

IAFL Introduction to European Family Law Conference

Tirana, Albania

15 & 16 October 2026

Session Resources Pack

Session 3 - Thursday, 15th October 2026: 14:30 -15:45

Alternative Dispute Resolution and Methods

- Speaker profiles
 - Panel Chair
 - Elodie Mulon, France Page 2
 - Panel
 - Silvana Çinari, Albania Page 3
 - Emanuel Lerch, Austria Page 4
 - Davide Piazzioni, Italy Page 5
 - Andrea Šťástková, Czech Republic Page 6
 - Papers and Presentation Page 7-74

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Profile

Partner of Chauveau Mulon Associés dealing exclusively with Family Law. Since she joined the Bar, Elodie has always been involved in matters directly concerning the profession and Family Law. She used to be a member of the Paris Bar Council and also the National Bar Council (CNB). She is currently a member of the board the National Bar Council, her mandate runs until 2025. She has been awarded the "Medal of Honor", and is a member of the family law commission of the Paris Bar. She is also the president of the Institut du droit de la famille et du patrimoine, a member of the Association of Practitioners of Collaborative Law and member of the Association Law and Procedure. Author of various family law publications, she takes part regularly in conferences and CPD courses for other family law practitioners, and co-directs the Family Law edition of the Gazette du Palais. She is also in charge of the Family Law faculty of the Law school which trains lawyers (EFB) and president of the family and inheritance committee of the European Bar (CCBE)

Languages Spoken: French English

Practice Areas: Divorce

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Silvana Çinari is an Associate Professor at the Faculty of Law, University of Tirana, where she teaches Civil Procedure Law, Alternative Dispute Resolution, and International Arbitration. She holds a PhD in Law from the University of Tirana, with a doctoral thesis focusing on provisional measures in civil litigation and arbitration proceedings, and an LL.M. in International Dispute Settlement (MIDS) from the University of Geneva and the Graduate Institute of International and Development Studies.

Her academic and professional expertise focuses on international dispute resolution, international arbitration, mediation, civil procedure, and private international law. She co-authored a textbook on Alternative Dispute Resolution and has published extensively on dispute resolution and related areas.

Silvana has participated in international academic and research programs in international arbitration and private international law, including research at the Max Planck Institute for Comparative and International Private Law in Hamburg. She has also served as a legal expert on several national, regional, and international projects addressing dispute resolution and related areas of law. She regularly participates in international conferences, seminars, and professional training programs on arbitration, ADR, and cross-border dispute resolution.

She has been a member of the Tirana Bar Association since 2009 and is also an Associate at Kola & Associates Law Firm, where she advises and represents clients in negotiations, court, and arbitration proceedings, particularly in commercial, tax, intellectual property, administrative, construction, mining, energy, civil, and family matters.

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Dr Emanuel Lerch is an Austrian attorney based in Vienna, practising primarily in family law and human rights law. He advises and represents clients in divorce, child custody, child abduction, maintenance and matrimonial property proceedings, frequently involving cross-border elements.

Before entering legal practice, Emanuel spent four years as a university assistant at the Department of Legal Philosophy at the University of Vienna. His doctoral research examined the relationship between individual autonomy, democratic legitimacy and the European Convention on Human Rights. His dissertation received both the Ars Iuris Doctoral School Award and the Austrian Parliament's Margaretha Lupac Foundation Prize.

Emanuel has particular experience in cases involving domestic violence, the protection of vulnerable family members and the recognition of diverse family structures. His work combines practical family-law representation with a strong focus on fundamental rights and access to effective legal protection.

He is the author of the monograph *Demokratie durch Autonomie? Eine Analyse entlang der EMRK* and has published on family-law matters, including the treatment of Islamic bridal-gift agreements under Austrian law. He regularly cooperates with victim-protection and LGBTIQ organisations and contributes to professional discussions on equality, family diversity and cross-border family disputes.

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Admitted to the Rome Bar in 2007 and admitted to practice before the Italian Supreme Court of Cassation and Higher Jurisdictions since 2020. My practice is exclusively focused on family law, child protection, and complex domestic and cross-border disputes, with high specialization in private international law and transnational matrimonial property.

I combine judicial advocacy with continuous institutional and academic involvement: I serve as National Vice-President of CAMMINO (National Association of Family and Juvenile Lawyers), Expert Member of the Family Law Commission of the Italian National Bar Council (CNF), and National Expert for Italy at the CCBE Family & Succession Law Committee in Brussels.

