



EUROPEAN CHAPTER
NEWSLETTER AUTUMN
2024

Message from **Sandra Verburgt,** IAFL European Chapter President

Dear Friends,
Thank you very much for taking the time to read our Autumn edition of the European Chapter Newsletter. It has been a busy time for the European Chapter.
The next European Chapter meeting is only a month away in Paris from 4-8 December. It will be the largest in the history of the IAFL with over 400 guests expected from 39 jurisdictions, this event promises to be a remarkable gathering of the brightest minds in family law from around the world.



The turnout for this meeting is unprecedented and presents new challenges for the IAFL. We received so many registrations from IAFL Fellows and lawyer guests that we were forced to close registrations within 2.5 months of opening. We know that some have been disappointed to not be able to register. The good news is that the next European Chapter meeting in Istanbul is just around the corner! It will take place from 21-25 May 2025.

We are used to the informality of the meetings and the ability to walk in and out of the conference. This time we will ask you to make a little extra effort. Arrive on time and wear your IAFL lanyard and badge at all times. By doing so, we will ensure that this is a memorable event for all registered delegates.

In the spirit of the season, we also acknowledge the festive tradition of Sinterklaas, a time of joy and reflection. Sinterklaas, also known as Saint Nicholas, was a bishop in Myra, a city in modern-day Turkey. He lived in the fourth century AD and was known for his generosity and kindness. The most famous story from the life of Saint Nicholas concerns a poor man. This father of three daughters was so impoverished that he could not afford their dowries. Without a dowry, the girls seemed destined for a life of prostitution. However, Saint Nicholas came to their rescue by throwing three sacks of gold through an open window, thus providing the necessary dowries!

According to some versions, the bags of gold ended up in shoes that had been left to dry by the fireplace. This is where the tradition of leaving shoes for Sinterklaas comes from. The oranges (mandarins) that Sinterklaas brings are a symbolic reference to the sacks of gold.

Another famous legend about Saint Nicholas is the miracle he performed in Myra, where he resurrected three young boys who had been killed by an evil butcher. This act of compassion and miraculous resurrection cemented his reputation as the patron saint of children. His feast day, 6 December, became an important date in the Christian calendar and eventually led to the tradition of Sinterklaas as we know it today. The story of Saint Nicholas spread throughout Europe and evolved into the figure of Sinterklaas, who brings gifts to children. In the Netherlands and Belgium, this is celebrated on 5 December, the eve of his feast day, with gifts and sweets.

On Friday 6 December, we will organise a community support activity. We will be filling bags with goodies for the Barreau des Rues, a charity set up by Parisian lawyers to help the most vulnerable people and prisoners in Paris. It is a tradition in December for Parisian lawyers to fill bags with goodies for this group. We will be joining them in this effort, fully embracing the spirit of Sinterklaas, who was known for his devotion to children and vulnerable people.

Looking back over the past 35 years, we see a rich tapestry of developments and achievements in European family law. Our theme for this year's conference, & European Family Law: A 35-Year Retrospective will provide a comprehensive overview of the evolution and future directions of our field. CLE Chairs Magali van Maanen and Alex Boiché have put together a thought-provoking education program which will offer something to take home for everyone.

Finally, we will launch our new European Chapter Initiative "Club25" celebrating European Chapter fellows, who have been a fellow for 25 years and longer. Join our First European Chapter President Miles Preston, Past European Chapter President William Longrigg and me on Saturday 7 December at the inaugural celebration during our European Chapter AGM.

I look forward to celebrating this momentous occasion with you and to continuing our journey together in advancing family law.

Best wishes

Sandra Verburgt,
IAFL European Chapter President

Message from Editor-in-Chief, Soma Kölcsényi, IAFL European Chapter Vice President

Dear IAFL Fellows,

Welcome to the newest edition of the International Academy of Family Lawyers European Chapter Newsletter. As we continue to navigate the ever-evolving landscape of family law, and since the summer's gone in the northern hemisphere, we had better stay informed about the latest developments, trends, best practices and of course where we meet next.



This newsletter is designed to provide you with valuable insights and resources that will enhance your professional practice. From case law updates and legislative changes to thought-provoking articles and event announcements, we strive to deliver content that is both relevant and informative.

Additionally, we're thrilled to announce that we'll be hosting our greatest and biggest ever European Chapter annual meeting in Paris in early December. We can't wait to come together with our colleagues from around the world to discuss the latest in family law, network with friends, and share knowledge.

Nedbank Private Wealth is the Principal Sponsor for the European Chapter meeting in Paris, 4-8 December 2024. In this issue, we are delighted to feature an article from Huw Williams, Nedbank Private Wealth Private Banker. Three IAFL Fellows were at the European Judicial Network event from 16-17 October in Budapest. We were next to the European Commission and the HCCH representatives and made sure IAFL's visibility continues to increase amongst EU officials for improved cooperation in cross border matters. This gathering provided an opportunity for various legal professionals from across Europe to discuss pressing issues in family law and explore potential solutions.

We're also excited to feature articles by our esteemed IAFL Fellows. One of the goals of this newsletter is to give visibility to our members and their exceptional work. We invite you to explore the thought-provoking pieces contributed by our colleagues on various family law topics.

I encourage you to explore the articles in this issue and share your feedback with us. Your input is invaluable in ensuring that this newsletter continues to meet your needs and contributes to the growth of our community.

Thank you for your continued support of the International Academy of Family Lawyers European Chapter.

Dates for your diaries - future meetings

European Chapter meeting, Paris, 4-8 December 2024. SOLD OUT

USA and Canadian Chapters meeting, Charleston, 5-9 February 2025

****REGISTRATION OPENING SOON****

European Chapter meeting, Istanbul, 21-25 May 2025.

IAFL Annual Meeting 2025, Nairobi, 3-7 September 2025



WENDY CREW, IAFL USA CHAPTER PRESIDENT – COME JOIN US IN CHARLESTON

Though we are all so excited about joining you in the City of Lights in December for Sandra's marvelous meeting, the Charleston, South Carolina meeting in the US is just around the corner. The next US meeting is February 5th through 9th, 2025 in this wonderful coastal town where history meets hospitality. This city was over 100 years old before the United States became a country!



Known for its fabulous food, warm Southern charm, and laid-back lifestyle, in 2024 Charleston was voted the #1 Top City to visit in the US by Travel and Leisure Magazine for the 12 th consecutive year. It is the only destination in the US named by Conde Nast as one of the top 25 cities to visit in the world!

The USA and Canadian Chapter welcomes you to join us as we explore its cobblestone streets and unique architecture from horse-drawn carriages. Relive the dramatic sea battles of World War II on the Yorktown, where we will put our competitive skills to the test as we have a scavenger hunt (yes, there will be prizes!). The scavenger hunt will take place throughout this jet aircraft attack carrier that earned five battles stars for service off the coast of Vietnam and then recovered the Apollo 8 astronauts and capsule.

