



EDUCATION PROGRAMME MATERIALS PACK



**IAFL Introduction to European
Family Law Conference, Bucharest,
Romania 15th and 16th November
2023**

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**IAFL INTRODUCTION TO EUROPEAN FAMILY LAW CONFERENCE
EDUCATION PROGRAM**

Bucharest, Romania

Wednesday 15 November – Thursday 16 November 2023

[Hilton Garden Inn Bucharest Old Town](#)

Education Program Chairs

[Daniela Jezova](#), Slovakia

Wednesday 15 November

13:30-13:45 **Welcome and Introduction to the Education Program**

Opening remarks: [Sandra L.A. Verburgt](#), Netherlands, European Chapter President and Flavia Teodosiu, Counsellor, Bucharest Bar Association

13:45-14:45 **Session 1: Who knew? Different Perspectives of Interim Measures – useful tips in different jurisdictions. Short presentations and contributions from the floor**

Chair: [Daniela Jezova](#), Slovakia

Speakers:

- [Eniko Fulop](#), Romania
- [William Healing](#), UK
- [Julia Pasche](#), Germany

14:45-15:15 **Coffee Break and Networking**

15:15-15:45 **What's new? The new EU Commission Proposals on the Recognition of Parenthood. Presentation.**

Speaker: [Alice Meier-Bourdeau](#), France

15:45 – 16:00 **Closing remarks: First Conference Day -** [Rachael Kelsey](#), IAFL President

18:30-20:00 **Welcome Drinks Reception at Linea Restaurant**

20:00-22:00 **Dinner at Linea Restaurant**

Thursday 16 November

09:00-10:00 **Session 1: What's new? Brussels Ila Recast Regulation**

Chair: [Renato Labi](#), UK

Speakers:

- [Konstantinos Rokas](#), Greece
- [Brikena Kasmi](#), Albania
- [Alexandre Boiché](#), France

10:00-10:30 **Coffee Break and Networking**

10:30-11:30 **Session 2: Who knew? Important Fact of Family Law in Different Jurisdictions**

Chair: [Sandra L.A. Verburgt](#), Netherlands

Speakers:

- Calin Viorel Luga, Romania
- Sandra Strahm, Switzerland
- Katrin Orav, Estonia
- Yordanka Berkirska, Bulgaria
- Agnieszka Swaczyna, Poland

11:30 – 12:00 **Presentation of IAFL European Chapter Young Lawyers' Award - international matrimonial regimes – case study**

Speaker: Michael Allum, UK

12:00-13:30 **Light Lunch**

13:30-14:30 **Session 4: Who knew? What others should know about the child maintenance in your country? Short presentations and contributions from the floor**

Chair: [Karen O'Leary](#), Ireland

Speakers:

- [Inmaculada Ruz](#), Spain
- [Soma Kölcseyi](#), Hungary
- [Arnaud Gillard](#), Belgium

14:30-15:00 **Coffee Break and Networking**

15:00-15:45 **The child in times of war from Ukrainian perspective**

Speaker: [Oksana Voynarovska](#), Ukraine

15:45 – 15:55 Our Family Wizard presentation

15:55-16:15 **Closing Remarks - [Sandra L.A. Verburgt](#), Netherlands, European Chapter President**



Education Chairs

DANIELA JEŽOVÁ

Bratislava, Slovakia

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IAFL Fellow Profile: [view here](#)



Daniela is managing a law office which deals with International and European family law. Daniela lectured for almost 15 years at the Comenius University law faculty in Bratislava the International and European law, she published a lot of scientific articles in this area. She has also actively contributed to several conferences of family law such as international scientific conference Children in the Net or the workshop about the Brusel IIa Recast in the relation to international abduction cases. She provides lectures also for practicing lawyers in Slovakia in Family law (C.H.Becks). She was selected as an expert to cooperate with European Union Agency for Fundamental Rights (FRA) in regard to Update of the Handbook on European Law Relating to Rights of the Child. Daniela is IAFL fellow for Slovakia.

RENATO LABI

Hughes Fowler Carruthers

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Renato has wide experience in dealing with financial disputes within divorce proceedings and following cohabitation, including cross-border financial remedy and enforcement cases, and in complex private law children's cases. Peers describe him as 'clever, resourceful and cool under pressure', commending his ability to 'turn over every stone to find the evidence needed.' Renato acts for and against leading international high net worth figures, and he also has an excellent reputation in the finance and professional sector in London.

Known for his tactical nous, he is highly recommended in the legal directories for his practice. Chambers UK highlights that Renato is respected for his expertise in matrimonial finance matters with trust and property issues and is 'an extremely proficient practitioner who is notable for his calmness' and having 'particularly good bedside manner with clients.'

SANDRA L.A. VERBURGT

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President, European Chapter. President Elect, European Chapter 2021 - February 2023; IAFL Vice President 2016-2021; Parliamentarian 2014-15. Has a wide experience in all kind of family law matters. Practice includes mainly divorces and financial relief (maintenance, divisions and prenuptial agreements), both contentious and non-contentious. Many of these disputes involve complex and financial aspects, often with an international element. Since 2007 also deals with cross border disputes and works closely with accredited family law specialists in the United Kingdom and the United States of America. Is an accredited family lawyer and member of the Dutch Association of Family Law Lawyers and Divorce Mediators (vFAS).

