Whether the father of a child is an automatic guardian depends on his relationship with the mother.

Citizens information (2019) mentions that for children born outside of marriage, only the mother has automatic rights to guardianship. (Even though a father's name may be registered on the child's birth certificate, this does not give him any guardianship rights in respect of his child). But if the parents of a

child marry each other after the birth, then the father automatically becomes a joint guardian of the child (provided that the father's name is on the birth certificate). There is, therefore, no need to apply for guardianship rights nor is there any need for the father to adopt the child. Where the father is joint guardian and the mother subsequently marries another man or enters into a civil partnership, the father will remain the joint guardian of his child. If the mother and her husband wish to adopt the child, they must seek consent from the child's father. If the child's father consents to the adoption, then he gives up his right to guardianship of his child.

Courts Service Ireland (2017) mentions that a father who is not married to the mother of his child can become a guardian if: 1) If the mother agrees to the father becoming a guardian both parents must complete a statutory declaration in the presence of a Peace Commissioner or a Commissioner for Oaths or a Notary Public - (Guardianship of Children (Statutory Declaration) Regulations, 1998 (S.I. No. 5 of 1998). This declaration states the name of both parents, that they are unmarried and that they agree to the father being appointed as a joint guardian. They then become joint guardians of the child. The declaration also states that the parents have agreed arrangements regarding custody and access. Where there is more than one child, a separate declaration must be made for each child. The document is retained by the parties. It is not lodged with the court. 2) An unmarried father is automatically a guardian if he has lived with the child's mother for 12 consecutive months after 18th January 2016, including at least three months with the mother and child following the child's birth (Children and Family Relationships Act 2015). 3) If there is disagreement as to whether or not the father has been cohabitating for the required length of time, an application for the necessary declaration can be made to the court. 4) If the mother does not agree to the father becoming the child's guardian, then the father can apply to the court to be appointed as a joint guardian. This is possible, whether or not his name is on the child's birth certificate.

3.2.4 Guardianship after divorce or split up

European Justice (2016) explains where the parents of a child divorce or “split up”, custody and access arrangements can be decided by agreement by the parents. Where agreement cannot be reached, parents can apply to court where a judge can make custody or access orders. Where both parents are guardians of the child, this is not affected by divorce or splitting up, although the guardianship of a non-marital father may in highly exceptional circumstances and only where the welfare of the child requires it be terminated by the court.

Judicial Separation and Family Law Reform Act 1989, section 3, seeks to protect any dependent children. When a separating couple has dependent children, the Court can refuse to grant a legal separation unless it is satisfied that they have made provision for the welfare of their children. This comprises the religious, moral, intellectual, physical and social welfare of the children concerned. When granting a judicial separation, the Court can make orders for the custody and right of access to children under the Guardianship of Infants Act, 1964. The Court can also order maintenance payments to be made for the benefit of a dependent spouse and children.

3.3 Child abduction

What could happen with the rights of the children is the parents decide split up and a parent decides to take him/her to another country to live in? This is a serious situation that has to be addressed under the International and Domestic Law. Taking out a child of the habitual residence causes emotional distress to all parties involved. Law must seek for the best interests of the child. Fatma Esra Güzeloğlu (2016) says when parents, especially those of different nationalities decide to get separated or divorced, it is of

paramount importance that they consider the best interest of their children during the judicial process. Especially in cases where one of the parents' wishes to relocate the child to a state other than the one child was last habitually resident in. In such circumstances, the parent should, preferably, have the consent of the other parent concerning the relocation of the child. However if the parents cannot agree on the matter, it is crucial that they pay attention to the applicable rules on child's relocation. Otherwise, it is highly likely to encounter legal implications both in civil and criminal nature. For example, if the conditions are met, left-behind parent may file a Return Application for child's return to his/her habitual residence pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. Moreover, as undesirable as it may be, depending on the circumstances, the left-behind parent may file a criminal complaint against the parent who wrongfully relocates the child. This quarrel over the child would not only prolong and increase the level of complexity of the separation/divorce process but it may also cause severe negative effects on the child.

3.3.1 Definition of Child Abduction

Department of Justice and Equality in Ireland refers International Child Abduction is generally used to describe situations where one parent (the abducting parent) removes a child from the state where the child usually lives to another state without the consent of the child's other parent (left behind parent) or in breach of a court order.

Citizens information (2013) mentions that when a child is removed from the person who has the legal right to custody of the child without that person's consent it is called child abduction. When the child is taken out of the country or is kept in another country they are visiting it is called international child abduction.

3.3.2 International Responses to the problem

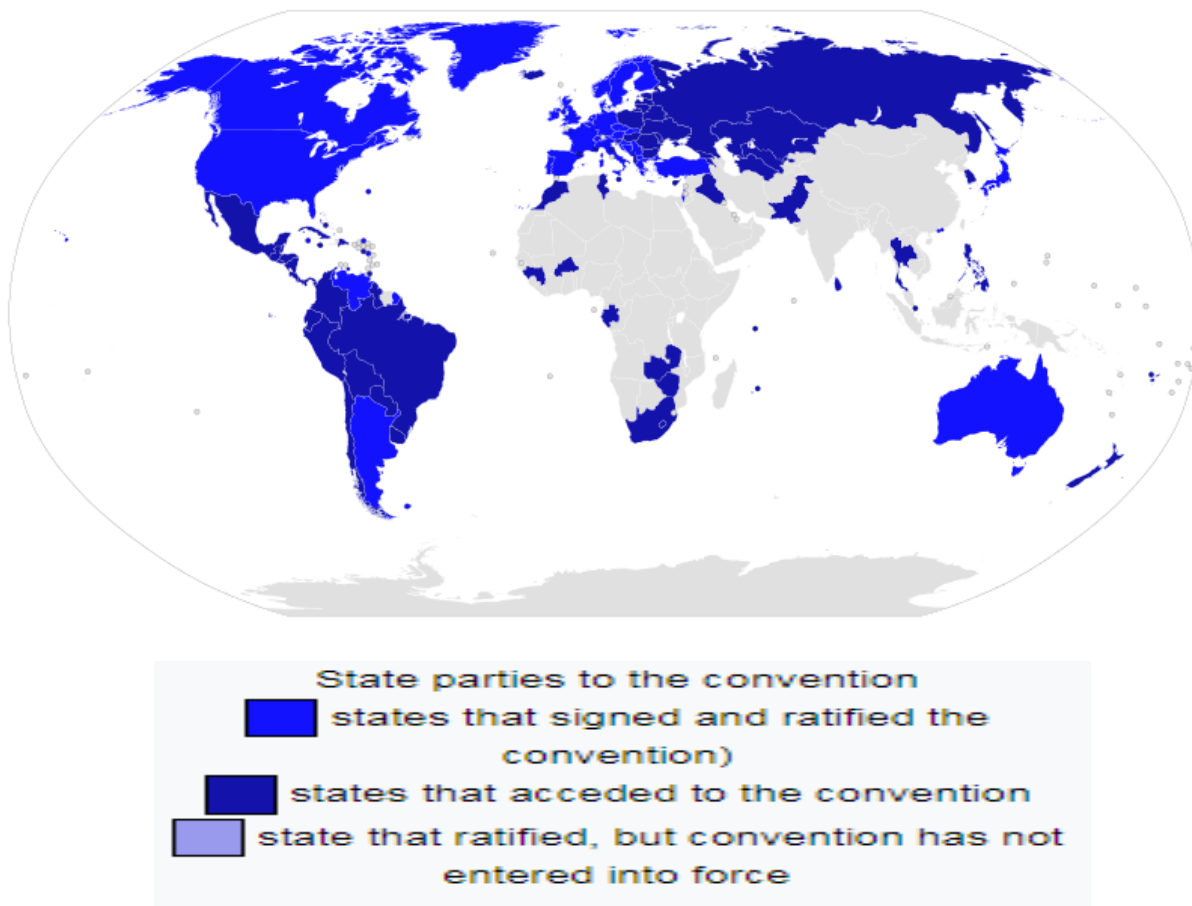
There are two main aspects to international child abduction as follows:

Citizens Information (2015) declares that International child abduction is a criminal offence in Ireland. A parent or anyone else who unlawfully abducts a child may be convicted of the offence. Also it concerns the question of arranging for the return of a child who has been abducted internationally is governed by international law. There are international Conventions and a European Union (EU) Regulation which set out the rules that apply. The EU Regulation applies to abduction from one EU member state to another. An international Convention applies to cases to which the EU Regulation does not apply. Also mentions that the abductor may be any person but frequently is one of the child's parents. For example, a child who is in the custody of his mother in Ireland and who is visited here by his father may be abducted from here and unlawfully removed by his father. A child who is in the custody of his father in Ireland may go to visit his mother in the USA and, if she keeps him there beyond the agreed visiting time, he has been abducted and is unlawfully retained by his mother. So, abduction may involve the wrongful removal or the wrongful retention of a child.

Shannon G (2011) mentions the rise in the number of abductions of children across international frontiers prompted the adoption of the United Nations Convention of the Rights of Child, Art 11, which requires Member states to take measures to combat child abduction. Arising from this commitment, two further Conventions were drawn up to address the issue, The Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children ('The Luxembourg Convention'), both of which were signed by the original contracting States in 1980 and brought into force in Ireland on 1 October 1991 with the enactment of the Child Abduction and

Enforcement of Custody Orders Act, 1991. The Protection of Children (Hague Convention) Act 2000 gives legal force to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children which applies in this area. There are 83 Members of this Convention⁴⁰⁰: 82 States, plus the European Union.