Learn to "Shag" (a South Carolina dance) at our low-country boil and roast s'mores under the stars. For our antique aficionados, on Saturday before our last night's Southern Supper in an 1807 South Carolina Governor's Mansion, we will have a brunch with a jewelry appraiser from the Antiques Road Show. Our learn while you laugh CLE has Rock Star Panelists from throughout the world. The Conference Hotel is in the center of downtown – simply walk out the front door onto King Street, the gateway to culture and class.

Look for registration to go live within the next two weeks. Review our Sponsorship menu attached below and come support our friends and fellows as we make marvelous memories in Charleston.

IAFL, USA AND CANADIAN CHAPTER ANNUAL MEETING 2025

CHARLESTON, SOUTH CAROLINA

FEBRUARY 2025

SPONSORSHIP OPPORTUNITIES

The sponsorship opportunities for Charleston (all of which include noted recognition) include:

• PRESENTING SPONSORSHIP OF THE MEETING

SOLD

- Logo on all advertising and marketing of meeting, logo on materials provided to attendees, distribution of marketing to each “seat”, recognition each day during morning introduction, vendor table in break area, a full page in the “Sponsor Book”, attendance at all cocktail parties and breakfasts, opportunity to attend or host a “Dine Around Dinner”, opportunity to provide meeting bags and two (2) tickets to all events.

• EDUCATIONAL PROGRAM:

SOLD

recognition during CLE, may distribute marketing materials to each “seat”

- Thursday morning
- Friday morning

SOLD

SOLD

• VENDOR TABLE AT CLE (6 of 6 spots SOLD)

- Tabletop in break area to promote product, attendance at cocktail and breakfasts, full page inclusion in “Sponsor Book”, inclusion in all marketing materials, recognition at CLE and, opportunity to attend or host a “Dine Around Dinner.



• COFFEE BREAKS AND MEETING A/V:

- Inclusion in Sponsor Book and all marketing materials, recognition at CLE and signage
- Thursday
- Friday
- Saturday

SOLD

• MEETING A/V:

- Board of Managers
- Annual Meeting USA Chapter

\$ 2,000

\$ 2,000

• CLE A/V:

- Thursday
- Friday
- Saturday

\$ 2,000

\$ 2,000

\$ 2,000

• SPEAKER GIFTS:

SOLD

• **HISTORICAL CHARLESTON TOUR BY HORSE DRAWN CARRIAGE (WED. 02/05)**

SOLD

- The best way to see the sites and hear the history of historic Charleston with the finest tour guides Charleston has to offer.
- This includes signage and branded lap blankets for all attendees, inclusion in "Sponsor Book" and branding on all media.

• **EXCLUSIVE SPONSORSHIP OF THE WELCOME RECEPTION (WED. 02/05)**

SOLD

- This will be held at the hotel rooftop bar.
- There will be prominent signage, branded napkins at cocktail hour, as well as an opportunity to speak both at the reception and during a CLE Break, inclusion in "Sponsor Book" attendance at cocktail parties and breakfasts, recognition at daily CLE's, opportunity to put material in all seats and in giveaway bags and logo on all media, branding on all media, and opportunity to attend or host a "Dine Around Dinner".

• **USS YORKTOWN EXPERIENCE (THURS. 02/06)**

\$ 5,000

- There will be prominent signage, inclusion in "Sponsor Book" attendance at cocktail parties and breakfasts, recognition at daily CLE's, opportunity to put material in all seats and in giveaway bags and logo on all media, branding on all media. and opportunity to attend or host a "Dine Around Dinner".
- Bus to USS Yorktown with signage, logo on all media and inclusion in "Sponsor Book" (2 Available)

\$ 1,000

• **HART MEADOW RANCH LOW COUNTRY BOIL (FRI. 02/07)**

SOLD

- Principal Event Sponsor
 - There will be prominent signage, branded napkins at cocktail hour, as well as an opportunity to speak both at the reception and during Friday Break, inclusion in "Sponsor Book" attendance at cocktail parties and breakfasts, recognition at daily CLE's, opportunity to put material in all seats and in giveaway bags, logo on all media and branding on all media and opportunity to attend or host a "Dine Around Dinner".
- Chug-a-Lug Wagon signage with recognition at all CLE's and inclusion in "Sponsor Book"
- Gullah Geechee Storyteller and Sweetwater Roses with signage, recognition at all CLE's and inclusion in "Sponsor Book" SOLD
- Lawn Games (Horse Shoe, Corn Hole, ect.) with signage, recognition at all CLE's and inclusion in "Sponsor Book" SOLD
- D.J. with two (2) Shag Dancing Instructors with signage, recognition at all CLE's and inclusion in "Sponsor Book" \$ 3,500

- Smores and Sparklers Under the stars with signage, recognition at all CLE's and inclusion in "Sponsor Book"
- Motorcoach to HART Meadow Ranch with signage, logo on all media and inclusion in "Sponsor Book" (2 Available)

SOLD

\$ 1,000

• **THE PRESIDENT'S DINNER (SAT. 02/08)**

- Principal Event Sponsor
 - There will be prominent signage, branded napkins at cocktail hour, as well as an opportunity to speak both at the President's Dinner reception and during a CLE Break, full page inclusion in "Sponsor Book" attendance at cocktail parties and breakfasts, recognition at daily CLE's, opportunity to put material in all seats and in giveaway bags and logo on all media and branding on all media.
- Cocktail Entertainment- Voices of Deliverance with signage, recognition at all CLE's and inclusion in "Sponsor Book"
- Dinner Music with signage, recognition at all CLE's and inclusion in "Sponsor Book"

\$ 15,000

\$ 2,500

\$ SOLD

• **BREAKFAST TABLE SPONSOR (5 AVAILABLE)**

- Recognition, inclusion on all sponsor signage, logo on table card at breakfast.

\$500



The purpose of sponsorships is to help decrease the direct cost to Fellows and to allow sponsors the opportunity to network with Fellows that practice both all over the United States and also internationally. All non-fellow sponsor names will be included on a Bingo Card given to all Fellows. Fellows who have their cards initialed by all table sponsors will have the opportunity to enter a drawing for a free registration to the next USA Chapter meeting! Some of the activities listed herein above may not be included in the event if not sponsored.

Principal sponsors will not be asked to pay a registration fee for the meeting but if they would like to attend tickets events (if not included above) those will need to be purchased. All sponsors will be included in the hard copy of the "Sponsor Book" which will include contact information for all attendees.

The sponsorship opportunities are flexible. Any proposals for sponsorship, at different rates or in other forms, or in any combination – or in concert with other fellows – are welcome and encouraged.

Even if you are not able to come to Charleston, you will still see benefit in being recognized and having a presence through one of the sponsorship opportunities.

We would be grateful if you could let us know ASAP whether you are willing to contribute as a sponsor. Please reach out to USA Chapter National Director, Valerie Smith, (valerie.smith@iafl.com) if you are interested in sponsoring the meeting. The more sponsors we have the greater opportunity for fellows to attend.

