Independent Colleges
learn to succeed

Dissertation Submission Form

LEARNER NUMBER:	51709724
NAME:	Kelly Kiefer da Silva
COURSE:	MA in Dispute Resolution
DISSERTATION TITLE:	Legal pluralism and dispute resolution: a comparative study of the evolution of the practice in Ireland and Brazil with a focus on issues involving culture and religion
SUPERVISOR NAME:	Craig Phillips
WORD COUNT:	18.926
DUE DATE:	05/11/2021
DATE SUBMITTED:	04/11/2021

I certify that:

- This dissertation is all my own work, and no part of this dissertation has been copied from another source: Yes ✓ No ☐
- I understand that this dissertation may be checked for plagiarism by electronic or other means and may be transferred and stored in a database for the purposes of data-matching to help detect plagiarism: Yes ✓ No ☐
- This dissertation has not previously been submitted in part or in full for assessment to any other institution: Yes ✓ No ☐
- I consent to the retention of my dissertation (hardcopy) in the library for the purpose of future research: Yes ✓ No ☐
- I consent to the inclusion of my dissertation in an electronic database maintained by the library: Yes ✓ No ☐

(Note that if no check boxes are selected, this dissertation will be regarded as NOT properly submitted, and may be subject to a late submission penalty)

Name: _____

Date: _____

Notes:

Legal pluralism and dispute resolution: a comparative study of the evolution of the practice in Ireland and Brazil with a focus on issues involving culture and religion

Legal pluralism and dispute resolution: a comparative study of the evolution of the practice in Ireland and Brazil with a focus on issues involving culture and religion

By

KELLY KIEFER DA SILVA

Student Registration No: 51709724

A dissertation presented to the

MA in Dispute Resolution

Faculty of Law Independent College Dublin

November 2021

Independent College Dublin
Assessment Cover Page

	Student A	*Student B*	*Student C*	*Student D*	*Student* E
Student Number(s):	51709724	# here	# here	# here	# here

Student Name(s): *(In the same order as student numbers above)*: Kelly Kiefer da Silva

Lecturer's Name(s): Craig Phillips

Module Name: Dissertation Submission

Assignment Title: Final dissertation: Legal pluralism and dispute resolution: a comparative study

Due Date: 05/11/2021

Date of Submission: 04/11/2021

Requested Word Length: 18.000

Actual Word Length (excluding list of references): 18.926

Check you have used the following file name convention: ■ **Checked**
surname_student ID_.doc or .docx

e.g.: *durant_51600001.doc*, **or** *durant_51600001_bird_51600002_ james_51600003.doc*

INTELLECTUAL PROPERTY STATEMENT

By checking the box below: I/we (if submitting on behalf of a group) certify that this assignment is my/our own work and is free from plagiarism. I/we understand that the assignment may be checked for plagiarism by electronic or other means and may be transferred and stored in a database for the purposes of data-matching to help detect plagiarism. The assignment has not previously been submitted for assessment in any other module or to any other institution.

■ **Agree**

Date: 04/11/2021

CONTENTS PAGE

ACKNOWLEDGEMENTS

Firstly I'd like to say thank God!

To my mother Elizabeth, who is the love of my life and forged my character.

My father José Antônio, always taught me to fight for things.

My three brothers… Alex, who is a doctor, a very smart person, my confidant and best friend. That he listened to me and was always by my side in the happy and sad moments.

Cristian, lawyer, and post-doctor, who I try to follow in my legal career.

Patrick, the future doctor who even from afar always helps me.

To my dogs and daughters Liang, Yuki and Angie. My family is the inspiration for my daily life!

To my dissertation supervisor Craig Phillips, for his availability always. Very polite, patient and helped me a lot in my dissertation. Thank you for your help.

University Fumec- Brazil, where I graduated in Law. Where I learned many things in the law course that helped me a lot in the Master's Degree in dispute resolution. My special thanks to the Professor Antonio Marcos Nohmi who helped me with my background for the selection of the Master Degree.

To the 83 mediators in Brazil and Ireland who took time out and answered my survey research.

To Mark Byrne who did my interview for a job on the Master Degree.

To all my Master's Degree teachers, Independent College Dublin: Anastasia Ward, Sharon Morrissey, Paul Crowther, Geoffrey Corry, Éamonn O'Moore and Orla Tuohy.

To staff Niamh and David for their help, and their patience in helping us. This Master Degree was very difficult. As I suffered, I cried alone many times. Work, study, study, and study. But it was worth more than 15 hours a day sitting in the chair and studying for the tests, and the most extensive assessments. And how worth it. The hard work is always more rewarding. Today I feel majestic saying that everything, despite being difficult, was worth it. Thank you, and may God bless you all.

ABSTRACT

The practice of Dispute Resolution, as an alternative instrument of justice to resolve conflicts between litigants, has now reached a status of great importance, as it has helped the judiciary in numerous countries to avoid the accumulation of cases and confrontation in the courts. This success is not only due to the speed that the self-compositional forms of justice, especially mediation and conciliation, reach in solving the processes, but also to the possibility of relating to other devices, such as legal pluralism. Motivated by this, this research comes to analyze, through a comparative study, the evolution of the practice of Dispute Resolution in Brazil and Ireland, from the integration of legal pluralism in their processes and its use in the effective resolution of disputes motivated by religious and cultural issues, focusing mainly on family cases. The research was based on the thesis that the self-compositional forms, using mechanisms of legal pluralism in both countries, was really effective in resolving conflicts, particularly those involving religious and cultural issues. To respond to this hypothesis, the research, of a quantitative and qualitative nature, was methodologically guided by the collection of data through the application of a survey to a sample population of 83 professionals in the field of Law and Dispute Resolution in Brazil and Ireland and supported by a rich secondary bibliography that worked on theories and concepts. The study proved that the practice has already been used in the judiciary of both countries for some years and associated with police agencies, private institutions and NGOs, it has effectively helped to reduce conflicts in the communities served. The research showed that this happens due to the fact that problems are dealt with in the family nucleus, preventing them from reaching a community dimension.

Keywords: dispute resolution, legal pluralism, Ireland, Brazil, religion, culture

LIST OF FIGURES

LIST OF GRAPHS

ACRONYMS

UN United Nations

EURATOM European Atomic Energy

ECSC European Coal and Steel Comission

ECC European Economic Community

EU European Union

CL Common Law

ADR Alternative Dispute Resolution

CNJ Conselho Nacional de Justiça do Brasil / National Council of Justice of Brazil

WTO World Trade Organization

NGO Non-governmental Organization

INTRODUCTION

The dispute resolution has emerged in recent years as a useful practice and acclaimed by legal systems in Western society, as it represents a quick and effective alternative in the resolution of disputes that avoid the court proceedings and confrontations in the courts. According to Burton[1] The term dispute resolution (or dispute settlement) refers to the process of resolving disputes between parties to a dispute, disputes that materialize in the form of conflicts at the personal, business and governmental levels.

In recent decades, with the end of the Cold War and the intensification of conflicts between different cultures and societies, the advent of globalization, dispute resolution processes began to aggregate in their mechanisms, the practices of legal pluralism, which can be broadly conceptualized as to how the use of two or more different and effective legal systems can be in place in the same time frame (Tamanaha et al, 2012)[2].

Legal pluralism has become one of the most important aspects of the socio-legal universe today. Because it contains an implicit notion of culture, it represents in itself a powerful instrument of legal practice in the dynamics of conflict conciliation, helping to conduct processes within other areas of law such as International Law, Civil Law, Family Law, Commercial Law, Environmental Law and others.

But despite the great use that the terminology has seen in recent years, its real understanding still remains rooted in the notion of globalization, which presupposes the coexistence of numerous concepts related to its practice, orbiting around elements such as culture, religion and politics, among others. It is true that legal pluralism was conceived in the context of globalization, acquiring increasing importance as the development of technology and the media brought people and cultures closer together through

[1] Burton, J. (1990). *Conflict: Resolution and Prevention.* Nova York: St Martin's Press.

[2] Tamanaha, B. Z. Sage, C. Woolcock, M. eds. (2012). *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*. Cambridge, UK: Cambridge University Press.

the notion of "global village", but it is certainly richer and denser than that.

It is in this context of interaction that exists between dispute resolution and legal pluralism that the research wants to understand its scope in the resolution of conflicts motivated by cultural and religious issues. In recent decades, our global society has witnessed an increase in conflicts arising from cultural and religious issues, such as doctrinal fundamentalism, the escalation of terrorism and the genocide perpetrated by wars that provoke the forced migration of millions of people. These problems, despite having intensified in recent years due to the technological development that strengthens armamentism, have been going on for centuries. However, humanity, after the two great wars, seeks to find peace and put an end to conflicts. Large international agencies such as the UN have sought to intensify the dialogue between religions and governments in order to end conflicts and the proposal of self-composition methods such as mediation, conciliation and arbitration has gained ground in this scenario (Gulati, 2010)[3].

Our proposal is to analyze the practice of legal pluralism in the context of dispute resolution mechanisms, focusing on a comparative study of its performance in Brazil and Ireland and its importance today in mediating conflicts motivated by cultural and religious issues. The research will be based on two basic types of data sources: primary sources, in the form of a survey applied to professionals who work with mediation/conciliation in institutions specialized in this type of work linked to the judiciary in both countries; and in secondary sources, through a review of specific literature in the area of law, in works that work the dimension of auto-composition systems of dispute resolution, legal pluralism and related religious and cultural issues. This option was made taking into account the social scope of dispute resolution work, considering its effects in the context of the family and the community.

[3] Gulati, R. (2010). *The Internal Dispute Resolution Regime of the United Nations: Has the Creation of the United Nations Dispute Tribunal and United Nations Appeals Tribunal Remedied the Flaws of the United Nations Administrative Tribunal?* In SSRN. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695215 (Accessed 21 October 2021).

In this context, the research is based on the following issue: does dispute resolution practice in Ireland and Brazil use the mechanisms of legal pluralism in its actions, through legal apparatus that seek to resolve conflicts motivated by religious and cultural principles?

A hypothesis was formulated to try to answer this question. The legal mechanisms that guide the practice of dispute resolution in Brazil and Ireland, including the practice of legal pluralism, effectively consider cultural and religious principles in the resolution of conflicts, privileging family issues as a means of achieving the well-being of the community.

The research aims to answer this question and focuses on documentary sources and field research. For this reason, the study will be divided into two parts. In the first part, concepts relevant to the universe of legal pluralism and dispute resolution will be developed, analyzing its emergence and historical evolution at a world level, but with special attention to the reality of Ireland and Brazil. Here, the study will be based on secondary research, which includes the entire scientific literature on the subject, dealing with theories and concepts.

The second part contemplates a comparative study of the practical realities of legal pluralism and dispute resolution in Ireland and Brazil, through field research (primary research). This will be done through the application of a survey for professionals who work as mediators/conciliators in both countries. The questions proposed by the survey, applied to a sample population selected according to strict criteria, will allow the empirical data to be tabulated and analyzed. The survey wants to demonstrate how legal pluralism is present in the activities of mediation and settlement of conflicts institutionally developed in the two countries and its more direct effects produced in the sphere of the family (seen as the basic cell of society) and the community, considering if its application in cases involving cultural and religious issues.

Bibliographic research and field research are organized into five chapters throughout the dissertation. The first chapter brings a literature review, addressing concepts and theories related to dispute

resolution, legal pluralism and issues of religion and culture in the area of law. Special attention was given to the historical context of dispute resolution and legal pluralism in the judicial reality of Brazil and Ireland.

The second chapter, tending to be more technical, addressed aspects of the methodology that guided the research, more specifically the proposition of the survey questions and their application to the chosen sample population, in a qualitative and quantitative view and its theoretical consequences. This sample population was carefully selected in Ireland and Brazil and consisted of 83 legal professionals, with or without practice in the field of dispute resolution, but who responded to the survey sent to them by social media and applied personally by the researcher.

The third chapter consists of the presentation of the collected data, following the proposed methodological orientation. It presents the 19 questions proposed by the survey and its results in the form of graphics, which were commented and explained.

The fourth chapter, which is extremely important, presents the analysis of data, criticized and supported by the revised literature. Here, the results were outlined, confirming or not the veracity of the formulated hypothesis, which was the main objective of the research.

In the fifth and last chapter we present a discussion of the results. It is the conclusion of the research work developed, which confirmed the hypothesis formulated as an answer to the problem that motivated the scientific investigation.

The main objective of this dissertation is to foster new discussions about the issue of legal pluralism in the context of dispute resolution. The intention was not to present a ready and finished discussion, but rather to contribute to future reflections. By addressing the social impacts of cultural and religious issues on society, which turn into conflicts, starting with the family, research acquires fundamental importance. It becomes important because it addresses these conflicts through the theoretical categories of Law, mainly sociology and anthropology, which allow us to understand this phenomenon more

clearly from the perspective of law and the sociopolitical and cultural arrangements that interact with it.

CHAPTER 1 – REVIEW OF THE LITERATURE: LEGAL PLURALISM AND DISPUTE RESOLUTION

Currently, the existence of dispute resolution as a dynamic practice within the Law is closely related to the issue of legal pluralism. In this first chapter, we want to historically address the emergence of legal pluralism, its evolution and its relationship with the practice of dispute resolution. This chapter, of a more theoretical nature, aims to present the general concepts directly related to legal pluralism and dispute resolution.

1.1 The concept of legal pluralism

Before delving into the comparative study of the practical reality of dispute resolution based on the legal pluralism exercised in Brazil and Ireland, it is important to outline a brief history of its emergence and define some pertinent concepts. Here we do not want to delve densely into the theory of legal pluralism, just to present some basic definitions offered by theorists.

According Menski (2006, p.82)[4] legal pluralism emerged in the context of modernity, in the wake of postcolonialism. This first legal look at the nature of the ethnic, cultural and linguistic encounters that characterized the colonial period in America, Africa, Asia and Oceania was motivated by the great cultural miscegenation that marked society in these continents. From then on, a discussion was developed within the scope of criticism of the phenomenon of globalization, which, as an instance of capitalism, brought countries and cultures closer together, making use of communications technology, especially the internet. His concept, however, is more complex and involves approaches from anthropology, sociology and ethnology, among others.

One of the leading theorists of legal pluralism today was the sociologist of law John Griffiths (1940-

[4] Menski, W. (2006) *Comparative Law in a Global Context*. Cambridge: Cambridge University Press.

2017). Griffiths published in 1986[5] an article in which he conceptualized legal pluralism as being "the presence in a social field of more than one legal order" and "that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs" (Griffiths, 1986, p.1-2). The author criticized what he called legal centralism, in which law was seen as an exclusive and uniform system of hierarchical orders, forged within positivism, the basis of state monism.

> Law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions. To the extent that other, lesser normative orderings, such as the church, the family... exist, they ought to be and in fact are hierarchically subordinate to the law and institutions of the state (Griffiths, 1986, p.3).

Griffiths pointed to two types of legal pluralism, which were the strong and the weak. For him, legal pluralism in its strong sense is when it is neither systematic nor uniform, not being administered by a single set of legal institutions of the State. In its weak sense, it operates with the ideology of legal centralism, being treated as a subtype of law, rather than being seen as a social phenomenon (Griffiths, 1986, p.5-8).

A truly important aspect to consider in understanding the concept of legal pluralism is its relationship with the socio-cultural aspect of society, a more anthropological aspect of the issue. This can be clearly seen today in society when working legally on the issue of immigrants, especially those at humanitarian risk, such as war refugees who are welcomed by countries and cultures different from their own (Macdonald, 2005, p.43)[6].

Jean-Guy Belley[7] also conceptualizes legal pluralism from a sociological point of view, saying that it is the simultaneous existence, within the same legal order, of rules of different rights that are applied to identical situations and the coexistence of a plurality of different legal orders that establish or not legal

[5] Griffiths, J. 1986. "What is Legal Pluralism?" *Journal of Legal Pluralism and Unofficial Law*, 24, pp.1-56.

[6] Macdonald, R.A. (2005) "Legal Republicanism and Legal Pluralism: Two Takes on Identity and Diversity", in Bussani M. & Graziadei M. (eds.), *Human Diversity and the Law*, p.43-70, Berne: Stämpfli / Brussels: Bruylant / Athens: Sakkoulas.

[7] Otis, G. (2012). *Méthodologie du pluralisme juridique*, Paris: Karthala.

relations between them (Otis, 2012, p.149).

In turn, Norbert Rouland (Otis, 2012, p.149-150) gives the concept of legal pluralism from the point of view of the anthropology of law. The author presents the complexity of the concept, saying that on the social plane, pluralism is a doctrinal current that insists on the fact that the plurality of social groups corresponds to multiple legal systems that are managed through relationships of collaboration, coexistence, competition and denial, where the individual is seen as the actor of legal pluralism insofar as he belongs to various social and legal systems. Anthropological theories relativize the presence of the State and value the law as the main or exclusive source of law. Legal pluralism combats the monism that places only in the hands of the State the function of controlling the social order.

According to Sabadell (2005, p.121)[8] legal pluralism is "the theory that supports the coexistence of various legal systems within the same society". It stems from two or more legal and efficient systems that coexist within the same time and geographic space, proving that the State is not the main and exclusive source of law.

The author highlights three current conceptions of legal pluralism (Sabadell, 2005, p.106-107). The first is based on interlegality, where various systems of legal norms interact with each other, creating networks of relationships that are constantly changing.

The second conception is based on changes at the international level that made possible the emergence of large international organizations such as the UN and the WTO and supranational organizations such as the European Union, NAFTA and Mercosur. As we shall see in the case of Ireland, the coexistence of international and supranational legal norms developed by these institutions is a form of legal pluralism.

[8] Sabadell, A. L. (2005) *Manual de Sociologia Jurídica: Introdução a uma leitura externa do Direito*. São Paulo: Revista dos Tribunais. Free translation of the author: "a teoria que sustenta a coexistência de vários sistemas jurídicos no seio da mesma sociedade".

The third concept of pluralism concerns the practices of the so-called informal law, practiced by social institutions such as churches, class associations, civil associations, companies and unions. This informal practice is different from the official practice, prescribed by the country's legislation, characterized by its own normative statutes.

These differentiated legal systems that are applied to identical situations reflect the plurality of social groups and their specificities, such as religion, language, culture and ideologies. A clear example is what happens in Islamic law, which bases the rules of conduct of Muslims on four distinct bases: the *Koran*, which is the holy book; the *sunna*, which is the tradition of the prophet; the *igma*, which is the consensus of the community; and finally the *qyas*, which correspond to analogy and reasoning to the opposite sense. These four sources control all aspects within Islamic society and in the case of Islam, divergence of opinions is seen culturally and historically as a divine blessing. Thus, Islamic law came to be characterized by legal pluralism, by recognizing the local culture and at the same time offering different opinions on the same subject (Hallaq, 2011, p. 19)[9].

