

Bucharest, the 16th November 2023

IAFL Introduction to European Family Law Conference

What's new? Brussels II bis Recast Regulation

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THE NEW RULES OF JURISDICTION RELATED TO PARENTAL RESPONSIBILITY

ARTICLES 8,9,10 ARE UNCHANGED EXCEPT FOR THEIR NUMBERS THEY ARE NOW 7,8,9 :

- Article 7 general jurisdiction of the Court of the habitual residence of the child
- Article 8 the courts of the former Member states keep jurisdiction during 3 to modify an access right see ECJ 27 April 2023, CM c. DN, C-372/22
- Article 10, the courts of the Member States in which the child is abducted could not take jurisdiction on the parental responsibility

CHOICE OF COURT (ARTICLE 10)

- 1. The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:
 - (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:
 - (i) at least one of the holders of parental responsibility is habitually resident in that Member State;
 - (ii) that Member State is the former habitual residence of the child; or
 - (iii) the child is a national of that Member State;
 - (b) the parties, as well as any other holder of parental responsibility have:
 - (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
 - (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and
 - (c) the exercise of jurisdiction is in the best interests of the child.

- 2. A choice of court agreement pursuant to point (b) of paragraph 1 shall be in writing, dated and signed by the parties concerned or included in the court record in accordance with national law and procedure. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
- Persons who become parties to the proceedings after the court was seised may express their agreement after the court was seised. In the absence of their opposition, their agreement shall be regarded as implicit.
- 3. Unless otherwise agreed by the parties, the jurisdiction conferred in paragraph 1 shall cease as soon as:
 - (a) the decision given in those proceedings is no longer subject to ordinary appeal;
 - (b) the proceedings have come to an end for another reason.
- 4. **The jurisdiction conferred in point (b)(ii) of paragraph 1 shall be exclusive.**

ARTICLE 16 INCIDENTAL QUESTION

- **Article**
- If the outcome of proceedings in a matter not falling within the scope of this Regulation before a court of a Member State depends on the determination of an incidental question relating to parental responsibility, a court in that Member State may determine that question for the purposes of those proceedings even if that Member State does not have jurisdiction under this Regulation.
- 2. The determination of an incidental question pursuant to paragraph 1 shall produce effects only in the proceedings for which that determination was made.
- 3. If the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation.
- 4. Article 15(2) shall apply accordingly.

NEW RULES ON CHILD ABDUCTION (ARTICLES 22 TO 29)

Article 22

- **Return of the child under the 1980 Hague Convention**
- Where a person, institution or other body alleging a breach of rights of custody applies, either directly or with the assistance of a Central Authority, to the court in a Member State for a decision on the basis of the 1980 Hague Convention ordering the return of a child under 16 years that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, Articles 23 to 29, and Chapter VI, of this Regulation shall apply and complement the 1980 Hague Convention.

Article 23

- **Receipt and processing of applications by Central Authorities**
- 1. The requested Central Authority shall act expeditiously in processing an application, based on the 1980 Hague Convention, as referred to in Article 22.
- 2. Where the Central Authority of the requested Member State receives an application referred to in Article 22, it shall, within five working days from the date of receipt of the application, acknowledge receipt. It shall, without undue delay, inform the Central Authority of the requesting Member State or the applicant, as appropriate, what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information.

- *Article 24*
- **Expeditious court proceedings**
- 1. 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.
- 2. Without prejudice to paragraph 1 a court of first instance shall,, except where exceptional circumstances make this impossible, give its decision no later than six weeks after it is seised.
- 3. Except where exceptional circumstances make this impossible, a court of higher instance shall give its decision no later than six weeks after all the required procedural steps have been taken and the court is in a position to examine the appeal, whether by hearing or otherwise.

- *Article 25*
- **Alternative dispute resolution**
- 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.
- *Article 26*
- **Right of the child to express his or her views in return proceedings**
- Article 21 of this Regulation shall also apply in return proceedings under the 1980 Hague Convention.