S'MORES AND SPARKLERS UNDER THE STARS

A night scene of a park. In the foreground, a fountain with multiple jets of water is illuminated with blue and white lights. In the middle ground, there are several large trees, some of which are lit up with warm yellow lights. In the background, a long string of warm yellow lights stretches across the horizon. The sky is a deep blue with some wispy clouds.



**NEDBANK
PRIVATE WEALTH**

Balancing emotions and finances during divorce

Huw Williams,

Nedbank Senior Private Banker



The decision to legally separate is never an easy one for a couple to make and divorce affects everyone differently. A marriage coming to an end is a profound life event and one that can be extremely disorientating, upsetting, and daunting.

However, as a couple looks to navigate this next stage in their lives there are steps that can be taken to ease the emotional and financial upheaval that accompanies the end of a marriage.

The emotional rollercoaster

Changing lifestyles and family circumstances can throw even the most resilient off balance, particularly during a divorce. It's not uncommon for high-achieving professionals, who are often accustomed to steering the ship of their lives, to struggle with what can feel like a loss of control. During this time it is important for clients to remember that with the decision to divorce comes a new opportunity to redefine future plans and goals. The average marriage lasts about 12 years before divorce¹, a long time for couples to intertwine their lives – often making the process of separation emotionally charged and financially challenging.

The need for comprehensive support

Seeking professional legal advice is essential when going through a divorce to help navigate through the technical detail and allocate assets fairly. But once the legalities are over, the need for support doesn't end. We've noticed a distinct client need beyond the legal support that you may ordinarily expect. This is particularly true for individuals with significant wealth, or who lead complex lives that involve them living in more than one country.

Wealth planning

With statistics showing that over 40% of UK marriages eventually end in divorce², ensuring proper wealth planning is in place is important to securing a stable future. By engaging with a wealth planner from the outset there's a natural journey for clients from dealing with the legalities of the past and present, to looking to their financial future. When the time is right, it allows the legal team to pass the client onto professionals that can help them envision their future cash flow needs and to consider the lifestyle implications of their divorce settlement. Adjusting to a potentially different standard of living necessitates careful planning, and pensions - often a significant asset - demand specialist attention for fair distribution.

Empowerment through financial literacy

In many marriages, one partner typically assumes the financial role, leaving the other to navigate uncharted fiscal waters post-divorce. Regardless of their professional expertise, we encourage clients to take the reins of their financial future. Selecting a wealth manager who can carefully and clearly explain the options in a clear, jargon-free way, and is willing to hand-hold during those initial uncertain months is invaluable.

Choosing the right advisers

The ideal adviser transcends the role of a financial guide; they can become a confidant and ally. Clients deserve advisers who view them holistically, empathise with their unique situation, and offer emotional support during their most vulnerable moments. As a private banker and trusted adviser, our mission is to provide this comprehensive support, helping clients rebuild their lives and envision a future filled with possibilities.

1 Divorce Statistics | UK Divorce Rate | Astle Paterson

2 Divorce Statistics | UK Divorce Rate | Astle Paterson

Nedbank Private Wealth offers a full range of wealth management services, and our dedicated, friendly team offers an award-winning end-to-end wealth planning service, whatever your clients' financial needs.

For more information about how Nedbank Private Wealth could help you and your clients, please call Andrew Simpson on +44(0)20 4513 5945, email andrew.simpson@nedbankprivatewealth.com or visit nedbankprivatewealth.com

Dutch national day of divorce

Saskia Braun, IAFL Fellow Netherlands

On Friday the 13th of September 2024, we in the Netherlands Celebrated the so-called Divorce Day. This national day was created 15 years ago by the Dutch Association of Family and Inheritance Lawyers and Mediators to draw attention to the need for proper divorce counselling. All Dutch members of the IAFL are members of this association. The day was chosen to be the second Friday in September. It was on this day in 1796 that the first divorce was granted in the Netherlands.



This year's theme was cohabitation. As every year, a consumer survey was carried out by an external research company. Around 500 cohabitants who had separated in recent years were interviewed. The results were striking. The number of cohabiting couples in the Netherlands is increasing, but the number of cohabiting contracts is not. At the beginning of this year, (only) 44% of Dutch couples had married status. This includes registered partnerships. Three-quarters of cohabiting couples have made a conscious decision not to marry or enter into a registered partnership, but when they break up, 47% of them regret not having made better financial and legal arrangements beforehand.

For marriage and, since 1998, for registered partnerships, Dutch law provides for numerous rules, rights and obligations. However, these rules do not usually apply to cohabitants, who are by no means always aware of this and often do not even think about it. When the relationship comes to an end, this can lead to surprises, because in the back of one mind one mistakenly assumes that separation is the same as divorce, with the same legal consequences.

Firstly, children: if a child is born within a marriage or registered partnership, both the mother and the father are legal parents by law and both have parental authority. If a child is born out of wedlock, only the mother is a legal parent. The father must first recognize the child. From 2023, recognition will automatically confer parental authority on the father. Until then, the father parental authority had to be registered separately. In practice, this led to distressing situations for fathers who were not aware of this or when mothers did not want to cooperate with the registration.

Married couples who wish to divorce must go to court. Before the court will grant the divorce, the parents must submit a parenting plan agreed by both of them. This obligation does not apply to cohabiting couples. If they separate, there is in principle no need to go to court. However, former cohabitants may need the help of a judge because they believe they are entitled to claim assets in the other person name, income to which the other person is entitled, the right to continue living in a house they shared while they were living together, etc. While we have a specific procedural law for divorce and dissolution of registered partnerships, this does not apply to cohabitants. They must follow the regular procedural law.

Another surprise that former cohabitants may face is when one partner wants to recover the investment in an asset that belongs to the other partner. Although the Supreme Court leaves some room for interpretation, these investments are not easily recoverable.

While there is some scope for property issues to reflect the situation during the relationship, this is certainly not the case for spousal maintenance. The law does not provide for spousal support for those who are unable to support themselves after the breakdown of the informal relationship, for example because they have little education and/or have always looked after the home and children. This can lead to large differences in wealth after separation. The question is whether this is desirable for children who continue to live with both parents.

Because of the lack of legislation, there are increasing calls for the legal status of unmarried people to be improved. But not everyone agrees. Opponents believe that the legislator should not be too paternalistic, because there are still couples who are aware of the consequences of not marrying and are making an informed choice to do so. We will see what the future holds for them. For now, they have to make their own arrangements in a cohabitation contract.

Trends and Developments

Mayte Garcia, IAFL Fellow Spain

Introduction

International child relocation has become a significant issue in family law in Spain, particularly in the context of international families, as Spain is a destination country for many foreign families. This situation arises when one parent, following a separation or divorce, wishes to move to another country with the child, often leading to conflicts between the parents and raising important legal and ethical questions, mainly affecting the child's rights.



This report aims to provide a general guide on international child relocation in Spain. It will address the applicable legal framework, relevant Spanish Supreme Court jurisprudence, and offer a detailed analysis of the “best interests of the child” principle and how it influences judicial decisions regarding relocation.