Holding a Ph.D. in Business Law from Bocconi University in Milan and a Law Degree (110/110) from Sapienza University of Rome, I ground the firm's methodology in analytical precision, seamlessly integrating domestic, EU, and international family law with interdisciplinary insights. I work and correspond fluently in Italian, French, and English.

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Profile

Andrea Štástková is an Attorney at Law at Bříza & Trubač in Prague. Her practice focuses on dispute resolution, private international law, contract law and family law. She advises Czech and international clients, particularly in disputes and other matters involving a cross-border element.

A significant part of her practice is devoted to family law disputes with an international dimension. She regularly advises and represents clients in cross-border family matters, including cases concerning international child abduction. Her professional interests therefore lie particularly at the intersection of family law, private international law and international judicial cooperation.

Andrea developed a strong interest in private international law and international dispute resolution during her university studies. She participated in the Willem C. Vis International Commercial Arbitration Moot as a member of a Finnish team. Her Master's thesis focused on institutional arbitration and compared proceedings conducted under the rules of the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic with arbitration under the rules of the Finland Arbitration Institute (FAI).

Before qualifying as an attorney, Andrea worked as a trainee lawyer at BRODEC & PARTNERS and subsequently spent several years as a trainee lawyer at Bříza & Trubač, where she continued her practice after passing the Czech Bar examination. Her experience in both commercial and family disputes informs her broader professional interest in the legal challenges arising when disputes, family relationships and judicial proceedings extend across national borders.

ALTERNATIVE DISPUTE RESOLUTION IN FAMILY MATTERS: THE ITALIAN PERSPECTIVE



Davide Piazzoni holds a PhD from Bocconi University in Milan, is a lawyer in Rome admitted to practise before the higher courts, Vice-President of CAMMINO – National Chamber of Lawyers for Persons, Family Relations and Minors, and co-founder of FLIN – Family Lawyers International Network. He serves as an expert member of the Family Commission of the Italian National Bar Council and, on its behalf, represents Italy on the CCBE's Family and Succession Commission. The author of several academic papers and a speaker at specialist conferences in Italy and abroad, he practises exclusively in the field of family law, with a specific focus on transnational families.

1. Statistical data (2022–2025) and the regulatory framework

A. Statistical analysis of family proceedings

Let us begin with the statistical data. To understand the importance of non-contentious resolution of family crises in Italy, one must start with the concrete data published **by ISTAT** (the Italian National Institute of Statistics) in its annual reports *entitled 'Marriages, civil partnerships, separations and divorces'*. The data show a gradual decline in proceedings for separation and dissolution of marriage, accompanied by a strong prevalence of consensual settlements over judicial/contentious ones:

- **Year 2022:** The Statistical Institute recorded a consolidation of the trend towards stability or a slight decline in marital instability following the post-pandemic rebounds, with over 85,000 separations and around 80,000 divorces nationwide, confirming that around three in four separations (over 75 per cent) are settled by mutual agreement.
- **Year 2023:** ISTAT data confirm a further decrease in separations (totalling 82,392, down 8.4 per cent on the previous year) and divorces (79,875, down 3.3 per cent). Mutually agreed settlements remain

by far the most common, confirming the effectiveness of out-of-court negotiation practices and joint agreements.

- **Year 2024:** The official ISTAT report published in January 2026 shows a further and marked decline in marital instability: separations fell to **75,014 (down 9.0% on 2023)** and divorces stood at **77,364 (down 3.1%)**. The figures on out-of-court proceedings are noteworthy: in 2024, **31.9% of separations** and **more than one in three divorces** were resolved through alternative or out-of-court means (assisted negotiation and civil status agreements).
- **Year 2025:** Provisional figures and the reports marking the opening of the judicial year (see *Court of Appeal, End-of-Year Reports*) confirm the trend towards a reduction in ordinary first-instance litigation, partly as a result of the implementation of the Cartabia Reform (Legislative Decree No. 149/2022), which strongly encourages lawyers and judges to seek early consensus and to make use of *parenting plans*.

B. The regulatory framework and the impact of the Cartabia Reform

In the Italian system, conciliation and family mediation have evolved from informal practices into codified institutions.

