

# *A Difficult Time to Talk*

*A qualitative socio-legal study on family mediation in Hague Cases of  
International Parental Child Abduction, from the perspective of a  
selection of legal practitioners and mediation professionals*

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# DEDICATION

For my late Mam and Dad

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To all, I say thank you.

# PLAGIARISM DECLARATION

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Ph.D. in Law and Criminology, is entirely my own work and has not been taken from the work of others, save and to the extent that such work has been cited and acknowledged within the text of my work.

# ABBREVIATIONS and ACRONYMS

ADR....Alternative Dispute Resolution / Appropriate Dispute Resolution

BA .....Bachelor of Arts

Brussels IIb... Regulatory framework of the EU Member states on parental responsibility

CA..... Central Authority

CIArb....The Chartered Institute of Arbitration (Ireland Branch)

CBFM....Cross Border Family Mediation

CEPEJ.... Court of Justice of the European Union

CFA.....Child and Family Agency (Tulsa)

CRC.....United Nations Convention on the Rights of the Child

CSO.....Central Statistics Office

DOJ.....Department of Justice

ECJ .....European Court of Justice

ECtHR....European Court of Human Rights

FDR.....Family Dispute Resolution (Australia)

FMA.....The Family Mediators Association (UK (United Kingdom))

FMS..... Family mediation Service (Ireland)

GAL.....Guardian Ad Litem

GEMME...European Association of Judges for mediation

GDPR.....General Data Protection Regulation

HCCH..... Hague Convention / Conférence de la Haye

HSE .....Health Service Executive (Ireland)

IFLA.....Institute of Family Law Arbitrators

ISS..... International Social Service

LAB.....Legal Aid Board

LEPCA.....Lawyers in Europe focusing on International Parental Child Abduction

MA..... Master of Arts

MIAM.....Mediation Information & Assessment Meeting- UK

MII..... Mediators’ Institute of Ireland

MiKK.e.V...International Mediation Centre for Family Conflict and Child Abduction  
(Berlin)

MOU.....Memorandum of Understanding

MU.....Maynooth University

NGO.....Non-Government Organisation

ODR.....Online dispute resolutions

OGCIO.....Office of the Government Chief Information Officer

TEU.....Treaty on European Union

UK.....United Kingdom

UNCRC.....United Nations Convention on the Rights of the Child

WRS.....Work Related Stress



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# ABSTRACT

This study explores family mediation for international child abduction cases in Ireland and across Europe, from the perspective of legal and mediator professionals. This socio-legal study focuses on their personal and professional challenges they face in working together within a legal framework. A selection of legal practitioners and mediators across Ireland and parts of Europe were interviewed to offer their perspective on their work. The removal of a child from their place of habitual residence to another country by one parent, without the permission of the other parent, constitutes International Parental Abduction. According to figures from Missing Children Europe 2020, there are over 1,100 such cases each year. Although the numbers may seem small in relative terms, the significant upheaval in the lives of these families cannot be underestimated. Resolving these abductions requires the cooperation of multiple agencies, governments, and legal systems. The Hague Convention on the Civil Aspects of International Child Abduction 1980 is a multi-lateral treaty offering a framework for collaboration between signatory countries to facilitate the prompt return of the abducted child to its place of habitual residence. This process focuses on delivering a prompt Return Order. Both the Hague Convention and the European Union Parliament (EU Parliament, 2008) have endorsed the use of mediation in suitable parental child abduction cases. When engaged, trained family mediators support the parents in finding a solution that reflects the specific family circumstances.

Building on my previous research, this new study focuses on the role mediation plays in finding resolutions for such cases, from the unique perspectives of the professionals working in this area. This research offers a window into the personal and professional challenges they face and what recommendations they offer to ensure best practice, such as resources, communication and well-balanced self-care. Their perspective is documented through findings from semi-structured interviews.

# PROLOGUE

Emotions, people and rules do not go easily hand in hand. Having had vast experience in the corporate world throughout my career and being aware of how simple situations can become more complex when emotions and personal issues become involved, the role of mediation has always been interesting to me. I had seen friends who engaged with family mediators when their marriages broke down as they struggled to agree on parenting plans and colleagues who worked with mediators to support them in work-related issues and could see the positive results. However, I have also seen when mediation did not work.

I had always been interested in achieving a degree and I undertook a four-year part-time honours degree at Dublin Business School, this degree allowed me to have a window into many sociological issues including criminology, globalisation, and a deeper knowledge of how the world works, through the tools of research and studies. Following my graduation with a Hons BA and having been awarded the Graduate of the Year Award in 2018, I was keen to continue in the academic world. I was offered a place at Maynooth University on the MA in mediation and Conflict Intervention by Dr Treasa Kenny. I had always been nervous of conflict, but I did work well with others in helping them to overcome issues they had, so I felt this could be a good fit. A minor thesis was a requirement of the MA and I had the opportunity to do a study on family mediation in international child abduction cases, *One Size Will Not Fit All* (Dunne, 2019). This study focused on the Irish Legal Aid Board and the pilot project they were conducting at the time with international child abduction family mediation cases. This research opened a whole new world to me. The legal involvement and the role of mediation were in a different category to what I had been expecting. This research allowed me to become involved in the world of the professionals who were in the legal profession and who were also involved in mediation. From the High Court to the District Court and at the community level, I got to experience how the system worked and by the time I had finished my project, I knew there was much more to add. I was aware that I had already extended my resources in doing the MA, and I knew that my family life was going to be busy, therefore I felt at that time that I may not have been able to commit to a Ph.D. During Covid-19, like many, I found it hard to move in the direction in which I was now interested in. Therefore, in April 2020, with advice from Dr Treasa Kenny, I decided to apply for the John and Pat Hume Scholarship at Maynooth

University with a goal to be the person to continue the research on mediation and international child abduction. In June 2020 I was awarded the scholarship and by this stage I had met the relevant stakeholders in this field and had attended many conferences about this subject. I had written some journal articles and some book reviews; I was totally engaged. While working as a volunteer mediator with Community Law and mediation (CLM), I was able to gain an insight into the challenges that mediators and legal professionals handled each day. I then realised that by doing this research I was offering these professionals the opportunity to tell their story and let their voices be heard. Having met with several of the Irish professionals working in this area, I then needed to expand to parts of Europe to assess if the issues were similar across mediation and family law. My own experience in mediation opened my eyes to how complicated and difficult the process could be and how much more training and experience the professionals needed to secure sustainable agreements in the challenging cases they were handling. What a journey this has been. I have had the opportunity to train as an international child abduction mediator with MiKK.e.V Mediation for International Child Abduction and become the Ambassador for MiKK.e. V here in Ireland. I expanded my training in Child Inclusive mediation (CIM) and continued to volunteer for CLM as a pro-bono mediator. However, this interest also created the prospect of unconscious bias, of which I am aware of. Therefore, only the words and feelings of the participants are discussed and analysed in this research.

The following research study is an interdisciplinary research project with a socio-legal approach. Finding the gap in what is already known is the key to all research, and this study is no different. This research discusses what international parental child abduction is, and what is the perceived added value of mediation in these cases. The unique approach of this research is that it explores this subject from the firsthand experiences and emotions of the professionals, both legal practitioners and mediators who work at the coal face of international family law. The significance of the research and the scope and limitations are discussed by evaluating and comparing the role of the Alternative/Appropriate Dispute Resolution (ADR). This allowed this research to explore why mediation, in many cases, is deemed the most appropriate ADR in the context of child abduction cases. The aspects of voluntary and confidential engagement are outlined in detail and each mediation style is discussed, with a view to determining which may be the most appropriate style for international parental child abduction cases. The findings and conclusions are based on the perception of the participants, following semi-structured



interviews. The recommendations which follow are derived from their experience and emotions of mediation in international parental child abduction cases.

The findings of this research study derive from the interpretation, evaluation and in-depth analysis of the nineteen semi-structured interviews. The findings include the views of the participants on what would support them working in this field - from resources to training. The benefits of self-care from a holistic and well-being approach to their work and the value that peer support can offer are explored. The need for more professional certified training modules to support mediators in working in the shadow of the law are considered. The practicality of how many international cases are deemed to be enough, to work productively, are considered. The value of colleague support and supervision and sharing and learning sessions are acknowledged. Suggestions are made to ensure such sessions become the norm in this field and for these sessions to be scrutinised as part of the professional certified process. Like many research studies, this study invites further research. However, this study has covered many issues for the first time throughout and the view of this researcher is that more could be achieved by a longitudinal study. A longitudinal study would add value to understanding of the role of mediation and review how the Regulations such as Brussels IIter 2019/1111 may have impacted the process for those who have been directly affected by international parental child abduction and outline if the introduction of the mediation process has merit.

I know that my personal feelings are irrelevant to the findings of this study. As mediation is often described as a conversation between parties facilitated by a third party, I chose qualitative research as the method and semi-structured interviews were deemed to be the most appropriate way to keep the discussion flowing. My unequivocal interest in this subject, my desire to hear the stories from the professionals and my acquired knowledge from my MA thesis in 2019 set the scene for this Ph.D. study and so my journey began.

# Chapter 1: BACKGROUND, CONTEXT AND MANAGEMENT IN INTERNATIONAL PARENTAL CHILD ABDUCTION CASES

The background, context, and management of international parental child abduction cases are outlined in this first chapter. The objective of this research on mediation for parental child abduction cases is also discussed in this chapter and why this researcher made the decision not to invite parents and children to be included as participants. The international setting of parental child abduction, combined with the legal process, is also outlined. A review of the Alternative Disputes Resolution (ADR) methods in family law ensures this research evaluates what has been deemed the most appropriate ADR for such cases. The definition of child abduction and what classification of cases are pertinent to this research are outlined throughout the study. This chapter concludes with the significance of this research and the scope and limitations which have been encountered during this study.

## 1.1 Objective of this research

Following on my previous research into mediation for international child abduction cases (Dunne, 2019), this researcher found many interesting projects on the process, the legal guidelines and the challenges from the figures available and organisational bodies involved. By exploring the challenges through the eyes of the people who work at the front line with the families and within the legal framework, this research had the opportunity to ask a different question; what are the experiences and needs of those professionally involved in the mediation process within a legal framework of international child abduction cases? This research aimed to understand the challenges that family law practitioners and family mediators both in Ireland and parts of Europe find in their work in family mediation and Hague international child

abduction cases. By conducting qualitative semi-structured interviews with these professionals this research gave them a voice to discuss what works for them and what recommendations they would offer from their experiences.

The decision was made early in this research not to include parents or children who may be involved in international child abduction cases and to focus on the professionals themselves. There are excellent research projects involving the views of children and parents to date, from Australia, Mc Intosh et al (2008), Europe (MCE, 2024) and from the United Kingdom Freeman and Taylor (2020). This research also recognised that the parents and children are under extreme pressure at this traumatic time, and this could have taken the research in a different direction as discussed further in the methodology strategy section at 3.1.3.4. In exploring this approach, wider issues arose, issues such as the challenges that practitioners deal with every day to ensure that the ethos of The Hague Convention on the Civil Aspects of International Child Abduction 1980 is upheld in mediation. According to this research, these changes to the scope and aim of what is deemed a legal process can be challenging to the different professionals in their capacity. Understanding how each profession works and harmonising between the two professions can bring challenges, and this research investigated this further. The priority of the Convention is to protect children from the effects of unlawful removal from their place of habitual residence and to ensure a prompt return. Habitual residence has been deemed to be the best place to decide custody disputes. The European Council and the Brussels IIb Regulation 2005 and the more recent recast of Brussels IIter 2019/1111 Regulation have promoted mediation in such cases. The Legal education programmes, such as the Council of Europe (CEPJ, 2019) place a strong emphasis on advocacy, negotiation, and alternative dispute-resolution skills and offer training to European Lawyers to assist clients in mediation. The role of the different ADRs is discussed further in this chapter 1.4. The value that such skills can contribute to the context of the existing legal framework has impacted the inclusion of mediation in such cases. The key stakeholders within the legal and mediation profession recognise this as a positive approach to child abduction conflicts and the desire of all the professionals is to support the parents at this emotional and challenging time (Dunne, 2019). This research proposes to expand on earlier studies on where mediation fits into the legal process and how the legal and mediator professionals face the challenges and time limit set out by the Hague Convention on the Civil Aspects of Child Abduction (HCCH, 2023). The role of

the ADRs is examined in the next section and this outlines why mediation is suggested as an effective ADR for family conflict and international parental child abduction cases.

## 1.2 What is child abduction?

Child abduction is an overall term which is used for the many different concepts of criminal offences involving children. However, for this research, the terminology of international parental child abduction is focused on the Hague Convention on the Civil Aspect of Child Abduction (HCCH, 1980). This treaty provides for a civil remedy for the return of the child to the place of habitual residence and does not deal with the criminal offence. The scope and meaning of international parental child abduction is therefore a subset of the child abduction process.

### 1.2.1 International parental child abduction

International parental child abduction occurs when a child is removed from their place of residence and moved to a different country without the consent of the parent. In some cases, a child or children may have been kept in another country following a visit or holiday without the consent or agreement of the other parent, (known as the ‘left behind parent’) or has been taken away unlawfully from their legal guardian and moved to a different country. The Hague Convention on the Civil Aspects of Child Abduction (1980) is a multilateral treaty between the ninety-one states, ninety countries and the European Union. The Convention establishes proceedings and a framework for countries to work together to resolve international parental child abduction cases. One of the key features of the Convention is that each member must appoint a Central Authority. This Central Authority is the crucial point of contact for the left-behind parents and the governments of the other countries involved. Central Authorities work closely with each other and are the first point of contact for the left-behind parent (HCCH, 2023), with the aim for an amicable return.

## 1.2.2 What area of child abduction is not included in this research?

The areas of parental child abduction which are not included in this research are the cases which stem from religious persecution, domestic violence and/or fleeing from war or persecution. As expounded on by Paul et al. (2023) and as directed by the court services in Ireland (Court Service, 2024) many cases which involve domestic violence are not deemed suitable for mediation by the courts. Shannon (2020) delivers a discourse on how the HCCH 1980 can be unjust when applied to domestic violence victims who are fleeing with their child and advises that the courts must be more sensitive when the abductor is a victim of domestic violence. Freeman (2023) and many others acknowledge the harm that domestic violence has on the child and therefore the return and mediation with the family is not always a suitable process. Therefore, the decision not to include such cases in this research was taken at the beginning as it was considered that it may take the research in a different direction. However, it would be beneficial to have further research with the professionals who deal with such traumatic events to add to the excellent studies which are available on the involvement of mediation in cases of domestic violence from Freeman (2024), Paul et al (2023). Quigg (2011) writes about the legal aspect of international human rights law through a case study of domestic violence. International family mediation and the involvement or non-involvement issues of domestic violence are discussed further at 1.6.

## 1.2.3 The legal process for international parental child abduction cases

The Hague Convention on the Civil Aspect of Child Abduction (1980) known as The Convention is a multilateral treaty which ensures that the rights of custody and access under the law are upheld, and the child is promptly returned to the habitual place of residence. The habitual place of residence is where the courts or the competent authorities ensure that the appropriate custody orders are followed through (HCCH, 1980). The Convention has a process in place to ensure that the left-behind parent has the correct advice and support to seek access

to their child. The Convention has been agreed by all the member states of the HCCH, which are in over 90 countries. Each member State has a Central Authority which works closely together to ensure a prompt return (HCCH, 1980). This research will outline the role of the Central Authority in each of the member states and the structure of this process. The procedural process for international child abduction cases primarily begins with an application by the left-behind parent to enact proceedings under the Hague Convention on the Civil Aspect of International Child Abduction 1980 to return the child taken to the place of habitual residence. According to Nehls (2023), the legal process will often depend on the local law. However, the HCCH framework is in place to support efforts for the child not to be taken to a country that is not a member of the convention. Article 6 of the HCCH Convention (1980) outlines how each Contracting State must have a Central Authority. The left-behind parent can apply in their State or the State of the abduction through their Central Authority. They can also apply to the court of the abduction State (Nehls, as cited in Paul et al, 2023). In Ireland for example, the Child Abduction and Enforcement of Custody Orders Act 1991 offers the full force of law in the return of the child (Gov, 2024).

## 1.2.4 Family mediation

Family mediation has been a successful tool in family law and is seen in Europe as an advantage in the resolution of family conflict (deConcerção Oliveira, 2010). Whilst being beneficial for the parties involved and child focused, as an international approach, it can also add to the multicultural and multinational society which is part of the European identity (deConcerção Oliveira, 2010). In Ireland, Shannon (2020) recommends that solutions outside the court should be actively promoted in cases of international parental child abduction. Mediation should be introduced to assist in ensuring the return of the child to the place of habitual residence.

According to the Family mediation Council in the United Kingdom (FMC, 2023) over 70% of cases in family mediation reach an agreement. These results are echoed across the world and mediation has become the go-to for dispute resolution in family conflicts and in supporting parents in parenting plans. Agencies such as the Family Mediation Association (FMA) in the United Kingdom, Family Dispute Resolution Australia (FDR) and Family Mediation Services (FMS) in Ireland, plus many organisations around the world, offer family mediation services

as part of the provision of legal aid for families. It is recognised that the progress of family mediation services has been fundamental in supporting parties to obtain divorces, separation agreements and child custody arrangements without engaging in expensive court proceedings (FMA, 2018) (FDR, 2024). One of the key aspects of family mediation in the UK is the mediation information and assessment meeting (MIAM) which is a service offered to parents as a first meeting to introduce mediation and the aspects available to them (FMA, 2024). This is a mandatory first step in the UK as directed by the Ministry of Justice which directs the parties to go to a MIAM meeting to provide an application to the court on a family matter which will related to parenting, finances, or property (Mediate UK, 2024). The MIAM UK and Family mediation Council in the UK have proven results on lower costs compared to court proceedings and shorter periods of time (FMC, 2023). The UK Ministry of Justice (2013) in the United Kingdom has stated that ‘two-thirds of couples who attended a single mediation session for a child dispute reached a full agreement’ (The FMA, 2023). As discussed earlier, contrary to some mediation processes, it is mandatory in countries such as Denmark and Greece for the lawyer to be at the mediation session for all cases including family and international cases (Banerjee, 2021., EODID, 2024). In Ireland, section 23 of the Mediation Act 2017 discusses the provision of mediation information sessions in family law akin to the UK’s MIAM model.

*The Minister may, for the purposes of ensuring that information sessions concerning mediation are available (in this Act referred to as a “mediation information session”), at a reasonable cost and in suitable locations, to parties to relevant proceedings and having had regard to the matters specified in subsection (2)—, ,*  
(Mediation Act, 2017: s.23(1))

To date mediation information and assessment meetings have not been introduced in Ireland, however the framework has been discussed and is part of the Mediation Act of 2017. The information which is offered by the Legal Aid Board (LAB), and online through Citizens advice and other NGOs outlines how mediation works and how to access it. The benefits of the MIAM program are well documented in the UK.

## 1.2.5 Why mediation in cases of international parental child abduction?

As mentioned, across the world, family mediation has been proven to be supportive in cases where the parents need to work out a parenting plan in the best interests of their child. Benjamin and Irving (1995) spoke about research which was carried out on the value of mediation and found that it can be more helpful to parents in conflict than litigation. To this day, mediation has been acknowledged by the HCCH directives (HCCH, Mediation, 2012) as a tool for parents in suitable cases of international parental child abduction. The decision is made by the judge and offers the parents the chance to connect and discuss how to move forward. Mediation has become more accessible for the left-behind parent to engage and ensure a resolution which is in the best interests of the child. This research outlines the role of mediation and the view of the professionals working with the parents and children in such cases.

## 1.2.6 Mediation in cases of international parental child abduction

The Guide to Good Practice, mediation (HCCH, 2012) promotes the introduction of mediation to cases of international parental child abduction. This process was established by the Malta Process in 2004 (HCCH, 2004) at the Malta Judicial Conference on Cross-frontiers Family Law Issues in May 2004. The Malta Conference (2004) recognised mediation as an important and gentler step in addressing conflict and even the language used emphasises the more human approach. It was recommended that steps should be taken to facilitate conflict resolution using mediation, and agreement of the parents to ensure a safe and sustainable return of the child/children. Shannon (2020) acknowledges the growing practice of parental child abduction in Irish society. Under his expert recommendations, mediation should be actively prompted to assist the parents in securing the return of the child. Shannon (2020) also discussed the delay in retaining guardian ad litem which he notes play a part in the delay under the proceeding. The introduction of common rules between member states was also proposed to ensure positive activity with no delays (HCCH, Judges Newsletter, 2004: Vol V11). According to Freeman



and Taylor (2023), there had long been a need to update the international approach to what had been known in the 1970s as parental kidnapping. As discussed, the Hague Convention provides for a civil resolution in cases of international parental child abduction. This adds to the premise of a softer approach to this conflict involving parents. Freeman and Taylor (2023) in their research, explored the approach of the Hague Convention on the Civil Aspect of Child Abduction 1980 and the effect it has on streamlining the process for parents worldwide. The topic of aftercare and post-return are addressed by Freeman and Taylor (2023) and the key part that the role of the Convention plays in international parental child abduction.

Many training books have been written on family mediation but there is a more limited availability of books and articles on family mediation for international situations. Although there have been more noted articles written on this subject in the last few years, many member states have different approaches to family mediation within their legal systems which work effectively in international child abduction cases. For example, in Greek mediation law the lawyers must attend to attend the mediation session. This mandatory obligation is to ensure the process is always for the benefit of the parties (EODID, 2024). In Denmark and the Nordic countries there is a system of court-connected mediation. This system has been in place since 2008. In Denmark lawyers and judges act as mediators for court-connected mediation and in Norway it is primary judges. The lawyers are always in the mediation room and mediation cannot take place without the lawyer in place (Banerjee, 2021). In most countries, the mediation only takes place with the mediators and the parties involved. Therefore, some states have a specific mediator who works with such cases and on their own, while other states take a more co- mediation model and as discussed others must have the lawyers in the room also. However, it is becoming recognised that a more common global approach proposed by the Hague Convention is fully implemented, and training for mediators is now taking place on a more global approach in line with the HCCH Guide (2012). The HCCH Guide to Good Practice, mediation (2012) offers recommendations for co- mediation based on a report by Reunite (2006) which advised on the benefits of co- mediation in such high-conflict international cases. Benefits, which include the support afforded to each co-mediator and the opportunity to have a wealth of knowledge in the room.

Khalaf-Newsome (Paul et al., 2023) outlines how the diversity of cultures, faiths, ethnicities, and languages can add to the complexities and escalation of many international family disputes.

In her introduction to international family mediation chapter for parental child abduction cases, Khalaf-Newsome invites us to understand and explore the despair and distress that the left-behind parent can experience (Freeman and Taylor, 2023). It is recognised that the return of the child to the place of residence is not always the end of the story; court return proceedings can often intensify the anguish and further complicate the issue. Khalaf-Newsome explores how mediation, and the opportunity for both parents to come together to discuss their children's needs, can offer them a less conflictual structure to establish a more sustainable result. European Justice (2023) describes agreements made by the parents with the support of a mediator as tailor-made *The agreement reached is a tailor-made solution for their dispute that ensures that their parental decisions take account of the best interests of the child* (European Justice, 2023).

The Family Mediation Council in the UK has demonstrated how there are (on average) lower costs and quicker resolution times for mediation compared to court proceedings (FMC, 2023). The Ministry of Justice (2013) in the United Kingdom has stated that ‘two-thirds of couples who attended a single mediation session for a child dispute reached a full agreement’ (The FMA, 2023). Co-mediation is the recognised method in international mediation and part of the 4-B method in MiKK.e.V (2023) and according to Paul et al., (2023) is deemed to be the most effective. This requirement and the specialised training from CBFM (2023) and MiKK.e.V (2023) aim to ensure both parties are represented. The 4B mediation model offers:

1. Bi lingual
2. Bi culture
3. Bi profession
4. Bi gender

MiKK.e. V have logged 301 requests for international mediation services in 2023 (Illes, 2024: Fig 2) and offer the services only with co-mediators trained in the 4B mediation model. Across the world, mediation has been accepted as a positive tool in family conflict cases and the mediation process and structure have progressed over the last forty years. Mnookin (1985) in his articles on family law, discusses the benefits of alternative dispute resolutions, from the legal perspective, in resolving family conflict. His interpretation of how the courts engage in family divorce proceedings promotes the value of negotiations and mediation. Mnookin (1985) argues that mediation supports the parents in their agreements without offering or proposing

an outcome. Mnookin offers us the term *Private Ordering* (Mnookin, 1985: 1016). This term, as defined by Mnookin, is not to replace or minimise the work of the courts, but to encourage the parties to work on their own agreements. However, Mnookin (1985) clarifies that mediation should not be considered a replacement for court proceedings.

This is important to this research as the studies and the recommendations of all the family mediation societies and agencies always promote the importance of obtaining legal advice throughout the mediation process and preferably before, to insure informed consent. This research will explore how legal and mediation professionals in this field feel about working together and the role each plays in the process. Family mediation focuses on the children and the parental plan that both parents can work with in the best interests of the child. In Ireland as stated by the Constitution of Ireland, article 42A, (2015) the child's best interest is paramount in our fundamental family rights. For member states of the Hague Convention (1980) on the Civil Aspects of International Child Abduction it is also outlined that the interests of children are of paramount importance in matters relating to their custody. With this agreement in mind, the Convention has established procedures to ensure the best interests of the child are protected (HCCH, 2018).

In the European Union, further regulations, such as the Brussels IIb regulations of 2005 and 2015 and more recently 2019/1111, have promoted the use of alternative dispute resolution (ADR) for international parental responsibility. This process outlined in the Guide to Good Practice (2012) promoted the introduction of family mediation as a form of alternative dispute resolution and outlined the procedure for its early introduction into the proceedings.

### 1.2.7 The legal aspect of family mediation

Internationally, family mediation has been recognised as a positive step in supporting parents when they are dealing with divorce and separation (FMC, 2023). However, as discussed by Dewar (1998), family law can often be viewed as chaos, and the emotional dynamics that can occur during a time of conflict can often be problematic for the legal process. Emotional matters which arise during separation and divorce, especially when children are involved, can alienate parties who are in emotional turmoil. Ryan (2012) reflects on when families in conflict are also

faced with a legal process, the legal proceedings may not consider the emotional journey that is involved. Dewar (1998) and Eekelaar (1978) write about understanding family law and how families are constructed, however, according to Martin (2005), the definition of ‘The Family’ has many different interpretations, based on political and ideological values and what is perceived as the norm by society. As international parental child abduction is recognised by the Hague Convention as a priority case, it is taken to the highest court of first instance in most member states. In Ireland, it is referred to the High Court (Gov, 2024). According to the convention and to ensure the proceedings are clear and concise in all member states, each member state must assign a Central Authority. One of the key roles of the Central Authority is to assist parents in the application for return orders in respect of international child abduction to the correct authorities (HCCH, 2018).

## 1.3 The role of alternative (appropriate) dispute resolution (ADR)

Alternative dispute resolutions (ADR) is the term that cover different processes and techniques that help parties to resolve legal issues without going to court. i.e. alternative to litigation (Law Society of Ireland, 2025). This section outlines the different processes of ADR and their role, ADR such as Arbitration, Conciliation, Collaborative Family Law, Adjudication, Restorative Justice, and mediation. This section will highlight the contrast between each of the resolutions and the value each of them brings to legal proceeding involving family conflict. This subsection also frames why mediation is promoted as one of the more positive approaches to family law though it is not the panacea for all conflict and as previous research has shown, one size will not fit all (Dunne, 2019). Following research on alternative dispute resolutions for Hague Convention child custody disputes, Pawlowski (2007) proposes that ADR would facilitate the amicable resolution of international parental child abduction cases. By outlining the negative effects on children in such cases and the complexities involved, Pawlowski (2007) based on research into mediation and ADR systems in Europe, Australia, and the United States, Pawlowski (2007) proposed that national ADR methods would benefit the treaty and should be considered. Thorp (2018) discussed how mediation was not a conventional approach initially and not considered for applications for a return order in Hague Convention abduction cases. However, following recognised success, documented by Thorp (2018) by many international organisations there was a shift in the professional attitudes. The role of ADR in Hague Contention cases became commonplace, and mediation was recognised and recommended for suitable cases, in the ‘Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part V, Mediation’ (2012). Vigers (2011) discusses how the family law community has encouraged parents to engage in mediation and therefore proposes that ADR tools such as mediation will be beneficial in cases of international family law also. However, it is recognised that other ADR practices such as arbitration, conciliation and collaborative law support international family law cases with much success (Paul et al., 2023). The legal process is critical in international child abduction cases and all agreements are required to becoming legally binding and enforceable in the one legal system. The legal complexity is indicative of the international and regional legal instruments and thus, any decisions must be able to be accepted in both the habitual residence and the place

where the child has been abducted to. Therefore a knowledge of the legal system or an ADR practice which involves a legal counsel is essential (Paul et al., 2023). How we work within our dispute resolution process has been shown to change over the last few years and this is very suitable for this research due to the addition of ADR supports. The Alternative or the Appropriate Dispute Resolution (ADR) processes offer a more personal approach to conflict resolution with the addition of a third party to support negotiation and dialogue. There is now a better understanding of the work of ADR and so much has been written over these last few years. This section will outline the different forms of ADR and how the process of ADR has evolved in dealing with the legal and social aspects of our court proceedings and legal issues. The definition and scope of the term ADR as presented in the Law Reform Commission Report 2010 as *A broad spectrum of structured processes, including mediation and conciliation, which does not include litigation though it may be linked to or integrated with litigation, and which involves the assistance of a neutral third party and which empowers parties to resolve their own disputes* (LRC, 2010: 13). Under the European Union Parliament Directive 2008/52/EC the access to alternative dispute resolution and the promotion of an amicable settlement of disputes on both civil and commercial issues is encouraged (EU, 2008).

In 2004 Fiadjoe LL.M., a professor of Public Law, invites us to understand how much the alternative dispute resolution process had already changed over the previous twenty years and how much it has reshaped our original view of ADR processes. Fiadjoe focuses on the developing worlds' engagement with alternative dispute resolutions and explores the tools of negotiation, arbitration and mediation and rights in international law. This is important for this ADR section in this research, as Fiadjoe's (2004) study explores the delivery of civil justice from litigation to ADR especially in the use of mediation and good governance and this is relevant to many countries worldwide, whilst outlining the benefits of all aspects of ADR in conflict cases. It is also important to note that Fiadjoe's study was in 2004, and ADR has developed further in the legislation and in the recommendations from the lawmakers such as The Hague, and the European Commission as described by the Guide to Good Practice, Mediation for the Hague Convention. (HCCH, 2012).

In Ireland, the Law Reform Commission recommends that mediation be introduced before litigation in family disputes, in appropriate cases and how conciliation and mediation have an important and sometimes better role to play in such cases (LCR, 2020). However, as quoted in

the Law Reform Commission Report (2020) *The Commission recommends that mediation and conciliation of family law disputes should not be a mandatory requirement before the commencement of proceedings* (LRC, 2020:110). The requirement for mandatory engagement for both mediation and conciliation are still being discussed today and many a debate has been held on this, to date both are still voluntary (Law Society, 2023). The Law Reform Commission Report also notes that Alternative Dispute Resolution or Appropriate Dispute Resolution (ADR) should be an inclusive part of the courts' justice programme and not detached from the law. Reviewing how the courts engage, and view ADR is significant in understanding how the legal process is more mindful of the benefits of ADR (LRC, 2010). It is worth noting that, the term ADR includes a range of alternative dispute resolution approaches, such as mediation, conciliation, arbitration, and adjudication. Each approach has a different context but with the same goal in mind. mediation, conciliation, and arbitration are forms of working on disputes, out of court, with the help of a neutral professional and independent third party and are all voluntarily and confidentially. However, the primary difference between these ADRs is who makes the decisions; in mediation, the parties are the only decision makers, in conciliation the neutral third party can make decisions and in arbitration, the parties agree to be bound by the arbitrator's decision. 'Appropriate' became a recognised term in place of 'alternative' and was considered more inclusive of all methods of ADR. More examples of appropriate format include Barry (2017) who introduced paralegal students to a complete range of dispute resolution tools available to them as legal practitioners, his book is titled Appropriate Dispute Resolution (Barry, 2017). In his research on neutrality in Irish mediation, Cheevers (2020) observes how discussing mediation as a philosophical term does not benefit the approach. Cheever's (2020) study found that to promote mediation, the benefits should be clearly outlined. Benefits such as its effectiveness should be stressed, and clients should have access to publications before engaging in mediation, it should also be recognised, according to Cheevers' (2020) research, that mediation is not a panacea for all conflicts and each ADR has its own role. Each of the ADR roles are discussed as sub-paragraphs which allows the research to explore how suitable mediation is as an ADR, and what value it offers in cases of international parental child abduction.

### 1.3.1 Arbitration

Today, as described by The Chartered Institute of Arbitration Ireland (CI Arb, 2023), arbitration is a process whereby parties can refer disagreements between them to a nominated third party in a confidential and private manner. The independent, neutral party known as the Arbitrator can be agreed upon by the parties or appointed by an institution nominated by the parties, as in commercial proceedings. In arbitration, the Arbitrator decides the outcome of the dispute based on the information and issues discussed. The *Haley v Haley* [2020] EWCA Civ 1369 case explored the role of arbitration in family law whilst outlining the concerns that more couples are reaching agreement without legal advice (IFLA, 2023). This case argues that a third party the Arbitrator, reaching agreement, is more effective on power imbalances than a private negotiation which is prepared through mediation. Whilst arbitration has long been recognised in commercial disputes, according to Heenan (2020) it has not been accessible to the general clients in family law. *Haley v Haley* [2020] EWCA Civ 1369 changed this and thus has implications for arbitration in the context of dispute resolution for family justice. This is a key message to be included as the mediators work in the shadow of the law and do not offer legal advice. Hinshaw, Schneider and Cole (2021) discuss how arbitration has been used in history for many centuries and valuable as a vigorous approach to dispute resolution. Arbitration can be a prompt process, as according to CI Arb (2023), the Arbitrator is normally available and therefore the hearings and preliminary issues can be organised quite quickly. Both Arbitration and Adjudication involve the third-party making decisions on the outcome of the case, which is different to mediation. The Irish Arbitration Act of 2010 permits the courts to adjourn proceedings to facilitate arbitration where it is deemed suitable, Arbitration Act 2010 Part 3 (ISB, 2010). Arbitration may, in the future offer an alternative approach to mediation and collaborative family law practices (IFLA, 2023).



### 1.3.2 Adjudication

Adjudication is not unlike arbitration in the sense that it involves a legal third party to settle the dispute between the parties. According to Halcon (2022), adjudications normally involve financial disputes or non-violent disputes as discussed in the online guide (Investopedia, 2022). In Ireland the legislation which governs adjudication for construction contracts regulates payments under construction contracts and provides for all related matters (ISB, 2013:34) This is an alternative to mediation and is a court or justice system process that is overseen by a judge or commissioner, who makes an official decision on the proceedings and has not been implemented in family law to date.

### 1.3.3 Conciliation

As discussed in the mediation, Guide to Good Practice (HCCH, 2012:88), mediation and conciliation are sometimes confused; however, conciliation is described by the guide as a more directive approach. Conciliation is recognised by the Guide (HCCH, 2012) as a mechanism involving an impartial third party, who is more involved and direct in finding agreements or solutions to the dispute. Conciliation has also been described by the Workplace Relations Commission (WRC, 2023) as when the employer organisation and the trade union organisation are not being able to reach an agreement on a dispute. Both groups can then voluntarily agree to meet with a conciliator who will facilitate a meeting between them. Both groups are still involved in the process and with the guidance of a facilitator they can come to their own agreements. The process is informal and can be carried out in one day. The key difference to mediation is the role of the conciliator, who is more involved in directing the parties to agreement, unlike mediation which the parties have self-determination and the decisions are made totally by the parties themselves with no input or directive from the mediator.

### 1.3.4 Collaborative Family Law Practice

Following a detailed empirical study on Collaborative Family Law in Ireland, Healy (2015) outlines the process as a more interest-based family-centred approach. In 2010 The Irish Law Reform Commission (LRC) described it as *an emerging method of dispute resolution* (LRC, 2010:121), however Collaborative practices have been practiced since 2005 (Healy, 2015). The Legal Aid Board in Ireland (LAB, 2024) also describes Collaborative Family Law Practice as a new way to deal with family matters such as divorce, separation, and parenting plans. The practice involves a face-to-face process where clients work with specially trained collaborative lawyers and thus removes the issues of going to court for a court order. This face-to-face approach offers the parties a sense of ownership and unlike mediation, Collaborative professionals are legally trained to work within the legal framework and with the parties to ensure they can access a multi-disciplinary approach. Multi-disciplinary approaches such as access to child specialists, financial services focusing on an interest-based approach; thus, promoting a more comprehensive approach (Healy, 2015). Wall (2022) discusses how collaborative family law ensures a more personalised approach from the lawyers to the clients and is more flexible as the lawyer is available to them throughout the process. The agenda can be set by the parents in what works for them, and it is less expensive than a court proceeding. Both parties sign an agreement, and this agreement prevents your collaborative lawyer from representing you in court if this practice breaks down (LAB, 2024). Understanding this ADR approach is important for this research, because, as discussed previously, in many European countries such as Denmark and Greece, it is mandatory for the legal profession to attend the mediation, focusing on the legal aspect of family law (Banerjee, 2021). The cooperation of multiple agencies, governments, and legal systems in collaborative family law practice is acknowledged as a positive step and alternative step to family mediation.

### 1.3.5 The Restorative Justice role

According to the Irish Penal Reform Trust (IPRT, 2024), Restorative Justice is a voluntary process which focuses on harm. Primarily the harm to the victim that has been committed during a crime. Restorative Justice does not focus on what laws or rules have been broken. (IPRT, 2024). Restorative Justice is part of the ADR role. Shonk (2024) discusses how

restorative justice has been applied in the criminal justice system and with satisfactory results. Marder (2022) conducted a study on how restorative justice and restorative practices are used in the criminal law system, albeit Marder (2022) writes about victimless offences (Marder, 2022, 1). This study also debated how restorative justice can enhance a more restorative culture of the Irish criminal justice system, therefore adding to the appropriate dispute resolution tools. Many mediators and legal practitioners have also trained as restorative practitioners. GEMME (2024) identifies restorative justice and restorative practices as a recognised ADR tool in conflict resolution. However, the restorative discussion is again a positive approach to building a conversation where harm has affected the parents' relationship and thus can support dispute resolution in family law (Shonk, 2024). Restorative conversations play a part in family mediation but are not an ADR tool in family law to date, but the training is beneficial in offering a different approach. Hence, the role of restorative justice and practice is discussed in this section.

### 1.3.6 Mediation

In discussing mediation as an ADR tool in family law, this research outlines the background to mediation and the international and Irish methods. Whilst also discussing the distinctive styles of mediation and which style is the most applied in family law. Hinshaw et al, (2021) paint a picture of ancient China over four thousand years ago where mediation was a key tool in solutions for disputes between anglers. During the Middle Ages, the term 'Lovedays' was used to describe a time set aside for complainants to meet and try to resolve their disagreements. This was carried out in English and French courts (Hinshaw et al, 2021). This rose-coloured view of mediation does not describe mediation as it is today. Mediation as described by the HCCH (mediation, 2012), has been described as proactive, whereas conciliation is described as directive (HCCH, 2012). mediation is not counselling for the parties. Counselling is designed to work with parties to find a solution to relationship issues. The importance of framing the difference between mediation and counselling is the process. For example, the process of mediation as described, is to focus on a specific issue and find a solution to meet the needs of all parties in a voluntary but informed way. (HCCH, 2012).

The Mediation Guide to Good Practice (HCCH, 2012) defines mediation as

*A voluntary, structured process whereby a 'mediator'*

*1. facilitates communication between the parties to a conflict, enabling them to take responsibility for finding a solution to their conflict*

*2. This Guide refers to mediation in this broad sense, without prejudice to the model and method applied (HCCH, 2012: 9).*

Further descriptions of mediation by Haynes and Charlesworth (1996) are, *a process in which a third person helps the participants in a dispute to resolve it* (Haynes and Charlesworth, 1996:1). This process is described as non-adversarial, private, faster than court proceedings, and less costly. The non-adversarial issue is important as if we look at the court proceedings, this system is (in the Irish and common law context typically) based on an inquisitorial legal system. It is recognised that many parties who come to mediation, want a solution but also may wish to maintain an ongoing relationship. A solution-driven mediation can be incorporated into the process; this is just one of the approaches in mediation. Mediation may appear to be like the previous procedures discussed, in fact, it is a quite different process. Mediation is a process that can be described as managing peoples' own negotiations. The mediator acts as a facilitator for the parties to have, what can be, a difficult conversation. Following the introduction of mediation to family disputes in Ireland, in 1989, mediation has gained momentum in judicial separation and divorce in many countries around the world.

In Ireland, the Law Reform Commission (LRC, 2010) in cases of divorce or separation, recommended that parents work on a parenting plan through conciliation or mediation in cases of divorce or separation. Further recommendations advise that where appropriate, mediation should be considered by the parties, but it should not be mandatory (LRC, 2010). McAuslan (2009) discusses how in the cases of family and separating couples, co-parenting is a life project and will not stop with an agreement. This process is ongoing for the parents; parties do not stop being parents even when they have stopped being in a relationship with each other. They now have a new relationship to navigate, and it is suggested that a family mediator can support them in this new arrangement. This is a profound opinion and is pertinent to this research, as parents never stop being parents, though the couple's sexual or romantic relationship is at an end. The mediator can support parents in navigating this difficult scenario, but the decisions on issues such as location and custody are the responsibility of the parents themselves.

Figures from international mediation services IFM (2022) tell us that today parents in conflict are increasingly turning to mediation to resolve family issues and help them in preparing parenting plans and agreements which can then be formalised by the courts. The legal profession is required to advise parents on ADR alternatives to litigation which includes mediation. The mediation clause is included in all first meetings with clients to ensure that they are aware of the alternative to the court process (Law Society, 2023). Research shows us that family mediation has a high success rate (Reunite, 2006) and is documented by HCCH's (2012) Guide to Good Practice as a valuable alternative to court proceedings with an acknowledgment of the positive results to date. These results have been supported by research by Reunite (2012). mediation is carried out by specifically trained mediators. While different states have different criteria for the certification of mediators, the key elements are similar; experience, specific hours of practice, attendance over a period and the mediator must achieve the allocated Continuous Professional Development (CPD) credits, throughout their work. The principle of mediation is described by the Guide to Good Practice, mediation (HCCH, 2012), as being non-judgmental, confidential, voluntary, self-determined, the fact that either party can withdraw at any time, being impartial and non-adversarial. The key aspects of the process are, the initial planning and introductions, establishing the ground rules, gathering information also known as storytelling, identifying the issues exploring the interests and needs of each party, whilst discussing proposals and reality checking the solutions. Therefore, these solutions can result in an agreement with full cooperation of the parties. The following section will outline the key to good practice in mediation such as self-determination and voluntary participation and the confidentiality aspect of all mediation.

### 1.3.6.1 Mediation self-determination for parties and voluntary participation

Hedeen (2013) discusses how self-determination is essential in all dispute resolution processes. Self-determination empowers the parties to make their own decisions as opposed to the court making the decisions for them. In Hedeen's (2013) article, self-determination is described as whereby a party can leave the mediation process at any time during the proceeding, without coercion or judgment. Not all ADR processes have this agreement, arbitration, for example, is contractual but in the absence of an agreement a party may opt out of the process when they

give 30 days' notice (ISB, 2010). Many mediators in stating the policy of self-determination, will ask the parties to engage with them first if they do want to leave. However, it is important to be aware that they have the right to withdraw at any time without judgment. Hedeén (2013) discusses how clients can often feel pressured by legal or mediator professionals to continue, stating that while voluntary mediation is considered the best policy and theory, it is not always practiced. According to his research Hedeén, (2013) argues that pressure on the parties to continue can be experienced and thus it can create unnecessary anxiety. 'Courts must ensure that court-connected mediation is delivered as promised—that self-determination is maintained throughout' (Hedeén, 2013: 273). This research also explores the training for mediators who work with the parties when they decide to withdraw from the process, and how much it is their right to do so. As discussed, mediation is a voluntary process, and voluntary participation includes all the parties and the mediator. The parties must jointly agree to resolve their conflict. Legal practitioners must ensure that parties are aware of the process of mediation and the voluntary aspect of it. However, if they choose not to go to mediation, it is important to recognise that it will not influence the outcome of the court decision, as set out by the European Justice (2023). Previous research participants spoke about how an agreement which is made by the parties themselves is more sustainable than an agreement that is passed down by the judiciary (Dunne, 2019).

### 1.3.6.2 Confidentiality

Confidentiality is a key focus for mediation sessions and all aspects of the meetings and the fact that the meetings are taking place, are part of that confidentiality agreement. (BAFM, 2004). The exception to confidentiality is noted in the agreement between parties and mediator, as when there may be a case of harm or when harm may be implied in children or in any disclosure of a criminal act, it is clearly outlined that these issues must be disclosed to the relevant authorities (Mediation Act, 2017). If information is disclosed in confidence to the mediator by either of the parties, permission must be sought by the party to share. Only on receipt of this permission will the mediator share any information with either party (BAFM, 2004). This may have implications for the viability of continuing with mediation. According to the Mediators' Institute of Ireland (MII, 2023), the confidentiality clause is critical in the mediation process.

*Confidentiality is an important feature of mediation. Participants find the privacy of the process highly attractive - it certainly plays a big part in the 'nothing to lose' approach that many people have to mediation. If it works confidentiality protects the outcome to make it effective. If it does not work no-one will even know it happened. Confidentiality is the driving force behind a lot of mediation successes.*

*(MII, 2024: Confidential).*

The fact is that all discussions are known only to the parties and the mediator, are held in a closed room, no recording of any meetings, no note taking, except for reference and no outside involvement unless discussed and agreed by each of the parties. Should the mediation fail, there is no discussion on the sessions and the parties can avail of other options.

There are different mediation styles, which are explored in the literature review. Thus, allowing this research to investigate which style is considered most suitable for family mediation.

### 1.3.6.3 Mandatory mediation

According to Korsakoviene, et al. (2023), following the mediation Directive of 2008, research has shown that the effort to foster mediation in cases of international child abduction has not been as effective as planned. Now over ten years later mandatory mediation in family disputes has become an evolving trend (Korsakoviene et al., 2023). Korsakoviene et al. (2023) states that family law has been recognised as suitable for mandatory mediation and offers examples of mandatory mediation in Italian family law which resulted in more successful engagement. The results as described by Korsakoviene et al (2023) identified that twenty of the twenty-seven EU Member States already implement mandatory mediation, but not specifically in family mediation, and others are keenly considering it. This study (Korsakoviene, et al. (2023)) also outlined that the discretionary model, which is when the judge refers the parties to mediation is the model applied and has a positive outcome. As discussed at Ch1(2.4) in the United Kingdom, family law cases have what is known as a Mediation Information and Assessment Meeting (MIAM). This meeting is a mandatory step to introduce the mediation process, before commencing court proceedings, unless an exemption applies. This MIAM meeting has proven positive results (FMA, 2024) as described at 1.2.4.

In Ireland, there is no mandatory mediation, however, referrals by the judge and information on the process from the legal professionals has contributed to the increase in mediation for family law cases. In 2004 in Ireland the Civil Liability and Courts Act 2004 (ISB, 2004) outlined the direction of mediation in cases where the benefits of holding a meeting, known as the mediation conference, can be held following the request of any party of the personal injuries action (ISB, 2004: 2(15)). In cases where the court gives direction for a mediation, this is considered a mandatory directive, and the court is notified if the mediation does not take place. Harrigan (2023) discusses the pros and cons of mandatory mediation and following the mediation Act of 2017 (part 3:14) the solicitor is obligated to advise the parties on mediation (Law Society of Ireland, 2024). However, before the mediation Act (2017) the Rules of the Civil Liability and Courts Act (2004) acknowledged the value of mediation as an alternative to court proceedings and this option was recognised by the legal practitioners prior to the Mediation Act 2017 directive. The Legal Aid Board in Ireland offer the free service of family mediation and is the primary centre for mediations in cases of international parental child abduction when directed by the judge. Court-based family mediation services are also offered through the LAB. Following a pilot project in 2019 the benefits of and training for mediator in international family cases is being reviewed and studied. However, mandatory mediation itself is still a contentious debate and as discussed in Ireland and many countries around the world the debate is ongoing. As discussed in Europe, twenty of the twenty-seven Member States have introduced mandatory mediation Korsakoviene et al (2023).

## 1.4 The principles of mediation in law

Family law deals with many distinct aspects which relate to family and domestic issues. Separation, divorce, maintenance, domestic violence, and arrangements for children when there has been a breakdown in the family unit are all covered by legislation and case law.

For this research the principal relevant legislation discussed from Ireland is the Judicial Separation and Family Law Reform Act 1989, the Child Abduction and Enforcement of Custody Orders Act 1991, the Family Law (Divorce) Act 1996, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the Mediation Act 2017, the Family



Law Act 2019 and the Child Care (Amendment) Act 2024. The Child Abduction and Enforcement of Custody Orders Act 1991 is the key Act for this research and was updated on 1<sup>st</sup> August 2022 (Law Reform Commission, 2022). This Act accords the force of the law to The Hague Convention on the Civil Aspects of the International Child Abduction 1980. The Convention recognises this Act and the enforcement of any decisions taken on the restoration of custody in cases of parental child abduction. The Mediation Act of 2017 is also important to this research as it validates the role of mediation in the court process. According to European Justice (EJ, 2023) all European Union countries have comprehensive legislation or procedural rules for mediation; Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Netherlands, Malta, and Spain have specific procedural rules. According to European Justice (EJ, 2023) there are Member states who have a strong mediation culture but do not have a specific mediation Act in place. In adherence to the law and the Hague Convention on the Civil Aspects of Child Abduction and whichever model of mediation is applied by each Member State, the key principles are followed by all. Impartiality: Impartiality requires that mediators do not take sides and remain neutral throughout the process. It is also important that the parties are aware that to come to a sustainable and informed decision, it is important to take legal advice throughout the mediation process. Confidentiality: Confidentiality, in the mediation process is the same as a legal relationship. All communications, meetings and documents are confidential. Discussions in mediation sessions and what is documented cannot be used as evidence in court proceedings with some exceptions (Mediation Act, 2017). It is also important to know that a mediator cannot testify for either party (European Justice, 2023). Voluntary nature of mediation: The voluntary nature of mediation is the third key principle. All aspects of mediation are voluntary, and the parties can withdraw at any time without judgment. According to the European Justice (2024) the importance of the voluntary nature of mediation is salient to the process and the mediator is not obliged to give evidence in court in any disputes at that time or further in the future. It is important to note that the voluntary nature of mediation also applies to the mediator (MII, 2024).

## 1.5 Mediation protocol in international child abduction cases

MiKK.e. V is one of the European NGOs that specialises in training mediators in international mediation. According to MiKK.e. V's Walker and Khalaf-Newsome, (2023) and cited in Paul, Kieswetter and Khalaf-Newsome (2023), the mediators who are involved in such cases should be aware and have a good understanding of the 1980 Hague Convention on Civil Aspects of Child Abduction, and the recasts to the Brussels IIter 2019 for the European Union.