Legal Framework in Spain

International child relocation in Spain is regulated by a combination of domestic laws and international conventions that seek to protect the child's rights and ensure that any decision made in this context is guided by the principle of the child's best interests.

Spanish Civil Code

The Spanish Civil Code Article 154 provides that the rights inherent to parental authority include that of “deciding the habitual place of residence of the minor, which may only be modified with the consent of both parents or, by judicial authorization”.

According with Article 156 of the Spanish Civil Code, it is understood that the Code refers to decisions on relocation and changes of habitual residence of minor children as falling within the scope of the joint exercise of parental authority by both parents. For this reason, they must be adopted by common agreement, or by one of them alone with the consent of the other, except in situations of urgent need and, in the event of disagreement, always by the Spanish judge.

Law 1/1996, of January 15, on the Legal Protection of Minors

This law establishes that the child has the right to have their best interests considered as a priority in any decision affecting them. Article 9 of this law reinforces the right of the child to be heard in all judicial proceedings that concern them, provided they have sufficient judgment, and in any case, if they are over 12 years old.

International regulation

While this report focuses on domestic Spanish issues, it is important to mention that Spain is a party to several international conventions that can influence cases of international child relocation, such as Hague Convention 1996, Council Regulation (EU) 2019/1111, Hague Convention 1980. These instruments regulate co-operation between states to ensure the protection of children in case of relocation.

Best Interests of the Child

The principle of the “best interests of the child” is the central axis in any judicial decision related to international child relocation. This principle is highlighted both in Spanish law and in numerous international instruments ratified by Spain.

Definition and scope

The best interest of the child is an indeterminate legal concept, meaning it does not have a precise or rigid definition. It is a principle that requires all decisions affecting a child to prioritise what is most beneficial for their physical, emotional, and social well-being. The goal is to protect the child and ensure their development is as healthy and balanced as possible, considering their needs and rights.

Factors to consider

When assessing the best interests of the child in a relocation case, Spanish courts usually consider several factors, among others as follows.

- The child’s relationship with both parents –

The court evaluates the emotional bond and the degree of attachment between the child and both parents, as well as with siblings and other close relatives.

- The child’s emotional stability –

The court analyses how the relocation might affect the child’s emotional stability, considering factors such as their adjustment to their current environment, school performance, and social network.

- The child’s ability to adapt to the new environment –

The court assesses the child’s ability to adapt to the new country, including culture, language, the educational and health-care systems, and opportunities for personal and social development.

- Living conditions in the new country –

The court considers the material and well-being conditions that the child would have in the destination country, including housing, access to education, and healthcare.

- Proposed contact with the left-behind parent–

It is crucial to present a detailed plan that allows for the continued and meaningful relationship between the child and the left-behind parent, including regular visits and constant communication and stays.

- The child's opinion –

Depending on the child's age and maturity, their opinion will be taken into account, especially if they are over 12 years old. The child's capacity to express their will and understand the implications of the relocation are key elements in the evaluation when the children have enough maturity.

Spanish Supreme Court jurisprudence on the best interests of the child

The Spanish Supreme Court has developed extensive jurisprudence regarding international child relocation, establishing clear criteria on how the principle of the best interests of the child should be applied in each case. The relocation must be based on objective and necessary circumstances and will never be admissible if the relocation is based on the selfish and capricious acts of one of the parents.

Supreme Court criteria

As a reference, relevant cases in which the Spanish Supreme Court has set out the criteria applicable to the best interests of the child are as follows.

- The Supreme Court denied the mother's request to relocate the child to Germany. The court argued that it had not been demonstrated that the relocation would benefit the child, who was fully integrated into their environment in Spain and maintained a meaningful relationship with both parents. This case underscores the importance of the child's emotional stability and the need to maintain their relationship with both parents.
- The Supreme Court authorised the relocation of a child to Argentina, requested by the mother. The judgment highlighted the importance of the mother's employment and family situation in Argentina, as well as the child's relationship with their extended family in that country. The court concluded that, in this case, the relocation was the most appropriate for the child's welfare, emphasising the need to evaluate each case based on its particular circumstances.
- The Supreme Court denied the relocation to the US, arguing that although the mother had presented legitimate reasons for her relocation, it had not been proven that the change would benefit the child. This ruling highlights the importance of proving that the relocation will positively contribute to the child's well-being.

- The Supreme Court permitted the relocation of a child to France with their mother, who had found employment in that country. The judgment highlighted the improved educational opportunities and quality of life that the relocation would provide for the child.

Additionally, the measures proposed to ensure that the child maintained a close and continuous relationship with their father, who remained in Spain, were viewed positively.

The decision adopted by the judge must make the protection of the best interests of the minor effective, the Supreme Court stating in its judgement of 28 September 2009, “that the regulations relating to the interests of minors have the characteristics of public order, and therefore must necessarily be observed by judges and courts in the decisions taken in relation to minors...”.

In this matter, different rights certainly come into conflict. On the one hand the right of one parent to freely choose their place of residence, and on the other hand the right of the other parent to relate to their minor children (Articles 90, 91, 94 and 103. 1 of the Spanish Civil Code); and above both the principle recognised in Article 39 of the Spanish Constitution, in the Declaration of the Rights of the Child proclaimed by the General Assembly of the United Nations on 20 November 1989, ratified by Spain and in the L.O 1/96, of 15 January, of the prevalence of the benefit and the best interest of the minor.

The Spanish Supreme Court in the judgment dated 20 October 2014, which established juris prudential doctrine, highlighted that “the change of residence abroad of the custodial parent may be judicially authorized only for the benefit of the minor children under his custody who move with him”, on the basis that the change of residence affects many things that have to do not only with moving abroad, with a different language, as in this case, but also with habits, schooling, customs, and even with the travel expenses involved in moving to a country far from the child’s environment, as this may prevent or make it difficult for both the child and the left-behind parent to travel in order to maintain contact with the child. It is the interests of the child that are paramount in these cases”.

The problem arises as to the suitability or inadmissibility of moving the child to another place of residence, which may entail a dramatic change in both their social and parental environment, with problems of adaptation; the Spanish Supreme Court specifying in the most recent judgement of 18 January 2017, that in cases of transfers of the custodial parent to a different location from the one in which they had been residing, and to which the child follows them to continue with the custody and guardianship, the respect and protection of the best interests of the child must be taken into account when deciding on this new situation.

In addition, the most relevant is not whether the custodial parent's freedom to choose residence can be restricted, but whether it is appropriate or inappropriate for the child to move to another country, which may entail a radical change in their social and parental environment, with problems of adaptation.

The concept of the interests of minors, as expressed by the Supreme Court in the judgment of 16 September 2016, has been developed in LO 8/2015, of 22 July, on the Modification of the Child and Adolescent Protection System, in the sense that: "The maintenance of their family relationships shall be preserved", "the satisfaction of their basic material, physical, educational, emotional and affective needs shall be protected", "the irreversible effect of the passage of time on their development shall be considered", "the need for stability in the solutions adopted...".