Figure 2 Convention on the Civil Aspects of International Child Abduction



Source:https://en.wikipedia.org/wiki/Hague_Convention_on_the_Civil_Aspects_of_International_Child_Abduction

The Non-Fatal Offences against the Person Act 1997 deals with the crime of international child abduction. Section 16 of the Act applies if you are a parent, guardian or a person to whom custody of

the child has been granted by a court. It does not apply to you if you are a parent who is not a guardian of the child. It applies if you unlawfully send or keep a child under the age of 16 out of the State or if you cause a child to be unlawfully taken, sent or kept. Unlawfully means in defiance of a court order or without the consent of the other parent or guardian. Section 17 applies to people who are not covered by Section 16 and who unlawfully detain a child or cause a child to be detained.

For a defendant² in proceedings under the Hague Convention, recourse may be had to the 'Defenses' provided by the Hague Convention, Arts 13 and 20. Article 13 provides that, notwithstanding the provisions of Art 12, the court is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that: a) the person, institution or other body having the care of the person of the child was not actually exercising custody rights at the time of removal or retention, or had consented to, or subsequently acquiesced in the removal or retention; or b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The main concern in international child abduction cases is the return of the child. The international conventions and the EU Regulation which govern the return of the child are all based on similar principles. They are that: The child should be returned to his/her habitual residence as soon as possible and the courts of the jurisdiction in which the child is habitually resident are the appropriate courts to decide what is in the best interests of the child. So, if there are any disputes about, for example, access, custody, maintenance, these disputes should be decided in the country where the child is habitually resident. There is a Central Authority in each country to facilitate the return of abducted children.

² Goeffrey Shannon, Family Law, 2008.

3.4 Mediation as an alternative dispute resolution

Mediation is a process in which an impartial third person assists those involved in conflict to communicate effectively with one another and reach their own agreed and informed decisions concerning some, or all, of the issues in dispute. (Whatling T, 2012, p19) while citizens information (2018) mentions mediation is a free service to help couples in Ireland who have decided to separate or divorce, or who have already separated, to negotiate their own terms of agreement, while addressing the needs and interests of all involved. Mediation allows people to make their own decisions. Mediation is not marriage counseling or a legal advice service. The Family Mediation Service encourages the separating couple to cooperate with each other in working out mutually acceptable arrangements on parenting the children.

The essential principles of mediation are: voluntary participation, mediator is neutral, impartial, the process is confidential (Whatling T, 2012, p,22-23). Citizens Information (2018) mentions the advantages of mediation include: The Family Mediation Service is a confidential service, each mediated agreement deals with the particular needs of the people involved, a balanced agreement is reached that is acceptable to both parties and parents are helped to remain as partners in childrearing by developing parenting plans that are personal to each family.

In Ireland, Mediation process works under Mediation Act, 2017 and determines if there is an outcome, section 11 Enforceability of mediation settlements, (2) a mediation settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.

3.4.1 Family Mediation

Legal Aid Board (2016) refers as Mediation is a process for resolving disputes where those in disputes meet with a third party who helps them to negotiate an agreed resolution. Family mediation is *a free service in Ireland* which it provide to help separating couples and parents whose relationship has broken down to negotiate their own agreement. The couple sits down together, facilitated and helped by a trained mediator, and negotiates their own terms of settlement. With mediation a couple will be helped to make their own decisions that suit their circumstances. If a couple decide to go to court it will be a judge who will ultimately make these decisions.

Mediation is not relationship counseling and it is not there to persuade couples to stay together. Couples do not need to have been married to benefit from mediation. It declares as benefit of mediation is a process that is committed to helping to reduce conflict to protect their children after the relationship has broken down. Family mediation is a child-focused service putting strong emphasis on the well-being of the child/children involved in separation and divorce. The mediator ensures that the "Voice of the Child" is brought into the mediation process. This is done directly or indirectly depending on the circumstances.

3.4.2 Mediation in International Child Abduction

In Ireland, the post of the European Parliament Mediator for International Parental Child Abduction was created in 1987. It has no statutory basis. It aims to help children who have been abducted by one parent in circumstances where the parents are of different nationalities and the marriage has broken down.

Lord Plum (1987) says cases of international marriages were rare then, but he understood that they would become more frequent in an integrated Union. Today, there are 350,000 cross border marriages in the EU, and 170.000 divorces (20% of the total). In only 6 months as mediator, I received 20 requests. If the two parties are willing we start mediation, if not, we provide assistance to facilitate dialogue and mutual comprehension, to smooth the judicial procedure. Very often, there are delays because of different legal systems between the Member States. There are some very difficult cases where parents haven't seen their children for 10 years. Mediation helps avoid the "run to the tribunal", that often damages the children. It goes beyond the legal approach, taking into account human and psychological aspects. The aim is to understand what matters to both parents, and find a solution that can partially satisfy the two.

European Parliament (2015), mentions after the adoption of the European code of conduct for mediators on 2 July 2004 and Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, a network of EU-trained and/or EU-authorized mediators for transnational proceedings involving children could be specifically developed and act under the auspices of the European mediator for child abduction. The network could serve the following different purposes. First, as suggested above, it would be important to propose – in the context of family dissolution proceedings and whenever it is possible to assess risks of unilateral action impacting the right of the child to maintain contacts with both parents – a mediations scheme, with a view to reach an amicable settlement on the transfer of a parent's residence abroad – with or without contextual transfer of the child's residence. The number and importance of the issues at stake in case of a transfer abroad requires communication between the parents. Communication supervised by mediators could prevent unilateral action and facilitate the relationship between the persons involved in the upbringing of the child. Secondly, after the illegal transfer of a child's residence from

one Member State to another, expert mediators from the countries involved in the move could offer professional help with a view to finding an amicable settlement with regard to the residence of the child and the modalities to exercise parental rights.

4. RESEARCH METHODOLOGY AND METHODS

The literature review is able to ease the overview theoretical framework, however, it is crucial to link a methodology to gain coherence³ and credibility⁴. “For any investigation, the selection of an appropriate research methodology is crucial to arrive at valid findings, comparisons and conclusions” Kumar affirmed⁵. The methodology is the topic which connects methods to philosophical questions which the researcher must work to draw considerations⁶ or how social science researchers call on to understand a complex world⁷.

For the present study, different research methods have been used taking relevant data from organisations linked to the themes of legal framework in Ireland, collection of data of individuals from both genders and different issues related to the research.

To summarize, this chapter gives a answers to the questions how the study has been carried out, provides a design of the research, methods and techniques applied for data collection. This section is broken into the following topics.

3 Colin Fisher, Research and writing a dissertation, 2010

4 Miguel Gómez jpd, ma, Cómo hacer tesis de maestría y doctorado: Investigación, escritura y publicación, 2010

5 Ranjit Kumar, Research Methodology a step-by-step guide for beginners, 2011

6 Colin Fisher, Researching and Writing a Dissertation for Business Students, 2004

7 Zina O'Leary, Doing your Research Project, 2017

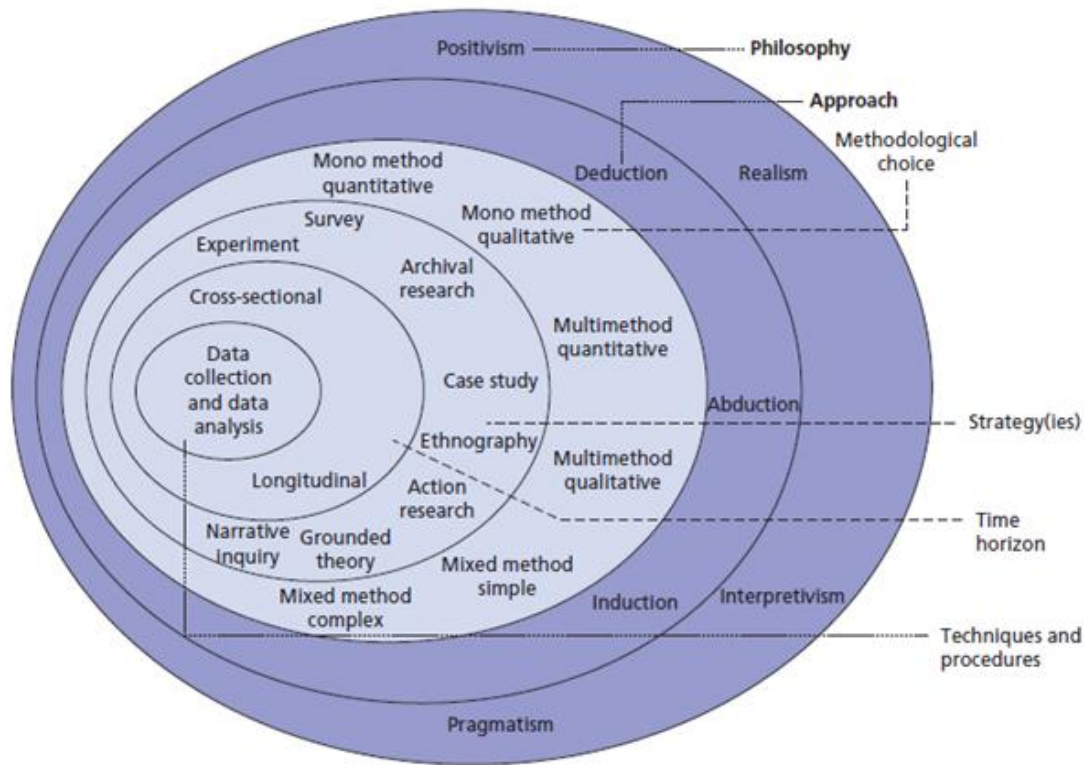
4.1 Research design

Kerlinger (1986) explains a research design is a plan, structure and strategy of investigation so conceived as to obtain answers to research questions or problems. The plan is the complete scheme or programme of the research. It includes an outline of what the investigator will do from writing the hypotheses and their operational implications to the final analysis of data.