This approach is important for this research as many of the mediators who were interviewed agreed that they do not have a full understanding of the law which applies to international cases; this is discussed further in the findings Chapter 4. The period of six weeks is the time limit that is allocated to international parental child abductions cases and thus this can be an issue as mediation should not delay the legal process. All agreements must be formalised, and it is important to note that the mediation may not be recognised or enforceable in the other country. The psycho-social aspects of international family mediation are also key for both the mediator and the legal professional, due to the emotional upheaval this situation creates. All mediation is child-focused and thus the professionals must be up to date with all the changes in legislation and the diverse cultures and different country regulations.

## 1.6 Significance of research

This thesis follows on from my own initial research for my MA thesis in 2019 which was carried out in Ireland, the primary focus having been on the topic of international parental abduction and the use of mediation in such cases. The overall findings were that mediation is not suitable for all cases and is a specialised field. That study (Dunne, 2019) also examined the process from the perspective of both the legal practitioners and the mediators working in Ireland at that time. The Legal Aid Board in Ireland at the time was conducting a pilot programme which engaged with mediation for such cases. This pilot project was also explored in the previous research and due to the small number of cases and the changes in the Brussels IIter (2019) Regulations. The outcome of the study primarily offered different suggestions.

These suggestions addressed (amongst other things) the timing of mediation, the challenges of mediation, how mediation is perceived by the legal practitioners and the mediators and how they collaborate within the structure.

As with the previous research, this research will not be looking at the process of mediation where there is Domestic Violence (DV) or where there is a case for Article 13 (1) (b) grave risk, non-return where the safety of the child is at risk (HCCH,1980). The reason for this is that according to many studies, such as Freeman, (2024). Paul et al (2023) and non-government organisations (MII, 2017) mediation is not deemed successful when there are situations of coercive control, domestic violence, or any risk to the child. It is recognised as covered in the Mediation Act (2017) that such cases are dealt with through the courts to protect the affected parent and the child or children. There are groups such as the United Kingdom UK FiLiA legacy project of Hague Mothers who object to the Hague Convention on the Civil Aspects of International Child Abduction in relation to mothers and children who are escaping from circumstances of abusive relations (Hague Mothers, FiLiA, 2022). It is especially important to this research to be aware of such organisations and not to have a facetious approach in discussions on mediation in such circumstances without the full knowledge of what is happening to mothers in conflict zones and in situations of domestic violence (FiLiA, 2022).

Consequently, the key focus for this research is the work that professionals carry out when parents are able, willing and have the capacity to engage in discussion, for the best interest of the child. These are cases where both parents love their child and want to find a way to work within the system where both parents live in different countries. In international cases, the key priority is access, other issues such as finance for travel and accommodation can be discussed at a mediation session and this offers a more focused approach (MiKK.e.V, 2022). Whereas in situations of family mediation for parents who are separating or divorcing and have children in the same country, the all-issues model as discussed by Haynes, (1978) is more appropriate. The all-issues model covers the key issues that family mediation acts on, such as family plans, finances, dates and times for children's needs and parenting plans for holidays and family events (Haynes, 1978).

In cases where the parents are in different countries or where there has been an international parental abduction, mediation has been further promoted in the HCCH Guide to Good Practice

Part V Mediation 2012 and this guide has been instrumental in endorsing key recommendations and guidelines for practitioners around the world (HCCH, Mediation, 2012). It is also noted that quite a lot of the research available on mediation and international parental child abduction focuses on the process and results, which in themselves are particularly important, but not the focus of this research project.

Professor Marilyn Freeman has authored many articles and books on Hague cases of parental abduction. Her most recent article focuses on children who are abducted to a third country who may not be covered by the Hague Convention (Freeman, 2024). The definition of the term, third country, is noted by Freeman (2024) as countries which are outside the EU Member states which are Contracting States to the Hague Convention and non-Contracting States. The article suggests that specialist international family mediation should not only be available in all cases of international parental child abduction but also for countries that may not be Contracting States to the Convention such as India, and China (Freeman, 2014). Further studies have focused on the effects of parental child abduction on the child throughout their lives. A previous empirical small-scale research project by Freeman reported that 73.53% of the sample of children who were abducted early in their lives were still having mental health issues into their adulthood. This rose to 91.17% when the participants spoke of their personal perceived effects, however, just 8.82% recorded no long-term effects. (Freeman, 2014). This report whilst exploring the emotions and long-term effects of parental child abduction, also offers the view that we are failing in our duty in the best interests of the child if we do not recognise how the children are seriously affected by these circumstances (Freeman, 2014).

While this research benefits from all the previous research into this subject, it takes a different viewpoint. It focuses on the perceptions of the professionals who work in this discipline and how they feel about the outcomes or challenges that they encounter. Professional efficacy and self-care of the professionals in such a high-conflict environment was examined and a request from the participants for more training on the Hague Convention process was noted. This research also looked at the bigger picture in Europe and met with professionals working in both mediation and legal fields. In my previous MA study, it was interesting to explore how both professions always have the clients' interests at heart, and how both professions view their work as more appropriate in cases of family conflict. The context and the complexities were clearly outlined, and this invited further research on this topic.

The opportunity to explore how mediation for international family cases has been carried out in other Hague Convention members was also a key focus of this new research. Consequently, part of the research design included this researcher to inviting members of the mediation and legal community outside Ireland to be interviewed and let their voices be heard and to include their perspective. The professionals invited were from the mediation and legal backgrounds and had many years of experience in this area.

This research also provides the opportunity to also look closely at the international bodies that promote mediation for such cases and work closely with the European Commission. These international bodies include MiKK e.V in Germany, the International Child Abduction Centre IKO in the Netherlands, reunite in the UK, and Missing Children Europe, promote mediation as per the Brussels IIter (2019) Regulations. Previous research by Paul, Kieswetter and Khalaf-Newsome (2023) has detailed that family mediation is beneficial for most separating couples who are working on a family parental plan.

However, the complexities that are involved when a parent removes a child from their place of habitual residence can be give rise to a more heightened conflict situation, but result in the same, emotive issues, just at a more amplified level. The fear and anxiety that the left-behind parent experiences are discussed by many professionals who work with international child abductions. All research studies in this area acknowledge the anxiety and emotional journey and the long-term effects on the child, which is explored in more depth by Freeman (2023).

Therefore, this research project is significant in that it will offer the parties who promote mediation for international parental child abduction cases a clear view of how the professionals who work in this area view the challenges and the perceived possible benefits. This opportunity to explore the feelings and opinions of each of the participants who participated in this research will add to the information that is already available, but to date the research has not focused as much on the emotion, feelings and impact that working in this discipline has on professionals involved. Hence the socio-legal aspect of this research.

The role of the ADRs is examined in the next section and this outlines why mediation is promoted as the most effective ADR for family conflict and international parental child abduction cases.

## 1.7 Conclusion

To conclude, this chapter broadly sets the background and context for this study. The aims, background and significance of this research set the scene for what this project is all about. This introduction begins with a general outline of mediation and international parental child abduction cases and then moves to a more specific outline of the process of mediation in the legal context. The roles of the many European non-government organisations in the implementation of mediation for these cases and the cooperation of the multiple agencies, governments and legal systems that work together are discussed in detail. The Hague Convention on the Civil Aspects of International Child Abduction 1980 has been explored in its capacity as a multi-layered treaty, which offers a framework for the collaboration between the members of the HCCH in facilitating the prompt return of the abducted child to its rightful place of habitual residence.

The scope and limitations of mediation and the legal system were discussed and explored in relation to other studies which are outlined in the literature review. By examining the alternative dispute resolutions (ADR), each of the primary ADRs were discussed in detail. Restorative Justice, Conciliation, Arbitration, Adjudication, and mediation, therefore, this chapter identified the benefits and differences between each of the resolutions and the value each of them brings to legal proceeding involving family conflict. This interpretation also enabled this research to frame why mediation is promoted as one of the more positive approaches to family law but is not the panacea for all conflict and One Size Will Not Fit All (Dunne, 2019). The principles of law in mediation are detailed by the European Justice 2024 and for Ireland the Mediation Act of 2017. This chapter has outlined the process for mediation within the legal context which is discussed in more detail throughout this study. The voluntary agreements and the process which is involved were discussed and the chapter has offered a collective view of how agreement is reached or not reached, due to the voluntary nature of the mediation process, which is also affected by the self-determination for all involved. The option

to withdraw at any time during the process without judgment has been discussed and is important to this research due to the sometimes-fragile nature of conflict resolution. By introducing the facilitative and confidential aspect of mediation in the legal process, this chapter has offered a view on the importance of confidentiality to the proceedings and how it can be the catalyst for ensuring that the parties are more inclined to be involved knowing that they have signed a confidentiality agreement. The protocol of introducing mediation to Hague cases of parental child abduction has been discussed in this chapter and the procedure outlined for Hague Member states.

This chapter also covered training and training opportunities for such a specialised field, focusing on the non-government organisations in Europe that offer such training in line with the Brussels IIter 2019/1111 Regulations which are discussed further in Chapter 2 Literature Review. The many cases of international parental child abduction require a more connected process throughout the Member states as the unilateral approach to training may leave some smaller members out of the loop. This research project gathers the thoughts and reflections of the professionals who deal with such cases each day in their working lives and thus ensures that we understand how best to meet the demands of the professionals, parents and children who are dealing with this trauma. The lived experiences in all aspects of family mediation and international family mediation have allowed this researcher to hear the voices of the participants and offer suggestions and recommendations based on the results of this study.

# Chapter 2: LITERATURE REVIEW

*International child abduction is a distinct field of practice within the family law sphere. It is a topic that requires specialist knowledge of a large body of case-law. It also requires an understanding of several international regulations and treaties.*

(Harrison, Anderson, et al, 2020:)

## 2.1 Introduction

This chapter discusses the literature researched and evaluated for this study on mediation and international parental child abduction. It offers the researcher a comprehensive understanding of the available information and data to inform this socio-legal research project. Both primary and secondary sources were investigated and allow this researcher to conduct a critical evaluation of the knowledge available today. The primary sources, obtained through government and non-government organisations, are the key to the empirical research and gives this researcher a full overview of the relevant figures and rules. However, the non-empirical secondary sources invited the researcher to explore the how and the why of what is happening and what is being spoken, discussed, and argued about. By exploring in detail previous studies, official documents from The Hague Convention, the European Court of Justice and individual government bodies, this researcher has aimed to fully understand the legal process in international parental child abduction cases. This chapter discusses the historical context of the HCCH, followed by the policy and legal process involved in international parental child abduction. The role of each procedural process is outlined and then this chapter moves on to better understand international parental child abduction mediation and the specific styles and training programs available. Each of the European projects from Missing Children Europe (2024) are discussed as well as the role that non-government organisations play. Previous studies are considered throughout this chapter, while the theory of mediation and challenges derived from the literature review are documented. The voice of the child and child-inclusive



mediation (CIM) is examined through the research of Freeman and Taylor (2023) who have diligently analysed the work and the role of the Hague Convention on the Civil Aspects of International Child Abduction. Finally, this chapter explores family law and mediation in the Irish context, before concluding the literature review.

### 2.1.1 Theoretical framework

As a socio-legal study, the theoretical framework for this research is based on systems theory. Poole (2014) in Putnam and Mumby (2014) describes systems theory as a system of independent sections that are connected by interdependencies. Systems theory describes what is often seen as the smaller parts of organisations collaborating and impacting the bigger picture. For example, the mediators working at the micro level with the parents and thus affecting the legal system that is in play. Systems theory was devised by Ludwig Von Bertalanffy in the 1940s (Wilkinson, 2011). A selection of professionals who are involved with International Parental Child Abduction mediation are legally trained, while others are not, but they all work within a court and legal system in international family cases. Clements (2020) debates how the complexities of social injustices are not often deemed the concern of the legal profession as the focus is on the legislation. Clements (2020) describes systems thinking as a mass-production approach to legal problem-solving. The cluster of complex difficulties with which the court system deals is the macro level; however, the parents often need to look at the micro level which is not only the legal aspect but the more human aspects to help them to resolve this issue in the best interests of the child. This theoretical framework for this research, is built on the previous studies and outlines the models of the regulatory framework for mediation in international family mediation today as discussed by Paul and Kieswetter (2014). The EU specific, Brussels IIb Regulation IIter Recast (2005 and 2019), and the Wroclaw Declaration Convention (2007) on the mediation of bi-national disputes over parents' and children's issues, strengthen cooperation between EU Member states. Conversely, The HCCH Convention is an international Convention. These international and EU measures support the child from wrongful removal from their habitual residence (Paul and Kieswetter, 2014). Key studies on mediation are outlined in section 2.2 and section 2.3 discusses the historical context of the Hague Convention.

## 2.2 Studies on mediation

There have been some key pieces of research following the 1980 Hague Convention on the Civil Aspect of Child Abduction. This research and the following literature review explore what has already been discussed and disseminated and have added to a more comprehensive understanding of the complexities involved for the parties. One of the first key pieces of research on international parental child abduction in Europe was in 1993 by the United Kingdom's Reunite (2023). Following its small beginnings in 1987, Reunite grew into an international support network for parents whose children had been abducted by their other parent. In 1993 the publication of the Research project by Reunite, *Home and Away: Child Abduction in the Nineties* (Reunite, 2023) offered the view from the perspective of 100 individuals and organisations who were affected by parental child abduction or even the threat of abduction. This project aimed to provide recommendations on policies and the steps that could be taken to help or prevent this from happening. The focus was to bring positive solutions; hence, the research recommended the introduction of mediation. The specialised mediation services that are provided by Reunite have added robust support to parents in enabling them to move away from the court proceedings and engage in conversation together. The introduction of mediation with the support of the lawyers and the Ministry of Justice UK (United Kingdom), allowed the parents to consider an amicable agreement which could suit their family situation (Reunite, 2023). Further research for Reunite on the effects of international child abduction was carried out by Freeman in 2006 and was funded by the Department of Constitutional Affairs. According to Freeman (2006), The Hague Convention should not be interpreted as a problem solver, but as a problem mover, which is relevant to this research, as The Hague Convention aims to move the issues/problems back to the home country of habitual residence to be decided on. This interpretation of a problem mover is acknowledged by this research as the problem is still to be resolved in a timely manner and with minimal upset to the families.

Additionally, research was carried out by Vigers (2011) on studies in private international law, reviewing mediating international child abduction cases. This research and book by Vigers (2011) are fundamental to this research to ensure that the outline of the process of mediation

for such cases is explored. Vigers (2011) argues that as much as mediation is promoted and endorsed by experts in the judiciary and through the Hague Convention on the Civil Aspects of Child Abduction, there had not been a major uptake in mediation for cases in Europe at the time of the study. Vigers (2011) who is a lawyer in the Permanent Bureau of the Hague Conference on Private International Law is also a family law expert and qualified mediator and has gained much relevant experience throughout her work. This legal and mediation background strengthens the understanding of where mediation fits into the legal system and why it was not fully utilised. The discussion by Vigers allowed this research to investigate and add clarity to where mediation fits and the legal structures that are in place to support mediation in such cases. Vigers (2011) proposes moving from an eagerness for mediation to more examples of practice. As a qualified family mediator in Scotland, Vigers' experience adds value to her research topic of mediation for Convention cases. Vigers' (2011) research is critical in understanding the empirical and proven data from 2011, on how mediation is being implemented across Europe. Vigers' (2011) findings and recommendations outline that there is not a willingness to engage in mediation, but rather a clear understanding of how this may be undertaken (Vigers, 2014). Much of what has been written about the process, in law and the theory of mediation and little has been written on the perception of the mediators themselves.

In another more recent study from Italy, Raineri (2018) explores the approach of mediation for international child abduction cases from the conflict of law issue. This approach is important to this research as Raineri (2018) concurs that mediation is a strong tool in deciding the questions on the child's future place of residence and agrees that these personal discussions cannot often be handled well in the traditional Convention Court. Raineri (2018) also speaks about the cost implications and the time, which is one of the main factors in the choice of mediation. The lengthy court proceedings as described by Missing Children Europe (MCE, 2023) are not in the child's best interests and MCE (2023) promotes awareness and mediation in family law cases. Raineri's (2018) research states that even though mediation is recognised as a positive tool in international child abduction cases, most of the Member states of the Convention do not apply it and choose instead the more formal court proceedings. This is an interesting conclusion from Raineri's work and the recommendation that EU Member states that are not facilitating mediation as a tool in such cases, should be offered more support to do so and more research into what they need to develop further.

This research takes the opportunity to explore this further and outline the resources and what may be needed to develop this concept further. As discussed, the objective of the Convention is to protect the child's rights and minimise the harmful effects of abduction by a parent. Access and return are the issues that the court of the child's habitual residence focuses on, and the process is supported by the Central Authority in each member state. The time limit for the return order is set at six weeks and this and other issues which affect the court proceedings is discussed in this research. However, family conflicts are overly complex and getting to the heart of what is best for the child and family can weigh heavily on the court and legal proceedings. In such cases, the court is dealing with parents who may love their children dearly and want to come to some agreement to co-parent, but the complexities of why the child was removed can hinder any possibility of agreement. Complex situations such as concerns around child safety, cultural differences, authoritarian figures within the family dynamic and the concept of maternal preference come into play. Even though the Central Authority in each member state is responsible for the documentation and the legal process involved in such cases, mediation is not one of their roles; their primary role is the protection of the rights of the child. The following sections will outline the policy, and the legal procedures involved, whilst outlining the mediation styles to frame why particular styles are deemed the most appropriate for international parental child abduction cases.

## 2.3 The Historical context of the Hague Convention

In 2023, the HCCH celebrates one hundred and thirty years. This special anniversary was celebrated with dedicated events held in Hong Kong, Special Administrative Region (SAR), as part of the Asia Pacific Week 2023 (HCCH, news archive, 2024). In 1893 the Dutch lawyer, Tobias Asser, (1838 – 1913), chaired the first ever session of the Hague Conference on Private International Law at the Hague in the Netherlands (HCCH, 2023). Asser believed that legal disagreements between nations should be viewed through a more common lens by encouraging nations to participate and work together for the common good and to work towards common agreements in legal disputes. Today, the Secretary General Bernasconi of the HCCH (2025) notes, that to ensure lasting peace between nations, a clear, and practical legal framework should be in place in international relations (HCCH, 2025). The Convention is the foundation for negotiations and the strategy for international legal cases including international parental

child abduction and today there are over 90 member states. The need for harmonious international procedures and laws is a key part in the success of the working of the Hague Convention. Globalisation, travel, commerce and interactions with families and work have added to the gaps in the legal framework in each of the different authorities.

The aim of the HCCH as directed by the World Organisation for International Co-operation in Civil and Commercial Matters (HCCH, 2023) is to support and provide international solutions, through negotiation, engagement and operation of the treaties and Conventions. These are based on soft law instruments, which according to the ECCHR (2024) refer to agreements, principles and declarations that are not legally binding. These agreements are normally found in the international forum (ECCHR, 2024) and support HCCH member states in developing their legislative positions. The aim of the Convention is to clarify international relations in International Family and Child Protection Law, transnational litigation and apostille, and commercial, digital, and financial law.

*The ultimate goal of the organisation is to work for a world in which, despite the differences between legal systems, persons – individuals as well as companies – can enjoy a high degree of legal security (HCCH, 2023: Conventions).*

The ethos of Asser's vision and tenacity is applied in the Conventions and treaties of today.

## 2.4 The international framework of the Hague Convention.

This research examines the provisions of the Hague Convention of International Child Abduction 1980 and the legal aspect of the return of the child for custody decisions to be made in their habitual place of residence. The interests of the children are most important in matters relating to their custody. The Convention has agreed on many provisions outlined in the Convention. For this study Chapter 1 HCCH Articles 1 and 3 are relevant to this study and Chapter 11 Article 13 is pertinent in the scope for the non-return of the child.

As noted in the HCCH (1980) Convention, Chapter 1 Article 1 outlines:

*a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State*

*b) to ensure that rights of custody and access under the law of one Contracting State are effectively respected in the other Contracting States.*

Chapter 1 Article 3 discusses the removal or retention of the child:

*a) it is in breach of rights of custody attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.*

*b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

(HCCH, Chapter 1 Articles 1 and 3, 1980)

In Chapter 11 The Return of the Child, Article 10 promotes measures to invoke voluntary return of the child, which in this context can be taken to encouraging discussion between parents (voluntary mediation):

*The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures to obtain the voluntary return of the child.*

(HCCH, Chapter 111, Article 10, 1980)

Chapter 111 Article 13 outlines the provision on opposing of the return of the children:

*a) the person, institution or other body having the care of the person of the child was not actually exercising their custody rights at the time of removal or retention or had consented to or subsequently acquiesced in the removal or retention.*

*b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*

(HCCH, Chapter 111, Article 13(a) (b), 1980)

In the HCCH Guide to Good Practice, Mediation Part V (HCCH, 2012) the process and procedure for inviting and facilitating mediation is set out. The advice to introduce mediation has been based on the importance of recognising the complexities of family situations. This Guide has been translated in to over twenty-five languages and is the cornerstone of how mediation is approached and recognised by the HCCH. The Guide promotes all forms of ADR for international family disputes which involve parental child abduction cases. In introducing and recommending mediation, the Guide recognises the positive impact that amicable resolutions can have on family disputes. This approach may feasibly involve mediation and other forms of ADR such as conciliation, and similar methods. However, the Guide recognises that mediation is the most used and the most effective method which has been used in family law worldwide (HCCH, 2012). The HCCH Guide on mediation 2012 was draw up by experts in the field of Family Law and Alternative Dispute Resolutions.

## 2.4.1 Role of the Central Authority in each Member State

Each of the ninety-one members of the HCCH must appoint a Central Authority. This Central Authority is the first point of contact for the left behind parent and deals with all the legal aspects of the return of the child to the place of habitual residence. The HCCH Guide to Good Practice Part 1 –Central Authority Practice (2003) under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction was published in 2003 and outlines the formal key operating principles of the CA in each HCCH Member State:

*Establish and consolidate the central authority*

- *Abduction application (outgoing) the role of the requesting CA*
- *Abduction applications (incoming): role of the requested CA*
- *Access applications: role of requesting and requested.*
- *All other important functions and issues for CA.*

(HCCH, Part 1, Central Authority Practice, 2003)

According to Brunch (1994) the role of the Central Authority under the Hague Child Abduction Convention is ‘a friend to the parent who has had a child taken abroad’. Brunch discusses how the Central Authority under the umbrella of the Hague Convention has provided the necessary legal support for the immediate return of the child to the place of habitual residence and offers the chance to restore the status quo ante, until the outstanding custody orders are resolved. In Ireland, the Central Authority was set up under the Child Abduction and Enforcement of Custody Orders Act 1991 and is based in the Department of Justice and Equality (Department of Justice and Equality, 2019).

The Central Authority works only with international cases. If a child has been taken by the other parent and moves within the same country the Hague Convention will not apply, and the Central Authority have no role in this abduction. Central Authority works under the Child Abduction and Enforcement of Custody Orders Act 1991 and also under the Brussels Ibis



Regulation 2019/1111 in relation to both matrimonial matters and matters of parental responsibility. Cases which come to the attention of the Central Authority are application made under the Hague Convention, the Brussels II bis Regulation and some are both. Also, the Luxembourg Convention and some are under both the Luxembourg Convention and the Hague Convention. Article 7 (1) (2) of the convention outlines the duty of the Central Authorities to cooperate with each state and take all the appropriate measures to ensure a smooth and speedy return of the child to the place of habitual residence. The primary function is to coordinate the correspondence between competent authorities internationally. Both incoming and outgoing requests can be dealt with and the administration in coordination such requests require the cooperation of many different Central Authorities in other international authorities. Due to the international framework of the applications made, the Central Authority will insist on the translation of all documents which are served. The non-compliance of this request can delay or even invalidate the request. The service of the Central Authority is a free service to the left behind parent. The abducting parent may have to go through a process for legal financial support. (HCCH, 2019)

The Hague Convention on International Child Abduction applies between certain countries (including Ireland) and primarily aims to ensure that an abducted child is returned to the country where they normally live, so that issues of custody and guardianship can be decided by the courts of that country. In the analysis by Brunch (1994) of the judicial decision under the Convention, the work of the Central Authority and the direct assistance to the parties, their lawyers, and the court in each of the authorities, is immeasurable. At such a distressing time for parents and children, the work of the Central Authority is critical in supporting the correct documentation and advice on return for both the left-behind parent and the parent who has taken the child or children. They also facilitate the conversation between the parents and or, their legal representatives and the application to the courts. Brunch (1994) further defines the work of the Central Authority as a valuable tool in securing the correct advice on official legal matters, materials such as sworn statements and assistance in ensuring travel documents to secure the return or visitation of children who have been removed from their place of habitual residence. *Central Authority means the Master of the High Court and in relation to another State means the authority or authorities designated to receive requests for service of documents under the Convention* (Court Service, 2023: 11E). The safe return is the priority but also the opportunity to engage in solutions between the parents. As part of the application, any

documents which are offered to the Central Authority are allowed in court and do not have the formalities which can often be required for court proceedings from other countries. The Convention will allow proof of habitual residence by showing evidence of parenthood or marriage according to the laws of the child's habitual residence. Positions and directives are set in place under the Hague Convention of 1980 to support and ensure the prompt return of the child to the place of habitual residence and the left behind parent. It is important for parents to be aware that the Central Authority does not offer legal advice, according to the Department of Justice, International Child Abduction information (2023) the parents will need to contact a qualified professional for legal advice. The key focus for the Central Authority is to submit the documents for the return of the child to the courts. However, The Central Authority does not have any say in the return of the child or any child custody or access matters, that is the decision of the courts. The services of the Central Authority are free, but can include some costs for the parents, such as flights. If in the USA where there is no free legal aid, provisions are made for reduced costs. The documentation which is necessary is compiled by the Central Authority and the location of the child is the key position. There are specific regulations on these documents. Best practice as per Article 24 of the Convention states that the language of the requested state should be the language used in the application and all other communications. Also, a request for a translation into the official language of the requested state or if that is not suitable, they will accept a translation into English or French (HCCH, 1980:24). it is also understood that confirmation of the application is normally received two to three days from receipt.

In exploring these heading the Central Authority's role is outlined clearly. Under resources and power, it is stated under the Hague Convention on Private International Law (HCCH, 2003) that each Central Authority should be given the staff and capabilities to ensure that they can carry out their work to the best practice model. The cooperation between each of the countries' Central Authority should be at the best possible level to ensure and continue the collaboration in providing mutual support to each other in the handling of international cases. Therefore, diligent communication between Central Authorities will need to be always adhered to, this would also involve all levels of information both to the public and between them to be up to date. As part of the consistency each Central Authority must work with a standard model form to ensure there is a statement of both the legal and factual basis for the application, focusing on the rights of custody, information and the location of the child or children (HCCH, 2003: 1.4). This standard process across the board is central to ensure each Central Authority works in the same format. In keeping with the prompt process that is required by the Hague

Convention on international child abduction (1980), each Central authority must ensure immediate action. This prompt action is important in all the stages of the process of registering the abduction and all communication, to achieve the best interests of the child and reduce any harm from the disturbance which the child may feel. The unwanted or illegal removal of their normal surroundings can have a deep impact on the child's welfare, and this is the key issue in the protection of the child's rights. Transparency is recognised as central to a good working relationship between each Central Authority and the stakeholders. All Central Authority must provide access and information on what are the procedures in their country. Access to information and the process is important for administrative procedures. The ongoing progressive implementation has also been outlined as part of the key operating procedures ensuring that Central Authorities can update practices and procedures when better knowledge or experiences have been gained.

The Central Authority in Ireland comes under the Department of Justice and Equality.

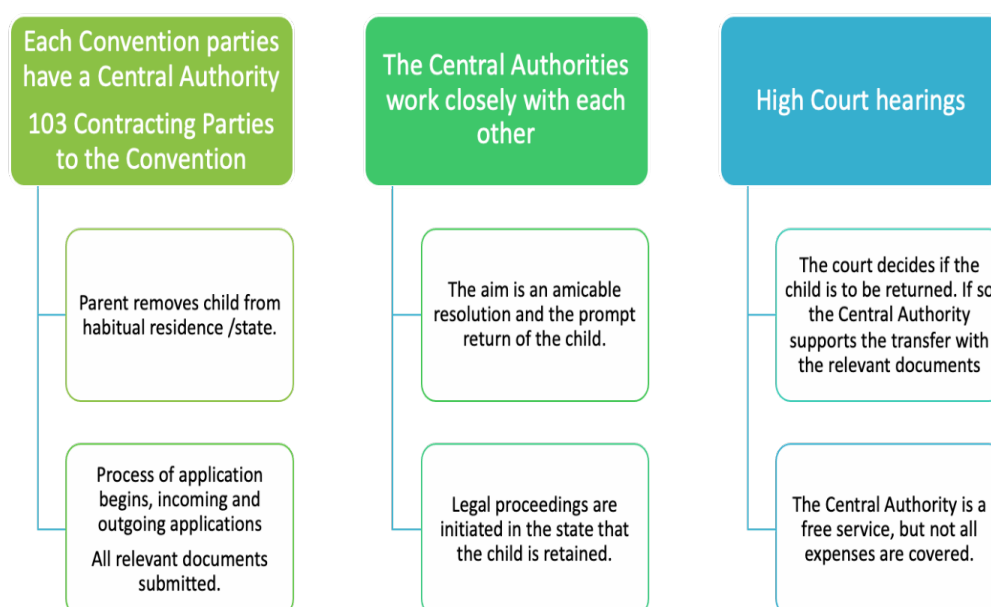


Fig 1: Central Authority (HCCH, 2003)

The professional relationship with the other Contracting States is a key ingredient in the workings of each Central Authority. Each Contracting State, of which there are 103, are required to have a Central Authority in place at the time of ratification (HCCH, 2023). The

Central Authority is the main point of contact for left-behind parents and government bodies and is responsible in locating the abducted children. Each of the 103 contracting parties to the Convention establishes a Central Authority. Further regulations such as the Brussels II bis (2012) and the Brussels II *ter* Recast Regulation (2019/1111) make certain the Central Authority of each Contracting State should be set up and established at the time of ratification. This process is addressed by the Guide to Good Practice for the Hague Conference for Private International Law (Family Law, 2003). Each Central Authority in each State is ready to begin work on sending and receiving applications from affected parties. Also, it is stated in the Guide to Good Practice (2003:2) that each Central Authority should have strong connections and good relations with other Central Authorities and the internal justice and welfare system (Central Authority, 2003: 2.3). This allows the countries to enable the application of the regulations under the International Convention. The primary role of the Central Authority in cases of international parental child abduction, is to handle both the incoming and outgoing requests. Article 7 of the Convention, states that the Central Authorities of each state shall work together to achieve the prompt return of the child or children (HCCH, 1980). Under Article 12 of the Convention, the return application must be under one year, since the child may have settled into a new habitual residence by this time (HCCH, 1980: 12). Research from Vigers (2011) and Thorpe (2018) offered suggestions of mediation being introduced at the point of application, notably, the Central Authority. This was recommended by my own previous research in 2019 (Dunne, 2019); however, this is not widespread practice in member states.

The HCCH Guide to Good Practice, Central Authority (HCCH, CA, 2003) suggests that the C.A. should be a pivotal point for the parents to access information on mediation and the legal framework involved. Currently according to Freeman and Taylor (2023) this is happening in Europe and in Japan whose Central Authority has an informative website with links to YouTube videos to help explain the process. This is also a very social media method for parents who are of this era. There is also strong links with family mediation NGOs and the Central Authority in Germany (Paul et al, 2023). Under Article 6 of the Convention on the Civil Aspects of International Child Abduction (HCCH, 1980), the establishment of the Central Authority is a commitment. It should be ready to work on incoming and outgoing applications from the first approach for the contracting state. (HCCH, 2003:2.2). The offices should have strong links to the relevant country's Department of Justice or equivalent. Each country can decide the location of its Central Authority. According to Brunch, 1994, the location of their

offices can vary. Some are at the Department of Social Affairs, Foreign Affairs, Federal prosecutors' office, community service departments and police departments. However, many of the European Central Authorities are located at the Department of Justice. The Central Authority in Ireland, along with many others, such as Denmark, France, Greece Luxembourg, and the Netherlands work under the Department of Justice. Each of the sections of the Executive Summary (HCCH, 2003) covers the requirements and the procedures in place to ensure the correct abduction applications of both outgoing and incoming. Section three and four outline the procedures of both incoming requests and outgoing applications. Section five concentrates on the peaceful and acceptable workings between countries and their different legislations. In preparing outgoing applications, the Central Authority must have all the details about the possible different procedures in the requesting country. The application must meet the Convention requirements as set out in The Hague Convention on the Civil Aspect of International Child Abduction (HCCH, 1980). All correspondence from the applicants (left-behind parent) must be checked and are of the highest urgency and any additional information required must be provided promptly. For the incoming applications, the time is essential.

The key role is obtaining information and ensuring the application is complete and in the correct format and language. It is also important that the Central Authority attains all the information it requires promptly and monitors all progress. This is why the relationship and communication between each of the Central Authorities of each member state is critical, as the rights and safety of the child is paramount. When the case has been completed and the return order is placed by the courts, the Central Authority can then be consulted on issues concerning the safe return of the child. It is also important that the Central Authority can request support from the Garda / Police or child protection agencies if deemed necessary. As discussed, the work of the Central Authority, is the first point of contact and can offer the parents the roadmap in which to navigate the complex legal aspects of international parental child abduction.

## 2.5 Procedural process in international child abduction cases

The procedural process for international child abduction cases primarily begins with an application by the left-behind parent to enact proceedings under the Hague Convention on the Civil Aspect of International Child Abduction 1980 to return the child taken to the place of habitual residence. According to Nehls (2023:2.5) chapter on the *Legal Framework of Child Abduction Cases* (Paul, Kiesewetter and Khalaf-Newsome, 2023), the legal process will often depend on the local law. However, the HCCH framework is in place to support efforts to prevent children from being taken to a country that is not a member of the convention. Art 6 of the HCCH Convention (1980) outlines how each Contracting State must have a Central Authority. The left-behind parent can apply in their own state or in the state of the abduction through their Central Authority, they can also apply to the court of the abduction state (Nehls, as cited in Paul et al, 2023). Finance arrangements: as discussed by Nehls, (as cited in Paul et al, 2023) legal aid is granted if parties fit the criteria. There should be no difference to the application for the left-behind parent and the abductee under Article 25. However, this will depend on the national law and the national conditions will always apply as in the case of expenses such as travel and accommodation. In some of the states, the laws and regulations are set in different courts. For example, In Ireland all Hague Cases are heard in the High Court, in Germany, they are heard in the Family Court at the state court of appeals, and in England, they are heard by the Family Division of the High Court. The Netherlands and other member states also have specific family courts. The courts will ensure that the child stays in the specific state throughout the proceeding. According to Nehls (as cited in Paul et al, 2023) the preventative measures are important. Measures such as

- Travel bans.
- The surrender of identity documents.
- The obligation to register with the authorities.
- Access rights during proceedings.
- Appeals, time limits and enforcement are based on national law.

(Nehls, as cited in Paul et al, 2023:194)

The updated recast of Brussels IIter Regulation 2019 has strengthened the relationship between European Member states. Decisions made in the habitual place of residence can be recognised and enforced in a more straightforward procedure under the Brussels IIter Regulation of 2019 and can impact the final decision on the child's place of residence. Article 27 clarifies Art 13 (b) (HCCH, 1980) the possibility of grave risk to the child by ensuring there are protective measures in place for the return of the child. Brussels IIter Regulation (2019) also under Article 21 in conjunction with Art 26, recognises the rights of the child to be heard in the proceedings, this is discussed further in Chapter 2 (2.7) the Voice of the Child in custody cases.

Article 25 (Brussels IIter, 2019/1111) also stipulates that the court must encourage parties to resolve their own disputes but not at the expense of the courts time or create any delay, Hence, endorsing the work of MiKK.e.V, Centre IKO and other CBFMs (Cross Border Family mediation ) throughout Europe. MiKK.e.V is the international mediation Centre for Family Conflict and Parental Child Abduction based in Berlin Germany and works with 41 countries and 42 languages and has a team of 217 certified international family mediators (MiKK.e.V, 2024). Certified international family Mediators (CBFM) must agree to work per the dance with the Wroclaw Declaration of 2007 which outlines the basic principles for bi-national mediation for cases of international child abduction case. The procedural process follows contact from the Central Authority or specifically by the court. When both parties have agreed to commit to mediation, MiKK.e.V will arrange the co-mediators that are suitable to the culture, language, and location of the parties. The paperwork which involves the contract between the parties and in cases involving the Central Authority. In some cases, the expenses are covered by the Central Authority if the applicant has shown he or she is entitled. When both parties have signed the agreement and arranged with the co-mediators a time, MiKK.e.V will then step away and it is between the parties and the mediators with the relevant agreements to ensure confidentiality. mediation always works parallel with the court system in MiKK.eV when engaged by court. However, parties can also contact MiKK.e.V personally. According to the MiKK.e.V website, the mediation is characterised by the following five sequential phases:

- Introducing mediation by making contact, working out the basic rules and the framework of mediation, and the initial agreement
- Naming and agreeing upon topics and questions that should be addressed in the mediation

- Dealing with conflicts by throwing light on the background and feelings, formulating needs, negotiating along the parties' interests and by creative thinking
- Developing practical solutions, negotiation, and agreement over criteria for decisions
- Concluding mediation by making a (binding) contract and by self-reflective reviewing

(MiKK.e.V, 2024)

The above are the procedures which are outlined from the application to the return of the child or children.

## 2.5.1 United Nations Convention on the Rights of the Child 1989 (UNCRC)

For this research, understanding the role of the United Nations Convention on the Rights of the Child 1989 which was approved by the United National General Assembly is critical. Every child under 18 has rights, and each government is responsible for ensuring these rights are upheld. Each member of the UN (United Nations)) have signed and ratified the Convention (except the US which has not ratified to date). All family law is child focused and the key principles of the UNCRC supports children's rights in all aspects of the law and the opportunity for children to be involved in decisions that affect them. Child inclusive and child focused and the voice of the child in mediation is covered in 2.9.

The key principles of the United Nations Convention on the Rights of the Child (UNCRC, 2010) include the following: Article 2, 3, 6, 12 and Article 35.

Article 2 covers the guaranteed rights of the Convention for children to be available without any discrimination:

*2.1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language,*



*religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*2.2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

*(UNCRC, 2010: 2)*

Article 3 focuses on the best interests of the child and echoes the HCCH Convention on the best interests of the child being paramount to the proceedings.

*3.1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

*3.2. States Parties undertake to ensure and care as is necessary for his or her well-being, considering the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

*3.3. States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

*(UNCRC, 2010: 3)*

Article 6 centres on the child's right to life, development, and survival:

*6.1. States Parties recognize that every child has the inherent right to life. [OBJ]*

*6.2. States Parties shall ensure to the maximum extent possible the survival and development of the child.*

Article 12 brings to focus that the child's views must always be considered in all matters affecting them. The child's opinion is the key to Article 12 and is the cornerstone for child-inclusive mediation. Article 12 has driven many discussions and articles in support of the voice of the child in family mediation.

*12.1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

*12.2 For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The importance of the principles of the UNCRC and the HCCH Convention on Child Abduction are echoed throughout. However, for this study Article 35 of the UNCRC (2010) is also important as it covers the sale, trafficking and more important, the abduction of children, which is what the parental child abduction is considered as:

*States Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of the sale of or traffic in children for any purpose or in any form.* (UNCRC, 2010: Article 35)

Each country that has ratified this Act agrees to be monitored and have a review every five years. This Convention was first ratified in Ireland in 1992 as per Children Section 4.2 (Gov, 2023). The ratification is submitted to the UN Committee on the Rights of the Child in Geneva (Gov, 2022). According to the Department of Children, in February 2022, Ireland submitted its fifth and sixth review under the Convention. Consultations were conducted with many young children and according to the Department of Children (2022), some civil society stakeholders and members of the public were also included. This report is especially important in how we listen to what the children have to say and what are their needs in society today. Therefore, the above-mentioned Articles are critical steps in the care and hearing the voice of the child in cases where they are the key focus. Ensuring they have a voice, either their own voice or an

advocacy programme is the most important aspect of the HCCH Convention on the Rights of the Child 1989.

## 2.5.2 Policy

The Executive Summary 2003 outlines the principles and role of the Central Authority and the Guide to Good Practice (HCCH, 2003). There are six sections in the Executive Summary all of which are essential in the smooth running of the Central Authority. Section one discusses the primary operating principles and how the Central Authority must be offered sufficient powers to accomplish the following objectives. The cooperation between each of the Central Authority in the HCCH Member states and the requirement to have effective communication ensures effective and prompt attention for each case. The contact details of each member state must be updated and available to each other and to be aware of the procedure and practice in each of the other countries. A website for each country is also promoted. A universal form is an ideal approach as then the legal basis for the application is clear for all. Consistency in all the paperwork and applications can support the understanding of the procedures for all. Speed is the key to all the procedures, and the Convention views a slow response as undermining the Convention and not in keeping with the best interests of the child. Clarity in all the processes and procedures is essential, what is known as the *progressive implementation ensures* that all the correct steps are taken to improve how each country enhances and works on its own operation of the Convention. (HCCH:1, 2003). These roles in the operation of the Central Authority will form some of the questions for this research to evaluate how these guidelines are being implemented.

## 2.5.3 Procedures

The procedures are clearly laid out and must be adhered to. If for any probable reason the Central Authority will not accept an application, then the reasons must be acknowledged and made known promptly to the requesting Central Authority. The location of the child or children is the primary concern and if the child is not located then the application must be returned. All applications must meet the Convention requirements. Some specific supports, such as

attendance at court hearings by CA personnel is determined by the unique contexts of each case. Section six of the Executive Summary (HCCH, 2003) covers other priority roles and issues for the Central Authorities, such as the continuation of the Convention statistics and annual returns to the Permanent Bureau. If a Central Authority has any issues in collating these statistics, they must inform the Permanent Bureau to request assistance. According to HCCH, 2021 the Permanent Bureau is what is known as the secretariat of the Hague Conference. Primarily the role of the Permanent Bureau, which is based in the Hague, is to prepare and organise Plenary Sessions and Special Commissions. According to the HCCH, 2021, the officials who make up the Permanent Bureau are of different nationalities. The accurate statistics for recording are considered especially important. (HCCH: 6.1, 2003). Section six also expects the Central Authority to ensure the public and the legal welfare professionals are aware of the service and understand their role in international parental child abduction. It is also imperative that the legal aid advice and services are offered to each parent and the process explained at all stages. Section six also states that practical assistance is offered in the repatriation of children in such cases. The 1996 Hague Convention on Child Protection also offers advantages as does the Brussels IIbis and the recast IIter regulation that apply to the European Union (Euro-family, 2019). The Brussels IIbis and IIter Regulation are discussed in more detail in Chapter 2.4.5.

## 2.6 The European Union

The European Union Mediation Directive 2008/52/EC of the European Parliament and the Council of the European Union on certain aspects of mediation in civil and commercial matters, stipulates that Member states of the European Union are obliged to incorporate the directive for mediation into their legal system by May 2011 (European Parliament, 2008). Following this directive, many Member states began the process of legislation to facilitate access to alternative dispute resolution mechanisms whilst endorsing the amicable settlement of disputes through the process of mediation. This Directive also applies to international disputes in civil, commercial, and family law. However, according to the mediation directive 2008/52/EC, it does not apply to revenue, customs, liability of the State or the exercise of the State authority (European Parliament, Research Service, 2018). According to the recitals:

*(7) In order to promote further the use of mediation and ensure that parties having recourse to mediation can rely on a predictable legal framework, it is necessary to introduce framework legislation addressing key aspects of civil procedure.*

*(8) The provisions of this Directive should apply only to mediation in international disputes, but nothing should prevent Member states from applying such provisions also to internal mediation processes.*

(European Parliament, mediation Directive 2008/ 52/EU).

According to the European Parliament Research Centre (2018), the lack of a mediation culture in some Member states was an issue and the Parliament requested Members to *step up their efforts* (EU Parliament, 2018: 627:135) on mediation for all civil and commercial disputes. The need for European standards was also assessed to ensure the provision of mediation services and to promote the use of mediation and to ensure it is not only affordable, but a robust and efficient approach to conflicts (EU Parliament, 2018). In 2004 the European Code of Conduct for Mediators was developed by stakeholders with the assistance of the European Commission. The principles which were set out were voluntary and the mediator could commit, but it was at their own discretion (Grundlagen und Entwicklungen, 2004). The European Commission did not carry out any verification on mediators or organisations who adhered to this code, and they were not endorsed by the Commission. Therefore, no responsibility would be taken for the services offered by such professionals. In Europe, the Brussels IIbis Regulation of 2005 has added extra provisions in relation to the parents' responsibility and matrimonial matters. Further provisions were included in the Brussels IIter recast Regulation 2019/1111. These responsibilities include the recognition of the judgement on the access rights and the enforcements of such judgments. This regulation also increases the role of the country of the habitual residence by ensuring that the procedures have a shorter period within the European Union, and under the original Chapter III (HCCH, 1980) the rules are set out for implementation in an EU context. The Luxembourg Convention is known as the 'European Convention on Recognition and Enforcement of Decision concerning Custody of Children on Restoration of Custody of Children' and is primarily in place to recognise and enforce custody and access orders in other contracting states (CETS 105, 1980). Under the Luxembourg Convention the recognition of a grant of custody, or access order, that has been made in one Hague member state to be enforced in another contracting state.

*A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State. (CETS 105, 1960, Article 7)*

Therefore, when one parent takes their child to a different state in defiance of a court order, this court order may have already granted access and custody rights to the other parent. If there is a breach of this order the HCCH Convention applies. Driven by legislative changes and a better understanding of the value that mediation can bring to traditional adversarial forms of dispute resolution; the Mediation Directive (2008) became effective in Ireland under the European Communities Mediation Regulations (2011). This applies to international disputes only and it also encourages professional training to ensure the best practice. The Convention provides a Central Authority in each of the member states and the Central Authority is the body that assists the application on behalf of left behind parents in cases of parental child abduction.

## 2.6.1 Brussels II bis 2003/ 2005 and Brussels Iter regulations 2019/1111

Brussels IIb Regulations 2005 and the following recasts of the regulations have aimed to ensure that the legal process is unified across Europe and that the Council Regulations that are made in one authority can be applied in another for the benefit of the parties and the flow of the process (Brussels II ter, 2019/1111). For EU Member States, the Council Regulations Brussels IIbis (2005) and not the Hague Convention 1980 govern the procedure in EU child abduction cases, however the Hague Convention still applies (Shannon, 2011). According to Shannon (2020) Irish courts interpreted the Brussels Iter 2019/1111 as overriding the Hague Convention 1980. But, as concluded by Shannon (2020) the courts continue to apply the Hague Convention unless it is obvious that there would be more protection of rights under the Brussels Iter 2019/1111. However, it had been thought that the new Brussels Iter Recast would create more conflict and possibly undermined the success of the Hague Convention 1980, but to date, Shannon (2020) has noted that this does not seem to have happened. Sir Matthew Thorpe who is a recognised advocate for alternative dispute resolutions in cases of family law and international law, discusses how in 2001 a Council Decision created the European Judicial Network for Civil and Commercial Law (as cited in Freeman and Taylor, 2023). This same

year the newly formed, but as Thorpe mentioned, ‘*short lived Brussels II Regulation*’ (Freeman and Taylor, 2023: 135) was then replaced in 2005 as the Brussels II Revised Regulation. This Revised Regulation included Family Law into the European Judicial Network. The Council Regulations EC 2201/2003 known as the Brussels Ila Regulation stated that:

*Judges must receive adequate training before entry into force of the new Regulation. The EJTN (European Judicial Training Network) should be used in this context. The European Judicial Network will also play a key role in this respect. The liaison judges specialised in Family Law should be effectively integrated into the Network and will disseminate information about the new Regulation at a National level.* (HCCH, 2004).

As discussed by Hopt and Steffek (2012) the European Directive, (Directive 2008/52/EC of the European Parliament and the Council of the European Union) has ensured that mediation gains a new momentum by determining a more common framework for international mediation. Hopt and Steffek, (2012) question how mediation should be registered and regulated in Hague Member states globally. However, they recognise that the Brussel Iibis Regulation aims to streamline the process throughout EU countries and has offered the opportunity for parties in Europe to work closely together to ensure a process that conforms to the Brussels Iibis Regulations.

The Recast Regulation also sets out clearer provisions on the placement of the child or children in another member state, and the coordination of rules for the enforcement procedure (EU Commission, 2016). The Brussels Iiter Regulation 2019 (EU, 2019) includes a specific requirement for the early consideration of mediation for international child abduction cases and for the requirement for the child or children to have a genuine opportunity to express their views. The 2019 Regulation (chapter III on Child Abduction, Article 25) outlines the request for national courts to invite the parties to consider mediation. As discussed by De Ruiter (2020) this specific statement on mediation had been added to the Brussels Iiter Regulation Recast 2019/1111. The inclusion of mediation is recognised as a support for the parents and children to come to their agreements (Legal Aid Board, 2019).

*As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means*

*of alternative dispute resolution unless this is against the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.*

(Brussels IIter Recast, 2019/1111: Article 25))

As per the Guide to Good Practice on mediation (2012) in accordance with Article 25 of the Brussels IIter 2019/1111 the court is obliged to invite the parties to consider mediation or other forms of alternative dispute resolution (Baruffi, 2023). However, this must not unjustifiably delay the proceedings and ensure that it is not contrary to the best interests of the child (Brussels IIter, 2019/1111). According to the European Commission (EU, 2018) the key new rules arising from the recast of the Brussels IIter 2019/1111 are deemed to ensure that the child is returned as swiftly as possible and with minimum disruption to the child. This is the crux of the guidelines and allows for clearer deadlines to ensure such cases are expedited in the correct manner. It also outlines clearer rules to allow the child to have a genuine opportunity to be heard and the abolition of the exequatur in decisions of parental responsibility.

*The complete abolition of exequatur for all decisions in matters of parental responsibility. This will save time and money for citizens whenever a decision needs to circulate from one member state to another. This abolition of exequatur is associated with a number of safeguards;*

*Clearer provisions on the placement of a child in another member state, including the need to obtain consent for all placements, except where a child is to be placed with a parent;*

(EU Council, 2018: Press release 7<sup>th</sup> Dec)

It is therefore important for this research to identify how mediation in international parental child abduction cases, is implemented by all states that are party to the Convention (HCCH, 2012). The 2019 Regulation (Brussels IIbis, Article 25) outlines the obligation of national courts to invite the parties to consider mediation.



*As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.*  
(Brussels IIter Regulation Recast, 2019: Article 25)

The Brussels IIter Recast 2019/1111 is the newest Regulation to invite the parties to engage in mediation for all cases involving children and specifically international child abduction cases (MiKK, 2024). As discussed, this recast 2019/111 allows for clarity throughout the process for international child abduction cases and for the process to be expediated in the correct manner. Ensuring the harmonisation of specific rules for the enforcement procedure, whilst safeguarding the right of the child to have a more genuine opportunity to be heard and the abolition of the exequatur in such decisions of parental responsibility (European Commission, 2020). In conclusion, The Hague Convention on the Civil Aspects of International Child Abduction 1980 and the Guide to Good Practice 2012, have been implemented by all states that are party to the Convention (HCCH, 2012). This new research study is timely, particularly with the proposal of the European Commission of the Brussels IIter Recast 2019 in August 2022 (EU, 2019).