Case Law in Spain on International Child Relocation

Spanish jurisprudence has addressed numerous cases of international child relocation, each with its particularities. Below is an analysis of some common situations and the resolutions adopted by the courts.

Relocation for employment reasons

One of the most common reasons for requesting international relocation is a job offer in another country. In these cases, courts evaluate both the professional opportunity and the parent's ability to provide a better quality of life for the child in the new destination. However, mere economic improvement is not always sufficient to justify relocation if it may destabilise the child emotionally or if their adaptation to the new environment is uncertain.

Relocation for family reasons

In other cases, relocation is justified by the need of a parent to reunite with their extended family in another country or due to a new marriage. Courts consider the stability and emotional support that the extended family can offer the child in the new country. However, it is essential to demonstrate that these new circumstances will not significantly disrupt the child's relationship with the parent remaining in Spain. This usually applies when the other parent has not attended to their parental duties for a long period of time.

Denial of relocation due to lack of child's ties to the new destination

In some cases, courts have denied relocation because the child had no prior ties to the destination country, which could hinder their adaptation. If the child does not speak the language, has no family or friends in the new country, and it has not been demonstrated that the change will significantly improve their well-being, the courts may consider that the relocation is not in the child's best interests.

Practical Considerations for Parents

For parents considering applying for international relocation with a child, it is crucial to take several practical aspects into account.

Preparation of a detailed plan

It is essential to prepare a detailed plan covering all aspects of the relocation, including residence, education, access to healthcare, and the visitation and communication plan with the parent staying in Spain. This plan must demonstrate that the child's well-being has been carefully considered in all dimensions.

Gather documentary evidence

Gathering all relevant documentation to support the application is crucial. This includes employment contracts, school acceptance letters, medical reports if necessary, and any other evidence that demonstrates that the relocation is in the child's best interests.

Communication and negotiation

Whenever possible, it is advisable to try to resolve the conflict amicably through negotiation or family mediation. Reaching an agreement between the parents is not only less costly and stressful but can also result in a more flexible solution tailored to the needs of all involved.

Evaluation of the new country's environment

Before making a final decision, it is important to conduct a thorough evaluation of the environment in the destination country, considering aspects such as the quality of the education system, social opportunities for the child, and ease of access to medical and psychological services.

Consideration of the child's stability

The court will place great importance on the child's stability, so any proposed change must be clearly aimed at improving their quality of life without causing significant disruption to their routine or important relationships.

Relocation Cases Involving a Child who is Under the Guardianship of the Competent Authorities of Another Country (HCCH 1996)

The international relocation of minors under the custody of competent authorities, such as child protection services or juvenile courts, is a matter of increasing importance in international family law.

These cases typically involve complex situations where the protection of the child, their well-being, and respect for human rights are of paramount importance. Collaboration between states is essential, as is finding an expert lawyer to ensure that decisions regarding the international relocation of these minors is done in a manner that respects their rights and promotes their welfare and that guarantees the legal status of the child in the state to which the child is to be relocated.

Many aspects have to be considered in these cases, such as the recognition of judgments issued by foreign courts, the adaptation of the child's custody to the domestic laws of the new jurisdiction, their incorporation into the educational system of the country where they will reside, guaranteeing the child adequate health care, legalising their residence status in the new country, etc.

Cases of International Child Abduction and Wrongful Retention

If one parent relocates the child to another country without the required consent of the other parent or retains the child unlawfully, the situation should be reported as a case of child abduction or wrongful retention.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction establishes mechanisms to ensure the return of the children. Spain is one of the signatory countries of this convention, and the process to be initiated before Spanish Central Authorities and Spanish Courts would be the subject of a further comprehensive report.

Conclusion

International child relocation is a complex issue that requires a careful and considered approach. In Spain, judicial decisions in this area are guided by the principle of the child's best interests, which involves a detailed assessment of how the relocation will affect their well-being in all aspects. For foreign parents facing this type of situation, it is essential to be well-informed about the applicable legal framework and jurisprudence, and to be prepared to present a solid case demonstrating that the relocation is in the child's best interests.

It is increasingly difficult to find judicial decisions that allow the relocation of children born and raised in Spain to other countries after the divorce of the parents. A really important relocation decision was the one taken by the parents to leave their country of origin to start a new life in another country, with a family life project, which must be continued if it guarantees the protection and well-being of the children.

Separating young children from one of their parents and taking them to a different country has harmful consequences as they would lose their emotional attachment to their parent, a circumstance that some of the parents do not attach any importance to.

It is also worth remembering the enormous complexity of this type of proceedings, in which the position of the judge is of special consideration, as it is not a matter of resolving a mere legal controversy of private claims, but of adopting a decision in which human interests of a family nature converge; a decision that becomes even more complex when the interests of minor children are at stake.

The change of country is a change of crucial importance for the children, so that what is decisive in deciding on the matter, we insist, is the interest of the minors, which is the primary concern, and not the preferences or wishes of their parents; in short, the interest of the parents, however legitimate it may be, is always subordinate to the interest of their minor children..

Finally, if the change of country would mean removing the children from their parent's life, from their usual family environment, school, etc, and exposing them to a new and different educational system and a new social and family environment – far from the one in which they have grown up – even if the destination is the country of origin of one of the parents, this change could negatively impact the children, especially if it is due to their parents' breakup. If it cannot be shown that the relocation is convenient and beneficial for the children themselves, and especially if it would harm their relationship with the left-behind parent, such a move would be contrary to the best interests of the children themselves.

THE PYRAMID OF POWER

Understanding Iranian Family Dynamics: Roles, Hierarchies, and Cultural Expectations

By **Abbas Hadjian**, IAFL Fellow USA



This article first appeared in the Los Angeles and San Francisco Daily Journal on 7 October 2024

Family dynamics in Iranian culture are deeply rooted in traditional values, hierarchical structures, and societal expectations that govern behavior within the household and the broader community. This article explores the nuanced roles, responsibilities, and expectations that define the pyramid shaped family life among Iranians. The discussion sheds light on the complexities of family hierarchies, the impact of cultural norms on divorce, and the role of culture in premarital and marital agreements among family members.

The Hierarchical Structure of Iranian Families

In Iranian culture, families operate within a well-defined hierarchical framework that influences decision-making, roles, and responsibilities. At the top of this hierarchy is the father, who is often considered the head of the family. The family structure is described metaphorically as a diamond or pyramid, with authority flowing downward from the father to the eldest son and then to other children. This model is not just a matter of familial organization but also reflects deep cultural values about authority, respect, and the preservation of family honor.

The eldest son, in particular, holds a significant role within this structure. Upon the father's death or incapacitation, the eldest son is expected to step into his shoes, taking on the mantle of leadership and becoming the trustee of the family interests. This role involves overseeing family affairs, managing the family business, and making crucial decisions regarding property and other assets. The eldest son's authority is often unquestioned, and his position is seen as both a duty and a privilege. In this context, any deviation from this norm—such as a younger sibling or a female family member assuming the leadership role—is considered and even unethical by traditional standards.