KAREN O'LEARY

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Karen is qualified as a Solicitor in England & Wales, Northern Ireland and Republic of Ireland. Karen has particular expertise in family cases involving an international dimension in the three jurisdictions where she is qualified. She deals with complex financial claims, children's issues and pre/post nuptial agreements. She has been ranked Band 1 by Chambers for a number of years. She is both a qualified mediator and chartered arbitrator in family law. Karen regularly presents and lectures on family law topics both nationally and internationally and is the author of both the Northern Ireland Chapter and Republic of Ireland Chapter of the Family Law "Blue Book" published by Thomson Reuters.



Who knew? Different Perspectives of Interim Measures – useful tips in different jurisdictions

ENIKO FULOP

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Eniko Fulop manages her own legal company in Bucharest, Romania. After 18 years of experience in field of commercial-, labour-, civil-, pharma-, and business law, decided to reverse the priority of her practice after winning a complicated child abduction case in 2015 in Bucharest.

In the last 8 years dealt with more than 40 international family law cases, which proved her that family law is her mission and her contribution to the world. She treats every case with total involvement and dedication.

She appears before all levels of litigation in Romania, having experience also before international Courts. Is a member of the Bucharest Bar since March 2009, being a legal counsel priorly between 2005-2009. She graduated from Babes- Bolyai University of Cluj in 2005 , Romania and has a Master degree in International Law.

WILLIAM HEALING

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William is a dual French and English national, he is a bilingual speaker, and most of his cases have a Francophone or other international angle. Most cases involve high net worth assets. He has been practising family law for 20 years. William is a Fellow of the International Academy of Family Lawyers (and European Chapter secretary). He is a widely acknowledged expert on European family law issues. A recent edition of the UK Chambers guide to the legal profession said “of all the solicitors in London he knows the most about European and cross border family law issues”. William frequently writes articles on international family law for a wide variety of publications and speaks at international conferences. He has been quoted in virtually all the broadsheet newspapers in England and France as well as appearing on national radio and television in both countries.

JULIA PASCHE

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Academic studies in Munich and Barcelona, Spain; legal clerkship in Munich and Cape Town, South Africa; Attorney in Munich since 2003; Specialist in family law since 2007 (Fachanwältin für Familienrecht); instructor at Hagen Law School; Member: German Lawyers Association, German-Spanish Lawyers Association.



What's new? The new EU Commission Proposals on the Recognition of Parenthood.

ALICE MEIER-BOURDEAU

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Alice has a Ph.D. in Law and has the distinction of being a ministerial officer and an attorney/barrister to the Supreme Courts of France, more usually referred to as “avocats aux Conseils” in French. Avocats aux Conseils are lawyers whose particularity is their ability to represent their clients before the Supreme Courts of France (Council of State and Court of Cassation). She is perfectly trilingual in French, German and English.

Her particular interest in private international law and family law has led her to write various papers and contributions. She has also lectured at an important number of conferences and is often designed as an expert in family law and private international law. She is a member of the French Community for Private International Law (Comité français de droit international privé), « Droit & procédures », the Association of French and German lawyers (AJFA), the European Law Institute (ELI), and the Société de législation comparée.



What's new? Brussels IIa Recast Regulation.

ALEXANDRE BOICHÉ

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Avocat à la Cour d'appel de Paris, Docteur en Droit. Accredited specialist of Family law and international law with the Paris Bar. Former lecturer at the Faculty of law of Toulouse (1993/1998). Auditor at the Academy of International Law at The Hague (1995). Member of the French Family law Institute. Member of the Louis Chatin association on the protection of the child. Editor in the law Journal ""Actualité juridique Famille"" for all the international case law since June 2006 : comments of the case law and many articles in International and European Family Law, many other articles in law review and conferences in France and abroad in International and European Family Law.

BRIKENA KASMI

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Ms. Kasmi has been an attorney – at – law from 2001 and on and is specialized in media law and international private law. She is currently managing and funding partner of AFortiori-legal-counsels law studio. Her experience includes civil society and project management; public administration and private law firm.

In addition, Ms. Kasmi has more than 12 years of experience as a professor and lecturer in the university and is author of more than 34 articles on human rights in national and international journals. Ms.Kasmi holds PhD in media law and has doctorated under the thesis of “commercial activity of media companies” from 2016. She is the author of academic books “Media law – General part (i) and Particular part (ii). She is co-author of mediation law commentary, co-author of the prevention of the conflict of interest law manual and commentary and has participated in the drafting of more than 98 legal acts including (i) the law on registration of real estate with the focus of women property rights; (ii) the criminal and civil code with the focus of libel and defamation; (iii) the mediation and arbitration law with the focus of establishing procedures on lawyer appointment; (iv) the criminal procedures code with the focus of reform of preliminary procedures, etc.

KONSTATINOS ROKAS

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Konstantinos Rokas after his undergraduate studies in law at the University of Athens, he went on to obtain two LLM degrees from the University of Athens (in private international law and EU law) and the University Paris II-Pantheon Assas (in international commercial law and private international law), finishing second in his class. He has defended his PhD on "Medically assisted reproduction in comparative private international law" in the University Paris 1 Pantheon-Sorbonne. He is admitted to the Athens Bar Association since 2004 and to the Supreme Court of the Country. Konstantinos handles a wide range of international family law issues, focusing on matrimonial property, international successions, parentage in ART, surrogacy to the benefit of international clients. He is a Lecturer in Private International Law at the University of Nicosia in Cyprus. He is fluent in English, French. He has a good level of German and he is learning Chinese.