## 2.7 Ireland

As Shannon explains (2020), the obligation to consider mediation or other forms of ADR in Irish family law has been in place for divorce and judicial separation cases under the 1989 and 1996 Family Law Acts (ISB, 2024). In Ireland it is the duty of a solicitor is to ensure that the client has been advised to consider mediation, that she/he has outlined the advantages and benefits and provide the clients with all the relevant details to make an informed decision.. The solicitor must also sign a statutory declaration of compliance before commencing proceedings, and the court may adjourn the proceedings if this is not completed (section 14 (3)) (Law Society of Ireland, 2024).

## 2.7.1 The Child Abduction and Enforcement of Custody Orders Act 1991

The Child Abduction and Enforcement of Custody Orders Act 1991 granted the force of Irish law to both the Hague Convention on the Civil Aspects of International Child Abduction and the Luxembourg Convention (Department of Justice, 2021). The Child Abduction and Enforcement of Custody Orders Act of 1991 also established the Irish Central Authority under the Civil Law Reform Division of the Department of Justice (Department of Justice, 2023: 4).

## 2.7.2 The Mediation Act 2017 Ireland

The Mediation Act 2017 (Ireland) provides for codes of practice to which mediators are bound. These codes of practice, when developed by the yet to be finalised Mediation Council, will outline the role of the mediator and the professional conduct and ethical standards to be followed (Mediation Act, 2017). As a profession, mediators in Ireland are not currently regulated. There is no obligation for consistent training or standards. The largest professional body for mediators in the Mediators' Institute of Ireland (MII). At this moment, all professional mediators who are accredited by the MII are required to undertake ethics training every three years, to be insured and to adhere to their obligations under the MII code of practice (MII, 2025: CPD). The provisions included in the Act have significant consequences for mediation in family law case. It is noted that as mediators are not legally trained and as a multi-disciplinary approach is essential to good practice, an understanding of the obligations of all professionals is key for the enforceability of mediation settlements. The all-issues model practiced by many family mediation services invites the parties to work on different issues, such as parenting plans, property, finances, and work towards problem solving (Lloyd and Sweeney, 2011:19). Cheevers (2018) also discusses how hearing the issues from the other party allows for a better understanding of the context of the dispute and opens a more productive dialogue.

As outlined in section 14 of the Mediation Act 2017, practicing solicitors have an obligation to inform clients to consider mediation as an avenue to resolve their disputes and the solicitors are obligated to give information on mediation services available. This information should be offered prior to issuing proceedings (Mediation Act, 2017). It is noted that mediation has been a positive alternative dispute resolution offered by legal practitioners in Ireland since the Judicial Separation and Family Law Reform Act 1989 and the Family Law (Divorce) Act of 1996. The Mediation Act 2017 was passed into law in Ireland and subsequently updated in 2019. The earlier statutory instrument, S.I. No. 209/2011 European Communities (Mediation) Regulations (ISB, 2011) intended to implement specific terms of the European mediation directive; it also includes the obligation of legal practitioners to inform the clients about mediation and the potential benefits before court proceedings to advise the clients of suitable mediators who provide this service and advise on the voluntary and confidentially nature of the mediation. This is important to this research as it has been presented that when mediation is advised or promoted by the judge and, or the legal professionals, it is more successful (Paul et al., 2023).

Section 16 of the Mediation Act 2017 outlines the role of court in mediation, and the invitation by the court for the parties to engage in mediation. Where the parties have agreed to mediation following a court directive, the court can then adjourn the court proceedings to facilitate. All these actions ensure a more positive view of mediation, and this research has noted that when mediation is recognised and promoted by the judge and legal practitioners the parties have a better understanding and a more positive outcome (Paul et al., 2023). The mediation can still be open to failure but the opportunity to have a discussion has always been a positive step (MII, 2024). It is also noted that the Mediation Act 2017 only applies to mediation and not arbitration, which is the subject matter of the Arbitration Act 2010. In Ireland, unlike litigation, according to Cheevers (2018), section 8 (3) of the Mediation Act outlines how in mediation the parties themselves are in control of the outcome. Sommon (2017) notes some of the key aims of the Irish Mediation Act 2017 such as: mediation is promoted as an effective, efficient, and professional alternative to the litigation route. The formal legal approach to mediation is still in the initial stages and this research has set out to understand all aspects and all issues involved in understanding how the process works for the professionals who are working in this field.

Although the EU Directive of 2008 primarily dealt with the cross-border civil and commercial cases, it did stipulate that mediation should be available in all EU Member states. Each Member state of the European Union was directed to have this written into their legislation. The subsequent Mediation Act 2017 in Ireland was relevant, from a family law perspective, although the provisions were already in place under the preceding legislation JSFLR Act and the Divorce Act 1995. The link between law and mediation process is now interlocked although consistency in training and standards still awaits the setting up of the Mediation Council.

## 2.8 Mediation

*The most effective means of ensuring the secure return of an abducted child is negotiation or mediation leading to a voluntary return.*

The Honourable Lord Iain Bonomy, (HCCH, 2004: Vol V11: 61-62)

According to the Mediators' Institute of Ireland, (MII, 2022) when parents engage in mediation for child custody arrangements, they often gain a better understanding of the different perspectives and reach a more sustainable agreement. Paul and Kiesewetter (2014), explore how separation is such an emotive time for both parents and child abduction can cause great pain in families who already are coping with the insecurities and conflict. In international child abduction cases, mediation can re-establish trust and communication between parents and can refocus the parents on their child's needs (MiKK.e.V, 2022). This subsection covers mediation from the international perspective and then through to the Irish view.

## 2.8.1 GEMME: Association of European Judges for mediation

GEMME is the Association of European Judges for mediation. GEMME advocate for alternative dispute practices including mediation in international legal cases (GEMME, 2024). To promote best practice, GEMME also ensure that there is ongoing training available for judges and legal practitioners which in turn will strengthen and improve practice. The role of GEMME is important to this research as the positive role of GEMME in advocating mediation promotes best practice and therefore the funding for mediation programmes. This subsection discusses the international perspective. GEMME currently has approximately 800 members. GEMME also recognises restorative practice and restorative justice as an ADR tool. Many of the events are available to Judges, lawyers, mediators, and professors and have free access with an associate membership. In September 2021, GEMME facilitated a round table discussion via Zoom on the future of family mediation in Bulgaria and Europe. This is just one of the many events that have family mediation at the core. (GEMME, 2024). The key goals are to promote the association of judges who work and support mediation. To strengthen and improve the practice of mediation and to ensure the exchange of information concerning practices in all methods of ADR. Also to encourage training for any other alternative method of legal dispute resolution. (GEMME, 2024: Homepage). This research recognised that when mediation is promoted by the judiciary or members of the legal practitioners it has a more positive outcome. This is supported by the many positive programs that GEMME promote on ADR and mediation in line with the international legal system. GEMME European Judges for Mediation is a positive step in all ADR methods (GEMME, 2024).

## 2.8.2 The theory of mediation and the theoretical framework

To understand mediation and its origins, it is important to explore the theory and as found during this research, the lack of a defined theory, of mediation. Regina (2011) in his study expresses the view that there is a lack of a unifying theoretical foundation in the field of mediation. This research explores the existing theories of mediation which involve the process, aims and understanding of mediation (Beer and Stief, 2000). The process is the key theory concept that outlines the many stages and types of mediation, such as peer, commercial, family and community (Regina, 2011). Many respected theorists such as Beer (2000), Haynes (1980) and Lang and Taylor (2000), suggest that mediation is a process. This process aims to facilitate parties to come to their agreement with the support of a third party, the mediator. Haynes (1980) describes mediation as assisted conflict resolution where the responsibility for the agreement is with the persons or parties involved.

As discussed, mediation theory focuses primarily on the process of mediation rather than the outcome. Noll's (2016) hypothesis is based on this concept, which, according to Noll is why a general theory has not emerged. Noll suggests that a simpler theory of mediation can be evaluated when conflict dynamics are included. Noll mentions that this simpler theory *contains four strands: conflict goals, level of conflict escalation, mediation style or process and outcome* (Noll, 2016: Chapter 3:1). Mediation is also described by Beer and Stief (1997) as a process in which a third-party help people to resolve their disputes and assists them in working together on an agreement. According to Beer and Stief (1997) mediators often speak of how they trust the process. Tallodi (2015) discusses mediation theory in the context of what should happen in mediation and his research focuses on workplace mediation how the parties experience this process. The approach is through the parties' perception of the mediation being a learning process and being open to innovative approaches (Tallodi, 2015). The artistry of mediation and experience in mediation is discussed by Lang and Taylor (2000) and the focus is on reflective practice and being aware of unconscious bias (Lang and Taylor, 2000). The theory is not the

result of the process, but the journey itself. Artistry is defined as a mediation process that flows with an expertise equipping the experienced mediator with an elevated level of competence *whilst* engaging in reflective practice and becoming aware of one's unconscious bias (Lang and Taylor, 2000).

The mediator's tool-kit theory is prompted by O'Sullivan (2018). This theory proposes that the formulation of the right questions will support the mediator in a successful outcome for mediation. The S-Questions Model has been welcomed by many experienced mediators; this model explores four dimensions of successful questions:

1. the subject matter dimension
2. the structured dimension
3. the information seeking dimension
4. the shifting thinking dimension

Analysis of the questions and the range of process interventions, such as the S-Questions model available in the toolkit strikes a balance between theory and practice. Many experienced mediators and negotiators such as co-author Jennifer Beer of *The Mediator's Handbook* (1997) agree that this approach is highly recommended (O'Sullivan, 2018). Noll (2016) argues that there is much debate around mediation and debates relating to the mediator's qualifications and their personal approach is the key focus. However, Noll continues to offer the view that a more practical theory could be applied and could support the mediators and the parties (Noll, 2016). This view by Noll (2016) is relevant to this research as theories are still evolving. Herrman, and her co-theorists Hollett and Gale, as discussed by Mosten (2006), propose the model of mediation as *a conversation waiting to happen* (Herrman et al, 2006: 8). This terminology is based on the varied factors that encourages mediation and does not assume only one approach but a more living dialogue, being free as much as possible of self-praise or pejorative views. Herrman et al (2006) also offer us a conceptual framework model of mediation which works in the context of organisations, establishments such as business organisations, courts, and non-government bodies. The vast variation of mediation projects discussed by Herrman (2006) are different in their philosophies and practices. Herrman (2006) discusses how the timing of the introduction of mediation can also greatly affect the outcome of the process. Through the legal context the timing sets out the introduction of mediation before any legal proceedings can

commence (MII, 2024). Exploring the theories, or as discussed, the lack theories in mediation, allows this research to understand the tenacity of the process in which mediators agree is the primary approach.

## 2.8.3. Mediation styles

Understanding the styles of mediation and their origin allows this research to understand how mediation works in family law. Foster (2003) conducted a study on mediation styles and analysed basic styles that are still the primarily types of mediation in practice today. Baksa (2012) discusses how the mediation styles which are outline below were originally framed in the United States of America in the early 1960s.

- Facilitative
- Evaluative
- Transformative
- Narrative

### 2.8.3.1 Facilitative mediation

The name facilitative mediation describes the style adequately as it facilitates a conversation between the parties. There is no offer of advice, or any private opinions of the mediator offered, and it is not necessary to have expertise around the dispute to be the facilitative mediator (Foster, 2006). Facilitative mediation is often used in family mediation and is also a key style for international child abduction mediation s (MiKK.e.V, 2024). According to Baksa (2012) it evolved in the 1960s and was known as the classic style of mediation. Baksa (2012) also discussed the origins of facilitative mediation and how they were developed by volunteer groups with the aim of supporting the resolution of disputes without the costly and exceptionally long court procedures. For this research, facilitative mediation is important as it is the cornerstone of family mediation, it is structured and is the style that is taught and practiced today in family mediation. The facilitative mediation will ask probing questions, look for interests and needs and while all the time reality checking the suggestions that arise. The



method is that the parties who are involved in the situation will have more understanding of their own position and what they need themselves for the best outcome. It allows the parties primarily to be the key decision makers, and the mediator has no authority to make decisions on their part. The mediator will set up private individual sessions first to meet each party and determine their needs; following these private individual sessions, if the decision is to go ahead, a joint session is the next step. Research shows that decisions that are made by the parties themselves are more sustainable than decisions that are handed down by the judiciary (Dunne, 2019).

### 2.8.3.2 Evaluative mediation

Evaluative mediation, as described by Stempel (2000) is a more lawyer-led process. This process of mediation has emerged from the court-led or court-referred mediation (Baksa 2012). According to Foster (2006) it was designed in response to the number of court cases that were being referred to mediation at that time during the 1980s. Whilst the facilitative mediator does not intercede or offer advice, the evaluative mediator can make proposals, offer opinions and even advise what issues can go back to court.

Evaluative mediation is often the style that is taken by legal practitioners who engage in mediation. Stempel as cited in Zumeta (2000: 336) talks about how lawyers like himself like what is familiar in the law and like to change mediation to fit that narrative and make mediation more like a settlement conference that the judge or judicial personnel decides. Zumeta (2000) continues by outlining how evaluative mediation offers a more tunnelled view and how context can define the mediation method. The issues to be resolved are legal issues, but people are at the core of these legal disputes and therefore along with the factual, procedures that must be dealt with, the more emotional and personal elements arise and according to Stempel (2000) the evaluative mediation could benefit from the facilitative model. This view is pertinent to this research as the participants have constantly mentioned that family mediation and especially international family mediation is an emotional situation due to the issues involved.

### 2.8.3.3 Transformative mediation

Unlike facilitative mediation, which aims to improve the situation, the primary aim of transformative mediation is that the parties have a better understanding of not only themselves but of the situation; to transform the issues Baksa (2000). How each party perceives the situation empowers the parties to make decisions. Foster (2006) describes transformative mediation as a newer style of mediation and tells us that the description called *transformative* came from the book *The Promise of mediation* (Bush and Folger, 2004). The structure is like facilitative mediation, but it is outlined as aiming to empower each of the parties and encourage them to see each other's point of view. The aim, according to Foster (2006) is to improve the relationship and the interaction for the parties.

### 2.8.3.4 Narrative mediation

Narrative mediation is so-called as it focuses on storytelling. The mediator uses the style to look at the conflict from a distance and through storytelling. By helping the parties in understanding how conflict can impact relationships, Windslade and Monk (2000) explore the underlaying issues by storytelling, thus, uncovering what can often be the crux of the conflict. Linden (2003) describes narrative style as a conversation and discussion to allow the parties to express how they feel and why they feel that way. When each of the parties have presented their story, Linden (2003) explains that the aim of this is to come to an *Alternative Story* which can be explored and used to create a mutually accepted agreement. It is recognised by Linden (2003), and Baskar (2000) among others that narrative mediation works best when parties may still be in an ongoing relationship after the mediation.

### 2.8.3.5 Conclusion to styles of mediation

In conclusion, the facilitative model of mediation is widely recognised as the primary model in family mediation, Lohvinenko, et al. (2021) agree that the facilitative model is the most common approach to mediation that mediators use. Following their research, Lohvinenko et al.

(2021) propose that the mediator can combine different models in the best interests of the parties and the context, and the relationship of the parties should also be included in the approach. The research by Lohvinenko et al. (2021) proposes that the results can support theoretical and practical research in this field. This, therefore, focuses on the method and the process which are the basis of mediation theory, which is explored further in 2.10 Lohvinenko et al. (2021) discusses how the models are based primarily on what should happen in mediation. Therefore, although there are different models of mediation that are suitable, the facilitative classic style of mediation has been shown to be the most effective method in family mediation. The following section discusses the specialist certified training programs for family mediators who work with international parental child abduction.

## 2.8.4 Training programmes for family mediators

GEMME the association of judges who support the role of mediation in Europe, advocate for specialised training for collaborating professionals to improve and develop the practice for international cases (GEMME, 2024). According to the European Justice (2023) there is a lot of diversity in the methods and policies of training for mediators in each country. Primarily, training involves up to fifty hours and then the continuous practice hours are considered. However, in different European countries the facilities for mediation training can be different. In France, at present, there are no set facilities for training in mediation, however, the state diploma for the Family Ombudsmen (DEMF) is required to work as an accredited family mediator (European Justice, 2023). The Family Ombudsmen will receive a minimum of 35 hours and ongoing training for the rest of their work. In the Netherlands, applicants must be registered in the Register of Mediators and have completed training in mediation, pass a theory exam and be assessed, this will provide the mediator with a certificated to practice and a VOG, which is a Declaration of Good Conduct (Justis, 2024). MiKK.e.V is the primary international mediation centre for family conflict and parental child abduction in Europe (MiKK.e.V, 2024) MiKK.e.V's 50-hour CBFM training for mediators is held in Berlin, Spain, Japan, and Singapore and since 2004 MiKK.e.V has provided specialist training for stakeholders such as judges, legal practitioners and mediators in over twenty countries. Online mediation is practiced by the international mediators at MIKK.e.V and thus online training is part of the bespoke training programme. Ongoing training and webinars are also offered to MiKK.e.V

mediators and legal practitioners to ensure continues professional development. This training covers the relevant legal aspects which the participants of this research were keen to explore and learn, and the training also covers issues concerning international family legislation in each of the member states (MiKK.e.V, 2024).

In Ireland as outlined in the Mediation Act 2017 code of ethics there is an additional forty-hour specific training to work in family mediation, with ongoing continuous professional development points for accreditation and supervision (MII, 2024). Accreditation is carried out through the Mediators Institute of Ireland (MII) and the successful candidates receive a practicing certificate when the recognised skills have been achieved. As outlined by the MII, the forty extra hours involves modules such as family dynamics, family conflict, separating couples, intimate partner violence, child focused mediation, child protection, family law and financial issues. Certified mediators undergo specific training modules and extra hours to gain a recognised certification from the MII. The list of training programmes in Europe is diverse, but the aim is similar, specific training hours, supervised experience, and continuous professional training throughout the mediator's work. Online mediations are often carried out, however, as discussed by Kenny (2022) following Covid- 19, online mediations became more the norm. This different approach created different challenges and even though the participants spoke of how they worked with this; further training programmes would be appreciated. Issues such as back up and IT support became essential to successful working in a different format. However, specialised certified training for international abduction is primarily available through MiKK.e.V which is carried out in Berlin. This research recognised that the participants of this research based in Ireland requested more specific training programs on Hague parental child abduction cases and this is recommended in chapter 6.

## 2.9 The Voice of the child in custody cases. Child-inclusive mediation (CIM)

Children who experience parental separation, not only in parental child abduction cases, are often very aware of the unease and upset in the home during the time preceding the separation (Barlow and Ewing, 2024). Thus, the opportunity to talk about emotional trauma can only help

and support the child. Following research by Freeman and Taylor (2024) who have examined the effects of abduction when there is a background of domestic violence, concluded that family life before abduction can often be more traumatic than the abduction itself within the home environment (Freeman and Taylor, 2024). This longitudinal study from the perspective of the children who have been unlawfully removed from their homes, concluded that the opportunity for the process to be more child centred would have helped them in coping with the changes. Therefore, Freeman and Taylor's study recognise the value of child inclusive mediation (Freeman and Taylor, 2024) As discussed at 2.5.1 The United Nations Convention on the Rights of the Child (UNCRC, 1990) outlines the right of the child to be heard in proceedings that directly affect them. It also guarantees that the child who is considered able to form their own views, should have the right to express their view freely. Taking into consideration the age and maturity of the child. When the age or maturity of the child is not suitable, an advocate should be in place or a representative of appropriate body incorporating the rules of national law. (UNCRC, Convention on the Rights of the Child, 1990). Article 11.2 of the Brussels IIbis 2201/2003 obliges the court to ensure that a child could be heard in court proceedings that affect them and that the child must be heard unless there is an issue with age, maturity or it is inappropriate. The Brussels II Regulations governs the procedure for all EU Member States (except Denmark) in cases of international parental child abduction, whilst working under the Hague Convention 1980 (Shannon, 2011). According to Barlow and Ewing (2024) the benefits of including children in the mediation process were seen as positive. Barlow and Ewing's study (2024) recognised that the barriers to the uptake of CIM is based on how family mediation is constructed as an adult approach. CIM according to Barlow and Ewing (2024) is often child focused not always child inclusive. By ensuring it becomes child inclusive, with the permission of the parents, the true voice of the child can be heard. According to Barlow and Ewing's research parents have found that even when a case was not resolved in an out of court process, the benefits included a stronger connection and understanding of what was happening. The study found that the child who was engaged in the process understood and appreciated that the parents were at least trying to resolve the situation amicably and this was a positive step. This study considered the age and maturity of the child and how this inclusion into what was happening to their family helped them and the parents feel more settled. 'Child-led agreements' (Barlow and Ewing, 2024:125) were deemed to have added to more meaningful decisions and a better understanding of the process. Barlow and Ewing (2024) also recommend that the

extended family mediation community need to be ready to take the lead in ensuring CIM becomes the norm in family practice.

The introduction of mediation to cases of parental child abduction across countries has been highlighted through recommendations and experience of family mediation in cases of divorce or separation. The regulations and how they have been applied is explored and critiqued. Therefore, this chapter outlines the relevant readings and assesses the importance of each work and their contribution to the body of knowledge available on The Hague Convention on the Civil Aspects of Child Abduction (HCCH, 1980). This literature review further focussed on legal publications, articles and books which offered a robust analysis of international child abduction cases today. Review of these publications and articles has ensured that this research clarifies what is already known on this topic. It was then possible to identify the gap in the knowledge and has provided a focus for this research. As discussed, family break-up is an unsettling time and when the child or children are also taken away from their habitual residence, this can be a traumatic time for them (MCE, 2020). When parents make decisions that affect their children, where they live, go to school, they have the right to be heard. In cases of international parental child abduction, the children are often not involved in the decisions as to where they may reside or with which parent. In such cases, known as Hague cases, if the parents cannot agree on what is best for their children, the judge is the decider. A Guardian ad Litem is offered to the child or children and will link the child and the judge. A Guardian ad Litem (GAL) will listen and hear what the child's wishes are, to support the decisions of the child. Best practice and the child's voice are the key issues for the Guardian ad Litem.

In Europe, following a study in 2019 by Missing Children Europe (MCE, 2019), the voice of the child was deemed not only to be a legal requirement but also to be critical for their own wellbeing. Twenty-four young people were involved in a study on *Enhancing the Wellbeing of Children Before, During and After Legal Proceedings of International Child Abduction Views and Voices of 24 Young People in Flanders, Belgium* (MCE, 2024). This study concluded that children irrespective of their environment and upbringing are experts in their situation. This study also concluded that children did not agree that they needed to be included in all aspects of the legal proceedings and felt that it should be the parents' duty to resolve the conflict. Having to choose between parents creates too much stress and this is very much related to their

age profile. The older children felt that children under 11 should not have too much responsibility and must engage with the legal profession. In Britain, CIM is a part of the family mediation process, and the Family mediation Association of England and Wales has put policies in place to ensure the correct application of methods and accreditation of mediators who work in this area (Family Mediation Association, 2023). The child can meet with a mediator who is trained and accredited or can meet separately with a trained child inclusive mediator as part of the family mediation process. In England and Wales, the age is set at children over 10 years. The MCE Missing Children in Europe report of 2021 reports how the focus is to empower children and equip professionals with the support that they need to better deal in cases of child abduction (MCE, 2021). In the June of 2011, a conference on the INCLUDE project was held at Missing Children Europe. This project focuses on the well-being of the child at all stages of a child abduction case. The Guide to Good Practice of 2012 was also presented to professionals and in October of 2021 the MCE promoted an international mediation week which promoted mediation for cases of international child abduction. The opportunity to promote mediation and outline the benefits offered to professionals was welcomed and this was a good success. This project also launched the iCare website and e-platform to ensure easy access to information and an opportunity for professionals to engage and format questions. This is a key step in extending the services to the public and for an information platform that is more easily accessible in a more hi-tech world. Among the major accomplishments of the project in 2021 were the launch of the iCare website and social media channels, conducting research on the needs of the stakeholders involved in ICA cases and the launch of the e-platform (MCE, 2021). These MCE European funded projects are discussed individually at 2.9.1.

## 2.9.1 European funded projects for children's needs

The European funded projects from Missing Children Europe (MCE) focus on the child and the child's perspective. The following subsection discusses the projects that have been undertaken over the last number of years through MCE. 'Together we can create a safer Europe that empowers children' (MCE, 2022:2) this is the tagline of Missing Children Europe. This organisation is the European Federation for missing and sexually exploited children. Working on the ground and protecting children is the main priority. However, the organisation Missing Children in Europe is just one of the non-profit organisations that promotes mediation in international family disputes. *Children want parents to find their solutions in family conflicts* (MCE, 2020:8). According to their website (MCE,2024), they represent thirty-two organisations from twenty-seven European countries and offer emotional, psychological, social, and legal support to children and their families in times of need. Hence the relevance of these projects to this research in understand the European support that is offered to parents and children. International family mediation is one of their key services for Hague cases and MCE acknowledge that every case is different. The aim of MCE is to advise and arrange access to certified family mediators and primarily offer the co- mediation model (MCE, 2024). The discussion on the models which are offered echoes the guide to good practice, mediation, (HCCH 2012). Co- mediation model with a balance of a lawyer and a psychologist, bi-nationalities, bi culture, bilingual, and bi gender Online mediation is offered or as outlined on their website, the pressure-cooker method where the parents meet up in one place and the mediation takes place over a few days. Obviously meeting together in one location can involve extra expense and extra travel time, but according to MCE (2024) this method has shown positive results.

Missing Children Europe has worked on such projects and studies as iCare, E-Well, Voice and Include. The following is a brief outline and outcome of each project or study.



### 2.9.1.1 Amicable project

The Amicable project is a European project designed to improve the situation of children caught up in international child abduction and focused on general EU best practice tools, mediator in court models and the national seminars to discuss and promote projects (Amicable, 2020). This project began in 2019 and was co-funded from the European Union and the European Union's Justice Programme from 2014 – 2020 and offered suggestions for the Brussels II recast of 2019. This project proposed a Legal Roadmap to offer Best Practice Tool for judges, legal practitioners, and mediators to support them recognising the agreements carried out by in different countries across Europe (Amicable, 2020). The four primary contributors to the Amicable project were Italy, Universidad de Alicante, Spain Bicocca University, Poland Uniwersytet of Wroclowski and Germany, MiKK.e. V (Amicable, 2020). In Germany, the United Kingdom, and the Netherlands the Best Practice Model, which invites mediation when directed by a judge and runs over the six-week period which is recommended by the Hague Child Abduction Convention 1980, is already in place. This Amicable objective is to discuss how the model can be applied in Spain, Portugal, and Italy. This research has found that the six-week turnaround can be a challenge and the mediation style, pressure cooker, which is in place in the Netherlands can be applied to other court-ordered mediation. The Pressure Cooker, method is when the mediation takes place over a couple of days, with a legal professional i.e. a solicitor close by to support any legal issues that arise. However, if the mediation is not successful or has not reached an agreement, the parties go back to the court, thus keeping it all within the six-week timescale.

### 2.9.1.2 iCare project

The iCare project is a collaborative project by the *Law and Internet Foundation in Bulgaria*, *CERTH in Greece*, *Defence for Children International DCI in Italy*, *MiKK.e.V. international mediation Centre for Family Conflicts and Child Abduction in Germany* and the *European Federation for Missing and Sexually Exploited Children AISBL – and Missing Children Europe MCE in Belgium* (MiKK.e.V projects, 2024). This project has the support of the Justice Programme of the European Commission under Grant Agreement No 101007436. By creating tools and activities online for children and families, iCare aims to create awareness of

international family support for international child abduction cases—tools such as an AI chatbot which is in progress. However, the key focus of the iCare project is to ensure that the legal practitioners, the relevant central authority legislation, and the family mediators can exchange information and work together for the benefit of the children who are involved in international parental child abduction. Promoting working together to ensure a comprehensive knowledge of the legal and organisational framework.

### 2.9.1.3 Voice study

This legal research Voice study was funded by the European Union Justice programme 2016 and conducted by the Universities of Antwerp and Genoa. It outlined the process in terms of how judges as a professional group consider the best interests of the child in judicial proceedings and if the judges hear the children in this regard (MCE, 2024). This study found that children did not always receive feedback on decisions that affect them. They felt a lack of understanding of the legal proceedings which involved them, and the hearings were not always appropriate. This is especially important in understanding the voice of the child in international family law. (MCE, 2024).

### 2.9.1.4 Include study

This is a 2021 study which offers recommendations following discussions based on the views of children and young people who talk with the professionals involved in international child abductions. This study was also funded by the European Union Justice Programme 2020-2022 and was launched to offer good practice in working with children who have experienced being abducted (MCE, 2021). These projects and studies frame the support aimed at the children and parents of international parental child abduction cases.

### 2.9.1.5 E-Well

This study builds on the results of previous research studies and focuses on the psychological effects of the outcomes for children involved in international child abduction. This study was

carried out by the University of Antwerp, IKO Centre Netherlands, CFPE-Enfants Disparus, Missing Children Europe and the French Central Authority, and found that the best interest of the child is a positive concept in such cases, but according to this study, is not always consistent (MCE, E-Well, 2024). This is further explored in this research 5.

## 2.9.2 The focus on the voice of the child in Ireland

Judge Geoffrey Shannon is a key expert in the field of family law in Ireland. He has written extensively in terms of all issues relating to child protection and children and family relationships and guardianship. The legal process of international child abduction and the Hague Convention are discussed in detail by Shannon, with reference to the Brussels IIbis and particularly the hearing of the child in the application of the Brussels IIbis regulations (Shannon, 2011). Shannon (2011) outlines that, in Ireland the views of the child are heard in court through the parents of independent child expert. This multi-disciplinary approach of the hearing the voice of the child is the key to Article 11.2 of Regulation 2201/2003 which is to ensure the child could be heard, (regarding age and degree of maturity) during proceedings that affect them. Finlay-Geoghegan as cited in Shannon (2011:315) outlined that it was appropriate that children of 10 years old should be interviewed. As part of the recommendations in the updated Child and Family Law 3<sup>rd</sup> edition (Shannon, 2020), it is noted that, if possible, mediation should be actively promoted. Shannon (2020) recommended that a resolution other than the court proceedings is desirable to assist in the return of the child by the abducting parent. Understanding how the voice of the child is included in international child abduction cases relates to studies on how the child is affected by separation. Hogan, Halpenny and Geene (2002) Trinity Colleges' study on children's experience of separation, presents a pattern of how children feel worried, anxious, and confused in times of parental separation. Hogan et al (2002) results show how when the child is older, they can be more understanding of the situation, however, when the child is younger, the separation of parents and moving away from home is recognised as a traumatic experience. In Ireland, the UNCRC Article 12 was ratified (ISB, 2011). This article outlined the view of the child and how they must be considered in securing the opportunity for children to have a voice in what will affect them. On the 10th of November 2011, an amendment was put to the people of Ireland under Article 41 on The Family and on

the rights of the child. This Amendment was passed by 58% to 42% in favour of the inclusion of Article 42A.

The Voice of the Child in mediation for International Parental Child Abduction Cases (UNCRC, 1989) has become more established over the last few years. According to Murphy (2018), there has been an increased in both the legislative and policy expansion. Family mediation has become more child-focused and in 1989 the right of the child to be heard in matters that concern them is written into law by the United Nations Convention on the Rights of the Child (UNCRC, 2022). Murphy's (2018) research on mediation for child protection proceedings in Ireland discussed how the value of protection for children's cases had not been fully explored. Murphy's (2018) findings did not advocate mediation in all children's cases but explored through evidence-based research a view to consider the use of mediation in certain aspects of child protection proceedings (Murphy, 2018:1).

*The best interests of the child should be the paramount consideration. Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child (Constitution of Ireland, 2018:172)*

Following this referendum in Ireland, the importance of the voice of the child was recognised and added to the law. This legal act of Article 42A, raises the opportunity for child inclusion mediation to hear the child, of relevant age, and their opinions on the family situation that they are involved in. O'Kelly and Brady (2014) conducted research on the voice of the child in accordance with the UNCRC (O'Kelly and Brady, 2014). The aim of their research was to capture the child's opinion, and it offers the perspective of the child who has experience of family break-up and divorce. It is a valuable contribution to this research as it helps us to understand the perceived benefits of including the children in the discussion. As part of this research digest, Graham, (2014:7) offers the view that even though the rights of the child are enshrined in law as per the UNCRC Convention 1992, the mechanisms were not fully in place at that time to support this Article. This again is important as Graham's study was done in 2014

and in 2022 the legal aspect of the Guardian ad Litem is more direct. As per the Convention on the Rights of the Child (1992) ‘the child should be offered a representative or an appropriate body, in a manner consistent with the procedural rules of national law’ (UNCRC, 1992). Research by McCaughrean (2022) discusses how children have a right to be heard in decision-making either formal or informal. This research also shows how the voices of children up to six years of age are not being heard due to the belief that they are too young to have any opinion. McCaughrean (2022) describes this as muffling or muting of children's voices and states that the procedures are not in place to correctly deal with family court proceedings. This report also acknowledges that the adversarial process in a court does not help and suggests that the more co-corporative methods may be more beneficial to keep such proceedings out of the court system. Therefore, the findings can influence this research on mediation for international parental child abduction and the possible addition of child focused mediation. Kearny (2014) discussed how the mediators included the child's voice in a more indirect approach. This discussion is important as the main links to the child are through the parents and not with the child themselves (Kearney, 2014: 153). This research explores how Child-Inclusive mediation (CIM) has been adapted and implemented in Ireland over the few years since Article 42A, 2012. It is required by mediation training agencies, such as the mediation Institute of Ireland (2022), Family mediation Association and MiKK e.V. (2022) that specific training and procedures are accredited for mediators who practice CIM.

## 2.10 The Role of Non-Government Organisations (NGOs)

According to many non-government organisations, family mediation has proven to be a successful alternative dispute resolution approach in supporting families and parents to find a solution which can work for their situation. NGOs organisations such as Reunite (2023) in the United Kingdom, IKO (2023) in the Netherlands and the Legal Aid Boards HCCH, (2012) in many countries, offer support and links to mediation for parents who can work together to arrange access for their children. These family support programs offer mediation, legal advice and many training programmes from the many professionals who work in this field. As

discussed previously, MiKK.e.V is a non-profit organisation which offers mediation and legal advice for parents who are caught up in international parental child abduction.

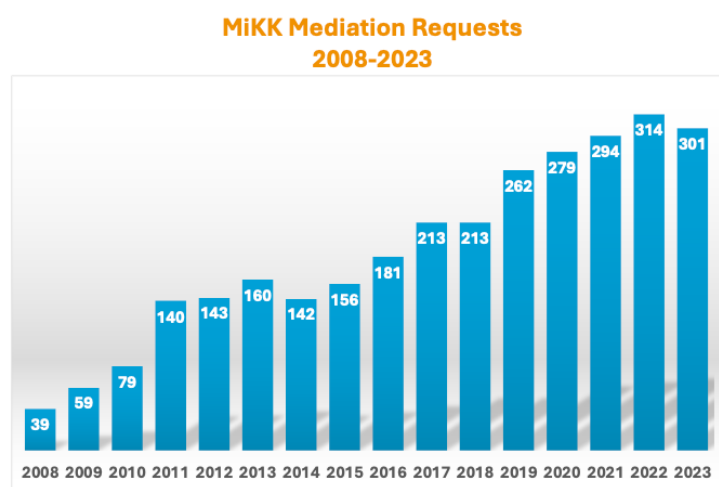


Fig 2, MiKK.e.V Training Graph 2024 (IILes, 2024)

This organisation is one of many non-government organisations (NGOs) who offer support in cases of parental child abduction and have over 250 requests each year. (Fig 2, MiKK Training Graph 2024)

## 2.11 Challenges

More recently, Freeman and Taylor (2023) have also explored how the Hague Convention on the Civil Aspects of International Child Abduction 1980 is a crucial step in the process of the return of the child to the place of habitual residence. The many benefits are discussed by experts who have contributed to Freeman and Taylor's writings; throughout this handbook on International Child Abduction Freeman and Talyor (2023) explore the complexities of human nature and along with their contributors probe what is deemed to be some of the failings of the Convention. Situations whereby a parent removes a child due to parental violence or abuse and finds themselves in a situation of having to return the child or children due to the Convention are examples of this. Article 13(b) allows for some legal flexibility, based on the grave risk

clause (see below), and this can be implemented. However, the time frame that is involved in such matters can add to any delays in proceedings as discussed by Freeman and Taylor (2023) and many domestic violence organisations, such as FiLiA (2022) project, stress that article 13(b) does not go far enough to protect mothers who are the primary carers in such situations:

*Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution, or other body which opposes its return establishes that –a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention or had consented to or subsequently acquiesced in the removal or retention; or b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.*

(HCCH, Article, 13 (b))

Freeman and Taylor (2024) also conducted a research project on when domestic violence is a key factor in international child abduction cases and the effects of this on children. This project involved 116 family justice professionals from around the world and some of the key issues were like this study, issues such as fear, panic and how the trauma of the child was related. This study recognised that life for the children was just as traumatic before the abduction as at the time of the abduction itself (Freeman and Taylor, 2024). This research aims to recognise the perceived failings of the Convention on the Protection of Mothers in domestic violence cases, which are documented by Freeman and Taylor (2023). However, this researcher does not focus on cases where domestic violence is a contributory factor, as discussed in the previous Chapter 1.2 and as per the recommendations which have arisen from Freeman and Taylor's study (2023). The following paragraphs will outline the macro legislation and legal procedures which frame international parental child abduction, whilst then focusing on the micro position of working with the parents in the real-life situations.

## 2.12 The background to mediation in family law in Ireland; an Irish perspective

*Mediation allows people to make their own decisions and hold onto their own power. The breakdown of a marriage or relationship propels families onto an unexpected and unplanned journey of change and transition. It is a stressful and difficult time.*

*(Family mediation Service, 2014)*

In Ireland, for example, Corry (Lloyd and Sweeney, 2011:16), discusses how the Family mediation Services (FMS) began with just one small office in 1986. Today there are sixteen offices nationwide, under the counsel of the Legal Aid Board (LAB, 2023). Family mediation has become so much more than a replacement for court proceedings and today works closely with the legal systems around the world to facilitate couples to make agreements relating to their children, without the pressure of a court proceeding. However, this is not to replace a court process where necessary and the mediated agreement can be brought to court to be ratified. To fully understand the work of Family mediation in Irish society and the role it has in family conflict, we need to look at the origins and the evidence of what results it has achieved. In Ireland, in 1937 the Irish Constitution, under Article 41.3.2, meant that you could not terminate a valid marriage. The only way that a couple could legally separate was through the 1870 Act, which was known as the *divorce a mensa et thoro* (from bed and board, effectively a judicial separation), as quoted in Sweeney and Lloyd (2011:12) or through a foreign divorce, which was an overly complicated arrangement which would only be recognised in Irish law if strict conditions were satisfied. The Catholic Church at that time, played a key role in marriage and in the dissolution of marriage, which was not recognised by the State. The Canon Law of 1983 allowed couples who made requests to terminate their marriage, to apply for a Catholic Church annulment, known as a Declaration of Nullity (Legal Aid Board, 2016). However, as this is a church rule, and not a recognised State law, it did not bind the State in anyway. State annulments are based on civil policy rather than church teachings. Therefore, this differs from a legal divorce which is a legal declaration which



dissolves the marriage and leaves the people free to remarry after certain conditions, however, as Nullity declared that the marriage was not recognised in the first place, the parties could then legally marry someone else. This was the only option for many Catholics and still is for those who are practising Catholics, however, before divorce became legal in Ireland, it brought conflicting legal issues for children born to the couple and any property claims (Legal Aid Board, 2016). Under the Fifteenth Amendment to the Constitution Act 1995 (ISB, 1995), divorce was written into the Constitution and then implemented into ordinary legislation under the Family Law (Divorce) Act 1996 (ISB, 1996). According to O'Connor, 'Marital separation is regarded as the most traumatic life event of all' (O'Connor, 1997: 538). This opinion by O'Connor who is a member of the Catholic Church and is also a mediator (O'Connor, 1997) is shared by many in the legal profession, as discussed in the Family mediation Service Booklet (LAB, 2014:16). In framing marital separation as a traumatic event, O'Connor (1997) steps outside the public opinion of religious orders. However, this shared opinion alone invites us to ask, how can we support the family which is going through a breakup and how best practice can help the children of such families?

Conneely (2002) explores the work of family mediation on the island of Ireland, both Northern Ireland and the Republic of Ireland from the perspective of the clients who use the service. By describing the origins of family mediation in 1986 and the role that the English Family Law Act of 1996 played in the promotion of family mediation as a dispute-resolution option Conneely, (2002) also offers us an insight into the history of mediation particularly in Asia and African countries. This insight by Auerbach (1984), as quoted by Conneely (2022), allows us to see how the approach and style of mediation during ancient times was recognised as being successful in disputes. Indeed Auerbach (1984) also recognised that some of the mediation terms were often referenced in legal anthropology discussions from historic times. Auerbach (1984) discusses how arbitration and mediation were what were called the referred alternatives to the legal routes. *They expressed an ideology and a communitarian justice without formal law, an equitable process based on reciprocal access and trust among community members* (Aurbach, 1983:4). The addition of a neutral third party has been shown to be effective in supporting people to come to agreements and can have a calming effect on parties in conflict according to Auerbach, as cited by Conneely (2002). In Ireland as discussed by Sweeney and

Lloyd (2011), the formal foundations of family mediation were promoted by the decision of the Minister for State, Nuala Fennell at the Department of Justice in 1986. The aim was to engage in a pilot project for family mediation, and this was welcomed by the family court system. Nuala Fennell TD, according to Corry (Lloyd and Sweeney, 2011:12) had special responsibility for Women's Affairs at the Department of the Taoiseach and the Family Law Reform at the Department of Justice. Corry's chapter in Lloyd and Sweeney, (2011) talks about how mediation had always been close to Nuala Fennell's heart. In 1986 Fennell launched a *free advice and support service for aspiring women entrepreneurs* (Fennell, 2009:167) and it was also in this year, 1986 that Fennell's plan for a pilot scheme for a Family mediation Service as a free advice and support service, came to fruition. This service was to be at no cost to the parties, primarily married couples who were separating, and to act as an Out of Court service. Fennell set up a steering committee in the Department of Justice, which reviewed models which could work within the legal system that was in place at that time (Fennell, 2009). The first office was in the Irish Life Building in Abbey St in Dublin under the administration of Maura Wall Murphy. Fennell mentions that she was able to implement this policy with the support of Solicitor Jim O'Higgins, who was an esteemed expert in family law and according to Fennell (2009) remained with the services for many years later. Fennell also credited the Taoiseach at that time, Garret FitzGerald, for ensuring the financial support for this project as she was aware of the lack of funding in Government at that time. Hence it is recognised that Fennell was a true advocate of family mediation, and a key player in recognising the need to have an alternative dispute resolution procedure in place for families, outside of the courtroom. With her expertise and drive the project began. This pilot project was initially set up as a three-year project. However, due to the ongoing support and the drive from the players involved in the setting up of the service, the family mediation services successfully grew from strength to strength and progressed through several different government departments. Philimore, (Lloyd and Sweeney, 2011), talked about how the Family mediation Services then moved to the Family Support Agency in 2003. The Family Support Agency was primarily the statutory agency which governs family services. As summarised by Philmore (Lloyd and Sweeney, 2011:7), this move was productive for mediation services as the number of Family mediation Services offices then grew from twelve to sixteen all over the county. Following the recognised success of the mediation services, the Family Support Agency and the Legal Aid Board offered a further pilot programme on family mediation to the Courts Service. Initially in the Family Law District Court in Dolphin House Dublin. This was the first time that a free service was

provided to offer parties in family law disputes to attend a more informal session. Following the mediation session, the parties had an option to draft a mediated agreement, whilst always having access to the Legal Aid Board solicitors who were always available. The role of the legal professional, the solicitor, is vitally important in all mediation cases, as it ensures the parties have all the relevant legal information to make informed choices. It is vital that they understand the legal implications of what they might decide between them and the implications for the children in such cases. In the Civil Legal Aid Act 1995, the Legal Aid Board was tasked with providing a family mediation service under Section 54 of the Civil Law (Miscellaneous Provisions) Act 2011, (LAB Report, 2021). This service was to provide persons with assistance on divorce, separation, parental access, and finance (ISB, 2011). As stated by ISB (2011) to support persons in this objective, the Board will provide both legal aid and family mediation services.

*Where the Board considers it necessary or expedient to do so to make arrangements for the provision of (I) family mediation services on its behalf by the engagement of persons appointed by it for that purpose, and (ii) training in family mediation, either by itself or by persons appointed by it for that purpose (ISB, 2011: 54).*

With these amendments to Section 54, the Legal Aid Boards additional function is to provide a family mediation service and all relevant in-house training to support that aim. McAuslan and Nicholson (2011) also discuss the emotional trauma of the conflict in family break-up from the children's perspective. This is important for this research in that it drives the narrative on what is important in such cases and further links to the chapter on child-inclusive mediation.

## 2.12.1 Article 42A of the Constitution of Ireland

The Thirty-First amendment to the Constitution was inserted by referendum on the 10th of November 2012 on the rights of the child, including provision for the child to be heard in family and child protection proceedings. Article 42A was passed by the electorate. The result was 58%

voting yes and 42% voting no. A challenge to the referendum result was lodged to the High Court to the Provisional Referendum Certificate on the 19th of November 2012. This was under the provisions of the Referendum Act of 1994. The petition was unsuccessful, and the result was delivered on the 18th of October 2013. An appeal against the judgment was lodged and heard by the Supreme Court in December of 2014 and was dismissed on the 24<sup>th</sup> of April 2015. Supreme Court Ruling *McCrystal v. Minister for Children and Youth Affairs & Ors* (2012) IESC 53 (Pila, 2016). The Thirty-First Amendment of the Constitution (Children) Act 2012 was eventually signed into law by 28<sup>th</sup> April 2015. (Gov, 2019). This Article 42A also requires the Oireachtas to ensure there are provisions in place for the courts to hear the voice of the child in family law. Thus, ensuring the best interests of the child to be served. This right and the best interests of the child are to be considered when the State may seek for intervention in the protection of their safety and welfare. (Gov, 2019).

#### ARTICLE 42A

*1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.*

*2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.*

*2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.*

*3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.*

*4 1° Provision shall be made by law that in the resolution of all proceedings—i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or*

*ii concerning the adoption, guardianship, or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.*

*2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.*

*(Bunreacht Na hÉireann, Constitution of Ireland, Children Article 42A)*

The Constitution of Ireland confirms the rights of the child. For this research Article 42A (4.1. ii) is the key to the best interests of the child. Article 42A (4.2) also confirms that the Oireachtas must make provision for the rights of the child to be included in family and child law decisions about them regarding their age and maturity. This is discussed further in the chapter (2.7) The Voice of the Child and child inclusive mediation. The role the mediator can play in introducing the opportunity for children to be involved is becoming more available whenever suitable. This role is important to this research to ensure the best outcome for the parties and for the children's needs.

## 2.12.2 Role of Legal Aid Board in Ireland (LAB)

The Legal Aid Board (LAB) in Ireland have been in existence since 1979 and today have 48 offices across Ireland. The role of the LAB is to be an independent body for civil legal aid and advice in Ireland. Family mediation is a valuable resource at the LAB and their mission is to ensure timely and effective assistance with highly qualified representatives. These qualified

staff manage all aspects of the legal support that is delegated to the LAB for the benefit of the public.

*We are an independent statutory body responsible for the provision of civil legal aid and advice, family mediation, and vulnerable witness related services and for the administration of a number of ad hoc legal aid schemes. Our mission is to develop timely, effective, inclusive, and just resolution of family and civil disputes to those most in need of our assistance, through high quality legal representation and advice, and/or mediation and to manage other aspects of legal aid which have been entrusted to us.*

*(LAB, The Statement of Strategy of 2024 –2026).*

In Ireland, the LAB work with parties who are unable to pay for legal services and for ADR services. According to the LAB they do not provide Criminal legal aid which is covered by the courts but do provide Civil legal aid for people who meet the requirements (LAB, 2024). Family mediation is a service provided by the LAB which also includes international family mediation for Hague cases of international parental child abduction that have come through the Central Authority and are being heard in the High Court. The services are free to the parties and are delivered by experienced and expert legal and mediator professionals (LAB, 2024).

## 2.13 Conclusion

In conclusion to this chapter, this researcher outlines the literature which is available currently. It is noted that much has been written since the beginning of this research on the process and thus will invite further research at a later stage. However, there is less research on the unique experience of the key players at the micro level, players such as exploring the experience of the legal practitioners and mediators. In 2011 Vigers (2011) questioned the aim of mediation for parental child abduction cases and asked, why so few cases are going to mediation? At this stage over 10 years later, this study explores this question further, from the unique perspective of the mediation professionals who are working in this field. By beginning with the previous studies, this research was able to outline the primary studies, books and articles which are

relevant to international child abduction and mediation. The previous studies offered a road map to ensure a full comprehension of the stage that international child abduction mediation is at today. By exploring the work and the regulations of the United Nations Convention on the Rights of the Child this research outlined how the UNCRC works with the legal and family organisations for the best interest of the child.

The Hague Convention on the Civil Aspects of Child Abduction 1980 is the key Convention that protects the interests of children about their custody. The wrongful removal of a child from its place of residence is against the law in Member states and through the Convention 1980, each State recognises the procedures to ensure what is known as the prompt return to the Habitual residence of the child. However, this chapter discussed the working of the HCCH Convention (1980) for international family law and where family mediation fits into the process of return. The background to mediation and family law in Hague member states is explored in this chapter. GEMME the judges for mediation, have promoted mediation in cases of child abduction and thus gives authority to the practice of mediation. The different projects that Europe funded through the Missing Children Europe which offered children a voice and support them through projects such as the iCare project. Projects such as the Amicable Project and the iCare Project. the Brussels IIb and the more recent recast Brussels IIter Regulation (2019) were explored in detail and the benefits and drawbacks were discussed. The Regulations are a key tool in the support and smooth application of cases throughout Europe. The background to mediation in the Irish context allows the researcher to invite the reader to see the role of the Legal Aid Board in Ireland and Article 42A of the Irish Constitution on the rights of the child. Some of the progress of mediation in family law is discussed and the many changes that have been recommended and applied over the last few years. The voice of the child is an especially crucial step for both the law and mediation. Child-inclusive mediation CIM is also discussed in this chapter and defined by the rules that regulate it. The different approaches by countries and the different approaches that are made for training is discussed for such cases. The Child Abduction and Enforcement of Custody Act 1991 granted the rule of law for both the Luxembourg Convention and the HCCH Convention 1980 this is outlined in this chapter. The procedural process offers this chapter an opportunity to review the approach and Nehls (2023) article offers a clear outline of the legal framework of child abduction cases in the most recent update of the International Family mediation book on custody and access cases (Paul, Kiesewetter, Khalaf-Newsome, 2023). The role of the NGOs allows this researcher to see the

impact of the non-government agencies and the work that they do in maintaining the calmness in such difficult circumstances as family conflict and the emotions that accompany it.

The role of the Central Authority is the first stop for the left-behind parent and thus is an especially key role. The guidelines and the good practice guides are also discussed, and the process is reviewed to frame the work that is carried out each day. Following this, the work of the European Commission policy expands further on the role of the Central Authority. The opportunity to understand the mediation styles allows this research to evaluate which style is the most applied in international parental child abduction and why. The findings show us that facilitative mediation is the most used by the participants in this research project. There are so many articles on this topic today, that this researcher had to focus on the articles that were deemed relevant to this research. It was a challenging task to navigate the number of articles worldwide, therefore keeping the focus on the European perspective, enabled this researcher to explore the Brussels IIter Regulations (2019/1111), the Non-government Organisations and the European Commission that work in this sector. The following Chapter 3 will outline the research methodology.