- *Article 27*
- **Procedure for the return of a child**
- 1. A court cannot refuse to return a child unless the person seeking the return of the child has been given an opportunity to be heard.
- 2. The court may, at any stage of the proceedings, in accordance with Article 15, examine whether contact between the child and the person seeking the return of the child should be ensured, taking into account the best interests of the child.
- 3. Where a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it shall not refuse to return the child if the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return.
- 4. For the purposes of paragraph 3 of this Article, the court may communicate with the competent authorities of the Member State where the child was habitually resident immediately before the wrongful removal or retention, either directly in accordance with Article 86 or with the assistance of Central Authorities.

- 5. Where the court orders the return of the child, the court may, where appropriate, take provisional, including protective, measures in accordance with Article 15 of this Regulation in order to protect the child from the grave risk referred to in point (b) of Article 13(1) of the 1980 Hague Convention, provided that the examining and taking of such measures would not unduly delay the return proceedings.
- 6. A decision ordering the return of the child may be declared provisionally enforceable, notwithstanding any appeal, where the return of the child before the decision on the appeal is required by the best interests of the child.

- *Article 28*
- **Enforcement of decisions ordering the return of a child**
- 1. An authority competent for enforcement to which an application for the enforcement of a decision ordering the return of a child to another Member State is made shall act expeditiously in processing the application.
- 2. Where a decision as referred to in paragraph 1 has not been enforced within six weeks of the date when the enforcement proceedings were initiated, the party seeking enforcement or the Central Authority of the Member State of enforcement shall have the right to request a statement of the reasons for the delay from the authority competent for enforcement.

- *Article 29*
- **Procedure following a refusal to return the child under point (b) of Article 13(1) and Article 13(2) of the 1980 Hague Convention**
- 1. This Article shall apply where a decision refusing the return of a child to another Member State is based solely on point (b) of Article 13(1), or on Article 13(2), of the 1980 Hague Convention.
- 2. The court giving a decision as referred to in paragraph 1 shall, of its own motion, issue a certificate using the form set out in Annex I. The certificate shall be completed and issued in the language of the decision. The certificate may also be issued in another official language of the institutions of the European Union requested by a party. This does not create any obligation for the court issuing the certificate to provide a translation or transliteration of the translatable content of the free text fields

- 3. If, at the time the court gives a decision as referred to in paragraph 1, a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has already been seised of proceedings to examine the substance of rights of custody, the court, if it is aware of these proceedings, shall, within one month of the date of the decision referred to in paragraph 1, transmit to the court of that Member State, either directly or through the Central Authorities the following documents:
 - (a) a copy of its decision as referred to in paragraph 1;
 - (b) the certificate issued pursuant to paragraph 2; and
 - (c) where applicable, a transcript, summary or minutes of the hearings before the court and any other documents it considers relevant.

- 4. The court in the Member State where the child was habitually resident immediately before the wrongful removal or retention may, where necessary, require a party to provide a translation or transliteration, in accordance with Article 91, of the decision as referred to in paragraph 1 and any other document attached to the certificate in accordance with point (c) of paragraph 3 of this Article

- 5. If, in cases other than those referred to in paragraph 3, within three months of the notification of a decision as referred to in paragraph 1, one of the parties seises a court in the Member State where the child was habitually resident immediately before the wrongful removal or retention in order for the court to examine the substance of rights of custody, the following documents shall be submitted to the court by that party:
 - (a) a copy of the decision as referred to in paragraph 1;
 - (b) the certificate issued pursuant to paragraph 2; and
 - (c) where applicable, a transcript, summary or minutes of the hearings before the court which refused the return of the child.

- 6. Notwithstanding a decision on non-return as referred to in paragraph 1, any decision on the substance of rights of custody resulting from proceedings referred to in paragraphs 3 and 5 which entails the return of the child shall be enforceable in another Member State in accordance with Chapter IV.