The roles of younger sons are more specialized and less authoritative. If a younger son is more educated or possesses specific skills, he may serve as a consultant, accountant, or advisor within the family business. However, his influence is typically limited to his area of expertise, and he is expected to defer to the eldest son's authority on broader family matters. This delineation of roles helps maintain a balance of power within the family, ensuring that the hierarchy is respected and the family interests are preserved.

The Role of Women

Women in Iranian families traditionally have more limited roles compared to their male counterparts. The wife or mother is generally expected to manage the household and provide support to her husband, who handles external affairs and financial responsibilities. While this division of labor aligns with traditional Iranian values, it also reflects broader societal norms that prioritize male authority and leadership.

However, the role of women can become more prominent in certain circumstances. For example, if the father passes away, the mother may assume a more active role in managing the family and mediating disputes among siblings. In such cases, she becomes an important figure who helps maintain family unity and continuity, ensuring that cultural values and traditions are upheld. Despite these occasional shifts in roles, the overall structure of Iranian families remains largely patriarchal, with men holding most of the decision-making power.

Premarital Agreements

The hierarchical nature of Iranian families can sometimes lead to tensions and conflicts reflected in the premarital agreements, particularly when individual desires clash with collective expectations. Marrying children, for instance, may find themselves caught between their personal aspirations and the directives of their father or elder brothers. This conflict is often exacerbated by the expectation that younger siblings and female members should conform to the decisions made by their male elders. In Iranian culture, premarital agreements are not sought to protect the interests of the married couple but normally to shield the pyramid of family property, honor, and reputation against the negative impact the fighting spouses in case of death or dissolution.

TRUST

The concept of trust plays a crucial role in Iranian family dynamics. Trust is not only a personal virtue but also a social currency that binds family members together. When a breach of trust occurs—such as a younger family member acting independently without the approval of an elder—it can result in serious consequences, including isolation from the family or other forms of internal penalties. Families typically prefer to handle such issues privately, avoiding external legal or social interventions to preserve their honor and integrity.

Divorce and Family Honor

Divorce in Iranian culture is not merely a personal matter; it is a significant family affair that can impact the family reputation and standing within the community. Divorce, especially when initiated by a wife against the husband will, can be perceived as an affront to the family honor. This is particularly true in close-knit families where loyalty and conformity to the family's pyramid of power are paramount.

The concept of Khianat or betrayal, is central to understanding how divorce is viewed within Iranian families. While Khianat is more commonly associated with infidelity, a wife decision to file for divorce can also be seen as a form of betrayal or disloyalty to the family's structure of power. This perception of divorce as a breach of family loyalty underscores the cultural importance of marriage as a binding social contract that involves serving the couple but also strengthens maintaining the larger family's pyramid of interest.

Under Iranian law, there are specific conditions under which a wife can file for divorce. These include cases of substantial domestic violence that cannot be prevented, lack of financial support confirmed by the court, or if the wife buys her freedom from the marriage with the husband's consent. These legal stipulations reflect the broader cultural constraints on a woman's autonomy within the cultural pyramid of marriage, emphasizing the role of the family and community in such personal decisions.

Documentation of Agreements

In Iranian culture, particularly within the pyramid of family-run businesses, oral agreements are often preferred over written ones. This preference is rooted in the belief that agreements should be built on mutual trust and honor rather than formal documentation. Asking for a written agreement in a family context could be perceived as offensive, implying a lack of trust. This cultural norm is particularly prevalent in business transactions involving family members, where personal relationships are prioritized over legal formalities.

However, there are exceptions to this cultural preference for oral agreements. Certain transactions, such as real estate deals, must be documented and recorded under Iranian law. This legal requirement reflects a blend of cultural practice and legal necessity, ensuring that even in a culture that values trust and oral agreements, formal documentation is sometimes necessary to comply with the law. Minority communities in Iran, such as Jewish and Christian groups, are allowed to follow their own procedures for marriage, divorce, and probate, provided these do not conflict with Iranian law. This flexibility highlights the diversity within Iranian society and the ways in which different cultural and religious practices are accommodated within the legal framework.

The Interplay of Culture and Law

The intricate interplay between cultural based pyramid of power and law in Iranian society is evident in how family dynamics, divorce, and agreements are managed. While cultural norms emphasize trust, honor, and hierarchical roles, the legal framework provides guidelines that sometimes align with and at other times challenge these norms. Understanding Iranian family dynamics requires an appreciation of both the cultural and legal contexts that shape behavior and decision-making.

For instance, in the context of divorce, while cultural expectations might discourage a woman from seeking a divorce, the legal system provides specific avenues for her to do so. Similarly, while oral agreements are culturally favored, the law mandates written documentation for certain transactions, ensuring legal clarity and protection for all parties involved. This duality reflects the complexity of Iranian society, where cultural practices and legal requirements coexist and occasionally collide.

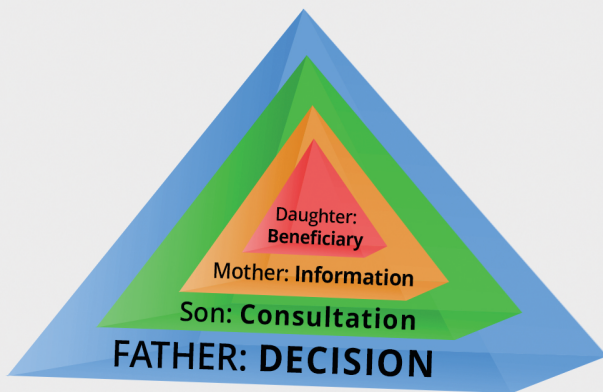
Conclusion

Iranian family dynamics are characterized by a complex web of roles, hierarchies, and cultural expectations that influence behavior and decision-making. The pyramid shaped hierarchical structure places the father and eldest son in positions of authority, while younger sons and women play more supportive or specialized roles. Marriage of children is expected to support the larger hierarchical structure of the family's interest. In Iranian culture premarital agreements are not sought to protect the interests of the married couple in case of death or dissolution, but normally to shield the pyramid of family property, honor and reputation against the negative impact the fighting spouses. Similarly, the preference for oral agreements over written documentation reflects a cultural emphasis on trust and personal relationships within the circle of trusted persons.

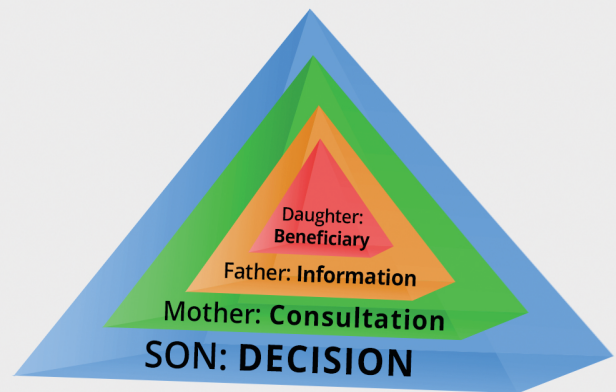
Understanding these dynamics is crucial for anyone seeking to engage with or comprehend Iranian society. It highlights the need to consider both cultural norms and legal frameworks when navigating family and social interactions in Iran. Iranian culture is deeply rooted in tradition, yet it is also shaped by the evolving realities of modern life and legal structures.