# Chapter 3: METHODOLOGY

*It is best to think of qualitative studies as wanting to understand the actual ways that a social world functions and how the participants in a particular social world go about living, working, interacting, and feeling about their place in that setting.*

*(Denny, A. S., and Tewksbury, R. 2012: 218-234)*

## 3.1 Introduction

Chapter 3 outlines why this research on mediation and parental child abduction, has chosen a qualitative research tool, with a focus on semi-structured interviews. This chapter discusses the approach and the planning procedure for the study, whilst setting out the objectives of the project. The research design outlines the methodology steps by describing the methods and the strategy that was applied and why this approach was deemed to be the best tool for this study. Informed consent is discussed, and the challenges of correct copy approval are discussed. This chapter also collates information on how the participants were identified and the method of inviting them, how the data collated was stored and archived. Finally, the process and the software, MAXQDA which supported analysis of the transcripts. Research has been described as a process that focuses on the analysis of the data from the very beginning of the text (Omasta and Saldana, 2022). This process of analysis continues throughout the complete research project, by way of a very distinctive analytical approach. This chapter determines that semi-structured interviews with professional mediators and legal personnel as the key participants, given the nature of this study, provide the best approach in gathering data and in understanding the process of mediation in parental abduction cases. This conclusion is further explored in the research design and supports this researcher in understanding the challenges that are experienced by such professionals. Following the literature review, qualitative research with a

selection of semi-structured interviews was deemed to be the best research approach. The interviews were carried out online and in person with legal and mediation professionals from both European Union member states and other Hague Convention states. The key stakeholders within the legal and mediation profession recognise mediation as a positive approach to child abduction conflicts and all the professionals desire to support the parents at this emotive and challenging time (MiKK.e.V, 2022). This study expands on earlier studies which explored where mediation fits into the legal process and how mediation interacts with litigation today, through the lens of the professionals working in this field. This chapter sets out the method strategy and the methodology applied in the creating of the data.

### 3.1.1 Description of qualitative method research methods

As discussed, the method that was used to collate this information and generate data for this research was qualitative semi-structured interviews. Systems theory was the thematic framework as it the qualitative interviewing style according to Mason (2018) is the most used method in qualitative research and was used for the first two interviews which allowed this researcher to outline any issues in the format and the validity of this method. One of these interviews was face-to-face or what is often known as co-present, and the second was online. Mason (2018) discusses how qualitative interviewing can often be referred to as unstructured interviews, loosely structured or in-depth semi-structured. For this research chapter 4 outline each of the findings with no discussion, chapter 5 then offers the discussion on each of the findings reflecting each of the themes. The suggestion is that the fundamental role of semi-structured interviews is a relaxed style and more of a conversation albeit a ‘conversation with a purpose’ (Burgess, 1984. p102). However, relaxed it may seem, each conversation or interview still must have the same level of ethical responsibility and critical reflection. The interviewer must be ready to further explore the unexpected narrative and make no assumptions about what the interviewee has said. The metaphor of a ‘gardener’ posed by Salmons (2016, Ch1) offers us the vision of a cultivating nurturing process during the interview. The metaphor of ‘traveller’ is mentioned by Kvale (2007), and this offers us the vision of the journey that the questions and the interview style take. Both these metaphors suggest an interaction and the gathering of data through a specific process. But it is important to this researcher to understand not only why to use semi-structured interviews, but also what value will they add to the data

being gathered. As part of the qualitative research, focus groups were also considered, but the decision was that professional may be more open to the semi-structured personal interviews than among their colleagues. This decision was based on my previous experience with one-on-one interviews therefore, I was able to determine how best to proceed. A selection of sample questions was drafted as follows:

- How would you describe your professional role?
- What is your experience of international parental child abduction?
- What skills are required to perform your role? (*Explore CPD (Continuous Professional Development) requirements, qualifications, etc*)
- How has the time limit in cases affected the outcome?
- What would be your preference in your work, face to face or online?
- In your experience, are there cases where mediation become more challenging?
- What is your preference, co- mediation, or single mediator?
- In your experience, are there cases (or cases of a particular type) that are not suitable for mediation?
- What advice would you offer to someone who was starting to work as a mediator or legal professional who may have a specific interest in working in international parental child abduction cases?
- What would be your recommendations for this research?

These questions formed the basis of the discussion interviews and invited the professional participants to engage in the conversation. The first two interviews allowed the researcher to understand if these questions generated enough information relevant to the research topic. The relevance became clear as the professionals understood what the research was about how they could voice their contribution based on their experience. However, as this is a semi-structured interview process, often the need for questions was unnecessary as the conversation flowed when the participants understood from the information sheet, what the context of the research is about. The importance of the information sheet (see appendix C) and the selection of questions (see appendix D) which was sent to all the participants before the interview, to ensure that they were prepared for the interview. This allowed the flow of conversation throughout.

### 3.1.2 Research design

The research design allowed the researcher to ensure the aims and approach of the research are clear and concise. Both primary and secondary sources are implemented as the primary information in government papers, the constitution on family law and the importance of the HCCH and European Justice portal have been instrumental in signposting the correct information for this research. The secondary sources have been vast and over the past ten years have grown with the availability of more online journal articles and a deeper understanding of the research programs that have been carried out. There are also more books which have been written on this subject, which is in line with the recasts of the Brussels Ibis Regulations and the advice on introducing mediation to these international family cases. Some of the writings, such as Paul and Kiewesser 2<sup>nd</sup> edition in 2014 now have update editions adding more valuable information to this subject, Paul, Kiesewetter, and Khalaf-Newsome (2023) International Family mediation. International Parental Child Abduction, Custody and Assess Cases 3<sup>rd</sup> updated and expanded edition. The research paradigm is pragmatism, as the ontology appreciates the constant changes in how reality is debated and interpreted. As epistemology, the theory accepts the limits and validity of the information, it also acknowledges that the data should be examined in the best way possible with the best tools available. After much consideration, the best tool available in this context was deemed by this researcher to be semi-structured interviews.

### 3.1.3 Research Strategy

The strategy of applying the qualitative method allows this research to talk with the people who are in the front line of international child abduction cases. Empson (2021) discusses how interviewing in professional organisations can present challenges. Ensuring access to the most suitable participants was important and building rapport and trust with them was important. Empson (2021) applies the term ‘elite interviewing’ and outlines how the power asymmetry can affect the interview. This research agreed with Empson (2021) and aimed to ensure that

not only trust was in place and following meetings and engagement with suitable participants, but this researcher was then ready to follow up on invitations for them to be a part of this research. This trust and rapport which must be established ensured that the participants were comfortable in discussing their concerns and thus added to the value of the data. Thunberg and Arnell (2022) discuss how conducting online interviews was often not considered a valuable interview. The strategy for the interviews in this research were carried out online and in person. With the geographical differences and the fact that this research took place during the Covid-19 pandemic, the opportunity to have online interviews was paramount to engaging with suitable stakeholders. However, as outlined by Thunberg and Arnell (2022) if the participants live far or in different countries the online interviews are a good strategy for collecting data. It is recognised that face to face interviews is often still preferred, but this research agreed with Thunberg and Arnell (2022) that the disadvantages (such as not meeting in person) did not inhibit the interview. It was also important to ensure that the internet infrastructure is robust, and any digital concern are addressed. For example, outlining to the participant how the interview transcript will be recorded and how the data will be used as discussed at 3.1.3.3.

The research strategy for this qualitative method is outlined below:

- Review the literature available from recent years and different countries, to understand what has been researched and documented previously.
- Apply for ethical approval from the relevant bodies. Tier 3 approval has been awarded (Appendix: G).
- Engage with the different state organisations and non-government organisations who work in this sector, based on the literature review
- Approach the stakeholders in the appropriate organisations to arrange information meetings to outline the aim of the research.
- Outline the research question or what this research would like to explore.
- Test with two interviews with mediators and use the learnings to frame and fine-tune the interview process and identify the most appropriate questions.
- Explore which questions will support the research in investigating the research question and ensure that these questions are useful and add meaning to the study.

- The questions should be clear and understandable. The aim is to generate meaningful data for the study as a selection of focused and broad questions can encourage discussion.
- Draft up consent form, information sheet, and introduction email / letter.
- Arrange interviews as per ethics guidelines, dates, and places which are acceptable to the participants.
- Transcribe the interviews with the use of software and manually and ensure copy approval
- Set up MAXQDA to support the thematic identification and analysis.

### 3.1.3.1 Breakdown of participants

This research met with mediation and legal professionals across Ireland and parts of Europe; the focus was on experience in international parental child abduction cases. Purposive sampling selection ensured that each of the participants had experience relevant to this research. Therefore, ensuring appropriate data that is pertinent to this study and its objectives. Each of these professionals were certified **mediators**, as in they had completed the appropriate training by a recognised training body such as MII, FMI, MIKK.e.V or IMO whilst in some cases were legal practitioners, such as lawyer or solicitor. The reason for this approach was to ensure that the voice of the mediation and legal professional was heard and all professionals had experience of bi-national and international family cases. These professionals have first-hand experience of being in the room with the parents and often the children themselves. Therefore, offering this research the perspective and experience at the coalface of international family mediation. Nineteen participants were interviewed on their subjective opinions on mediation within the legal framework. Accredited certified mediators have completed an approved mediation training program, such as the MII, IMO, MiKK.e. V or a recognised training program. For balance 47% (9) of the participants were certified by recognised training bodies as discussed and 53% (10) of the participants were legal practitioners who also had mediation experience and certification 63% (12) of the participants were based in Ireland and 37% (7) were based in Europe. All 37% of participants based in Europe were legal practitioners and were certified practicing mediators. Of the 63% (12) participants in Ireland 17% (2) of them had both law and mediation qualifications and 33% (4) had law only. All had experience with

international family cases and or had experience in Hague international parental child abduction cases.

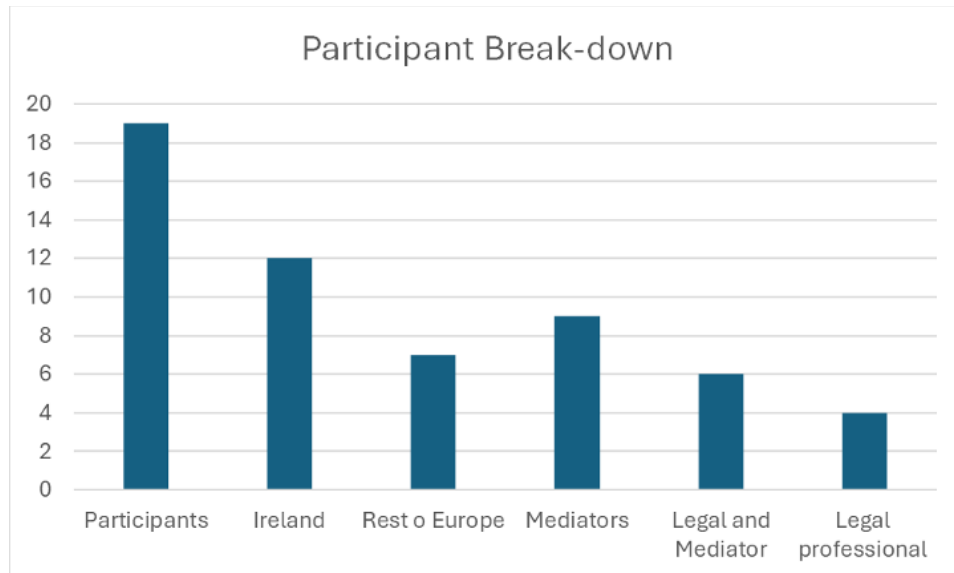


Fig 3 Participant Break-down.

\* 47% Certified mediators (9)

\* 21% Legal practitioners, lawyers, barristers, solicitors. (4)

\* 32% Legal practitioners who are also practicing certified mediators (6)

47% (9) in Ireland were certified mediators and 32% (6) in other parts of Europe were certified mediators. The remaining 21% (4) were lawyers with no mediation experience but had training. However, in parts of Europe all Law professionals were also certified mediators.

### 3.1.3.2 Thematic Identification and Analysis

As this was a semi-structured interview process, each interview was taken in the direction that the participant discussed. Some of the key questions were standard to establish experience and

ongoing skills required. The sample questions which were asked of each participant (see Appendix C) are based on the following topics.

#### Experience:

- Length of time involved in family law and mediation and training involved.
- Working time on involve international child abduction cases
- Opinion on the effectiveness.
- Views on Brussels Ibis Regulation (particularly the revised version) on mediation in international child abduction cases.
- The challenges and the possibilities of non-suitable cases for mediation.

#### Developing Skills:

- Skill required and training aspects
- Support you in your work and life balance.
- Advice for new starters.
- Recommendations or suggestions.

The transcripts had assigned codes to allow for pauses and anonymity.

|              |                                                |
|--------------|------------------------------------------------|
| (--)         | Person cuts off for thoughts                   |
| ( )          | Non-verbal communication i.e. smiling/ emotion |
| .... / (: :) | Pause / longer pause                           |
| [ ]          | Names or dates pseudonyms                      |

Fig 4 CODE meanings.



### 3.1.3.3 Interview Strategy and Transcription

During my MA thesis in 2019, I had the opportunity to meet with many of key stakeholders in international parental child abduction and the legal and mediator professionals in both Ireland and Europe. During my current research and throughout my training as an international family mediator, I was able to expand my network through attending international conferences, international training and meeting with specialist in mediation training and international legal parental child abduction cases. This opportunity ensured that each of the participants who engaged in this research had the relevant experience and each of the participants was then invited by an introduction email (see Appendix D). Members of the Legal Aid Board in Ireland received an information email from the Research Department of the LAB. The LAB Agreement (see Appendix E) was drafted and agreed on between the Research manager at the LAB, this researcher, and the supervisors of this research. This agreement was approved before any contact was made with the staff at the LAB. Following these introduction emails, the professionals who replied with interest, were then sent a full information pack (see Appendix A) and a copy of the consent form (see Appendix B), with an invitation to speak with this researcher about any queries they may have had. When the participants agreed to be interviewed, they then returned the signed consent form. The time and location were agreed on and a Microsoft Teams link was sent online from the Maynooth University School of Law and Criminology forum. For others, it was more suitable to meet in person and this researcher travelled to a location of their choosing. A voice-only recording was deemed suitable, not a video recording as the participants were anonymous. Each participant decided on their contact details preference, some preferred work email addresses and others used their private email accounts. The minimum manual data such as consent forms were locked in files with limited access and all achieved data was cloud-based. This Microsoft cloud-based storage is fully encrypted, and password protected, thus ensuring ready verification in electronic formation. All original data is authenticated as per Maynooth Research Ethic Policy (see Appendix F) to ensure there is no scope for allegation of any falsifying of data. As per this policy, no files showing personal data is available to anyone other than the researcher or an authorised person, such as a supervisor. However, in this research, only this researcher had any access to personal data.

### 3.1.3.4 Inclusion and exclusion criteria

This researcher has made the decision early on in this research project not to invite parents involved in child abduction cases. At first, it was assumed that there would be a need to have discussions with parents to ensure a clear and open project. However, it was soon realised that most of the parents involved are under extreme pressure and as discussed by the Mediators' Institute of Ireland, the trauma of relationship breakdown affects the whole family (MII, 2022). Thus, the conflict and anger can cloud the judgment of the parents and would take the research in a different direction. To keep this research focused the decision was taken not to interview the children affected by parental child abduction. There have been many studies including one of the most relevant studies from Freeman (2014) which focused on the children and the long-term effect of being a child who was involved in one of these cases. More recently Freeman and Taylor (2023) investigated the psychological issues in child abduction high conflict cases and the global efforts that are in place to deter parents from abducting their children (Freeman and Taylor, 2023).

Freeman was one of the first to complete research for the UK's Reunite in 2006 and this was another key reference for this research (Freeman, 2006). This report for Reunite was known as the outcomes report (Reunite, 2006: 1) and focused on the children who had been abducted and returned and was addressed with interviews to gain the child's own perspective. Therefore, this research chose not to expand on the child's perspective as much has been professionally written on this topic by Freeman in 2006, 2014 and 2023 along with many journal articles. Hence the decision to study this subject from the professionals' personal perspective, which has allowed this research to become aware of the gap and confidentially add valuable information to this topic, as this is the key to good research. McAuslan and Nicholas (2018) speak of how parents often make assumptions about each other, which can affect their judgment. By understanding this statement, this researcher concluded that interviewing the parents would take the research on a different journey. Therefore, following the meticulous literature review and the findings, and finding little research on the opinions of those working at the coal face, the decision was taken to focus this study on these professionals.

By interviewing the mediators and the legal practitioners who have met with the parents, this research focused on what worked and what did not for the professionals working with the parents. The connection and interaction of the roles of the participants who work in the non-government organisations and, or the government institutions will add a more policy and procedural, meso-level dimension to this research. Meanwhile, interviewing the mediators who work in the public sector, for example, the publicly funded bodies such as European NGOs, the Legal Aid Board Ireland and those who work in the private sector, the micro level, will add a unique perspective. Therefore, the decision was made to focus on the professionals and their interpretation of family mediation services and sustainable agreements. This aims to keep this study on a path to fully engage with the subject, mediation, and international parental child abduction. The emphasis of this research is to concentrate on the perspective of the professionals in their work-life and explore the challenges and expectations for mediation in both family and international mediations.

### 3.1.4 Aims and objectives of research approach

The research design will allow the researcher to ensure the aims and approach of the research are clear and concise. Semi-structured interviews will ensure that the interviewee will have the opportunity to add their own perspectives to the collection of data and offer information that may not have been available previously. Also, to have the opportunity to meet and have discussions with the professionals who work at the coalface of these situations and therefore have experience of working with deadlines and real people with real-life conditions the research methods of both qualitative and quantitative methods were considered. Having considered the merits of each, this researcher has deemed that a qualitative approach will add more value to this research.

### 3.1.5 Research paradigm

The research paradigm aimed to build a framework to understand the process and the experiences of the professionals who are working in mediation and with international parental child abduction cases.

In applying creative thinking on the approach, this researcher aimed to understand the methods and sources that would offer the best outcome and keep the research focused. By asking the key questions on how best to gather the information and to not fall into the trap of unthinking methodological habits, as discussed earlier, the method of qualitative semi-structured interviews was decided to be best for this research. A decision not to invite parents to share their experiences was made by this researcher. This decision was made specifically, due to the vulnerability of parents and a lack of objectivity on the process and the added challenges of privacy and ethical concerns, therefore the focus is primarily on perspective of the professionals working with the parents and in some cases, the children. This researcher has investigated the research methods involving both qualitative and quantitative methods and decided on a qualitative approach for the gathering of data. As discussed earlier, the reason for this was to have the opportunity to meet and have in-depth discussions with the professionals who work at the coalface of these situations, thus would have experience working with deadlines and real people with real-life conditions. As part of the qualitative research, focus groups were also considered, but as this researcher explored what information was needed to gather and who would have that information, again identifying that the semi-structured interviews were decided as the best approach to explore the topic from this perspective. According to Mason (2018), the interviewer should be trained sufficiently in the qualitative approach to interviewing methods. Therefore, this researcher, attended specific training to hone their skill in interview techniques. The specific modules attended, such as SO819, SO620 and SO802 ensured a fully comprehensive understanding of the interview process and the work undertaken ensured the researcher understood the value which semi-structured interviews can offer.

### 3.1.6 Scope and limitations

The objective of this research was to speak with a selection of mediators and legal practitioners who work with cases of international parental child abduction in a selection of European countries. This study aimed to document their views on how mediation works for such cases and what challenges are faced. As a doctorate research project, the timeline was set at a four-year plan and funded by the John and Pat Hume Scholarship at Maynooth University. The

scope of this timeline allowed this researcher to plan the process of this research and examine the research already available. This involved a lot of time in the literature review process and the scope of the research expanded with the literature available. It became obvious that much of the research available was connected to the legal process, case studies and the theory of mediation as a tool in Hague cases. Little evidence was available of research on the feelings and views of the professionals who dealt with such cases. This is further discussed in the literature review in Chapter 2. Therefore, to ensure that this research was diligently undertaken it was important to understand both the scope and the limitations. During the time that this research has been undertaken, there have been further articles and journal updates; the emergence of this new research added to the limitations of the research project as not everything can be included. This research set out to ensure that the most relevant literature which became available at the later stage, was examined, critiqued, and included in this study. The decision was made to focus on the micro level of professionals from a European perspective as to explore this topic from a worldwide, macro level would be too vast. Focusing on a European perspective allowed this researcher to reach out to EU organisations and professional bodies that work in parental child abduction cases every day. By keeping the scope more focused, this researcher was able to go to many international conferences in Europe and become an associate member of GEMME (European Judges for mediation) and be involved in many seminars throughout the last four years. This involvement and attendance at the relevant seminars allowed this researcher to keep abreast of any changes in policies and procedures. The opportunity to present this research at conferences in both Ireland and parts of Europe allowed this researcher to explore the limitations and scope of the project.

## 3.2 Primary research method

As discussed, this research applied qualitative methods to understand the strengths and weaknesses in the process of international parental child abduction mediation. Through the gathering of different perspectives, this research project has adopted a qualitative methodological approach. According to Heise-Biber (2011), a qualitative approach can enrich individual stories with the use of methods such as semi-structured interviews and will ensure that the researcher will obtain more information on the process and form a fuller understanding. The interconnection of the work in international child abduction and the personal perception

of each participant will allow this researcher to explore the observations of the professionals and, in analysing the data, will aim to gain a better understanding of the challenges and work of such professionals (Mason, 2018: 8). Therefore, semi-structured interviews are the main source of the data to be generated and analysed for the findings. The use of qualitative methods allowed the research to capture accurate and in-depth insights. By engaging the participants through the application of Brinkmann and Kvale's (2007) interview standards, the research has ensured a personal approach to determining the studies' findings. The description of individual experiences and the participants' beliefs and experience have formed the descriptive data and the responses to open-ended questions have impacted the way the semi-structured interviews have flowed. Observation is suggested by McKechnie (2008) as one of the oldest and most fundamental research methods approaches. Smit (2018) discusses the importance of active listening in qualitative research by stating that whoever listens matters. Together, observation and listening allowed the researcher to recognise the value of what the participants had shared. The ability to check and question has enabled the researcher to validate what was heard and correctly identify the concepts which have emerged (Kvale, 1995).

### 3.2.1 Information for participants

The ethical application (appendix, F) was made to Maynooth University in December 2021 and was granted in January 2022. This stringent process outlined the process of the research through all the protocols which were involved in ensuring the participant and their identity were protected. The ethics approval application in December 2021 is attached, see Appendix F, and the approval letter which was received in January 2022 is attached in Appendix G. The approval letter (appendix, G) was sent out to the Legal Aid Board to draft the information sheet for LAB participants. Following the initial invitation to become a participant, each interested party received an information brief (see appendix E). A selection of sample questions was also sent to the participants before the interview (Appendix C). It was important to ensure that each participant had the opportunity to meet and discuss their participation and ask any questions they may have. Two separate information sheets were drafted for this research. One for LAB staff who were invited through their work, and the second one for participants invited through the researcher's contacts and international mediation groups.

The first information sheet was in conjunction with the Legal Aid Board's Research manager and involved a process agreement of the LAB management. As discussed, this researcher has conducted discussions with the Legal Aid Board and an approval agreement document was drafted and signed by the researcher and co-signed by both supervisors, Dr Treasa Kenny, and Dr Fergus Ryan, to ensure consent before approaching any of the members of the Legal Aid Board. The Legal Aid Board Strategy Unit reviewed the research proposal and gave approval for its staff to be involved in this study (see appendix E). The wording was incorporated to include the Legal Aid Boards draft and was sent to all the professionals who were working at the Legal Aid Board who had been invited to the research. The addition line read as:

*The proposal has also been reviewed by the Research Department, Strategy Unit of the Legal Aid Board, and the research protocol has been assessed as following the Legal Aid Board's Research Policy and Code of Practice (see appendix E).*

The second information sheet which was sent to all other participants did not include this line but was the same in all other contexts (see appendix B). The information sheet clearly outlined the process for the interview and the options available for participants, online or face-to-face. The opportunity was also offered to have a discussion with the researcher on the research before committing to an interview and the inclusion of the Maynooth Code of Ethics (see appendix F) as per Social Research Ethics Sub-Committee (SRESC) template with the opportunity to opt-out at any time was attached. This was a continuing factor whilst commencing any interviews.

### 3.3 Consent form and agreements

The consent form is attached at Appendix A. Consent is key to a professional qualitative study. Each of the participants were offered copy approval and the transcript was sent to each of the participants. Two of the participants asked for the transcript to not be sent and it is documented that they were happy with the interview and did not require a copy. However, all participants were sent a copy with a time limit to approve, edit or reject. All seventeen remaining participants copy approved their transcript and four had some edits that they wanted to add. This offered the research an opportunity to ensure that each participant had read and understood the consent

agreement that they had signed up to. One participant edited back the transcript with some identifying features added back in as the transcript had been sent back to them with de-identifying pseudonyms. However, this transcript was a valuable addition and was added to the analysis and no identifying features were included in the findings.

### 3.3.1 Method theory

For this research method, the theory of Symbolic Interactionism (Blumer1966) offers a systematic framework based on Mead's (1936) theory that our perspective emerges from our social interactions with others and our surroundings. This theoretical approach to the interview process supported how each perspective of the participants is unique. Carter and Alvarado (2018) address the five methods applied in symbolic interactionism studies, interviews, content analysis, experiments, ethnographies, and surveys. According to Carter and Alvarado (2018), Blumer termed this framework as *symbolic interaction* and classed it as both a theory and a method, which supported an understanding of behaviours, attitudes, motives and how people interpret their experiences and what happens around them. This method is also known to represent the Chicago School methodology. (Carter and Alvarado, 2018). Clements (2020) discusses how the complexities of social injustices and in this case, international parental child abduction cases often are not deemed the concern of the legal profession. Clements (2020) describes systems thinking as a mass-production approach to legal problem-solving. The cluster of complex difficulties which the court system deal with is the macro level, however, the parents often need to look at the micro level which is not only the legal aspect but the more human aspect to help them to resolve this issue in the best interests of the child. Arising from this researchers' previous experience in qualitative semi-structured interviews, it was noted that a conversational approach often allows the participant to engage in the subject at a much deeper level. It is also important for this research to understand how mediation is reflected in the process of international parental child abduction and if, or how, it can add value to the legal process that is in place from the Convention rules. To explore this statement further and fully comprehend why mediation is endorsed by experts and legislative changes since the introduction of the mediation guidelines, which were documented by the HCCH, in 2012 (HCCH, 2012); the question still arises that Vigers (2011) asked in her research (on mediation and international child abduction cases), why are so few cases still being practiced? By



discussing an interview format, with a selection of both legal and mediator professionals, this research has had the opportunity to understand more fully the challenges and the benefits of the mediation process from their perspective.

The use of MAXQDA supported this researcher in categorising the codes and saving the themes to ensure each of the quotes was captured succinctly. On Microsoft Teams the voice recording was switched on during the interview and thus a draft of the transcript was available to this researcher. However, it was found to be difficult for some accents to be transcribed, and the format was not clear, therefore a voice recording was also in place. This allowed the transcript to be double-checked before being finalised. This was noted to each participant before beginning the interview. The voice recorder was used for the face-to-face interviews and there was water on the table and each participant was advised that they could have a comfort break at any time. There were no notes taken as this researcher felt this would disturb the flow of the conversation. The recording was kept under a password on a password-protected laptop and is destroyed following the submission of this thesis as per the Maynooth Research Ethics Policy (see Appendix F). Subsequently, after the interviews, the transcripts were uploaded to MAXQDA software for coding. By engaging MAXQD software (see 3.4.5) and highlighting various phrases from the transcript of each of the nineteen interviews, this researcher then devised labels to describe their content. These labels or codes, as they are known, began to link closely with each other and each of the codes identified began to form themes. Each of these codes is an expression of the participant's feelings, experiences, emotions, or recommendations. These codes then gave this researcher a more summarised overview of the key points and commonality of the data received, thus exploring the meanings that arose throughout. As each of the sentences or phrases from the transcripts were coded, the recurrent themes which were generated began to emerge to shape the research findings. In general, themes are normally more detailed than codes but have a similar thread (Caulfield, 2022). Compiling the codes into themes, it is then possible to see where the data takes us and how the story unfolds. Based on the questions that were asked (see Appendix C) this research was able to identify the experience of the participants; how they were trained; and their experience. Following the coding process which generated over one thousand codes, the themes emerged which is noted in this chapter.

## 3.4 Process

The aim was for an interview of a maximum of 90 minutes with a comfort break on request. However, most of the interviews took approximately sixty minutes. Each participant was invited to raise any questions they may have relating to their involvement in the study, and these were addressed before commencing any interviews. It was made abundantly clear that the invitee can change their mind at any time up to the end of August 2023. However, this too was expended as three of the interviews were carried out after June 2023. This time limit had been based on the need to have time to have an analysis of the data collated. Copy approval of the de-identified transcript was offered to each of the participants before being entered into the study; this included the opportunity to review what is quoted in the final document and many of the interviewees took full advantage of this opportunity. This applied only if the participant had ticked the box to allow quotes from the transcript to be published anonymised.

This research was initially offered online due to COVID-19 restrictions, and following lifting of restrictions, some were carried out face-to-face. The platform for the interviews was initially Microsoft Teams and the collection of data was on voice recording, not video recording. Voice recording was deemed sufficient for this research, as the transcripts were completed after recording and the recording could be erased. A voice recorder was used, and this method of data collected was noted on the information sheet and permission obtained by the participant. Primarily the work email address of the participants was used, to ensure the invite is delivered to their work-related email unless the participant specifically asked for their own private email to be used. By inviting the professionals from European Non-Government bodies and the Irish Legal Aid Board to participate, this research reached a selection of the key professionals who deal with parents in international disputes on an ongoing basis. As some members of the Legal Aid Board did not have access to Microsoft Teams or Zoom, this cohort were offered a phone and /or a face-to-face interview in line with government guidelines and only when the participant requested. Again, the participants were only invited to take part in semi-structured interviews as previously discussed, as from my previous research and the literature review, this method of data collection was deemed the most suitable at this time. This furthered the opportunity to engage with professionals and hear their valued opinions on this subject. As

discussed, the early part of this research was undertaken during COVID-19 restrictions, face-to-face interviews took place at a suitable location and in line with all Government guidelines and regulations for mask-wearing, social distance, and ventilation, as per Maynooth University guidelines, which were consulted regularly. For the Irish participants, the Irish Government website on COVID-19 updates was regularly consulted to ensure compliance with the evolving regulations and guidelines. In determining whether the interviewee is comfortable with face-to-face interviews, the researcher consulted in advance with individuals and ensure signed and informed consent (see appendix B). Even in the absence of public guidance against face-to-face meetings, some interviewees were more comfortable with a remote interview. All participants were invited to engage in a semi-structured interview online by Microsoft Teams or face-to-face, subject to current Government COVID-19 restrictions and guidelines. As discussed earlier this researcher honed skills on interview techniques through GST modules at Maynooth University.

### 3.4.1 How were the samples identified?

This research follows on from an original research project, *One Size Will Not Fit All* (Dunne, 2019) which primarily had focused on the Irish perspective. Due to the minimal opportunity to look further afield at that time, the option to talk with others involved at a more international level was not available. Therefore, for this study, participants from European Non-Government Organisations, who had vast experience in international child abduction cases were invited. These participants were from the researchers' network of contacts who the researcher had met at many international conferences, international training events and online meetings whilst researching for this project. The interviewer also invited connections on LinkedIn who were in the researchers' network of contacts due to the involvement of the researcher in mediation training programs in Europe and Ireland. These participants were selected to be invited, not only as they had vast family law experience, but were also involved with Hague cases from both the legal and mediation aspect and were based in the Europe Union and the United Kingdom.

As discussed, one of the key stakeholders here in Ireland, is the Legal Aid Board. The Legal Aid Board is 'an independent statutory body who are responsible for the provision of civil legal

aid and advice, family mediation' (Legal Aid Board, 2021) here in Ireland. Their offices are dispersed evenly throughout the State and offer court-based online mediation for children and families. However, to allow for an in-depth analysis, this researcher planned to interview no more than twenty key professionals who were working with family mediation and international cases, the final figure was nineteen and no one involved in international cases refused to be involved. In contrast, all the professionals that were invited were pleased to offer their opinions and some recommendations. A need to ensure a balance of participants across the various professional groups was identified as the project progressed, to ensure a cross-section of participants and this was addressed by the snowball effect on the participants. Each organisation has a different process for recruiting research participants. Information emails were sent to persons who were identified from the initial master's research thesis (Dunne, 2019), with an invitation to contribute to this new research. Initial phone /Microsoft Team meetings are being held to build awareness of the research project and establish interest in participating in the research process itself. Following primary discussions with a selection of key organisations, such as the Legal Aid Board, and international mediation organisations, the information sheet was sent to their members and other professionals. (see appendix A) along with the invitation to contact the researcher if any queries or more information was needed. There was no other contact from the organisations following the introduction and the organisations were not aware of who may have been interviewed. As discussed, this researcher also contacted professionals that had been interviewed for the previous research *One Size Will Not Fit All* (Dunne, 2019) as some were interested in offering a different view following COVID-19 or following a change in their work environment or placement. This approach has had a snowball effect with the result that other contacts were suggested to me who, when approached, also expressed interest in this study. Members of the European Association of Judges for Mediation (GEMME) had been approached, and preliminary information discussions had been conducted. The number of interviewees was open to change according to the data gathered and this was planned for. However, this was not needed as there was only repetition in the interviews at the final stages. Nineteen was the final number of interviewees.

### 3.4.2 Description of participants.

The original aim was to meet with 15-20 key professionals between Ireland and Europe. Invitees were to include professionals from the key Non-Government Organisations (NGOs) in Ireland and in the wider European Union. Other invitees were from the Legal Aid Board staff and family mediators. Also, court officials overseeing Hague cases, and both private and public solicitors working in this area. Members of the Mediators' Institute of Ireland (MII) were also aware of the research as there is an expertise in family mediation among members. Not all invitees responded, and some just met for an information chat, which was not added to the findings but supported the researcher to move in the right direction.

Nineteen interviews were conducted. Participants were identified by their work in this field through the researchers' networking on LinkedIn and experience in international parental child abduction training modules and international conferences. Following the previous research project in 2019, the Legal Aid Board (LAB) of Ireland continued to be interested in this research (One Size Will Not Fit All, 2019). The LAB research manager established a procedure to inform the staff about the research; a draft agreement was drawn up, co-signed by this researcher, the thesis supervisors and the Legal Aid Board and was part of the Maynooth University Ethics application. On the strength of this agreement (see Appendix E), the legal and mediator professionals in LAB who are involved in international family cases were invited to be a part of this research. This invitation was sent out to mediation and legal staff from this researcher, explaining the research, with a phone number and email to contact the researcher with any queries they might have. The participants in this study come from across Ireland and other parts of Europe. All of them have experience in family and bi-national mediation and a knowledge of the legal proceedings of international parental child abduction cases. However, not all had been specifically trained in international parental child abduction cases but had gained experience with international parental cases.

Each of the professionals who participated volunteered to be interviewed and signed an interview consent form (Appendix B) after receiving and reading the information sheet (Appendix A). When participants were fully conversant with the research project and what being interviewed involved, a selection of members willingly agreed to be involved and were agreeable to their voices being heard. Some participants declined to be interviewed but were very amenable to meet with this researcher and offer advice which was invaluable to this research. Other European candidates for this research were members of an international family mediation services panel of mediators. These mediators and legal practitioners work regularly

with parents who find themselves involved in Hague parental child abduction cases. The researcher had met with these professionals during training modules and international conferences from NGOs such as MiKK.e.V, of which this researcher is a certified member and ambassador. Other participants were drawn from within the mediation professionals' bodies across Europe. The key stipulation was that they had experience in mediation and or legal expertise in family law and international mediation services. Stakeholders such as the Central Authority, the Mediators' Institute of Ireland (MII), MiKK.e.V (a non-profit organization, based in Berlin which provides free multi-lingual advice for parents in international cases), and the European Association for Judges for mediation known as GEMME, have all shown interest in this research and its findings. MiKK.e.V also offers referrals for mediation and custody and relocation advice for international parental child abduction and have several fully trained mediators who have specialised in international mediation. Several private mediators working in Ireland were also interested in being involved in this research. Each professional was sent an information sheet and consent form to complete and had an opportunity to discuss directly with the researcher any issues or concerns first.

The Irish Central Authority offered this researcher an opportunity to discuss specific issues that this researcher may have and said that they were available to reply to specific questions to help in the research. Like the MiKK.e.V and the Mediators' Institute of Ireland, the discussions with the Central Authority were primarily for information purposes. The decision to follow through with de-identified interviews was decided on meeting with each of the organisations. United Kingdom mediation support services, such as Reunite, and Scottish Family mediation were also researched but were not approached for interview. United Kingdom rules allow data to be transferred to the EEA (European Economic Area) subject to compliance with GDPR (General Data Protection Regulation). Therefore, any data acquired must be handled in line with the European Union GDPR requirements. This researcher liaised with the Data Protection Office at Maynooth University before moving forward with this section of the research to ensure compliance with international data protection requirements. As the United Kingdom General Data Protection Regulation (GDPR) process is currently aligned with the EU GDPR rules this should not present a difficulty (Oxford, 2021). However, it was deemed that the relevant information was available to this research from previous research studies in the UK Reunite. All discussions with other agencies supported the understanding of the process and did not contribute to the findings of the data collection. Following my on-site training with MiKK.e.V

in Berlin, many of the professionals who were at the training were extremely interested in contributing some of their experience to this research and interested in having a discussion. Again, not all contributed to the findings but were extremely helpful in building the research paradigm. MiKK.e.V is the German-based non-profit organisation that freely provides advice, referrals, and multi-lingual support for parents in parental child abduction disputes/cases throughout Hague member countries. They provide a ‘roadmap’ for best practice tools for judges, legal practitioners and mediators whilst assisting parents in working towards a mediated family agreement. and qualifying as a certified international family mediator. Some MiKK.e.V members were invited to join for an interview and were an integral part of understanding their process. The Members of MiKK.e.V who are working as international mediators were also invited to the research. As discussed, there was no involvement with any organisation and all invitees were spoken to in their own capacity and in compliance with the confidentiality of the interviews. The semi-structured interviews took place solely based on the permission of the individual who requested to be included in the processes. Further suggested participants of this study based in Ireland included others identified as the study evolved.

### 3.4.3 Storage and archive of data

In line with the National Framework on the Transition to an Open Research Environment, all data is preserved for a minimum of 10 years following publication as per Maynooth Guidelines. To ensure research integrity through compliance with relevant Data Protection legislation, as per the Maynooth University Ethical Review of 2021, this researcher will

- Obtain and process the personal data fairly
- Keep it only for one or more specified and lawful purposes
- Process it only in ways compatible with the purposes for which it was volunteered initially
- Keep it safe and secure, accurate and up to date
- Ensure it is adequate, relevant, and not excessive
- Retain it no longer than is necessary for the specified purpose
- Give a copy of his/her personal data to any individual on request.

(Maynooth Ethical Review, 2021)

Based on Maynooth University Ethical Guidelines, the most appropriate archive for data is cloud-based, fully encrypted and password protected. This cloud-based storage will ensure ready verification in electronic formation. All original data is authenticated as per Maynooth University guidelines, to ensure there are no scope for allegation of any falsifying of data. The interviews are held under a password protected file. To ensure secure data, the relevant back up and access logs will have the appropriate firewalls and anti-virus software in place. All encryption and security measure were in place for remote access to data through WIFI connection. Data will not be stored on a mobile device, USB keys, smart phones, video recorders, audio recorders and or laptops due to the risk of theft or loss. The data that is collected on a mobile device is encrypted and removed to a secure location at Maynooth University. Manual data is in locked files with limited access. No files showing personal data is available to anyone other than the researcher or an authorised person such as a supervisor. The Freedom of Information Act 1997 allows participants to access documents in the University's possession. A keen awareness of the Data Protection Acts 1988 to 2018 and the GDPR is critical in dealing with sensitive and personal information; therefore, confidentiality and disclosure of information is especially important. The researcher and supervisors at Maynooth University is responsible for the safeguarding of the data collated: Emily Dunne, Dr Treasa Kenny, and Dr Fergus Ryan. However, Emily Dunne, this researcher, is the only person to have access to the personal data.

### 3.4.4 Analysis and data

According to Mason (2018 :8) analysing the data gathered can be a challenging experience. Epistemological thinking, which Kuhn and Weinstock described as “theory-in-action” (Kuhn & Weinstock, 2002:134) has encourage the researcher to be methodical in exploring the personal perspectives of the participants. The software tool of MAXQDA was used to support coding of the quotes and help in generating themes.



### 3.4.5 Software tool, MAXQDA

In organising the data, which is the key to applying good analysing skills, this researcher has looked at the different software packages offered (with training) by Maynooth University. The decision to use MAXQDA is based on the principle that the software is designed as a tool, primarily used in unstructured text data and is suitable for qualitative and mixed-method research design. This software tool did not do the job of analysing, only allowed this researcher to structure each of the quotes into codes and then generate themes from the codes selected. These themes set the format for the analysis of the data.

The manual evaluation of data management was especially important for thematic coding, as this is an analysis tool with which this researcher is familiar. Another key reason for the choice to use MAXQDA was the programme is supported with regular updates and online training for the user. This was invaluable in ensuring that this software was correctly applied throughout the analysis. All the semi-structured interviews were transcribed manually and uploaded to MAXQDA for coding. The process of coding organised and sorted the data which was generated. This process offered the researcher the opportunity to not only label and organise the data but also invite interpretations of the data. According to MAXQA (2022) this software package offers one of the most up-to-date choices for thematic analysis. Thematic analysis offers the coding and visualization of the project to better analysis the data collated. Among the many benefits of using MAXQDA is the code and retrieve option, which allows the researcher to mark relevant and valuable information which becomes known by using assorted colours, which is also the approach that manual coding offers. Tools include the visualisation of the data and the relevant insights which can support the researcher in developing new theories (MAXQDA, 2022).

## 3.5 Ethics

All research projects must adhere to the highest ethical standards regardless of the method. Quantitative or qualitative methods are all deemed to fall under the same level of ethical standards. This research project applied for tier 3 ethical approval in line with the Maynooth University Ethics Committee under the Social Research Ethics Subcommittee (SESC). The tier

3 application process is over a longer period and involves more intense scrutiny. This allowed for robust approval and a clear guideline for the interview process. In December 2021, the ethical application was made to the Maynooth University Ethics Board to complete this research, which was granted in January 2022 (see appendix G). This application was a stringent process and extremely thorough (see appendix I). The ethical Maynooth University application outlined the process from the beginning and the protocols involved in ensuring that the participant and their identity were protected. No interviews were conducted until after March 2022 and the last interview was conducted in November 2023. Separately, an agreement was also drawn up with the Legal Aid Board Ireland (LAB). The LAB' policy is to engage with researchers in Higher Education Institutes (HEI) and other recognised research bodies. They aim to provide a forum for researchers to connect with the Board and encourage their staff and clients to assist in recognised research that has a shared interest and a common purpose (LAB, 2019). In December 2021, the LAB drew up an agreement with this researcher under supervision of Dr Fergus Ryan and Dr Treasa Kenny. The LAB agreement was an additional agreement which was put forward with the Ethical approval application to Maynooth 'university. One of the aims of this agreement is to ensure, among other things, that both parties, this researcher, and the LAB were responsible for data protection, confidentiality obligations, ethical soundness and publishing arising from the project. The researcher and the Board agreed to cooperate to ensure that the project could be completed promptly and to ensure compliance with their obligations. It is critical to ensure that this researcher is aware that the primary objective of the LAB staff is the provision of services and if they may be unavailable at various times. All issues this research agreed to following consultation with Maynooth Ethics Board and with the supervisors. (See Appendix D).

### 3.5.1 Unconscious bias

This researcher has developed an awareness of unconscious bias as this researcher is an accredited mediator with the Mediators Institute of Ireland (MII), a volunteer with Community mediation and Law (CLM) and a certified international family mediator with the international mediation Centre for Family Conflicts and Child Abduction, MIKK.e.V. This researcher is also an ambassador for MIKK.e.V involved in promoting mediation for Hague cases of parental child abduction throughout Ireland. This position became available during the last year of this

research and runs from 2023 –2025. Due to this researcher being involved in the process of family mediation it is important to recognise unconscious bias and how to deal with this. The training programmes for mediators are clear on this and it is discussed by all mentors. Self-reflective practice is a part of this researcher’s training and is also a requirement for every mediator who is accredited through the MII. The importance of a reflective practice group is discussed by Lang and Taylor (2000). According to Lang and Taylor (2000) the tools to manage triggers, unconscious bias and the constellation of theories and is central to a mediator's training in managing unconscious bias through reflective practice. Therefore, as part of the certified training for mediators, reflective practice groups and sharing and learning groups ensure that each mediator is equipped to be aware and manage any unconscious bias that they may encounter. Supervision, which is also offered to all mediators supports clarity in understanding the triggers for unconscious bias. This opportunity to speak and share thoughts on your work and any triggers has a benefit in exploring unconscious bias.

### 3.5.2 Copy approval and right to withdraw

As per the research consent form which was discussed earlier (see Appendix A), all participants were entitled to change their mind at any time and remove or change their interview up to and including the assigned period of August 2023. Each participant has had the opportunity to review their de-identified interview, as this researcher will forward the transcription to them first for copy approval. However, the aim was to ensure they were fully informed before deciding about being a participant. During the interview time, no conflict of interest had been identified or has arisen as this researcher is not involved in the process of mediation or court proceedings in any Hague parental child abduction cases. This research has no access to confidential mediation case information during any aspect of this study. The funding for this study was from the John and Pat Hume Scholarship and is not connected in any way to the Central Authority or the Hague Convention on the Civil Aspects of International Child Abduction or to any persons who play a role in the process. Any potential conflicts of interest that could have arisen unexpectedly would have been disclosed in writing to the designated person as per the Maynooth University Conflict of Interest policy. This was monitored throughout the study as per the Maynooth University Conflict of Interest Policy (see consent form, Appendix A, and the information sheet Appendix B).

## 3.6 Conclusion

As discussed, this Chapter has outlined the methodology and the method to be applied in this research on mediation and international parental child abduction. The Symbolic Interactionism theory of both Meade (1934) and Blumer (1966) was discussed in the relevance to how participants are influenced by symbols and the interpretations can often be different for each participant; thus, alerting their perspective. Applying this theory, to the interviews, the role of mediation can be viewed through a different lens from each of the professionals, due to their own experiences and symbolic interactions. Based on this theory, participants can be swayed by their own experiences and their own States' legislation for international parental child abduction cases. Therefore, this research offers an overview of the challenges and benefits that are perceived of mediation. The Hague Convention on the Civil Aspects of Parental Child Abduction and the impact of the Brussels II recast regulation for EU members is such an important aspect in the approach and process of mediation and therefore is explored fully through the methodology discussed. This chapter outlined the method of semi-structured interviews that was best for this study and as discussed it was chosen due to the conversational nature of the interviews. As discussed by Mason (2018) qualitative research is considered 'quite remarkable' (Mason, 2018) and can add a more in-depth understanding of the topic to be investigated. The research strategy and design are outlined in the plan of the stages for completing the research. A review of previous literature explored and illuminated what has already been discovered, enhancing the analysis of the data gathered using MAXQDA software and or manual analysis. The cohort of participants and the recruitment process for the twenty invited participants were also discussed and the reasoning was explicated. This research is relevant and timely due to the Brussels II ter Regulations recast of 2019 and in understanding the approach to mediation of the different member states, whilst focusing on mediation for international parental child abduction cases through the perspective of the professionals who are working with the families. The following Chapter 4 will report the findings of the nineteen semi-structured interviews and how they inform this research.

# Chapter 4: THESIS FINDINGS

## 4.1 Introduction

The decision was made in the preparation of this thesis to outline the findings in this chapter with the discussion on the finding in Chapter 4 Discussion. This decision was based on previous research that this researcher had reviewed. This findings chapter is a critical step in this research as the views of the participants are the foundation of this study and are a stand-a-lone chapter. According to Omasta and Saldana, (2022), it is important to communicate research in a transparent, unbiased, and fair manner. The complete analysis of each interview ensures that this distinctive analytical approach informed the findings in this chapter and the discussion in Chapter 5. How the participants work in international parental child abduction cases, their viewpoints on their approach to these cases and their recommendations based on their experience are key factors in the findings of this study. Therefore, this chapter must be comprehensive in sharing the voices of the participants as this allows the discussion in the next chapter to explore and analyse what was said and how it affects the outcome of this research. Chapter 3 outlined the approach to inviting the participants, the process by which they were fully informed, about this research and why it is being carried out. Following the consent received and the interviews being held, the relevant transcript was then sent to each of the participants and copy approval was obtained. This was a key point in ensuring that each participant's voice was heard correctly, and that each person was fully involved in the process. As described in Chapter 3, the semi-structured transcripts were uploaded to the MAXQDA software program, and this supported the coding and analysis of the themes which emerged. Each of the themes and subthemes generated are discussed in detail and the discussion which evolved is in Chapter 5. This chapter presents the participants' experiences and illustrates these experiences using direct quotes. The chapter outlines the context of each quote and its relevance to the study. The quotes from each group of participants were deemed the best approach to ensure that each voice is heard, and differences or similarities are identified. The choice of quotes ensures balance and adherence to ethical considerations, as per Maynooth Ethics guidelines (see Appendix H). These selected quotes are deemed by this researcher to be the most relevant

to the themes which emerged. This chapter does not include interpretation or explanations at this stage, simply the findings. The discussion of the findings can be found in Chapter 5. The concluding summary of this chapter offers a synopsis of the key findings and reiterates the key issues that relate to the research topic. This concluding summary will then set the path for the next step which is the discussion of the findings in Chapter 5. As each group of participants offered different perspectives on each occasion, the researcher has grouped the participants as below:

The interview participants fall into one of three distinct groups:

1. Mediators (M)
2. Legal practitioner (LP)
3. Legal experts who also practice mediation. (LP/M)

### 4.1.1 Objective

Mediation in general in this context refers primarily to family mediation, mediation in a child abduction context applies to the international context of when the child is abduction to another country or state without the knowledge of the left behind parent. The primary objective of this research is to hear the voice to the professionals who work in international family mediation and the legal practitioners who work with cases of international parental child abduction. Experienced family mediators also spoke about how they have not worked with many cases to date as they felt it is better to have specific international training and experience and primarily their experience was with bi-national parents. Giving them a voice in this research allows a broader exploration of the purpose and value of mediation in such cases from the perspective of the professionals involved. The research also gives voice to recommendations and suggestions from the participants on professional efficacy issues such as work and life balance to ensure best practice.

## 4.2 The process

As discussed by Kiesewetter and Paul, (2023) mediation for international cases is often the last attempt to secure an agreement. This process involves many different agencies such as the

courts, central authorities and the legal practitioners before the parents even get to hear about mediation. MiKK.e.V has found that the process of a third-party offering information and advice can reduce the stress of going to the mediation process (Paul et al, 2023). P4: LP/M discusses how mediation offers the parents a way to consider how they can find a way through.

