



IAFL Introduction to European Family Law Conference, Thessaloniki, Greece

**Thursday 18 April
15:15 - 15:45**

**Session 5: Young Lawyers' Award
presentation, Olalla Garcia-
Arreciado, England**

Presentation



**IAFL INTRODUCTION TO EUROPEAN FAMILY LAW CONFERENCE IN COLLABORATION WITH
THE LAW SCHOOL OF ARISTOTLE UNIVERSITY, THESSALONIKI
EDUCATION PROGRAM**

Thursday 18 April

15:15-15:45 **Session 5:** Presentation of IAFL European Chapter Young Lawyers' Award 2024
By Olalla Garcia-Arreciado, England

HOWARD KENNEDY

IAFL Young Lawyers' Award

Presentation of the case study

Olalla García-Arrechedo
Thessaloniki, 18 April 2024

The factual matrix

The factual matrix

Nationality	Habitual residence
<ul style="list-style-type: none">- Mona: Spanish- Franck: German- Clara and Leo: unknown	<ul style="list-style-type: none">- Mona: Spain- Franck: England- Clara and Leo: Spain <p>➤ <i>N.B. Mona, Clara and Leo were habitually resident in England at the time of the divorce agreement</i></p>

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The factual matrix

Provisions of the divorce agreement

- Mona, Clara and Leo will relocate to Spain
- Franck will remain in England
- Franck will spend time with Clara and Leo (holidays)
- Franck will pay €500 pm per child in child maintenance

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The factual matrix

What went wrong...

- Franck says Mona is breaching the child arrangements
- Mona says Franck has stopped paying her child maintenance

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The legal issues

The legal issues

Enforcing the existing child arrangements	Enforcing child maintenance	Varying the existing agreement
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The legal issues

Enforcing the existing child arrangements

If there isn't an order... No jurisdiction in England to make Children Act 1989 orders Jurisdiction lies with Spain (CC and LEC apply)	If there is an order... When was it made? When did the proceedings start? → 11pm, 31.12.2020
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The legal issues

Enforcing the existing child arrangements

Order made before 31.12.20 ○ Article 67 of the Withdrawal Agreement ↓ ○ Regulation 2201/2003 (Brussels IIa) <ul style="list-style-type: none">- No special procedure required- Limited grounds for non-recognition- No need for a declaration of enforceability- No possibility to oppose its recognition- Local court can make practical arrangements	Order made after 31.12.20 ○ 1996 Hague Convention <ul style="list-style-type: none">- Recognition by operation of law- Measures need to be declared enforceable or registered in Spain- Central Authorities must cooperate- Mona can apply to vary the terms of the order but the court should be slow to grant a variation (see the <i>Practical Handbook</i>)
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The legal issues

Enforcing child maintenance

If there isn't an order...

- Child Maintenance Service lacks jurisdiction to make an assessment
- Jurisdiction lies with the English courts (Sch 1, Children Act 1989)
- Jurisdiction also lies with the Spanish courts (CC and LEC)
 - Consider location of income/assets and duty of disclosure
- Additionally: 2007 Hague Convention for orders, enforcement & info

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The legal issues

Enforcing child maintenance

If there is an order	Order made before 31.12.20	Order made after 31.12.20
- When was it made? - When did the proceedings start? → <u>11pm, 31.12.2020</u>	Article 67 of the Withdrawal Agreement ↓ Maintenance Regulation 4/2009 (Annex II)	2007 Hague Convention

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The legal issues

Varying the existing agreement

If Franck wants to vary the child arrangements and maintenance...

- Jurisdiction lies with Spain (Regulation 2019/1111, Brussels II ter)
- Single set of proceedings to deal with both issues (CC, LEC and LJV)
- Best interests of the children are paramount re child arrangements
 - New primary carer because Mona is in a same-sex relationship = breach of ECHR
- No formula for child maintenance, proportional to needs/resources


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The legal issues

Varying the existing child arrangements

If Mona relocates to Switzerland...

- Wrongful removal – 1980 Hague Convention engaged
- Automatic joint PR under Spanish law equals having a right of custody
- Return to Spain will be ordered unless an Article 13 defence applies
- Interim contact can be ordered under 1980 or 1996 Hague Conventions
- Mona must apply for an international relocation in Spain (LJV)
 - Again, the best interests of the children are paramount, but interpretations vary between countries

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Thank You

Olalla García-Arreciado
Thessaloniki, 18 April 2024

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