As noted, legal pluralism is dynamic and this plural dimension has achieved great importance in the processes of conciliation of conflicts of restorative justice and legal instruments of dispute resolution.

1.2 Legal pluralism and dispute resolution

Dispute resolution is an alternative instrument of justice that seeks to resolve disputes between disputing parties. According to Adorno et al, the term conflict is often used as a synonym for dispute, although it is more complex. Some authors argue that the conflict refers to a disagreement between the parties and a dispute exists when it is necessary to articulate a proposal to resolve this conflict, in a judicial or extrajudicial manner[10]. According to the authors, this mechanism seeks to resolve issues

[9] Hallaq, W. (2011) *An introduction to islamic law*. New York: Cambridge University Press.

[10] Adorno, P.A, Fialho, ML, Peres Jr, R and Santiago, V. (2018) "Conciliação e mediação políticas públicas e cidadania"

involving people, governments and companies. Dispute resolution methods include lawsuits, arbitration, collaborative law, mediation, conciliation, negotiation, facilitation and evasion[11].

According to Adorno et al (2018, p.7), the practice seeks to reduce the judicialization of processes, being self-compositional methods that resolve conflicts and implement a culture of peace, valuing the satisfaction of the parties involved in dealing with the results obtained. At the same time, it provides quick and effective access to justice, without resorting to the courts. Thus, dispute resolution mechanisms based on the principles of legal pluralism, fighting monism, really take away from the State the weight that it is the only one capable of resolving conflicts in society. It becomes an escape valve, an alternative path that optimizes conflict resolution. This speech by the authors is in line with the proposal of this research, which is to discuss the adoption of legal pluralism in dispute resolution processes and measure its effectiveness in litigation involving religious and cultural issues in Ireland and Brazil.

In the dispute resolution aspect, this research will work with the practices of conciliation, mediation and arbitration. The methods of conciliation and mediation used in dispute resolution seek a consensual solution to existing conflicts between litigating parties and, therefore, they are called self-composition, as they seek to restore the shattered relationship between them. Arbitration is not self-composition as it does not intend to restore the relationship between the parties, since the arbitrator, who holds the power, will make the decision. But all three are considered alternative methods to ordinary justice, as their quick solution prevents cases from going to court. Scavone (2018) differentiates between them, which, although they may seem synonymous at first glance, have different specificities. According to the author,

---

Interciência, v. 15, available at: https://uniesp.edu.br/sites/_biblioteca/revistas/20180925134931.pdf (accessed 2 September 2021).

[11] Burton, J. (1990). *Conflict: Resolution and Prevention*. New York: St. Martin's Press.

> Conciliation implies alternative considerations to resolve the conflict and depends on the consent of the parties. Mediation is the process in which litigants seek the assistance of a qualified and neutral third party. Arbitration is a private jurisdictional means, available by arbitration award pronounced by the expert referee, judge in fact, this means power given to someone, who uses conceptual techniques in order to resolve conflicts (Scavone, 2018, p.9)[12].

The author explains the three types of intervention in the conflict. Mediation is a facilitating process, in which an agent instituted for this purpose acts as an intermediary between two parties that are in dispute, to close an agreement between them and end the conflict, and it has become popular in several countries around the world. Mediation does not focus on resolving the conflict itself, but wants to reformulate the situation that gave rise to it, holding the parties accountable and guiding their negotiation and decision, in a friendly way. Therefore, it acts in processes where the parties already maintain previous bonds, maintaining a passive posture, not interfering in their decisions. In mediation, each party must be represented by their respective lawyers.

Conciliation is similar to mediation, but different in that the intermediary agent acts as an evaluator of the issue, opening on the merits of the case and suggesting agreements to promote dialogue and end the conflict. The role of the conciliator is that of facilitator of the agreement between the parties, which does not maintain previous ties, favoring that common interests are brought closer and relationships harmonized. His posture is active and participatory in this sense. In conciliation, it is also required that the parties be accompanied by their respective lawyers in the process.

Arbitration is a private and confidential method, applied to cases where the issue that motivated the conflict is technical. This intermediary investigates this disputed matter and issues a final and binding determination. While mediators and conciliators need to undergo training in order to work, the arbitrator must be a specialized person. In arbitration, although the parties may be accompanied by a

[12] Scavone Jr, L.A. (2016) *Manual de Arbitragem: mediação e conciliação*. Rio de Janeiro: Forense. Free translation of the author: *"Conciliação implica nas ponderações alternativas para resolver o conflito e depende da anuência das partes. Mediação é o processo nos quais os litigantes buscam o auxílio de um terceiro capacitado e neutro. Arbitragem é um meio privado jurisdicional, disponível por sentença arbitral prolatada pelo árbitro especialista, juiz de fato, isso significa poder conferido a alguém, que utiliza técnicas conceituais com objetivo de solucionar os conflitos"*.

lawyer, their figure is not necessary in the process.

These concepts represent a paradigm shift with regard to the goals of social pacification, through which an impartial individual, without the intervention of the judiciary, brings together the parties involved in the dispute in a common dialogue in order to reach an agreement. The conciliator/mediator shows each of the parties the negative and positive points of the dispute and encourages them to responsibly seek a consensual solution, avoiding the authoritarian presence of a third person, in this case the judge. As an instrument available to justice to put an end to disputes between peers, it is not merely aimed at a punitive view of the guilty, intending to establish agreements between the parties that may include compensation and retraction. In this regard, the practice of dispute resolution approaches the notion of restorative justice.

According to Zehr (2002), restorative justice has emerged today as an opposition to the concept of criminal justice, a new paradigm in the definition of crime and the objectives of justice. The author considers that criminal justice defines crime as a punishable violation of State norms, while restorative justice defines crime as a violation of the person and interpersonal relationships and proposes to restore the damage caused by these violations. In the view of restorative justice, the role of justice is to repair the damage caused to the victim, society and interpersonal relationships, including the perpetrator himself. Its intention is the humanization of the judiciary[13]. Van Ness and Strong (2010) highlight the importance of the practice to protect victims' psychological feelings of anxiety and helplessness[14].

Laurence and Strang[15] They point out that restorative justice is not a current practice, but that it dates back to Ancient Rome and was also practiced by Muslim law (Sharia), saying that "restorative justice is an ancient practice that has been codified in Roman law, Sharia law, and many other documents.

[13] Zehr, H. (2002). *The Little Book of Restorative Justice*, Intercourse: Good Books.

[14] Van Ness, D. W. and Strong, K. W. (2010). *Restoring Justice – An Introduction to Restorative Justice*. 4th ed. New Province: Matthew Bender & Co., Inc.

[15] Sherman, L. W. Strang, H. (2007). *Restorative Justice: the Evidence*. London: The Smity Institute.

Restorative justice is arguably the most common approach to law in most societies throughout most of human history" (Laurence and Strang, 2007, p.44).

In any case, the relationships between dispute resolution, legal pluralism and restorative justice are clear, as instruments that seek to resolve conflicts between the parties, promoting harmony and satisfaction between them. In this regard, we can consider that the adoption by dispute resolution mechanisms of different rules and systems within the same legal system corresponds to a desire of society that wants justice, above all, more human and accessible to all, regardless of social status or gender. The practice represents an effective alternative way of winning litigation and achieving justice, avoiding lengthy processes and emotional strain on the courts.

Before moving on to the concrete analysis of the results obtained by field research in Ireland and Brazil, it is necessary to present how the practice of dispute resolution related to legal pluralism has historically consolidated in both countries.

1.3 Emergence and historical evolution of legal pluralism in Ireland and Brazil

We can speak of a historical trend of legal pluralism in Western society that dates back to the Middle Ages. Legal sociologists believe that the medieval geopolitical configuration favored that several different legal systems coexisted at the same time. Wolkmer[16] (2001, p.170) cites Rouland, who explains that the four most important legal systems of the period were royal law, developed in the centralization of empires and kingdoms; Canon Law, which governed the Catholic Church; bourgeois law, practiced by merchant guilds and brotherhoods; and the stately law, developed in the feuds, with a military character. In addition, there were ethnic groups, such as Roma, Muslims and Jews, whose culture was based on their own right.

With the end of the Middle Ages and the consolidation of the overseas expansion of Europe, the notion

[16] Wolkmer, A C (2001) *Pluralismo Jurídico: fundamentos de uma nova cultura no Direito*. São Paulo: Alfa-Omega.

of Law was influenced by liberalism and individualism. According to Maliska (2000, p.23)[17] the consolidation of the capitalist mode of production and scientific development in the great universities, more autonomous in relation to Church control, influenced the notion of politics and law. The European Enlightenment criticized the legal pluralism practiced in the Middle Ages, which they considered chaotic, stressing authoritarianism in the execution of sentences and the lack of justice for the poorest, who had no representation. But this happened because in the Middle Ages there was no centralizing power in a notion of unity.

According to the author, it was only in the 19th century that the notion of legal pluralism began to be reviewed in Europe and treated as a new approach within the sociology of law. Two important works at the time were that of jurist Otto von Gierke, who analyzed the Law in German corporations, and Eugen Ehrlich, who studied the manifestations of Law in peasant communities in the region of Bukowina, in central Europe, practiced to the detriment of Civil Law of the Austro-Hungarian empire. Also noteworthy is Karl Llewllyn's studies of legal practice in Cheyenne Indian society in the United States.

Sabadell (2005, p.105-107) says that the beginning of the 20th century was especially fruitful for the development of a more pluralistic notion of law. The works of Santi Romano and Widar Cesarini Sforza focused on the autonomy of institutions, which developed their own legal mechanisms, independent of the State. With the end of the Cold War and the advent of globalization, studies on the practice of legal pluralism have increased considerably, both empirically and practically. And it is in this context of political renewal with the advent of globalization that we want to situate the emergence of dispute resolution mechanisms, as an expression of legal pluralism in Ireland and Brazil.

1.3.1 Legal pluralism and dispute resolution in the EU and Ireland

The relationship between legal pluralism and dispute resolution in Ireland must be understood in light

[17] Maliska, M A. *Pluralismo jurídico e Direito moderno*. Curitiba: Juruá, 2000.

of the socio-cultural and political processes that underpinned the conception of the European Union as an economic bloc. The contemporary history of Europe has always been marked by treaties intended to unify territories and create common markets. This project to unify the continent gained momentum with the signing of the Treaty of Paris, on April 11, 1951, which established the European Coal and Steel Commission (ECSC) and with the two Rome treaties, signed on March 25, 1957, which established the European Economic Community (EC) and the European Atomic Energy Community (EURATOM). This was followed by the 1965 Treaty of Merger of Executives, which unified the structures of the CECA and EURATOM; the 1972 Brussels Treaty; and the Single European Act of 1987, which expanded the powers of European communities and organized decision-making procedures.

On February 7, 1992, the Treaty on European Union was signed in Maastricht, bringing together in a large free trade zone and single currency (the euro) the following countries: Germany, Belgium, Denmark, Spain, France, Portugal, Ireland, Italy, Greece, Luxembourg, Netherlands and the United Kingdom. The bloc entered into force on November 1, 1993 and in 1995 Austria, Finland and Sweden also joined the European Union. The Maastricht Treaty was later amended by the Amsterdam Treaty in 1997 and the Nice Treaty in 2001[18].

The Treaty on European Union represented a new phase in the continent's integration process, motivated by the desire to build solid foundations for its future. The EU acts like a continental state and enacts norms that are in force in all member countries. The intention of the Treaty, in addition to the elimination of barriers and unification of the territory, was the establishment of a free trade zone, seeking to guarantee better living conditions, greater security and freedom for the European people. And it is precisely aspects like these that underlie the legal practice on the continent.

[18] European Union (2021). *The History of the European Union*. Available at: https://europa.eu/european-union/about-eu/history_en (Accessed 02 October 2021).

We can speak of two legal systems that coexist in Europe: National Law and Community Law. National Law is composed of a set of constitutional laws specific to each member country. Community Law comprises the set of supranational norms, arising in the treaties and elaborated by the directive community institutions, which are the Council of the European Union, the European Commission, the European Parliament and the Court of Justice of the European Communities. The relationship between National Law and Community Law is quite complex, with governments transferring part of the powers to supranational community institutions. This is where legal pluralism found its legitimate basis for action[19].

Neil MacCormick (1941-2009) characterizes the relationship between the Union and the member states as "interactive rather than hierarchical, distinct but interacting" (MacCormick, 2002, p. 118)[20]. According to the author, one of the ways to materialize this interactivity is through legal pluralism, amid the complex political organization of the system.

Legal pluralism can be identified in the autonomy of Community Law, its primacy over National Law and its direct applicability in the legal systems of the Member States. This is due to the rich jurisprudence of the Court of Justice of the European Communities. And it is in this aspect that we want to place its practice in the context of Irish law, with regard to the exercise of dispute resolution mechanisms.

1.3.1.1 The case of Ireland

This research will not delve into the history, structure and functioning of Irish law, as the intention is only to situate the practice of legal pluralism and dispute resolution in the country's judicial system. As the practice of dispute resolution is relatively new in the country's history, it must be contextualized

[19] Beck, G. (2013). *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart Publishing.

[20] MacCormick, N. (2002). *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. 2rd ed. Oxford: Oxford University Press.

within the European Union's integration model, while respecting the Irish Constitution. Coakley and Gallagher[21] point out that Ireland was part of the United Kingdom until its independence in 1922 and many elements of its law were inspired by the British model, although it is not a monarchy.

Irish law is made up of constitutional, statutory and customary laws. The Irish Constitution is the ultimate law from which all other laws are derived. The Irish legal system is common law, having a constitution based on a parliamentary democracy based on the British system, but governed by a directly elected president. This system has the separation of powers, with a developed system of constitutional rights and judicial review of primary legislation (Coakley e Gallagher, 2005, p.84).

The legal system in Ireland is governed by the principles of Common Law. Its structure is composed of the Supreme Court, which determines the compatibility of the laws and activities of state institutions with the Constitution and is the final court of appeal; by the Superior Court, which has the legitimacy to examine constitutional issues and judge serious cases involving civil and criminal matters and is the one who judges appeals against decisions of the lower courts; the Circuit Court, which serves as the jury court; and the District Courts, which judge common matters.

According to Garner[22] (2001, p. 177) Common Law is a form of law that developed in the United Kingdom and whose laws are created through decisions made by judges in the courts, not by legislative acts of the government. Currently, all countries that were colonized by the British Empire, such as the United States, Canada, Australia, India and South Africa, use adapted versions of this legislative system. Its most defining characteristic is its precedent aspect, in which a common law court analyzes the set of precedent decisions taken by other courts and synthesizes these decisions, applying them to the current case. This happens when parties disagree about what the law is. The Common Law is based on the principle of Stare decisis, which states that similar facts produce similar results and this

[21] Coakley, J. and Gallagher, M. (eds.) (2005). *Politics in the Republic of Ireland*. Oxon: Routledge,

[22] Garner, Bryan A. (2001). *A Dictionary of Modern Legal Usage*. 2rd edn. NewYork: Oxford University Press.

generates jurisprudence.

For Delmas-Marty[23] Europe has become an important experimental field for legal pluralism, given the complexity of the different languages and cultures that have historically made up the continent. According to the author, the Common Law system practiced on the continent favored the aggregation of this plurality of aspects, by respecting and considering the established legal logic (Delmas-Marty, 2002, p. 3).

In the case of Ireland, the so-called Alternative Dispute Resolution (ADR) that existed as an alternative practice to the courts, was regulated by the Mediation Bill n°27 of 2017[24], decreed by the Minister for Justice and Equality. decreed by the Minister for Justice and Equality. The law was initiated by SI 591 in the same year and entered into force on January 1, 2018. According to data from the European Portal of Justice, the appeal is voluntary and more often used in cases arising from criminal damages, commercial law and law family, also serving illegal discrimination actions under the equality laws. The agreement reached by the parties has the force of an established and signed contract, which must be respected. Likewise, the service is not free and the costs of the process are established between the litigants. Since the Mediation Act 2017, all lawyers must advise clients to consider the mediation alternative, before the courts. If the client does not agree, the professional must attach a statement to the file saying that he was advised to mediate but refused to accept the procedure.

Previously, mediation was regulated by Articles 15 and 16 of the Civil Liability and Courts Act of 2004 and other laws that followed. In Ireland, the training of mediators, conciliators and arbitrators is not the responsibility of the State, but public and private institutions such as universities and institutes offer training courses to candidates, who then need to pass a rigorous selection process to be able to work.

[23] Delmas-Marty, M. (2002). *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism*. Cambridge: Cambridge University Press.

[24] Justice Ireland (2017). *Mediation Bill 2017/ An Bille Idirghabhála 2017*. Available at: http://www.justice.ie/en/JELR/Mediation_Bill_2017_as_initiated.pdf/Files/Mediation_Bill_2017_as_initiated.pdf (accessed 2 September 2021).

Except for a few cases, the mediator may be appointed by a body ordered by the Minister for Justice, Equality and Law Reform[25].

In Ireland, there are numerous centers that do mediation work serving communities. Even though the practice is still very recent, centers such as the Ballymun Community Law Center and the Mediator's Institute of Ireland, among others, offer dispute resolution as an alternative to resolve conflicts at the family and community level, including cultural and religious issues that are the focus of this research are important aspects. In this practice, legal pluralism finds a direct application, as shown by the results of this research.

1.3.2 Legal pluralism and dispute resolution in Brazil

In Brazil, discussions about legal pluralism and its use in the judicial system, linked to dispute resolution mechanisms, are older than in Ireland. They arose in the wake of post-colonial criticism, which accentuated the strong ethnic and cultural hybridization of Brazilian society.

Unlike Ireland, according to Barral and Deffenti[26] Brazil was born under the aegis of Portugal, which colonized it from 1500. Until the arrival of the Portuguese royal family in 1808, which fled Portugal as a maneuver by King Dom João VI to prevent the Portuguese government from succumbing under Napoleon Bonaparte's invasion, legislative and judicial policy was controlled by the monarchy. During the imperial phase, which ran from 1822 to 1889, there was a political reform and the first constitution was drawn up in 1824. Unlike what happened in other Latin American countries, Brazil acquired political and economic stability, centered on the figures of the emperors Peter I and Peter II.