There is a wide array of quantitative and qualitative research paradigms and methods available for use by researchers. However, the choice of a suitable methodology (Nolan 1997), is based on the nature of the research problem and the researcher's philosophical orientation and assumptions. For this study, the *Research Onion*⁸ is included as reference. The methodology purposes are to demonstrate philosophy, approach to theory development, methodological choice, strategy, time horizon and techniques and procedures.

⁸ Mark Saunders pl at, Research Methods for Business Students, 2019

Figure 3 The Research Onion



Source: Mark Saunders, pl, at, Research Methods for Business Students, 2019

The present research follows the *Ontology philosophy* which is about the nature of reality and existence⁹ and the assumptions about the nature of reality¹⁰.

The analysis of this study acknowledge that Irish citizens are lacking information about the scenarios they might have to pass through after they split up in regard to the custody of a child and the rights of both parents and the child. Emotions and perceptions are considered in this research to avoid bias; the study will be focused on both sides to follow issues in relation to this conflict.

⁹ Mark Easterby rt pr, Management Research, 2012

¹⁰ Mark Easterby rt pr, Management Research, 2012

4.1.2 Research Philosophy

Mark Saunders pl at. (2019) explains the purpose of *interpretivist research* is to create new, richer understanding and interpretations of social worlds and contexts, and emphasis that humans are different from physical phenomena because they create meanings¹¹. This study is significant to understand about the development of knowledge¹² in this particular field, in comparison with David Carons, ag cp kg. (2001), in ontology philosophy, interpretivism uses a more personal process in order to understand reality.

To carry out this research philosophy, *Interpretivism* will be used from the first layer of the Research Onion¹³ to provide guide in the structure. The interpretivism approach was chosen to analyse the findings on this field with the “*social actors*”¹⁴. This approach is based on data collection such as interviews and observations to understand their point of view¹⁵. *Positivism philosophy* is not suitable for this study owing to is strictly focused on scientific empiricist method¹⁶ and facts uninfluenced by human interpretation or bias¹⁷.

11Mark Saunders pl at, Research Methods for Business Students, 2019

12 Mark Saunders pl at, Research Methods for Business Students, 2019

13 Mark Saunders pl at, Research Methods for Business Students, 2019

14 Mark Saunders pl at, Research Methods for Business Students, 2019

15 Mark Saunders pl at, Research Methods for Business Students, 2019

16 Mark Saunders pl at, Research Methods for Business Students, 2019

17 Mark Saunders pl at, Research Methods for Business Students, 2019

4.1.3 Research Approach

On the second layer of the Research Onion, the *induction approach* will be used to conduct this study. In induction approach, data collection is used to explore a phenomenon, identify themes and patterns to create a conceptual framework and to generate untested conclusions (Mark Saunders pl at, 2019, p.153). In this approach, deduction does not suit to conduct this research due to facts need to be measured, in this research, the data collection will be analysed qualitatively. The researcher opted to apply a questionnaire to get access to reliable information from the respondents. The information obtained was from the Irish people with kids living in Ireland and people who faced the same issues related to this matter.

4.1.4 Methodological Choice

For this section of the study, *Mix Methods* will be used from the third layer of the Research Onion¹⁸. This draws from both qualitative and quantitative research. Saunders pl, at, (2019), said that mixed methods research involves the separate use of qualitative research and quantitative methods within a single phase of data collection and analysis. Saunders pl at (2019), said qualitative research is interpretive because researchers need to make sense of the subjective and socially constructed meanings expressed about the phenomenon being studied. Also he refers to qualitative research as studies participants, meanings and relationships between them, using a variety of data collection techniques and analytical procedures, to develop a conceptual framework and theoretical contribution (Saunders pl at, 2019, p.179).

18 Mark Saunders pl at, Research Methods for Business Students, 2019

The research choice has to be carried out in a proper method to reach valid information that could be validated. Mark Saunders pl at (2019) says that those who consent to take part in qualitative research are therefore not seen as mere respondents but as participants in collection of data. Non numeric data¹⁹ analysis procedure applies for this part of the research due to observations of variables in the couple's behaviour²⁰. It is a way of facing the empirical world in this way.

The questionnaire was designed with short questions to encourage participants to complete the form and do so within the stipulated time, as agreed, so that it is easy and simple to get concise and precise answers from the questions. The interviews were unstructured allowing to flow according to the information given.

4.1.5 Research Strategy

Saunders pl at (2019) mention the key to your choice of research strategy or strategies is that you can achieve a reasonable level of coherence throughout you research design which will enable you to answer your particular research questions and meet your objectives. On the Research Onion, the four layer has strategies as: experiment, survey, archival research, case study, ethnography, action research, grounded theory and narrative inquiry. Although, there is a range of strategies, to develop the present research, the *case study* appears to be more adequate. Saunders pl at, (2019) says the *case study* is an opportunity for the objective of this analysis to gain comprehension about the topic and generate insights from intensive and in-depth research into the study of a phenomenon in its real-life context, leading to rich, empirical descriptions and the development of theory.

19 Mark Saunders pl at, Research Methods for Business Students, 2019

20 Steven Taylor rb dm, Introduction to Qualitative Research Methods: A Guidebook, 2015

As strategies, *experiments* cannot be used for this study because it is for laboratory-based²¹ research and *narrative inquiry* is based on a sequence of events²².

4.1.6 Research Time Horizon

The fifth layer of the Research Onion is represented by the *time horizon*. The time horizon guides two points: cross-sectional and longitudinal²³. To conduct this part of the research, a *cross-sectional* approach is the most appropriate as the study will be carried out at a particular time and will be based on the analysis of an individual's perceptions on that period of time. Longitudinal study does not suit due to variables has to be measured repeatedly over different periods.

4.1.7 Techniques and Procedures

The last layer of the Research Onion²⁴ presents two procedures: *Data collection* and *data analysis*. the perception of each individual can interfere with each answer given, however, The researcher must make a fair judgment about the quality to identify the *reliability and validity*²⁵ of the information collected. The validation of the authenticity of the information is relevant to guide this research challenging the outcome according to “beliefs, attitudes and interpretations”²⁶ as Mark Saunders, pl at affirmed. The study tries to show transparency during data collection and data analysis.

21 Mark Saunders pl at, Research Methods for Business Students, 2019

22 Mark Saunders pl at, Research Methods for Business Students, 2019

23 Mark Saunders pl at, Research Methods for Business Students, 2019

24 Mark Saunders pl at, Research Methods for Business Students, 2019

25 Mark Saunders pl at, Research Methods for Business Students, 2019

26 Mark Saunders pl at, Research Methods for Business Students, 2019

4.2 Sample

The population for this study is focused on people living in Ireland and also for people having conflicts related to children's custody in Ireland. The opportunity to gain access to both genders is feasible for this research at the moment they agree to participate in the survey and in-depth interview. Male and females could easily answer all the questions in a single session. It is relevant to inform them of the use and protection of their data even when the information will be anonymous. The data gathered will be managed completely for ethical and research purposes only, due to involve *social actors*²⁷.

4.2.1 Sample Size

To review the perceptions of legal framework in Ireland, in-depth interviews will be used qualitative analyses due to typically require a smaller sample size than quantitative analyses. Qualitative sample sizes should be large enough to obtain enough data to sufficiently describe the phenomenon of interest and address the research questions. The goal of qualitative researchers should be the attainment of *saturation*. Saturation occurs when adding more participants to the study does not result in additional perspectives or information. Glaser and Strauss (1967) recommend the concept of saturation for achieving an appropriate sample size in qualitative studies. For phenomenological studies, Creswell (1998) recommends 5 to 25 and Morse (1994) suggests at least six.

27 Mark Saunders pl at, Research Methods for Business Students, 2019

These recommendations can help a researcher estimate how many participants they will need, but ultimately, the required number of participants should depend on when *saturation is reached*, however, Kumar (2011) mentions in qualitative research, number considerations may influence the selection of a sample such as: the ease in accessing the potential respondents; your judgment that the person has extensive knowledge about an episode, an event or a situation of interest to you; how typical the case is of a category of individuals or simply that it is totally different from the others.

For the quantitative part of this research, forty five people answered a questionnaire online to analyse people's perceptions in this matter.

4.3 Limitations

There are a few limitations to gain more information about the research such as people who cannot take part in a survey because they do not have time or other people might not want to share their experiences, however, it brought a positive effect when they were informed that the survey can be via link and the in-depth interviews by phone call or face to face, and it would not take too long to answer and the most important point is that the information gathered is completely anonymous and confidential.