Who knew? Important Fact of Family Law in Different Jurisdictions.

CALIN VIOREL LUGA

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Calin Viorel Iuga is an international lawyer, member of the U.I.A. (International Association of Lawyers) in the Family Law, Immigration and Labour Law Committees and Vice-President of the Eastern Bars Commission of the European Bars Federation. In Romania he is a counselor of the Cluj Bar Council and is the coordinating lawyer of the law firm IUGA & Asociații in Cluj-Napoca. He frequently participates in conferences and in national and international projects being most attracted by pioneering projects. He believes that among the most important values of the profession of lawyer are fraternity and the awareness of defending fundamental human rights.

SANDRA STRAHM

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Sandra Strahm completed her studies in Lucerne. After working for the courts, lawyers' offices and public authorities, she was admitted to the bar of the Canton of St. Gallen. Since then she has been working as an attorney and advises and litigate mainly in the areas of family law (incl. child abduction) and inheritance law, but also in contract and criminal law. In addition to divorce, her areas of practice also include family law disputes concerning children of unmarried couples. She is also involved in international settlements concerning visitation and maintenance.

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Attorney-at-law Katrin Orav is a member of the Estonian Bar Association since 2006. For 9 years she served as the Board Member of the Estonian Bar Association.

Katrin is currently the Chairman of the Estonian Bar's Family Law Committee. In 2020, Katrin was awarded the honorary title of "Diamond of the Bar Association". Her candidacy was submitted by the Estonian Union for Child Welfare.

As of 2022, she works in her own Law Firm specializing in Family Law.

Her daily work includes representing parents in child custody, visiting rights and maintenance cases, as well as divorce, division of property and succession.

YORDANKA BERKIRSKA

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Yordanka Bekirska is a human rights lawyer, member of Sofia Bar Association. Her everyday work is to enhance the human rights international standards in Bulgaria. She held her first Master degree in Law from Plovdiv University in 2004 and LL.M in the International Institute for the Sociology of Law, Spain, 2007. Yordanka graduated in Womens' Human Rights Training Institute in USA and did her third master degree in Private International law in 2016. Yordanka is specialized in strategic human rights litigation and conducts cases before national and international tribunals. Since 2009 Yordanka develops her legal practice on the right to respect for private and family life. As a managing partner at specialized law office in international and family law "bekirska § partners" she deals mainly with national and cross-border family cases and has comprehensive knowledge on implementation of the 1980 Hague Convention in Bulgaria. Mrs. Bekirska educates legal practitioners since 2012 on the International Family Law at the Center for Legal Education in Bulgaria part of the Supreme Bar Council. Since May, 2018 Mrs. Bekirska is a permanent member of the Human Rights Commission of The European Bars Federation/Fédération des Barreaux d'Europe (FBE), and member of the international team of Advo Alliance Group (www.advoalliancegroup.com). Mrs. Bekirska established the first Cross-Border Family Mediation Center in Bulgaria and deals with family mediation since 2009. For her active and devoted work, she was awarded as the best lawyer on International Law at the 2018 Judicial Awards and nominated for the most challenging law suit for 2021 among 5 listed. On a daily basis she monitors and analyzes the situation of human rights in Bulgaria, conducts advocacy campaigns and lobbies for legislative changes and takes part at many working groups for amendment of the legislation.

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Agnieszka Swaczyna has a degree in Law from the Jagiellonian University in Cracow. She has been an attorney since 2003 and a member of the District Bar Council in Cracow. Agnieszka specializes in family law, including parental child abduction cases (Hague Convention of 1980). Agnieszka has lead workshops for trainee attorneys at the District Bar Council in Cracow since 2014. Agnieszka is also a family mediator and has volunteered at the Adoption Centre of the association "Pro Familia" for three years. In the interests of making the law more accessible to the public, Agnieszka has authored two law blogs: www.blogrozwod.pl and www.childabductionblog.pl. The law firm Swaczyna Łabuz-Weiss Kancelaria Adwokacka s.c., of which Agnieszka is a partner, was included in the Forbes 2023 ranking of the best law firms in Poland in the field of family law.



Presentation of IAFL European Chapter Young Lawyers' Award - international matrimonial regimes – case study.

MICHAEL ALLUM

The International Family Law Group LLP, Partner
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Michael Allum is a Partner at The International Family Law Group LLP.

Michael specialises in financial issues which arise on relationship breakdown including financial provision on divorce or separation, financial provision for the benefit of children (Sch 1) and financial provision after an overseas divorce (Part III).

Michael's practice covers both national and international cases. His international work includes the recognition of overseas marriages and divorces, the enforcement of financial orders and sharing English pensions after overseas divorces. He is regularly instructed to advise and act in relation to jurisdiction and/or forum disputes to secure proceedings in another country.

Michael has extensive experience of taking cases through the court system, he will do his best to find an amicable settlement where possible. Michael's pragmatic and conciliatory approach often results in many of his cases being settled out of court.

Michael is one of the leading family lawyers specialising on enforcing English pensions following an overseas divorce. He is regularly asked to provide second opinions to clients. Michael has been instructed to provide expert evidence for overseas courts in relation to English law.

Michael is a member of the editorial board and co-editor of the Financial Remedies Journal.

Michael is frequently asked to write articles for leading publications and give lectures/seminars to the legal profession on international family law issues. Michael is also committed to family law reform and is a regular contributor to the Government's Consultation papers.