- **Practice guide for the application of the Brussels IIb Regulation**

- [https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-
ea90-11ed-a05c-01aa75ed71a1](https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-
ea90-11ed-a05c-01aa75ed71a1)

What's new? Brussels II bis Recast Regulation, Recognition and enforcement of Judgments

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Bucharest, 16 November 2018

Brussels Iiter Regulation Regulation 1111/2019

- **Point One: Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States**
- **Point Two: The Cooperation of authorities under Brussels Iiter Regulation**
- **Point Three: Recognition and enforcement of Decisions under Brussels Iiter Regulation**

1. Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States

- **Point One: Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States**
 - **Divorce proceedings**
 - No means of declining jurisdiction in favor of a non-EU court even when that court is first seised (*lis pendens*) or is clearly the more appropriate forum
 - New Regulation does not address the issue
 - **But Art. 9 par. of 1103/2016 Regulation: means of declining jurisdiction for matrimonial property**
 - « By way of exception, if a court of the MS that has jurisdiction pursuant to Article 4, 6, 7 or 8 holds that, under its private international law, the marriage in question is not recognised for the purposes of matrimonial property regime proceedings, it may decline jurisdiction. »

1. Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States

• Divorce proceedings

- Post BREXIT and in the absence of provisions on *Lis Pendens* similar to articles 33 and 34 of Brussels Ibis Regulation (1215/2012) Forum Shopping towards EU Member states will be reinforced
- Brussels Iiter does not prevent husbands running away from Jurisdictions, such as those in England and in the United States where High Financial Provisions can be granted
- Ex - : Case where one party is running away from the forum that the marriage is strongly connected to: Spouses both Greek nationals, both working in the UK, children in the UK and a significant number of assets in England – Husband recourse before the Greek courts

1. Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States

– Divorce proceedings

- **Example - :** Spouses both Greek nationals, both working in the UK, children in the UK and a significant number of assets in England – Husband recourse before the Greek courts
- **Possible defense of the left behind parent: Fraude à la loi/Fraude à la juridiction**
- **Obstacles: Broad rules of jurisdiction**
 - **Art. 3:** « In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:... (b) of the nationality of both spouses.
 - **Article 6 Residual jurisdiction 1.** Subject to paragraph 2, where no court of a Member State has jurisdiction pursuant to Article 3, 4 or 5, jurisdiction shall be determined, in each Member State, by the laws of that State. »

1. Interaction of the Brussels I Regulation with Litigation in Non-EU States

– Proposals to tackle the issue *De lege ferenda*

- If EU Court seized second it should be possible to decline jurisdiction in favour of the non-EU Court
- & even if EU court seized first: possibility to have recourse to *Forum non conveniens* theory when there is an obviously stronger connection between the marriage and the non-EU forum

1. Interaction of the Brussels I Regulation with Litigation in Non-EU States

• Parental Responsibility proceedings

- Better situation thanks to 1996 Hague Convention on the Protection of Children
- **System of Transfer of Jurisdiction:** Arts 8 & 9 1996 Hague Convention
- «Article 8 (1) *By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either*
- – request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- – suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State. »

1. Interaction of the Brussels IIter Regulation with Litigation in Non-EU States

• Parental Responsibility proceedings

- **System of Transfer of Jurisdiction:** Arts 8 & 9 1996 Hague Convention
- «Contracting States that may be addressed: Article 8 (2) ...
 - a) a State of which the child is **a national**,
 - b) a State in **which property** of the child is **located**,
 - c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their,
 - d) a State with which the child has a **substantial connection**»
- **Possibility of Exchange of Opinions between authorities**
- According to Art. 9 the request can emanate from the Authorities of the Contracting States determined in 8 (2)
- Transfer dependent on an agreement of authorities (9 par. 3 HC 1996)

1. Interaction of the Brussels IIter Regulation with Litigation in Non-EU States

• Parental Responsibility proceedings

- **In the absence of Agreement for Transfer: Art. 13 on Lis Pendens:**
- « The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child **must abstain from exercising this jurisdiction** if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration

1. Interaction of the Brussels Iiter Regulation with Litigation in Non-EU States

- **Parental Responsibility proceedings**
 - **Difficulty in 2201/2002 Regulation**
 - **Art 61 R 2201/2002:** 1996 Hague Conventions applicable **only when the child concerned has his or her habitual residence on the territory of a MS**
 - **Point rectified under article 97 (2) Brussels Iiter Regulation:**
 - **Arts 8 and 9 on the transfer of jurisdiction, art. 13 on litispendance and art. 10 on the choice of a non EU Court contracting party to the 1996 HC apply even when the child does not have his or her HR on the territory of a MS**

2. Cooperation of Authorities under Brussels Iiter Regulation

- **Cooperation between central authorities very important tool in cross border procedures concerning children**
- **In the EU legal framework** only after the replacement of Brussels II Regulation with Brussels IIbis Regulation that central authorities

2. Cooperation of Authorities under Brussels Iiter Regulation

- Different problems observed in relation to Central authorities and their cooperation
- Obvious: Resources of Central authorities of MS vary significantly
- Staff ranging from 1 person to 21
- Sometimes staff duties exclusively on one or more instruments

2. Cooperation of Authorities under Brussels Iiter Regulation

- Different problems observed in relation to cooperation of Central authorities under Brussels Iibis (2201/2003)
- Articles 53 -58 Brussels Iibis Regulation
- 1. Did not contain any translation requirements for requests made under the Regulation (*Delays*)
- 2. Vagueness of certain cooperation provisions in Brussels IIa

2. Cooperation of Authorities under Brussels Iiter Regulation

- **Example of problem**
- Obligations under art. 55 (a) Bruss libis were sometimes interpreted by MS' authorities as one to transmit a social report concerning the child
- **Doubtful** whether those provisions constituted a sufficient legal for requests concerning other family members

2. Cooperation of Authorities under Brussels Iiter Regulation

- **Under Brussels Iiter Regulation some of those problems are solved (art.s 76-84 R.1111/2019)**
- **Explicit and clear rules in the Regulation with regard to translation requirements (art. 80 par. 3, 81 par. 2, 82 par. 4)**
- **Clearer and more detailed cooperation rules which solved problems that have been raised under R. 2201/2003**

2. Cooperation of Authorities under Brussels Iiter Regulation

- **Art. 80 Cooperation on collecting and exchanging information relevant in procedures in matters of parental responsibility**
- 1. Upon a request made with supporting reasons, the Central Authority of the Member State where the child is or was habitually resident or present, directly or through courts, competent authorities or other bodies:
 - (a) shall, where available provide, or draw up and provide a report on:
 - (i) the situation of the child;
 - (ii) any ongoing procedures in matters of parental responsibility for the child; or
 - (iii) decisions taken in matters of parental responsibility for the child;
 - (b) shall provide any other information relevant in procedures in matters of parental responsibility in the requesting Member State, **in particular about the situation of a parent, a relative or other person who may be suitable to care for the child, if the situation of the child so requires**; or
 - (c) may request the court or competent authority of its Member State to consider the need to take measures for the protection of the person or property of the child.

3. Recognition and enforcement of Decisions under Brussels Iiter Regulation

- Rules on enforcement applicable of Brussels Iiter will apply to decisions on matrimonial matters and parental responsibilities given in legal proceedings instituted **on or after 1 August 2022**, authentic instruments formally drawn up or registered, as well as agreements which have become enforceable on or after that date
- **Challenge:** fragmentation of rules on enforcement for closely connected issues i.e. maintenance, succession, protection measures, matrimonial property regimes and the property consequences of registered partnerships

3. Recognition and enforcement of Decisions under Brussels Iiter Regulation

- Evaluation of the enforcement regime

- Diversity Fragmentation of enforcement regimes

Brussels II ter judgments	Marital Property and Registered Partners
Maintenance judgments	Successions
NO NEED FOR EXEQUATUR	EXEQUATUR