It must first be noted that the field of Italian family law is characterised by a fragmentation not always found in other systems:

- On the one hand, relational issues, characterised by a strong presence of inalienable rights not only in relation to legal status but also with regard to the position of the most vulnerable individuals within family relationships. This area includes
 - o marital *status* (separation, divorce, annulment of marriage) and *parent-child relationships*;
 - o The rights of minor children and parental responsibility for them, including child support;
 - o Financial relations between the parties, insofar as they govern a basic need and require the protection of a position of vulnerability: separation or divorce spousal maintenance;
 this area is characterised by mandatory and imperative rules, and by far-reaching powers – including informal ones – of the court (which has certain independent investigative powers and may even go beyond the parties' claims);
- On the other hand, there are property matters, such as property relations between spouses, which are governed by legislation that is only partially subject to derogation, but are characterised by rights that are exclusively at the parties' disposal. In this area, Legislative Decree 28/2010 provides for an attempt at mediation and conciliation before bringing legal proceedings, failing which the action will be deemed inadmissible.

Within the sphere of 'relational' family law, the exclusivity of the state's mandatory jurisdiction (judgements handed down following contentious proceedings) has been progressively eroded in two different directions, driven by legal practice:

- By broadening the scope for the parties to reach agreements, subject to varying degrees of judicial oversight;

- By granting the court powers of conciliation or the authority to 'encourage' the parties to utilise alternative means of managing dialogue and conflict (mediation and parental coordination).

In both cases, the recent so-called Cartabia Reform (Legislative Decree 149/2022, Legislative Decree 12/2023 and Legislative Decree 164/2024) has

- expanded the scope of access to assisted negotiation: not only separation, divorce and related amendments, but also proceedings concerning unmarried couples, as well as matters relating to the custody and maintenance of children, the rights of adult children who are not financially independent, and civil partnerships (same-sex partnerships);
- granted the judge specific powers of conciliation and mediation (Article 473-bis.21, para. 3, Code of Civil Procedure) and the power to inform and invite the parties to engage in family mediation to resolve their personal disputes (Article 473-bis.10, Code of Civil Procedure), except in cases of violence (Article 473-bis.43, Code of Civil Procedure);
- facilitated rapid access to judicial settlement by mutual consent, both by allowing separation and divorce applications to be joined (Article 473-bis.51 of the Code of Civil Procedure and Court of Cassation judgment 28727/2023) and by reducing the formal requirements (it is possible to conduct the hearing through a simple exchange of written submissions, without the parties appearing in person).

However, there is no mandatory attempt at mediation, in accordance with Constitutional Court rulings 401/2005 and 272/2012, which clarified that a preliminary requirement is lawful only if it does not entail disproportionate burdens or delays incompatible with the reasonable duration of proceedings (Article 111 of the Constitution), limits which, in family law, make an order for an information hearing preferable to a punitive barrier.

2. THE ROLE OF THE SOLICITOR IN ALTERNATIVE DISPUTE RESOLUTION (ADR)

A. From litigation to collaborative negotiation

The role of the modern family lawyer requires a radical shift in approach and a cultural change which, although already underway, has not yet borne fruit.

Italian lawyers, accustomed to an adversarial and confrontational approach, are in fact unaccustomed to working towards the management of conflicts with a view to reaching an agreed resolution. Statistical figures should not be misleading, because it is not only the quantity of agreements or consensual solutions that matters, but also, and above all, their quality. It is, in fact, common for seemingly consensual solutions to turn out to have been imposed by one party on the other, and for them to reveal their full imbalance and inadequacy after just a few years (sometimes even months).

In short: in practice, it is often the 'agreement' itself that is 'won', and not just the case. This means that these 'agreements' are sometimes more tools of abuse than a genuine means of managing a family crisis.

The tools do, however, exist, and they become essential particularly when the matter involves transnational families where differing sensibilities can lead, upon the breakdown of the relationship, to an inability to engage in dialogue if the parties are not adequately guided to examine the needs of all those involved – *first and foremost* the minor children – in order to find a mutually agreed solution that will stand the test of time.

B. Professional ethics and disclosure obligations

In any case, our legal system recognises the fundamental role of solicitors in the out-of-court and consensual resolution of family disputes. Indeed, the Cartabia Reform and the Code of Conduct for Lawyers (Articles 58 et seq.) impose on lawyers the obligation to clearly inform their clients, from the moment the mandate is conferred, of the possibility of resorting to alternative dispute resolution methods. Furthermore, the Professional Act requires continuous professional development.