*I learned so much from the different family models and, mediation, the families the possibility to focus on their family model and to focus on the setting they want to have for their family. So, which is different, what the court can give them, what the law can give them. The law has a standard wonderful standard, but it is a standard and so many families do not fit into that standard. And the mediation gives them the possibility to find their own way to express how they are, how they want to live as family after this episode, after this break. (P4: LP/M)*

P5: M discusses how important it is to have the required separate sessions for each party. This is the format of all mediation sessions (MII, 2024)

*I consider to be the absolute necessity of holding separate private meetings with both parties before bringing them together because that is where you will discover whether these parties are suitable for mediation (P5: M)*

When discussing family mediation cases, P12: LP was a little cautious of family mediation in family law, hence was doubtful about the process in legal Hague Convention cases, citing concerns about the legal and financial implications during divorce cases.

*But in a lot of cases, I've had some clients come to me where I would be concerned about them in mediation because they just don't strike me as they would not have a good grasp of all the finances are being particularly well able to advocate for themselves (P12: LP)*

P11: LP was clear that they felt the two professions, the legal and the mediator role are different and bring different elements together.

P4: LP/M recognised that the mediation role and the legal role can overlap, and it is important to point them in the right direction.

*I do not wear a legal hat. But sometimes it comes to the point when I realise, oh, this is going to be a legal question and we also, for example, sometimes we realise especially in the abduction cases, when the mothers who heard from their lawyer as well, it's everything which is happening is happening in the best interest of the child. And you must tell them. Well, that's not true and there is also a legal framework which says that the child has to be brought back as soon as possible to the place of habitual residence, because they have to figure out what is in the best interest of the child and sometimes their mothers don't see it then (P4: LP/M)*

Hague cases are referred by the central authorities to the courts and then to the Legal Aid Board in Ireland and to the Mediation services if required in Europe. P7: M describes the process applied in their specific organisation.

*The solicitor for the applicant would usually make an application that the case has been referred and would ask would somebody take that on, so my line manager would refer that to me, and I would ask the solicitor, the referring solicitor to also provide the name of their respondent's solicitor ...*

*Names and dates of birth of the children and what was a very brief background to include where the child was living when the Hague proceedings were instigated and I just ask the question is there a pending expert report, or is there any GAL's involved, so then once I get that questionnaire back from both solicitors, they email that back to me and then send an e-mail to both solicitors...*

*So then I send an email back to both solicitors, both solicitors copied in, and I say, Yes I will offer, and I call them mediation assessment appointments, and I give them a date, so I say this is the time and date that I will meet with the applicant and this is the time I will meet with the respondent and they will always be either a telephone call or a*



*zoom call and I ask the solicitors to have their clients to come back to me to confirm that appointment. (P7: M)*

The interdisciplinary professionals are involved at all aspects of the process in Hague international child abduction cases and work together in a collaborative approach.

## 4.3 Findings outlined

This chapter is entirely descriptive and objective with no interpretation or explanations. By focusing totally on the findings and the themes of the transcripts from the participants, the themes which have emerged are fully explored and discussed in Chapter 5, Discussion and Conclusions. This approach allows the voice of the professionals to be heard and the themes to emerge organically before analysis is applied. Following the interviews, the transcripts were uploaded to the software of MAXQDA to support coding and analysis. See 3.4.5 for full description of MAXQDA software tool. Themes are derived from the views of the participants based on their experience. The themes are then coded to attach labels to identify them and guide the findings emerging from the transcripts (Huddersfield, 2024). When subjects or features recur throughout the transcripts, they can be identified as a theme. However, in some cases, a single comment can be deemed just as important to the findings. Therefore, this researcher needed to be vigilant in the transcription and diligent in hearing what was said and its relevance to this study.

Communication was a key theme, and the sub-themes spoke about professional efficacy, reflective practice and sharing and learning groups. The opinions shared on co- mediation and solo mediation practices were noted. Technology became a theme as many of the participants wanted to talk about the online process post and pre-pandemic. The participants also offered their opinions on face-to-face mediation versus the online process. The legal background and the relevance of this for mediators created a discussion on national and international policy and the connection to the legal system. The new recast of Brussels II ter 2019/1111 Regulations and how the mediators work within the legal systems was also recognised as a theme under the heading of The Legal Framework. The importance of professional efficacy and the self-care aspect emerged after the first interview and was then added to the questions for others. Many

spoke about their experience and their work satisfaction, describing their role and how the support they received assisted them in their professional efficacy. This was an unexpected addition to the findings and became a key focus for some of the participants. Life experience and supervision also became a sub-theme under this heading. Life experience as many of the participants agreed that their own life experience helped them in their work and the supervision allowed them to work effectively. The attitude to resources drew some interesting comments and the effect that funding or lack thereof had on their work. All the participants offered advice from their own experience for new starters. Again, colleague support was sub-themed under resources as described by the participants. The context such as the challenges, including timescale and the pressure it can create were discussed and became a theme. The limits of mediation and the skill and training which was needed to support the process became a sub-theme of challenges. Finally, the participants offered their own recommendations that they wanted noted and what they felt would support the process today. These recommendations were based on their own personal and professional experience. Each of the themes and related sub-themes are set out below.

### 4.3.1 Communication

Communication can be described as a connection between peoples and discussed under the headings of technology and face-to-face. Cowan (2022) however, discusses the challenges of communication in the legal context and invites us to explore how emotion can play a role in communications. Cowan (2022) speaks not only of the emotion that is in the courtroom during difficult family cases, but the legal practitioners' own personal emotions, for example, lawyer emotions (Cowan, 2022). This emotional context was echoed by the participants. When asked about skill, P3 spoke about empathy and how the mediator needs to be aware of their own emotional journey.

*Kind of skills. OK .... Although it does not really.... I think empathy, is something that is important to give both parents the feeling that you ... can relate to their feelings. So, I think this is really important and as soon as you give them the feeling that you can relate to their feelings, so you're gaining trust and this is very important in these cases*

*(-- of course, the ability to be very flexible and to be very adaptive with communications. (P3:M)*

Communication was also discussed under the headings of technology such as online mediation and the face-to-face meeting compare. The role of the interpreters and translators was also discussed.

#### 4.3.1.1 Technology, face to face v online

The use of online mediation and court cases had to be implemented during the COVID-19-pandemic. Many of the participants spoke about the effect the pandemic had on services. Moving everything online was a key issue and most had to adjust to a new platform. P7: M spoke about how the legal process felt mediation could help with people being able to talk.

*But I think when everything shut down and people's access to services and the courts fell, the lawyers felt that the only process that people can have been mediation where they can talk. (P7: M)*

This research showed that professionals preferred face to face but when there was no choice, it was better than nothing. But face-to-face is what most mediators and legal practitioners said they wanted but are happy to adapt. All participants spoke of these challenges and the administration process. P12: LP discussed the challenges of IT (Information Technology) administration. P17: M spoke of how their opinion changed after COVID-19 and they took the changes on board.

*Lock-down was challenging as regards IT, so you needed to be very up to speed with doing things remotely, using your laptop case management system and all that sort of stuff. (P12: LP)*

*My preference is face to face and that is what I am hearing from other mediators as well. However, we were doing.... little or no online mediation prior to the pandemic.*

*Now we're doing quite a bit, you know, we had one or two mediators who actually, who worked with the child abduction cases, who found that they did work online, out of necessity because one parent is outside the jurisdiction, but now we have many mediators including myself who are comfortable to try working online and see if it works for everybody. (P17: M)*

Kenny (2022) discussed how groups adapted to mediation online during COVID-19 and noted that mediators need to be aware that 80% of the body language is not seen and this can impact online mediation (Kenny, 2022). This was captured by the participants in their views on being able to engage on a more personal level with people. P4: LP/M captured this perfectly and offered a clear description of the comparison of online and face-to-face, whilst also discussing how some mediation could not have been done without technology.

*Well, before I before I did it, I thought, I cannot do it. And I said, well, it is only, it is not second class, it is impossible. You know there is so much, but from my experience it is not true, from my experience. I have had quite a few cases also child abduction cases, which worked well. Of course there is something missing. There is the missing, the welcoming, would you like a coffee. How do you feel? I see you are sitting so and so, (simple questions on which way the sun is shining in the window) is the sun on your side? Whatever. What you do to small talk to feel people comfortable. This is limited in online. (P4: LP/M)*

*Also, there are other limitations in online. For example. Now, I see your face. I do not see your hands. I do not see if you are cross your knees or whatever, so I do not see how you are dressed except what I see up here [using hand gestures to show the top part of the body] so all these things. would not have had the possibility too, because one parent was in [Europe], the other parent was, wherever, in [Europe] and the other was in [Southern Hemisphere]. (P4: LP/M)*

Getting everyone in a room together and aligning with the different timetables can be challenging as discussed by Paul et al. (2023). P11: LP spoke of how technology can help in

organisations and with several stakeholders; described how trying to have everyone face to face could be difficult and a virtual meeting can support in issues like this.

*IT within the [organisation] is a huge problem, a huge problem, so we would need to have all those systems in place. But potentially it could get very messy if you had clients, barristers, three separate locations then you had another client, barrister, solicitor, then you have the mediator, I think there must be some form of.... it probably would be a little bit more helpful if one party was going to be, virtually logging in then the other team is at least present with the mediator and that there would be a room available that the mediator could go and just address the person virtually and have their conversation with them. (P11: LP)*

P13: LP/M explained how the core work in international is more streamlined with the online form.

*So, I suppose one of the benefits of COVID-19 and now I think of it, like I would have done international before COVID-19, but one of the benefits of COVID-19 is that, working online, conference calls and video mediation is now much more part of our core work and much more likely to be how we must work in international . (P13: LP/M)*

The benefits of the technology in online mediations became more relevant following the restrictions of Covid-19.

### 4.3.1.2 Interpreters and translators

Carroll (2023) as discussed in Paul et al. (2023) captures the benefits of having a dual language co-mediator as an interpreter. These discussions are based on the interpreters of the spoken language and not sign language interpreters. The benefits of a co-mediator who understands not only the language but also the culture can offer so many benefits such as costs, timings and convenience for the parties involved (Paul et al. 2023).

*I mean, that is not a skill again, it has to do with life experience, and you cannot say everybody should do it, you know, or should have it, or something like that. Because I know there are good mediators out there who do not have experience of bi national, But and the language ability, I mean I (personally) have several languages. (P19: M)*

In the following quote P9: LP/M spoke of the two roles that they have, advocate for the child and mediator. However, the imbalance of power was clear when the mother wanted the mediation not to work and hold on to the child.

*I could speak both languages. So, this is why the judge said OK, we can try and mediation with you as a mediator, but then if it does not work then you cannot come back anymore as an advocate of the child. And in that case, I would take that decision, the mother was in (had an) advantage. So, the mediation at this very moment finished because the mother said, OK, if mediation does not work, I will get what I want. (P9: LP/M)*

When dealing with an outside interpreter P7: M felt that it was not always beneficial and created a delay in the proceeding.

*I do find it more difficult to work when there's an interpreter to tell you the truth because sometimes my language that is very familiar to me in my work and is not fully understandable to the interpreter and time has to be spent explaining to the interpreter what I said, and what I need to know the different ways and I don't like that. Because I also feel, I wonder do the clients feel that I am having a conversation with the interpreter about the case, so too much time must be spent some time with the interpreter for them to fully understand. (P7: M)*

P13: LP/M spoke about the difficulties with an interpreter, not just the cultural but the layer of complexity.

*Where I was working with the translator, it is harder without a doubt, even where you've got the cultural elements where English, we can assume, because we're all speaking English, we all understand what we're saying and we forget the colloquialisms and all that that we use, that other people may not understand it the same way. But where English isn't (emphasis) everybody's first language, and you have a translator, translating what you're saying, that brings another layer of complexity....because you are trusting in terms of trust, you are trusting that the translator is translating exactly what you are saying, and you can't know that. (P13: LP/M)*

However, this research acknowledges the value that interpreters and translators have in such cases and specific certification that is involved in becoming a legal interpreter. According to the LAB Ireland (LAB. 2024) interpreters and translators must be approved and passed by authority before being engaged. These views from the participants are connected to the actual trust involved from their perspective and do not include sign language interpreters.

### 4.3.2 Role of mediator

Building bridges is how mediation is described by Cork (Family Law, 2021) and the aim to build bridges is reflected in the views of the participants. However, as also discussed by Cork (Family Law, 2021) the mediator's role is not to become involved in what decisions the parties make, but to help them to come to sustainable decisions themselves. This view is also reflected in the views of the participants.

*It is not for me to know where the children's location is best served, but as a mediator, we take the ethic that parents collaborating as much as possible within a spectrum is better than not. (P16: M)*

The views of the legal practitioners on the role of the mediator were noted. The role of the mediator from the perspective of the participants was very clearly laid out. Both professions

spoke about the uniqueness of the role and the importance of regulation in this field. However, as discussed by Beer and Steif (1997) mediation does not always result in an agreement and sometimes a stable relationship is what can come from it. P18: LP/M agrees that sometimes enough is not enough but good enough and you can constantly question yourself.

*You know, very often seen with mediation, was that agreement the best you could have done? Nothing is ever the best. What you are looking at is, is it workable. If it is workable, it is fine. If it preserves the relationship, it is fine, things change, people change, and circumstances change. No such thing as a perfect agreement, you know, and I think to let go of that as well because very often we are told you want it to be perfect. You want the best. (P18: LP/M)*

Agreement between parents has been proven to help children cope with the pain and upheaval of parental separation. According to previous studies a voluntary agreement between the parties is recognised as being more sustainable than a decision that is imposed by the judiciary, (Dunne, 2019). P16: M discussed this and how mediation can help and P9: LP/M noted that mediated agreements can be sustainable for many years.

*Because you get to the core of the conflict, and I do not know if a normal civil issue is better for them to solve it with mediation or not. Probably yes, but family issues which are for me, I specialise in family issues, and I see that many times that mediation can really solve the problem sustainably for many years. (P9: LP/M)*

The role of the mediator is described by many theorists such as Haynes (1980) as assisting in conflict resolution whereby the result rests with the parties themselves supported by a third party such as a mediator (Haynes, 1980). P1: M describes their role as supporting the parties in re-connection.



*What mediation is, in my environment, is to provide a space for re-connection. My role as a mediator is to allow them to be heard and switch off the defensive mechanism. (P1: M)*

The professionals who worked in both mediation and law spoke about how they arranged their time and space and why they felt separating the time and space was important. This separation of space followed the question of how you approach a mediation session when you are legally trained and not able to offer advice as per the mediation directive (MII, 2023) (MiKK.e.V, 2024). P4: LP/M who is both mediator and legal practitioner discussed how they arrange the room for each of the meetings.

*I always had a part for the mediation in my room. My room was a very personal room. There were no law book standing around. I always had a break of at least half an hour between my lawyer's work and starting the mediation because I wanted to.... get some fresh air in and had it on a different spot with different tables. Different, different table, different chairs. So, I had a special setting which took the people away from the other role and took me away from the other role. (P4: LP/M)*

The use of softer skills was discussed by P5: M as a benefit of the mediator in a time when the parents may feel frightened. As discussed by Lang and Taylor (2000) the actions of a mediator can move from interactive to reflective practices to work with the parents. Self-reflective practice is key to the work of a mediator.

*So, when we are frightened, we cannot 'think straight.' This is where a mediator needs to use the softer skills to listen effectively to the party until they feel heard and understood. Is this a big part of a lawyer's training? (P5: M)*

The role of the mediator and the different use of skills was noted by some mediators as being different to the legal practitioners. The views of the legal practitioners on mediation were noted and discussed further in Chapter 5.

### 4.3.3 Co- mediation and solo mediation

Co-mediation has also been noted and recommended by the HCCH Guide to Good Practice: Mediation (HCCH, 2012). This is recognised as best practice in international child abduction cases. The value of having two mediators is deemed to add more understanding from different perspectives and limits the need for interpreters. P2: M remarks that co-mediation and gender combination is the best approach. P8: LP/M clarified that co-mediation is practiced during training programmes. P6 LP/M spoke about circumstances whereby the parties may want to have two mediators, and they do not have a problem with arranging this.

*I would, I would say co-mediate. You know, and if you can, it can be good if you could, if you have a male /female combination, that is the best you know, but you must be able to work with somebody. I mean, I have worked with females and work with men. So long as the man is okay you know. So sometimes, like three women and a man in the room, it is imbalanced, you know. (P2: M)*

*I did it in training, I did it in training? in the (European city). I did it in training in (different European city). I did it once or twice as a try-out in (a European city), but not really a long project. I do not have a lot of experience in co- mediation .... my experience that I have are good, I mean, I would like to do it more. (P8: LP/M)*

*I do not have a problem with either practice and sometimes I need to call for another mediator, for example now I am preparing for another mediation, it is international, and it is in the context of child abduction. The father is living in [European city], and the mother is [European nationality], and she took the child, four years old and she came here to [European country]. So, if I feel some resistance or some barriers to mediation from the father, I am going to give him the contact information of [colleague], so if he wants, he can call her and have her as a co-mediator. (P6: LP/M)*

When co-mediating, P4: LP/M likes to ensure both mediators have time to meet and form a relationship before going into the mediation sessions. Having the opportunity to meet with a co-mediator before starting mediation was recognised as being a positive approach as one mentioned that the connection with a co-mediator is not always positive. Therefore, it was deemed as being important by all the participants.

*If I do mediation with a new co-mediator I have never met before, I would like to clarify her/his personal story a little bit, to feel more comfortable, but ask her/him, what is her/his link to the question of abduction, to the question of cross border? Has she /he had any personal experience? And mostly we all have some personal contact with the field, but .... I am always clearing it before advance. (P4: LP/M)*

MiKK.e.V (2024) promotes best practice with the co-mediators being familiar with each other. P5: M concurs with this practice and would not be comfortable to just co-mediate without getting to know each other. MiKK.e.V have a panel of international mediators who would often be in touch or on conference with each other, hence they would be familiar with each other before meeting (Paul et al, 2023).

*Yes, but I would not do it unless I really knew the person. So, when I see the community organisations doing it and they are doing it without getting to know each other as co-mediators, that must be very difficult. It is important that mediators could have sessions, to get to know each other. So, asking about what is important for the other in mediation and what value base they work from as a mediator, can be discussed before they start to work together. (P5: M)*

However, a small selection of these participants prefers to work on their own. This was discussed and expanded on by a selection of the mediators.

*I mediate on my own. Not in these cases (international) I would co-mediate sometimes if we have multi parties, but where I have just a mum and a dad, I am fine in those cases. (P7: M)*

This can often be attributed to the costs. P8: LP/M spoke about how they mediate on their own due to the extra cost it would be to co-mediate. P13: LP/M mediates on their own but likes the idea of male and female to reflect the parties.

*I mediate alone. I would love (emphasis) to do it in co- mediation. But....like in the (EU country) they do it a lot more and it has to do with money. In the [city], they can get a lot of money, like there is another system.... But if we do co-mediating, it is not usual in [EU country]. So, when you do it, you must be willing to earn only half. (P8: LP/M)*

*Mediate on my own and that is very much a resource issue. I have done co- mediation; I have done it recently in terms of other mediators getting more familiar with the ethos of the organisation and I have done it in that kind of context. I like the idea of a male / female. (P13: LP/M)*

P5: M explained that if the conflict is heightened between the parents, then they would find it helpful to work in co- mediation.

*I think more than 50% of the cases I was doing on my own and the other half I was doing it co- mediation and the more, the more, (emphasis) conflicts (cases) that I had, the more I like to work in co- mediation. (P5: M)*

The opportunity to have male/ female and the relevant cultures and languages was also deemed by all as being important and is recommended by the HCCH (2012) mediation Guide to Good Practice. However, P13: LP/M recognised the importance of this and the need to have justice

not just done, but seen to be done, but it often is not available due to time or professional availability.

*Now that is, I suppose you could be dealing in an international abduction. It could be two female it could be two males, but whatever gender the parties are. If you can have those reflected in the mediation. I think again, it can make it easier to engage, because you know, that phrase, "Justice must not only be done, but be seen to be done." .... The perception, I think, can be that the female or the male is aligned with the same gender. In any mediation and in particularly in international , where you're trying to build connection and trust and you don't have a lot of time to build that because you're against the clock in terms of getting back and, those pieces, I think are useful, because anything that can help you build trust easily is a good thing. (P13: LP/M)*

P15: LP/M prefers co- mediation and feels it has more benefits to it. This is echoed by many of the participants and through the training with CBFM (2023). P13: LP/M concurs that the relationship between the mediators is important, and the building of the relationship will not only benefit the mediators but the parties too.

*And usually, I co-mediate with the psychologist I work with because I have a partnership with a psychologist that I worked with many years ago on domestic violence disputes initially. She/ he is also a mediator and sometimes we do mediation s together it has its benefits. (P15: LP/M)*

Understanding each other and how each mediator works is helpful to the session. As described by Love and Stulberg (1995) co-mediators ideally should be coordinated with one another. This is supported by practical guidelines outlined by Love and Stulberg (1995), therefore building trust is especially important and each having a role in the process as discussed by P13: LP/M.

*Nothing is simple because two people building trust (--) does not always mean that, that is easy, because you have got to have two mediators working well together coming from*

*the same corner. So that it is building those blocks. Sometimes if you have one mediator who is driving it, facilitating it, knows where they are going goes left, if one party is going left and the other, you are not trying to think, but why did he or she asked that her do that. So, there is there is complexity in co- mediation too. (P13: LP/M)*

Many of the participants spoke of how co-mediation supports them and it is good to have someone with them. P3: M captured how it feels to have support, and this is echoed by the research CBFM (2023): having someone to discuss a case with is helpful.

*To be honest, I do not think it is more challenging it is it is just you have to have more experience. You must be more fluent in.... mediation language if you want to say it like this. Umm. Since you are working with the co-mediator, it helps. I mean if I would have to do it on my own oh my God, I would feel totally overwhelmed, overwhelmed (emphasis). But since we are two and you always have the, you know, one can always lean back and the other, the other one is in charge and the other way around or both are in charge, then it gets tight for the clients. So yes. So.... I do not think it is more challenging, but it is more, yes, you just have more experienced. (P3:M)*

P19: M captures how mediation can help when the conflict is heightened. This is echoed by research from Reunite (2014) which mentions that mediation can offer parties time to talk even when the issues have become escalated.

*So, it is more effective the less escalated the conflict is, but there is also this fascinating thing because it can be more effective, even if it is so escalated because people have, they really have a lot to lose. (P19: M)*

The benefits of co-mediation are discussed in this section and thoughts on how co-mediation verses solo mediation and will be discussed further in Chapter 5.

## 4.4 Child focus

Konstanze Welz (Paul et al., 2023) speaks about her own experience as an abducted child and the trauma and the long-term consequences that followed. Following her own personal experience Welz has now trained as a trauma recovery coach and international family mediator (Paul et al., 2023) and speaks about the benefits of involving the child in mediation from the onset. Welz has spoken about how, as a child herself, she was not aware that anyone was in the same predicament and now feels that mediation would have been beneficial to her and the whole family during such a traumatic time (Paul et al., 2023). As stated by Kelly (2008) research has shown listening to the child and including the view of the child is more beneficial than not listening to the child and not taking their views into account. Kelly (2008) contends that not including the child's views can be damaging to the child. O'Kelly and Brady (2014) conducted research with children on how being involved in proceedings in what was about them, was empowering. This involvement and invitation to be heard had immense value for the child (O'Kelly and Brady, 2014). This resonates with the findings in this research and the views of the participants. P19: M captures the importance of how involving the child can change the context for the parents.

*I mean, the few times I have done it, I have ended up saying, wow, you know, you have one special kid there. And that that changes the context for us, of course, because we have had the interaction with this child, I mean to I know it is a controversial thing, but it is important. (P19: M)*

Freeman, Taylor, and Schuz's (2019) research project set out to review the practical application of Article 12 of the UNCRC (1990) (Freeman et al, 2019) Freeman's previous research (2014) questioned the differences in professional opinion about child inclusion in HCCH proceedings. P19: M also spoke about how child inclusion does not always happen in the proceedings, but when it does, it works.

*I know we have tried to do it in more cases than it has happened in, but when it happened it has been great, because the kids love it. I mean, they feel really like, you know, they are being listened to. (P19: M)*

This was echoed in this research as some of the participants had different views on the voice of the child in mediation and cases of international child abduction. Some of the mediators felt it was important to bring the parents back to include the voice of the child as in agreement with Article 12 of the United Nations Convention 1989 (UNICEF, 2024).

*So I would always do my best to work indirectly, when we have a plan, to put it up in grids, and I would say, now bring it home talk it through with the kids, get their views and feed it back to me in mediation, so that way I am getting indirect consultation, rather than direct consultation, so to come back to your question yes, I would need to think it through clearer, but yes if there's an agreement I think there is no harm in their wishes being heard. (P: 5)*

However, the thoughts on involving the child and child-inclusive mediation were mixed. Following a question on child-inclusive mediation, P9: LP/M mentioned once the parents are working together the child will benefit and to meet with them is not always necessary.

*That is a particularly good question.... my premise is if you solve the problem with the parents, you solve the problem with the children. So, if you get peace between the parents, you protect the children indirectly. (P9: LP/M)*

*So, the three times this happened, I could confirm my suspicion. Not the child, not the children had problems, but the parents.... and how they talked to the child, how they react to the child. So, once you change their mindset and accept the child as it is to reduce the level of stress.... (P9: LP/M)*



According to O'Sullivan (2023), the child-centred approach is the key and recognises that the child can be directly affected and therefore an opportunity to hear the voice of the child as per EU directive is crucial. P7: M offered an example of an agreement without the child involved but with child experts involved.

*The clients produce a different agreement and child protection is not adversely affected.... We then proceeded, and I kept track of the clients' progress all the time. 'Have you met with the expert, has the child met with the expert?' And you know in these cases it usually happens quickly enough; it is not like in normal separation and divorce cases these experts' cases normally happen quickly enough. (P7: M)*

Others felt that the child is best to be included and to let the child be heard. Following the UNCRC (1992) article the voice of the child should be encouraged to be heard. However, participants described how it is often not easy to implement.

*It is important when the child is a bit grown up, in any case under 16, but when the child is 12 or 13, they also should be, in my view, involved a little bit in the whole thing, not just the hearing. But just to explain to the child as well and explain the options of agreements and the mediation as well children understand very well, I think children can have a positive impact on their parents in reaching an agreement. But it is not happening. (P5: M)*

P7: M captured how the parents often do not realise that the child has a lot of opinions on the family situation, regardless of their age. The example offered was the youngest taking in everything but not being included. This is echoed by research by Freeman and Taylor (2023) outlining the child's need to be heard.

*So there might be two or three (children) but the youngest would be four and it's funny but the parents would always say, 'oh don't mind them they're kind of oblivious to*

*what's going on', and they'll say, 'you won't get much out of him' and it's funny, but sometimes it's always the youngest ones whose voice you will hear in the room because they are used to having to fight their corner with their siblings, their bigger siblings, cos they have a lot to say [laughs]. (P7: M)*

In discussing who else should be involved in the family mediation session Kieseewetter and Paul (2023) talk about how the approach to include the child is different in different countries. A suggestion by some mediators is to bring an image of the child with them to the meeting. P1: M:M acknowledges this by inviting the parents to bring a valuable picture of the child with them.

*And then when you are dealing with couples with young children again it is about you know, bringing them back from the conflict. Most of us when we are training in mediation, we talk about drawing a picture of the children on the whiteboard in the photographs and I will always ask them to bring a framed picture from home of their children. The reason I ask for a framed photograph is because, if you framed it, it is either a special photograph or memory or it signifies some sense of importance. (P1: M)*

P18: LP/M portrays the feeling of a little boy and how vulnerable he seemed during a mediation case. P18: LP/M also described other tactics to distract him and let him talk about himself. Lesley Allport (Paul et al. 2023) discusses the challenges the mediators have in achieving a balance between the rights of the child and not placing undue responsibility on the child.

*Even the little boy found it extremely hard because he just kept telling me how much he loved his mum; how much he loved his dad. He did not want to hurt anyone, and you are saying to him, I hear you, but can you tell me something else? Tell me about yourself, tell me about what you are doing. Tell me what you like. Is there a particular soccer team? (tell me about) your father and what are you doing in school? You are trying to get people to open to you and talk to you in a way that hopefully will relax them. And then you know even for the kids, because there is so many complex*

*relationships at play. Like even for him, he was worried about his older sister. (P18: LP/M)*

Including the voice of the child is a legal right and the views on this are complex as most of the interviewees dealt with the parents only. The opinions of mediators who worked with children added to the value of this research which will be discussed further in Chapter 5.

## 4.5 Challenges

The participants each acknowledged how complex these situations are for the families and spoke about how escalated the conflicts can be. P1: M captured the attitude of some family mediators of being a fixer and mentioned that this is not the job of the mediator.

*Part of it is letting go of an ego, because if you are in the room and you think you can fix every problem that is going on in the room and if you think that is your job, then you are in the wrong place. (P1: M)*

P2: M discussed how adversarial these mediation sessions can be. O'Donnell (2008) considers why mediation can be more productive than the adversarial approach, while also understanding how adversarial the situation can be.

*They are so adversarial and toxic by the time they come to us, so there is such a history of adversity. (P2: M)*

Many of the participants spoke of how rewarding it can be when a mediation is successful, this quote from P7: M captures this thought.

*It is extremely rewarding work because it is a huge thing to happen in a family, it is just people's worlds are torn apart when you see how they can just shift in a mediation it is remarkable. (P7: M)*

Ten of the practicing mediators who were not typically involved in taking legal proceedings spoke of how rewarding it can be and how much they enjoy mediation as described by P1: M.

*I love it, I love it and it's funny, people often say, how can you do that, do you not come away with the weight of the world on your shoulder, but you actually don't because you are lifting the weight off for somebody else. And if I say that, sorry, they are lifting some of the weight they are carrying, when you see them .... the little moments. (P1: M)*

Vigers (2011) research discussed how mediation is much more understood today but questioned how often it is applied. This is captured by the participants. P19: M talks about providing more information on mediation can help the parties understand the process.

*No, easier in the sense that it is more well-known, and people are more familiar with it and more likely to do it. But I mean, the people you know who are stuck in their conflicts are still stuck in their conflict. But yes, I mean it is much more well known, yes. (P19: M)*

Challenges are recognised by all the training programmes such as MiKK.e.V and exploring the complex issues in mediation practice is recognised as a benefit to the parties.

### 4.5.1 Skills and training

The role of training and ongoing training was a key factor for all the respondents. All the participants discussed how training and development (CPD) was crucial in ensuring best practices for mediation. Each of the participants were aware of the benefits of CPD and keen to have mandated regulatory training programmes. The value of training was alluded to by P5:

M and how the training affected their work. The gaps in training and what is needed for specialised cases were discussed by P7: M.

*So, I started it [the course] and it started everything for me. It was amazing. That is where I learned my first listening skills, where I learned that behaviour is about respect and is about mutual respect and that children were not children and that they were people. And we needed to treat them like people. And so, years after attending my first parenting program, I was asked to co-lead one with one of the trainers. (P5: M)*

*Our experience is that people who have come in from.... and taken training elsewhere .... (other organisations) have quite large gaps in their knowledge, you know in terms of what the family mediation services need them to know. (P7: M)*

Walker and Khalaf-Newsome (2023) discuss in Paul et al. (2023) how the EU have stressed the need for specially qualified mediators handling mediation in child abduction cases (Paul et al. 2023: 167). The professionals involved concurred with this and P7: M spoke about how the mediators need the correct training to be effective.

*The training that has been provided from the mediation service for many years has been exactly what was needed for the mediator in the [organisation] and is what we need the mediators trained to be. So that is the only way that the [organisation] can assure, is the only way that people can hit the ground running, know what they need to know. (P7: M)*

As discussed by Khalaf –Newsome in Freeman and Taylor (2023) the specialised nature of the international family mediator is a unique role. International family mediation (CBFM) and NGOs such as Reunite International (UK), MiKK.e.V International Centre for Family Conflict and Child Abduction (Germany) and the mediation Bureau / IKO (The Netherlands) promote the services and training for this specialised role (Freeman and Taylor, 2023).

*I suppose having the skills enables you to ask an appropriate question because you know enough to ask an appropriate question, and you also know enough to realise whether you're connecting well with the client or you're not, or what might be impeded because you do a lot of training on self-awareness, you know, because in any mediation I would say the mediator is as much party and influencing it as the parties like the three of us in the room, not just two, with a facilitator. (P13: LP/M)*

O'Sullivan (2019) recognises the value of specific tools for successful mediation. This is captured by P6: LP/M who spoke of how incorporating the correct tools is key and if they do not feel they have the right tools for mediation, they must find them for themselves.

*So, every time I have a lack of tools, I go look for this tool. So, I did special training on negotiation, and not marketing negotiation, no, negotiation like Fisher and Ury and I had a life coaching training. I had a minor audition training to know how to speak with kids at the age of 10 and now I going to start in [date], I can start a new training of coaching and linguistic programme (P6: LP/M)*

The family legal practitioners spoke of the skills that they felt are a requirement for an international family mediator from their experience and perspective. While advocating for mediation they discussed how legal practitioners also have a good deal of experience with conflict and negotiation settlements. In Ireland following the mediation Act 2017, solicitors must advise the parties on mediation services and consider mediation; they must also give the parties information on what is available and advantages of using mediation (MII, 2024).

*I have a huge respect for mediation, and it is very worthwhile, and it is an important level of skill which we do not have. But then lawyers and solicitors have a lot of skills in terms of negotiation and in terms of trying to you know, but we would negotiate quite a few settlements ourselves without even going to mediation. So, it is good to have that recorded and noted (P10: LP)*

According to Beer (1997), soft skills such as empathy and patience, should always be part of the expertise of the mediator. It was noted that the additional soft skills were very salient throughout the mediation process. Trust issues and understanding high-conflict cases were also considered to be valuable throughout the process. P19: M spoke of understanding high-conflict cases.

*I mean, people are always terrified. They are usually terrified; they are going to lose their kids. They also feel super wronged. They also feel absolutely no trust whatsoever in the other side. (P19: M)*

The trust issue is also connected to empathy and focusing on the parties. Each of the participants acknowledged that the parties have lost trust in each other and the process, therefore the connection with the parties is a critical step.

*I think the key skill, the key skill for me is empathy. You have got to find a way of connecting with the parties. Because if you do not connect with them, they are not going to trust you. They certainly do not trust the other party, if they do not trust you, how are you going to make progress? (P13: LP/M)*

Participants noted that empathic skills are so important and can help the parties to know the mediator aims to understand and make a connection with them. Many of the mediations can be complex and empathic skills can show openness and a willing to understand.

*Those empathic skills, I think clients will forgive you an awful lot if they see that you are trying to understand it from their perspective and that connexion (P13: LP/M)*

As mediation skills are now incorporated into law training modules (Law library, 2023), many of the legal practitioners already have a knowledge of mediation as part of their skillset.

*I am a certified mediator for not that long, but when I did this mediation training to obtain the certificate, I found out that I have done this mediation before. So, then I do not know if the certificate changes something substantively in my practice. (P15: LP/M)*

The length of time being a mediator was expressed by P19: M as being positive whilst discussing experience.

*What is my role now? I am kind of one of those oldies, but goldies (laughs gently). (P19: M)*

P17: M would like mediators to have more training in the Hague cases and be comfortable with the legal aspect of such cases. This is echoed in studies by Paul et al. (2023) that family mediators do not have specialised training.

*We have a lot of mediators who would be perfectly capable in this area but have a fear of something they do not understand. I think when they hear words like child abduction, Hague Convention, that scares them off and you know. So I think the training piece that we need to do, that we could do if we were to formalise it as a little module would be really just to explain the context of the legal proceedings that lie behind this work and, you know, and the types of timelines, because really, and this has been pointed out to me by a few mediators, at the end of the day, you're talking about child arrangements. (P17: M)*

Skills and training were discussed in detail by the participants, and this echoed the literature review findings as discussed further in Chapter 5.



## 4.5.2 Time restrictions

The time limit for international parental abduction cases is a constant issue for the mediation process (Paul et al, 2014). It is important that the date of the mediation can be co-ordinated with the dates of the court cases; this can avoid travel costs but more importantly any agreement made can be put to the court immediately (Paul et al. 2014). It was mentioned by 20% of the participants that the parents need time between sessions.

*What I say to my clients is ...you need d after every session at least one week.....but yes, to let the emotions calm down and work them in your mind. (P9: LP/M)*

However, with the ‘Pressure cooker method’ (Rodrigues, 2019) which is used by many European mediators, describes how court-referred mediation over a weekend or brief time can be beneficial as the parties had the opportunity to be heard. P13: LP/M spoke about the tight time limit and P17: M spoke of the urgency of such cases.

*In international abduction cases, time limits are tight, court rightly involved and awareness of that, so that you gather that information, so you know the time limit you must work with the parties, is crucial. So, you need to know enough to be able to ask those questions around that, so that you can structure the mediation appropriately. (P13: LP/M)*

*Do we need to respond to these cases slightly differently than your average separation or divorce case and because there are some issues that just need to be acknowledged and the speed of the of the court proceedings and the urgency of the court proceedings really impact on that. (P17: M)*

P15: LP/M spoke of the challenges of the six-week time limit for Hague cases and P13: LP/M discussed how the mediator needs to be sure that the parties have the correct legal information to proceed.

*Because in mediation we do not deal with the legal personnel involved, so we are relying on the information and the time to go back to the legal people when time can be of the essence in these cases. This is also an issue. (P13: LP/M)*

*I do not think, because if the six weeks term will work, it is a matter of the jurisdiction. You know it works completely different in Germany, in the Netherlands, in Bulgaria, in Romania (for example), things work differently. (P15: LP/M)*

### 4.5.3 Limits of mediation

According to the Mediators' Institute of Ireland, one of the key issues which limit the use of mediation is domestic violence (MII, 2023). This is recognised by many organisations as a factor which can exclude the process of mediation to ensure the safety of the child and the other parent. This is related to the protection of the child or children. Keshavjee and Khalaf-Newsome (2023) discuss how screening for domestic violence is essential before mediation can be considered and this screening process is also essential in training mediators (Paul et al, 2023). This screening is imperative to the decision to move forward with mediation. The participants of this research spoke on the issue of domestic violence in cases of mediation. P3: M felt that mediation has limits when there is any kind of violence in the family. P6: LP/M speaks about coercive control and how it also limits access to mediation.

*Definitely. Yes, any kind of violence towards oneself or towards another person is a problem. It is something where, yes, I think, mediation finds its limits. (P3:M)*

*Cases where I see that there is .... psychological violence and one of the parents are under the control of the other. (P6: LP/M)*

Understanding how the parents' conflict is the primary issue during mediation and according to Vigers (2011) this can make the mediation become stagnant. P12: LP felt that it was due to the bitter relationships that the parents had, that the mediation could become more to do with their issues, rather than with the children and limit the process.

*You know you're dealing with parents who have very acrimonious relationships and often times significant issues of their own....Sometimes you have parents who are very, very difficult, and they just can't meditate, and you find that in the (..) court as well, they just couldn't agree on the colour of the wall..... So, mediation is not going to help that. It can when people are ready to be reasonable and deal with each other and to behave in a conciliatory manner, but oftentimes in this type of scenario, those are not the kind of parents you are dealing with. (P12: LP)*

In discussing the limits of mediation, P9: LP/M offered an example whereby one of the parents was unable to continue due to mental health issues. This links back to ensuring that each party can understand the situation and have the capacity to engage (MII, 2024), which is part of the mediators' guidelines.

*But the mediation which was online was interrupted because of.... well, in that time it only happened one or two times that we had to interrupt, because in this case the father had real disorders that he was unable to concentrate. ....Something was going on in his mind. It was not possible to have a mediation, so we had to abort it. But the next step would have been to talk to the child. (P9: LP/M)*

Voluntary mediation and a willingness to be involved is recognised by all theorists as a crucial step in the process. P17: M spoke about keeping the channels of communication open, even while the legal process is ongoing,

*Or do you want to put a short-term parenting arrangement in place while the proceedings are ongoing? Let us just keep the relationship with the children going in the best way possible and you know how you are going to deal with the summer holidays or birthdays, sometimes that can soften the conflict a bit. (P17: M)*

A safe place is key to mediation and the confidentiality of the meeting is paramount to the process (MII, 2024). It is also recognised that mediation is not always the best approach, and the screening meeting is critical. P5: M expressed how the needs of the parties are primarily.

*This is where I pick up whether the case is suitable for mediation or not (the screening meeting) as sometimes investigation or the legal process may be better than mediation, I want to know if they may need a support person or could be better served by having their solicitors in the room also. But more importantly than anything else I want to ensure that the mediation process is a safe place for both and I want to ensure that I am well prepared for what may arise in the joint session – even though I know there can still be surprises! (P5: M)*

The limits of mediation capture by the participants are noted throughout this study.

#### 4.5.4 Resources

Resources were discussed by all the participants who work within organisations throughout Europe. Private mediators did not discuss this topic and offered no issues with any lack of financial resource. P11: LP felt there is an issue with resources available in specific NGO organisations but not all.

*But if I could say one thing about dealing with these things from my perspective, a huge thing is the resources, the resources, and that will vary depending on the (organisation) that you go to, but that was my experience. (P11: LP)*

The six-week time limit set by the Hague Convention was an issue discussed by P10: LP and noted that it is more about resources as other issues can affect the process.

*I think, I'm not sure how that can really, critically impact (emphasis) in terms of, I think it's more around resources and possibly having to look at a kind of a structural change, in terms of you know the level of detail that the affidavits sometimes go into, but then, on the other hand there can be very technical issues that can arise in cases, so it's difficult to see how you can streamline it you know, how you could radically streamline it in terms of, because obviously, from both the applicant's perspective particularly from the respondent's perspective, if there are defences around grave risk or the children's wishes or technical issues that might require an affidavit of laws, or require DNA testing, these issues can crop up all the time in these cases so how you can then achieve the six-week time frame, I am not sure. (P10: LP)*

The salary for mediators was discussed as an issue in organisation and P16: M felt that the beginner's salary is not sufficient to attract the right personnel for their organisation.

*So, here is the biggie. We have a problem with the entry-level salary. The graduate entry salary is a disaster where we are not managing to employ. (P16: M)*

The timeframe of the Hague cases has always been an issue and this research notes that the timeframe can be worked with to ensure best practice. As noted, the introduction of expectations for salary is also an issue for resources.

## 4.6 Legal framework

As discussed above, The Hague Convention on the Civil Aspects of Child Abduction (1980) is a treaty that was set up to help facilitate the return of children to their place of habitual residence, for the courts of that state to make decisions about their custody and, or access. The Convention also works with parents to help with the custody rights (Gov, 2020). The advantages of mediation in the legal process are discussed by Vigers (2011) as a method of

applying the rule of law through the Convention. Viger's (2011) research promotes mediation as a perfect fit within the work of the Convention. The participants acknowledged that in some specific cases, all parties including and especially the children would be more protected through the legal system. Specifically in cases of international parental child abduction.

*I took the decision that all parties, and especially the children, would be better protected if the parents had solicitors working on their behalf and if the case went through the legal process. (P;5)*

It was acknowledged throughout the court proceedings could never be replaced by the mediation process, but that there were benefits to working closely together for the benefit of the parties and children. As P7: M spoke of how the court process alone can often adversely affect the relationship.

*So, it helps, you know the court is not going to rebuild any sort of ongoing relationship, it just can make it more fractured, but mediation can help mend the fractures. (P7: M)*

P18: LP/M captured the essence of mediation in relation to the court procedure.

*Very often in court situations, as advocates, we cannot show the full truth. We must control the narrative, and we are trained to do that.... I am trained to control the narrative for my client. I am trained to do that in and out in the situation, but in mediation they speak for themselves. (P18: LP/M)*

The obligation to always inform the parties to take legal advice and make informed decisions was discussed by many. It was discussed by many about the need to ensure that the parties had full access advice throughout the process and each mediator recognised the obligation to inform the parties about their legal process. P6: LP/M also talked about this obligation.

*Well, I do not have a legal role. I am not a lawyer anymore. I stopped being lawyer a since [year]. ... So, I am not in that role, but from my position of mediation, I have this obligation to inform you about the law. (P6: LP/M)*

The support of the judge in recognising how mediation can be beneficial in cases that are deemed to be suitable, is also discussed and P10: LP outlined how important the support is.

*The judge that takes The Hague list, so she/he is interested in mediation and supportive of mediation, and of negotiated settlements, so you know you are pushing an open door in terms of...yes. (P10: LP)*

The value of research such as this was discussed and one of the participants wanted it noted that it is in the public interest to understand how conflict can be understood and worked with by family mediators who understand family conflict.

*It is important for research like this to be able to inform the legislative framework that mediation is operating in, so that the public interest can be adaptive, as we understand how to work with conflict within the family law system. (P17: M)*

The legal practitioners who also were legal practitioners spoke of their role in family law and their views on mediation. P15: LP/M spoke about how mediation is not often considered or typical in cases of parental child abduction.

*I have less than 20 or 30% that ended by out of court agreement which was subsequently approved by the court. In particular child abduction cases, not family disputes, we speak about child abductions usually, however, it reaches the second instance, and it is decided by the second instance in court. So, the mediation is not, let us say, typical. (P15: LP/M)*

Some of the participants spoke of their feelings on how the court system is not the only way, and how they view the effectiveness of mediation in such cases. The views on the court process were mixed, as outlined in this section. P4: LP/M found that, from the beginning, mediation became the most positive way forward for them in family law.

*What is the result when you finally succeed in court against the other parent, or against the other spouse? So, when I first heard of mediation in the middle of the 90s, I said, well, that is something I really would like to know, and I still remember that moment when I saw a brochure lying out in the in the (legal settling). And I said, well, that is it, I would like that. So, I went into it and then it became quite a crucial part of mine, always, from the very beginning, doing mediations. (P4: LP/M)*

The desire of the mediator to do the right thing for the parties is recognised by P5: M.

*I would say it would seep from my head through to every part of my body, that I needed to ensure people were safe. So, I was hyper-vigilant in managing that. So, when it came to mediation, of course, I have brought all this experience with me. (P5: M)*

The support of the judge in the relevant proceedings was explored by P10: LP who spoke of how it would be difficult to introduce mediation if the judge were not supportive.

*100% absolutely think it would be difficult to do it without that (judge's support), it helps the parties. If the parties are hearing that message as well, that is important, it is important, because the court is saying this is a legal process and the judge has the binary decision either let the child stay or let the child return. So, it is very stark, and it is very brutal really, you know. Whereas, if parties can mediate and try and take control and come to some decisions themselves, the judge might consider this. (P10: LP)*



The judge as bound by the Convention (HCCH, 1980) is always aware of time limit and must ensure that mediation will not delay the case. P8: LP/M recognises the value of the time limit in Hague cases and how the judges work within this timeframe.

*Of course, the longer the splits between child and parent, the more negative effect it has, and like I did the training in the [EU city] also, especially about the effects on children .... because that is always a discussion, and they say they should not go to their father or their mother because he is a bad guy. Not a lot of judges realise that time is important, and that is the good thing about Hague (cases), that is the good thing there, that you do not waste a lot of time. (P8: LP/M)*

One of the participants talks of the challenge of when a legal professional is not used to Hague cases and felt that inaccurate information can often bring more harm than good. The importance of lawyers understanding Hague Convention cases was an issue for P19: M.

*So, they are less, you know, if it is a Hague Convention case, then they can be less invested in the mediation. But if someone has faulty, I mean this is extremely difficult when people have faulty information because they have a lawyer who does not know the first thing about Hague Convention, and tells them, oh, you are the mother. The mother is in [country] usually get, you know, custody or whatever. (P19: M)*

Participants spoke on the aftermath of court proceedings and the effect on the parents and children.

*Well, it is important to explain very, very clearly, to explain to the parties. People tend to mix child abduction cases with parental responsibility disputes, and this is very much wrong. (P15: LP/M)*

The participants acknowledged the role of the legal practitioner in such cases, and how this is in the best interests of the child in many cases.

#### 4.6.1 Brussels Iiter 2019/1111

Brussels Iiter 2019/1111 is the most up-to-date recast of the Regulations between European member states relating to family law, divorce, and child custody. According to Eux-Lex (2024), this regulation is to assist in free movement across member states of the EU. The European Commission for the Efficiency of Justice (CEPEJ, 2018) implemented guidelines on mediation and the European Code of Conduct for Mediators. This code of conduct is how mediation is applied throughout Europe and discussed by the participants. P5: M outlines how in Germany there is training for judges. On replying to a question on recommendations for mediation early in the case.

*Yes, they do, and a short answer towards that and I know that the idea that the courts are encouraged to recommend mediation, is an enormous help. There are so many cases, so many international cases where we worked in [Europe] close together where the central authorities and with the courts if possible and in Germany there is a system of judges' trainings. (P5: M)*

The Brussels Iiter Regulation 2019 recast is the most up to date recast of the Brussels II regulations. Brussels Iiter 2019 is a 'Council Regulation (EU) 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)' (Eur-Lex, 2024) Most of the participants agreed with the most recent recast of Brussels Iiter Regulations (2019). Nehls (Paul et al, 2023) reviews how the Hague Convention 1980 in Europe is by the Brussels IIb Regulations and aims to improve the international proceedings within European member states. P15: LP/M spoke of not being sure it was a positive step and how it may not be too different to the previous recasts but understands that it needs to be implemented and understood.

*I spent hours and hours studying the differences between the Brussels II bis recast and Brussels II, there and then when my [family member] says, [he/she] is also a judge, [he/she] said that [he/she] doesn't understand why everybody is busy with this, when the new regulation is the same as the old regulation....*

*So, there are some differences, obviously, it is a recast, there are differences, but I am not sure how they will practically affect what we do. Of course, I am very much fond of this regulation, and we should all follow and use it and so and so. So, but it is not that easy to change existing patterns and existing practices by implementing new rules. I think we still did not understand the results to Brussels IIb, good. So, I do not know when the time will come that will understand the Brussels IIter recast and the changes that it brought. It looks good on paper, but yes, in practice I am not completely positive that it will bring something spectacularly different. (P15: LP/M)*

P6: LP/M outlines how both parents are affected by international family law and points out that sometimes the child is caught in the middle.

*When we must be aware and well-informed about international family law. The recommendation of Brussels II recast 2 or the Convention of Light to inform and to ensure parents, because sometimes they come here, and the courts for example, and they say ok I don't want him to take the child and to go to Africa or to go to India or to go to Brazil or So what? So here I tell them, OK, you do not have to worry, there are bi-lateral conventions and there are laws that prevent that. So, just in case I informed them about this, but I inform them also that if they forbid to the child to leave the border, [location]. It is going to be on both sides; the interdiction is for the father and the mother and who is the loser in this case? It's going to be the child, because, for example, if there is a school trip outside in a foreign country in Europe or somewhere else and the child is out of this group, he won't reach his colleagues and friends and so and so it's a pity for the child. (P6: LP/M)*

Article A13(b) of the Hague Convention states that the safeguarding of the child is paramount and can be enacted on the non-return of the child to the place of residence. P18: LP/M talked about an example of how the judge kept the children in focus during the proceedings and acknowledged the role of the safeguarding legislation in the Convention.

*So, I think again, as he/she said, nothing in the Convention prevented the judge doing what he/she was doing to make sure the kids were safe and that they were not going to be returned to danger. He/she said that was never the intention of the Convention (Article 13 (b) to send back children to a dangerous situation or a situation where it is unsafe for the safeguarding issues. The judge took it more seriously I suppose and again, it shows you the role for the safeguarding legislation (P18: LP/M)*

In answer to a question on any potential impact of changes made by Brussels IIter (2019) Regulations recast, and what was the opinion on how it will affect the mediation process and policies? P4: LP/M spoke of the emphasis on encouraging mediation for such cases. Speaking of the judges that advise mediation, P4: LP/M also says that it can make a significant difference if the judges are on board.