3. Recognition and enforcement of Decisions under Brussels Iiter Regulation

- Abolition of exequatur to all decisions in matrimonial matters and matters on parental responsibility (No need for declaration of enforceability or of a registration of the judgment)
- **Consequence:** decisions appropriately certified in the MS of origin are enforceable in other MS **in the same manner as their domestic decisions.**

3. Recognition and enforcement of Decisions under Brussels Iiter Regulation

- Main reasons for abolition:
 - Mutual trust between EU MS
 - Facilitate circulation of decisions concerning children by providing a less time consuming and less costly procedure

3. Recognition and enforcement of Decisions under Brussels Iiter Regulation

- An application for the refusal of enforcement can still be made under the new regulation
- Grounds for refusal of enforcement has in principle been retained both in matrimonial matters and in matters of parental responsibility.
- For Parental responsibility judgments an **additional reason for refusal of enforcement (Article 56(6))**
- Maintains separate enforcement scheme for privileged decisions

3. Recognition and enforcement of Decisions under Brussels IIter Regulation

Article 56 Suspension and refusal

« ...

4. In exceptional cases, the authority competent for enforcement or the court may, upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned or of any interested party acting in the best interests of the child, suspend the enforcement proceedings **if enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances:**

Enforcement shall be resumed as soon as the grave risk of physical or psychological harm ceases to exist.

.. 6. Where the grave risk referred to in paragraph 4 is of a lasting nature, the authority competent for enforcement or the court, upon application, **may refuse the enforcement of the decision.**

3. Recognition and enforcement of Decisions under Brussels IIter Regulation

CONCLUSIVE OBSERVATIONS

- *Important changes with issues that remain unresolved especially in cases with third states*
- *Specific improvements of the legal framework even for practical issues*
- *Abolition of exequatur important step that does not solve all the issues but it can facilitate the circulation of judgments and still could highlight important differences that persist*

The Brussels II Bis recast regulation and Albania

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15.11.2023



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WHAT WE WILL LEARN

- I. Recognition and enforcement (R&Es) of foreign decisions in civil matters
- II. R&Es on the Hague Convention of 25 October 1980
- III. Applicable law on divorce, legal separation, marriage annulment, disputes about parental responsibility
- IV. Jurisdiction in cases with a foreign element
- V. List of international bilateral and multilateral treaties



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ALBANIA

- Albania is a small but very resourceful country. Occupied by Italy before the beginning of World War II and later by Germany, after the WORLD WAR II, Albania emerged under a communist regime until 1990. From 1946 to 1990, the country was isolated under a propaganda that people were not allowed to travel or go abroad because the best country in the world was thereto in Albania.
- This caused a huge flow out of the country starting from 1990 up to date. Currently, over 1.4 million Albanian citizens or almost half of the current population of the country are *international migrant*, mainly to Italy, Greece followed by USA, UK, and Germany.
- For over 3 decades, Albanian people have been legally and non-legally internationally migrating mostly in neighbour countries such as Italy and Greece with more than half of million people born in foreign countries.

R & E OF FOREIGN DECISIONS IN CIVIL MATTERS

- Albania is part of many international multilateral and bilateral acts
- Recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, is done in compliance with the civil procedure code.
- The Brussels II Bis recast regulation is not mandatory for Albania and is an instrument usually used for the Albanian legislators by their liking to consult when drafting a piece of legislation.

INTERNATIONAL INSTRUMENTS

- member since 4-VI-2002 of the International private law Conference of the Hague.
- National Organ is Ministry of Justice
- Albania has ratified 14 Hague's conventions
 - Recognition of Divorces and Legal Separations;
 - on Private International Law on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of children.
 - Hague Convention of 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, but for the reasons of inner procedures, hereto below explained it was not applicable.
- Albania has not ratified the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.



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R & E OF FOREIGN JUDICIAL DECISIONS IN ALBANIA

- regulated by the Civil Procedure Code and international/ bilateral agreements ratified by Albania. In every instrument ratified or entered into from Albania, the recognition and enforcement of foreign decisions based on the principle of reciprocity is excluded. Hence, the national procedures law will be applicable.
- **types of decisions**
 - Intermediary decisions
 - Final decisions
 - Non-final decisions
 - The securing of the lawsuit is made: a) by sequestering the movable and immovable things as well as the credits of the debtor; b) by other appropriate measures taken by the court.