4.4 Strengths

The survey to gather data it will use a suitable language for the participants. While discussing the topic with the participants, they were delighted to take part in this research as this phenomenon is currently occurring more frequently. Respondents understood the purpose of this study which helps to gain access to information.

4.5 Ethics in Research

Ethical concerns in any research at the moment of seeking access to information of organisations or individuals. Saunders *et al.* (2019), refers ethics to the standards of behaviour that guide your conduct in relation to the rights of those who become the subject of your work and are affected by it. Research ethics therefore relates to questions about how we formulate and clarify our research topic, design our research and gain access, collect data, process and store our data, analyses and write up our research findings in a moral and responsible way. The researcher should conduct the investigation in trust and respect²⁸ and ensure the confidentiality²⁹ of the participants.

28 Mark Saunders *et al.*, Research Methods for Business Students, 2019

29 Mark Saunders *et al.*, Research Methods for Business Students, 2019

5. PRESENTATION OF DATA

This chapter's objective is to show the data collected through the questionnaire survey and the in-depth interviews completed by people regarding the topic of the research. In this part of the dissertation, the reader can find information corroborated through the analysis of the data collected to get the answers to the questions established for this investigation.

The data provides the variables about the following topics discussed:

1. What is the legal framework in Ireland in regard to a child if the couple split up?
2. How Mediation works as alternative dispute resolution to solve a conflict in regard of a child's custody?
3. What is the procedure to follow and the implications in a situation where one partner takes a child to another country without permission from the other partner?

The presentation of data collection is combined with graphs to give a better scenario of the perspectives related to the answers given from the participants; just a glance at the charts results will reveal the perspectives. In-depth interviews are also included due to the use of mixed methods research, which was used in the study. In this research, analysis of case intends to study both genders to review their perceptions related to law in Ireland. Perceptions are relevant for this study.

The interpretivist approach combined with the interview method is important to gather as much information possible from the respondents. Data collection techniques included three in-depth interviews with people facing issues related to the custody of a child and also for a questionnaire survey amongst the Irish citizens.

The results obtained in this study, the researcher has interpreted in her own way according to the inductive approach. The topics involved in the literature review have been validated and analyzed together with the answers to the open questions, this means that a connection was made with the literature review information. The inductive approach guarantees the integrity of this study.

5.1 Questionnaire Survey

The questionnaire survey (Appendix F) was made available online through Google forms³⁰. The designed period of the survey was 25th of July to 8th of August 2019. It has fourteen questions, and a total of forty five Irish citizens voluntarily answered them.

The questionnaire survey was created taking into account people's perceptions about the following topics: legal framework in Ireland in regard to a child if a couple split up, mediation as an alternative dispute resolution to solve a conflict in regard of a child's custody and the procedure and implications in a situation where one partner takes a child to another country without permission from the other partner.

Figure 4. Question 1. Do you voluntarily agree to participate in this survey?

The first question has as purpose to show that the participants are answering voluntarily and are over 18 years old.

³⁰<https://docs.google.com/forms/d/e/1FAIpQLSeUKQGTn50x8bipTnt2GiTMy8maCD0ScAHJyywkg8aQE7IcQ/viewform?vc=0&c=0&w=1>

Figure 4

1. Do you voluntarily agree to participate in this survey?

- ☐ Yes. I am over the age of 18 and agree to participate in this study.
- ☐ No, I am not over the age of 18 or I do not agree to participate in this study

Figure 5. Question 2. What is your gender identity?

The purpose of this question is to extract the number of each gender to analyse gender specific perceptions related to the study.

Figure 5

2. What is your gender identity?

- ☐ Female
- ☐ Male

Figure 6. Question 3. Civil Status

The aim of this question is to evaluate how different civil status' affect perceptions of different scenarios.

Figure 6

3. Civil Status

- ☐ Married
- ☐ Unmarried

Figure 7. Question 4. Have you and your partner ever spoke about what will happen with the children if you split up?

The purpose of this question is to study if the couples have analysed the situation in case they decide to split up.

Figure 7

4. Have you and your partner ever spoke about what will happen with the children if you split up?

- ☐ Yes
- ☐ No

Figure 8. Question 5. Do you and your partner have an agreement regarding the children if you split up?

The objective of this question is to investigate communication between couples, if they have spoken

about this topic and reached an unofficial agreement, this is an important part of this study, it might help to reach a hypothesis if they could be open to try mediation in case of conflict.

Figure 8

5. Do you and your partner have an agreement regarding the children if you split up?

☐ Yes

☐ No

Figure 9. Question 6. If you consider going to court, do you think the problem will be solved fairly for both parties?

This topic is relevant to ask in this survey. The objective is to review participants perceptions about Irish law according to their experience.

Figure 9

6. If you consider going to court, do you think the problem will be solved fairly for both parties?

☐ Yes

☐ No

Figure 10. Question 7. Do you know your rights and obligations over your children?

This question intends to demonstrate if Irish citizens are aware of their legal rights and obligations to the children.

Figure 10

7. Do you know your rights and obligations over your children?

☐ Yes

☐ No

Figure 11. Question 8. Do you know the International Children's Law?

This question is related to the topic of child abduction in literature review. It intends to demonstrate the knowledge of the participants related to this theme.

Figure 11

8. Do you know the International Children's Law?

☐ Yes

☐ No

Figure 12. Question 9. Do you know the implications if you take a child out of the country without permission from the other parent?

This question is related to the literature review where it explains the legal implications and consequences. It researches whether participants are aware of the legal consequences of taking a child out of the country without permission of the other parent.

Figure 12

9. Do you know the implications if you take a child out of the country without permission from the other parent?

☐ Yes

☐ No

Figure 13. Question 10. Did you have a dispute over the custody of a child before?

This question is relevant for the study. It is to collect the number of participants that had a dispute of a child's custody.

Figure 13

10. Did you have a dispute over the custody of a child before?

☐ Yes

☐ No

Figure 14. Question 11. What would you prefer to do, to solve a child's custody conflict?

This question will show according to the participants' perceptions, the preferred method to solve a dispute regarding a child's custody.

Figure 14

11. What would you prefer to do, to solve a child's custody conflict?

☐ Mediation

☐ Court

Figure 15. Question 12. Do you consider Irish Law seeks the best interest of the child?

This question evaluates the opinion of the participants in this survey. It could be used to debate whether Irish Law considers the best interests of a child.

Figure 15

12. Do you consider Irish Law seeks the best interest of the child?

☐ Yes

☐ No

Figure 16. Question 13. Do you consider the Irish law gives preference to women?

This question intends to show the perceptions of the citizens related to gender preferences in Irish Law.

Figure 16

13. Do you consider the Irish law gives preference to women?

☐ Yes

☐ No

Figure 17. Question 14. If yes, Why?

This question is linked to question 13, if the participants think Irish Law gives preference to women, they can give their opinion. The information given in this question is relevant to analyse the perceptions of the respondents and to gather more information related to this research.

Figure 17

14. If yes, Why?

Long-answer text

5.2 In-depth interview

There are two participants for the in-depth interview addressing topics related to this research. The reliability of data collected is merely high due to the fact that the sample is focused on Irish citizens having a dispute of a child's custody in Ireland. The researcher adopted the narrative of the in-depth interviews to maintain the anonymous status of the participants (Appendix A). There is a code used to identify both of them: Female Participant, Male Participant 1 and Male Participant 2.

5.2.1 In-depth Interview Female Participant

The researcher conducted an unstructured interview but kept a focus on the information relevant to the study. The female interviewee said that her experience through mediation did not work because she could not reach an agreement with her daughter's father, she said he was asking for too much and she was not going to accept it so he took the case to court. "The problem started when he stopped giving me the maintenance and he was there just when he wanted", so she believes it was not fair for her daughter. "As a father you have responsibilities for your child, he broke up with me not with my daughter," she affirmed. She attended three meetings in Court, she was trying to negotiate the maintenance and the father was trying to negotiate access to the child. One day, the father called the mother and told her that he is not going to Court anymore because he is not getting what he wants, that it is a waste of money and time and she will have more privileges because she is a woman, so if she wanted to negotiate with him, he would be open to listen to her. She stated at this point that she thinks he must be tired of wasting time and money. She is still not sure what course of action to take. In her experience, she thinks that a mother's role is more important to raise a child and the law will look

protect her due to this, she thinks that this is not a preference of gender or inequality and that it is common sense that a mother is a more important figure in a child's life. To add, she knows what child abduction is and how it works but she does not have any plan to live in another country, however, she still needs the father's permission to take the child out of the country.

5.2.2 In-depth Interview Male Participant 1

The researcher conducted an unstructured interview to gather information in regard to the study. The male interviewee mentions his experience in a dispute of a child's custody in Ireland. His ex-partner is from Poland, she was planning to take the child to Poland to live, since that moment, the conflict started. He tried to negotiate on this issue with her but she was not open to listen, due to that, he decided to start a legal process in Court to prevent her from taking the child out of the country and grant him more access to see his child.

He feels Irish Law gives preference to her even when he had proof he can look after the child equally as well as the mother does. The last two years he has been going to Court trying to negotiate more access to his child, he feels it is a waste of money and time, he thinks it would have been better going to Mediation instead of Court but due to the circumstances he had no more options. He believes strongly that if his ex-partner takes the child out of the country the law won't do anything in his favour to bring the child back to Ireland. He also highlighted that she has threatened and hit him, he has a video of it and presented it to the court but for the court that is not enough evidence to give him more access to the child or custody if the mother does not accept. Thus, he wants to solve this situation in the best terms possible but he does not think it will happen as he expects he is at a disadvantage due to his gender.