CASE STUDY (1)

- **Junior** is 25, he is a Brazilian football player, he plays for Paris and lives and resides in France.
- He has a brilliant career; he has a great contract with his club and has a number of sponsorship deals. He knows he won't stay in Paris all his career and plans to go to another club in England, Spain or Germany soon.
- He is in a relationship with **Eva** who is a model and actress with dual British and American citizenship. She has inherited from her father, and she is the sole heir of her mother who is a very wealthy and famous film producer. Eva lives mainly in London.



CASE STUDY (2)

- Junior and Eva want to marry and to do a prenuptial agreement.
- Junior would like to be protected because he may have a very successful career but he has also a lot of uncertainty. Eva would like to protect her family assets and to be protected if they have a family.
- How will you proceed to establish this prenuptial agreement?'



WHO WILL BE THE CLIENT?

- Common Law
- Civil Law



SEVERAL AGREEMENTS OR ONE MASTER

- Some lawyers want separate agreements for each jurisdiction adapted to national laws.
- Others prefer one master document which include the specific wording required for each jurisdiction.



GET YOUR TEAM IN PLACE

- Junior lives in France
- Eva lives in England
- Junior is from Brazil
- Eva has dual British/American citizenship
- Also told Junior may move to Spain or Germany soon



ISSUES TO CONSIDER (1)

- What are the jurisdiction grounds for any divorce and, if different, financial proceedings and can there be standalone applications.
- Is it possible to defend the divorce and/or financial proceedings and, if so, on what basis.
- Is it possible to contest the forum of the divorce and/or financial proceedings and, if so, on what basis.



ISSUES TO CONSIDER (2)

- Does lis pendens/“first to issue” apply or carry any weight if there were a jurisdiction dispute.
- Is there a separation period required before divorce and/or financial proceedings can be issued.
- What is the court’s approach to finances on divorce including (a) treatment of non-marital property (b) treatment of marital property and (c) claims for maintenance.



ISSUES TO CONSIDER (3)

- What is the court’s approach to marital agreements including (a) any safeguards/procedural requirements and pre-conditions and (b) whether they are legally binding.
- Are jurisdiction and/or applicable law clauses possible and/or binding.
- If the parties envisage that they may have children in the future, what is the court’s approach to financial provision for children.



ENGLAND (1)

“The approach of English law to nuptial agreements differs ... significantly from the rest of Europe and most other jurisdictions. Most jurisdictions accord contractual status to such agreements and hold the parties to them, subject in some cases to specified safeguards or exceptions. Under English law it is the court that is the arbiter of the financial arrangements between the parties when it brings a marriage to an end. A prior agreement between husband and wife is only one of the matters to which the court will have regard...” (Radmacher, Para 3)



ENGLAND (2)

- Jurisdiction (pre- and post-Brexit)
- No fault divorce since April 2022
- Lis Pendens replaced by test of closest connection
- Discretionary approach to financial provision on divorce
 - Fairness
 - Capital (marital and nonmarital)
 - Periodical payments



ENGLAND (3)

- Marital agreements historically seen as contrary to public policy.
- 2010: *“The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.”* (Radmacher, Para 75).
- That left the *“difficult question”* as to the circumstances in which it would not be fair to hold the parties to their agreement.



ENGLAND (4)

- In 2014 the Law Commission recommended Qualifying Nuptial Agreements (QNAs).
- Must be contractually valid, have been made by deed and contain a statement signed by both parties that they understand it will partially remove the court’s jurisdiction.
- Must not have been made within 28 days of the wedding.
- Both parties must have received disclosure of material information about the other’s financial situation and independent legal advice.



ENGLAND (5)

- No material distinction between pre and post nuptial agreements.
- Important there is opportunity to obtain all information that is material to the decision.
- There should be respect for individual autonomy.
- There should be no vitiating factors (duress, fraud or misrepresentation)
- The court should give effect to a marital agreement that is freely entered into by each party with a full appreciation of its implications unless unfair to do so.
- Parties are unlikely to have intended that one of them should be left in a predicament of real need whilst the other enjoys a sufficiency or more.
- It is the court (not the parties) that ultimately determines the financial outcome on divorce.



FRANCE, SPAIN AND GERMANY (1)

- Jurisdiction (Art 3, Brussels II)
- Forum:
 - Lis Pendens between EU Member States (Art 19, Brussels II)
 - Domestic laws apply outside intra-EU Member States



FRANCE, SPAIN AND GERMANY (2)

- On 29 January 2019 Council Regulation (EU) 2016/1103 came into force in 15 EU Member States including France, Spain and Germany.
- The Regulation allows parties to choose the law applicable to their matrimonial property regime provided one of them is habitually resident in or a national of the country where the agreement is concluded (Art 22).



FRANCE, SPAIN AND GERMANY (3)

- The Regulation provides that (a) the matrimonial property agreement must be expressed in writing, dated and signed by both parties and (b) if only one of the spouses is habitually resident in a Member State at the time the agreement is concluded and that state lays down additional formal requirements for matrimonial property agreements, those requirements shall apply (Art 25).



FRANCE, SPAIN AND GERMANY (4)

- The Regulation also provides that a party may when seeking to dispute the validity of the agreement rely upon the law of the country in which they had their habitual residence at the time the court is seised if it appears from the circumstances that it would not be reasonable to determine the effect in accordance with the law nominated in the agreement (Art 24).