*We asked them, please, one week into mediation , tell the parents that you agree to it, give your blessing to the mediation , and as soon as they did, as soon as the judge tells the parties and their lawyers, if you go to a mediation , that's a good start. Do what you find out and if you fail, I am happy to help you as well with these sentences and you have the bases of mediation. That is what Brussels IIter 2019 recast gives to it, you know. It says the recommendation of mediation from the judges, from the court. In so many cases, they said, well, you know, we are here because the judge said that it might be helpful, you know and I said, great. (P4: LP/M)*

On discussion of the impact of the Brussels IIter recast 2019, P10: LP spoke about the timeline and the amount of work that is needed to be done within this time limit. P14: LP felt that six

weeks is not realistic and not happening and that most of the children are send back now unless there is a separate agreement.

*Well, if you were to honour the real spirit of the convention or know, the aspiration of the spirit of the convention and Brussels II, I suppose you are balancing expediency with I suppose due process and there is a tension there between the two, I think. (P10: LP)*

*There is no such thing as six weeks turn around. That is all pie in the sky. I mean, three months, if you are lucky.... Most Children are now sent back now. You know, that is hard to defend them. Unless it is by agreement that somebody stays. (P14: LP)*

One of the participants felt that the Brussel II legislation helps to add more structure and is a sensible approach but felt it adds to the more legalistic approach to mediation.

*While the mediation Act (in Ireland) gives a guide and a structure and is very welcome, it is very lawyer driven. It was developed for application to civil and commercial mediation. And while there is nothing in it that I would consider to be inappropriate for community, workplace mediation etc., it does leave me wonder about its focus and application. I understand that we are still waiting for a council to be established and there is still work to do around requirements for mediation training. While we need to let parties know about our qualifications, the act does not state what those qualifications should be. (P: number not noted due to identification)*

The legal support from the judges and the legal practitioners is recognised in ensuring a more positive mediation with the families. This is discussed further in Chapter 5.

## 4.6.2 Shadow of the law

According to Kornhauser and Mnookin (1982), the agreement and negotiation that happens outside the courtroom are proven to be an agreeable opportunity to work with parties themselves for their benefit i.e. divorce proceedings. Working in what is known as the shadow of the law (Mnookin, 1979) is recognised as an alternative dispute resolution. P7: M discussed how the costs and time limit were so much shorter than the court proceedings and felt this must benefit the clients. P17: M explores further on the interesting time that we are in at present with the different regulatory bodies.

*The short amount of mediation time it took for the parents to decide their own outcome for the future of their children, that is what was remarkable to me, the short amount of time and I am sure the cost too. I did not do any analysis because that is not my thing, but I am sure that those who can analyse the cost of a few mediation sessions compared to the expense of the High Court with lawyers and barristers is enormous, I am sure.*  
(P7: M)

*I mean mediation is at an interesting time because whilst for mainstream we're not regulators, you know, as a profession and I think it's quite obvious to me that we're at a time where the judiciary and the Department of Justice and different bodies are wanting us to be mainstream and we're going to have to start really interacting in a different way with all these different arms of the state and Europe. And that is good.*  
(P17: M)

In some European countries the legal process is free, but the mediation is not. P9: LP/M felt this is not beneficial to the parties and only costs the state more. P9: LP/M spoke about the costs of mediation and how the court services can be free in their country but not the mediation.

*So, you get a lawyer for free. You can get to court for free, but you do not get a mediation, which is for me, the better way to solve a conflict.* (P9: LP/M)

The link between the legal aspect and the mediation is an important part of the process. P13: LP/M discussed how time can be an issue as the mediators need to be sure the parties have the legal information and the time to check legal details.

*Because in mediation we do not deal with the legal personnel involved, so we are relying on that the party has the information and time to go back to the legal people, when time can be of the essence in these cases, is also an issue. (P13: LP/M)*

P7: M:M feels that mediation has become more bureaucratic and has strayed away from the ethos of mediation.

*I will retire from the public service because I feel so bureaucratic under too much attempting that othering as I call it. (P7: M)*

The advantage of all the professionals working together is that they can make agreement about cases together. P10: LP offers a scenario of such a case of the legal practitioners working together helped to decide if it was a case for mediation or not.

*Those kinds of scenarios, particularly during covid, but it is an adjacent country, both parties could be able to manage financially access back and forward, and everything like that, you know. So, in that case when it came in, from the very beginning, the barristers and I said yes this is definitely a case for mediation , but we still had to introduce the proceedings that's the important thing, to get them served and then now with my client's instructions that he'd like to mediate. Obviously if there are serious allegations around domestic violence or grave risk you are not going to suggest mediation in these kinds of cases (P10: LP)*

## 4.7 Self-care

Self-care is defined by Lawlor (2023) as taking care of yourself to ensure that you stay healthy and can not only do your job but can care for others. Looking after your self-care adds to the mindset that you can accomplish what you need to do each day (Lawlor, 2023). Following the pilot interview, which covered all family mediation, the importance of self-care emerged from the interviewees themselves. It then became an important additional question in the semi-structured interviews. P10: LP acknowledged the importance of self-care and used the analogy of a parent putting on their own oxygen mask first.

*It is important. It is like the analogy of a parent putting on their oxygen mask first, you do need resource yourself so you can then tolerate I suppose... (P10: LP)*

The professionals themselves need to be aware of how they are affected in the process and P13: LP/M also acknowledged that the professional is part of the process, and you need to protect yourself.

*OK what are you doing to look after yourself, because you are part of the process as well .... sometimes, the situations can be really toxic. So, if they are very toxic, it has got to (have an) impact. So, I think (--) I'm much more aware of that and maybe because of the many years that I've now mediated and that has got to (have an) impact and then we are duty bound both for ourselves, our own families and the clients that we're going to see before and after them, to look after ourselves (P13: LP/M)*

Many participants spoke of looking after themselves and ensuring they had good breaks and were in a good headspace to do the mediation. P18: LP/M talked about a self-care plan.



*We use a lot of kind of collegiality and talking to people. And then there is also an element of what the psychologist called, kind of self-care stuff. So, you have a responsibility to take care of yourself. If you are not well and not in a good headspace then you are no good to anyone. I am quite fortunate in that I suppose, I have a plan for myself that I would work on anyway. (P18: LP/M)*

Training organisations often reflect on the importance of taking the time to relax and have policies on self-care in place (MiKK.e.V, 2024). P13: LP/M spoke of the tools they use to relax.

*I think I facilitate meditation better in the afternoons or in the morning if I've a break beforehand, I clear my head, I walk along the [place] watch the waves, see the birds flying so that you clear your head, when you empty yourself of whatever else has gone on, then you're fully present to the clients, in the space, then that you're seeing them for that hour, hour and a half, and then afterwards again, that you clear that space again, so that your next client gets every bit as good service. Not that it is unfortunate that they are your third session that day, so they are getting what is left. (P13: LP/M)*

Self-care was recognised as an important part of the best practice in the work environment. The participants alluded to the fact that it is more of an ad hoc approach. This is explored further at Chapter 5.

### 4.7.1 Work satisfaction

Each of the respondents spoke about how important they felt work satisfaction is and how much it relates to their well-being. This also invited comments about support while dealing with their workload. This a common thread from both groups. P7: M spoke about working on plans and the satisfaction you get when it works.

*Yes, and the one that gave me, well mediators should not use the word satisfaction, but it gave me comfort that they were going to be okay, and we worked out a plan right up two about 2026 when the little boy would be about 11. (P7: M)*

Others such as P17: M spoke of how rewarding the work is and how empowering it can be for the parties.

*Yeah, I do love the work, again, you know, it is hard work, you know, you must be realistic. It is sometimes hard. But it can also be very energising and no, it can be rewarding work. And I think I when I still believe in mediation as much and more than I did when I first came to it, you know the concept of kind of handing things back to people and empowering them to, as I say, be the authors of their own story. (P17: M)*

Stress factors can affect work satisfaction and the mental health of the professional (HSE, 2024). P12: LP gave a scenario of when someone is sick and out of the office or the workload gets busy, the cases just get spread around as there is no one to take over. They felt that this can be stressful in their day. P11: LP acknowledged that burnout is a significant factor from these issues.

*Yes, on top of my own work (smiles) so I had a bit of extra capacity, but that was like you know, that is what happens, one person goes down and everybody picks up the slack and then the next person goes down. It is an ongoing issue in the [organisations] and has been for quite a long time. (P12: LP)*

*You need support in place of solicitors on the ground to be able to do it correctly because it is not good for your own mental health, it is not good for your physical health, you just end up exhausted and burned out from it. That is the truth of it, and I was that way [time] I was burnt out from it; I could say that very honestly. (P11: LP)*

The demands of the work and how staff dealt with this were discussed. Making changes to the workplace was a key to helping deal with stressful situations as described by P16: M

*You know my first change for me, which was a healthy decision, but it was the first sign I stopped doing one-on-one meetings with my boss at home. Even in the height of the pandemic the second the second lockdown so the first one no choice but in the second lockdown I just stopped doing them at home and I went into work, and I thought that's interesting I just did not want, and he/she is a perfectly good boss, but it is very challenging. (P16: M)*

Being aware of what was not working helped to deal with the stress levels and understanding and addressing this effectively as described by P11: LP.

*I was not in the best place, there was too much going on I was so stressed I had a [court review] on as well and I was doing an interview as well, it was too much. Straight up it was far too much, well it affects you personally 100% it affects you personally, you are constantly exhausted you get up exhausted every single morning. You work out of hours; I mean I was working ten, eleven twelve at night on the laptop at home. it is exhausting it is exhausting. (P11: LP)*

The attitude to the amount of international child abduction cases was interesting as there is not much data on what are too many mediations for one person. P4: LP/M talked about how many they would be able to carry out in a year and how demanding they can be. However, this was in addition to other work that they carry out.

*The international cases are sometimes interesting spots that you cannot do, for example, when I was doing all the abduction cases, I think you cannot do more than.... three or four abduction cases per year. It is so, it is so demanding, and I never did more than four cases per year.....and most of the cases were successful, but they are sucking you out. You know, they are taking all the energy you have so. (P4: LP/M)*

Work satisfaction was deemed important to the professionals in all aspects of their work and according to Paul et al. (2023) being content in work is a key factor in best practice.

## 4.8 Support

The recommendations which the participants made were based on what would work for them in their situation. The issues of support when such cases come in, were discussed by many as they must move their workload around to fit Hague Cases in. In some cases, this presented a stress level due to knowing that there was no one else available to take up the work.

*And you need support and if you take anything from here today, it is that we need support and backup when these cases come in. (P11: LP)*

Whilst acknowledging that the legal practitioners are doing tremendous work, the need for more legal practitioners in this field was addressed by P17: M as a recommendation for support.

*There are wonderful solicitors out there and we just need more of them, (smiles) you know. (P17: M)*

The value of mediation in these cases was spoken about by P7: M and the view that research such as this would help promote the value for all parties involved.

*What I would like to come out of this research is people would see the value of mediation in these cases, what I think with that review that was done for the [organisation] what has happened, the way I read it, was the role of mediation in these cases wasn't given its true value, unless it comes from the judge, it's a second thought to the lawyers, so the lawyers don't necessarily seek or advise their clients unless it comes from the judges, because all of the emails coming in, say judge such and such*

*said these clients should go to mediation , it was never I would like my client go to mediation. It's only when the lawyers are directed by the judges in these cases, that they should mediate so I would like to see that as soon as these cases come before coming to the lawyer's desk or come before the court but before it progresses into any legal proceedings that mediation should be attempted immediately. That is what I would like to see happening. (P7: M)*

The value of research such as this was addressed by P16: M and the role in influencing the legislative framework and of the benefits for the public interests.

*It is especially important for research like this to be able to inform the legislative framework that mediation is operating in, so that the public interest can be adaptive, as we understand how to work with conflict within the family law system....*

*My lead role is to successfully develop a service with the Child Abduction Unit that the solicitors that [organisation] can stand over in terms of good practice, but also will inform the field, hence the involvement in the research. (P16: M)*

One of the participants P18: LP/M spoke about how legal practitioners look for perfection in cases but felt that it just needs to be workable.

*People get lost when they go too far down the rabbit hole trying to make it. There is no perfect, you need to let go. There is no perfect. I am not perfect; they are not perfect. The system is not perfect. The process is not perfect, but it is workable. It is doable, it is manageable. It is designed to evolve, and it will and for people as well. Relationships change, time changes; you know wounds heal as well. You are very often dealing people who are wounded. (P18: LP/M)*

Two of the participants P10: LP and P2: M, wanted to learn more about international parental child abduction cases as to understand what other authorities did and how it is supported, both financially and professionally.

*I would like to know more about the international (cases) and what is happening in other authorities. I would like to spend a little bit more time to look at the strategy and have a more understanding of what is happening in other jurisdictions. I think that will be remarkably interesting and there are ways in which we can integrate it more deeply into the system. (P10: LP)*

*And so I wondered if the court was to be supportive of and actually pay for, you know, that they get their mediation mediators and that the court would actually pay for it, you know, the, the court system would say, okay well, you know, we can facilitate you to have a number of sessions of conflict coaching and mediation, and it's up to yourself to, you know, find the mediator. And this is what we will pay the mediator. And whatever you know, I think that would be helpful. (P2: M)*

The acknowledgment of peer support and supervision was also discussed by all the participants in all aspects of international family mediation. These issues added to the support of the professional in ensuring balance in their work and ability to focus on issues which arise each day.

#### 4.8.1 Supervision and reflective practice

The role of supervision and the approach to reflective practice is an element of self-care for the professionals. Paul et al., (2023) discuss the emotions of the parents such as fears, and deep sadness can affect the mediators personally working on the case. Supervision and reflective practice are recognised as a tool to support mediators (Paul et al., 2023). As discussed by the Mediators' Institute of Ireland, supervision offers an opportunity for mediators to come

together and share their experiences (MII, 2024). P13: LP/M is mindful of how supervision supports mediators during difficult cases.

*I would be mindful of scheduling supervision if I knew I was having a tough case coming up. So that I would have something like that lined up soon afterwards so that I could process it and then leave it at work and not carry it home. (P13: LP/M)*

Others spoke of the separate groups that they are involved with. P1: M spoke of the strong network they have.

*I am a member of the [group], I am on the [council] I am also involved with a network of mediators across the globe through LinkedIn and I am part of that. I am part of [named] conflict coaching, and then I have a sharing and learning group and I have a supervisor, so I am lucky (smiles). (P1: M)*

Many mediators enjoyed the group work, and P19: M voiced that they feel all mediators with experience or not will always benefit from them. Lang and Taylor (2000) address the value of such group sessions and the capacity for professional achievement with coaching and reflective supervision to achieve artistry in mediation.

*Supervision helps; I love reflecting teams. I am wild about reflecting teams. I have wonderful experiences with it, I mean every now and then it does not work, but usually it works. So, it is not only new mediators who need supervision. I mean, experienced mediators sometimes need it too. (P19: M)*

Lang and Taylor (2000) acknowledge that family mediation services support a reflective practice approach, whilst recognising that private practitioners do not always have these

opportunities. However, normally certified organisations to which practitioners are affiliated would ensure as part of the CPD that supervision and learning and sharing groups are available to the mediator (MII, 2024). P7: M speaks about how supervision helps in working through cases if there are any concerns.

*But we would have supervision reflective practise and would have case reviews with our line manager, as well, just around say certain cases whether it took long or not long, anything that would come up, that would be concerned that the manager might need to know. (P7: M)*

Others such as P6: LP/M spoke of the regular supervision that is required in their practice and how they can call the necessary specialist when needed.

*I have supervision once in a month for the entire day or half a day 3 1/2 hours. .... Now when I need to talk about a situation and when I need other advice or another opinion. I look for the opinion or advice and when I need more information, I go to look for it. For example, I can call a psychiatrist, I can call a special education, special professional and I investigate your opinions. Also, the group [organisation] is rich, and I call some friends I need when I need to talk.... I talk. (P6: LP/M)*

The legal practitioners also spoke about reflection and the new talent coming through, which they feel will only support and add to the profession.

*There is a lot of reflection, and it is great to work with young talent, some of them may go on and qualify as [professions], or they might want to do different kinds of other jobs, it is I find that really interesting that there is an energy in it. (P10: LP)*



One of the professionals P10: LP spoke about carrying out reflective opportunities for cases but would like to see more options to help other professionals. This is reflected in studies by Taylor and Lang (2000) who also discuss this possibility in the context of coaching for professionals.

*We discuss cases and I try and encourage that, for people to reflect on, if they had a difficult case, we would have a weekly meeting unit here. So, we sit down every week, virtually, it is back to in person, every week we go through every case, where are we at, what must be done, we action it. But then we also will discuss if there are any kind of issues around, or if there is difficulty with clients or emotional difficulties and we will always discuss that in that meeting. But then even the other [professionals] in case work who are doing other work, we do try and encourage people to discuss the cases if they just come back from court or try and debrief yes. It is extremely important, but even with that, you need something like supervision and reflective practice. But you are not always going to hit it, with an open-door policy, some people can be too busy, or you just do not know what is going to resonate with somebody or what is going to trigger or stay with them. (P10: LP)*

Another participant P13: LP/M focused on self-determination but spoke about how they would need supervision before returning to the topic at the next session. Again, the value of supervision is noted by the participants. P7: M

*Other than my supervision, I am in supervision all the time and then as a long practising mediator I've spoken on about this for years, we're not that different to therapists in the system, especially family therapists working in the system, and systemic therapists would always be in therapy, so I would always touch into my own therapy every now and again when I need it (P7: M)*

*That comes with experience. You need to discuss it in supervision, where you are saying.... it is all self-determination, but then I said you need to bring it back at the next session, we cannot discuss it without it (supervision). But you know where you can explore (P13: LP/M)*

The role of supervision was a focus for mediators and the lack of it for legal practitioners. As both mediator and legal practitioners discussed the importance of supervision. However, it was acknowledged that legal practitioners had no opportunities to access this. Daicoff (2004) discuss how legal practitioners are not seen in what is deemed a more humanistic light and are therefore stereotyped in a more adversarial role. In promoting and supporting a more personal approach for legal practitioners, such as supervision, sharing and learning groups and reflection are noted in this section and thus echoes Daicoff's explorations. The legal practitioners in this research noted that there is no supervision available to them to date. P10: LP spoke about the lack of supervision in the legal profession and P17: M acknowledged that they are requesting supervision due to the conflict they deal with in their cases.

*I think reflective practice, I feel very strongly about it, well it is.... or supervision, or both. I think it has been significantly lacking in the legal training and in the legal profession. Obviously, social workers, mediation s they all have supervision, the work [professional] doing can be difficult, can be stressful, even in younger people. (P10: LP)*

*(Question on solicitors' supervision) No, but they are asking for it and I am happy that they are, because I have said that for years because, they hear a lot worse than we do and a lot of the time (question on supervision for legal practitioners. (P17: M)*

Continuing the theme of supervision, P13: LP/M feels it is important as it has the effect of someone close by supporting. Supervision allows the practitioner to explore and discuss the

sessions in a safe space to share and have more understanding which in turn offers a better practice for the clients. P2: M speaks about requiring a specialist supervision session.

*Why supervision is important? Well, somebody else who is standing outside (the room). (P13: LP/M)*

*I booked myself and [name] to have supervision. We required somebody who is involved in child mediation. So, this did not go legal. I got, we got supervision, but the supervision was around child focused mediation more so than talking to somebody who is an expert in abduction. But I do think it helped. (P2: M)*

Lang and Taylor (2000) speak about supervision in organisations and its value. P17: M outlined the supervision framework for some organisations.

*A more independent supervision and we manage it in two ways. We manage it, having an internal panel of supervisors who are qualified in that area. So, they will do peer supervision. There is a framework around that in terms of confidentiality and whatnot, and then we do not have enough to provide supervision to everyone now. So, we have some outsourced supervision as well, so between those now everyone has access to supervision. Well, the supervision, I suppose is not ad hoc. I mean the supervision is scheduled so it has become a requirement for all of us to attend and that is a good thing. (P17: M)*

Whist supervision and sharing and learning groups supported the mediators, peer support was also considered to be of added value to the work environment. Thus, ensuring the best outcome for the clients.

## 4.8.2 Peer support

Jungert, Van de Brock, Schreurs, and Osterman (2018) discuss how organisations rely on teamwork and state that the relationship between colleagues is the key to a decent work environment. The study by Jungert et al (2018) shows the value of employees working together and the study shows how it can increase autonomous motivation for the team. All the participants in this study recognised the support of colleagues in the workplace. P11: LP acknowledged the value of the clerical staff.

*Two clerical officers in the office who were just fabulous, they allowed me to function, I could not live without them they are the lifeblood. (P11: LP)*

Whilst P17: M spoke of the interaction of colleagues in a supportive environment.

*I think there is always a colleague that you can have a cup of tea with and whilst you might not be discussing the case per se, you would be discussing issues that come up for you in the case or are things that you found difficult and I think that's very supportive, that's a supportive environment, you know I'd like to think that we are. (P17: M)*

The administrative support of colleagues was also discussed. One of the participants P14: LP noted that the administration staff always knew what was needed, and they were incredibly grateful for this.

*They know what registrar to contact, you know; they just know the system, and which is invaluable, frankly. It is really, you know just the weirdest, even like, you know, you say your document must be translated. They know how to get off and get translated and certified, and there is a lot of stuff you would not even have to say to anybody, and they would know. And they also know the mediators on whom to contact, you know; they are built into that system. (P14: LP)*

Having colleagues that participants can discuss the whole case with and working closely together was deemed important to all.

*In my role I have a few people that I work with and usually I do not work child abduction cases alone, because I as you know, I am not in [Eastern Europe city]. So, I always have a colleague that I'm interchangeable with, despite let us say, I have prepared the documents, I've prepared the strategy, the notes, the questions for the witness or whatever but usually if not always, I have colleagues that I discussed the whole case with. (P15: LP/M)*

The professionals offered advice for someone starting mediation or law with some good comments on the focus and on the skills-base that the participants felt was needed and even the language that you use. P19: M spoke of sometimes learning how to fail and to just get out there and do cases.

*Well, super important, I mean because they must learn the part, that it is okay to fail, in quotation marks. I mean, it does not mean that you failed or that we have failed because sometimes the odds are just against you. They just are you know, way off somewhere else, you know, or too much has happened or whatever. And what would I tell new mediators, you know, cases, cases, cases. I mean, just go out there and do it. (P19: M)*

Peer support was especially important to the participants and each of them recognised the value to their work and wellbeing of being able to rely on their work colleagues. This again supported the thoughts on sharing and learning groups.

## 4.9 Conclusion

In the findings of this study on the perception of the legal and mediation professionals in relation to international parental child abduction cases, many issues were noted from the interviews. Both professional categories, mediators, legal practitioners, and legal practitioners who are practising mediators, spoke on the importance of mediation for cases of international parental child abduction. This observation is discussed further in Chapter 6. All participants spoke of their view on what other opportunities to explore in this field. The regulations and guidelines that have been implemented over the last few years have been discussed. When reporting the vast results on the attitudes of the professionals, both the role of mediation and the skills required were spoken about. The professionals also articulated the voice of the child; this was deliberated by all professionals in their discussion to ensure that the child was at the heart of the process. The limits of mediation were also expressed, and the perspective of the legal practitioners and mediators often were parallel paths, this is discussed further in chapter 6. The transcripts reported on communications which included the co- mediation role and the sharing and learning groups all gave many varied perspectives. The national and international process and the legal system itself drew many similarities, and all professionals were very well informed the process. They also drew some diverse comments which are included above in the sub-sections. Each of the participants noted that the parent in each case was always at the core of the proceedings, which echoed throughout the findings. The legal process was noted as being quite different from the mediation process; one of the participants described it as a unique style of operating in the field of international family conflict. Technology was another key issue which involved discussion on the face-to-face versus online and pre- and post-pandemic and the findings were mixed, from the perspective of the benefit for the parents and for the flow of the legal and mediation process itself. Self-care was not deemed a key issue until after the first interview. Therefore, based on the findings, the questions on self-care were added to the interviews. Questions such as how you look after yourself and how does your organisation support you. The replies were based on work satisfaction, the role in the workplace, peer support and the benefits of supervision and reflection. These views also included the experience, and all participants agreed that the relevant experience was a bonus to how they dealt with day-to-day stresses. Members of the legal profession often spoke of how supervision is not available to them but to mediators and other such professions. Misinformation,

professional allies, challenges faced, care and self-care, understanding the legal position, time limit issues, costs involved and what is covered by government NGOs were also discussed, and as discussed, opinions were mixed. This chapter outlined the research design. It distilled the experience of the participants into themes and sub themes which have been presented in this chapter. In view of the amount of data and the themes that emerged, this research had to make conscious decisions on which quotes to illustrate each theme and sub theme in relation to the study. In the next chapter (5) the findings of this research are analysed about what is already known in this field and what new knowledge has emerged.

# Chapter 5: DISCUSSION

## 5.1 Introduction

As part of the theoretical framework, this discussion chapter will mirror the findings of chapter 4 in the analysis of each of the themes. This approach will allow this discussion to reflect on the themes which evolved in the findings. This socio-legal research has embarked on a journey to hear the voices of the professionals, both legal and mediators, who work on intentional cases of parental child abduction under the Hague Convention on the Civil Aspects of Child Abduction (1980). Previous studies, discussed in the literature review, focused on the legal journey and the effect on parents and or children involved in international parental child abduction. This research took a different approach and only spoke to the professionals involved in family mediation and in the HCCH process. This researcher found that all the participants spoke passionately and were keen to share their experiences. The professionals were referenced according to their role, for example mediators who only practiced mediation (M), mediators who were also legal practitioners (LP/M), and legal practitioners (LP). This allows this research to show how each of the participants viewed the questions and their work practices. This also allowed this research to compare some of the findings relative to each profession. Qualitative research methods allowed the participants to talk openly about their experiences and engage in interviews. The systems theoretical framework supported the approach to the findings, as mediation sits within the legal framework in a macro system-based approach. The participants were offered a more naturalistic approach to discussing their opinions with the open semi-structured interview style. This researcher found that the description of Putnam and Mumby (2014) of systems theory as a system of independent sections which are connected by interdependencies was a positive reflection of this research. The professionals who collaborate in a multidisciplinary approach work independently of each other but are connected by the legal framework of family law, and this view was discussed throughout.

The conclusions of this study have given this researcher a window into the daily life of professionals working in law and mediation for international parental child abduction cases.



However, due to the small cohort of participants who were interviewed and the location, the views from outside the European Union are not included in this research project. Therefore, this study recognised that these are only the views of the respondents. The study focused on a selection of professionals, both mediators and legal practitioners, who are involved with Hague cases each day, primarily working in the European context and Ireland; it is not a comparative study on the locations. This chapter reflects the findings and limitations of the study, while outlining the interpretation of the results. This discussion and critique are summarised according to the key themes outlined in Chapter 4, 'The Findings'. The recommendations from the participants are reviewed throughout, and this chapter ends with recommendations for future research. This researcher used the analogy of baking a cake, to best describe this discussion chapter. As discussed by Felix and Smith (2019) in their practical guide to dissertation writing, the discussion is a process of combining what was discussed in all the previous chapters. The literature review, methodology, and findings are now all synthesized and blended to offer us the results. As in the analogy of cake making, each of the previous ingredients is as important as the next, and each of these ingredients contributes to the result (Felix and Smith, 2019). Therefore, this chapter incorporates each of the previous chapters and expands on the findings.

## 5.2 Research summary

As a socio-legal study, the theoretical framework for this work is structured around systems theory as a percentage of mediation professionals are not legally trained, however, they work in the shadow of the legal system in international parental child abduction cases, but they are not court officials. This research shows that both legal practitioners and mediators work at the micro level with parents, therefore understanding their experience adds a deeper understanding to the legal system involved in international child abduction cases, According to Bouchrika (2024) systems theory has become an important framework for exploring the complexities of human behaviour which connect with the larger systems such as societies. For the interview process, this study subsumed symbolic interactionism by Meade (1936) and later by Blumer (1966). However, for this research, Mead's (1936) theory of symbolic interactionism was deemed the theory that best supported the approach to the transcripts of the participants. In understanding how each perspective is drawn from our own experiences and surroundings, this

theory supports the findings of each participant and how they view their situation differently. This allowed this discussion to explore each participant's unique view. This personal perception is the key to this research project and why it was undertaken, hearing the voice of each participant. As discussed in Chapter 3 'Methodology' the method of semi-structured interviews was chosen as the tool to explore the personal perspectives of the participants, based on systems theory in understanding where mediation fits into the legal framework. These perspectives and views are detailed in Chapter 4. This new chapter unpacks the findings in Chapter 4 and offers a clear appreciation of the participants' perceptions. The findings valued the views and emotions which were expressed by the professionals. This research totally focused on the views of the professional participants. By listening to their voices and their opinions in relation to their work, this research is unique in its findings.

### 5.2.1 Comparison with the literature

Studies such as Vigers (2011) have shown that mediation has not been introduced as often as expected in cases of international parental child abduction. According to Vigers (2011) research showed that even though the benefits of mediation are more recognised throughout the world, introducing and working with mediators was not happening. This was echoed by the more recent study by Korsakoviene et al (2023) which reviewed the mediation Directive 2008, and the responsibility of the Member states of the European Union to promote mediation and found it agreed that it was not happening too. The many reasons for this are discussed in this study, (time limit, experience, trust issues, domestic violence, and location) whilst exploring the challenges that do not allow mediation to take place. However, the level of success in mediation for Hague cases is recognised following previous research by researchers such as Freeman (2023) and Paul et al (2023). The participants in this research recognised the success and value of mediation but as per previous research, it is not always possible to achieve a full agreement. The issues which add more complexity to this situation are addressed by themes in this discussion.

## 5.2.2 Limitations of research

This study captured the views of a selection of professionals working with international parental child abduction cases with a focus on family mediation. Due to the number of professionals working in this field throughout the world, to involve each country would be too vast and would not have allowed for focused study. There are over 200 fully trained mediators assigned to the international family mediation list at Missing Children Europe (CBFM, 2023). According to MiKK.e. V (2023), this number is rising across Europe with ongoing global training programme each year. The International Mediation Institute (IMI) has a Quality Assessment Programme (QAP) that assesses and qualifies experienced mediators for certification. The QAPs have over 550 IMI-certified mediators in 31 countries (IMI, 2024). Therefore, the decision was made to meet with the selection of mediators one-on-one and legal practitioners deemed involved and experienced in Hague cases and mediation. The nineteen professionals who were interviewed were a mix of people from different countries and different authorities and offered this research the opportunity to hear diverse opinions. This did not limit the selected research project but meant that professionals outside Europe did not have an opportunity to engage with the project at the macro level. However, this also denoted that the research was focused, and the micro level, working directly with the parents was the key to the detail discovered.

Another limitation of this research involved cases of domestic violence and the threat to the child and/or parent. As described in the introduction chapter, this research did not speak with parents, or children or review case studies and supports the view that mediation can only be engaged in when there is compliance and no threat of violence or coercive control. The research conducted by Freeman and Taylor (2024) on when domestic violence is a key factor in international child abduction cases involved 116 family justice professionals from around the world. Some of the key issues were also identified in this study by the participants, issues such as fear, panic and how the trauma of the child was related to their lives before the abduction rather than the abduction itself. (Freeman and Taylor, 2024). The many opportunities availed by this researcher to engage in discussions at conferences and events with many of the other legal practitioners and staff from government bodies added to the richness of this study. A better understanding of the workings of Hague cases in Family Law was deemed essential for

best practice. The limitations of mediation in such cases, which were considered by the participants, are further discussed in the section on the interpretation of findings, 5.3. in this chapter.

## 5.3 Interpretations of findings

This chapter on the interpretation of the findings mirrors the themes outlined in the findings chapter (4). Each of the findings is discussed and analyzed in chapter five. Discussion, child-focus, challenges, legal framework, self-care, support and finally recommendations are the key themes.

### Communications:

- Technology, face to face vs online
- Interpreters and translators
- Role of mediator
- Co- mediation and solo mediation

### Child Focused Meditations.

### Challenges:

- Skills and training
- Time restrictions
- Limits of mediation
- Resources

### Legal Framework:

- Brussels II Regulations
- Shadow of the law

### Self-care:

- Work satisfaction

Support:

Supervision and reflection

Peer support

Recommendations.

## 5.3.1 Communications

According to Beer and Steif (1998), Keeping the lines of communication open and ensuring ongoing communication between the parties is recognised by all theorists of mediation. The mediation role itself and the communication between co-mediators is considered one of the key factors in achieving any sustainable results from mediation, as is the role of the interpreters and translators in cases of international parental child abduction. Cowan (2022) discusses the emotional context of courtroom cases and how the professional emotional journey is also to be considered while communicating. Many of the participants agreed with this emotional effect that being involved in mediation can have on the professionals involved. They all discussed how they need to be aware of emotions and conflicts. This research agreed with Cowan on the emotional context of legal practitioners.

### 5.3.1.1 Technology and face to face

Technology versus face-to-face meetings was also a sub-theme as we were still coming out of the pandemic (Covid 19) when this research began. Singh (2023) noted that online dispute resolution (ODR) has become a valuable tool in resolving international legal disputes. However, whilst ODR has brought more opportunities to access ADR across different countries, it has also brought some challenges, such as the multiple courts and jurisdictions which add to the complexities of international cases (Singh, 2023). Singh's research explores the advantages of technology in online ADR and while the positive support such as flexibility and accessibility are important, the challenges of trust, power imbalances and enforcement difficulties need also to be addressed (Singh, 2023). This is important for this research as following the Covid-19 pandemic, all work, private and through an organisation, that was

suitable to be online, was moved to an online forum. Creo (2020) described the best practices online and speaks about how the soul of mediation could change if not face-to-face. This was echoed by Singh (2023) who spoke about challenges such as legal, cultural, and linguistic barriers which can create issues in trust and communication. Many of the mediators and legal practitioners in this research reported adapting very well during the pandemic and now recognised the value of online mediation and online court proceedings. It was interesting to note that over half of the mediators would not have engaged in online mediation prior to the pandemic and were totally against it until they had firsthand experience. Creo's (2020) study on *Zoom, Zooming, Zoomed into the Future! Moving to Optimist from Sceptics on Online mediation* looks at the best practice models and questions how online mediation can change the whole aspect of the soul of mediation. Creo (2020) was concerned about the clients and how they behaved on Zoom and questioned how compassion and empathy can be seen online. But in this research mediators felt this was the only opportunity to meet with the parties during the pandemic and it was better to have some option to offer them. Nevertheless, most of the practitioners still preferred the option of face to face for the very reasons that Creo (2020) mentioned. As discussed in the findings P17: M felt that mediators are more comfortable with meeting face to face, even though they did a lot of the online throughout COVID-19.

Having the opportunity to engage online and see the benefits at a time when there was nothing else to offer the parties, they then agreed it was not deemed as scary as they would have thought. Each of the participants spoke of the support of the IT (Information Technology) personnel and the administration staff, which was also reflected in the peer support section whilst they found the IT aspect challenging.

*Lock-down was challenging as regards IT, so you needed to be very up to speed with doing things remotely, using your laptop case management system and all that sort of stuff (P12: LP).*

Kenny's (2022) studies show how online mediation was necessary during the pandemic and therefore mediators who never engaged before were happy to be able to work at this time with this format. This was echoed in this research, but two of the mediators would not like to replace

mediation practice with an online preference approach. Kenny (2022) wrote that the challenges that parties in online dispute resolution faced in divorce proceedings became more prominent during the pandemic. As we know, the pandemic forced the legal system and most systems to work online within an unprecedented time limit. The participants of this research do not want to see the online format normalised as the way forward, but as a choice when no other option is available. The value of talking with others is well documented, and many of the participants agreed that this needed to continue, and mediation is a key factor in offering parties the chance to talk.

*I think when everything shut down and people's access to services and the courts fell, the lawyers felt that the only process that people can have been mediation where they can talk (P7: M).*

Most of the participants in this research preferred face-to-face, and the legal practitioners remarked that it was a pity for new trainees to miss the experience of the courtroom. The challenges of not being able to read a person's body language can impact the mediator's work (Kenny, 2022). But when needed, some participants found it to be helpful and not as daunting as they had thought.

*Before I did it, I thought I cannot, and I said, well, it is only second class, it is impossible. You know there is so much..., but from my experience, it is not true. I have had quite a few cases also child abduction cases, which worked well (P4: LP/M).*

The participants of this research agreed that there is a place for both face-to-face and online mediation. As Paul et al. (2023) discusses, due to the geographical variations of locations for the parents, the challenges are minimised by online mediation.

*I did it for a child abduction case with people, the mother was in [South American Country]. I never met her in person, but it did not work out either, so it was not a good experience. But when I can meet them at least once, it works (P8: LP/M)*

Some of the participants spoke of how technology can also help in associations and large organisations with several stakeholders. The view was that virtual meetings can save time and money and in international cases the virtual option is helpful due to the time limits.

*I have been doing cases, I would not have had the possibility to do, because one parent was in [Europe], the other parent was, wherever, in [Europe] and the other was in [Southern Hemisphere] (P4: LP/M).*

This research affirms these findings and as discussed by Paul et al. (2023) that the different time zones and different timetables can be a challenge in organising meetings; therefore, online technology can be helpful. The role of technology is now more accepted in mediation and this research confirms that there is a place for online going forward. This research finding affirms this new technological role. However, as mentioned by Kenny (2021), the loss of being able to see and read the body language of each party can sometimes be a drawback. Also, the risks arise that there are technological glitches which can impact and frustrate the other party. One participant felt that the parents got more chances to opt out of mediation online, as it was deemed less secure.

*But online mediations, half of the time, are interrupted so they are just less.... I do not know, less firm, less solid in the relationship. So, they feel themselves.... freer to say, OK yes, that is fine. I will not come anymore, but it never happens once you are there in person, and you talk to both people and try to mediate with them. So, it is less, less loose, and looser probably online (P9: LP/M).*



Therefore, based on this point, this research demonstrates that more training is needed to give mediators the online skills necessary to ensure that they can deal with online conflicts. Based on this research, mediation moving online happened fast due to the pandemic, and most people were caught off guard and had to just row in with the changes or not work. Many international mediators who already had some experience with online mediation had never had the volume of mediation online that they had during the pandemic. This research identifies how even though they will continue to work online, most mediators still prefer the face-to-face method. In general, the participants of this research recognised face-to-face mediation as the best approach. However, following the online method, which was the only way during the pandemic, is now not as daunting for the mediator as originally thought.

### 5.3.1.3 Interpreters and translators

The view of interpreters and translators was mixed, and the reasons were clear. Most of the participants were not happy with their experience of interpreters in the room and the recommendations of the HCCH (2012) for bilingual mediators was considered a better option. As translators work with written word, most of the mediators and legal practitioners work with interpreters. As the written word of the translators is deemed correctable, the interpreters' word was deemed harder to interpret in the room. According to Carroll (Paul et al, 2023), the cognitive effort that is required by the mediator when there is an interpreter present can sometimes cause confusion and uncertainty for the parties and leave the mediator feeling compromised. This was echoed by the participants who noted that the translation is often not correct, and the interpretation can be swayed by personal perception.

*I do find it more difficult to work when there's an interpreter to tell you the truth because sometimes, my language that is very familiar to me in my work and is not fully understandable to the interpreter and time has to be spent explaining to the interpreter what I said, and what I need to know the different ways, and I don't like that (P7: M).*

The layer of complexities of language added to the complexities which are recognised as part of the international mediation process. Not one of the participants was in favour of interpreters

over a bilingual co-mediator but recognised the benefit of having an interpreter when there was no other option. P13: LP/M (findings) spoke of how when the mediator does not have the language, there must be trust that the translator is translating exactly what you are saying. This lack of trust in the interpretation process was a finding of this research. It added to the complexity of the process and underlined the value of co-mediation with an emphasis on bilingualism. This was not expected in this research, that the mediators in this research did not have full belief in what the interpreter was interpreting or were not confident in the process which is often used. The role of interpreters is a critical concept of the Bi-lingual recommendations from the EU and MIKK.e.V. As per Fig 5 below, the countries that made requests for mediation to the European NGO MiKK.e.V in 2023 were remarkably diverse. This therefore shows the need and advantages of bi-lingual mediators for international parental child abduction cases to support communication. The following Fig 5 displays the countries in 2023 that were involved in the international process with the support of MiKK.e.V (Illes, 2024).

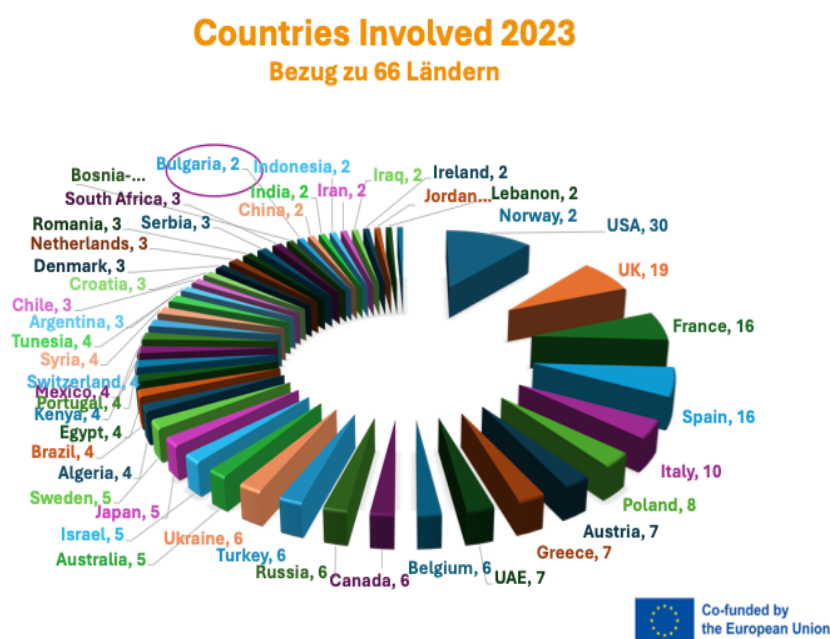


Fig 5 MiKK Training Guide (Illes, 2024)

However, this research is aware that the mediators agreed that quite often English was the main language used in many mediations across Europe. In many cases the parties themselves often agree on which language to use.

### 5.3.2 The role of the mediator

Supporting the parties to make decisions for themselves and in their own best interest is recognised as a vital aspect of the professional efficacy of the mediator. According to Haynes (1980), encouraging parents to be cooperators, not adversaries, is the key strength of the mediator. This was acknowledged by all the participants. The opportunity to allow the parents to meet and speak with each other about the children's needs and put a parental plan in place can involve a lot of trust. According to this research, trust is something that is not always there after a parental abduction.

*I think one skill you really need is to deal with high conflict cases (emphasis) and extremely emotional situations, and because people, I mean, people are always terrified. They are usually terrified, that they are going to lose their kids. They also feel super wronged. They also feel absolutely no trust whatsoever in the other side (P19: M:M)*

This research recognises that this mistrust can be a difficult place from which to start the mediation process, but also that it is comparable in all international child abduction cases. The conflict intervention training that all mediators receive is an important part of this process. The loss of trust and the left-behind parent's feelings of being wronged, can take time to come to terms with. The participants felt that the family courts may not have the time to work on trust between the parents as the family or High courts must make a judgement in Hague cases. The participants agreed that mediation can support mutual trust between the parents, if and only if, there is a mutual desire to work together in the best interests of the child. Therefore, the process can impact the outcome. However, it is recognised that in some cases this trust cannot be repaired, and mediation cannot take place. However, this research has also shown how the

positive aspect of mediation can also help with the parental plans after the court decision. *The law has a standard, a wonderful standard, but it is a standard and so many families do not fit into that standard, and the mediation gives them the possibility to find their own way to express how they are, how they want to live as family after this episode, after this break.* (P4: LP/M: LM). It is clear from research studies on mediation and international parental child abduction, by Freeman (2024) and Paul et al. (2023) find that living as a separate family after child abduction is not an easy task and some parents are unable to process it. However, all participants of this research agreed that if the attention is on the child, it can refocus the opportunity for an agreement.

This research found that mediation in international cases may not be able offer a successful outcome if both parties cannot come together, as agreements cannot be finalised. The participants agreed that mediation alone is not enough to ensure the best result and must work within the confines of the court system to achieve the best result in suitable cases.

*Because in mediation we do not deal with the legal personnel involved, so we are relying on that the party has the information and time to go back to the legal people, when time can be of the essence in these cases, is also an issue.* (P13: LP/M)

Due to the mediator's role being so different to that of the legal professional, this research gave the mediators, some of whom are also lawyers, an opportunity to talk about their experience. Based on the findings, the professionals who worked in both roles, mediator, and legal professional, discussed how they had a good understanding and an emphatic view on how the parents worked with each other.

The benefit of being with both parents and supporting them together in the best interest of the child was different from being client focused. When working with one client, the participant spoke of what is expected of them in their legal role, such as controlling the narrative on behalf of the client. However, when mediating, they felt that it was a different dynamic.

*Very often in court situations, as advocates, we cannot show the full truth. We must control the narrative, and we are trained to do that.... I am trained to control the narrative for my client. I am trained to do that in that situation, but in mediation they speak for themselves. (P18: LP/M)*

Therefore, this research agrees that the roles of the mediator and the legal professional are quite different, and both add value in such cases. As discussed in the literature review, according to the HCCH (2012), the court can recommend that the parties attend mediation before the return of the child. When this is directed by the courts, a mediator is engaged; the mediator can only work with the parents if deemed suitable by the judge. Based on the complexities of these situations and to facilitate discussions on what is in the best interest of the child, the role of the legal professional is to ensure each party has the correct advice and is aware of the possible outcomes, before mediation can take place. Following previous research, communications leading to resolutions made by the parties together are more sustainable than decisions handed down by the judiciary (Dunne, 2019). This is the key perspective of all the participants, and they all felt it was better for the parents to try to meet, even if they did not have full agreement. As discussed, the Legal Aid Board jointly agreed-upon decisions have a better chance of being honored (Legal Aid Board, 2023).

### 5.3.3 Co- mediation and solo practitioners

The role of co-mediation and solo practitioners became a theme, and there were different viewpoints on this. Many mediators and legal practitioners who practice mediation prefer to mediate alone. However, the mediators who work in European organisations that specialise in international Hague cases primarily work with co-mediators. This is echoed in the guidelines of the HCCH (2012) and in specialised training modules on Hague cases. This is understood to be a benefit, to have dual languages, dual cultures, and genders, to ensure that both parties are represented as per best practice methods. As discussed in the literature review, Missing Child Europe (MCE, 2024) offers two different mediation methods for families dealing with international child abduction. The first method is the pressure-cooker method which invites the parents to meet in one location and work with co-mediators over a brief period. Each of the co-

mediators offers a different skill, a psychologist, and a legal professional. They also offer mediators of each gender, each nationality and each culture and bilingual as per the HCCH mediation guide to good practice (HCCH, 2012)

This research recognised that some mediators are more comfortable mediating alone and following discussion with them, see no reason that they should not continue and be supported in this. However, when mediators are practicing alone due to a lack of resources, it becomes problematic for some of the participants, as they want to offer the best service. Over half of the mediators mentioned that they would like to have more opportunity to work with another professional on a case, but it was often the fact that resources were not there. In some private cases, (not especially international cases) the cost would be more for the clients to have two mediators.

*I totally understand that it is too expensive if you do co-mediation on a regular basis, it becomes too expensive for people who are looking for mediation. I think it would be, (co-mediation) it would be perfect as a general setting. But I can totally understand that it is too expensive. (P3: M)*

The preference of over half of the mediators for co-mediation was clear, even when the mediator normally works alone.

*I do not have a lot of experience in co-mediation .... The experience that I have is good, I mean, I would like to do it more. (P8: LP/M)*

This is reflected in the studies on co-mediation and training programs in Europe (CBFM, 2023) and this research echoes this view. Recognising that it can often have more to do with funding or the cost for the parties, it was mentioned that the legal process can often be funded but not the mediation process in some EU countries.

*I mediated alone. I would love (emphasis) to do it in co- mediation. But....like in the (EU country) they do it a lot more and it has to do with money, in the [city] they can get a lot of money, like there is another system.... But if we do co-mediating, it is not usual in [EU country]. So, when you do it, you must be willing to earn only half. (P8: LP/M)*

This research showed that most mediators felt that in international cases, co-mediation was more beneficial and agreed with the recommendations of the HCCH Guide to Good Practice mediation (2012). This guide fully advocates for the co-mediation model with emphasis, when possible, on bi-lingual and bi-gender roles. This, according to studies (Paul et al, 2023), supports parents to feel represented at the meeting. P2: M discussed in the findings that co-mediation is preferable and when possible, a male and female for gender balance in the room and in non-international family mediation it is good to co-mediate when starting out.

*But co-mediation is important, particularly when you are starting out. You really reserve your judgment (to discuss with a co-mediator). (P 2:M)*

Again, the general viewpoint was a preference for co-mediation for most cases including international cases. This research identifies this preference, whilst acknowledging the preference of solo mediators among this small cohort.

*I am more used to ....to single mediations than to co- mediations, or to solo mediations than to co-mediation. (P3: M)*

Therefore, as in many organisations, Reunite, Legal Aid Board (LAB), Mediators' Institute of Ireland (MII), MIKK.e.V. V Berlin, IKO The Netherlands and CBFM Europe, there is a role for both co- mediation and solo mediators. Over half of the participants preferred the co-mediation role, due to many reasons. P3: M discussed how having the benefit of a discussion with your co-mediator helped in moving forward.

*We do speak about.... About the whole process, what went well, what did not go so fine, and where there are possibilities to improve the process? What slows down the process? ....Yes, we do (discuss the mediation session) (P3: M)*

The companionship, extra support with language issues, and the opportunity to have another person with whom to discuss the issues raised by mediation, and the value of a unique perspective. One participant spoke about how they like to work with someone from whom they can learn.

*I have been mediating with mediators I have never met before, and it was great, you know. And it is always the question, are they better educated than I am [smiles], are they more experienced, do we have the same style of mediation? But when you are open to it, you realise someone has a different style and you find it interesting (P4: LP/M).*

However, due to resources, solo mediation can often be the only available course of action. This researcher feels there is an opportunity for this research to outline the benefits of offering co-mediation in situations where the mediator believes it would be more beneficial to the parents, without the added pressure of finance involved. This is an idealist view from this research, but it is a good finding from the research of the views of participants. This is also in line with the HCCH mediation Guide to Good Practice 2012.

## 5.4 Child focus

Child focus became a standalone theme, recognising the importance of where the child itself or the child's voice fits into the process of both mediation and the legal process. Understanding how traumatic separation can be for the child combined with the removal from their established home and family and friends can add extra distress (MCE, 2024). Welz (Paul et al., 2023)



discusses her own personal trauma as a victim of international child abduction and speaks of how if mediation was available to her and her family at that time, the outcome may have been different. Studies on children's experience of parental separation have shown that children can not only feel trauma but also feel isolated and different from other families during separation (Horgan et al, 2002). Older children, according to studies (Horgan et al, 2002) can understand more about the situation than younger children and deal with it differently. As discussed in the literature review, abducted children with a family background of domestic violence often feel that their life before the abduction was more traumatic than the abduction itself (Freeman and Taylor, 2024). This is echoed by Shannon (2020) in discussion on domestic violence in cases of international parental child abduction and notes that domestic violence causes irrefutable harm to children. Therefore, as recommended by Shannon (2020) more effort must be made by the Hague Convention to support the abducting parent who has been a victim of domestic violence.