A second constitution emerged after the fall of the monarchy and the establishment of the republican system in 1891. Following the movements that marked Brazilian society throughout the 20th century,

[25] European Justice (2021). *Mediation in EU countries*. Available at: https://e-justice.europa.eu/64/PT/mediation_in_eu_countries?IRELAND&clang=en (Accessed 29 September 2021).

[26] Barral, W. O. and Deffenti, F. (2017). *Introduction to Brazilian Law*. 2rd ed. Alphen aan den Rijn: Wolters Kluwer.

other constitutions followed, until consolidated in the 1988 Constitution, which is still in force.

The Brazilian Constitution of 1988 is the highest law in the country. With regard to the judicial system and its relationship with the executive and legislative powers, according to Mendes (2008), it favored free access to the judiciary. According to the author, it guaranteed, through the principles of effective judicial protection, the natural judge and the due process of law, a decisive importance in the organizational process of justice, especially in the independent structuring of bodies and in guaranteeing the judiciary. Before that, access to justice was given only to those who had financial power, given the high costs of the proceedings[27].

Brazil has a complex judicial configuration, with a varied structure of bodies, which follow a hierarchy. According to the Federal Constitution, the Brazilian judiciary is composed of: the Federal Supreme Court, the highest instance; National Council of Justice; Superior Justice Tribunal; Superior Military Court; Superior Labor Court; Superior Electoral Court; Federal Regional Courts and Federal Judges; Labor Courts and Judges; Electoral Courts and Judges; Military Courts and Judges; and finally, the Courts and Judges of the states, territories and the Federal District[28].

In Brazil, the bodies that are part of the judiciary exercise two important roles: a jurisdictional function, which is the power and prerogative of composing conflicts of interest through legal proceedings, where general and abstract rules are applied, transforming actions into law, which constitutes the phenomenon of the material res judicata; and an administrative function, by which internal affairs are handled, generating laws.

It is in this reality presented, of dialogue between the different bodies of jurisprudence with the other

[27] Mendes, G. (2008). *Organização do Poder Judiciário Brasileiro*. Available at: https://biblioteca.cejamericas.org/bitstream/handle/2015/2951/JudicBrasil.pdf?sequence= 1 & isAllowed=y (Accessed 01 October 2021).

[28] Presidência da República do Brasil - Ministério da Casa Civil. *Constituição da República Federativa do Brasil de 1988*. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm (Acessed 01 October 2021).

powers and with easy access to justice that the possibility of legal pluralism and its application via dispute resolution mechanisms in Brazil is opened.

1.3.2.1 The case of Brazil

In Brazil, discussions about legal pluralism began with postcolonial criticisms, which encompassed the socio-cultural and historical formation of countries that were European colonies in America, Asia, Africa and Oceania. In terms of Law, criticisms are directed at monism, which traditionally points to the State as the sole holder of the legislative monopoly. According to Carvalho (2010, p.14), the accentuated formalism of monism "reduces legitimacy to legality"[29], preventing pluralism. This is negative, as it does not open up to the community, associations and collective practice of law.

It so happens that in Brazil, whose society was built from ethnic, cultural and religious hybridisms, the issue is complex and monism cannot resolve the conflicts generated within this hybridization. In a multicultural country with ethnic plurality, the very concept of pluralism already establishes that the justice model cannot be closed and restricted only to the point of view of the State and its bodies. Thus, the subjects who make the law and apply it must necessarily be plural. For Bensunsan (2008), pluralism must exist so that there is a legal regime that protects traditional knowledge, whether of any kind..

> The creation of a truly sui generis and appropriate legal regime for the protection of associated traditional knowledge must be based on the concepts of legal pluralism and on the recognition of the legal diversity existing in traditional societies, an expression of their cultural diversity (Bensunsan, 2008, p.74)[30].

[29] Carvalho, L. B. de. (2010). "Caminhos (e descaminhos) do pluralismo jurídico". In: Wolkmer, A. C. (dir.). *Pluralismo jurídico: os novos caminhos da contemporaneidade*. São Paulo: Saraiva.

[30] Bensunsan, N. (ed.) (2008). *Seria melhor mandar ladrilhar?* São Paulo: Peirópolis, p.74. Free translation of the author: *"A criação de um regime jurídico verdadeiramente sui generis e apropriado para a proteção dos conhecimentos tradicionais associados deve se basear nas concepções do pluralismo jurídico e no reconhecimento da diversidade jurídica existente nas sociedades tradicionais, expressão da sua diversidade cultural".*

Griboggi (2001)[31] says that within this multicultural and democratic reality, it is precisely the need to meet the most varied needs of society that gives rise to social movements that form legal pluralism. These movements arise due to the pressure of the capitalist economic system and problems such as the educational deficit, poor income distribution, inflation and political corruption, among other factors. For Wolkmer (2001) these social forces that generate autonomous normative practices may or may not be recognized by the State. In this aspect, we can even include our own legislative codes, such as those created by institutions and religious groups and that directly impact dispute resolution by activating legal pluralism.

Trentin (2012)[32] cites Wolkmer, one of the great Brazilian theorists of pluralism and forms of alternative justice, who says that in recent years there has been a transformation in the country's legal-social configuration. This transformation takes place through the emergence of two strands within legal production: the institutional practices of alternative production within the positive law of the State and the non-institutionalized practices of alternative production, outside the positive state law.

Silva Santos, also cited by Trentin (2012), highlights that, in Brazil, the State's ineffectiveness in resolving cases led to the implementation of a system constituted by informal conciliation and arbitration courts. This brought greater flexibility and agility to practical procedures, providing greater guarantees of operationalization of the work and access of less privileged sectors to justice. Some legislative and jurisdictional instances, even non-state ones, are also considered authentic and fair. These alternative and non-state forms, adds Wolkmer (2001), serve to resolve conflicts between litigants, especially the poorest and most marginalized, in a consensual way, unburdening the judicial system.

---

[31] Griboggi, A. M. (2007). *Pluralismo jurídico e a crise do positivismo jurídico no Brasil*. Available at: http://www.conpedi.org.br/manaus/arquivos/anais/bh/angela_maria_griboggi.pdf 9 (Accessed 01 October 2021).

[32] Trentin, F. (2012). "Métodos alternativos de resolução de conflito: um enfoque pluralista do direito". *Âmbito Jurídico*, 15, pp. 01-26. Available at: https://ambitojuridico.com.br/edicoes/revista-98/metodos-alternativos-de-resolucao-de-conflito-um-enfoque-pluralista-do-direito/ (Acessed 01 October 2021).

Kokol (2015)[33] says that dispute resolution mechanisms (conciliation, mediation and arbitration) began to be practiced in Brazil during the colonial and imperial times. The Philippine Ordinances that were in force in Brazil in the 16th and 17th centuries already advised that the parties in dispute should reconcile before proceeding with the costly processes. Arbitration was already present in the Brazilian legal system since the Constitution of 1824, despite the high costs and the centralization of the State making its practice unfeasible. In 1996, the Arbitration Law was regulated by Law No. 9,307, of the current President Fernando Henrique Cardoso, and this has boosted its practice since then. Perseguim[34] says that the Supreme Court has also declared its constitutionality, as it applies to cases involving available rights.

According to Rodas[35] self-composition methods have already proved quite successful in the country. According to Salomão, cited by Rodas, in 2006 the National Council of Justice created a movement called "Movement for Conciliation", as part of its judicial policy. The author indicates that, according to statistical data from the CNJ, up to June 2020, more than 15 million agreements were closed quickly, without the use of sentences. Therefore, in 2010, the CNJ definitively implemented the consensual dispute resolution methods, creating the National Judicial Policy for the Adequate Treatment of Conflicts of Interest within the scope of the judiciary, through CNJ Resolution No. 125/2010. This resolution was important for the change in the Civil Procedure Code, which made mediation mandatory in the first phase of the process and for the creation of the Mediation Law itself in 2015.

[33] Kokol, A. (2015). "Panorama dos procedimentos autocompositivos no Brasil". *Âmbito Jurídico* (Online). 134. Available at: https://ambitojuridico.com.br/edicoes/revista-134/panorama-dos-procedimentos-autocompositivos-no-brasil/ (Acessed 01 October 2011).

[34] Perseguim, I. B. (2019). "Conciliação e mediação no ordenamento jurídico brasileiro comparado ao direito internacional e suas principais nuances". *Jus Navigandi* [online]. Available at: https://jus.com.br/artigos/73458/conciliacao-e-mediacao-no-ordenamento-juridico-brasileiro-comparado-ao-direito-internacional-e-suas-principais-nuances (Acessed 29 September 2021).

[35] Rodas, S. (2020). "Em 5 anos, Lei da Mediação ajudou a mudar cultura do litígio no país" *Consultor Juridico* [Online] Available at: https://www.conjur.com.br/2020-jun-27/anos-lei-mediacao-ajudou-mudar-culturalitigio#:~:text=A%20Lei%20da%20Media%C3%A7%C3%A3o%20(13.140,de%20especialistas%20ouvidos%20pela%20ConJur (Accessed 28 September 2021).

The author still says that in 2015, the Brazilian government sanctioned the Mediation Law through Law 13.140, which was responsible for changing the culture of litigation in Brazil. The law regulated the practice that had been taking place for some years before, which allowed for the resolution of conflicts more quickly and effectively. Salomão said that this law favored the inclusion of a mediation clause in contracts, so that it would always be the first alternative, before the courts, and this clause was quickly included in contracts in sectors such as finance, energy and tourism.

But these alternative processes have their limits. In the case of the Arbitration Law, it can only be applied in cases involving available property rights, where the interested parties are declared capable. The self-composition processes of mediation and conciliation, on the other hand, are not indicated for the solution of very complex disputes, as we can see in many cases that require access to the courts, especially in those where there is intent or guilt, with serious damage to one of the parties. According to Almeida and Correia[36] (2012) in many cases of domestic violence against women, children and the elderly, individual and family conflicts, for being reconciled only immediately and without going deep into the root of the problem, have compromised the quality of its solution. In Brazil, OMG's and private institutions, such as Instituto Elo in the province of Minas Gerais, work together with the State and the civil and military police in a proposal to pacify areas considered to be at social risk, in an initiative that has yielded good results.

1.4 Cultural and religious issues in the context of legal pluralism and dispute resolution

As this research proposes a reflection on the impact of cultural and religious issues on dispute resolution processes, it is necessary to address some theories about this, before moving on to the analysis of the results obtained by primary research. The concepts of culture and religion are very

[36] Almeida, B. de L. F. de and Correia, D. B. (2012). "Access to Justice through Mediation and Conciliation: Limited Rights Guarantees". *Revista CEJ*, year XVI, 58, pp. 38-43.

close, having originated together in human societies through the evolution of primitive societies. There are numerous concepts of culture and religion and it is not the intention of this research to go deeper into discussions on the subject. What interests us is to associate the concepts of culture and religion in the aspect of social behaviors that, in our research, condition dispute resolution work.

One of the first classical concepts of culture was developed by the English anthropologist Edward Tylor (1832-1917). According Tylor[37] "Culture is that complex whole which includes knowledge, belief, art, law, morals, custom, and any other capabilities and habits acquired by man as a member of Society" (Tylor, 1920, p.1). As we can see, belief systems are seen as cultural aspects.

By Tylor's classic concept, we understand that culture is a form of interaction between man and nature. Knowledge, belief systems, laws, notions of morals and customs, as well as everything that humanity created to relate to the environment that surrounded it is culture. Since primitive times, culture has expressed this relationship of humanity's dependence on nature, the cosmos and the gods, to whom they attributed the explanation of what they did not understand and did not dominate.

Sociologist Peter Berger (1929-2017)[38] conceptualized religion as

> the establishment, through human activity, of an all-embracing sacred order, that is, of a sacred cosmos that will be capable of maintaining itself in the ever-present face of chaos. … Every human society is, in the last resort, men banded together in the face of death. The power of religion depends, in the last resort, upon the credibility of the banners it puts in the hands of men as they stand before death, or more accurately, as they walk inevitably towards it (Berger 1967, p.51).

According to Berger, human beings use religion with a sense of cultural order. This definition is more useful for our study, because we want to understand how cultural and religious issues interfere in dispute resolution actions. For the author, humans need to be able to impose order on the reality that surrounds them. And this happens through culture, which is a collective construction. While the

[37] Tylor, E. B. (1920). *Primitive culture: researches into the development of mythology, philosophy, religion, art, and custom*. London: John Murray.

[38] Berger, P. (1967). *The Sacred Canopy*. Garden City: Doubleday & Company.

cultural order favors social life, social life favors culture. And religion plays a fundamental role in this order, to the point of conditioning many societies around itself.

As part of a cultural system, religion is dynamic. It changed over the centuries, with the creation of myths, rites and symbols with which believers communicated with the deities. Religion can only be understood from the worldview of those who created it, follow its doctrine and practice its rites. Thus, Christianity is not understood without the figure of Jesus, Hinduism without the Trimurti gods, or Islam without the figure of Prophet Muhammad. All cultural aspects that have been passed on from generation to generation by followers of a certain religion are part of the identity of each individual.

The culture of justice has always been closely linked to religion. Historically, it has always developed under the tutelage of goddesses and gods who represented social order and peace, even though war was an instrument for it. Virtually all ancient societies had their societies organized according to religious principles. Ancient Rome, which inspired the model of law for Western society, always invoked the gods to ensure social order. The image of the Roman goddess *Justitia*, who merged symbolic elements of the Greek goddesses *Themis* (divine justice) and *Diké* (human justice) is represented blindly, indicating impartiality and holding a scale, symbol of prudence and a sword, symbol of imposition and of duty (Hamilton, 1997, p.42)[39].

Based on this assertion that culture and religion still exert a great influence on the social order today, we want to understand how it interferes in dispute resolution lawsuits, in the context of legal pluralism. Says Fassberg[40]

> Society is made up of individuals. Individuals differ from one another. They differ from one another in ways which stress their individuality, and they differ from one another in ways which stress their identity as members of discrete groups. One of the ways in which members of a society may differ from one

[39] Hamilton, É. (1997). *La mythologie: ses dieux, ses heros, ses legendes.* Alleur: Marabout.

[40] Fassberg, C. W. (2005). "Religious Diversity and Law", in: M. Bussani and M. Graziadei (eds.). *Human Diversity and the Law / La diversité humaine et le droit*. Berne: Stämpfli Publishers Ltd./ Brussels: Bruylant Ltd./ Athens: Ant.N. Sakkoulas, pp. 25-41.

> another is in their religious affiliation. While religious affiliation is often an important element in individual identity, it also identifies the individual with a group and distinguishes the individual, as a member of that group, from other members of society who are not so identified (Fassberg, 2005, p.25).

According to the author, religious identity is one of the factors that matter in sociocultural organization and this diversity is normally dealt with through public law. In modern society, numerous religious groups have interacted with each other on many levels. This interaction is not always peaceful. Fassberg points out that some cultural, linguistic and ethnic factors can even be prohibited and criminalized, if they deviate from the beneficial interests for the community (Fassberg, 2005, p.29). Religious fundamentalisms are often obstacles to peace and social harmony. At the same time, in most countries that are constitutionally secular, that is, where there is a separation between State and religion, legal pluralism is practiced as a possibility for conciliation, respecting the plurality of beliefs within the judicial systems.

During the treatment of the data collected through the application of a survey with dispute resolution professionals in Brazil and Ireland, we will expand the discussion about these aspects of the relationship between culture, religion and legal practice.

CHAPTER 2 - RESEARCH METHODOLOGY AND METHODS

The purpose of this research is based on an empirical approach that seeks to understand the practical relationships between legal pluralism and dispute resolution regarding cultural and religious issues that involve the processes. This empirical approach seeks to analyze specific facts and, through them, reach a more general result. Through the survey applied to dispute resolution professionals in Brazil and Ireland, we seek an answer to the problem that motivates the investigation: the practice of dispute resolution in Brazil and Ireland is mediated by legal pluralism, through legal apparatus that prioritize religious principles and cultural in conflict mediation? Therefore, our line of research is inductive and uses a qualitative and quantitative empirical approach in order to elucidate the formulated hypothesis, that in fact, the legal mechanisms that guide the practice of dispute resolution in Brazil and Ireland consider cultural and in resolving conflicts, prioritizing the unity of the family and using legal pluralism in these approaches in a practical way.

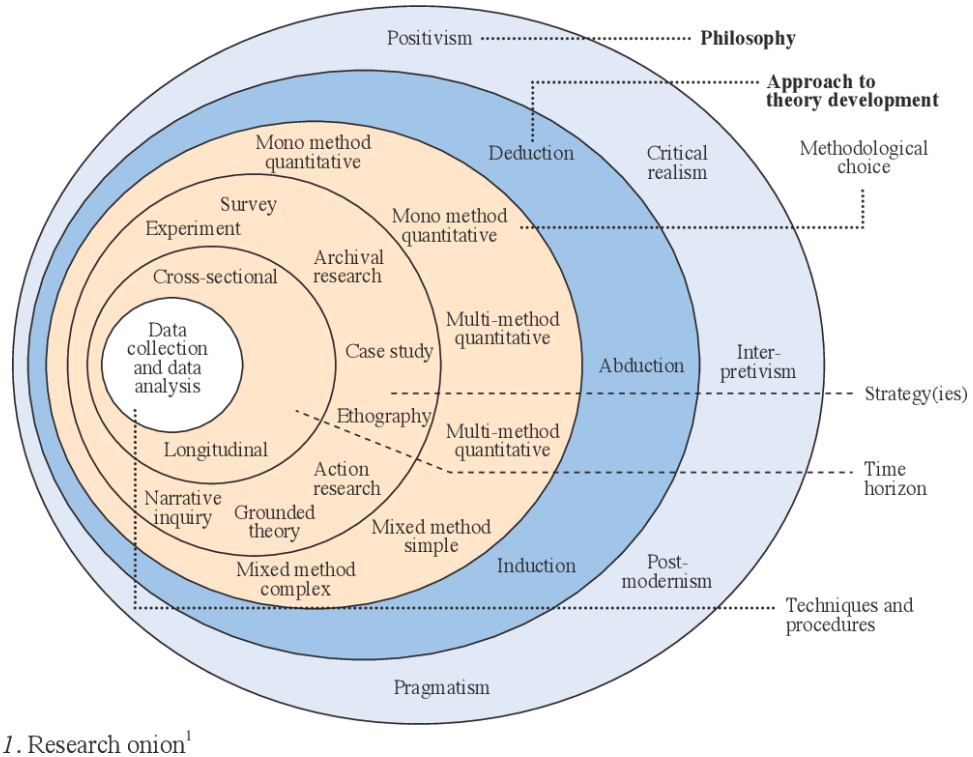
As we saw in the previous chapter, historically cultural and religious pluralism has always influenced legal practice and the constitution of law in society. Even today, in societies considered theocrats, where the State does not separate itself from religion, such as the Islamic society, justice and laws are governed by religious principles. In Western countries, especially in Europe and America, where a democratic society allows for the coexistence of different beliefs and cultures in the same political and legal system, conflicts evidently also arise motivated by these issues. What we want to conclude is if, in fact, legal pluralism has been used in dispute resolution works aiming at the conciliation/mediation of the litigants that present religious and cultural issues as elements that hinder an understanding. In a more objective proposal, the research results aim to deepen the theme in the universe of dispute resolution, contributing to future discussions.