Decision Making in Family Settings

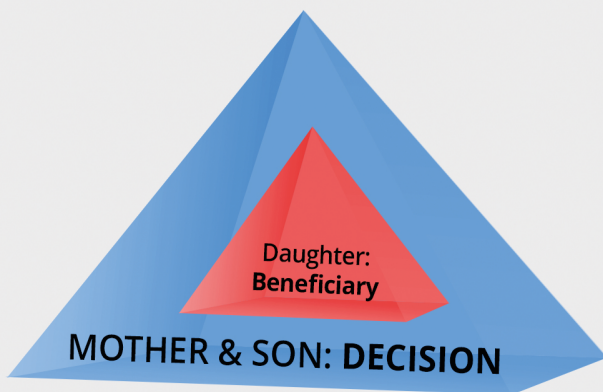
MIDDLE EASTERN



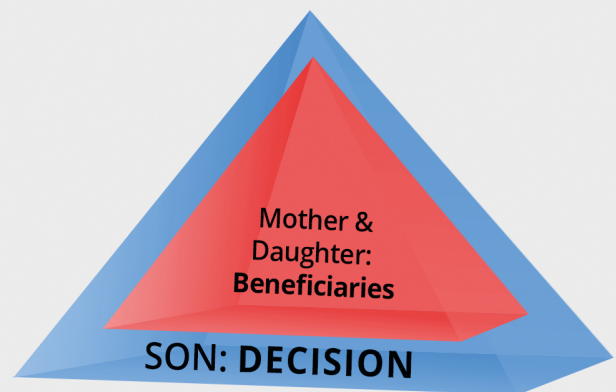
Father Alive & Active



Father Alive & Inactive

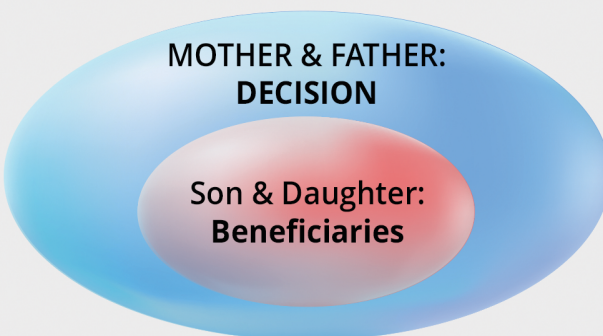


Father Dead, Mother Active

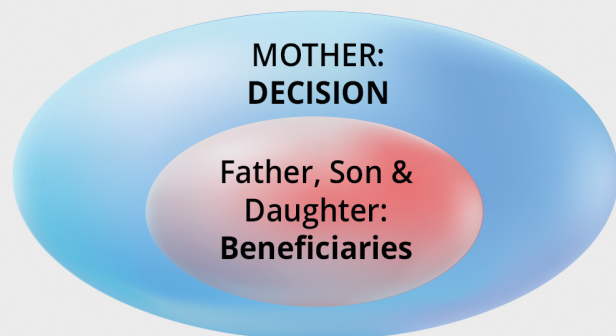


Father Dead, Mother Active

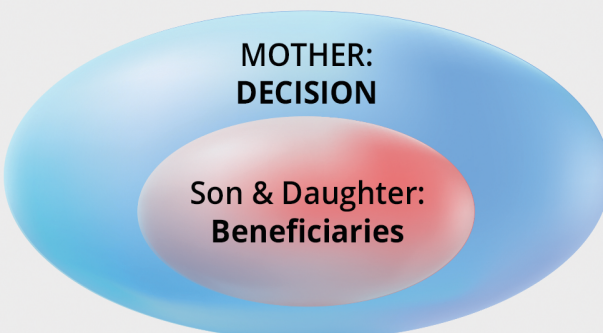
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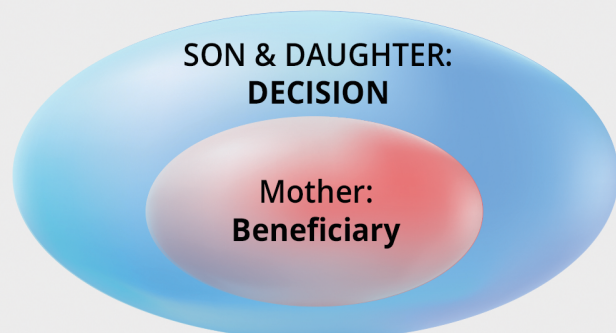
Father Alive & Active



Father Alive & Inactive



Father Dead, Mother Active



Father Dead & Mother Inactive

UPDATES FROM THE HCCH Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention

**By Carolina Marin Pedreño,
IAFL Fellow, England**



The eighth meeting of the Special Commission on the practical operation of two of the most important international treaties concerning the protection of children, the Hague 1980 and 1996 Conventions, took place from 10 to

17 October 2024 at the Peace Palace in The Netherlands. One year later I am reflecting on the recommendations and conclusions reached during those 7 intensive days of work.

The meeting was attended by 471 delegates formed by representatives of States, International Organisations and Non-Profit Organisations with the status of observers. The IAFL has been recognised with this status. The fellows selected to attend the meeting on behalf of the IAFL were Michael Gration KC, Fabiana Quani, Wendy O. Hickey and Richard Minn. I had the privilege to attend as an observer representing our sister association, AIJUDEFA (Association of Spanish speaking Family Jurists).

In this occasion the HCCH was also celebrating the 25th anniversary of the International Network of Hague Judges on this occasion.

The Chairs of the Meeting were Justice Bennett from Australia and Dr. Daniel Trueca, Head of the Central Authority of Uruguay.

The first day's session commenced with a review of the statistics received by 71 of the State signatories. The study was undertaken by Professors Nigel Love and Victoria Stephens and they provided their conclusions having studied the statistics provided over the last 22 years. They started by drawing our attention to the length of Hague 1980 proceedings. In 2021 the average time it took Hague proceedings to conclude were 301 days in comparison to 207 days in 2015. The issue of the additional time was discussed in detail and some of the conclusions were that the

Covid 19 pandemic was the main factor together with the limited IT resources of some central authorities. The delay caused within the judicial process is also connected to the lack of special procedure of some jurisdictions. The recommendations in this aspect were for encouragement to use better IT systems to accelerate the communication within central authorities and parties and the need for special procedure in those jurisdictions lacking it.

In addition to the delay in resolving proceedings, it was also of note that there had been a decrease in applications seeking the return of a child and the increase of applications for access rights under article 21 of the Hague 1980.

The sessions covered the following topics:

i) The operation of the treaties and other international instruments such as the Human Rights Convention on childrens rights and the Convention of 1951.e 1980.

ii) Legal representation available to the parties.

iii) Direct judicial communication.

iv) Art 13.1 b) and protective measures.

v) Child's participation.

vi) Access rights.

vii) International relocation.

viii) Cross border children in care.

ix) Interrelation of the two treaties.

x) Malta process.