Much of the discussion involved the child's voice, but the focus within the process was on the parents. Research by O'Kelly and Brady (2014) resulted in framing how a child in situations of family conflict can be empowered by the feeling of being heard and by inclusion in the process. This resonated with the findings of this research on hearing the voice of the child. It was agreed by the participants that hearing the child and understanding how the child feels is not only a legal requirement but is beneficial to working on agreements. The Voice research project of 2018 from Missing Children Europe (MCE, 2024) offered results based on the study of twenty-four young people who have experienced parental child abduction. MCE defines children as 1-17 years and young adults as 18-24 years. These results concluded that there is still a lot to be done in Europe and acknowledged that there is still no concept of coherence in the way that the member states work together. The children spoke of how their unique needs should be assessed according to the child's age and that the parents must resolve the conflict in the best interest of the child. They also concluded that the children are experts irrespective of their background in being innovative and creative in problem solving. The research's findings were that the children wanted to be heard and informed and were clear on the best way to ensure this (MCE, Voice, 2018). The participants of this study agreed that children should be able to have their legal right to be heard but agreed that it is not happening as often as it is perceived to be.

*I know we have tried to do it in more cases than it has happened in, but when it happened it has been great because the kids love it. I mean, they feel really like, you know, they are being listened to. (P19: M)*

Child-inclusive and child-focused proceedings are a legal right under the practical application of Article 12 of the UNCRC (1990). However, Freeman et al, (2019) found that child-inclusive mediation, however good it is deemed to be, is still often not happening. This research found that in some cases the mediators had to remind the parents that the child has a legal right to be heard and that listening to them can help with the process. Some of the feelings of the participants were mixed in inviting the voice of the child. One participant holds the view that if the parents are doing okay, the child is okay.

*My premise is children have no problem. Parents have problems. So, the three times this happened, I could confirm my suspicion. Not the children had problems, but the parents. Between them and how they talked to the child how they react to the child (can be the problem), so once you change their mindset to accept the child as it is, to reduce the level of stress at work, which are the problems. (P9: LP/M)*

However, this was not mentioned by others and many of the participants were in total agreement with ensuring the child is heard in mediation. However, Child Inclusive mediation (CIM) is also a specialised field and many of the mediators with whom this researcher spoke did not have the specialised training or were certified in CIM. Certification for CIM mediation is recognised as a crucial step in the inclusion of the child in mediation. The different approaches to ensuring that the child stays as the primary focus are described by Kiesewetter and Paul (2023) to be inconsistent in different countries. The participants agreed that the legal framework for ensuring the well-being of the child is the heart of all the discussions, but that it can be a different approach depending on the jurisdiction. As discussed, some had their unique way of inviting the parents to keep focus on the child. One participant would ask the parents to bring a framed picture of the child or children as a framed picture is considered more valuable.

*Because if you frame it, it is either a special photograph or a memory with a sense of importance. (P1: M)*

This value attributed to the framed photograph was deemed to add a special signification to the process and to the voice of the child when not in the room. However, this research demonstrates that most of the discussions were on mediation with the parents and the focus was on the parents' approach to the issues. The lack of child-inclusive mediation approaches was noted by this researcher, and the continued focus on the parents was prominent throughout the interviews.

This research, however, was not originally intended to focus on child-inclusive mediation and therefore, following the literature review and research, including the voice of the child became a key theme. Even though it is agreed and enshrined in HCCH law that the voice of the child is important, this research does not totally support the view that this is happening at the coalface. However, there are many children-focused agencies working closely on this approach. Agencies such as Missing Children Europe, who promote that the most common way to resolve international child abduction cases is mediation. According to the 2022 report (MCE, 2022) of the 637 new cases which were dealt with by the MCE hotline, 18% of cases were resolved by mediation and 12% were court proceedings. The most up-to-date law in Ireland is the Childcare (Amendment) Act of 2022 which aims to standardise the National Guardian ad Litem (GAL) service, therefore adding power to the voice of children in law proceedings (Kirwan, 2022). The participants agreed that this is a very welcome Act.

This research concludes that the voice of the child is pertinent to the child being offered the opportunity to be heard in proceedings which directly affect them, as per Article 12 of the UN Convention on the Rights of the Child (UNCRC, 1989). CIM is therefore deemed a valuable tool which allows the child who wants and needs, to be heard during international child abduction cases. Following the findings from the participants on child focus, this research demonstrates and proposes that the offer of CIM should be as normal as ensuring the couple have taken legal advice before and throughout the process.

## 5.5 Challenges

Challenges became a key theme with a focus on training, skills, time restrictions, and the limits of mediation. The complex situations that involve family members and children are well-recognised throughout the literature review. Many studies explore how complex and difficult working with a family can be. According to Freeman and Taylor (2023), this can be escalated in situations of international parental child abduction and the findings of this research agree with this view. Mediators mentioned in the findings that they often recognise that parents often come from a toxic environment which contributes to challenges.

*They are so adversarial and toxic by the time they come to us, so there is such a history of adversity. (P2: M)*

Some participants pointed out that some mediators want to be fixers and found that this could add to the issues.

*Part of it is letting go of an ego, because if you are in the room and you think you can fix every problem that is going on in the room and if you think that is your job, then you are in the wrong place. (P1: M)*

Each of the participants spoke of the training and skills needed to ensure good practice and the challenges this can bring. They spoke of the time restrictions involved in Hague cases and the limitations of mediation for such cases. Training and skills issues, time restrictions, limitations and resources are discussed in this section.

### 5.5.1 Skills and training

Vigers (2011) outlines how the international family law community encourages parents to engage in mediation and discussed what steps are needed to understand how the mediation process can be used within the restrictions of the Hague Convention. One of the key aspects is ensuring that family mediators are trained and gain more experience with international custody cases. Family mediators who specifically deal with international family conflict need to have specific skills and knowledge according to MCE (2024). The diverse legal systems and the organisational procedures which are at play can be a formidable challenge for the mediators (MCE, 2024). All the points which have been discussed in this research such as language, geographical location, diversity, and the level of mistrust, are crucial factors when working with international child abductions and these factors can heighten the tensions involved. Therefore, training and skills required were key issues for participants in ensuring the merit of the mediator's role. Missing Children Europe (MCE, 2024) advocates for all certified family mediators who work in international cases to have a very specialised skillset. As per their website, the mediators must understand that the parents are dealing with diverse legal systems and protocols which can become formidable for both the parties and the mediators. All mediators and legal practitioners participating in this research agreed that training and ongoing continuous professional development (CPD) were essential in ensuring best practice as per the Guide to Good Practice, mediation (HCCH, 2012). Training such as the specialised international family mediation (CBFM), training programs from MiKK.e. v and similar organisations outline the benefits of comprehending the specialised training for the role of the international mediator.

Many of the participants of this study mentioned that some very experienced mediators will avoid international cases as they do not feel confident in Hague law.

*We have a lot of mediators who would be perfectly capable in this area but have a fear of something they do not understand. I think when they hear words like child abduction, Hague Convention, that scares them off. (P7: M)*

This quote shows how much the specialised training would benefit the mediators and legal practitioners who may shy away from Hague cases due to not having a good understanding of the law in such cases. This anxiety of the unknown is also discussed by Walker (Paul et al, 2023) as a barrier to understanding the basics of international family mediation. Paul et al, (2023) also discuss how specialised mediation is a requirement for mediators who work on international child abduction cases. However, some of the participants felt that family mediation is the same all over, and if you can mediate all issues for a family, then you can do international mediation too. These research findings do not agree, and the participants have mentioned that further training in the legal aspect would give the mediators the confidence to engage in Hague cases, as these have more specific procedural and legalistic aspects, such as timeframes and different authorises. Freeman and Taylor (2023) have outlined that these cases are escalated and more complex, and this research affirms that this is the foundation for a more specialised training program. Therefore, following the views of the participants, the key to best practice in international family cases is to ensure that specialist training is available at all levels. The requests by the participants for a clear module to ensure that family mediators are familiar with the context of international guidelines will add to the confidence of the mediator and professionals.

*So I think the training piece that we need to do, that we could do if we were to formalise it as a little module would be really just to explain the context of the legal proceedings that lie behind this work and, you know, and the types of timelines, because really, and this has been pointed out to me by a few mediators, at the end of the day, you're talking about child arrangements. (P17: M)*

The view that there is not enough ongoing training available, or the accreditation is not high enough was noted as a concern for best practice. These research findings confirm this view, and the participants have voiced that they want ongoing training.

*Our experience is that people who have come in from.... and taken training elsewhere, have quite large gaps in their knowledge, you know in terms of what a family mediation organisation needs them to know. (P7: M)*

The role of the mediator and how it is such an important part in the process, was spoken about by the participants. The skills to ensure that the mediator is connecting with the parties and understanding their role in the process was deemed by this research to be the key to providing the best possible outcome.

*I suppose having the skills enables you to ask an appropriate question because you know enough to ask an appropriate question, and you also know enough to realise whether you're connecting well with the client or you're not, or what might be impeded because you do a lot of training on self-awareness, you know, because in any mediation I would say the mediator is as much party and influencing it as the parties like the three of us in the room, not just two, with a facilitator. (P13: LP/M)*

Therefore, the training programme is the key to the best practice within family law and mediation. Following the interviews, this research recognised that full access to training is what was proposed by all the participants, and ongoing training in specialist fields is a requirement for moving forward in all European Member States.

## 5.5.2 Time Restrictions

Shannon (2020) acknowledges that Article 11(3) of the recast Brussel IIter 2019/1111 requires a six-week time limit for the return of the child to the place of habitual residence. However, Shannon (2020) notes that delays in the proceedings can have the potential of delaying this return and the purpose of the Convention. One of the key findings in this research was the

timing of the involvement of mediation and how it can affect the outcome or delay. However, the legal practitioners expressed how fast the process is with the six-week time limit which has been discussed in Chapter 1(1.5). Other participants spoke of the six-week time limit as unrealistic and rarely happening.

*It's difficult to see how you can streamline it you, know, how you could radically streamline it in terms of, because obviously, from both the applicant's perspective particularly from the respondent's perspective, if there are defenses around grave risk or the children's wishes or technical issues that might require an affidavit of laws, or require DNA testing, these issues can crop up all the time in these cases so how you can then achieve the six-week time frame, I am not sure. (P10: LP)*

From the mediators' perspective, the time limit of six weeks meant the addition of mediation ended up being quite rushed and needed to be structured. This is a crucial step in the role of mediator and is recognised by this research and the training authorities such as CBFM (2023). Others preferred the time restrictions and felt they got more done within the shorter time limit. Rodrigues (2019) describes the 'Pressure cooker method' and how court-referred mediation over a weekend or brief period can be beneficial to the parties. This pressure cooker method is when both parents meet in one selected location with co-mediators (MCE, 2024) and is offered in many international and European countries. The participants had different views on this; one participant, however, found that they worked better with a time limit on mediation.

*Yes, we went into the mediation with a super strict schedule and (--) we managed to finish with all points on our agenda by the end of the day. .... That is how we did it. We did not really manage to complete all the time, but we knew we had to finish by the end of the day and in the end, we managed so yes, time is super helpful. The pressure of time is super helpful. (P: 3)*

This research acknowledges the time limit as being very tight, with the six-week turnaround recommended by Brussels IIter 2019/1111 and the HCCH (2012). However, most of the legal



practitioners agreed that they are used to working under such time pressures and acknowledge that mediation is a more measured time process. This can involve extra expense for one party and blocking off time for very intense meetings, which according to MCE (2024) can be beneficial while working within the six-week time limit that is allocated by the Convention. However, not all the participants of this research agreed with the pressure-cooker method, and some spoke of how the parents may feel under pressure to make an agreement. Others found this method to be beneficial for a speedy resolution. Others felt that mediators needed time to work with the parents and to allow them to have a cooling off period, but this research acknowledges that time is a luxury in Hague cases.

*OK, what I say to my clients: you need after every session at least one week.... but yes, to let the emotions calm down and work them in your mind. (P9: LP/M)*

This research affirms that mediation must work within the time limit allocated to the case. The time limit of six weeks set by the Hague Convention is the key to the best interest of the child and to ensure there is no delay in returning the child to the place of residence. Again, based on this research, specialised training is so important to ensure that mediators have the correct skills to work in this tight time limit. However, it is noted that judges can extend the time limit for the parents to be involved in mediation if there is evidence of progress and if it will not compromise the child's or parents' safety (HCCH, 2012). This research has shown that each of the professionals' have preferred methods and again training in understanding each other's role can be supportive.

### 5.5.3 Limitations of mediation

The limits of mediation in cases of international family cases are a prominent issue for discussion. The participants had noticeably clear views on this and often discussed the acrimonious relationships that arise within families in this context.

*You know you are dealing with parents who have very acrimonious relationships and often significant issues of their own. (P12: LP).*

This was a common theme for the participants who all agreed on the large scale of conflict and complexities in these cases. This research supports the views on complexities and as discussed previously, the voluntary aspect is also a key issue: if one of the parties is not agreeable to a meeting, then mediation cannot go ahead, and a court case is the only route. Prominent issues such as domestic violence (DV) are specific issues that will limit the use of mediation, Article 13(b) of the grave risk exemption of the Convention will also limit mediation, and this research confirms this view. If the judge determines that the return of the child could expose them to physical or psychological harm, then Article 13(b) is enacted by the courts.

*Obviously, if there are serious allegations around domestic violence or grave risk you are not going to suggest mediation in these kinds of cases (P10: LP)*

On issues of domestic violence, it was agreed that mediation in such cases is very limited, if at all. This research found that the participants agreed that it is not possible to mediate if one of the parties is not agreeable or has more control over the relationship and that court is the best option in such instances.

*Definitely. Yes, any kind of violence towards oneself or towards another person is a problem. Yes, it is where mediation finds its limits (P3: M.)*

The findings confirm this and reflect Alexander's (1992) study summarizing how women who have lived with violence and years of abuse do not have equal bargaining power with the other partner. They also lack opportunities to be involved with finances and may suffer from low self-esteem. As discussed, in Ireland, mediators will not normally work with parties where there is a history of domestic violence but in other countries such as Germany, they can but have enhanced screening in place. This outlines how much screening and training is necessary

in approaching and working with DV cases. This approach is also discussed by Khalaf-Newsome (2023) on how screening for domestic violence is essential before mediation can be considered and this screening process is also essential in training mediators (Paul et al., 2023). This screening is to ensure capacity for all parties and is the key to ensuring that vulnerable parties are protected (MII, 2023). In the civil aspects of the Hague Convention mediation Guide to Good Practice (2012), the application of mediation is endorsed; however, due to these DV factors, the process of mediation is not always acted on.

Based on these findings, and previous research projects such as Freeman and Taylor's (2024) findings on the effect on children when there is a background of domestic violence in international custody cases, this research confirms that such cases are not suitable for mediation. The discussion by Shannon (2020) also outlines how the Hague Convention 1980 needs to step up in protecting the abducted parent who is a victim themselves, of domestic violence. The training that mediators must have in screening for domestic violence or coercive control must ensure that the parties have the capabilities to make informed decisions. As discussed in previous chapters, the process of mediation is described by the Guide to Good Practice, mediation (HCCH, 2012) as having many benefits; the principles of mediation such as being non-judgmental, confidential, voluntary, self-determined, that either party can withdraw at any time, being impartial and non-adversarial. Also, according to the Guide (HCCH, 2012) legal practitioners must ensure that parties are aware of the voluntary aspect. This voluntary approach is echoed by all the studies and training manuals described in this research and by the participants in this study. All participants of this study agreed on the importance of voluntary agreements, and a key part of their training covers this. However, mandatory mediation is now emerging as an approach in mediation for family disputes (Korsakoviene et al, 2023).

This research found that the mediators and the legal practitioners were not fully on board with the mandatory mediation which according to Korsakoviene et al. (2023) is being rolled out across some European states. The participants of this research agreed that the process of mediation should stay voluntary. The reason offered by the participants was based on the theory of mediation as a voluntary process (Beer, 1997).

*You can solve them like this, little by little, you only need two people that really want to be there to solve the problem and they trust you. (P9:LP/M)*

Based on this research, the view is that if other countries were to follow the route of Spain, Italy, and other EU (European Union) members and introduce mandatory mediation it would need to change to the law in the specific countries.

Ferreira (2019) speaks about why mandatory mediation should be necessary in Hague Convention on the Civil Aspects of Child Abduction cases and documents data from South Africa on, not just an alternative to court, but a mandatory requirement (Ferreira, 2019). This discussion argues that as early as possible the families should be offered mediation to ensure they have control over the decisions that affect them. Also, that the parents are under too much pressure to be able to decide what approach they should take and based on the premise that mediation is in the best interests of the child, mandatory mediation is recommended by Ferreiras' research. The belief is that if it is mandatory, it will support the parents at this time where they have *a spiral of conflict* (Ferreira, 2019:16) and thus cannot make an informed decision. This is not compatible with this research from the perspective of the professionals working in this field. This research agreed with Levitt (2020 and Mediation Act (2017) that primarily the view is to keep mediation voluntary. This also ensures access to justice through the court system for those who require it and need it (Levitt, 2020).

Examples in Canada for commercial mandatory mediation show expedited hearings especially in complex cases Levitt, (2020). Yet as discussed by Levitt (2020), the quality of the settlements was found to be lacking. This was more prominent in cases with a recognised power imbalance. This research recognised that with court proceedings formal safeguards, witness statement and advocacy are provided, and agrees with Levitt (2020) that mediation can often rely on the specific mediators' skills and training. The legal practitioners in this research also spoke about how the client may want and need their 'day in court' for justice to be seen to be had. For example, the Mediation Act 2017 in Ireland and mediation acts across Europe are

clear on the voluntary aspect for all participants and facilitators and to date this is still the core of the mediation process. ‘Participation in mediation shall always be voluntary’ (Mediation Act, 2017, 6:2).

## 5.5.4 Resources

The participants who worked in organisations spoke about resources: resources around hiring more mediators, solicitors, and resources to ensure more specialised training for continuous professional development. It was agreed by the participants that all parties, both professionals and clients will benefit from more resources in specific areas. Notably, mediators and legal practitioners working in the private sector did not focus on resources. This sub-theme arose most frequently in interviews with professionals who worked in the public sector or NGOs. The salary for starting in mediation was discussed as being too low in some organisations and this was deemed to be a negative factor in recruitment as discussed by P16: M in the findings. Many discussed how different organisations have different resources and it depends on the organisation that you are with. This was echoed by participants in all the different countries.

*But if I could say one thing about dealing with these things from my perspective: a huge thing is the resources...the resources and that will vary depending on the (organisation) that you go to, but that was my experience. (P11: LP)*

Resources for training and adding services, such as supervision, were also discussed. Participants discussed how more opportunities for both supervision and reflection should be available. Two of the legal practitioners discussed how the legal practitioners do not have access to supervision and felt this was important to be able to offer this service. Even if they choose not to avail themselves of it, the opportunity should be offered as part of the self-care process.

This research demonstrates that supervision and reflection should be offered to legal practitioners if they request it, and it should be part of the work assistance that is offered.

## 5.6 Legal framework

As discussed in the literature review, The Hague Convention on the Civil Aspects of Child Abduction (1980) is a treaty that was set up to help facilitate the return of children to their place of habitual residence, for the courts of the habitual state to make decisions about their custody and, or access. The Convention also works with parents in supporting them with custody rights (Gov, 2020). According to Reunite (2023), the remaining objective is often a struggle for many parents in cases of child abduction due to the complex nature of the cases. Therefore, national and international organisations and the legal framework aim to work with parents in the best interests of their children. By describing family law as chaos, Dewar (1998) discusses how the conflict that families face during separation can affect their understanding of how to work, or not work, within the legal process that is involved in family law. These descriptions allow this research to explore the role of the legal process, also the role of the mediation process in understanding how families in conflict can be affected in such a negative way when trying to navigate the legal proceedings. Research has shown that the role of family mediation has changed the legal process of divorce agreements and added a more personal approach to the parties being involved in their own parenting agreements (MII,2023) (HCCH,2012). Therefore, it is important to note that attitudes varied between the legal practitioners and the mediators in areas such as the role of mediation in international Hague cases.

Daicoff (2004) discusses the legal practitioner's profile and how it is seen as having a strong personality trait. Traits such as competitiveness, materialism, and levels of success. However, Daicoff questions whether it is time for a more humanistic understanding of lawyering (Daicoff, 2004). P10: LP discussed how legal practitioners have many negotiation skills to support them in international family law cases, whilst demonstrating a more humanistic layer of lawyering as discussed by Daicoff (2004), parents in international family law cases,

*I have a huge respect for mediation, and it is very worthwhile, and it is a high level of skill which we do not have. But then lawyers and solicitors have a lot of skills in terms of negotiation and in terms of trying, you know... but we would negotiate quite a few settlements ourselves without even going to mediation. So, it is good to have that recorded and noted. (P10: LP)*

This research recognised that some legal practitioners thought that mediation is not typically applied in court cases, and some mediators felt that the court proceedings just escalated the conflict.

*Child abduction cases, not family disputes, we speak about child abductions usually, however, it reaches the second instance, and it is decided by the second instance in court. So, the mediation is not, let us say, typical. (P15: LP/M)*

It was acknowledged throughout by participants that the mediation process could never preplace the court proceedings but that there were benefits to working closely together for the benefit of the parties and children. As previously noted in the findings P6: LP/M discussed the importance of informing the parties of the legal process and P5: M spoke about how in some cases the parties and especially the children would be better protected and informed when in the court proceedings. This is pertinent to this research as the key approach to the best practice is deemed by the participants to be mediation and the courts working side by side. The obligation of the legal practitioners to inform the parents of the mediation process is enshrined in law (HCCH, 2012).

### 5.6.1 Brussels II Regulations

As discussed, in accordance with Article 25 (Brussels IIter 2019/1111) the Guide to Good Practice on Mediation (2012) there is an obligation for the court to invite the parties to consider

mediation or other forms of alternative dispute resolution in cases of international child abduction (Baruffi, 2023). However, this must not unjustifiably delay the proceedings, and the court must ensure that it is not contrary to the best interests of the child (Brussels IIter, 2019/1111). De Ruiter (2020) discusses how the recast of the Brussels IIter (2019/1111), Article 25 should ideally allow the process to be dealt with more efficiently; mediation is recognised as a key process in supporting parents and children to work on their own agreements (Legal Aid Board, 2019). Not all the participants agreed that the proceedings following the recast would be more efficient and questioned if there are any real changes at all as discussed by P15: LP/M in the findings. However, discussions with most other participants tended to acknowledge that the changes cannot be measured until the Brussels IIter 2019/1111 has been acted upon. Chapter III of the Regulation recast is dedicated to international child abduction cases. According to Maoli (2022) the United Nations Convention of the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union have enhanced the protection of basic rights of the child in this recast (Brussels IIter, 2019/1111). These rights have already been in place but are now more protected by linking the children's rights to the EU legal order and the urgency it involves under Article 24, expeditious court proceedings.

*A court to which an application for the return of a child referred to in Article 22 is made shall act expeditiously in proceedings on the application, using the most expeditious procedures available under national law (Article 24:1).*

Maoli (2023) discusses how under the Brussels IIter 2019/1111 the jurisdiction of parental responsibility is unaltered. However, there have been some revisions which concern the choice of court in not only to be in the best interests of the child, but also a substantial connection should be in place between the child and the State to which the child has been moved to (Maoli, 2023). UNCRC the international convention in Article 12 provides the obligation to hear the child, now the same obligation is stated in Article 26 *Right of the child to express his or her views in return proceedings* (Article 26, 2019/1111). A decision about a child cannot be enforced if the child is not offered the opportunity to express their views under Article 21. According to Maoli (2023), as with all articles, there may be unusual circumstances in which



this cannot occur, and this is outlined by Article 39 (2). ‘The recognition of decisions in matters of parental responsibility may be refused if the child could form his or her own views and therefore must have been given an opportunity to express them’ (Article 21). These examples of changes to the Brussels IIter 2019/1111 discussed by Maoli (2023) show that there are modifications to the Brussels IIb which work in harmony with the UNCRC-specific rights of the child whilst ensuring the child is heard and how it can affect the outcome. This objective, to ensure the best interests, has introduced a more flexible approach to national authority. For example, pending an international child abduction proceeding the national authorities can issue a protective order, or even suspend the enforcement of a decision if there is deemed a psychological risk to the child. (Maoli, 2023). Therefore, this research acknowledges that the changes, however minor, are beneficial in cases of international child abduction and this new Regulation sets the opportunity for the child to be included and heard and to ensure the best interests of the child are firmly in place. Under Article 56, the enforcement of a decision can be suspended if it is found to expose the child to grave risk of physical or psychological harm after the decision was made, or if circumstances change. This is important and ensures the best interests of the child are paramount.

### 5.6.2 Shadow of the Law

Mediators who are not legally trained work in the shadow of the law and often, according to this research, feel a little intimidated by the legal process. As discussed, this research had three groups: family mediators, legal practitioners who also work as mediators and legal practitioners who specialised in the legal process only. This research offered to explore the different approaches and opinions of each group. This researcher feels that this again links back to specialised training for international family mediation, as having a better understanding of the legal position of the parents and children will support the mediator in their work. The roles are different as described by this research, so a general understanding of each will benefit the process and the confidence of the professional. All of this equates to a better process which is expected by the HCCH 1980 Convention. This research has also found that mediation and the legal process are often parallel paths. The legal practitioners spoke of their understanding of

mediation but expressed that they do not always have the time to follow up on mediation. Due to the pressure of time and workload, many of the participants discussed different attitudes to mediation, and this view was different between mediators and legal practitioners. Fifteen of the participants, who were both legal practitioners and practicing mediators, offered a more open response to mediation. These views echo the views mentioned the previous studies such as Vigers (2011) and Paul et al. (2023).

## 5.7 Self Care

Self-care is recognised by the World Health Organisation (WHO) as being the key to supporting not only yourself but how you respond to others around you. Self-care interventions are evidence-based tools that can include medicines and counselling (WHO, 2023). Turner and Rankine (2024) found that self-care concepts are not available and not adequately implemented in professional organisations, such as counselling. There is little information on self-care within the legal professional and according to Turner and Rankine (2024) organisations are not fully aware of the burnout signs as self-care is often seen as an optional measure. This research also indicated that the legal profession does not have access to self-care programmes in their work and many other professionals have minimal access to a more holistic education as described by Turner and Rankin (2024).

Initially, self-care was not a primary issue for discussion, however, as happens in semi-structured interviews the interviewee often decides which way the conversation will flow. This allowed the theme of self-care to become prominent and was then included as a question for discussion in the following interviews. This researcher was happy that this happened, as it allowed the participants to be more open about how they look after themselves in what can sometimes be a catalyst for vicarious trauma. However, in this research, the participants reflected on the benefits of their own self-care tools and how finding and working with a self-care routine supported them in their work in both family law mediation and international parental child abduction cases. Tools discussed such as supervision, peer support, how they switched off, and finding contentment in their work environment. Being open and able to approach a colleague was recognised by the participants as empowerment and the ability to speak about their self-care in this research was deemed to be important to them. Based on part

of the safety briefing when flying on an airplane, one might use the metaphor of putting on your own mask before looking after someone else; this was spoken about by one of the participants on the topic of looking after oneself. This was a relevant analogy by P10: LP (findings) and summed up what most of the participants felt about self-care. The legal practitioners discussed the absence of supervision and peer support in their work support. Daicoff (2004) speaks about the strength and personality of the legal practitioners and the three-part crisis in the legal profession; crises such as the challenges, poor mental health, and the lack of respect the public have for the legal profession. Daicoff (2004) explores a possible new model of lawyer which involves engaging in a more comprehensive lawyering and human-centered approach. Therefore, when dealing with very intense situations, which this research has found arise frequently in international family mediation and legal cases, each of the participants acknowledged how self-care is important. Being aware of their self-care allows them to do their work efficiently, and they feel it is their responsibility to ensure that they are constantly aware of that. The participants also acknowledged that when working in an organisation the support is an important part of their job.

*So, if they are( the clients) very toxic, it has got to impact, so I think (--) I'm much more aware of that and maybe because of the many years that I've now mediated and that has got to have an impact and then we are duty bound both for ourselves, our own families and the clients that we're going to see before and after them, to look after ourselves (P13: LP/M)*

This research acknowledged how stressful the work of mediation and family law can be for the professionals themselves and therefore this topic became important to this study. As discussed, self-care was not included originally in the research, but this researcher found each of the participants spoke of how aspects of self-care supported them. The benefit of semi-structured interviews allowed the participants to discuss what helped them in their work and therefore self-care became a theme. The sub-themes were derived from this; the satisfaction of the work environment, the supervision and reflective practices, and the support of their colleagues were all discussed as being helpful to them in their coping mechanisms.

### 5.7.1 Work Satisfaction

As part of self-care, work satisfaction was discussed by all the participants. It incorporated support while dealing with international child abduction cases and how sometimes they may be difficult to address within the time limit allocated as all other work must be put aside. It was acknowledged by the participants that burnout can happen to some professionals whilst working on cases. Too many cases and too few professionals working in this discipline are the primary causes. When an international family case arrives on the caseload it must be prioritised, due to the time limit discussed earlier. As all other work must be put aside, this can create pressure as the participants mentioned that in some organisations there just is not anyone else to pick up the case and thus this can cause unnecessary stress as discussed by P12: LP in findings.

As discussed in the findings one participant mentioned that they do not like to use the word satisfaction with mediation cases, but they do feel satisfied when mediation has a positive outcome for the parents and children. This observation is important to this research as it reflects a positive working approach. This research also recognised the value that more support and staff would offer even just at peak times. However, they acknowledge that it can be difficult to when an international child abduction case comes in, as they must act on these cases promptly. Therefore, planning timetables and extra support can be a challenge. All the participants spoke about how work efficacy can be improved by engaging extra support in the form of administrative staff and flexibility to recruit extra on-call staff. This research demonstrates the value of added support that each participant has mentioned.

## 5.8 Support

Each of the respondents spoke about what would work for them and acknowledged that the workload needs to fit around Hague cases. As Hague cases must be dealt with when they come in, other work must be put aside in larger operations. In some cases, the respondents felt that this presented a higher stress level due to the lack of more experienced staff available.

*There are wonderful solicitors out there and we just need more of them, [OBJ](smiles).  
(P17: M)*

This research acknowledged that work-related stress (WRS) can affect work satisfaction and the mental health of the professional as discussed by the HSE (2024). According to the HSE (2024) this can happen when a person feels unable to cope. Therefore, support in the workplace is key to ensure best practice for support, both resources and self-care practices are in place.

### 5.8.1 Supervision and reflective practice

Reflective practice is a part of the training module for mediation and the benefits are recognised by all training organisations (MiKK.e. V, 2023) (MII, 2023). Reflective practice is also included in all mediation training modules across Europe. In sharing their experiences, the mediators agreed that they learn from each other and can share experiences in a confidential environment. All sharing and learning groups and supervision groups are affiliated with a trainee program and the professional must be an a certified member (MII, 2024). All training programs offer sharing and learning groups, reflective practice, and supervision to the mediators. The benefits of reflective practice and sharing and learning groups are discussed by Lang and Taylor (2000) and outlined as nurturing the curiosity and exploration of themselves as professionals. Mediators with experience in supervision are aware of the benefits and how it can help their own self-care. The legal practitioners do not have supervision or reflective practice sessions and felt that this could be beneficial to them as they have similar complex cases.

*I think reflective practice, I feel very strongly about it, well it is.... or supervision, or both. I think it has been significantly lacking in legal training and the legal profession. Obviously, social workers, and mediations all have supervision, the work [professional] doing can be difficult, can be stressful, even in younger people (P10: LP)*

This point was heard and acknowledged; legal practitioners want similar support, such as supervision or reflective practice sessions included in their legal training.

## 5.8.2 Peer support

Factors such as IT support and administration staff in organisations have been spoken about as key factors in peer support. Knowing that issues are sorted professionally can help when working in an organisation and having colleagues that you can rely on adds to the supportive environment. Peer support was also recognised as being akin to self-care for the individual. The simple act of having a coffee break with someone and being able to discuss, anonymously, a case was also deemed to be beneficial and was discussed by P17: M in the findings. The support for legal practitioners was also noted as a concern when cases came in and no one was able to share the load. Peer support was also evident in the way that the participants offered guidance for new starters or colleagues who may want to become mediators and/or solicitors. This advice ranged from gaining full training opportunities to just going out there, and if you make a mistake, just own it.

*What would I tell new mediators, you know, cases, cases, cases. I mean, just go out there and do it (P19: M).*

This advice is relevant in this research as it recognises that most new professionals can be nervous to begin and is particularly important for new mediators. This research found that this was a recurring theme with legal practitioners. Understanding the role of support became key in the findings and for self-care. The discussion of how many cases the professionals must dealt with, varied with each participant. The stress involved in working in parental child abduction cases was spoken about and this sentiment was echoed by others. One of the mediators who also worked as a legal professional felt that up to four cases a year was enough, and this was the personal key to their work satisfaction and self-care. However, other legal practitioners spoke about doing quite a lot of parental cases in both mediation and divorce in short spaces of time but not necessarily international cases. A figure of over 301 requests have been made to the international child abduction body MiKK.e. V for mediation services in 2023 and these

requests have been steadily rising since the year 2008 Fig 2 (Illes, 2024). It is important to outline the growing demand for mediation services in international parental child abduction cases is important. Therefore, this research recognised that work satisfaction, regular supervision and peer support and the number of cases carried out all contributed to self-care for the professional and this was a key theme throughout.

## 5.9 Recommendations

The participants' recommendations were very varied, and the participants spoke about support and backup. Whilst acknowledging the recent positive changes in the workplace, the legislation and public interest were addressed and the lack of suitably experienced solicitors in some locations. Many professionals who worked within organisations felt that they would need more staff in all areas to ensure best practices. Conversely the benefits of having a colleague who you can talk to is well documented by studies, such as a Trinity College Dublin study (Fu, Ryan, and Cambell, 2020) which recognises wellbeing as a key positive tool in the workplace. Key recommendations from the Trinity Staff Survey Report (2020) were to 'establish a central platform to support the building of networks to share and exchange knowledge, ideas and information across departments in Trinity' (Fu, et al, 2020: 59). Thus, aiming to support a learning and continuous improvement culture for the benefit of individuals, teams, and the University, specifically following the COVID-19 restrictions. The aspect of support for organisations and NGOs was also discussed. Primarily in the legal framework, as it was discussed how when cases come in there is no one to take over the work already in progress.

*And you need support, and if you take anything from here today, it is that we need support and backup when these cases come in (P11).*

The views for ongoing training and upgrading the training already in place were key factors for the participants. Upskilling on issues such as recognising domestic violence or cohesive control to ensure best practice and the safety of the parties. In Ireland this is discussed by the Law Reform Commission and the Mediation Directive (2008) that each member state should encourage the professional training of those who practice mediation which will in turn will

ensure a high standard of mediation (Law Society Gazette, Ireland: 2022) Interestingly, the directive notes that mediation can be conducted by a judge provided she/he is not responsible for any judicial proceedings concerning the dispute.

*I would like to know more about the international what is happening in other jurisdictions. I would like to spend a little bit more time to look at the strategy and have a more understanding of what is happening in other jurisdictions. That will be remarkably interesting and there are ways in which we can integrate it more deeply into the system (P10: LP)*

The participants also wanted to know more about other jurisdictions to understand how Hague cases are handled. This linked back to training on all aspects and thus the recommendation to support more specialist training in this area.

*It is important for research like this to be able to inform the legislative framework that mediation is operating in, so that the public interest can be adaptive, as we understand how to work with conflict within the family law system (P17: M)*

Understanding how the legal process works was discussed as important, but others felt that mediation should not become too legalistic and there was no need to have legal knowledge to carry out a mediation. However, others did not agree totally with this sentiment and felt that more understanding of the legal process can only benefit the parties and ensure capability, whilst agreeing that the role of the legal professional is to inform the parties about the legal implications. Following the HCCH: Guide: Central Authority in 2003, the HCCH Guide to Good Practice: Preventive Measures, was agreed upon and published in 2005. This guide suggests that the Central Authorities should be a Central Point for information for parents to promote preventive measures. Preventive measures such as identifying the issues before the conflict escalates and in cases of international parental child abduction, an opportunity to talk with a support person before any action is taken. An example is The Netherlands Centre IKO



which has delegated operations 24-hour hotline for parents in conflict and works closely with the Dutch Central Authority (Freeman and Taylor, 2023). Some other countries such as Japan and Germany also have active preventive measures in place (Freemen and Taylor, 2023). A preventive measure approach was agreed to be a good approach by Vigers (2011) and by this researcher in a previous study (Dunne, 2019). However, it is still being discussed today and there is no factual evidence in this research study that supports a more European approach to preventative measures currently.

## 5.10 Conclusion

Previous studies on mediation and international parental child abduction, which have been outlined in the literature review, have helped shape this discussion chapter but the views of the participants in this research enhance our understanding of this field. Having the opportunity to meet with several different professionals in different areas of Europe and hearing their views offers this research a unique window into this topic from their personal perspective. How mediation works across different legislation, from the perspective of the professionals involved, has been enlightening. The world of each participant emerged as their different experiences were documented. Many similarities were noted in working in mediation and in working in cases of international child abduction, and many different opinions. This discussion chapter allowed this researcher to fully explore the findings that were discussed.

This chapter followed the format of the themes in the findings and explored each of them in relation to the literature review which was presented.

The key themes found were:

- Communication
- Child focus
- Challenges
- Legal framework
- Self-care
- Recommendation

Under each of these headings, the discussion was framed.

Communication explored the role of the mediator and co-mediation model and discussed face-to-face mediation and how it compares to online mediation. Communication also focused on how the professional's opinion on working with interpreters is. The participants agreed that, as discussed by Beer and Stief (1997), mediation will only work if the parties want a resolution. Everyone agrees to join, and all parties can talk openly. This research found that communication can often break down and cannot continue in cases of international child abduction, due to trust issues. Each of the participants discussed how trust is lost and therefore communication can be difficult. The mediator's job is to work with the parents to rebuild that trust, but this research accepts that this is not often possible. Co-mediation was discussed in detail, and the participants agreed with the recommendations of many studies and the HCCH Mediation Guide to Good Practice (2012) which promotes the co-mediation model. However, there were some who preferred to work alone but acknowledged that co-mediation is better for international cases, citing the benefits of bilingualism, and bi-cultural as a positive measure. As this research was post-pandemic, the role of technology and online mediation was keenly discussed. It was interesting to see that many of the professionals who had never worked or wanted to work in an online format were now happy to engage. Having had online mediation and legal proceedings, it was deemed not as daunting as first thought. However, all the professionals agreed that face-to-face is always better when it is available, and the circumstances are right. They all agreed that they would not recommend going online as the norm going forward. The role of interpreters was discussed, and this research found that there is a lack of trust in the interpretation process. As discussed by Paul et al. (2023), due to the complexity of the sessions, the mediators found the addition of the translator can be an extra complication in the room. This again supported the need for bilingual co-mediators, and the lack of confidence in the interpretation process was not an expected result of the research. However, this research found that many of the mediators agreed that often English was the main language which was spoken in mediation across Europe or in many cases the parties often agree among themselves which language would be the primary language spoken.

Child focus became a standalone theme as the importance of hearing the voice of the child or being aware of the child's needs was the priority of the mediation and court proceedings. Interestingly, the participants spoke primarily about the parents in mediation and arranging

how and where the child would live. This was noted as not involving the child, which was not in keeping with the guidelines of the Guide to Good Practice Mediation (HCCH, 2012). This echoed previous studies by Freeman and Taylor (2023), Vigers (2011) and the report from MCE (2021) on the rights of the child and what the child needs, and how the child's voice is not always being heard. It was disappointing that this research found this to still be the case. There has, however, been much more training on child-inclusive mediation and hearing the voice of the child over the past few years since this research began in 2020. Certified specialised training modules are much more accessible to mediators and the best practice standards are valued (FMS, 2023).

Challenges became the next theme, with training, time restrictions, and the limitations and resources discussed under that title. Training became a subtheme which emerged through this research. The participants discussed how ongoing training and continuous development are important for ensuring best practices and achieving certification in all aspects. Participants who were more focused on family law were keenly interested in understanding more about the international aspect of Hague Convention cases to be more comfortable with them. One of the participants who is also involved with training spoke of how being more aware of the process in Hague cases could support the mediators who are apprehensive about taking cases on, whilst recognising that they are very capable and have vast experience in family law.

The time restrictions were discussed, and many participants spoke of how the six-week time limit is too restrictive. The opportunity to engage in mediation for Hague cases is based on the probability of not delaying the process. This can encourage the pressure-cooker method of mediation, which is offered by many international NGOs, such as MCE, IKO, Reunite and MiKK.e.V. Many of the participants did not approve of the mediation process carried out over a few days with a focus on results; however, some of the mediators who had worked with this method were happy with the results.

This research recognises that each method has a role and understands why some mediators did not use the pressure-cooker method. In many cases, mediator training would always ensure that the parents have had an opportunity to take a break from each of the sessions, to cool down or reflect. However, based on this research, the time limit and pressure for the parents to meet and discuss was a benefit for some cases. Limitations of mediation were discussed from the

participants' perspective and were based on issues such as domestic violence, time limits as discussed, and voluntary agreement between the parties. Screening for domestic violence and ensuring that both parties have the capacity to engaged and this was recognised by the participants as an important part of the mediation. This research agrees with legislation from the HCCH (2012) that mediation is not suitable for cases of domestic violence and the correct screening needs to be in place. Again, this links back to essential specialised training modules in screening as described by Khalaf-Newsome (Paul et al, 2023).

It was noted that resources became a subtheme as part of challenges from the participants who were affiliated with public bodies or NGO organisations. The need for more legal practitioners, increased IT access, training opportunities and better salary expectations were suggested by public sector and NGO participants but not mentioned by participants in the private sector. However, this research showed that even though the NGO staff spoke of how they enjoy their work and their colleagues, they agreed that more professionals, training opportunities and better salary expectations are needed to improve the service for both workers and clients.

The legal framework, the Brussels Iiter 2019/1111 Regulation and the shadow of the law became the next themes. Many of the participants did not discuss the Brussels Iiter 2019/1111 and felt it was not necessary to fully understand it and be still able to work with international cases. Others who worked with the Regulation were not sure they fully understood it and felt the new recast had not changed in any way. The literature review counters this opinion as there are many changes in the 2019 recast of the Brussels Iiter 2019/1111 which were outlined in this research. The support of the judges for mediation was also discussed and many commented on how it can make a vast difference if the judge is happy to recommend mediation to the parents. This was discussed as a positive step in mediation when the directive comes from the judge, According to Korsakoviene et al (2023) the discretionary model accounts for more engagement across Europe. The mediators who worked in cases where the judge offered mediation and explained it to the parties felt they had a better outcome. This research shows that this support and recommendations from the judiciary is the key to a more successful outcome in international cases.

The mediators are not legally trained and currently, there is no specification for them to have a legal qualification; therefore, they continue to work in a legal environment but with a

sociological approach to mediation. Therefore, they work in the shadow of the law. This research confirmed that there is no straightforward evidence that having a legal qualification is a benefit to mediation. However, it was agreed that more information and training on the working of the law in international cases should be part of the specialised training for mediators. It is important for the mediator, as discussed, to ensure that the parties can make informed decisions; therefore, an insistence on legal advice throughout the process is deemed critical. This concurs with studies from Paul et al. (2023).

The inclusion of self-care from the perspectives of the participants became especially important throughout the research. Participants wanted to discuss the tools they used to ensure they look after themselves, however, they really felt that when working in an organisation there should be more focus on self-care. Work satisfaction, supervision and reflection and peer support became subthemes and each of the participants acknowledged how these issues helped them in their daily working lives. Work satisfaction was recognised as the priority in self-care. Burnout was mentioned as a side effect of international child abduction cases due, to not only the time limit involved but being unable to walk away from ongoing work. To be able to pass their work on was an issue and the need to have everything done was an issue for some. This created stress and the opportunity to talk about this issue. Most participants recognised that this stress is caused by not having enough staff to share the workload and not the case itself.

Supervision and reflection became a prominent issue in supporting participants when they needed to discuss issues or feelings about cases and how they coped. In all fields, both private and public bodies, the opportunity to avail yourself of supervision was a real bonus for the mediators. The legal practitioners noted that supervision is not offered to them, and many who spoke about it would have liked the opportunity for them to have supervision. This research demonstrates this request, as based on the findings of previous studies on work which may involve vicarious trauma for the professionals, supervision and reflective practice are essential (Paul et al, 2023). mediation accreditation involves specific CPD hours in supervision and reflective practice (MII, 2024). Lang and Taylor (2000) have been discussing the benefits of reflective practice and sharing and learning groups in all mediation training programme. The curiosity and exploration involved in reflection provides support to professionals, and it is recognised that mediators with experience in supervision are aware of how it can be beneficial in their own self-care. Peer support was an integral part of all the participants' work. The

research by Jungert et al. (2018) examined how organisations rely on teamwork and noted when employees work well together, this can create a decent work environment. Jungert et al. (2018) study discuss how teamwork increases autonomous motivation for the team.

All the participants acknowledged how much they needed and valued the support of their peers. The benefits of peer support ranged from sharing a cup of coffee with colleagues to the support of the IT personnel and the administration support in arranging calendars and meetings. The additional benefits were outlined as helping inexperienced staff to integrate into the system and offering them the support they needed too by experienced professionals. Good relationships with colleagues were deemed to be a key part of self-care and this research has shown that the support and value that peer support can contribute to a person's well-being is especially important, agreeing with the study by Jungert et al. (2018).

Each of the participants offered recommendations for this research which primarily focused on specialised training modules. Even though over half of the participants agreed that they wanted to understand more about the legal aspect of international family mediation cases, they did not want the family mediation process to become more legalistic. In Ireland following on from the legal approach of the Mediation Act 2017, many mediators who were very experienced as family mediators were cautious of the legal aspects following the Act and were not sure if they would continue. This was not the same across Europe and it was not mentioned outside Ireland. Whilst acknowledging how much has changed over the last few years in a positive framework, many participants still felt that the field needs more mediators and more legal practitioners. The discussion from the participants on having more research carried out to help them in what they need and how they see the profession moving forward. The opportunity to observe and learn from how other authorities work with international child abduction cases was also spoken about. Participants questioned how mediation and training is being financed in other countries and recognised how much more there is to learn about international child abduction cases and mediation. This research acknowledges the voice of the participants for this study and in the concluding chapter 6 discusses in detail the conclusions drawn from this study.

# Chapter 6: CONCLUSION

Concluding this study this research found that according to the participants, when mediation and court proceedings work side by side the best practices in international parental child abduction cases are achieved. The participants also found that mediation is an additional tool and when applied correctly can support the parents in conflict throughout the legal process of international parental child abduction cases. However, this research agreed with previous studies that not all cases are suitable for mediation, whilst acknowledging that mediators and legal practitioners who work in this field have a specific skillset to work with the challenges and this skill set needs to be constantly updated. The value of mediation in such cases was outlined as offering the opportunity for parents to come together with the child as the focus and talk but appreciated this can be a difficult time to talk.

## 6.1 Introduction

In exploring the many findings throughout, The Hague Convention on the Civil Aspects of International Child Abduction 1980, the role of the mediator and international organisations can support the HCCH law in working with the families. The guidelines on mediation and the Guide to Good Practice Mediation (2012), advocate for mediation in such cases and the Brussels IIter 2019/1111 offers the steps to ensure the process works across the member states. The primary aim of this research on mediation for international parental child abduction cases was to hear (from their own perspective) the challenges that arise for the legal practitioners and the mediators who work in mediation and with Hague Convention cases. from their perspective. To hear their voices and condense their experience of what works for them and their concerns and suggestions on issues that need more attention. This study was carried out with participants in Ireland and other parts of Europe. This research confirms that many mediators discuss how mediation can often be very emotional for the parties and the mediators themselves. Therefore, Herrman (2006) views mediation theory as being more complex due to this emotional process and debates that there is more theory and research to be carried out. This research aimed to ensure more understanding of the emotional journey that the mediation process involves and did not focus on the more rationalist approach to negotiations. As described, there are

conflicting approaches and theories about mediation, but primarily the process/journey is the theory which is the most recognised and adopted by practitioners today. According to this research, the scope and aim of mediation in international parental abduction cases and what is a legal process can be challenging to different professionals in their capacity. Working in the shadow of the law, mediators do not have legal expertise and do not offer any advice on legal matters, but the consequences of mediation can affect the legal outcome for parents and children. The role of collaborative practices offers the parties a more legal approach to dispute resolution whilst also offering a more integrated approach (Healy, 2015). Understanding how each of the professions work and engaging between them can bring challenges, and this research investigated this further. This research discussed how in some countries such as Denmark and Greece, it is mandatory for the lawyers to always attend the mediation. This contrasts with the training of the traditional method of mediation as a separate meeting.

Wider issues were brought to light throughout the research. Issues such as a focus on specialised training, self-care of professionals, working in the shadow of the law and resources were all discussed. This research offered the opportunity to speak with professionals both legal and mediators working in international parental child abduction cases, under the Hague Conference on the Civil Aspects of Child Abduction (HCCH, 1980). The focus was on a micro socio-legal study of participants in Ireland and parts of Europe. All participants were involved in training and expertise in international parental child abduction cases. The primary aim was to hear the voices of the participants and their views of how they work and what works for them in their daily working lives. Nineteen participants, staff of NGOs organisations and self-employed personnel were interviewed over a period of eighteen months. All participants were noted as mediator (M), legal practitioner (LP), and mediator (M/LP). During this research, other studies have been conducted which have focused on mediation for international parental child abduction. Therefore, some of the issues mentioned throughout this study were addressed before this research was finished. The uniqueness of this research is that it is quite different from other research discussed in the literature reviews, as this study focuses exclusively on the voice of the professionals involved, which offers an innovative approach in terms of understanding the experiences of key actors in the system. The insights derived into the process of mediation and some specific practices such as the different models of mediation supported this research to explore the different models of mediation. Therefore, this research concluded that the facilitative model of mediation is deemed to be widely recognised as the primary model



in international family mediation. This concluding chapter reflects not only what this study is about but also what was achieved. This chapter outlines each of the preceding chapters briefly, discussing the content and encapsulating the key findings of this study whilst addressing the research objectives. The main contributions are discussed, and the limitations and constraints of this research are noted and explored. The recommendations for future research are addressed and outlined concerning the previous findings, whilst detailing how this researcher aims to disseminate the results.

## 6.2 Brief outline of previous chapters

Chapter 1 discusses this research's significance, whilst outlining the scope and limitations. It identifies how the research set out to identify the professionals who work within the system and give them a voice in relation to how the process works and what their suggestions would be for an improved system. While this research benefits from all the previous research projects discussed in Chapter 1, this research takes a different viewpoint. The focus of this research is the professionals' perspective on the outcomes and challenges that they encounter during their work in this discipline. Another key focus was the self-care of the professionals and how they look after their well-being. This research also looks at the bigger picture in Europe and meets with professionals working in both mediation and the legal arena as lawyers, solicitors, barristers and judges.