This chapter presents the research in its practical aspects: its conduct, methodologies used and

treatment of data collected via a survey, which proposed to the interviewees more objective questions about their professional experience with dispute resolution and legal pluralism, also addressing the occurrence of cultural and religious issues that would possibly interfere in the conciliation and mediation processes.

2.1 Research Design

According to Saunders et al. (2007) the research must be able to integrate a series of procedures that aim to organize the elements of data collection, measurement and analysis in a cohesive, logical and understandable way. To achieve this purpose, the authors developed a scheme known as the "onion model", through which the authors describe the methodological steps of the research project. In general, these steps include philosophy, approaches, strategy, methods and data collection.



e 1. Research onion[1]

Figure 1 - Research onion model (Sanders et al., 2007, p. 132)[41]

[41] Lewis, P. Saunders, M. Thornhill, A. (2007). *Research Methods for Business Students.* 4rd edn. Harlow: Prentice Hall.

2.2. Research Philosophy

This research is guided by the principles of positivist philosophy. According Dudovskiy[42], the positivist philosophy proposes that only factual knowledge obtained through observation, being measurable, is reliable and, therefore, the researcher's role is limited to objectively collecting and interpreting data (Dudovskiy, 2018). Stephen and Walliman[43] agree with Dudovsky, describing positivist philosophy as "the application of the natural sciences to the study of social reality" through "an objective approach that can test theories and establish scientific laws" and whose goal is "to establish causes and effects" (Stephen and Walliman, 2016, p.12).

The positivist philosophy, applied to dispute resolution studies, allowed the results to be collected objectively. She guided the questions proposed by the survey, all of an objective nature, which sought to understand the perceptions of respondents about the practice of dispute resolution impacted by cultural and religious issues and the role of legal pluralism in the solution of these conflicts.

2.3. Research Approach

This research is developed in an inductive approach to the scientific method. Fachin[44] (2017) emphasizes that science seeks to understand phenomena and facts through data collected and interpreted through two methods: inductive and deductive. While the inductive method works the analysis, going from particular cases to reach a general explanation, the deductive method works the synthesis, going from general cases to obtain specific results. Bell and Waters[45] cite Miles and

---

[42] Dudovskiy, J. (2018). *The Ultimate Guide to Writing a Dissertation in Business Studies: A Step-by-Step Assistance* [online]. Available at: goodreads.com (Accessed 14 October 2021).

[43] Stephen, R. Walliman, N. (2016). *Social Research Methods: The Essentials*. 2rd edn. Thousand Oaks: Sage Publications Ltd.

[44] Fachin, O. (2017) *Fundamentos da Metodologia Científica: noções básicas em pesquisa científica*. 6rd edn. São Paulo: Saraiva.

[45] Bell, J. Waters, S. (2014). *Doing your Research Project: A Guide for First-time Researchers*. 6rd edn. Berkshire: Open

Huberman, who say that "theory building relies on a few general constructs that subsume a mountain of particulars" and "any researcher, no matter how inductive in approach, knows which bins to start with and what their general contents are likely to be. Bins come from theory and experience and (often) from the general objectives of the study envisioned (Miles and Huberman, 2014, p.107)[46].

The inductive approach for this research is based on the idea that by analyzing particular cases, in this case the experiences lived in the dispute resolution area, it is intended to reach a generality, which is to measure the impact of cultural and religious beliefs on conflicts and use of legal pluralism as an instrument of solution. In other words, a theory will be established from the analysis of the data.

2.4 Research Strategies

Bryman[47] (2004, p.19-20) specifies that the research methodology can be quantitative or qualitative. According to the author, quantitative research is guided by a deductive approach, epistemologically based on a positivist and ontologically objective philosophy, in the observation of social fact. In its qualitative aspect, the methodology is based on an inductive approach, which rejects the positivist philosophy in favor of an individual interpretation of the social fact and which is ontologically constructionist, that is, it perceives the social fact as something changeable and dynamic. But the author also points out that it is common in the same research to use both methodological approaches.

> Research methods are not determined by epistemology or ontology and that the contrast between natural and artificial settings for qualitative and quantitative research is frequently exaggerated. Furthermore, quantitative research can be carried out from an interpretivist perspective, as can qualitative research from one of natural science. Quantitative methods have been used in some qualitative research, and analyses of quantitative and qualitative studies can be carried out using the opposite approaches (Bryman, 2004, p. 437-450).

University Press.

[46] Miles, M..B. Huberman, A.M. (2014). *Qualitative Data Analysis.* 3rd edn. Thousand Oaks, CA: Sage.

[47] Bryman, A. (2004). *Social Research Methods.* 2nd edn. Oxford: Oxford University Press.

This research is more oriented within a qualitative approach, but also presents a quantitative approach with regard to data processing. The qualitative focus is found in the aspect of literature review on dispute resolution issues, legal pluralism and sociocultural and religious issues. The quantitative was more used in the treatment of data collected by the survey.

Bell and Waters (2014, p. 9) agree with Bryman, saying that "there are occasions, however, when qualitative researchers draw on quantitative techniques, and vice versa and it will all depend on what data the researcher requires". Saunders et al. (2007, p.135), Bell and Waters (2014, p.9) list research strategies, such as, survey, experiment, case study, action research, grounded theory, ethnography and archival research. The authors emphasize, however, that each approach and strategy has its strengths and flaws, and it is up to the researcher to choose the one that best suits their context, depending on the nature of the object of study.

According Gray[48] (1998), an important aspect of the qualitative character of the research is the way in which the results are presented.

> Data collection for narrative research requires the researcher to allow the storyteller to structure the conversations, with the researcher asking follow-up questions. So a narrative approach to the question of how mature-age undergraduates perceive their ability to cope with the experience of returning to study would involve extended, open-ended interviews with mature-aged students. This would allow the students to express their personal experience of the problems, frustrations and joys of returning to study. It might also involve similar 'conversations' with other stakeholders in their education – perhaps family members; their tutors and lecturers – to provide a multiple perspective of the context of the education of mature-aged undergraduates (Gray, 1998, p.2).

For the author, the narration is an interesting proposal to present the data obtained in the survey, portraying individual experiences that are particularly presented in a narrative way, as in a journalistic interview, in order to guide the researcher in the development of his ideas and hypotheses.

[48] Gray, J. (1998). *Narrative inquiry*. Unpublished paper. Joondalup: Edith Cowan University.

2.5 Time Horizons

The time horizon refers to the time determined by the survey for data collection. According to Saunders et al. (2007, p.148), this temporal perspective can be in two ways: transversal, when it lasts a certain period pre-established by the researcher, or longitudinal, when the research takes place over different periods. In the case of this research, we opted for a cross-sectional time cut, since data collection took place over a month.

2.6 Ethical Research

All scientific research must be guided by ethical values that occur at all stages of the process. In all phases of the research, from the choice of the theme, through the collection, storage and processing of data and dissemination of results, the researcher has an ethical and moral commitment to ensure the integrity of those involved and that guarantees credibility to his product. For Bell and Waters (2014), Stephan and Walliman (2017), maintaining research ethics is one of its most important characteristics, avoiding data corruption and results processing.

These parameters were followed in this research, carried out within the ethical and moral principles that govern scientific work, especially with regard to the formulation and application of the survey. All stages of the research were defined together with the research director, especially aspects of formulating and applying the survey to the participants. He guaranteed the anonymity and privacy of the interviewees, as it did not contain their personal data, a fact that they were already aware of when they participated. All respondents had access to a consent form, which explained the nature of the research and their participation. The data collected and that originated the results disclosed by the research also remained confidential, serving solely and exclusively for the production of this dissertation.

2.7 Sample

This survey determined the sample group of professionals in the field of dispute resolution from Ireland and Brazil. For Bell and Waters (2014, p.166) it is a sample of the focus group, representative of the general population that experiences the practice of dispute resolution. According to Stephen and Walliman (2016, p.75-76) the word population does not necessarily designate a number of people, but a total number of things (objects and people) or cases (events) that relate to the object of study. In any case, this population sample shows a generality.

In the case of the research itself, the initial idea was to interview the largest number of professionals available at the institutes that carry out dispute resolution work at the Elo Institute in Belo Horizonte, Brazil and at the Ballymun Center in Dublin, Ireland, within a month. However, due to the context of the coronavirus pandemic and the dispersion of professionals, in a homework regime, this was not possible. Therefore, we chose to choose professionals in the area of law and dispute resolution who could respond to the survey, but nationally and not just locally. Following indications from legal professionals, a list of contacts in Brazil and Ireland was drawn up. Respondents were then personally contacted by the interviewer by phone or email, consenting or not to fill out the survey sent to them through the digital platform link surveymonkey.com. The interviewer only made the contact and explained the nature of the research, not influencing in any way the interviewee's personal responses. In all, 31 respondents in Ireland and 51 respondents in Brazil agreed to respond to the survey, which consisted of 19 closed questions. It should be noted that both the survey and its application strategy were consistent with the individual protection laws in force in Europe and Brazil, safeguarding their right to freedom of expression and not exposing their image and personal data.

2.8 Data Collection Methods

According to Stephen and Walliman (2016, p.83-85) the data collection methods concern the primary and secondary sources that constitute the theoretical basis of the research. The authors emphasize, therefore, that even with the primary data collected in the survey, secondary research is inevitable to support the conclusions. In this aspect, the authors list as sources that can base secondary research:

> Personal documents; oral histories; commentaries; diaries; letters; autobiographies; official published documents; state documents and records; official statistics; commercial or organizational documents; mass media outputs; newspapers and journals; maps; drawings; comics and photographs; fiction; non-fiction; academic output; journal articles and conferences; papers, lecture notes, critiques, research reports, textbooks, artistic output, theatrical productions – plays, opera, musicals; artistic critiques; programmes; playbills notes and other ephemera; virtual outputs; web pages; and databases (Stephen and Walliman, 2016, p.85).

According to Bell and Waters (2014), it is recommended that data collection methods are chosen only after the researcher has defined what will be studied and why it will be studied. The primary data collection method favored in the research was the survey, which has an exploratory character of mixed qualitative and quantitative nature, with an explanatory bias, to respond to the demands of the problems and hypotheses formulated for the study. Secondary data were obtained from published books, academic articles and texts published on websites specialized in law and government websites of the European Union, Ireland and Brazil.

2.9 Data Analysis Procedures

The procedures, as mentioned above, were aimed at analyzing the qualitative and quantitative data obtained from primary and secondary sources, allowing for an understanding of the realities of legal pluralism and its application in dispute resolution cases involving religious and cultural issues. Based on the data collected by the survey, the research then performed two types of analysis: statistical and

descriptive. Statistical analysis analyzed, interpreted and modeled the data in the form of graphs, which enabled the establishment of comparisons. After that, we proceeded to the descriptive analysis of these data, which discussed these comparisons, highlighting differences and similarities, allowing us to respond to the problem and the formulated hypothesis (Saunders et al., 2007; Bell e Waters, 2014; Miles and Huberman, 2014; Stephan and Walliman, 2016).

CHAPTER 3 - PRESENTATION OF THE DATA

The comparative research developed in the dispute resolution area aims to understand the impact of cultural and religious issues on dispute resolution processes and the use of legal pluralism to resolve conflicts in Ireland and Brazil. This comparative research can be characterized as having a mixed approach (quantitative and qualitative), transversal, behavioral, statistical and descriptive.

The work was guided by a problem and a hypothesis. Does the problem detect whether the practice of dispute resolution in Brazil and Ireland is mediated by legal pluralism, through legal apparatus that prioritize religious and cultural principles in the mediation of conflicts?

The hypothesis, in turn, seeks to respond to the problem detected: the legal mechanisms that guide the practice of dispute resolution in Brazil and Ireland effectively consider cultural and religious principles in the resolution of conflicts, prioritizing family issues as a means of achieving well-being of the community.

For this, the study focused on a population sample of 82 people who answered the 19 questions of the online survey structured directly on the site surveymonkey.com and which generated fundamental statistical and descriptive data to support the results. These questions were evaluated by the research director to be applied to professionals in the field of conflict resolution in Brazil and Ireland at the same time. Due to the limited time for applying the survey to the sample population, which took a total of one month, the study was cross-sectional, also known as transversal approach, according to Johnson e Vogt[49] (2005). The proposed questions, all objective, sought to investigate the level of knowledge about legal pluralism and its intersection with cultural and religious issues in conflict resolution, in addition to analyzing the behavioral conduct of the interviewees in view of this lived reality. Therefore, the study can also be characterized as behavioral (Johnson e Vogt, 2005).

[49] Johnson, R. B. and Vogt, W. P. (2005). *Dictionary of statistics & methodology : a nontechnical guide for the social sciences*. 3nd ed: Thousand Oaks: Sage.

The survey questions, as mentioned above, were all objective and divided into two parts. The first part focused on collecting structural data such as gender, age group, continent, country and working time in the dispute resolution area. The second part was more emphatic in the theoretical aspect of the research, investigating the level of knowledge about legal pluralism and its relationship with the practice of dispute resolution, as well as the interviewee's view of cultural and religious issues impacting the processes. The results of the questions, as we will see in the next chapter, were drawn in the form of statistical graphs.

The interviewer spoke directly to each of the interviewees, who usually took about seven to ten minutes to respond to the online survey, whose link was sent to them by email and social networks, mainly Whatsapp, Facebook, Instagram and the Telegram. One of the reasons that led the interviewer to apply the survey in person by telephone is due to the fact that the questions were in English, a language that not all professionals mastered in Brazil, a Portuguese-speaking country. In any case, the interviewer did not interfere in the interviewees' answers, since his role was only to ask for authorization to carry out the survey, present the essential information about the work and translate the questions.

The data obtained were plural, but the answers provided sufficient evidence that the issue of legal pluralism is known in Brazil and Ireland, despite the difference in time in which dispute resolution has been practiced in both countries. At the same time, they also showed that religious and cultural issues do indeed influence the results of dispute resolution and legal pluralism has become a favorable instrument for the conciliation of the litigants, in this regard.

CHAPTER 4 – DATA ANALYSIS/ FINDINGS

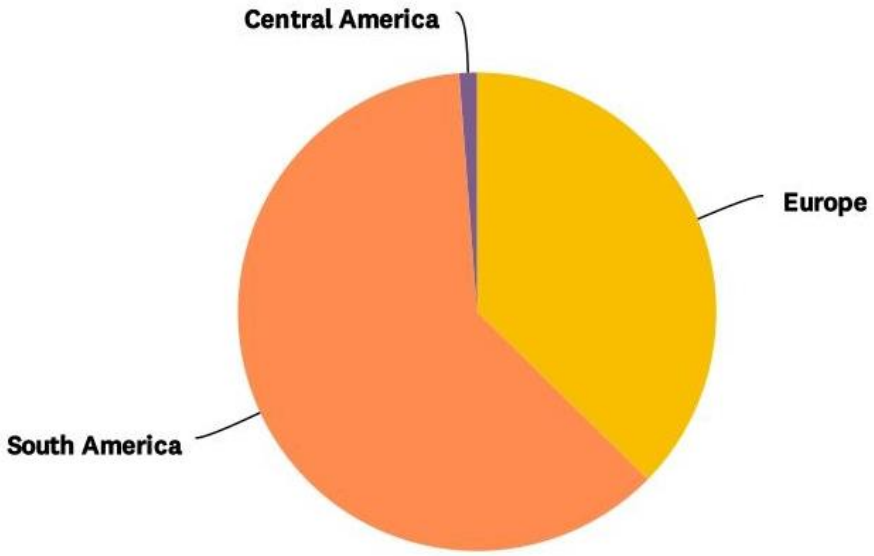
After defining the methods and methodology that would be used in the research designed in the three previous chapters, it is time to present the analysis of the primary data obtained. The comparative research on the realities of dispute resolution in its relation to legal pluralism in Brazil and Ireland is based on the results of the survey applied to professionals in the field.

The main objective of the research, as mentioned above, is to understand how legal pluralism is applied to the work of resolving conflicts impacted by cultural and religious issues in Brazil and Ireland. In order to achieve this goal, a questionnaire containing 19 questions was prepared, which were answered by 83 legal professionals who also work in dispute resolution in both countries. One aspect that allows us to make a comparison between the two countries is that *surveymonkey.com* allows us to analyze the responses of each respondent separately. They showed us relevant aspects of dispute resolution practice in Brazil and Ireland with regard to religious and cultural issues and the problems that reflect the conflicts in the two countries.

4.1 The survey

The survey consisted of 19 objective questions, which addressed practical aspects of dispute resolution, legal pluralism and the cultural and religious particularities surrounding the processes. The first part (questions 1 to 4) dealt with basic issues such as gender, age and country/continent. The second part (questions 5 to 19) was intended to discover the interviewees' perception of the relationship between dispute resolution and legal pluralism involving religious and cultural aspects in Brazil and Ireland.

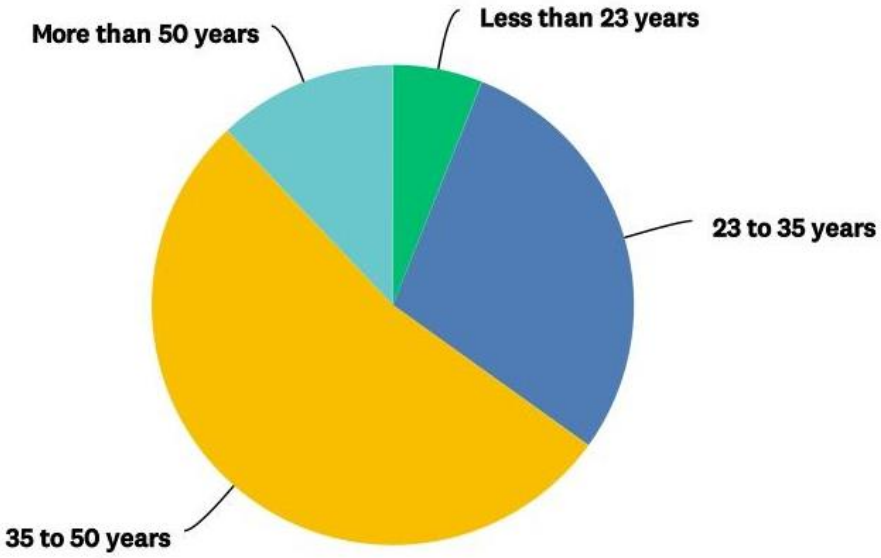
4.1.1 Question 1 - Which continent are you from?