FRANCE

- There are various matrimonial property regimes in France including community of assets and separation of property.
- The default regime is the community of assets which applies where (a) both spouses reside in France at the time of their marriage and have France as their first habitual residence after the marriage and (b) the parties have not entered into a marital agreement electing another matrimonial property regime.
- On divorce the parties' assets will be divided in accordance with the relevant matrimonial property regime.



CONCLUSION (1)

- To comply with The Matrimonial Property Regimes Regulation, the law applicable to the property regime must be that of a country where Junior or Eva are habitually resident or a national (Art 22).
- As Junior and Eva plan to stay living in Europe that narrows the most appropriate jurisdictions down to France and England.
- Given England's more discretionary approach to marital agreements, Junior and Eva may decide to elect that French law is applicable.
- It would be prudent to attach evidence that Junior was habitually resident in France at the time of signing to the agreement.



CONCLUSION (2)

- More information is needed about Eva's financial circumstances, but based on the available information a separation of property regime would give Eva protection that any assets acquired by way of inheritance would be kept separate (provided the asset was not acquired in joint names).
- More information is also needed regarding Junior's financial circumstances. Owing to the nature of his work he is likely to have a high income for a short period of time. On divorce, especially towards the end of high earnings, a lump sum may be needed to ensure Junior can meet his future needs.



CONCLUSION (3)

- Although it is not possible to have a binding agreement as to jurisdiction in England, the EU Maintenance Regulation allows Junior and Eva to have an agreement that would be binding in France, Germany and Spain as to where maintenance claims are determined provided there is a sufficient with the nominated country (Art 4, EU Maintenance Regulation).
- The Matrimonial Property Regimes Regulation also allows Junior and Eva to have a binding agreement in those countries as to which matrimonial property regime would apply provided it is in writing, dated and signed by both parties and one of them is habitually resident in or a national of the nominated state at the time the agreement is concluded (Art 22).



CONCLUSION (4)

- To satisfy The Matrimonial Property Regimes Regulation, the marital agreement must comply with the requirements and formalities in France and England as that is where Junior and Eva are currently habitually resident.
- For France that would mean both Junior and Eva signing the marriage contract before a French notary in person.
- The position is less clear for England, but it would be best practice to ensure both Junior and Eva had separate independent legal advice, a full appreciation of the other's financial circumstances and for the agreement to be signed as a deed at least 28 days before the wedding.



CONCLUSION (5)

- As the English court would have the ability to interfere with the marital agreement in the event the divorce proceedings take place in England, steps should also be taken to ensure that the marital agreement meets the recommended safeguards in England.
- Although it is not possible to oust the jurisdiction of the English court whilst there is a sufficient connection to bring divorce proceedings, in recent years the judicial wind has continued to blow increasingly towards upholding marital agreements as encapsulated in the following comments of Mr Justice Moor in March 2023:



CONCLUSION (6)

“Litigants must realise that it is a significant step to instruct top lawyers to prepare a pre-nuptial agreement prior to marriage. It is highly likely they will be held to these agreements in the absence of something pretty fundamental that vitiates the agreement. These agreements are intended to give certainty. Those signing them need to know that the law in this country will provide that certainty. Litigants cannot expect to be released from the terms that they signed up to just because they don't now like what they agreed.” (MN v AN, Para 85)





Who knew? What others should know about the child maintenance in your country?

SOMA KÖLCSÉNYI

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2002 Janus Pannonius University of Sciences, Faculty of Law
2003-2005 associate lawyer
2005-2007 central administration - legal rapporteur
2008 lawyer - Kölcseyi and Némethi Law Firm

IAFL International Academy of Family Lawyers - fellow
Mikk eV Mediation bei international Kindschaftskonflikten - mediator
KEMI Central European Mediation Institute - Vice-President
EJN European Judicial Network - delegated expert of the Hungarian Bar Association
EIPA European Institute of Public Administration - invited speaker
ERA Europäische Rechtsakademie Trier - invited speaker
LEPCA Lawyers in Europe on Parental Child Abduction - invited speaker
Budapest Metropolitan University - invited speaker
Széchenyi University, Faculty of Alternative Dispute Resolution - invited speaker
Ministry of Justice - Mediation Working Group - member
Ministry of Justice - Working Group on Strengthening the Effectiveness of Family Law Enforcement
- delegate member
Thomson Reuters Family Law "Big Blue Book" - co-author

LEGAL STRUCTURE OF CHILD MAINTENANCE LEGISLATION

1. Maintenance of blood relatives

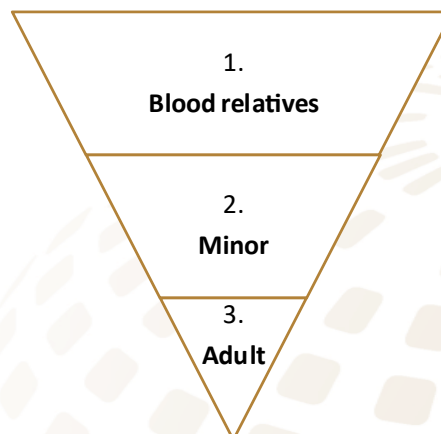
General rules

2. Maintenance of a minor child

Specific rules

3. Maintenance of an adult child

Special rules



LEGAL STRUCTURE OF CHILD MAINTENANCE LEGISLATION

1. Maintenance of blood relatives

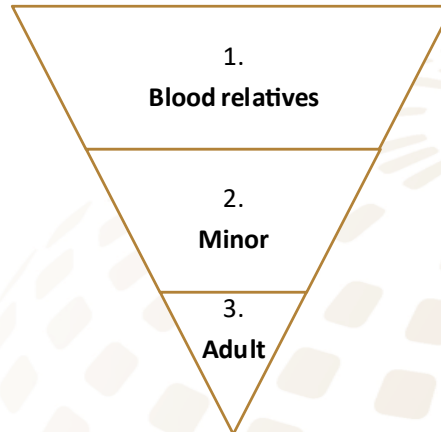
General rules

2. Maintenance of a minor child

Specific rules

3. Maintenance of an adult child

Special rules



1. MAINTENANCE OF BLOOD RELATIVES

- Level of maintenance
 - Justified needs
 - Financial capacity
- Manner of maintenance
- Consumer price index
- Duration
- Modification
- Termination, cessation