To understand the alternative/appropriate dispute resolutions, each of these was explored, whilst focusing on mediation as a recognised ADR. This chapter outlined the range of alternative dispute resolution (ADR) processes and each of them were discussed in detail. Arbitration, Conciliation, Adjudication, Collaborative Family Law Practice, and mediation. By exploring each of these ADRs this chapter was able to present the contrast between each of the methods and the value each of them brings to legal proceedings involving family conflict. This interpretation also enabled this research to frame why mediation is promoted as one of the more positive approaches to family law but is not the panacea for all conflicts and as per this researcher's previous research, *One Size Will Not Fit All* (Dunne, 2019). Mediation was discussed in detail and the different fundamental attributes of mediation such as voluntariness, confidentiality, and neutrality were expanded. Each of the mediation styles was discussed -

facilitative, evaluative, transformative, and narrative - which allowed this research to explore the different approaches and review what is the best style for each position. The theory of mediation was reviewed which allowed this research to understand how theories have been devised over time. This research noted a lack of a unifying theoretical foundation in mediation (Regina, 2011), so tentative ideas for new theories emerged through the exploration of what the participants found worked for them. Also in the first chapter, the principle of mediation in law was discussed, and this was explored under the headings of: the European Parliament and the Mediation Act 2017. This allowed this research to perceive mediation protocol in international child abduction cases. This chapter also discussed the training programme and this focus on training was truly relevant in the following findings, as training and skills became an especially important theme. Chapter One sets the framework for this research thesis and sets out the guiding principle for the following chapters.

Chapter 2 focused on the literature available to this researcher. By exploring the literature available and previous studies, this research investigated both primary and secondary sources to ensure a comprehensive understanding of the information available. The research design covered both primary and secondary sources of information. The primary information in the Constitution on family law and the importance of the HCCH and European Justice portal were instrumental in signposting the correct information for this research. The secondary sources have had changes and updated versions as this research was done over four years. The availability of more online journal articles offered this research a deeper understanding of the previous research programs that have been carried out. There are also more books which have been written on this subject, which is in line with the recasts of the Brussels IIter 2019/1111 Regulations and the advice on introducing mediation to these international family cases. Some of the writings, such as Paul and Kiewesser 2<sup>nd</sup> edition (Paul et al. 2023), now have updated editions adding more valuable information to this subject involving international parental child abduction cases. As this research is focused on the rights of the child and the swift return agreements between Hague member states, in cases of international parental child abduction, The United Nations Convention on the Rights of the Child (1989) and The Hague Convention on the Civil Aspects of Child Abduction (1980) were explored in detail. Understanding why the Hague Convention was formed and its origins, this researcher deemed it important to add historical context to this study. The background to mediation and the different projects and guidelines were expanded in Chapter 2. The work of the HCCH, and the guidance under the

Guide to Good Practice 2012 were also discussed under the headings of Brussels II bis Regulation and the subsequent recast of this regulation, which aim to smooth the legal process in child and family law cases between member states of the European Union. EU projects such as the Amicable Project were set up to discuss proposals that support the rights of children caught up in international child abduction and focus on the best practice tools. This project began in 2019 and was co-funded by the European Union Justice Programme (2014-2020). This chapter also outlined the role of Missing Child Europe (2024) with a focus on offering mediation for child abduction cases. Chapter 2 explored the background to mediation in family law from an Irish perspective and the role of the Legal Aid Board and covered Article 42A of the Irish Constitution. This offered this research an opportunity to explore the work of family mediation in Ireland, and how it has expanded into international child abduction mediation for Hague cases. The voice of the child and hearing the child in custody cases was especially important to this research and became a stand-alone theme of discussion for the participants. Understanding this role and the procedural process in such cases was important to include in the literature review, as was the role of the NGOs and the Central Authority. All these topics allowed the researcher to fully understand the workings of the Hague Convention and what questions needed to be addressed in this research. Due to the amount of literature on primary sources and articles online relating to this study, it became important for this research to focus on the micro level, hence, this research worked on the European perspective, NGOs, and the Brussels IIter 2019/1111 Regulation. The role of the Central Authority in being the first step for the left-behind parent was discussed and the work of the European Commission Policy in this regard.

Chapter 3 covered the methods of gathering the data from the participants and outlined why this research chose the qualitative method of semi-structured interviews. This chapter offered this research a full overview of the participants, how they were recruited, the planning of the interviews, the ethics approval that was required and the research paradigm. The methodology was detailed, and the descriptions of qualitative methods, and the interview strategy were discussed. The inclusion and exclusion criteria of the participants outlined why this researcher did not include persons directly involved in child abduction cases, such as the affected parents and children, and how this worked for the research paradigm. The information for the participants was detailed and the consent template to take part were all included in this method chapter. The Maynooth University Research Ethics Policy (MU, 2020) outlines the process

which this research took to ensure the correct ethical approval. Receiving ethical approval, tier 3, which is a more rigorous process than tier 1 and 2, has ensured this research has a robust policy for this researcher to engage with the participants. The application also ensured that this researcher was aware of unconscious bias due to the profession of this researcher. As a certified mediator myself and a certified international family mediator with a role as Ambassador with MiKK.e.V (2023-2024), the importance of following the process of the ethics application was critical. After the rigorous application for this research, ethics approval (Appendix G) was granted in January 2022, and no interviews were conducted until after March 2022. The detailed outline of the methodology and how the research would be carried out, lead naturally to the findings/results in chapter four.

Chapter 4 sets out the findings. The aim, methods, and process involved in the findings of this research were set out in Chapter 3. The findings are a critical step, as the views of the participants are the foundation of this study. Having the opportunity to analyse the transcripts and the findings in a transparent and unbiased manner was critical to this research. However, this researcher found this step quite difficult. Due to the vast number of codes which were captured by the transcripts, this researcher had to ensure that the study had captured the valuable contribution from the participants. There were six themes but over 1,900 codes and not all the codes could be quoted. Therefore, is important to realise that this researcher had to be selective in which codes to quote and ensure they are relevant to the research proposal and aims and objectives of the study. The findings were presented in this chapter and included no discussion and no comments from this researcher. The format of presenting the findings/results first was deemed to be the best approach, thus outlining the findings, and then allowing for a full exploration of each theme in the following discussion chapter.

Chapter 5, the discussion chapter, outlined the six themes emerging from the research: 1. Communications, 2. Child Focus, 3. Challenges, 4. Legal Framework, 5. Self-care and 6. Recommendations and each of these themes had a detailed list of sub-headings.

The research summary focused on the theoretical framework of the research and acknowledged the structure of mediation in international child abduction cases. This research recognised that most of the mediators are not legally trained but work within a court and legal system. Their voice and their opinions became more personal throughout the research, and this is where this

research found the gap which is not included in other research projects; a unique view of mediators and legal practitioners, how they work within the system, and how they view their well-being whilst working. This chapter offered comparisons with previous literature and explored the limitations of this research. By acknowledging how much has been added to the body of research since this research began over four years ago, it was interesting to review the more recent developments. It was noted that some of the suggestions from the participants had already been put in place, which was a welcome sign. These included more opportunities for supervision and reflective practices, and recruitment drives for organisations. Each of the themes and sub-themes were discussed in detail. It is good to note that whilst acknowledging the recent positive changes in organisations in the workplace, there were also key recommendations in place. Recommendations such as support and backup for NGOs and organisations; a better understanding of how Hague cases work; and more certified training on this aspect, for all mediators working in organisations and privately. Gaining comprehension of positive approaches in mediation and across Europe was also deemed to be a valuable addition to the learning criteria and exploring what each country could learn from each other. Identifying the gaps, which are the cornerstone of all research, was a critical aspect of this research, and to recognise the value that previous research projects brought to this study. By hearing the voices of the participants throughout this research, this study is unique as there is little research on the emotional and psychological experiences and perspectives of the professionals. Whilst acknowledging their positive feelings about working in mediation, this research also focuses on their concerns and views of their well-being. By focusing only on the professional voices and not on the families involved in international child abduction cases, this study takes a micro approach to the introduction of mediation for these cases from a socio-legal perspective.

## 6.3 Objective of this study

The main objective of this study was to understand the challenges the professionals met in their work in mediation for family and international child abduction cases. This was achieved by listening to and documenting the views of each professional, on their role and how they work with international family cases. Therefore, this research was able to examine not only how the professionals worked with cases of international parental child abduction but also how the

professionals, both mediators and legal practitioners, worked together. However, this research found that many of the participants felt that both professions were still working parallel paths. All participants agreed that the interdisciplinary professionals involved needed to take a more collaborative approach, even though many of the European participants practiced in both the law and mediation. There was still a recognised aperture between them. The recast of the Brussels IIter Regulation 2019/1111 was examined in this research and outlined how the system has become more streamlined between EU member states. The significant changes in the Brussels IIter recast 2019/1111 primarily concern children and parental child abduction cases. This research recognised that the overall view on parental responsibility has not changed, and the best interest of the child is paramount. The Brussels IIter Regulation 2019/1111 offers a more formal framework with the aim of returning the child to the state of habitual residence or the State in which they have the most substantial connection. The child must also be offered an opportunity to give their opinions, subject to their ability and age. As discussed in this research, this echoes Article 12 of the UNCRC and allows for a general obligation to hear about the child in the proceeding that directly affects them. Under the Alternative Dispute Resolution Directive, each person has a legal right to access an alternative dispute resolution process (HCCH, 2020) and each of the ADR's processes were discussed, this allowed this research to understand why mediation has been deemed to be successful in family law. No judgment, impartiality, and the self-determination of the parties to come to their own agreements, when possible, facilitated by the mediation process, was deemed to be a supportive ADR in family law. When parents are willing and able to engage in mediation, this research finds its value. As discussed, parties who are in conflict and or do not have the capacity where there is a background of domestic violence have not been included in this study. The role of mediation is described throughout this study and recognised as being constructive when both parties agree and are fully informed about the process. According to Cheevers (2020), being informed and understanding the process is an asset to moving forward. The concepts which make mediation different from other ADRs such as voluntarism, confidentiality and neutrality are echoed by the participants of this research to be a crucial step in promoting mediation as discussed by Cheevers (2020).

Therefore, as discussed, the objective of this study was to understand the role of the mediator and legal practitioner and document the legal and mediation process through the experiences of the professionals working in this field.

## 6.4 Discussion and implications of this study

The implications of this study were discussed by the participants and noted that research like this can inform the legislative framework within which mediation operates. Each of the participants discussed how a better understanding of mediation for the public is critical to the success of the mediation process. The issue of family mediation becoming more legalistic in the family mediation process was discussed and discouraged by over half of the participants. However, they recognised the essential and significant role of the law in international cases. The ethos of mediation as a voluntary and confidential process was warmly embraced by the participants and replacing this process with a more legal format was not encouraged. Therefore, this research, based on the findings, would not recommend that the mediators become more involved with the legal process but acknowledge the benefits of co-mediators with different strengths. This co-mediation model has always been promoted by the HCCH Guide to Good Practice, mediation (2012) and the Brussels IIter 2019/1111 Regulation. This co-mediation model was also recognised by the participants as being a good opportunity and over 60% of the participants agreed that they would prefer to be in a co-mediation model for the best interests of the parties. Multi-lingual co-mediation was also deemed beneficial in cases where there must be interpreters, and it added to peer support, which was a focus for self-care.

Self-care and well-being became prominent issues for the participants. They discussed how reflection and supervision practices helped them be more productive. The legal practitioners involved noted that supervision is not accessible to their profession and mentioned that this could be a useful facility. Being mindful of the lawyer-client context, more broad-based supervision was suggested. It was noted that it may not be necessary for all but for those who request it, the offer of supervision could be supportive. This suggestion to add supervision and reflective practices to legal organisations was new and the value of such practices was noted as being beneficial to the well-being of people who work in this profession. The value of peer support and administrative support was also deemed to be invaluable. It was good to see this support recognised throughout this research. The implications of this research offered a view on the certification of training modules and the importance of CPD modules to ensure best practice. The view is also that training could also benefit from including discussions on how

other member states of the EU work within the system and how mediation is carried out. Each of the participants, regardless of their location, felt that they could learn from their counterparts in other member states and what works for them. It would appear in this research that more communication between bodies who work with international child abduction cases will add to the learning and understanding of how each country deals with mediation in the process. This topic is covered by the Brussels IIter Regulation 2019/1111, and the relevant Central Authority, but participants still felt more communication between the professionals' bodies and the individual mediators would be of benefit.

## 6.5 Limitations and reflections

The limitation of this research became obvious early in the process. Due to the volume of mediators and legal practitioners working in this area worldwide, this research had to take a more micro approach. By focusing on mediators and legal practitioners involved in mediation and international child abduction cases in Europe, this research had the opportunity to conduct a more specialised study. The discussion chapter explored how there are over 550 IMI-certified mediators in thirty-one countries (IMI, 2024); therefore, this research project focused on meeting a selection of mediators and legal practitioners. Nineteen professionals were interviewed from different European countries and different authorities, which offered this researcher the opportunity to hear diverse opinions. Other professionals who were invited expressed their interest and offered suggestions and advice to this researcher but were not involved in the interview stage. Their advice was informative and valuable and set the researcher on the right path. The nineteen participants did not limit the research project as the interviews began to create similar themes. As this research was carried out in parts of Europe, the opportunity to expand further research outside Europe would be valuable and could be achieved through future research projects. However, this smaller sample of participants ensured a focused, micro level study and was the key to the themes which emerged.

This study also reflected the mediator skills as distinct from the legal practitioners' skills which often came into the discussions. The participants spoke about how the legal practitioner's focus is on the client and what is best for them in a court of law, skills such as negotiation and active listening. However, as discussed, this study found that both legal and mediation professionals



agreed that the mediator often adds a more personal aspect to the procedure, whilst also employing the expertise of listening and negotiation. Both professional groups agreed that mediation can often help the parties interact with each other face-to-face. The mediation may not always have a successful outcome but may help them to be face to face in court. This opportunity for each parent to engage with the other, with whom they may not have even spoken for a long time or even like anymore, offers them the chance to talk on the same level, whilst acknowledging the pain and emotion involved. This researcher also reflected on unconscious bias and was constantly aware of any triggers that may affect this research. The tools of personal reflection, discussion with supervisors and reviewing all questions before any interviews allowed this researcher to minimize any opportunities for unconscious bias to affect the ethics of this research.

## 6.6 Recommendations

The key recommendations offered by this research echo some of the suggestions that previous research provided. These suggestions include the need for more specialised training including online mediation training for international child abduction cases and child-inclusive mediation. However, funding specialised training involves sourcing funds and budgeting, and as discussed in this research, these funds are not readily available. Therefore, this researcher would advocate workshops and focus groups with the stakeholders to explore funding opportunities from the European Union as they offer funding, grants, and subsidies for many different projects (EU, 2024). Many mediation training programs across Europe are funded by the European Commission and the European Union, thus, availing of such grants to work with proposals would be a key recommendation. Since this research began there has been evidence of more recruitment in NGOs and legal and mediation organisations and there is now a stronger emphasis on hearing the voice of the child as per the recast of the Brussels IIter 2019/1111 Regulation, before the judges make their final decisions. Suggestions from the participants include providing more information on mediation at the primary stages as it is the process in some of the EU Member states and MIAM in the UK. This research would echo that suggestion and invite other organisations and NGO bodies across Europe to embrace the introduction of mediation early as per Brussels IIter 2019/1111 Regulation. The findings showed that the self-care discussion and professional efficacy discussion of this research proved to be topical and

deemed relevant in the working world today. The semi-structured interviews enabled each of the participants to speak candidly about how they look after their well-being. As discussed by most of the participants, much of the onus of their self-care is on them, with no structure in place. This has been discussed by the participants as not often the best outcome, as time and work commitment are a factor in delaying self-care opportunities. Recommendations to introduce a more focused self-care package for all the staff in organisations and a more structured self-care regime for self-employed professionals as part of their continuous professional development (CPD) criteria were suggested.

The issue of reflective practice and supervision for legal practitioners was discussed, and the legal practitioners agreed that it would be beneficial to have supervision available as a self-care tool for them too. As discussed, supervision is only available to mediators as part of their CPD, and well-being and reflective practice is a common approach for mediators whilst working on cases. The positive aspect of reflective practice and supervision was clear throughout this research, as was the role of peer support. The personal aspect of support in such a legal role was discussed as truly relevant, and all studies acknowledge this personal approach. This study outlined the improvements and improved interest in family mediation in international child abduction cases and how much momentum is growing within the legal profession. The participants discussed how this interest is due to a better understanding of the approach of mediation and the ability to run both professions side by side. However, some mentioned that they feel the professions work in parallel paths. This research offers suggestions that legal and mediator practitioners could meet and discuss concerns when taking on a case. This creates an opportunity to gain a better understanding of each role. This research has discussed how mediation has become more involved in the legal process as part of the ADR process. The opportunity to introduce mediation as an ADR early in the process was keenly discussed. By outlining all the ADR options, this research has shown why mediation is deemed best to deal with the complexities of international parental child abduction. and why the mediators have asked for more training for this specialised role.

As discussed in the literature review (Chapter 2), research from Vigers (2011) and Thorpe (2018) offered suggestions of mediation being introduced at the point of application, for example, the Central Authority. The HCCH Guide to Good Practice: The Central Authority (2003) suggests that the Central Authority should be a pivotal point of accessing information

for parents on mediation and the legal framework involved. As this research discussed, this is happening in Europe and in Japan: for instance, the Japanese Central Authority has an informative website with links to YouTube videos to help explain (Freeman and Taylor, 2023). There are strong links with Family mediation NGOs and the Central Authority in Germany (Paul et al. 2023). These strong links create a sharper process for introducing mediation to international child abduction cases. This research agreed that introducing mediation as early in the process as possible is desirable for the most positive outcome; However, the limitations of time and the process involved can limit this early intervention. This research proposes that following this doctoral study which has discussed the needs and requests of the professionals involved in such cases, a longitudinal study would add value in understanding the long-term outcomes of Brussels IIter 2019/1111 and the consequence of mediation for specific international parental child abduction cases. Short studies and questionnaires can be good for initial responses but asking the same questions a year or more later might have a more realistic response. The gathering of reactions spontaneously on completion of any engagement can be positive. However, when the initial emotions wear away, the reality of the situation can set in and can change the outcome. This would offer the opportunity for participants to be involved in changes that may be made to their working environment and measure any progress, both personal and professional, that has been covered in the years following this research. The participants could see that this research opened the conversation of best practices for the staff, which in turn will benefit the clients who are at the core of the issues. Echoing the phrase from one of the participants on putting on your oxygen mask before attending to others, self-care was a key theme for all. As discussed, a longitudinal study would also ensure that the research could collate with the views of the practitioners and facilitate an opportunity for the professionals to be involved in the process of well-being strategies over a particular period. Therefore, a summary of the key recommendations above is as follows:

- Setting up strategy workshops to explore the European Union funding which is available for many different projects (EU, 2024). This funding is ideally placed to ensure delivery of the specific training modules which the participants have requested in this research.
- Designing a specific training module nationally which focuses on the legal aspects of international parental child abduction and works on the 4-B model as recommended by

the Guide to Good Practice (HCCH, 2012) and offered by MiKK.e.V international training.

- Online mediation training module addition as part of the specialised training tools
- Building on training proposals to be guarantee the inclusion of culture diversity and diversity in backgrounds and abilities as part of all training programmes. Compliance with the CPD points necessary for certification.
- Further focus on self-care practices such as supervision, sharing and learning groups with opportunities to structure the self-care package for both in-house staff and for self-employed personnel. Whilst this is part of a CPD requirement in some NGOs, the participants proposed that it should be more focused and more in-house.
- Design of a structured supervision framework for solicitors, legal practitioners, and professional mediators to replace the current ad hoc approach.
- Design and delivery of workshops to strengthen the roles and practices of mediators and legal practitioners working together for the benefit of the parties.
- Developing a plan of action to initiate structured information and assessment meetings, as proposed by the Mediation Act 2017 (Ireland) article 23, akin to the UK's' MIAM mandatory process.
- Further specialised training to identify cases of domestic violence, cohesive control and all aspects of safety for the parties.
- Proposal to echo Shannon (2020) aims to strengthen the protection of abducting parents who are victims themselves of domestic violence through the Hague Convention 1980.

Suggestions for a longitudinal study were noted above and the benefits outlined.

## 6.6 Conclusion

This study has been such a journey and an interesting topic. The many issues which arose offered this researcher the opportunity to explore the process and training aspects for mediators and legal practitioners who mediate international parental child abduction cases. As discussed throughout, the cases that came to international parental child abduction involved parents who agreed to meet and were willing to achieve the best outcome for their child. Most of them were

directed by the judge, or in some European countries, facilitated by the Central Authority in their jurisdiction. This research has shown that in some European countries, the role of the Central Authority as a first step in introducing mediation works successfully.

This recommendation by the judge was noted by many of the participants as the best approach and method of engaging the parents and added to a more positive outcome. Therefore, this research recognises that the role of GEMME, European Judges for mediation, is a positive step in European Family Law and the judges' recommendations for mediation are very much welcomed by the participants of this research. This research also explored the well-being of professionals who work with international child abduction cases and how their self-care is a key issue. Each of the participants acknowledged the support of their peers and colleagues in their daily work. However, most suggested a more formal approach to providing opportunities for self-care and including it in the work ethic. This research has shown that this has been happening since this research began, but the participants spoke of a token approach, and discussed how they would like a more person-centered approach for their work-life balance.

The role of supervision and reflective practice were viewed as a positive inclusion, and it was noted that mediators who work in an organisation would like to have more access to this. Supervision and reflective practice are part of the CPD points system in organisations that offer accreditation on training modules, and this was discussed by the participants who work as independent mediators. The legal practitioners spoke of how they do not have the opportunity to have supervision or reflective practice as part of their work but did feel that it could be a benefit to them if it were offered. The legal practitioners acknowledged that they focus more on the issues and the legal direction but can often be overwhelmed by the role. One mentioned that they have seen some legal practitioners triggered by what happens in the court and the chance to discuss and reflect in a safe environment is beneficial for growth. Throughout this research, the implications of working with families and the complexities involved in such work are recognised as an incredibly stressful time for all professionals. As discussed, each of the other roles, such as a counsellor, mediator, social worker, and case worker all have supervision; this research shows that the legal practitioners who participated in this research would like possible broad supervision to be included in their role, whilst acknowledging the lawyer-client confidentiality. This aspect of self-care was discussed as being conducive to best practices in their work. This research suggests that exploring the concepts discussed may pave the way for

ensuring that mediation becomes more of a normal model in the legal process of Hague cases and can run parallel to the proceedings that are deemed suitable by the Judge.

## 6.7 Dissemination of work

Following this thesis submission and publication, this research is presented to many different NGOs and organisations who work with The Hague Convention on the Civil Aspects of Child Abduction. During my time completing this study, I have had many conversations with the Office of the European Parliament Mediator for International Parental Child Abduction and am arranging to present this research to the European Parliament. After attending several international legal conferences, and meeting with the Secretary General of Missing Children Europe (MCE), I have been invited to present my research findings at future conferences.

The Rt. Hon. Sir Mathew Thorpe, who is a former Lord Justice of Appeal in England and Wales, Vice-President of the Family Division, and the inaugural Head of International Family Law UK, has been keen to read the findings as he was instrumental in supporting this project. Following an initial discussion with Sir Mathew Thorpe, I also met with GEMME and became an associate member; this will offer me the prospect of sharing my research findings. This research is to be presented to MiKK.e. V, The International Mediation for Families in Conflict in Berlin, as I am a member. It will also be presented by this researcher to the Mediators' Institute of Ireland at their National Conference, who have requested the opportunity to hear about the research. I have already presented some of the tentative findings to the training conference at the Legal Aid Board (Ireland) and as part of my agreement with them, will present the complete findings later. This research has also been presented at conferences at Queen's University Belfast, Edinburgh University, Maynooth University and Ulster University. MiKK.e. V Berlin is the key training organisation for specialised international parental abduction training programs for EU member states. With grants available from the EU, the opportunity to engage in specialised training is a welcome addition and based on these research findings, offers an opportunity to ensure more professionals have the prospect of availing themselves of specialised training. Currently this researcher is actively engaging with the relevant authorities in Ireland (LAB and MII) with the aim to ensure that specialised international parental child abduction mediation is available to mediators and legal partitioners

who are interested in extending their knowledge in this specialised field. The opportunity for this researcher to be involved in programs for specialised training purposes has been offered by training bodies and I am delighted to hear that some of the mediators who have spoken with me on this topic are now registered to attending further specialised training on international parental child abduction. The setting is defined for ensuring the recommendations of this research are followed through and the opportunity to disseminate the findings will support the suggestions and ideas that the participants have kindly offered. Nevertheless, as agreed by all respondents, even when all the protocols are in place, from a legal perspective, the specialist mediators are recruited, and the parents and children can engage and have discussions, this can still be a difficult *time to talk*.

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# APPENDICES:

## Appendix A: Information sheet for participants

### Information Sheet:

#### INFORMATION FOR RESEARCH PARTICIPANTS Study on mediation and International Parental Child Abduction

My name is Emily Dunne, and I am a doctoral research candidate with the School of Law and Criminology at Maynooth University, Kildare.

As part of the requirements for my doctorate, I am undertaking a research study under the supervision of Dr Treasa Kenny and Dr Fergus Ryan.

This research study has been funded by the John and Pat Hume Doctoral Scholarship.

**Purpose of the Study.** This is a research study on mediation for International parental child abduction cases. The aim of The Hague Convention on the Civil Aspects of International Child Abduction is to protect children from the effects of unlawful removal from their place of habitual residence and to ensure their prompt return. The habitual residence is deemed to be the best place to decide any custody disputes. The European Council and the Brussels Ibis regulations 2005 and more recently the recast of 2019 have also set in place regulations for mediation in such cases. Legal education programmes place a strong emphasis on advocacy, negotiation, and ADR (Alternative Dispute Resolution) skills. The value of such education programmes contributes to the inclusion of mediation in cases. This research will examine where mediation fits into the legal process for international child abduction cases and how it interacts with litigation today from the perspective of the legal and mediation professionals with experience in such cases.

**What will the study involve?** The study will involve 15 -20 interviews with family mediators and legal practitioners familiar with such cases and or mediation for family cases. An interview from one hour to ninety minutes is conducted online on Microsoft Teams or face to face, depending on Government COVID-19-19 guidelines and on your preference. If you feel you would like to break at any time, that is no problem. This interview is voice recorded, and the recording is deleted when transcribed. You are invited to review your transcript for approval before submission.

**Who has approved this study?** This study has been reviewed and received Tier 3 ethical approval from Maynooth University Research Ethics committee. A copy of this approval is available to you.

The proposal has also been reviewed by the Research Department, Strategy Unit of the Legal Aid Board, and the research protocol has been assessed as following the Legal Aid Board's Research Policy and Code of Practice.

**Why have you been asked to take part?** You have been asked because of your family mediation and/ or legal experience in this field. However, it is imperative that you do not discuss any individual case or reveal any identifying information on any cases.

#### **Do you have to take part?**

No, you are under no obligation whatsoever to take part in this research. You are invited to take part in a one-to-one semi-structured interview, by Microsoft Teams online, or face-to-face. This can be your preference. However, face-to-face is now available under government COVID-19-19 guidelines and if you feel this is something you are comfortable with. It is entirely up to you to decide whether you would like to take part. If you decide to do so, you are asked to sign a consent form and be given a copy of this and the information sheet for your own records. If you decide to take part, you are still free to withdraw at any time without giving a reason and/or to withdraw your information up until such time as the research findings are published. A decision to withdraw at any time, or a decision not to take part, will not affect your relationships with Maynooth University, and no-one within the Legal Aid Board is informed of your decision to participate or withdraw.

#### **What information is collected?**

The only demographic information that is collected from the participant is their name, which is removed from the interview transcript and stored separately, for use in case of a request to withdraw data. A pseudonym is assigned to each participant, and participants is referred to using the pseudonym in any resulting analysis or publications. Communication with participants is conducted using work-related phone numbers and email addresses only.

#### **Will your participation in the study be kept confidential?**

Yes, all information that is collected about you during the research is kept confidential. No names are disclosed at any time, and all other identifying details is removed from interview transcripts.

All hard copy information is held in a locked cabinet at the researchers' place of work; electronic information is encrypted and held securely on MU (Maynooth University) PC or servers and is accessed only by Emily Dunne (the Researcher).

No information is distributed to any other unauthorised individual or third party. Authorised individuals are only myself and my supervisors. If you so wish, the data that you provide can also be made available to you at your request.

*It must be recognised that, in some circumstances, confidentiality of research data and records may be overridden by courts in the event of litigation or during investigation by lawful authority. In such circumstances the University will take all reasonable steps within law to ensure that confidentiality is maintained to the greatest possible extent.*

(Maynooth University Ethics Policy, 3.3 2020)

**What will happen to the information which you give?**

All the information you provide is kept at Maynooth University in such a way that it will not be possible to identify you. On completion of the research, the data is retained on the MU server. After ten years, all data is destroyed as per Maynooth Ethics Policy. Manual data is shredded confidentially, and electronic data is reformatted or overwritten by the principal investigator (myself) at Maynooth University.

**What will happen to the results?**

The research is written up as part of my doctoral thesis. This will also be presented as a summary report, which is discussed at MII (Mediators Institute of Ireland) conferences, Legal Aid Board, MiKK.e.V the international parental abduction mediation support and GEMME the European Judges for mediation group. This may also be published in mediation journals. A copy of the research findings is made available to you upon request.

**What are the possible disadvantages of taking part?**

Due to the nature of the qualitative data being collected, there is a small risk that individuals may be identifiable, for example, to their colleagues. All measures are taken to mitigate this risk. Therefore, to ensure this, all data collated side identified. As per the Research Agreement, each of the participants misadvised not to reveal any identifying data on cases or individuals. However, I do not envisage any negative consequences for you in taking part, however you may find that talking about your experience may cause some distress. I will always have a copy of the support services with me.

**What if there is a problem?** At the end of the interview, I will discuss with you how you found the experience and how you are feeling. If you experience any distress following the interview, you may contact the specific support services available to you or appropriate external services such as an employee assistance program. I will have a list of potential contacts should it be needed.

You may contact my supervisors at Maynooth University, Law Department.

Dr Fergus Ryan email: [Fergus.Ryan@mu.ie](mailto:Fergus.Ryan@mu.ie)

Dr Treasa Kenny email: [Treasa.Kenny@mu.ie](mailto:Treasa.Kenny@mu.ie)

if you feel the research has not been carried out as described above.

**Any further queries?** If you need any further information, you can contact me:

Emily Dunne

Email: [Emily.dunne.2019@mumail.ie](mailto:Emily.dunne.2019@mumail.ie)

Phone: +353 83 0181821 This is a phone number dedicated for use for this research only.

If you agree to take part in the study, I can send you the consent form and if you could complete and return to me.

**Thank you for taking the time to read this.**

Maynooth University Ethics Policy, (2020) online available at:

<https://www-maynoothuniversity-ie.jproxy.nuim.ie/sites/default/files/assets/document/Maynooth%20University%20%20Research%20Ethics%20Policy%20%28Updated%20March%202020%29.pdf>

## Appendix B: Consent form for participants

### **Consent Form** **Study on mediation and parental child abduction cases.**

I.....agree to participate in Emily Dunne's research study.  
On mediation for international parental child abduction cases.

Please tick the box next to each statement below if you agree:

The purpose and nature of the study have been explained verbally and in writing to me. I was able to ask questions, which were answered satisfactorily. ☐

I am participating voluntarily. ☐

I give permission for my interview with Emily Dunne to be audio recorded. ☐

I understand that I can withdraw from the study, without repercussions, at any time, whether that is before it starts or while I am participating. ☐

I understand that I can withdraw permission to use the data right up to October 2023 ☐

It has been explained to me how my data is managed and that I may access it on request. ☐

I understand the limits of confidentiality as described in the information sheet ☐

I understand that my data, in a de-identified manner may be used in further research projects and any subsequent publications if I give permission below: ☐

I agree to quotation/publication of extracts from my interview ☐

I do not agree to quotation/publication of extracts from my interview ☐

I agree for my data to be used for further research projects ☐

I do not agree for my data to be used for further research projects ☐

I agree for my data, once de-identified, to be retained indefinitely in the Irish Qualitative Data Archive Maynooth University.



Signed.....

Date.....

Participant Name in block capitals .....

*I the undersigned have taken the time to fully explain to the above participant the nature and purpose of this study in a manner that they could understand. I have explained the risks involved as well as the possible benefits. I have invited them to ask questions on any aspect of the study that concerned them.*

Signed:                      Date.....

Researcher Name in block capitals: EMILY DUNNE

*If during your participation in this study you feel the information and guidelines that you were given have been neglected or disregarded in any way, or if you are unhappy about the process, please contact the Secretary of the Maynooth University Ethics Committee at [research.ethics@mu.ie](mailto:research.ethics@mu.ie) or +353 (0)1 708 6019. Please be assured that your concerns are dealt with in a sensitive manner.*

*For your information, the Data Controller for this research project is Maynooth University, Maynooth, Co. Kildare. Maynooth University Data Protection officer is Ann McKeon in Humanity house, room 17, who can be contacted at [dataprotection@mu.ie](mailto:dataprotection@mu.ie). Maynooth University Data Privacy policies can be found at <https://www.maynoothuniversity.ie/data-protection>.*

***Thoro copies: One for Participants and one for Researcher***

## Appendix C: Sample Interview questions

Sample interview questions for participants.

Doctoral Research Study  
mediation and International Parental Child Abduction Cases  
Emily Dunne  
Maynooth University School of Law and Criminology  
John and Pat Hume Scholarship

This research will study the current and potential use of mediation in international parental child abduction, under the following headings:

- The approach to mediation for international parental child abduction cases, from both the legal and mediator professional perspective.
- The impact for parents who engage in mediation and those who do not have the opportunity.
- The effective implementation of the Hague Convention on the Civil Aspects of International Child Abduction, and the Brussels IIb Regulation (2018).
- The adoption of the best practice tools which aim to support mediated agreement in the EU.
- The European Parliament's mandate on international parental child abduction and Children's Rights.
- The process and the accessibility of mediation in international parental child abduction cases in Ireland and Europe.

*Thank you for agreeing to be a part of this research project, this interview is confidential, and no persons or places is identified. If at any time you feel you would like to stop or withdraw from the interview before the end of August 2023 that is no problem. If you decide that you do not want the information given to be used, you may request it to be deleted it before the findings are presented. A further consent form will be sent before any interviews commence.*

### **Legal and / or Mediator background**

#### **Experience:**

- How long have you been involved in family law and mediation?

- How did you get started and where did you train?
- Have you much experience in Child Abduction cases?
- How much of your working time would involve international child abduction cases?
- In your opinion how effective is mediation in international family conflicts?
- How would you describe the effect of the Brussels IIbis Regulation (particularly the revised version) on mediation in international child abduction cases?
- In your opinion, has mediation become easier or more difficult?
- In your experience, do you feel that there are contexts in which mediation might not be appropriate in child abduction cases?
- 

**Developing Skills:**

- What kinds of skills do you feel that you bring to this work and how have you developed those skills?
- As an experienced practitioner in this area, what would you like to see that could support you in your work? Work/life balance.
- What advice would you give someone who was starting to work as a mediator, with a specific interest in working in mediation in international child abduction cases?
- From your experience, do you have any suggestions or ideas that you feel could be of benefit to help with the issues of parental child abduction?

## Appendix D: Recruitment email draft

Email for introduction for participants.

Dear all,

My name is Emily Dunne, and I am a PhD candidate at Maynooth University. I am conducting a research project to understand the potential role of mediation in international parental child abduction cases. This research project is funded by the John and Pat Hume Doctoral Scholarship.

Insights from professional experience are essential to understand the issue, and I am inviting mediators and legal practitioners to share their views on this topic with me. I would very much value your participation.

Interviews should be about one hour long with a break on request. Participation is completely voluntary and confidential. You may change your mind and withdraw any time without consequence, up until the findings are published.

All data side-identified, and no-one is informed about your decision to take part or otherwise. Active cases will not be discussed, and each interview participant is asked not to reveal any identifying information on cases or clients.

I have attached an information sheet outlining the full details of what participation would involve and is happy to answer any other questions you may have.

With thanks

Emily Dunne

**Emily Dunne**

PhD Candidate /John and Pat Hume Doctoral Scholarship

Tel: +353 86 6033874

Maynooth University School of Law and Criminology

Email: [Emily.Dunne.2019@mumail.ie](mailto:Emily.Dunne.2019@mumail.ie) / [emily.dunne@mu.ie](mailto:emily.dunne@mu.ie)

Web: [www.maynoothuniversity.ie](http://www.maynoothuniversity.ie)







## **Legal Aid Board Standard Research Agreement**

**Date:** 10<sup>th</sup> January 2022

(1) Legal Aid Board

and

(2) Emily Dunne ('the researcher')

### **Background**

A. The Legal Aid Board (the Board) engages with researchers in Higher Education Institutes (HEI) and other recognised research bodies to provide opportunities for researchers to link with the Legal Aid Board, its staff, and clients and to assist with the pursuit research with a shared interest and common purpose.

B. This Agreement sets out the way in which the research project is managed by the Board and the researcher and deals with, among other things, the responsibilities of both parties regarding data protection, confidentiality obligations, ethical soundness and publishing arising from the project.

C. The researcher and the Board both agree to cooperate and notwithstanding any other provision of this Agreement to do all such acts and things as may reasonably be required of each of them in order to facilitate the completion of the research project in a timely manner and otherwise to ensure compliance with their own obligations under the Research Project Terms. The researcher must note that the provision of services is the main priority for staff and may result in the unavailability of staff to assist with the research at times.

D. The research must align with the basic principles that underpin all research integrity and good practice as outlined in the national policy statement on *Ensuring Research Integrity in Ireland* and *The European Code of Conduct for Research Integrity* and the Legal Aid Board's *Research Code of Practice*<sup>11</sup>. This agreement assists in the realisation of such a commitment.

E. The Board and the researcher have by acceptance of this research proposal outlined in schedule 1, agreed to be bound by the Terms and Conditions of the Research Project Terms outlined in schedule 3.

**Agreed by the parties through their authorised signatories:**

SIGNED Research Manager – on behalf of the Legal Aid Board:

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

SIGNED - Researcher:

SIGNED – Primary Supervisor:

Signed the original hard copy

\_\_\_\_\_  
Name Emily Dunne

\_\_\_\_\_  
Name Dr Fergus Ryan  
Dr Treasa Kenny

\_\_\_\_\_  
Date 20<sup>th</sup> January 2022

**Schedule 1 - Project Plan**

|                                     |                                                                          |
|-------------------------------------|--------------------------------------------------------------------------|
| <b>Commencement Date</b>            | January 2022                                                             |
| <b>Completion Date</b>              | October 2024                                                             |
| <b>Short description of project</b> | Research into mediation for International parental child abduction cases |

## Data collection and analysis

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Methodological approach</b> | <p>This is a narrative qualitative research project. A selection of semi-structured interviews (15-20) with professionals who work with the Family mediation and the Legal sector is invited.</p> <p>Thematic analysis will explore the data collected. NVivo software will support the analysis of the patterns formed and the information which is collated. This software programme is primarily used in unstructured text data and is suitable for qualitative and mixed method research design. The perceived volume and rich data that this study will generate will benefit from the use of NVivo software.</p> |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Register of Data

| Describe data                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | List any risks and challenges associated with the use of this data                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The data collected is related to the personal experience of the professional participant and how they see mediation for family disputes. This will primarily be focused on international parental child abduction and how mediation can support this. This data will also focus on the countries that are using mediation in such cases and gather an understanding of how the new regulations, Brussels IIb, (2019) are being approached. All identifying details are removed during the data transcription process.</p> | <p>Due to the nature of the qualitative data being collected, there is a small risk that individuals may be identifiable, for example, to their colleagues or managers. All measures are taken to mitigate this risk. Therefore, to ensure this, all data collated is identified. As per the ethical approval granted by Maynooth University, each of the participants will also be advised not to reveal any identifying data on cases or individuals.</p> |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>The key participants are the legal and mediation professionals who work in this field and with the families in international child abduction cases. As a qualified and certified mediator with conflict intervention experience, I am aware that an interview may bring up some difficult emotions. I will use my skillset to screen for and manage issues that may arise. In the event of a participant becoming anxious, I will discontinue the interview and advise of the appropriate support service available and/or supervisor support. e.g., HSE, Counselling Service).</p> <p>Also, in compliance with ethical requirements, there is no reporting back to the organization on any individual interviews.</p> <p>This research has received Tier 3 Ethics approval from The Social Research Ethics Sub-Committee (SREC) Maynooth University. The SRESC reviews research that involves human participants to ensure the research is ethically sound and does not present any risk or harm to research participants. (MU, 2022).<br/>The interview process for this research is commencing in March 2020.</p> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **Schedule 2**

### **Research Projects Terms and Conditions**

The parties agree as follows:

#### **1. General Conditions of the Research Project**

**1.1.** The research project must commence on the fixed date agreed in Schedule 1.

**1.2.** The researcher is held to conduct the research subject to these Terms and Conditions. If any of these Terms and Conditions are breached, the Board reserves the right to suspend, pending review, or terminate the research agreement.

**1.3.** It is the responsibility of the researcher to inform the Board of any change of address, telephone number, or email address within two weeks of such a change.

**1.4** While researchers are expected to complete their research at the HEI as originally proposed in the research agreement, it is recognised that exceptional circumstances may call for a change of location or research supervisor. In these cases, the researcher must write to the Board informing the Board of the change. The Board will consider if the agreement can be sustained owing to the change and if it considers it cannot, it will terminate the research agreement.

## **1. Scope of the Project**

### **2.1 Project**

The researcher shall carry out the project described in Schedule 1 with support from the Board contact point(s).

### **2.2 Duration**

The project shall be carried out from the commencement date until the completion date or until such later date as may be agreed in writing between the Board and the researcher, or until it is terminated in accordance with the terms of this Agreement.

### **2.3 Review of Progress**

The researcher agrees to update the Board quarterly about the research progress as outlined in the submitted plan.

If the researcher fails to update the Board, the Board reserves the right to convene a review with the researcher. The researcher must attend to provide an account of the progress made to date. The Board will consider renewing for a further limited period after which the project be reviewed again; or termination of the agreement.

## **2. Responsibilities**

### **3.1 Responsibilities of the Researcher**

The researcher:

- shall comply with these Terms;

- shall follow the guidelines outlined in the Legal Aid Board's Research Code of Practice;
- is responsible for updating the Board on the progress of the research;
- where the principal researcher delegates responsibility for aspects of the research, responsibility for the competence of the person(s) to whom the delegation is made should be assured by the principal researcher;
- significant changes in methodology or mode of dissemination after the research has commenced, shall be notified and approved, via the same process as for the original project approval, and prior to implementation.

### **3.2 Responsibilities of the Legal Aid Board**

The Legal Aid Board shall:

- support the researcher to undertake research in accordance with the Research Project Terms;
- use all reasonable endeavours to enable the researcher to meet their obligations under this Agreement.
- nominate contact points within the organisation to work with the researcher to offer advice on the availability of resources and to create a link with Board activities. The contact points will be:  
Dr Áine Travers, Legal Aid Board Research Manager  
([axtravers@legalaidboard.ie](mailto:axtravers@legalaidboard.ie))
- Contact should be maintained between the Board's contact point(s) and the researcher throughout the duration of the research project.

## **3. Confidentiality**

### **4.1 Confidentiality obligations**

Each receiving party undertakes to:

- maintain as confidential all information obtained directly or indirectly from the disclosing party in the course of or in anticipation of this Agreement and to respect the disclosing party's rights therein;
- use any such confidential information only for the purposes of this Agreement;
- disclose such confidential information only to those of its personnel to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement;
- ensure that all those to whom disclosure of or access to such confidential information has been given comply with the provisions of this Agreement, and the receiving party shall be liable to the disclosing party for any breach of this Agreement by any of the foregoing.

## **4.2 Exceptions to obligations**

The provisions of 4.1 shall not apply to confidential information which the receiving party can demonstrate by reasonable, written evidence:

- was, prior to its receipt by the receiving party from the disclosing party, in the possession of the receiving party and at its free disposal; or
- is subsequently disclosed to the receiving party without any obligations of confidence by a third party who has not derived it directly or indirectly from the disclosing party; or
- is independently developed by the receiving party by individuals who have not had any direct or indirect access to the disclosing party's confidential information; or
- is or becomes generally available to the public through no act or default of the receiving party or its personnel.

## **4.3 Disclosure in accordance with legal obligations**

To the extent that the receiving party is required to disclose any of the disclosing party's confidential information by order of a court or other public body that has jurisdiction over it or under other statutory or regulatory obligations, it may do so, provided that before making such a disclosure the receiving party shall unless it is prohibited from so doing by law:

- inform the disclosing party of the proposed disclosure as soon as possible, in any event, no later than five (5) business days after becoming aware of the proposed disclosure;
- co-operate with the disclosing party's reasonable, lawful efforts to resist, limit or delay such disclosure (at the cost and expense of the disclosing party).

## **4.4 Disclosure of any confidential information**

Pursuant to any such order or requirement shall not be deemed to render it non-confidential and the receiving party's confidential information shall not be changed or lessened by virtue of any such disclosure, unless such disclosure results in one or more of the exceptions listed in Clause 4.2 above applying to that confidential information.

## **4. Freedom of Information Act (FOIA)**

The parties acknowledge and agree that the Board is subject to the FOIA, and the codes of practice issued under the FOIA as may be amended, updated, or replaced from time to time. The Board and researcher agree that all requests under the FOIA relating to this Agreement and any other relevant records is processed under the terms of the FOIA.

## **5. Data Protection**

The parties acknowledge and agree that the Board, the researcher, and HEI is subject to the General Data Protection Regulation (GDPR), Data Protection Acts 1988-2018, and the party's data protection policies as may be amended, updated, or replaced from time to time.

The parties acknowledge and agree that the Board, the researcher, and HEI must adhere to the data protection guidelines outlined in the Legal Aid Board's Research Code of Practice and the Legal Aid Board's Data Protection Policy including the need to undertake a Data Protection Impact Assessment where appropriate.

## **6. Dignity In The Conduct Of Research**

The Board supports a research system in which individual researchers are enabled to reach their full potential at all stages of their career. Researchers and their supervisors are entitled to carry out their research free from any form of harassment, victimisation, or bullying. Staff of the parties are entitled to be always treated with courtesy and respect and, accordingly, are encouraged to report any instances of infractions to management. In cases where staff experience abusive or inappropriate behaviour, the Board reserves the right to report any such behaviour to the relevant personnel in the HEI or other organisation connected with the individual.

## **7. Notice of breach**

Each party shall give immediate notice to each of the other party of any unauthorised use, disclosure, theft, or other loss of that other party's confidential information as soon as is practicable after becoming aware of it.

## **8. Publication**

The parties agree that the researcher and the Board shall be entitled to make oral, written, or other public disclosures of the results of the project including but not limited to:

- making presentations at seminars, conferences, symposia, professional meetings;
- publishing in journals, or otherwise of their own choosing, methods and results in accordance with normal academic practice, provided that the publication has been approved by the Board.
- All publicity, including interviews, email signatures, letterheads, office signs, public lectures, publications, print materials, online materials, press releases, television and radio advertisements, formal social media, websites, video/audio recordings associated with or arising from the research



undertaken by the researcher must contain acknowledgement of collaboration with the Legal Aid Board.

### **9.1 Prior consultation**

The publishing party shall submit its proposed publication in writing to the reviewing party at least 30 days before submitting it for publication.

### **9.2 Delay for protection of data**

If the reviewing party believes that a delay is needed in order to seek protection for any of the reviewing parties data, the reviewing party may by giving written notice to the publishing party require the publishing party to delay the proposed publication for a maximum of thirty (30) days or other such time as both parties may agree, or until any affected data is protected, whichever is the sooner.

### **10.2 Removal of confidential information**

All client data shall be treated as confidential information belonging to the party who owns the data. The reviewing party may by giving written notice to the publishing party require the removal of any of the reviewing party's confidential information from the publication.

### **11.2 Assumed permission**

If the publishing party does not receive a written objection from the reviewing party within 30 days of submission of notification of publication, then permission to publish shall be deemed to have been given.

The researcher must receive written approval from the Board to proceed with the publication.

## **2. Warranties and Undertakings**

### **10.1 Warranties**

Neither party warrants or undertakes that any result or outcome, whether stated in this Agreement or not, shall be achieved, be achievable or be attained at all or by a given completion date or any other date, nor does either party give any warranty that the content or use of any results, data, intellectual property, reports, information or other materials provided in connection with this Agreement will not constitute or result in any infringement of third-party rights.

### **10.2 Liability and Insurance**

The researcher shall have no liability to the Board other than for breach of its obligations in connection with or in relation to this Agreement and the research project, excluding breaches of Clause 5 (Confidentiality).

### **10.3 Termination**

This Agreement shall continue until the earlier of cessation of the project in accordance with the Research Project Terms:

- The research envisaged by the project has been concluded to the satisfaction of the researcher, the Board, and where applicable the member(s) of the faculty of the HEI who is/are acting as academic supervisor(s) for the purposes of the research and a thesis has been delivered/report has been finalised/published;
- the researcher has received written confirmation that they have failed to comply with this research agreement;
- agreement in writing between the researcher and the Board that this Agreement should terminate.

## **10 General**

### **1.1 Amendments**

This Agreement may only be amended in writing signed by the researcher and the Board.

### **2.1 Assignment**

Neither party may assign, mortgage, charge or otherwise transfer any or all its rights and obligations under this Agreement without the prior written agreement of the other party.

### **3.1 Notices**

All notices given by either party to the other pursuant to this Agreement shall be in e-mail or writing and may be delivered or sent to the contact points at 3.2 of this agreement and the researcher.

### **4.1 Severability**

If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect the legality, validity or enforceability under the law of that jurisdiction of the remainder of the provision in question or any other provision of this Agreement and the legality,

validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

### **5.1 Announcements**

Neither party shall make any press or other public announcement concerning any aspect of this Agreement or make any use of the name of the other party in connection with or in consequence of this Agreement without the prior written consent of the other party.

### **6.1 Law and jurisdiction**

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Ireland, and each party agrees to submit to the exclusive authority of the courts of Ireland.

<sup>[1]</sup> Available on request from the Research Manager of the Board

## Appendix F: Copy of Maynooth Research Ethics Policy

<https://www.maynoothuniversity.ie/sites/default/files/assets/document//Maynooth%20University%20%20Research%20Ethics%20Policy%20%28Updated%20March%202020%29.pdf>

# Appendix G: Maynooth Ethics Approval Letter

**MAYNOOTH UNIVERSITY RESEARCH ETHICS COMMITTEE**

MAYNOOTH UNIVERSITY,  
MAYNOOTH, CO. KILDARE, IRELAND



Dr Carol Barrett  
Secretary to Maynooth University Research Ethics Committee

20 January 2022

Emily Bernadette Dunne  
Department of Law  
Maynooth University

Dear Emily,

The Social Research Ethics Sub-committee has reviewed the ethical protocol for your project: **International Parental Child Abduction cases for Mediation** and we would like to inform you that ethical approval has been granted.

Any deviations from the project details submitted to the ethics committee will require further evaluation. This ethical approval will expire on 30/09/2024.

Kind Regards,

A handwritten signature in purple ink, appearing to read "Carol Barrett".

Dr Carol Barrett  
Secretary,  
Maynooth University Research Ethics Committee

C.c. Dr Fergus Ryan, Department of Law  
Dr Treasa Kenny, Department of Law

|                                        |
|----------------------------------------|
| Reference Number<br>SRESC-2021-2452382 |
|----------------------------------------|

[SRESC-2021-2452382 Emily Bernadette Dunne.pdf](#)