Graph 1. Continent of origin
Source: surveymonkey.com

The data obtained showed that 37.35% of respondents live in Europe, while the vast majority live in South America (61.45%). Only one respondent, who works in Brazil, indicated that he came from Central America, making up 1.20% of the total number of respondents. All 83 respondents answered the question.

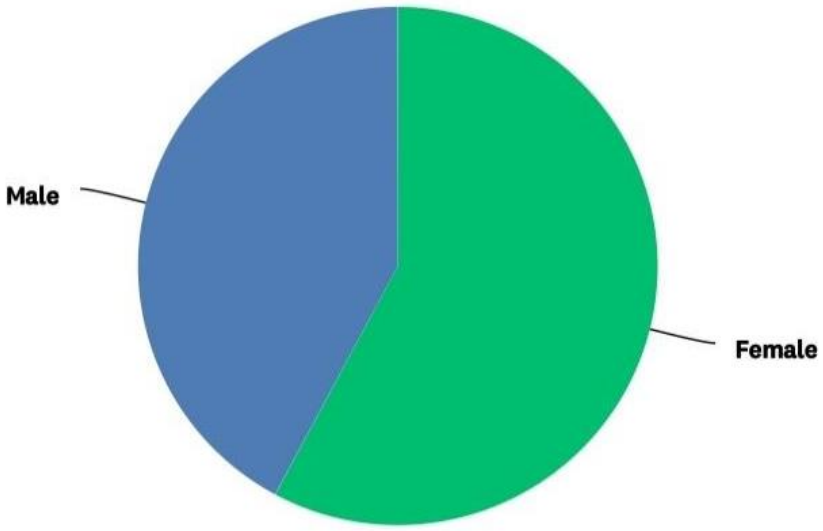
4.1.2 Question 2 - How old are you?



Graph 2. Age of participants
Source: surveymonkey.com

The second question investigated the age group of respondents. The data show that the vast majority of the sample population (53%, 44 participants) is made up of adults aged 35 to 50 years. Younger adults, aged 23 to 35 (28.92%, 24 participants) make up the second largest group. The third group is that of adults over 50, who correspond to 12.05% (10 participants). Finally, young people under 23 are the minority of the sample group (6.02%, 5 participants). All respondents answered.

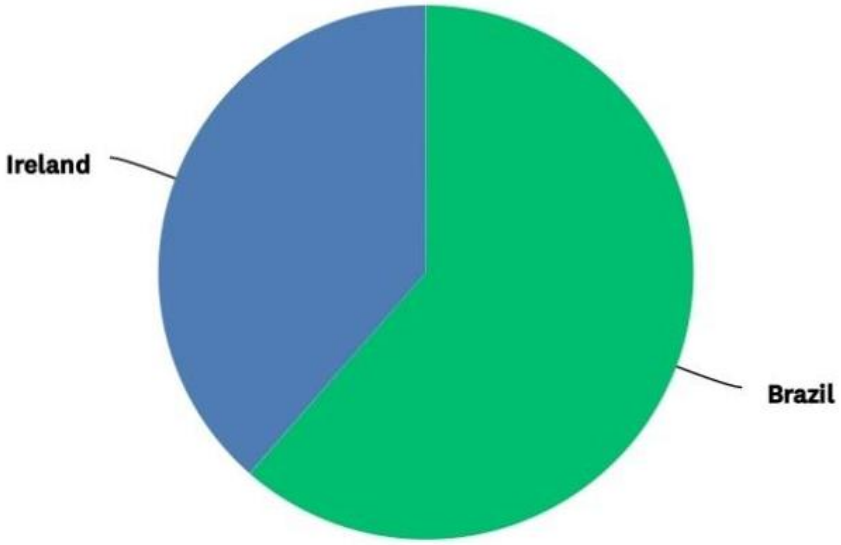
4.1.3 Question 3 - Are you male or female?



Graph 3. Gender of participants
Source: surveymonkey.com

The data showed that the largest number of respondents (57.83%, 48 participants) were women. The remainder, a total of 42.17% (35 participants) were men. All respondents responded and none of them declared themselves to be transgender.

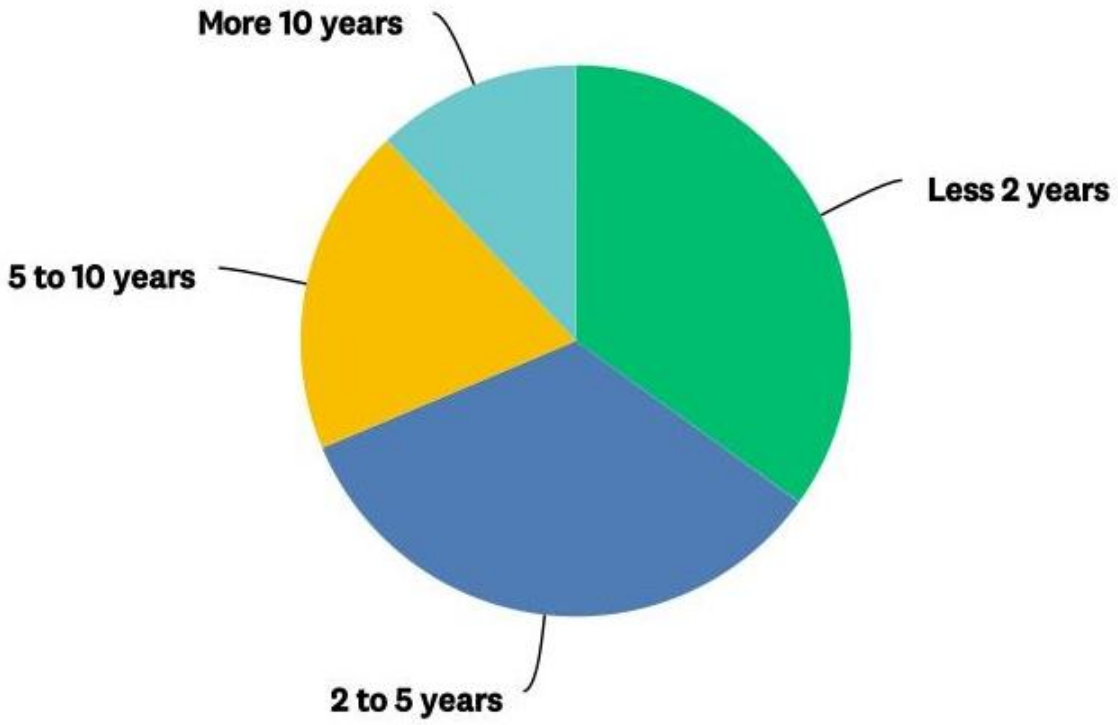
4.1.4 Question 4 - Which country are you answering?



Graph 4. Geographical area of operation
Source: surveymonkey.com

In the fourth question, the survey wanted to know how many respondents would indicate their place of residence and work in Ireland and Brazil, as implied in the initial contacts made by telephone. The data proves that they were in Ireland and Brazil. Of the sample population, 51 people (61.45% of respondents) answered Brazil, while 32 people (38.55%) answered Ireland. All respondents answered.

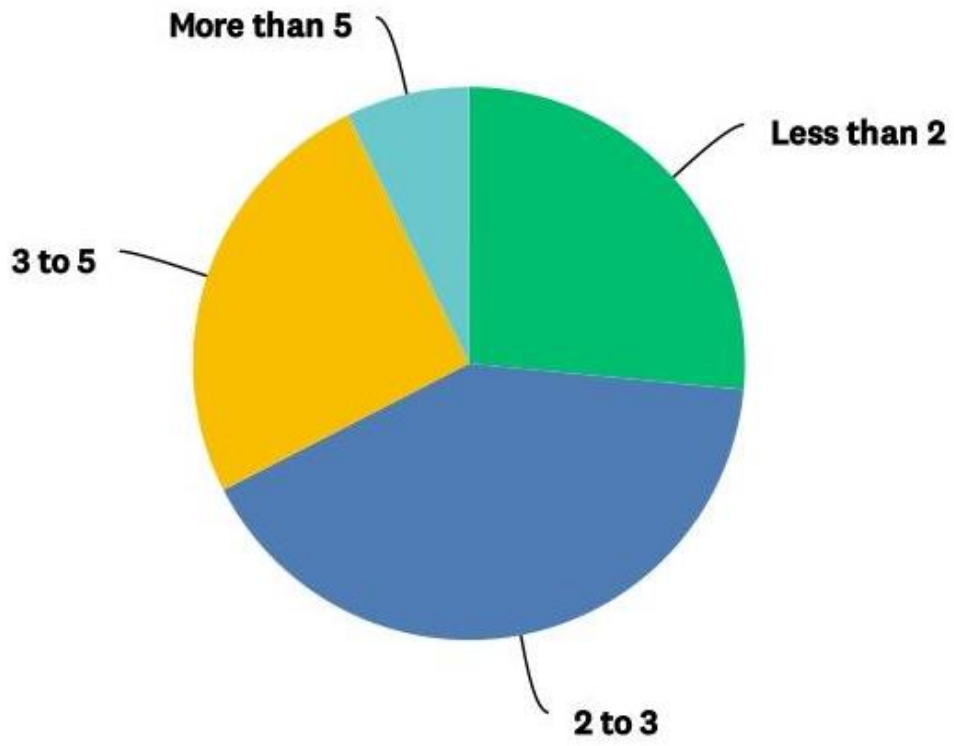
4.1.5 Question 5 - How long have you been working as a mediator/ conciliator?



Graph 5. Involvement in the dispute resolution area
Source: surveymonkey.com

The data revealed that the vast majority of respondents work relatively recently as mediators and conciliators, having joined this career in the last five years. A total of 29 people (34.94% of respondents) have been working for less than two years, while 28 people (33.73%) have been in the profession for between two to five years. Another subgroup of 16 people (19.28%) answered that they work as mediators and conciliators for between 5 and ten years and 10 people (12.05%) answered that they have been in the profession for more than 10 years. A more accurate survey of data by individuals demonstrates that Brazilians have been in dispute resolution work for longer than the Irish, the vast majority of which work in the area for between 2 and 5 years. It is worth remembering that the Irish legislation that regulated the practice of dispute resolution in the country is relatively recent, dating back to 2017. In Brazil, the practice has been known for many years. This justifies the results. All respondents answered.

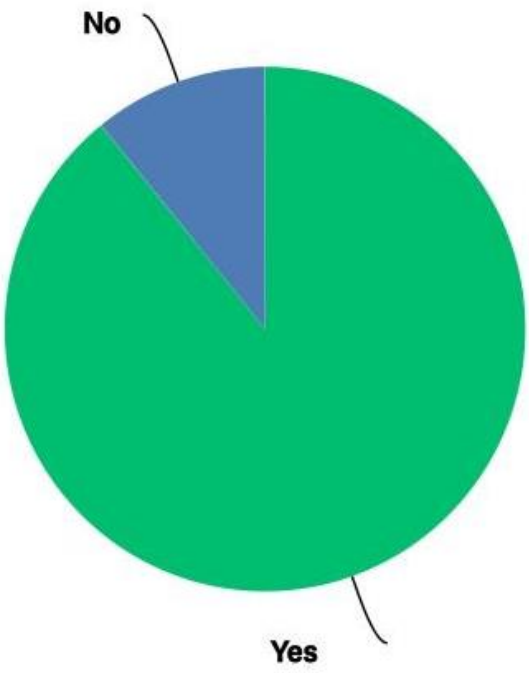
4.1.6 Question 6 - How many mediation cases do you work on per day as a mediator/ conciliator?



Graph 6. Number of cases worked per day
Source: surveymonkey.com

The survey wanted to discover the degree of involvement of professionals in the dispute resolution area, in order to understand the frequency of cases handled per day. The vast majority of respondents (40.96%, 34 respondents) said they treated between 2 and 3 cases a day. As a result, 22 respondents (26.51%) said they attended to less than 2 cases per day and 21 respondents (25.30%) said between 3 to 5 cases. Only a small subgroup of the sample population, out of a total of 6 respondents (7.23%) said they held more than 5 conciliation/mediation sessions per day and, according to the calculation of individual data, they were in Brazil. All respondents answered.

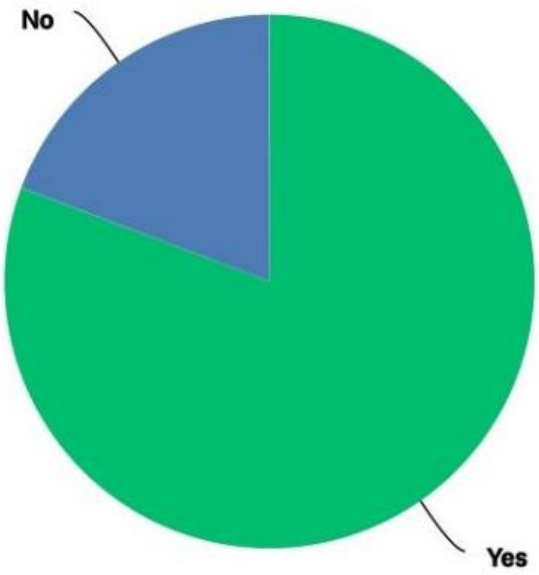
4.1.7 Question 7 - Do you know what legal pluralism is?



Graph 7. Concept of legal pluralism
Source: surveymonkey.com

The seventh question asked respondents if they were aware of the concept of legal pluralism. The vast majority of respondents (89.16%, 74 people) said yes, while a minority of 9 respondents (10.84%) said no. The consultation of individual data shows that 68 of the respondents who said yes are aged between 23 and 50 years. This survey is important for the research because it demonstrates the level of deepening of the concept among adult and young professionals, generally apprehended at universities or in preparatory courses for the career of conciliator/mediator, has increased in recent years. All respondents answered the question.

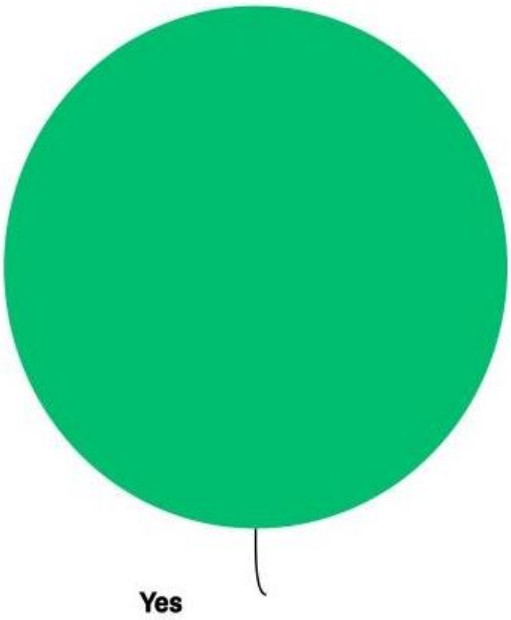
4.1.8 Question 8 - Have you ever heard about legal pluralism before?



Graph 8. Legal pluralism in common sense and in the practice of dispute resolution
Source: surveymonkey.com

Questions 7 and 8 of the survey, at first glance, seem similar. But they are not. While question number 7 wants to know the level of in-depth knowledge of the concept of legal pluralism among professionals in the area, question number 8 seeks to understand, at a common sense level, how many know it in practical terms in the field of dispute resolution. The answer was somewhat impactful, as the number of those who said they had not heard about the subject before the survey or did not know the practice by this name increased (16 people, making a total of 19.29% of respondents). However, the number of those who knew the theories of legal pluralism and its applications in dispute resolution constituted the vast majority, with 67 respondents (80.72% of the sample). All respondents answered the question.

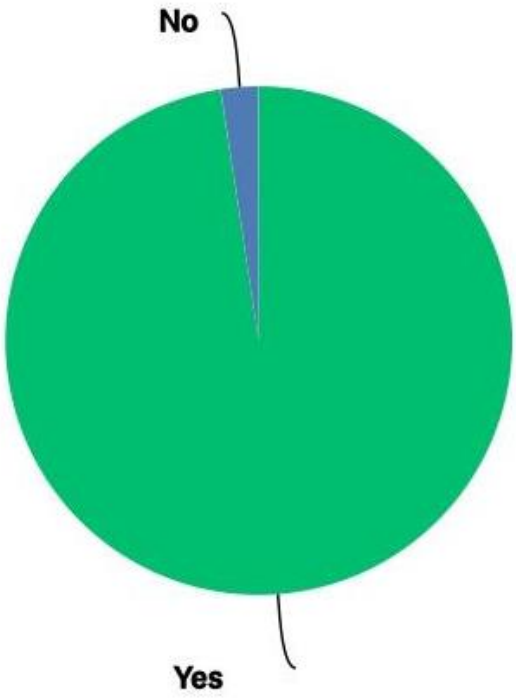
4.1.9 Question 9 - Legal pluralism seeks to restore human and social relationships through the tools of dispute resolution, socially building a culture of peace. Do you believe that legal pluralism is important?



Graph 9. Legal pluralism as an instrument of peace and social change
Source: surveymonkey.com

This question, whose result was unanimous for the 83 respondents (100% of the sample population), pointed out the importance of legal pluralism in dispute resolution processes as an instrument of social change and building a culture of peace. This took place after the initial explanations given by the interviewer about the concept and use of legal pluralism in the judicial system in Brazil and Ireland. Even those who did not have a deep knowledge of his theory, judged it to be a powerful tool that justice had to pacify conflicts and effect social and cultural changes based on peace and harmony.