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IRREVOCABLE DECISIONS

- The civil procedures code provides for the **Irrevocable decisions**:
 - it cannot be appealed against;
 - no appeal has been made;
 - the appeal presented has not been accepted;
 - the decision of the court is left in effect, is changed or trial in the second instance or it has been ceased.
- An irrevocable decision shall be mandatory for parties, their heirs, for the people who take away rights from the parties, the court that has issued the decision and for all other courts and other institutions.
- It prevails on any other matter between the same parties, on the same subject and for the same cause.

ARTICLES 393-399 OF THE CPC

- The recognition and enforcement of foreign decisions is done in accordance with the Articles 393-399 of the CPC.
- General rule of application is that R&Es is based on the criteria and procedure foreseen in the CPC and separate laws.
 - international acts should prevail.
 - international acts that are directly applicable
- Decisions are recognised and applied in the conditions provided in the CPC and the separate laws, when for this purpose there is a special agreement between the Republic of Albania and the foreign state, the provisions of the agreement apply.

LEGAL OBSTACLES

- **COMPETENCE**
 - in conformity with the provisions in effect in the Republic of Albania, the dispute cannot be within the competence of the court which has issued the decision;
- **DUE PROCESS OF LAW**
 - the statement of claim and the writ of summons to court has not been notified duly and in time to the absent defendant in order to give him the possibility to defend;
- **LITISPENDENS**
 - between the same parties, on the same subject and on the same cause has been issued another, different decision by the Albanian court;

LEGAL OBSTACLES

- **IRREVOCABILITY**
 - a lawsuit is being reviewed by an Albanian court, which has been filed before the decision of the court of the foreign state has become irrevocable;
 - **LEGAL IRRECONCILABLE**
 - the decision of the court of the foreign state has become final in violation of its legislation;
 - **PUBLIC ORDER**
 - it does not comply with the basic principles of the Albanian legislation.
- The decision of the court of a foreign state is applied in the Republic of Albania only on the basis of the decision of the court of appeal which gives effects to that decision and is executed in conformity with the relevant provisions of this Code

DOCUMENTS NEEDED

- copy of the decision which must be applied and its translation in the Albanian language legalized by a notary;
- certificate by the court issuing the decision that it has become irrevocable as well as its translation and legalization by a notary. Both the copy of the decision and the certificate that it has become irrevocable must be certified by the Ministry of Foreign Affairs of the Republic of Albania;
- the power of attorney in case the request is presented by the representative of the interested person, translated and legalized by a notary.

R&ES ON HAGUE CONVENTION OF 25 OCTOBER 1980

- lawsuit is presented by the plaintiff
- the request is submitted in the court by the ministry of justice
- there is not a unified decision from the Supreme Court yet.
- judges have issued different decisions. Practice established upon a ministry of justice explanatory letter
- MOJ will not take part in the trial. Therefore some of these requests undergo the procedure as in derogation of authority in evidence gathering.

LAWSUIT

- is written in Albanian language and must contain:
 - the court before which the lawsuit is filed;
 - first name, father's name, surname, domicile or residence of the plaintiff and of the defendant and of the persons representing them respectively, if any. If the plaintiff or the defendant is a legal entity, its denomination as it appears in public registers, showing the seat or the headquarters, where the notification shall be served.
 - a definition of subject of the lawsuit;
 - an indication of concrete facts, circumstances, documents and other evidence, grounds on which the lawsuit is based on, as well as the concrete claim of the plaintiff;
 - value of the lawsuit, if the subject of the lawsuit is calculable. This is not applicable for the requests considering that the request is submitted from