5.2.3 In-depth Interview Male Participant 2

He is an Argentinian man who has a child with an Irish woman. The conflict started 3 months after the child was born. Due to different circumstances, the mother did believe he had the right to share custody of the child with her. They are still in conflict. He said: “Even though the “relationship” with my ex - partner is better at this moment, I have to admit that this is a very sensitive topic and issue. She has - as stated by her - been diagnosed with Bipolar mental illness. She also has an addiction problem to drugs and her mental stability fluctuates depending on different factors.

In order to share the guardianship with her according to Irish law, he thinks that he has to be married to her. The other possibility was to get the child passport done; therefore, the mother would have accepted him legally to be the guardian of the child. Nonetheless, at the moment, he is legally the second guardian.

They haven’t tried legal mediation other than sending a request to social welfare and INTREO to assist him with his claim, which hasn’t been exactly successful all in all. When his visa / work permit expired, he was “politely” invited by the authorities to leave the country as he doesn’t have to remain in the state while his case or request has been handled. He also refers to the fact that he has been threatened to be taken to court as he is not sending Child support (though the money is saved in his bank account). He wants to wait until the Irish government can intervene in order to assure him that the money sent would not be spent by the mother to sponsor her addiction. She is currently on social welfare and she is entitled to a housing Assistance Plan; therefore, he understands that she currently receives a sufficient income to provide for herself and the child, as long as she keeps herself clean. Taking into account that he is 7,000 miles away from his child and cannot visit them to make sure that is the case. “As well, she has threatened me to deprive me from

any right to visit our son, just because she believes I have no rights” before they ended the relationship and due to her strong desire of consuming drugs (that made her even consider, selling drugs or storing drugs in the house near the child) they were having arguments all the time, and she even was violent physically to him on one occasion. After this incident, during which he claims that he hugged her in order for her to stop punching him, she had threatened to go to the Garda Station in order to file a case based on domestic violence against him. Nevertheless, there is a case being handled by Garda regarding this issue and an issue that happened later where she was trying to force him to go to the house after all these incidents happened. He had decided to meet her in public places in order to make sure she was not going to claim that he has abused her again. In case he can take the case to court, he has the screenshots of conversation as well as recording sent on Facebook messenger and Whatsapp as evidence to support my statements. He doesn't believe that the law is fair. After all this happened and he had been “politely” invited to leave the country, he has requested several authorities - among them social welfare - to help him to make sure that the child is provided a safe environment. Nonetheless, he hasn't received any response on this but the letter stating that the cases have been generated. He added, it would be great “by the fact that in order to have the same rights as the mother - being the case of not being a married couple - the mother has the right to deny the father almost every right a father is entitled. I would love to have the same rights as any responsible parent may have to his son”.

6. DATA ANALYSIS/FINDINGS

For this research, qualitative data will be analyzed in a descriptive way. It matches with induction approach due to is linked it to identify themes. Kumar (2011) said descriptive information first goes through a process called content analysis, whereby you identify the main themes that emerge from the descriptions given by respondents in answer to questions. Having identified the main themes, there are three ways that you can deal with them, you can examine verbatim responses and integrate them with the text of your report to either support or contradict your argument, you can assign a code to each theme and count how frequently each has occurred or you can combine both methods to communicate your findings. This is your choice, and it is based on your impression of the preference of your readers.

For the quantitative data collected will be analyzed as Berman Brown and Saunders (2008) mentions, it can be divided into two distinct groups: categorical and numerical. Categorical data refer to data whose values cannot be measured numerically but can be either classified into sets (categories) according to the characteristics that identify or describe the variable or placed in rank order. These are known as descriptive data or nominal data as it is impossible to define the category numerically or to rank it. Rather these data simply count the number of occurrences in each category of a variable. For virtually all analyses the categories should be unambiguous and discrete; in other words, having one particular feature.

6.1 Questionnaire Survey

Figure 18. Chart question 1. Do you voluntarily agree to participate in this survey?

The chart shows that forty five participants answered the survey voluntarily which means 100% of the respondents agree to participate as part of this study.

Figure 18

1. Do you voluntarily agree to participate in this survey?

45 responses

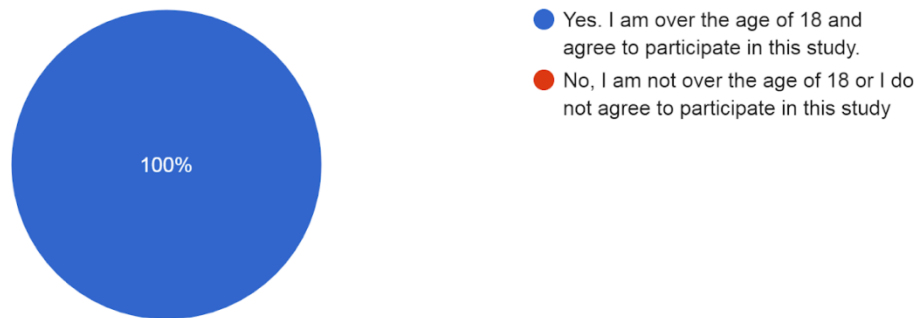


Figure 19. Chart question 2. What is your gender identity?

The chart shows the individuals that participate and gender diversity, 23 males which means 51.1% of respondents and 22 females means 48.9% of participants in this survey.

Figure 19

2. What is your gender identity?

45 responses

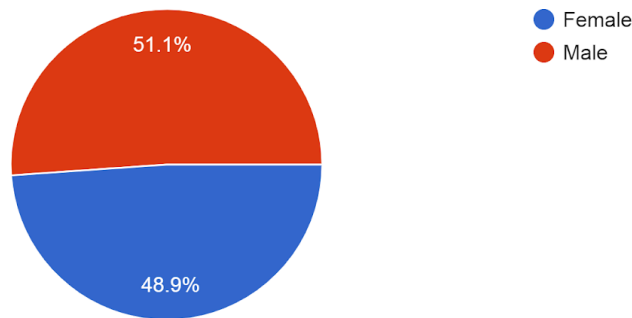


Figure 20. Chart question 3. Civil status

The question intends to extract the civil status of the participants to take perceptions of both cases regarding a child's custody conflict which has relation to the information in the literature review. The chart shows 68.9% of the participants are unmarried while 31.1% are married.

Figure 20

3. Civil Status

45 responses

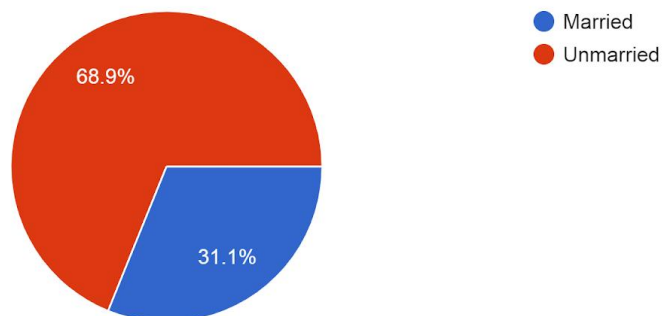


Figure 21. Chart question 4. Have you and your partner ever spoke about what will happen with the children if you split up?

This is a very important point for this study, in this part is where the conflict starts due to usually couples do not talk about this issue as it is shown in the graph, only 24.4 % which means 11 of the 45 participants said they have talked about it with his/her partner.

Figure 21

4. Have you and your partner ever spoke about what will happen with the children if you split up?

45 responses

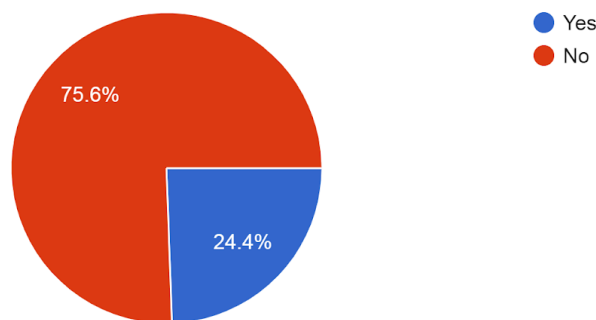


Figure 22. Chart question 5. Do you and your partner have an agreement regarding the children if you split up?

In this question, there were just 44 answers of 45 due to the fact that it is a voluntary survey. It is shown that 29.5% means 13 participants have been spoken with his/her partner and have made an unofficial agreement regarding their children if they split up. The other 70.5% do not have an agreement which means if they split up and they cannot reach an agreement between them, they will have to try mediation or court which do not end in good terms most of the time and the outcome is given by a third party.

Figure 22

5. Do you and your partner have an agreement regarding the children if you split up?

44 responses

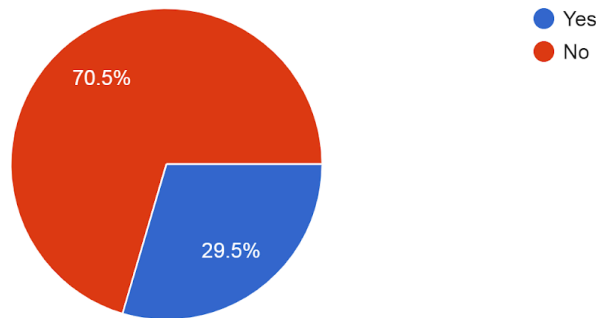


Figure 23. Chart question 6. If you consider going to court, do you think the problem will be solved fairly for both parties?