2. CHILD MAINTENANCE

• Specific rules

- Presumption of indigence
 - Until age of 20 and with secondary education
- Maintenance obligation
 - Restriction of his/her own necessary maintenance
- Manner of maintenance
 - Caring parent: in kind
 - Separated parent: in money



2. CHILD MAINTENANCE

- Level of maintenance

- Parents' agreement – primarily
 - one-off provision of an adequate asset
 - sum of money

Valid if:

- the period for which maintenance is covered
- approved by the guardianship authority or by the court.

- Judicial setting of child maintenance - secondarily



2. CHILD MAINTENANCE

• **Judicial setting**

- a) Justified needs of the child
 - regular expenses
 - healthcare
 - upbringing
 - education
- b) Income and property of both parents
- c) Other children



2. CHILD MAINTENANCE

- d) Child's income
- e) Child protection allowances, family support, social insurance and social allowances
- Extraordinary expenses - for example:
 - Child's illness involving regular medical treatment
 - Surgery
 - Unexpected educational cost



2. CHILD MAINTENANCE

- Debtor's income
 - 15-25% of the average income
 - 1 year before the action was brought to court
 - level of child maintenance is limited to the child's actual reasonable needs
- Luxury expenses
 - Standard of living
 - Private school



3. MAINTENANCE OF AN ADULT CHILD

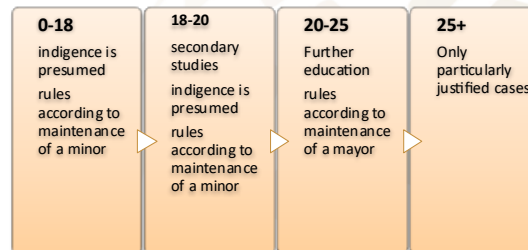
- **Special rules**

- Entitlement to maintenance:

child of majority age who is fit for work, and is engaged in further studies

- Parent is not obliged to pay:

- Child is unworthy
- Child fails in the studies
- Parent would jeopardise his/her own necessary maintenance or his minor child's maintenance



3. MAINTENANCE OF A MAJOR CHILD

- Level of maintenance
 - Justified needs
 - Own income
 - Property of the child
 - Allowances
 - Parent's financial capacity
- Information obligation regarding studies

Thank you for your attention



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Arnaud Gillard studied law at the Université Catholique de Louvain and political sciences at the KU Leuven, Belgium. He is a lawyer at the Brussels Bar since 2003. Having worked as a partner in two leading law firms in Belgium, he founded his own law firm specialising in family law 'Gillard Avocats' Brussels in 2019.

He is recognised by the French-speaking Order of Lawyers of the Brussels Bar as a specialist in Family Law and Estate planning law. He is the author of several publications in international private law and family law, primarily regarding international divorce, child relocation and international maintenance claims. Mr Gillard is a speaker at various conferences in Belgium and abroad in International and European Family Law.

He is fellow of the International Academy of Family Lawyers and one of the Belgian representatives at the Family Law Committee of the CCBE (Council of Bars & Law Societies of Europe).

LEGAL BASE



ARNAUD GILLARD AVOCATS

In Belgian law : two articles

- Formal legal base : Art. 203 of the “old” Code civil :

“§ 1. The father and mother are obliged to assume, in proportion to their means, the accommodation, maintenance, health, supervision, education, training and development of their children. If the education has not been completed, the obligation continues after the child has reached majority.

§ 2 By means of property, is meant in particular all professional, movable and immovable income of the father and mother, as well as all benefits and other means which ensure their standard of living and that of the children.”



STANDARDIZED CALCULATION METHOD



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There are some calculation methods.

Most important is *Méthode Renard*, but also one from the court of appeal in Ghent.

Only for information of the judge – not legally binding.

Legal criteria are the following:



LEGAL BASE



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In Belgian law : two articles

- Explanation of the previous article in art. 1321 of the Judicial Code

“Any court decision ordering a maintenance contribution pursuant to Article 203, § 1, of the Civil Code shall indicate the following elements :”

8 elements are mentioned in that article, which are required to be indicated in any court decision, but also should be mentioned in an agreement to be legalized by a court.



LEGAL CRITERIA



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1. *“the nature and the amount of each parent’s financial capacities”*

Court must take into consideration all capacities, i.e. salary, unemployment, any other income, or element that participate to finance the day to day life of the parent.