REASONABLE TIMING

- usual deadlines and not the 6 weeks of the convention is applied
- The Reasonable timing for completion of an investigation, trial or execution of a decision with final force and effect, shall be considered: in a process in a civil trial at first instance within two years, in a civil trial on appeal within two years; and in a civil trial at the High Court within two years.
- The enforcement/ execution of a civil decision is within one-year
- implementation of the Hague Convention, 1980 on the Civil Aspects of International Child Abduction follows different procedures in terms of timing in Albania

JURISDICTION RULES IN ALBANIA

- on divorce, legal separation and marriage annulment; disputes about parental responsibility with a foreign element
- Definition of the “**the foreign element**” is given in the Albanian International private law. The foreign element implies any legal circumstance that is related to the subject, the content or the object of a juridical-civil relationship (concretely marital relationship) and which is the cause for linking this relationship to a certain legal system
- law regulates the applicable law in civil and commercial matters and the jurisdiction in cases with a foreign element.



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ALBANIAN LEGISLATION LACKS THE CONFLICT NORMS

- related to the co-habitation *more uxorio* and marriage invalidity.
- connectivity criteria of the usual common domicile is referred to as a subsidiary criteria against the nationality criteria
- **Doctrine has established a distinction in between of the applicable law on marriage as a legal action *matrimonium in fieri* the applicable law on marriage as a legal relation *matrimonium in facto esse***
- The applicable law is regulated by the articles 21 and 22 of the international private law (IPL – Law 10428/2011).
- The applicable law on rights and obligations of the parties entering into a marital relation of the personal (non-property) quality and of the property quality are regulated by articles 23 and 24 of the IPL.



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A MARRIAGE LICENSED IN A FOREIGN COUNTRY

- Assessment of the material conditions for entering into a marriage shall be in accordance with *lex fori*
 - Albanian legislator is based in the compliance of the principle *favor matrimonii*.
 - shall be interpreted in a manner that if an obstacle arises in the foreign applicable law which prohibits parties to enter into a marriage and which are conditions that are not provided as negative ones in the Albanian law.
 - substitution of the *lex nationalis* with *lex fori* is conditioned with the enjoyment of an Albanian nationality of the usual domicile.
 - *Ratio* of this norm is the prevention of marriages of foreign individuals that do not have a contact legal point in terms of connectivity criteria with the Albanian state but whose objective might be the deceit of their national applicable law.
- can be recognized as such in Albania **if** it complies with the material conditions (not formal ones) of the Albanian law.



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IMPORTANCE AND CONNECTIVITY TO A LEGAL JURISDICTION

- All legal elements are evaluated concretely
- judge of *lex fori* shall be competent for the evaluation.
- Albanian jurisdiction similar to French doctrine has recognized the character of the prevailing ordering norm (*loi de police*)
 - norms provided in the French Civil Code correspond with the Albanian Family Code articles 50-65.
- foreign law which provides less rights for the position of a wife in a matrimonial relationship shall be considered as in violation with the Albanian public order/ policy.
- Albanian IPL does not provide for norms of conflict neither related to the co-habitation; nor other legal formal or factual forms of a family union.



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LEGISLATION APPROXIMATION WITH EU

- Stabilization and Association Agreement Albania-EU
- Law “On Private International Law” June 2011 in compliance with:
 - Regulation (EC) no. 593/2008 of the European Parliament and of the Council “On the law applicable to contractual obligations”,
 - Regulation (EC) no. 864/2007 of the European Parliament and of the Council “On the law applicable to non-contractual obligations”.
 - Chapter IX entitled “The jurisdiction of Albanian courts in the adjudication of cases with foreign elements” is aligned with the Council Regulation 44/2001 of 22 December 2000 “On Jurisdiction and Recognition and Enforcement of judgments in civil and commercial matters” (Brussels I).