To this study, the question of considering going to Court shows the perceptions of 66.7% of the respondents which do not think the issue will be solved in a fair way for both parties. 33.3% of the respondents consider Irish law is fair to solve a conflict.

Figure 23

6. If you consider going to court, do you think the problem will be solved fairly for both parties?

45 responses

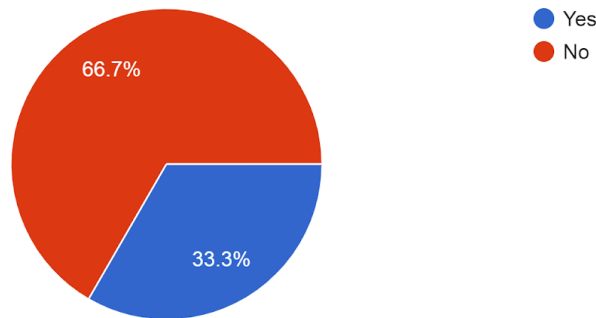


Figure 24. Chart question 7. Do you know your rights and obligations over your children?

There were 44 responses to this question where only 61.4% which means 27 participants know about their legal rights and obligations over children. 38.6% of the participants do not know their rights and obligations in regard to their children.

Figure 24

7. Do you know your rights and obligations over your children?

44 responses

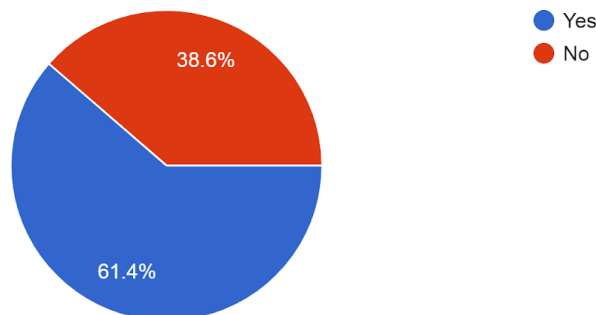


Figure 25. Chart question 8. Do you know the International Children's Law?

In this question of the survey 15 of 45 participants stated that they have knowledge about the international children's law. This question promotes visualization of individual perception of lack of knowledge about it.

Figure 25

8. Do you know the International Children's Law?

45 responses

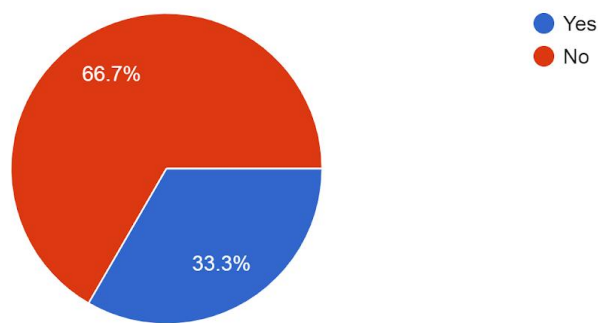


Figure 26. Chart question 9. Do you know the implications if you take a child out of the country without permission from the other parent?

In this topic, 28 of 45 respondents know about the implications of taking a child out of the country without permission of the other parent which means the remaining 37.8% lack knowledge of this scenario which is a serious subject with legal consequences, as this is a criminal offence in Ireland.

Figure 26

9. Do you know the implications if you take a child out of the country without permission from the other parent?

45 responses

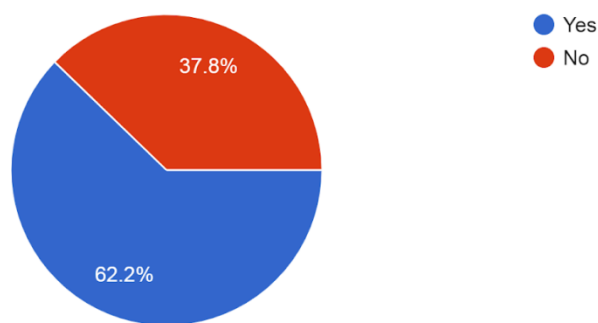


Figure 27. Chart question 10. Did you have a dispute over the custody of a child before?

For this study, 40% of the participants (18 Irish citizens) have had a dispute over a child's custody and are familiar with the process.

Figure 27

10. Did you have a dispute over the custody of a child before?

45 responses

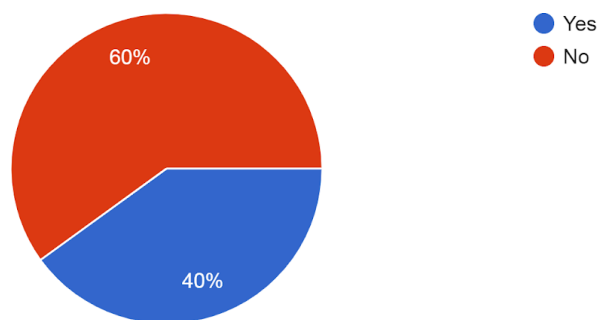


Figure 28. Chart question 11. What would you prefer to do, to solve a child's custody conflict?

For this question, 44 participants answered. It was intended to start a debate according to Irish citizens' perceptions of what is the best way to solve a conflict in the matter of child's custody. The options were: Mediation or Court. 84.1 % means 37 citizens prefer to deal with this issue through mediation as an alternative dispute resolution while the rest 16.9% prefer to take a case of child's custody to court.

Figure 28

11. What would you prefer to do, to solve a child's custody conflict?

44 responses

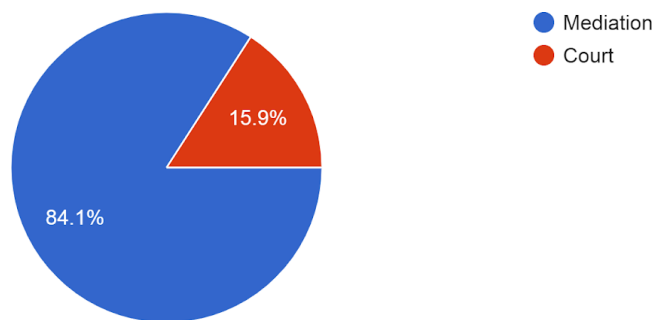


Figure 29. Chart question 12. Do you consider Irish Law seeks the best interest of the child?

According to Irish citizens' perceptions, 62.2 % of participants do not believe Irish Law considers the best interests for a child which shows why going to Court takes longer to solve the conflict as the people involved do not reach an agreement which they consider fair for each party as mother, father and child, 37.8 % of the respondents believe Irish Law seeks the best interest of the child.

Figure 29

12. Do you consider Irish Law seeks the best interest of the child?

45 responses

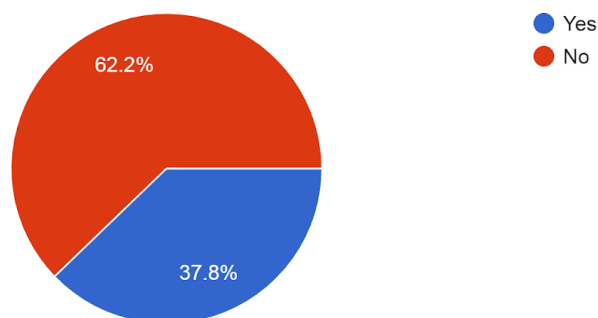


Figure 30. Chart question 13. Do you consider the Irish law gives preference to women?

This subject is relevant due to 73.3% of participants think Irish Law has preference to women in related to child's custody conflict. Participant's perception is that law gives more privileges to women.

Figure 30

13. Do you consider the Irish law gives preference to women?

45 responses

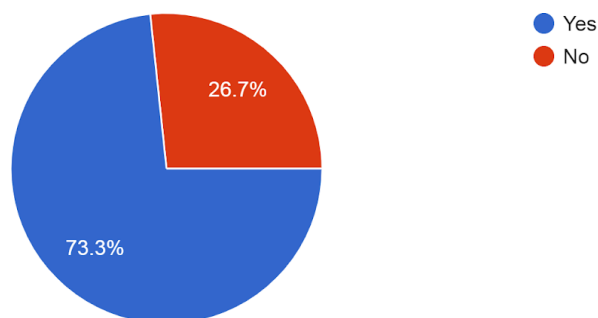


Figure 31. Question 14. If yes, why?

This question is completely open. Most of the opinions are related to how the law gives preference to women and the fathers cannot have the same privileges as women have. These are the perceptions of the 27 respondents:

Figure 31

- 1.- They have more access to children
- 2.- In many cases the child is left with the mother
- 3.- It is considered in the best interest of the child
- 4.- Because relationship between mother and children is always stronger.
- 5.- Husbands previous experience & countless others we met along the way. Family court is corrupt; huge money being made on other people's pain & sorrow. Children fairing out the worst each time...
- 6.- Because fathers have to go to court to get guardianship and visitation rights. Mothers can stop access anytime they feel like it including making false claims against their ex partners to obtain barring orders etc
- 7.- It's an automatic decision that the children are to stay in the family home along with the mother. Unless there is a major issue with the mothers mental health or drug use for example. Fathers are generally dealt a bad hand and there is a huge amount of support for mothers but almost none for fathers.
- 8.- Women mainly get custody with access only for men. Men are seen as walking cash machines by the courts. Irish courts see women as the only one who can rear the kids. No thought is given to men doing this role. There is no sanctions taken against women who deny access. It's an easy cop-out for the judges. It should be a 50:50 split with everything divided equally including rearing of the kids.