Can be :

- salary ;
- dividend on personal company or investment ;
- advantages paid by the employer (company car, health insurance, phone, etc.);
- help from the family if it was provided during the time when the parents still were together ;



LEGAL CRITERIA



1. *“the nature and the amount of each parent’s financial capacities”*

Once capacities have been determined, we need to calculate the ratio of income between the two parents, that will be the key for the rest of the calculation.

e.g. : Parent 1 earns 5,000.00 €/month – parent 2 earns 10,000.00 € / month
Ratio is 33 % for parent 1 and 77 % for parent 2



LEGAL CRITERIA



2. *“the ordinary costs that make up the child's budget and the way in which these costs are assessed”*

The parent asking for a child support should present a budget of the ordinary costs of the child, i.e. the costs that are necessary to finance the day to day life of the child.

There is a standard budget list that has been made by a joint commission of attorneys and judges of the Brussels bar and court.



LEGAL CRITERIA



ARNAUD GILLARD AVOCATS

3. *“the nature of the extraordinary expenses that may be taken into consideration, the proportion of these expenses to be borne by each parent and the terms and conditions for incurring these expenses”*

In addition to the ordinary costs, are the extraordinary costs.

In short, these are the costs that cannot be foreseen or put in a budget.

There is a list of these in a Royal Decree dated 22 April 2019 - [Arrete Royal du 22/04/2019 arrete royal fixant les frais extraordinaires resultant de l'article 203, § 1er du code civil et leurs modalites d'execution \(openjustice.be\)](https://openjustice.be/Arrete-Royal-du-22-04-2019-arrete-royal-fixant-les-frais-extraordinaires-resultant-de-l'article-203-%C2%A7-1er-du-code-civil-et-leurs-modalites-d-execution)



LEGAL CRITERIA



ARNAUD GILLARD AVOCATS

4. *“the child's accommodation arrangements and the contribution in kind made by each of the father and mother to the child's maintenance as a result of this accommodation”*

The time each parent spends with the child is taken into consideration as it is considered that, during that time, they participate *in natura* to the costs of the child.

There has been some debate on that criterium as sometimes, even in shared custody, the same parents takes responsibility for some costs (clothes, doctor's fees, etc.) and it should be taken into consideration.



LEGAL CRITERIA



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5. *“the amount of child allowances and social and tax benefits of all kinds that each parent receives for the child”*

These allowances or advantages must be allocated in priority to the well being of the child and are therefore deducted from the monthly budget.



LEGAL CRITERIA



ARNAUD GILLARD AVOCATS

6. *“where applicable, the income of each parent resulting from the fact that this parent manages the child's property”*

In Belgian law, parents are the ones who are legally entitled to manage a minor child's assets.

The incomes that come from these assets must be used in priority to the wellbeing and cost of this child.

It is therefore taken into consideration in the calculation of a possible child support.



LEGAL CRITERIA



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7. “the share of each of the parents in the costs resulting from Article 203, § 1 of the Civil Code and any maintenance contribution thus fixed and the arrangements for its adjustment pursuant to Article 203c of the Civil Code”

This means that the judge must explain the calculation made to reach the amount of the child support.

Legal doctrine and case law have managed to have a specific calculation that is often used by the court.

This is called the Brouwers method, named after Jean-Christophe BROUWERS, a Belgian attorney who explained that method in an article in the *Actualités du droits de la famille*.

(J.C. BROUWERS, « *Le compte est bon* », note sous Cass. (1ère ch.), 24 novembre 2017, n° C.16.0493.F in *Actualités du droit de la famille*, 2019/1-2, p. 102 et suivantes)



LEGAL CRITERIA



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If parent 1 is the one who will pay the child support

Global cost of the children	X €
Child allowances	Y €
Netto cost of the children	X - Y €
To be paid by parent 1 in proportion of their income (n % of the global cost)	N% x X €
Deduction of parent 1's participation <i>in natura</i> (percentage of time spent with the child - t%)	- t% x X
Deduction of parent 1's share of the allowances that are paid by the State to parent 2 (same percentage as the time spent with the child)	- t% x Y
Child support to be paid by parent 1



LEGAL CRITERIA

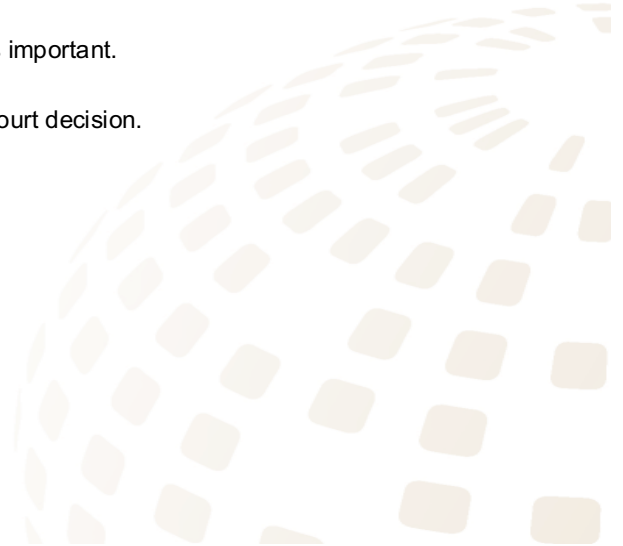


ARNAUD GILLARD AVOCATS

8. *“any special criterium that the court seems correct to take into consideration”*

The courts can use any other criterium that seems important.

I don't recall ever seeing that criterium used in a court decision.



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Inmaculada specialises on Family and Probate law and has been practicing as a family lawyer for over 25 years. She has valuable experience on international family law and child abduction.