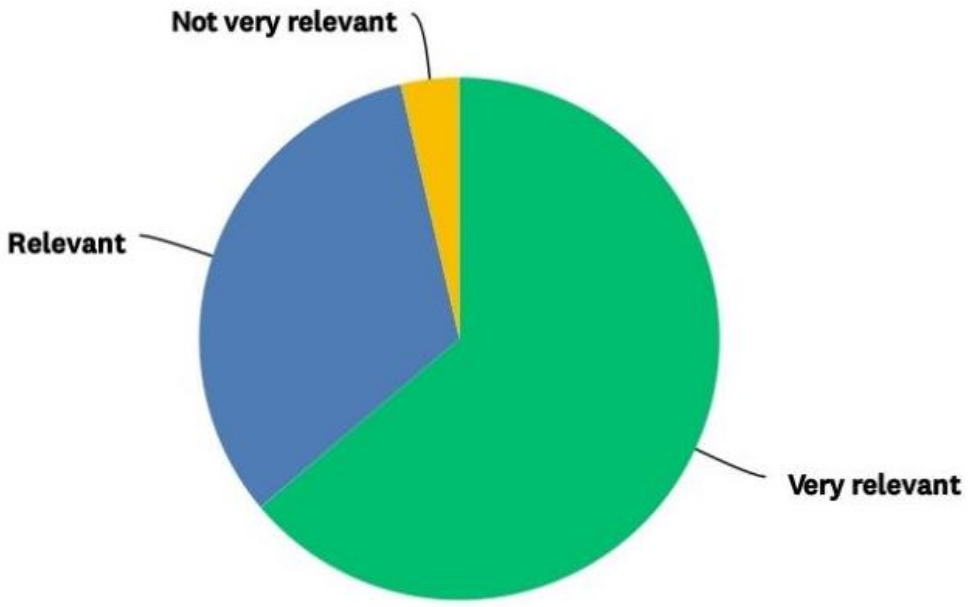
4.1.10 Question 10 - Do you consider that the adoption of different systems in the same practice (legal pluralism), can help to achieve the result and solve that problem between the parties in a mediation/ conciliation session?



Graph 10. Effectiveness of the use of legal pluralism in dispute resolution processes
Source: surveymonkey.com

This survey question sought to discover the opinion of respondents about the effectiveness of adopting legal pluralism mechanisms in dispute resolution processes. The vast majority of the sample population (97.59% out of a total of 81 people) was in favor of using the concept linked to the practice of dispute resolution in Brazil and Ireland. Only 2 respondents were more skeptical about considering the effectiveness of this feature, making up 2.41% of the sample. All respondents answered.

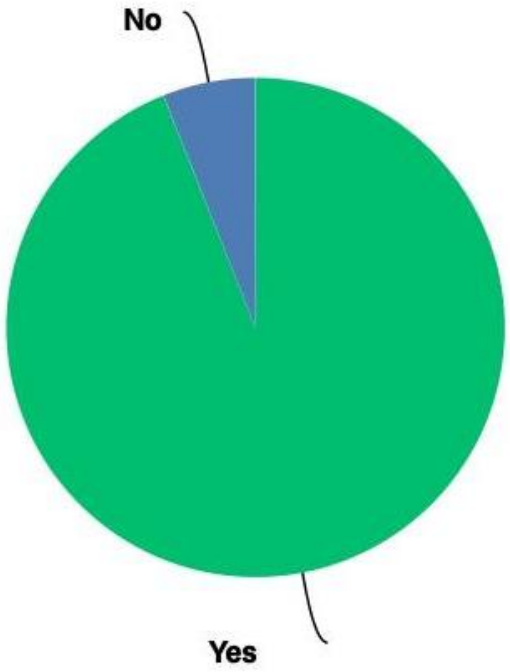
4.1.11 Question 11 - Considering the success of mediations based on legal pluralism, how would you classify its importance in promoting family and social peace and harmony for the communities served?



Graph 11. Level of social relevance of legal pluralism according to interviewees
Source: surveymonkey.com

This question sought to measure the level of importance that respondents gave to legal pluralism as an instrument of dispute resolution in their task of promoting peace and harmony in the family, with repercussions for gain in the community. The vast majority (53 respondents, 63.86%) considered the joint adoption of the two systems very relevant, bringing permanent gains for the family and the community. Another portion of the sample population (27 people, 32.53%) judged the practice to be only relevant, limiting its effectiveness. Only 3 people (3.61%) did not consider it as important, disbelieving that community gains were large and permanent. All respondents answered.

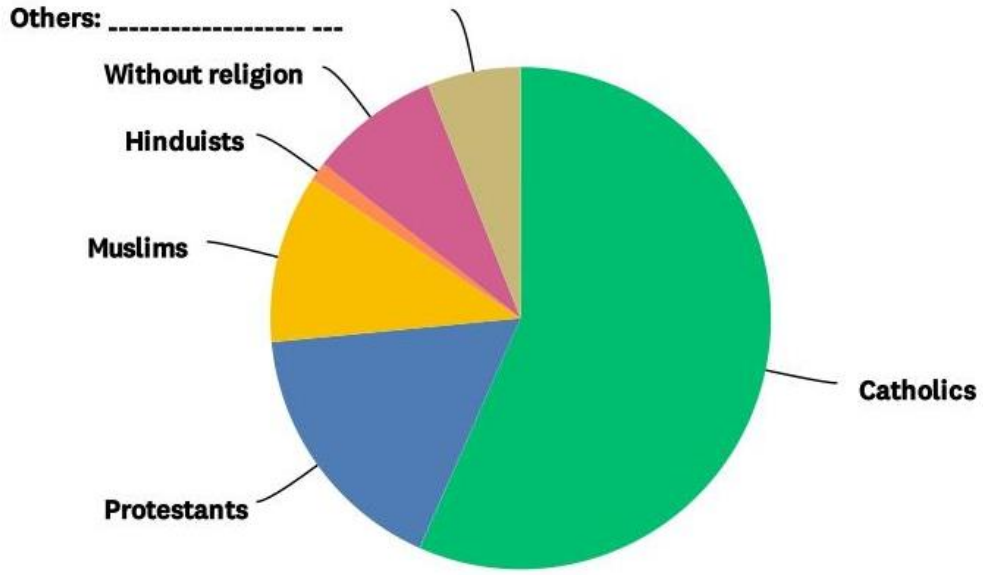
4.1.12 Question 12 - Do you think it is important as a mediator/conciliator to know more about the cultural and religious issues surrounding the cases in which you work?



Graph 12. Need for prior knowledge on the part of the professional about the cultural and religious situation of the parties in litigation
Source: surveymonkey.com

In the twelfth question, the interviewees began to think of cultural and religious aspects as facilitating or hindering conflict resolution. In this aspect, the proposed question wanted to measure the professional's level of involvement with the issues involved in the conflict he mediated, especially those of cultural and religious content that are the object of study in this research. Of the total 83 respondents who answered this question, 78 of them (93.98% of the sample population) found it important and useful for the dispute resolution professional to have access to all aspects related to the litigation processes in which he worked, especially the issues that could impact the resolution of the conflict. On the other hand, 5 respondents (6.02%) were against this prior knowledge. This denial may be an indication of the contrary trend to those who deem important a greater involvement of the dispute resolution professional in the cases worked.

4.1.13 Question 13 - When it comes to the impact of religious beliefs on the outcome of mediation processes, point out a religious group that most appears in the developed work?



Graph 13. Demand from religious groups for dispute resolution services
Source: surveymonkey.com

By posing this question, the research wants to know which are the religious groups whose believers most act as litigants in dispute resolution processes. The intention is to verify, in the reality of Brazil and Ireland, what is the religious nature of individuals who seek conciliation and mediation services to resolve conflicts, as a way of understanding the very nature of these conflicts and proposing alternatives for dialogue and solution, among them the instrument of legal pluralism. Respondents were able to choose only one alternative of the question containing the religious group that, in their perception, has a greater demand for the dispute resolution service. This issue needs to be analyzed taking into account not only the religion itself, but its presence in both countries.

More than half of respondents (56.63%) said that Catholics are those who most seek dispute resolution institutes to resolve their disputes between conflicting parties. Among the 47 respondents who were Catholics, 28 were Brazilian and 19 were Irish.

Protestants and Muslims followed. Protestants were the second most voted group, being named by 14 respondents (16.87%), all of them Brazilians. Muslims were the third most voted group, accounting for 10.84% of the total. Of the 9 respondents who took this option, 5 were Brazilian and 4 were Irish.

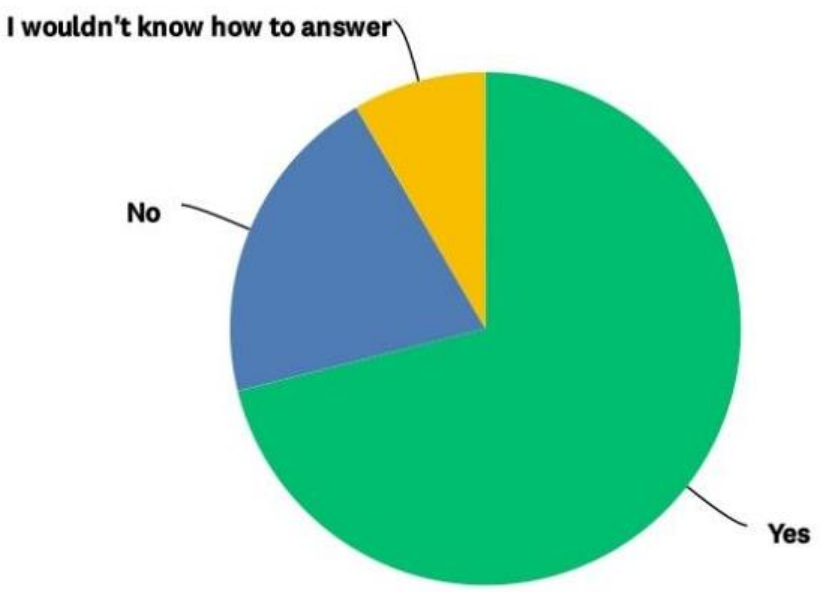
Irreligionists (atheists or without religion) were the fourth group with the most votes (8,43%). Swatos[50] cites Campbell, who conceptualizes the so-called irreligious or atheists as those who maintain "active rejection of either religion in general or any of its more specific organized forms" and "it is thus distinct from de *secular*, which simply refers to the absence of religion" (Campbell apud Swatos,1998, p. 239). In the subgroup that chose non-religion, 4 respondents were Irish and 3 were Brazilian.

As a result, 2 Irish and 3 Brazilians chose to mark the option other, listing other religious denominations (6.02%). In the case of Brazil, the option was for spiritualist religions, such as Kardecist spiritualism and African-based religions, such as Umbanda and Candomblé, and in the case of Ireland, for the so-called neo-pagan religions, such as Wicca, traditionally expressive in the country.

Finally, the last religious denomination mentioned was Hinduism (1.20%), an option chosen by a professional from Ireland. Jews and Buddhists were not voted in. All 83 respondents participated by answering the question.

[50]Campbell, C. (1998). "Irreligion" in *Encyclopedia of Religion and Society*. Swatos Jr, W. H. (ed.). Walnut Creek: Roman Altamira Press.

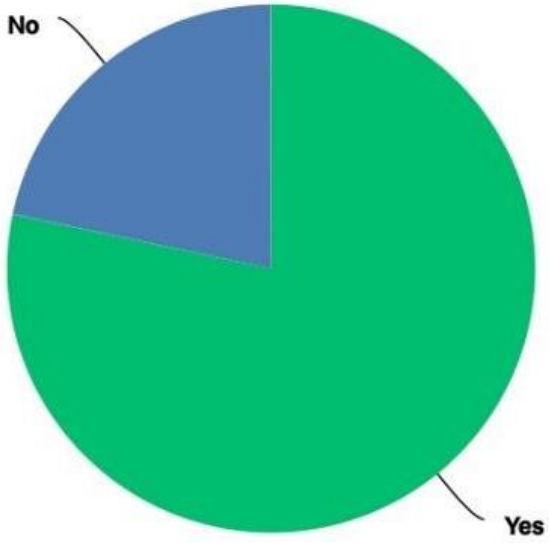
4.1.14 Question 14 - Have you ever faced difficulties during mediation processes motivated by issues such as chauvinism and the downgrading of the female status due to the religious and cultural beliefs of the parties involved?



Graph 14. Experience of conflicts between the litigants motivated by religious and cultural issues
Source: surveymonkey.com

This question proposed by the survey to the interviewees seeks to reflect on the conflicting situations they experience during dispute resolution sessions, solely and exclusively motivated by religious and cultural issues. We cite as an example the tendency of some religions to overvalue the male figure and demean the female condition, a situation that is still very common in our reality. The interest is to know whether during dispute resolution sessions the religious issues are exacerbated, triggering verbal and even physical aggression between the litigants. Most respondents (59 professionals, totaling 71.08%) said they had witnessed critical and embarrassing situations like these in the sessions they presided over, at least once in their career. A total of 17 respondents (20.48%) said they had never witnessed verbal and physical conflicts in the sessions they chaired and a minority of 7 respondents could not answer (8.43%). All respondents answered this question.

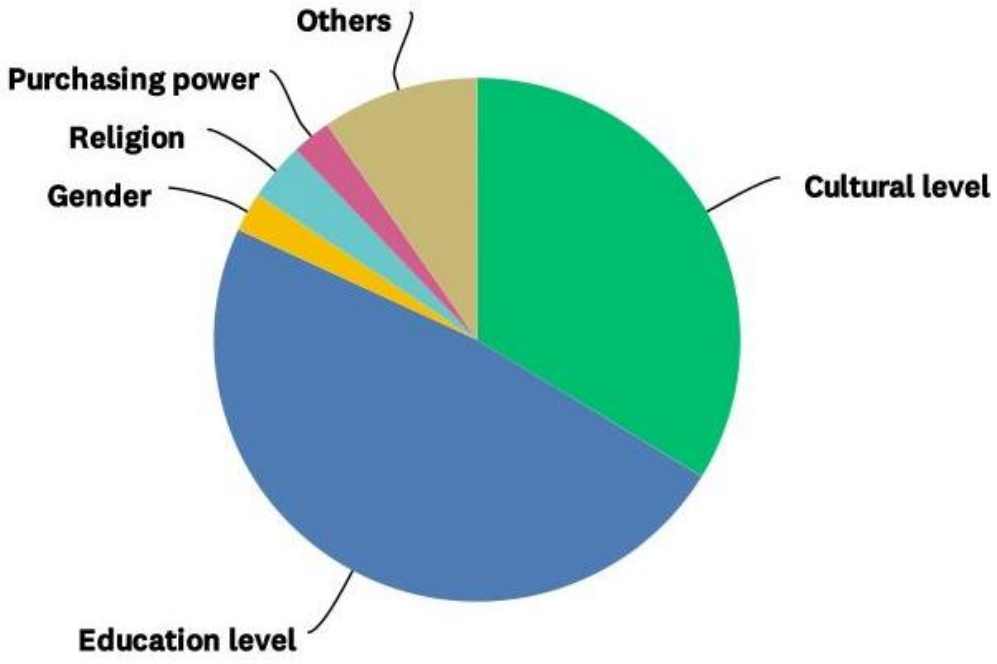
4.1.15 Question 15 - Do you consider that cultural and religious issues are an obstacle to the parties' conciliation?



Graph 15. Cultural and religious issues as an obstacle to the conciliation of conflicting parties
Source: surveymonkey.com

This important question proposed by the survey seeks to understand, according to the interviewees' point of view, whether religious and cultural issues act as an obstacle to the resolution of conflicts between the parties. In the opinion of the majority of respondents (65 people totaling 78.31%), religious beliefs and cultural habits interfere negatively in the processes, often making it difficult to quickly reach a solution to the conflict. This is perhaps due to the fact that many individuals assume fundamentalist postures in their daily lives, not giving up their “truth” in terms of the truth and rights of others. In turn, a group of 18 people (21.69%) believes that cultural and religious issues do not characterize obstacles to achieving necessary and satisfactory solutions during dispute resolution processes.

4.1.16 Question 16 - According to your experience in dispute resolution, what elements do you consider most relevant and positive for the success of the practice today?



Graph 16. Most relevant elements for the success of dispute resolution processes today
Source: surveymonkey.com

The survey proposed to the interviewees a reflection on the main elements that, in their opinion, conditioned in a more positive way the solution of conflicts in the mediation and conciliation sessions. This aspect of the research seeks to understand the factors that most positively affect the understanding of the parties in dispute, favoring the success of dispute resolution sessions. In this context, some conditioning factors were listed.

All 83 respondents answered the question. The majority group, made up of 40 people (48.19%) believes that the most conditioning factor to the success of dispute resolution today is due to the educational level of individuals, followed by the group of 28 people (33.73%) which they believe to be the cultural level the most stimulating success factor. Respondents believe that a good educational and cultural level ensures faster understanding between the parties.

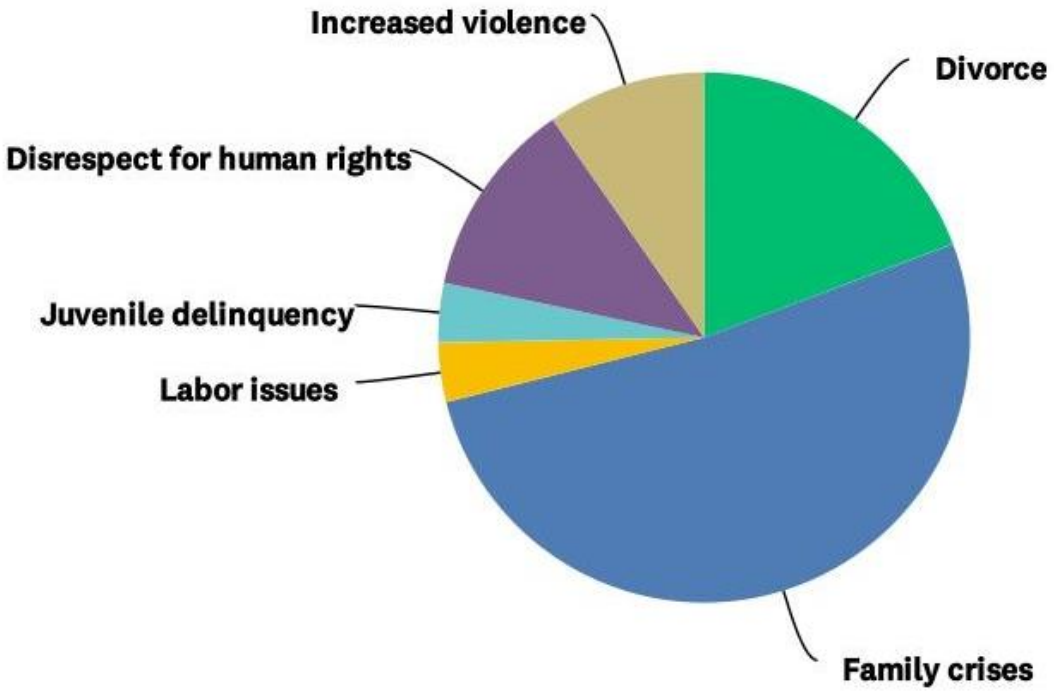
The 8 people who chose the “others” category (9.64%) bet that the success of dispute resolution is related to other elements of the discussion that were not related, but they were unable to answer which ones they were.