9.- After 33 court appearances it has become apparent.

10.- It's based on a traditional view of the family.

11.- Not sure

12.- Irish law enshrines the traditional family, while this often disadvantages women, it may be to their advantage in family law.

13.- I was imprisoned for maintenance arrears but the Court will not imprison a mother for breaching access orders.

14.- Irish family law has a presumption that a child is better off in sole custody of mum, rather than 50/50 where possible. Mums are generally trusted to speak for the child. No regard to hearsay. Yet a father's word is less likely to be accepted as truth. Too much time lost on reports and backlogs in courts. No consideration to parental alienation. Judges are not qualified on the psychological impact on children that conflict may cause. Judges need specific training in the field. Tusla not fit for purpose. many kids deprived from loving meaningful relationships with both parents and extended family.

15.- The system was ignorant to the reality of a child's best needs which is both parents equally.

16.- Because the law is way too old. They play blind towards a man's capabilities. If both sex are to be given equal rights then a father should be given equal parental rights

17.- I don't exactly know the Irish law about it, I can guess that the law gives preference to women because we usually are more organised and aware what kids need, but it's also true and it has been demonstrated that men can raise a child and can be better than women in some cases, it absolutely depends on every case.

18.- Rights are more favourable towards the mother than they are towards the father in Irish law.

19.- €13000 spent on legal fees in one year. Got nowhere regarding children's needs. Mothers feelings held supreme above all else, dad's concerns are interpreted as a hate campaign after mother moves a stranger she met online in with a 4week old baby

20.- I think they go by the traditions and give preference to the mother of the child, even if this is not the best option

21.- In Ireland it is always considered that the maternal role is more important than the paternal. This may also be linked to the traditional church led value of the mother being the homemaker and primary carer while fathers provide money to the household

22.- Because I don't see full time dads, and I see a lot of women bragging about the amount of money they took and take from their exes and how they use the children to manipulate situations in their favour

23.- It is a money making scam full of corruption to drag out cases and using Parental Alienation and fake fixed reports to keep parents away from children. Like a carrot and the donkey trick. All solicitors and judges and social workers and people doing the resorts unregulated are in on the scam. Most of the mothers they target for this scam have issues, most sexually abused as kids themselves. Because they have personality disorders, the symptoms help them with the scam they have.
<https://www.youtube.com/watch?v=ne07rdebgtY> Many Thanks Monica.

24.- The agreement we have is constantly being broken, when I contact the gardai I get ignored, but when I get the time I've lost back, I'm being bothered by them. I was dragged to court over splashing water on her during an argument and she obtained a safety order. There's tonnes of things I could talk about...

25.- Law is in favour of the woman in our society

26.- Irish laws protect our human rights

27.- Women don't have to say where they live , Women are believed without their story being checked . Women are favoured by the court , these laws were set up in the 1900s and it's 2020 now. It's time for a change.

6.2 In-depth interview

Perceptions of Irish law of both genders are completely different according to their experiences and how they feel related to be treated depending on the “gender”. It is a question of interpretation of each social actor.

6.2.1 Research question 1: What is the legal framework in Ireland in regard to a child if the couple split up?

The purpose of the in-depth interview for both genders is to analyse the legal framework for both parties and to assess it according to them if law is fair to any gender. The answers given are based on their experience and perceptions of both genders in regard to law in Ireland over a dispute of a child.

Females and males largely disagreed regarding how the law gives preference to women. The female respondent's perception is that it is not a preference, it is an issue of what “role” is more important to raise a child while males respondent strongly believes law gives preference to women and has no more options to follow what law determines in regard to a child, the rights are not the same for both parties.

6.2.2 Research question 2: How Mediation works as an alternative dispute resolution to solve a conflict in regard of a child's custody?

The purpose of this topic on the in-depth interview is to examine both genders's perceptions and experiences trying to solve a child's custody conflict through mediation. For this study, both genders could not solve the conflict through mediation as the female respondent said, she attended mediation

but it did not work as the male respondent could not negotiate anything, it forced him to apply to court. For the other male respondent, he never tried mediation but thinks it would not work. Their perceptions differ, the male participant would have preferred to do it through mediation instead of Court as he believes the court is a waste of money and time while female participant's perception is mediation does not work.

6.2.3 Research question 3: What is the procedure to follow and the implications in a situation where one partner takes a child to another country without permission from the other partner?

The purpose of this topic is to analyse if parents are aware of the implications of taking a child out of the country without the other parent's permission. On the interviews, both genders disagreed, the woman affirmed the law would not allow her out of the country if the father did not authorise it while the male participants believe women can take the child without their permission and the law would not do anything to bring the child back.

7. DISCUSSION

In this chapter, it is to examine and interpret the elements that were analyzed in this research. The purpose of this chapter is to discuss and analyse the results of each research question for this study and support them with the information in literature review and findings to extend the knowledge. The information collected in the previous chapters allows the understanding of disputes about child custody and the associated perspectives' held by each gender in Ireland related to it. It provides further information in regard to mediation as an alternative dispute resolution for these issues.

7.1 Research question 1: What is the legal framework in Ireland in regard to a child if the couple split up?

The analysis of the literature review shows that legal separation and divorce in Ireland is embedded in the constitution in Family Law (Divorce) Act, 1996. Divorce was legalised on the basis of the irreparable breakdown of a marriage. For married parents, after divorce one parent is usually granted custody while the other parent is granted access to the children. It is possible for parents to continue to have joint custody of their children after separation or divorce and for the children to spend an equal amount of time with each parent if the parents can agree and arrange this.

According to Irish Law, for unmarried parents, the mother automatically has guardianship of the child but the father can jointly be granted guardianship, but it is dependent on his relationship with the mother which is a disadvantage for the father, if the mother of the child refuses to grant the father joint guardianship, the father has to take the issue to court.

The basic findings in this research corroborate perceptions of both genders in relation to children's rights after the couple split up. It confirms that both genders have different rights or privileges. The

study keeps impartial of facts and the discussion of causes related to both genders. This research reveals that the mother is automatically the guardian of the child if she is not married to the father of the child; it is a disadvantage for male gender. And if both genders decide to go to Court, the mother will have more privileges over the father as he just gets access depending on the arrangements between them or purely based on the court decision.

7.2 Question 2: How Mediation works as an alternative dispute resolution to solve a conflict in regard of a child's custody?

This topic was essential for this study in order to find reliable information and gather data with social actors. In Ireland, Mediation is addressed under Mediation Act, 2017. The results of the study shows that literature mediation is a voluntary process which means you cannot force someone to attend a mediation meeting to solve a conflict. It is an alternative dispute resolution for a couple to try to solve conflicts instead of going to Court. As an alternative dispute resolution, it is guided by a neutral third party, it is often cheaper and takes less time to find a mutual solution between parties and usually helps maintain good relations. The advantage of this alternative dispute resolution is that the outcome is agreed for both parties not for a third party.

The social actors' perceptions demonstrate this alternative dispute resolution is not suitable for all people. If one party is able to cooperate while the other does not, unfortunately mediation cannot go further due to it is a negotiation between two parties to reach an agreement.

An analysis of the data collected, the respondents in the survey for this research expressed their perceptions about this topic where most of them would prefer to try mediation before Court to solve a

child's custody dispute but the two respondents' in-depth interview refers mediation is a good option but it did not work for them.

7.3 Question 3: What is the procedure to follow and the implications in a situation where one partner takes a child to another country without permission from the other partner?

The literature review shows evidence of the international responses to this phenomenon and reveals that in Ireland it is a criminal offence.

As a response of a child abduction, The Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children apply to bring a child back to the place where he/she was living. For this topic, mediation also exists as an alternative dispute resolution to negotiate child abduction as it is mentioned in the literature. It is the responsibility of the European Parliament and of the Council to mediate transnational proceedings where children are involved.

In the literature it is shown that if a child is in danger, the guardianship can apply to not return the child in order to keep him/her safe. As part of the analysis of data collected with social actors in Ireland, it is demonstrated that not all the parents have knowledge about child abduction and the consequences which it is a big matter if it happens for the emotional consequences for the children.

CONCLUSION

When a conflict appears, people try to find several ways to reach a solution. Thus, people find it suitable that a third party imposes a solution for them as is the case with the legal system in Ireland. Considering mediation as a self-solving method of resolving a conflict, it is the parties themselves who will try to end the controversy arisen. The fact that a third party intervenes does not mean people will fit within the framework of the solutions. The key element for such differentiation is that the parties acquire the adoption of agreements.

A 'good' Split up/Divorce reduces stress on each party, children can keep a good relationship with both parents, it makes them feel secure with both parents, otherwise, there are risks for children after the couple split up which threatens their emotional stability and leads to a lower standard of living. If the couple opts to go through mediation a child can be inclusive in the mediation where he/she can have their voices heard, make their parents improved alliances, reduce stress and conflict, reach more tenable and improved relationship between people involved.