- Albanian case law



International High Court expressly refers to the Brussels I Regulation (2012) and the case law of the Court of Justice of the European Union

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JURISDICTION OF THE ALBANIAN COURTS

- General rule of the international jurisdiction
 - The Albanian civil courts have jurisdiction for the dissolution of civil-judicial disputes with foreign element, if the defendant has a usual domicile in the Republic of Albania, except in the following article provide otherwise.
- Exclusive Jurisdiction
 - ownership rights and other real rights on real estate, renting rights and rights deriving from the use of real estate located in Albania;
 - commercial companies' decision making bodies *company usual domicile;
 - incorporation, termination of judicial persons and claims dealing with decisions of their organs when judicial person *company usual domicile;
 - registration validity in the Albanian public and Albanian court registrars;



International High Court expressly refers to the Brussels I Regulation (2012) and the case law of the Court of Justice of the European Union

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JURISDICTION OF THE ALBANIAN COURTS

- Additional international jurisdiction
 - Albanian civil courts shall have international jurisdiction also if the lawsuit derives from the support obligation in case the creditor of the support has a usual domicile in the Republic of Albania
- Jurisdiction established upon an agreement
 - parties agree to it and agreement must:
 - Be in written form or in a verbal one but certified in written;
 - Be in compliance with the international commercial customs, known from both parties.
 - the respondent does not claim the lack of court jurisdiction and has been represented duly by an attorney-at-law or the court has already arose the point of jurisdiction and it has been duly noted in the verbal act for the hearing.

JURISDICTION ON THE MARRIAGE

- on any matter related to marriage in the following cases:
 - one of the spouses is or on the time of marriage license has been and Albanian citizen;
 - the respondent spouse or the plaintiff spouse in case of marriage dissolution has a usual domicile in Albania;
 - one of the spouses is without citizenship but has a usual domicile in the Republic of Albania
 - the lawsuits related to marriage are lawsuits for the dissolution, annulment, declaration of marriage existence as well as the lawsuits dealing with marital property regimes.
- effects arising from the dissolution, annulment, declaration of marriage existence as well as the lawsuits dealing with marital property regimes and intermediary decisions issued by the court.

JURISDICTION OF THE ALBANIAN COURTS

- Jurisdiction on the relation of spouses, parents and children, paternity, maternity
 - cases dealing on rights and obligations arising in the marital relationship and relationship in between of the parents and children, recognition or annulment of paternity and maternity, in case that one of the parties is an Albanian citizen or has a usual domicile in the Republic of Albania.
- Jurisdiction on adoption
 - in case that at least one of the adopting parties is an Albanian citizen as well as in case the adopted child is an Albanian citizen or has a usual domicile in Albania.
- Jurisdiction on custody
 - if the minor or person under custody is an Albanian citizen or has his/her usual domicile in the Republic of Albania.



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INTERNATIONAL ACTS IN CIVIL OR COMMERCIAL MATTERS

- [Convention of 1 March 1954 on civil procedure](#)13-XII-2010
- [Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions](#)24-XII-2013
- [Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents](#)9-V-2004
- [Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters](#)1-VII-2007
- [Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters](#)1-XI-2010
- [Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations](#)6-V-2013
- [Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters](#)14-IX-2010
- [Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations](#) 1-XII-2012
- [Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations](#) 1-XI-2011



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INTERNATIONAL ACTS

- [Convention of 25 October 1980 on the Civil Aspects of International Child Abduction](#) 1-VIII-2007
- [Convention of 25 October 1980 on International Access to Justice](#) 1-I-2008
- [Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption](#) 1-I-2001
- [Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) 1-IV-2007
- [Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance](#) 1-I-2013

BILATERAL AGREEMENTS

- Greece, Agreement on “Legal aid in civil and criminal cases” year 1993;
- Russian federation; Agreement on “Legal aid in civil, criminal and family cases” year 1996;
- North Macedonia, Agreement on “Legal aid in civil and criminal cases” year 1998;
- Turkey, “Agreement on “mutual legal aid in civil and criminal cases” year 1995;
- Rumania Agreement on “mutual Legal aid in civil, criminal and family cases” year 1962;
- Hungary Agreement on “mutual Legal aid in civil, criminal and family cases” year 1961;
- Bulgaria, Agreement on “Legal aid in civil cases” year 2005.

THANK YOU

Further questions:



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