Religion appears in fourth place, in the opinion of 3 people (3.61%). As mentioned above, the individual position in favor of religious belief, conceived as a cultural identity, is seen as a negative aspect, but it is often also favorable to the good development of processes, favoring sensible dialogue and agreement between the parties.

Finally, 2 respondents (2.41%) chose the “purchasing power” option and another 2 respondents (2.41%) chose the “gender” category. Gender issues are often associated with the religious aspect, especially in the cultural view of the great patriarchal religions, in which women do not have the same status as men. But the gender difference, outside the religious aspect, can favor the dialogue between the parties, according to the interviewees. On the other hand, purchasing power can also favor the quick conclusion of agreements, especially those that concern financial issues and sharing of goods, among other aspects.

The categories "age" and "political position" were not selected by any of the interviewees.

4.1.17 Question 17 - In your opinion, the demand for dispute resolution in the country has increased more in recent years, motivated by what problems?



Graph 17. Causes of the increase in demand for dispute resolution services in Brazil and Ireland in recent years
Source: surveymonkey.com

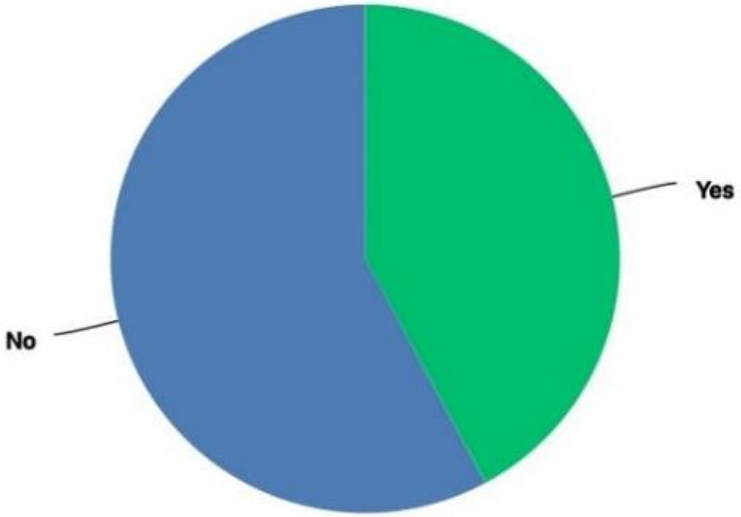
The survey asked respondents to indicate a factor that, in their opinion, was responsible for the increase in demand for dispute resolution services in Ireland and Brazil in recent years. The interest was to identify the focus of problems that required mediation and conciliation rites, capable of using the instruments of legal pluralism and that had roots in cultural and religious issues.

Each of the 83 respondents was given the power to choose only one factor. The main factors chosen by respondents were divorce (16 people, 19.28%), followed by disrespect for human rights (10 people, 12.05%), increased violence (8 people, 9.64%), labor issues (3 people, 3.61%) and an increase in juvenile delinquency cases (3 people, 3.61%). The factors of gender and migratory crises were not chosen by any of the interviewees, totaling 0%. However, the factor most voted for by about 51.81% of

respondents was the aggravation of family tensions.

About 43 respondents (51.81%) said that the increase in family crises today has favored the search for dispute resolution services. The answers met the research objectives, demonstrating that family problems are the cause of the increase in the demand for legal conflict resolution apparatus. In a more detailed view of the problem, it is in the family, the basic cell of society, that conflicts are processed that, if not resolved quickly, will directly affect the entire community. Divorce, juvenile delinquency and violence are structural problems in society that originate in the family nucleus. Therefore, the research is interested in understanding how the actions of dispute resolution and legal pluralism, focusing on the family, can prevent conflicts from growing and reaching the dimension of the community, especially if they are aggravated by cultural and religious issues, such as fundamentalism. In both Brazil and Ireland, the number of voters was almost the same, according to individual reading of the survey data: 23 respondents in Brazil and 20 in Ireland.

4.1.18 Question 18 - In your opinion, do you think it is important that your own religious beliefs and cultural practices interfere in the mediation process?

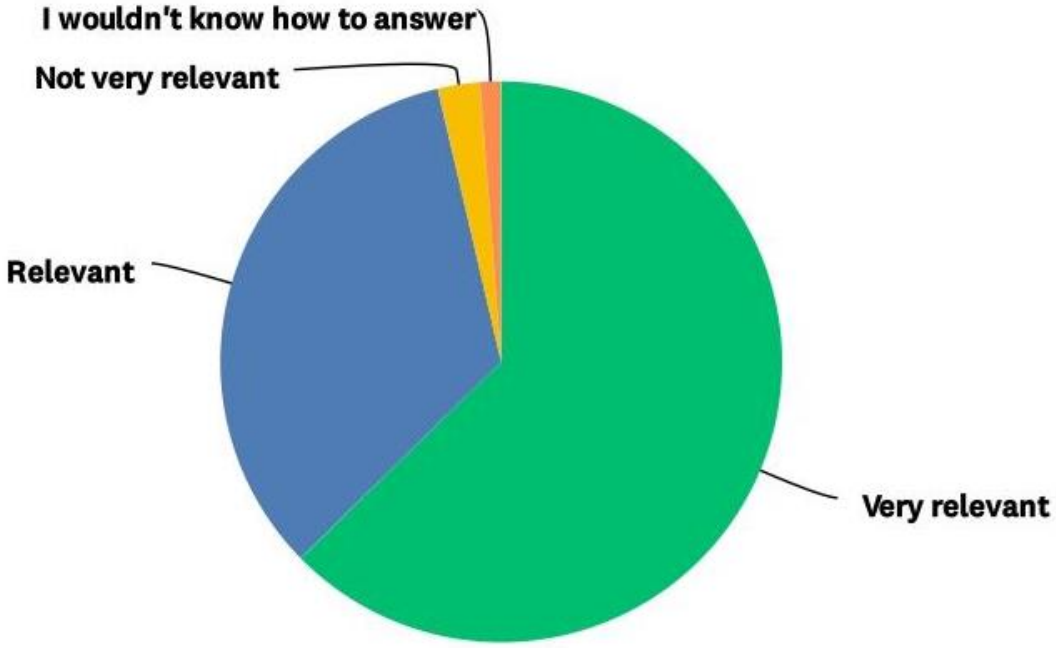


Graph 18. Position of impartiality and neutrality of dispute resolution professionals in the face of conflicts
Source: surveymonkey.com

By proposing this question, the survey sought to reflect on the level of neutrality maintained by dispute resolution professionals regarding their participation in the processes. The question itself is to know how far this neutrality exists, when it comes to the involvement of the professional with the case that is being worked on. Can he really manage to remain neutral, not getting involved in the litigants' drama and not letting their own religious beliefs and ideas interfere in the process?

All 38 professionals in the sample population answered this question. About the majority of respondents (48 people, totaling 57.83%) claimed no. According to them, it is important to maintain neutrality and impartiality throughout the process, guiding the debate, but not letting their own individuality interfere in the decision of the parties. On the other hand, 35 people (42.17%) believe so: that they cannot remain completely neutral regarding the situation of litigants and, at some point during the processes, they need to be partial, as they believe that their own cultural beliefs and habits should guide your consciences.

4.1.19 Question 19 – In your opinion, what is the importance of using legal pluralism mechanisms in dispute resolution processes?



Graph 19. The importance of using legal pluralism mechanisms in dispute resolution processes
Source: surveymonkey.com

The last question proposed by the survey concludes the participation of the professionals interviewed, reflecting on the importance of the mechanisms of legal pluralism within dispute resolution processes. All 83 respondents answered the question, assessing the importance of this strategy for the context of dispute resolution and its effectiveness.

The majority of respondents in Ireland and Brazil, around 52 people (62.65% of the sample population) considered it very relevant that legal pluralism be practiced in conjunction with dispute resolution, given its ability to offer alternative legal systems within the judicial systems in the two countries. The research considers that, in the case of processes where the parties have conflicts of a cultural and religious nature, the adoption of pluralism can be a reasonable and interesting alternative to reach an effective solution.

As a result, 28 respondents (33.73%) believed that action is important, but not essential to resolve conflicts. Another 2 professionals (2.41%) thought the action was not important, but did not justify why. Finally, 1 respondent (1.20%) was unable to answer whether the measure was effective and did not give an opinion.

CHAPTER 5 – DISCUSSION

The intention of this chapter is to critically discuss the data collected throughout all phases of the research, especially those obtained through the survey and interweaving this information with the relevant literature to understand the research object.

A first aspect to be considered is the practice of dispute resolution in the context of Ireland and Brazil, where two elements stood out in the set of data obtained: the highest concentration of women (57.83%, 48 participants) in the career and character of auto-composition works, mainly in Ireland. Data analysis confirmed a trend that was already expected, as dispute resolution, even previously occurring in Ireland, was only regulated in the country in 2017, which justifies the fact that the vast majority of respondents entered the career between 2nd and 5 years. In Brazil, dispute resolution has been practiced for a few years and the data correspond to the age group of adults over 35 years old and who are in the profession between five and ten years old and over ten years old (respectively 19.28% and 12.05% of the sample population).

The large percentage of women who pursue careers in the dispute resolution field also confirms a fact that was already known in both Brazil and Ireland. According to data from the *Instituto de Ensino Centro de Mediadores*, located in Brazil, women already account for about 75% of the people seeking a career in mediation. According to the institute, women have important skills for their careers, such as negotiating power, setting limits, emotional intelligence, creativity and assertiveness, among others. According to the institute, in cases that include family issues, women know how to dialogue with angry children and young people, leading them to a logical reasoning[51].

Regarding the practical relationships between dispute resolution and legal pluralism in the resolution of conflicts motivated by cultural issues and religious beliefs, the research revealed important aspects. The

[51] *Instituto de Ensino Centro de Mediadores,* 2019 [online]. Available at: https://www.centrodemediadores.com/mulher-mediadora-a-lideranca-do-seculo-xxi/ (Acessed 20 October 2021).

first of them is the very notion of legal pluralism, explored in two distinct but related issues: the first, about its theoretical notion and the second, about its practical notion. These questions, of course, relate pluralism to the judicial practice of dispute resolution. The data showed that, although the vast majority of respondents already knew about legal pluralism in theory and in practice, there was no unanimity in attributing its relevance in conflict resolution. This is due to the fact that the concept, in its theoretical and practical aspects, is still viewed with suspicion or even uncertainty by many professionals in the field of law. According to Griffiths, quoted by Menski, legal pluralism

> "is defined as an imperfect form of law by the very ideology which gives it meaning as a concept, that accounts for the low opinion of 'legal pluralism' held by so many of those who write within and about it, and it is thus not surprising that even lawyers and scholars who live in states whose legal systems are formally pluralistic take a dim view of that state of affairs" (Griffiths apud Menski, 2006, p.118)[52].

When asked about the effectiveness of the direct association of the practice of legal pluralism with dispute resolution mechanisms in the resolution of conflicts, the interviewees therefore demonstrated that there is a certain optimism on the horizon in relation to this. A total of 62.65% of the sample population who agreed that this association was extremely relevant seems to suggest that the new generation of law professionals who are graduating from universities and even those who specialize in the field of dispute resolution are more knowledgeable about benefits of this relationship. It is also worth remembering that the vast majority of those interviewed were unanimous in considering the use of legal pluralism mechanisms as instruments to promote peace and family and community harmony to be very relevant. The total number of respondents (100%) believe that it is an instrument that can and should be used to resolve conflicts and establish peace, even if they still do not know how this can be done. When speaking of conflicts generated by land tenure, Unruh[53] confirms this tendency, saying that

[52] Menski, W. (2006). *Comparative Law in a Global Context: the Legal Systems of Asia and Africa*. 2rd edn. Cambridge: Cambridge University Press.

[53] Unruh, J. D. (2003). "Land Tenure and Legal Pluralism in the Peace Process". In: *Peace & Change*, Vol. 28, 3.

legal pluralism can represent a favorable alternative to achieve peace and resolve conflicts in societies led by fragile governments and legislation (2003, p. 365).

One of the focuses of this research was to situate the role of legal pluralism with regard to conflict resolution in the family and community context, in the aspect of religious and cultural issues. The confronted survey data with the literature review showed that there is a direct relationship between family, community and conflicts motivated by cultural and religious issues. The choice of the vast majority of Irish and Brazilian respondents, placing Catholics (56.63%) as the group that most sought out dispute resolution services to resolve their disputes, goes against the theories of society's secularization. According Norris and Inglehart[54] (2004, p.3-32), secularization can be defined as a process of transformation of society in which religious values and their institutions previously in force begin to identify with non-religious values and secular institutions. According to the authors, as societies progress and modernize, becoming more rational and technological, religious authority diminishes in all aspects of social life and government. The secular orientation of many countries, where religion is separated from the State, at least in the legislative aspect, is a result of the secularization process, which grew in the second half of the 20th century. We do not want to go into the dense issues of secularization here, only to think critically as one of the possible causes of Catholic Christians (as well as Protestant Christians, about 16.87% according to respondents) to seek other ways to resolve their legal conflicts without access the internal jurisprudence of religion. The self-denominated without religion (8.43%), for rejecting religious practices, do not look for them to solve their problems. Muslims, Jews and Hindus, on the other hand, have internal legislative and moral codes guided by their religious beliefs and therefore resolve their disputes internally within their own

---

Washington D.C.: Peace History Society and Peace and Justice Studies Association, pp.352-377.

[54] Norris, P. and Inglehart, R. (2004). "The Secularization Debate" "In*: Sacred and Secular: Religion and Politics Worldwide. Cambridge:* Cambridge University Press, *p. 3-32.*

community, which is why they were inexpressive in the survey statistics.

With regard to the family and the community, 51.81% of respondents stated that the problems generated in the family sphere are the cause of the current problems that affect society and provoke the demand for dispute resolution. Although the survey did not directly relate family crises to religious and cultural issues, it is certain that the relationship exists. If we think that 78.31% of respondents stated that cultural and religious issues represent obstacles to the understanding of the litigants and that 71.08% had already witnessed situations of intolerance and aggressiveness motivated by these same issues during the sessions, the relationship becomes obvious.

These elements identified in the research make us think that unresolved issues within the family unit will turn into bigger problems in the context of the community. The increase in violence attributed to young offenders has fueled many discussions not only in Ireland and Brazil, but around the world. Drugs, violence and aggression often have their origins in homes. In very critical cases, moral issues and religious precepts do not have the power to reduce conflicts, requiring the intervention of other forces, such as the police and, in the most extreme cases, justice. In this judicial context, legal pluralism and dispute resolution mechanisms find their legitimacy to try to resolve problems through dialogue and agreement between individuals in conflict.

This study came to prove the hypothesis that legal pluralism has been applied in Brazil and Ireland linked to dispute resolution mechanisms analyzed (conciliation and mediation) and that they have been effective in solving conflicts based on cultural and religious issues, which were conceived in the family nucleus. This is because legal pluralism offers other differentiated legal systems that often include criteria based on culture and religion. As we saw in the literature review, Brazil has adapted laws to give more space and increase the action of self-composition mechanisms in society, as a way to avoid overloading the judiciary and aligning state and private dispute resolution institutes with structural bodies such as the police and the defense secretariats, aiming to reduce violence and other problems in

communities. In Ireland, similar attitudes have been taken by the government, making conciliation and mediation services accessible to the population as a way to generate dialogue and sensitize society that prison is not the only form of punishment and solution to social conflicts.

CONCLUSION

In the scenario of International Law, geopolitical issues involving culture and religion have received special attention from governments due to the fact that most of the efforts for peace reside in them. This research, by proposing the treatment of cultural and religious issues primarily within the family nucleus, using the self-composition legal mechanisms of dispute resolution and legal pluralism, contributes to the discussion that already takes place in society at many levels. As seen, the United Nations itself has been using this legal alternative in the conflict areas managed by it. In other words, this research also sought to understand the action of the two mechanisms in peace actions, but not in the context of armed conflicts. The aim was to understand the role of justice in peace, which is conceived in the harmony of social relationships, initiated in the home and spread throughout the community.

Dispute resolution has been a practical reality in Europe and America for a few years. In Brazil it is older than in Ireland, but in both countries it has been effective in the context of conflict resolution, preventing the overloading of the judiciary and the confrontation of the courts. The practice of conciliation and conflict mediation has been the object of special attention by the justice commissions, which are positively committed to their ability to reach the end of fights and disputes between litigants through dialogue and signed agreements.

This research was motivated by a problem and a hypothesis. These two elements guided all the scientific procedures adopted here. The need to understand how dispute resolution and legal pluralism were related in theoretical and practical terms was followed by the need to understand how their joint action allowed for the resolution of conflicts, first in the family and then in the community. And as every scientific investigation wants to reach an answer, we launched field research, which would not be fruitful without the theoretical foundation of secondary sources, a process that took place in two ways.

First, the survey, which when applied personally to each of the 83 interviewees, reflected the researcher's desire to obtain supporting data for the hypothesis that legal pluralism, adopted as a strategy by the dispute resolution mechanisms (conciliation and mediation) was used successfully in the judicial reality of Ireland and Brazil with a focus on the family and the community.

Second, the survey of bibliographic sources offering important theoretical discussions proposed by jurists and experts in Law, presenting the relevant concepts that based the study. This rich heuristic composed a broad bibliographic corpus that included works (books, articles, dissertations and theses) produced by thinkers of Law and other scientific areas in English, Portuguese, French and Spanish. Added to this are legal documents from Ireland and Brazil, such as constitutions, as well as laws and decrees in the field of auto-composition justice.

The research was able to achieve its purpose and prove the legitimacy of the formulated hypothesis. In fact, in Brazil and Ireland dispute resolution mechanisms, especially mediation and conciliation, have used legal pluralism for some years in their processes. The research showed that the increase registered in cases of family crises in recent years has been mostly motivated by cultural issues, mainly derived from exacerbated religious beliefs, which undermine the structure of the home. Often the divorce of the spouses and the abandonment of the children lead to the degradation of the family fabric. This lack of structure in homes causes more serious problems such as violence, drugs and juvenile delinquency. The need to contain the problem at its base and prevent it from expanding and taking on a community dimension has been the focus of dispute resolution actions in Brazil and Ireland today. We can see an example of this in the associations that many government bodies of the judiciary have made with NGOs, institutes and local police (*Garda Síochána* in Ireland and civil and military police in Brazil), joining efforts to combat violence and juvenile delinquency in both countries.