First

Couples must think about the legal framework in Ireland in relation to whether they are married or not and decide to expand their family based on this because in the future if they split up it can cause problems for both parties due to the different applications of legislation for both genders regarding the rights of the children. Custody cannot be granted to both parents, one of them has custody while the other partner has part-time access to the child depending on the arrangements while both parties can have joint guardianship to take decisions related to the child depending on the relation that the father has with the mother of the child.

Second

Mediation is based fundamentally on the voluntariness and equality between the parties. It is essential to evaluate that parties come freely and that between them there is a balance so they can defend their positions and agree with total and absolute freedom. Mediation as an alternative dispute resolution is complementary way of conflict resolution.

The agreement is principal aspect of mediation and its adequate depends on the parties. In my opinion, it is necessary to make it legally binding in order to grant effects legal.

Third

The mediator is not a judge, he is not a lawyer, nor is he a therapist. It has a specific role which necessitates adequate regulation of its legal status (rights, duties, regulations and regime disciplinary). The mediator is a facilitator and impartial, it is not taking sides. It is there to help both parties to reach an agreement but also can finish the mediation if the parties are not able to reach an outcome.

Fourth

Mediation compared to Court, mediation has more advantages as it is less expensive, takes less time to solve a conflict, keeps good relations, it is voluntary, flexible and it is guided by a third party but the outcome is agreed for the parties not for the mediator. In Court, it is assigned a third party to guide the conflict, it is expensive, a long process and the decision is taken by a third person

Fifth

An unmarried couple, if the father of a child is not sharing the guardianship with the mother, the mother can take the child out of the country without his permission.

Sixth

Parents sharing guardianship, when one of the parents wants to take the child out of the country, he/she should have consent from the child's other parent (left behind parent) or in breach of a court order to leave the country, otherwise, it would be child abduction which is a legal offence.

Seventh

There is mediation for child abduction under the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, a network of EU-trained and/or EU-authorised mediators for transnational proceedings involving children could be specifically developed and act under the auspices of the European mediator for child abduction.

Recommendations

This topic has many gaps that could be considered for further analysis. Especially in the matter for foreigners having children with Irish citizens taking into account the male "role" as most of the time even when a father proves he can take care of the child better than the mother, Law does not consider it, and gives preference to a mother even when she cannot take care of the child. Father's rights should be analysed deeply.

REFLECTION

The challenge of writing a thesis concludes in great satisfaction for me. This has been a new learning experience for me, starting with the experience of researching, writing and trying my best to write a proper and accurately critical analysis about this topic of research. It has been impressive the way that I have to perform in-depth analysis on a topic while looking for reliable sources. To start the research I must know what exactly it will be focused on. As an engineer, I never did research or wrote about a specific subject, everything that I did in the past was related to industrial processes and figuring out how those processes work, without basis to analyse the situation to get an assertive result. Most of the time my work was required to find a solution as soon as possible, with no time to waste.

I have had first-hand experience conducting fieldwork for my master's degree, and while it was a significantly enjoyable experience, I did make a number of mistakes during the process. However, I learned some valuable lessons as a result of this too. After I started doing this research topic and the research of literature, I found the need to narrow down the scope of the investigation and to be as specific with the objectives. There is a large amount of information on this topic so I was careful to select valid and reliable sources of information and judge the credibility of authors. The most difficult part of doing the investigation was building the literature review as it was a confusing process due to the nature of the investigation, which deals with legal frameworks the amount of information found and redundant language it uses can turn out to be overwhelming to read. It took me longer than expected to go through all the research. However, finishing this chapter was also the most rewarding part of the investigation because it gave me most of the answers for this study. This literature review made me more conscious on how to research and analyse the information to give a good critical base with fundamentals. It also made me realize how law works in Ireland and the international family law. When I had to start writing the methodology it took me longer than writing the literature review. I was

so confused about all the parts of the research onion methodology but while I went through it, I was enjoying going through this step because I found it so interesting.

During my collection of information I came across some problems due to the fact that not all people were willing to cooperate with the present study even when I said it would be completely confidential, while other people just ignored the survey but an opportunity arose where I found some other helpful people that contributed to this research.

In my experience there are benefits of doing this kind of research such as learning about the differing perspectives of both genders. I cannot imagine how helpful and useful it would be for people if they would have an interest in reading reliable sources about any of these topics to become more informed.

As students, we must change our mind to improve our personal life, empowered by knowledge. Definitely the world would be a completely different place if everyone did this.

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Appendix A: Information Form & Consent Sheet

INFORMED CONSENT FORM

Project title: Mediation as Alternative Dispute Resolution in regard of a child's custody: An analysis of perspectives in Ireland

My name is Mónica Arregui and my supervisor in this dissertation is Mary O'Dwyer. I am conducting an in-depth interview on child custody disputes as part of the research for my thesis to obtain a Master's Degree in Dispute Resolution awarded by Independent Colleges.

You may decide to stop being a part of the research study at any time without explanation required from you. You have the right to ask that any data you have supplied to that point be withdrawn / destroyed. You have the right to omit or refuse to answer or respond to any question that is asked of you. If you have any questions as a result of reading this information sheet, you should ask the researcher before the study begins.

The data I collect does not contain any personal information about you, all the information given will be ethical managed confidentiality.

Name and Signature

Date

Appendix B: Informed Consent Form Participant Female

INFORMED CONSENT FORM

Project title: Mediation as Alternative Dispute Resolution in regard of a child's custody: An analysis of perspectives in Ireland

My name is Mónica Arregui and my supervisor in this dissertation is Mary O'Dwyer. I am conducting an in-depth interview on child custody disputes as part of the research for my thesis to obtain a Master's Degree in Dispute Resolution awarded by Independent Colleges.

You may decide to stop being a part of the research study at any time without explanation required from you. You have the right to ask that any data you have supplied to that point be withdrawn / destroyed. You have the right to omit or refuse to answer or respond to any question that is asked of you. If you have any questions as a result of reading this information sheet, you should ask the researcher before the study begins.

The data I collect does not contain any personal information about you, all the information given will be ethically managed confidentiality.

Louise Walsh

Name and Signature

26 07. 2019

Date

Appendix C: Informed Consent Form Participant Male 1

INFORMED CONSENT FORM

Project title: Mediation as Alternative Dispute Resolution in regard of a child's custody: An analysis of perspectives in Ireland

My name is Mónica Arregui and my supervisor in this dissertation is Mary O'Dwyer. I am conducting an in-depth interview on child custody disputes as part of the research for my thesis to obtain a Master's Degree in Dispute Resolution awarded by Independent Colleges.

You may decide to stop being a part of the research study at any time without explanation required from you. You have the right to ask that any data you have supplied to that point be withdrawn / destroyed. You have the right to omit or refuse to answer or respond to any question that is asked of you. If you have any questions as a result of reading this information sheet, you should ask the researcher before the study begins.

The data I collect does not contain any personal information about you, all the information given will be ethical managed confidentiality.

Frank Mc.

Name and Signature

01/08/19

Date

Appendix D: Informed Consent Form Participant Male 2

INFORMED CONSENT FORM

Project title: Mediation as Alternative Dispute Resolution in regard of a child's custody: An analysis of perspectives in Ireland

My name is Mónica Arregui and my supervisor in this dissertation is Mary O'Dwyer. I am conducting an in-depth interview on child custody disputes as part of the research for my thesis to obtain a Master's Degree in Dispute Resolution awarded by Independent Colleges.

You may decide to stop being a part of the research study at any time without explanation required from you. You have the right to ask that any data you have supplied to that point be withdrawn / destroyed. You have the right to omit or refuse to answer or respond to any question that is asked of you. If you have any questions as a result of reading this information sheet, you should ask the researcher before the study begins.

The data I collect does not contain any personal information about you, all the information given will be ethical managed confidentiality.

JUAN FONTAINE *Juan Fontaine* 04/08/19
Name and Signature Date

Appendix E: Questionnaire Message

My name is Mónica Arregui and I am conducting a survey on child custody disputes as part of the research for my thesis to obtain a Master's Degree in Dispute Resolution awarded by Independent Colleges.

I would appreciate it if you could take a few minutes to complete this survey. Participation is completely voluntary, so you are not obligated to participate. However, if you agree to complete this survey, participation is anonymous and completely confidential.

Thanks in advance.

Regards

Mónica Arregui

Appendix F: Questionnaire Survey

1. Do you voluntarily agree to participate in this survey?

Yes. I am over the age of 18 and agree to participate in this study.

No, I am not over the age of 18 or I do not agree to participate in this study

2. Gender

Male

Female

3. Civil Status

Married

Unmarried

4. Have you and your partner ever spoke about what will happen with the children if you split up?

Yes

No

5. Do you and your partner have an agreement regarding the children if you split up?

Yes

No

6. If you consider going to court, do you think the problem will be solved fairly for both parties?

Yes

No

7. Do you know your rights and obligations over your children?

Yes

No

8. Do you know the International Children's Law?

Yes

No

9. Do you know the implications if you take a child out of the country without permission from the other parent?

Yes

No

10. Did you have a dispute over the custody of a child before?

Yes

No

11. What would you prefer to do, to solve a child's custody conflict?

Mediation

Court

12. Do you consider Irish Law seeks the best interest of the child?

Yes

No

13. Do you consider the Irish law gives preference to women?

Yes

No

14. If yes, Why?