Inmaculada founded her own law firm in 2010. Inmaculada was the President of the Family and Matrimonial Section of the Barcelona Bar association (20012- 2019). She has been a lecturer on family law at the Master of International and Domestic Private law of ISDE. She was also a lecturer at the Escuela de Practica Juridica of the Barcelona Bar. She is a regular publisher at various legal magazines, and has participated in numerous radio and television programs as an expert in her area. She participates regularly as a speaker in national and international conferences on family law.

Inmaculada is a member of the Spanish Association of Family Lawyers (AEAFA) and the Catalan Association of Family Lawyers (SCAF). In addition, she was a committee member of the Spanish branch of STEP (Society of Trust and State Practitioners). She is in the committee Catalan Association Collaborative Law She is founder of FDFSI, currently President (Foro de Familia y Sucesiones Internacional) and President from 2.022. She is member of the International Academy of Family Lawyers

AGENDA

- 1.- General Terms and Particularities
- 2.- What does maintenance include?
- 3.- Maintenance for adults
 - o 3.1.- Maintenance for children over 18 years of age
 - o 3.2.- Maintenance for children over 18 years of age with special needs
- 4.- Termination of maintenance payments
- 5.- Differences between Spanish general law and Catalan local law



1.- GENERAL TERMS AND PARTICULARITIES

- **Concept:** In Spain, maintenance shall include day to day expenses, housing, clothing and medical assistance, education costs and the expenses derived from pregnancy and childbirth.
- **Characteristics:**
 - Public Order
 - Imperative, priority and essential character. The court can order it of its own accord.
 - An updating clause must be included (CPI, or others)
 - It cannot be renounced
 - Supported by the principle of proportionality
 - Not subject to compensation or condition, nor to statute of limitations.
 - It prevails over that of other dependant relatives and is more extensive.



- The judge has discretion to set up the maintenance sum but must take into account: the financial means of the parties, the expenses of the children, and the “ **maintenance tables**” published by the **General Council of the Judiciary** - these are just indicative and not binding to the Court, but helps us calculating the potential maintenance due.
- “Maintenance tables” - do not take into consideration other expenses (ie school fees, housing and extraordinary expenses) however a minimum amount is established, and it varies depending on the area of Spain. It is often taken as a starting point.



2.- WHAT DOES MAINTENANCE INCLUDE?

- Everything that is essential for one basic support, housing and supplies, clothing, pharmaceutical expenses and medical care. It also includes educational expenses while he/she is a minor and even afterwards when he/she has not completed his/her studies for reasons not attributable to him/her.
- To be paid during the 12 months of the year, including the holiday periods.
- Extraordinary Expenses→ Those that are unforeseeable and eventual. Amongst them there will be some considered “necessary” (for example, a medical intervention or orthodontics) and others as “not necessary” (such as extra school activities).



3.- MAINTENANCE FOR ADULTS.

The legal system, in matters of maintenance, provides for a different treatment depending on whether the children are minors or adults (over 18):

- The maintenance for minor children is recognised in the Law and has a marked preference for its inclusion in the parental responsibility derived from the parent – child (*paterno- filial*) relationship.
- The provision of maintenance for adult children is subject to certain requirements.



3.1. Maintenance for children over 18 years of age

Double requirement needed:

- 1) Adult child must live with his/her parents.
- 2) To be paid during the child's academic or professional studies (tertiary education). *These circumstance must be accredited, as the child must not have been able to complete his/her studies for reasons not attributable to him or her, such as negligence or carelessness.

→ The statutory provisions of the law leave a wide margin of discretion in each situation.

→ Spain recognises that each situation is unique and that, therefore, it is not possible to establish an age beyond which this support is no longer provided to the child.



3.2. Alimony for children over 18 years of age with special needs

- There is no age limit for the maintenance that a divorced parent must pay for his/her child if he/she has special needs.
- The coming of age of a child with special needs does not extinguish the obligation to pay maintenance and it should be treated in the same way as maintenance for minor children as long as **1) they continue to live with the family** and **2) the child has no financial resources**.
- Aim of this doctrine: To guarantee the protection of the most vulnerable people.



4.- TERMINATION OF MAINTENANCE PAYMENTS.

- Reasons why maintenance may be extinguished:
 - When financial independence is reached: *With their incorporation into the labour market or on the contrary, by accrediting a passive conduct in the search of employment. It is necessary to assess each case.
 - Upon the death of the person entitled to receive maintenance (creditor).
 - Upon the death of the person obliged to pay (debtor). It is not included in the estate, so that the right to receive the maintenance is extinguished.
 - When the creditor has committed any of the faults that give rise to disinheritance.
 - If there is no relationship between the child and the non-custodial parent. If the child is of legal age, the lack of relationship must be constant and prolonged in time. It can also be a cause for termination if the children refuse to maintain the relationship with one of their parents.



5.- DIFFERENCES BETWEEN SPANISH GENERAL LAW & CATALONIAN LOCAL LAW

- Statute of limitations for claiming unpaid maintenance established in a Court Order: **5 years** in the areas where Spanish general law is applicable and **3 years** in Catalonia.
- Update of maintenance payments with the CPI: State CPI currently **3.5%**, Catalan CPI currently **3.4%**.
- Termination of maintenance payments: no age limit under Spanish general law whereas under Catalan law maintenance for an adult child will be extinguished if he/she has finished his/her studies and is 25 years old.



**THANK YOU VERY MUCH FOR
YOUR ATTENTION! 😊**





The child in times of war from Ukrainian perspective

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