A significant amount of time was dedicated to the operation of the article 13(1)(b) of the Hague 1980. The biggest elephant in the room was domestic abuse as a grave risk exception. Before the meeting commenced, the Secretary General, Christophe Bernasconi made reference to correspondence received by the Permanent Bureau in preparation for the Meeting on this issue. Some representatives of NGOs and Charities that offer support to parents involved in Hague proceedings had representatives outside the Peace Palaceadvocating for the need to amend the Convention. Some of them were proposing for Domestic Violence per se to be one of the exceptions to the principle of the Treaty.

On the last day of the meeting, the Secretary General of the HCCH reassured those seeking a discussing on Domestic Abuse and Child Abduction, offering to organise a forum for that particular topic. Spontaneously the representatives from the Philippines offered to host that meeting. It took place, but not in the Philippines. The Forum on Domestic Violence and the Operation of Art 13 (1)(b) of the Hague Child Abduction Convention took place from 18 to 21 June 2024 in South Africa. It was co-hosted by the government of Suth Africa and the University of Pretoria.

I was invited by the Secretary General of the HCCH to join the Steering group that organised the Forum. The group was formed by State representatives, Central Authorities, Practitioners, Representatives from Charities, Judges and Professors. The aim was to organise a programme which would be well balanced and allow a space for fruitful discussions on this topic. Due to space constraints, the attendees were selected from those who expressed an interest on attending in person.

The conclusions of the Forum have been published on the website of the HCCH for attendees only and its content is confidential. I can only anticipate that the need for the exchange was palpable and those representing charities and NGOs that support victims of domestic abuse and child abduction were grateful for the opportunity to have the exchange.

From the closing messages, the need for a further meeting was well received and Brazil took the torch.

Another important conclusion from the meeting was the need for more research and work on international relocation and in particular more awareness of the Washington Declaration. It was recommended that the HCCH would send a questionnaire to gather more evidence on the current legal treatment of international relocations. With the 15th Anniversary of the Washington Declaration of 2010 knocking on the door, the HCCH, in partnership with IAFL and the Canadian Government, is planning a meeting in Washington in April 2025. This is still work in progress. Our Relocation Committee chaired by Anna Woodward is currently working on a questionnaire to prepare a comparative study and we will keep all our fellows informed once there are more concrete plans on this meeting. In the interim, we encourage all of you to participate and complete the questionnaire to assist with this research.

The work of the HCCH leading up to and during the 7 days, including the weekend was impressive. The Special Commission adopted 103 conclusions and recommendations. You can read them in the three official languages of the HCCH in this link <https://www.hcch.net/en/publications-and-studies/details4/?pid=8488>

Parental Alienation

Eniko Fulop, IAFL Fellow Romania

Parental alienation

Parental alienation as a legal institution has been recognized in the jurisprudence, the case law of Romanian courts as a form of psychological abuse of a minor since 2012, in which the alienating parent was ordered to be sanctioned with the loss of parental authority and the loss of the minor's home.



As a consequence, it was not a huge surprise the regulation of parental alienation by Law no. 123/2024 as a form of psychological abuse leading to the loss of parental authority and the change of the minor's home in cases when parental alienation is found to exist by national courts.

However, in the absence of a legal provision, many opinions even some psychologists expressed that parental alienation does not actually exist as a form of abuse and that it was merely an artificial concept imported from the United States, even if the society parental alienation after divorce became a day by day phenomenon, by restrictions of the visiting and contacting right of the non-resident parent.

The amendment of Law no. 272/2004 of child rights by Law no. 123/2024, which entered into force on 10 May 2024, is extremely important because, for the first time in Romanian law, parental alienation is recognized and sanctioned as a form of child abuse. Currently, there is a legal definition of parental alienation and its express qualification as a form of psychological violence against the child. The new rules also expressly lay down the penalties that can be imposed on the alienating parent.

As in the past, the key role will fall to psychologists, who have to establish the existence of parental alienation in every judicial case. Overtime many psychologist emphasized the risks that parental alienation can lead to and why it is a very serious form of abuse - the child's attitude of rejection of the parent can go as far as denying parentage. Today's abusers will be tomorrow's abusers. In practice, there have been some truly shocking cases of children being severely abused and traumatized, with parental alienation compounded by abusive behaviour or ill-treatment of the minor.

According to art. 18 para. 4 of Law no. 123/2024, at the request of the alienated parent or ex officio, in order to restore and maintain the child's personal relations, the public social assistance service and, where appropriate, the general directorates for social assistance and child protection of each sector of the Bucharest municipality/ or the social assistance in each local administrative authority in all 40 counties, are obliged to order counselling, provided by specialists from the public social assistance services or authorized bodies, both for the child and his/her parents.

When there is a suspicion of parental alienation or any other form of violence against the child and the court has been notified, the DGASPC(social service abbreviation) is obliged to ask the court to carry out an expert assessment.

Paragraph. 5 of the same article provides that, if one of the parents hinders or negatively affects the child's personal ties with the other parent, by not complying with the program established by the court or agreed with the other parent, or refuses or opposes to comply with the measures concerning counselling, the public social assistance at the request of either parent, will order the monitoring of the child's personal relationships for a period of up to 6 months, at the same time as the request to the guardianship court to supplement the consent of the parent who opposes or, where appropriate, modify the measures concerning the child.

At the end of the monitoring period, a report is drawn up and the DGASPC may propose an extension of the monitoring period by a maximum of 6 months, psychological counselling or expertise, including forensic psychiatric expertise of the parents and/or the child, as well as a series of measures to improve the personal relationship between the child and the non-resident parent or, where appropriate, the introduction of child protection measures.

The court may establish a situation of parental alienation at the request of one of the parents, at the request of the public prosecutor or at the request of the General Directorate for Social Assistance and Child Protection, in the main proceedings or in any pending litigation, where measures are to be ordered in respect of the minor child.

In such cases, the court listens to the minor with the participation of a psychologist from the general directorate for social assistance and child protection, who will draw up a report.

The new rules provide that the court may order a forensic psychiatric report.

The confirmation of a case of parental alienation will have important legal consequences in terms of determining the minor's domicile, the visiting schedule and the exercise of parental authority. More specifically, according to the draft, parental alienation will be considered as one of the grounds expressly mentioned in the law for which the court may consider the exclusive exercise of parental authority by the alienated parent.

These legislative amendments introduced by Law 123/2024 are an important step towards normalizing relations between separated parents and their minor children. As the courts constantly emphasize in the judgments they pronounce, "the child has the right to have two parents whom he or she must be allowed to love without fear or guilt towards the other parent".

There are still a lot to be done, monitoring the implementation of the law in the current judicial procedures in the newly regulated alienation procedure is mandatory in order to serve properly the child best interest, and avoid even more trauma which these procedures can cause in the emotional sphere of children.