In this regard, the survey also concluded that the presence of women working in dispute resolution actions is also a differentiator. We think that the presence of the woman, associated with the mother

figure, manages to carry out a more subtle approach with families and especially in cases where there are children and young people, it is an indispensable factor for success. The fact is that, as demonstrated, the demand for training courses for agents of self-composition justice has increased and, for the most part, women have sought to become a professional in this area.

The results found here are not intended to exhaust the subject, but to inspire new discussions about the practice of self-compositional justice in its relationship with legal pluralism. Very little has been said about this relationship, which went beyond the theoretical limit and was established in practice. Legal pluralism has ceased to be the subject of mere theoretical approaches to being understood as an available and effective instrument in the resolution of conflicts at various levels, especially in conjunction with the full exercise of dispute resolution. Perhaps this is the main contribution brought by this scientific research... to show that this is a possible action.

REFLECTION

My background is in law. So my work on this dissertation thesis was important to learn more about conflict mediation. I studied at the University dispute resolution in civil law. My thesis talks about culture, religion, sociology and legal anthropology, history, and law. All areas that I like a lot. It's important to study culture and religion. I am fascinated to have taken this Master's Degree and to have gained more knowledge about the subject in the course.

Dispute resolution is very important, especially with regard to social gains for the community. It seeks to solve problems between the parties in an agile way, even if some processes are complex. In this research I could analyze how it is processed in Brazil and Ireland. I did the survey through a survey only with mediators in Brazil and Ireland, because in these countries there was already a discussion about the benefits of dispute resolution and where I thought it would be interesting to intertwine aspects of culture, religion and legal practice. It was important to learn from the mediators' responses and experience.

But this course also represented a challenge for my academic and professional career. During my graduation in Law, my scientific initiation was more oriented towards bibliographic review work, more focused on writing texts that discussed theories. Here in Ireland, for the first time I had contact with primary research. It's something that made me step out of my comfort zone and explore new potentials. Going into the field and applying the survey in person to 83 interviewees here and also in Brazil proved to be a challenge, at first an agonizing one, as some contacts I had managed refused to respond, alleging lack of time and also a certain lack of interest, as I noticed in some cases. The pandemic also hindered contacts with professionals in the field, as it caused the closure of some centers here and in Brazil, which started to work remotely. This was also problematic, as I had stipulated a month for the survey to be applied and was unable to access the sample population. Due to the short time I had to

dedicate to the dissertation, which I needed to reconcile with my work, this made it difficult. But fortunately, thanks to friends here and in Brazil, I received indications from other contacts and, in the end, I had 83 interviewees. And everything worked out.

Scientific production is a path that sometimes becomes a two-way street and we are forced to make decisions that do not compromise the value of our research. I was also able to experience this experience here in the course, when I decided to change the focus of my original research object, which was just the evolution of dispute resolution and legal pluralism in Ireland and Brazil, to adapt it to fieldwork. So I decided to delimit my object focusing on the practice of legal pluralism in dispute resolution, but only in cases related to cultural and religious issues in the family environment. In the end, I considered the proposal to be excellent, as these issues are part of discussions at the world level, and are always up-to-date. We can see the issue of immigrants, especially those at humanitarian risk, for example, war refugees who are received by many countries and cultures different from their own. The thesis talks about the cultural and religious principles in dispute resolution in Brazil and Ireland, where family members seek a way to achieve the well-being of the community. In all these discussions I could contribute my research.

Added to this is the richness of a comparative study between Brazil and Ireland, which gave the dissertation an unprecedented character, as I have not found similar studies to base my analysis on. Two countries, with such different cultures, separated by millennia of history and the grandeur of an ocean, but so close and alike in many ways. I believe that comparative studies are very good for starting the discussion as they allow us to assess similarities and differences between different objects. By studying the judicial realities of the two countries, we found that the yearning for renewal in the practice of Law is real in them and it is not confined to governments only, often starting from the private sector and non-governmental organizations, in which dispute resolution has been shown so active and effective. I was able to verify this same reality in both countries, although in different spaces

and histories. And that did a lot to broaden my view as a lawyer and dispute resolution specialist.

This Master Degree in Dispute Resolution changed my life forever, and added a lot to my professional training in law and my curriculum. And with this thesis, the understanding reached by carrying out this study, I learned a lot.

BIBLIOGRAPHY

Adorno, P.A., Fialho, M.L. Peres Jr, R and Santiago, V. (2018). "Conciliação e mediação políticas públicas e cidadania", in *Intraciência*, v. 15, available at: https://uniesp.edu.br/sites/_biblioteca/revistas/20180925134931.pdf (accessed 2 September 2021).

Almeida, B. de L. F. de and Correia, D. B. (2012), in: "Access to Justice through Mediation and Conciliation: Limited Rights Guarantees". *Revista CEJ,* year XVI, 58, pp. 38-43.

Barral, W.O and Deffenti, F. (2017). *Introduction to Brazilian Law*. 2rd ed. Alphen aan den Rijn: Wolters Kluwer.

Beck, G. (2013). *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart Publishing.

Bell, J. and Waters, S. (2014). *Doing your Research Project: A Guide for First-time Researchers*. 6rd edn. Berkshire: Open University Press.

Bensunsan, N. (ed.). (2008). *Seria melhor mandar ladrilhar?* São Paulo: Peirópolis,

Berger, P. (1967). *The Sacred Canopy*. Garden City: Doubleday & Company.

Bryman, A. (2004). *Social Research Methods.* 2nd edn. Oxford: Oxford University Press.

Burton, J. (1990). *Conflict: Resolution and Prevention*. New York: St. Martin's Press.

Bussani, M. and Graziadei, M. (eds.). (2005). *Human Diversity and the Law / La diversité humaine et le droit*. Berne: Stämpfli / Brussels: Bruylant / Athens: Sakkoulas, pp. 25-41.

Campbell, C. (1998). "Ireeligion", in *Encyclopedia of Religion and Society*. Swatos Jr, W. H. (ed.). Walnut Creek: Roman Altamira Press.

Carvalho, L. B. de. (2010). "Caminhos (e descaminhos) do pluralismo jurídico". In: Wolkmer, A. C. (dir.). *Pluralismo jurídico: os novos caminhos da contemporaneidade*. São Paulo: Saraiva.

Coakley, J. and Gallagher, M. (ed.). (2005). Politics in the Republic of Ireland. Oxon: Routledge.

Presidência da República do Brasil - Ministério da Casa Civil. *Constituição da República Federativa do Brasil de 1988*. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm (Acessed 01 October 2021).

Delmas-Marty, M. (2002). *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism*. Cambridge: Cambridge University Press.

Dudovskiy, J. (2018). *The ultimate Guide to Writing a Dissertation in Business Studies: A Step-by-Step Asssitance* [online]. Available at: goodreads.com (Accessed 14 October 2021).

European Justice (2021). *Mediation in EU countries*. Available at: https://e-justice.europa.eu/64/PT/mediation_in_eu_countries?IRELAND&clang=en (Accessed 29 September 2021).

European Union (2021). *The History of the European Union*. Available at: https://europa.eu/european-union/about-eu/history_en (Accessed 02 October 2021).

Fachin, O. (2017). *Fundamentos da Metodologia Científica: noções básicas em pesquisa científica*. 6rd edn. São Paulo: Saraiva.

Fassberg, C. W. (2005). "Religious Diversity and Law", in: M. Bussani & M.

Garner, B. A. (2001). *A Dictionary of Modern Legal Usage*. 2rd edn. NewYork: Oxford University Press.

Gray, J. (1998). *Narrative inquiry*. Unpublished paper. Joondalup: Edith Cowan University.

Gulati, R. (2010). *The Internal Dispute Resolution Regime of the United Nations: Has the Creation of the United Nations Dispute Tribunal and United Nations Appeals Tribunal Remedied the Flaws of the United Nations Administrative Tribunal?* In SSRN. Available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695215 (Accessed 21 October 2021).

Hallaq, W. (2011). *An Introduction to Islamic Law*. New York: Cambridge University Press.

Hamilton, É. (1997). *La mythologie: ses dieux, ses heros, ses legendes.* Alleur: Marabout.

Instituto de Ensino Centro de Mediadores, 2019 [online]. Available at: https://www.centrodemediadores.com/mulher-mediadora-a-lideranca-do-seculo-xxi/ (Acessed 20 October 2021).

Johnson, R. B. and Vogt, W. P. (2005). *Dictionary of statistics & methodology: a nontechnical guide for the social sciences*. 3nd ed. Thousand Oaks: Sage.

Justice Ireland (2017). *Mediation Bill 2017/ An Bille Idirghabhála 2017*. Available at: http://www.justice.ie/en/JELR/Mediation_Bill_2017_as_initiated.pdf/Files/Mediation_Bill_2017_as_initiated.pdf (Accessed 2 September 2021).

Kokol, A. (2015). "Panorama dos procedimentos autocompositivos no Brasil", in *Âmbito Jurídico* (Online). 134. Available at: https://ambitojuridico.com.br/edicoes/revista-134/panorama-dos-procedimentos-autocompositivos-no-brasil/ (Acessed 01 October 2011).

MacCormick, N. (2002). *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. 2rd ed. Oxford: Oxford University Press.

Macdonald, R.A. (2005). "Legal Republicanism and Legal Pluralism: Two Takes on Identity and Diversity", in: M. Bussani & M. Graziadei (eds.), *Human Diversity and the Law/ La diversité humaine et le droit*. Berne: Stämpfli / Brussels: Bruylant / Athens: Sakkoulas, pp.43-70.

Maliska, M. A. (2000). *Pluralismo jurídico e Direito moderno*. Curitiba: Juruá, 2000.

Mendes, Gilmar. *Organização do Poder Judiciário Brasileiro.* Available at: https://biblioteca.cejamericas.org/bitstream/handle/2015/2951/JudicBrasil.pdf?sequence=1&isAllowed=y (Acessed 01 October 2021).

Menski, W. (2006). *Comparative Law in a Global Context: the Legal Systems of Asia and Africa*. 2rd edn. Cambridge: Cambridge University Press.

Miles, M.B. and Huberman, A. M. (2014). *Qualitative Data Analysis.* 3rd edn. Thousand Oaks, CA: Sage.

Norris, P. and Inglehart, R. (2004). "The Secularization Debate", in*: Sacred and Secular: Religion and Politics Worldwide. Cambridge:* Cambridge University Press, *p. 3-32.*

Otis, G. (2012). *Méthodologie du pluralisme juridique,* Paris: Karthala.

Perseguim, I. B. (2019). "Conciliação e mediação no ordenamento jurídico brasileiro comparado ao direito internacional e suas principais nuances", in: *Jus Navigandi* [online]. Available at: https://jus.com.br/artigos/73458/conciliacao-e-mediacao-no-ordenamento-juridico-brasileiro-comparado-ao-direito-internacional-e-suas-principais-nuances (Acessed 29 September 2021).

Rodas, S. (2020). "Em 5 anos, Lei da Mediação ajudou a mudar cultura do litígio no país", *Consultor Juridico* [Online] Available at: https://www.conjur.com.br/2020-jun-27/anos-lei-mediacao-ajudou-mudarculturalitigio#:~:text=A%20Lei%20da%20Media%C3%A7%C3%A3o%20(13.140,de%20especialistas%20ouvidos%20pela%20ConJur (Accessed 28 September 2021).

Sabadell, A. L. (2005). *Manual de Sociologia Jurídica: Introdução a uma leitura externa do Direito*. São Paulo: Revista dos Tribunais.

Saunders, M., Lewis, P. and Thornhill, A. (2007). *Research Methods for Business Students.* 4rd edn. Harlow: Prentice Hall.

Scavone Jr, L. A. (2016). *Manual de Arbitragem: mediação e conciliação*. Rio de Janeiro: Forense.

Sherman, L. W. and Strang, H. (2007). *Restorative Justice: the Evidence*. London: The Smity Institute.

Stephen, R. and Walliman, N. (2016). *Social Research Methods: The Essentials*. 2rd edn. Thousand Oaks: Sage Publications Ltd.

Tamanaha, B. Z., Sage, C. and Woolcock, M. (eds). (2012). *Legal Pluralism and Development: Scholars and Practitioners in Dialogue*. Cambridge: Cambridge University Press.

Trentin, F. (2012). *Métodos alternativos de resolução de conflito: um enfoque pluralista do direito*. *Âmbito Jurídico*, 15, pp. 01-26. Available at: https://ambitojuridico.com.br/edicoes/revista-98/metodos-alternativos-de-resolucao-de-conflito-um-enfoque-pluralista-do-direito/ (Acessed 01 October 2021).

Tylor, E. B. (1920). *Primitive culture: researches into the development of mythology, philosophy, religion, art, and custom*. London: John Murray.

Unruh, J. D. (2003). "Land Tenure and Legal Pluralism in the Peace Process". In: *Peace & Change*, Vol. 28, 3. Washington D.C.: Peace History Society and Peace and Justice Studies Association, pp.352-377.

Van Ness, D. W. and Strong, K. H. (2010). *Restoring Justice - An Introduction to Restorative Justice*. 4th ed. New Province: Matthew Bender & Co., Inc.

Wolkmer, A. C. (2001). *Pluralismo Jurídico: fundamentos de uma nova cultura no Direito*. São Paulo: Alfa-Omega.

Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse: Good Books.

APPENDIX

1. **The Survey**

RESEARCH DISSERTATION: MASTER OF ARTS IN DISPUTE RESOLUTION

Legal pluralism and dispute resolution: a comparative study of the evolution of the practice in Ireland and Brazil with a focus on issues involving culture and religion.

IMPORTANT NOTES

Purpose

This research has an academic purpose only. There is no direct benefit from answering the questionnaire, but your participation will have an importance in the development and further understanding of the topic.

Confidentiality

Any answers provided will be sent to a link at Survey Monkey, and the data collected will be stored online in an electronic format protected by a password. Information such as name, email address or IP address will not be collected by the platform. As a result of this, all responses are completely anonymous, and no identification is required.

Aim

The legal mechanisms that guide the practice of dispute resolution in Brazil and Ireland effectively consider cultural and religious principles in the resolution of conflicts, privileging family issues as a means of achieving the well-being of the community.

Declaration

This research is being carried out in accordance with the WMA Declaration of Helsinki ethical principles (available at: - https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/)

Concerns

In case you have any doubts or concerns in relation to this research, you are welcome to contact the research supervisor, Mr. Craig Phillips (craig.phillips@independentcolleges.ie) and the research candidate Miss. kelly kiefer da Silva (k1238@hotmail.com), who is a registered student at Independent College Dublin undertaking the degree of Master of Arts in Dispute Resolution.

In case you feel that this research has not been able to maintain ethical principles, please contact

Independent College Dublin at the contacts below:

Independent College Dublin at Block B, The Steelworks, Foley St, Dublin 1, or by email: info@independentcolleges.ie

Proceeding with the questionnaire, you are automatically indicating that: You have READ and AGREED with the above information. You agree to participate in this research VOLUNTARILY.You are 18 years or over. Thank you for your time and for assisting me in the completion of my master's degree.

Question Title
**** 1. Wich continent are you from?***

- Europe
- South America

Question Title
**** 2. How old are you?***

- Less than 23 years
- 23 to 35 years
- 35 to 50 years
- More than 50 years

Question Title
**** 3. Are you?***

- Female
- Male

Question Title
**** 4. Which country are you answering?***

- Brazil
- Ireland

Question Title
**** 5. How long have you been worked as a mediator?***

- Less 2 years
- 2 to 5 years
- 5 to 10 years
- More 10 years

Question Title
**** 6. How many mediation cases do you work on per day as a mediator?***

- Less than 2

- 2 to 3
- 3 to 5
- More than 5

Question Title

**** 7. Do you know what legal pluralism is?***

- Yes
- No

Question Title

**** 8. Have you ever heard about legal pluralism before?***

- Yes
- No

Question Title

**** 9. Legal pluralism seeks to restore human and social relationships through the tools of dispute resolution, socially building a culture of peace. Do you believe that legal pluralism is important?***

- Yes
- No

Question Title

**** 10. Do you consider that the adoption of different systems in the same practice (legal pluralism), can help to achieve the result and solve that problem between the parties in a mediation session?***

- Yes
- No

Question Title

**** 11. Considering the success of mediations based on legal pluralism, how would you classify its importance in promoting family and social peace and harmony for the communities served?***

- Very relevant
- Relevant
- Not very relevant
- Irrelevant
- I wouldn't know how to answer

Question Title

**** 12. Do you think it is important as a mediator to know more about the cultural and religious issues surrounding the cases in which you work?***

- Yes
- No

Question Title

**** 13. When it comes to the impact of religious beliefs on the outcome of mediation processes, point out a religious group that most appears in the developed work :***

- Catholics
- Protestants
- Muslims
- Jews
- Hinduists
- Buddhists
- Without religion
- Others: (Spiritism, African-based religions, Wicca and neo-pagan religions, etc.) _____

Question Title

**** 14. Have you ever faced difficulties during mediation processes motivated by issues such as chauvinism and the downgrading of the female status due to the religious and cultural beliefs of the parties involved?***

- Yes
- No
- I wouldn't know how to answer

Question Title

**** 15. Do you consider that cultural and religious issues are an obstacle to the parties conciliation?***

- Yes
- No

Question Title

**** 16. According to your experience in dispute resolution, what elements do you consider most relevant and positive for the success of the practice today?***

- Cultural level
- Education level
- Gender
- Religion
- Political positioning
- Age
- Purchasing power
- Others _____

Question Title

**** 17. In your opinion, the demand for dispute resolution in the country has increased more in recent years, motivated by what problems?***

- Divorce
- Family crises
- Labor issues
- Juvenile delinquency
- Migratory crises
- Disrespect for human rights
- Gender issues
- Increased violence

Question Title

**** 18. In your opinion, do you think it is important that your own religious beliefs and cultural practices interfere in the mediation process?***

- Yes
- No

Question Title

**** 19. In your opinion, what is the importance of using legal pluralism mechanisms in dispute resolution processes?***

- Very relevant
- Relevant
- Not very relevant
- Irrelevant
- I wouldn't know how to answer

Applied by www.surveymonkey.com