C. The negotiation tools available to lawyers under Italian law

The formal tools available to lawyers are both quasi-judicial and judicial:

1. **Assisted Negotiation (Decree-Law No. 132/2014, converted into Law No. 162/2014):** This enables spouses, civil partners, unmarried parents and adult children who are not financially independent to reach an amicable settlement of their dispute. This is a fairly strictly regulated procedure, which involves the following stages:
 - **An invitation from one party to the other to enter into negotiations through their solicitors**, with 30 days to accept or decline. This stage may be omitted if there is agreement;
 - **A negotiation agreement**, in which the parties, assisted by their respective solicitors, define the scope of the subsequent negotiations;
 - **The actual negotiation process**, lasting a minimum of one month and a maximum of three months (extendable by a further month);
 - **A negotiated agreement** which, once signed by the parties and their lawyers, must be approved by the Public Prosecutor at the court with territorial jurisdiction.
 - If there are no minor children or children of full age who are not financially independent or who have a severe disability, the Public Prosecutor's review is purely formal;

- Otherwise, the Public Prosecutor must assess whether the children's rights have been infringed or compromised and may request further clarification, refuse to grant authorisation and refer the case back to the court;
 - Under Italian law, an authorised agreement has the same legal force as a court judgement.
But beware: it is difficult to enforce abroad, particularly outside the European Union. And even within the EU, problems may arise regarding a minor child's right to express their opinion;
- 2. **Collaborative Negotiation:** Based on contractual autonomy (Article 1322 of the Civil Code), this requires lawyers to withdraw from the case should negotiations fail, ensuring maximum transparency and good faith. There are no established practices regarding the use of this tool, which is in fact not at all widespread;
- 3. **Joint application to the court:** governed by Article 473-bis.51 of the Code of Civil Procedure, this is the mechanism through which the court examines the agreement reached and validates it in a judgment.

D. The role of mediation

In this context, the role of mediation becomes marginal and is primarily focused on managing the conflict. The natural outcome would be an agreement, but such an agreement must in any case be formalised either before a judge or through assisted negotiation.

3. CROSS-BORDER AGREEMENTS AND THE CIRCULATION OF DECISIONS

The European and international framework

In intra-EU cross-border proceedings, the recognition and enforcement of agreements rests on EU-level pillars:

- **Directive (EC) 2008/52:** this provides a European framework for cross-border mediation, which also affects domestic mediation. However, its practical relevance has remained very limited;
- **Regulation (EU) 2019/1111 (Brussels IIa):** Applicable from 1 August 2022, it simplifies the circulation of decisions in matrimonial matters and matters of parental responsibility, allowing for the automatic recognition of agreements registered by a public authority or validated in the countries of origin by means of standardised certificates.
- **The Hague Convention of 19 October 1996:** The framework for international cooperation and the protection of children.
- **Regulation (EU) No 2009/4:** The framework for maintenance obligations.

Proceedings involving cases outside the EU, however, present greater difficulties in terms of the circulation of decisions, unless there is a bilateral or multilateral international convention (such as the 1996 Hague Convention):

- In Italy, for the recognition of a foreign order (including a consensual one) or agreement that has the force of a judgment in the state of origin, approval must be obtained from the Court of Appeal, which will assess whether there has been a breach of fundamental procedural rights (breach of the right to be heard) and whether the decision conflicts with international public policy. 'Pure' agreements must be submitted to the judicial authority, which – if the parties consent – will convert them into a judgement (mirror decision);
- From an Italian perspective, ongoing and prior coordination with colleagues abroad is essential; without this, there is an extremely high risk of producing agreements that subsequently cannot be recognised abroad.

4. ARBITRATION AND FAMILY LAW: THE CURRENT SITUATION IN ITALY

A. Regulatory boundaries and the non-arbitrability of inalienable rights

In the Italian system, arbitration (Articles 806 et seq. of the Code of Civil Procedure) faces the insurmountable limit set by **Article 806(2) of the Code of Civil Procedure** and **Article 2060 of the Civil Code**: personal status, the validity of marriage, separation, divorce and orders concerning minor children are excluded from the parties' contractual discretion and are **not subject to arbitration**. Similarly, children's rights to maintenance and, in a manner that is not always entirely clear, a spouse's economic rights (but **not** rights relating to property relations between spouses) are considered non-negotiable. The state court retains a reserve of jurisdiction and an absolute review of legality.

It is open to debate whether there are other rights that are now subject to contractual arrangement: the Cartabia Reform did, in fact, introduce a distinction between rights subject to contractual arrangement and those that are not within the field of family law, without, however, specifying which fall into which category. The prevailing practice, which is moving towards greater contractualisation of family relationships, has found very tentative openings from the Court of Cassation; however, these have not yet been formally established.

B. Disposable property matters

Arbitration is admissible exclusively for disposable property rights arising after the dissolution of the marital status (e.g. division of the statutory community of property, dissolution of inherited estates amongst competent co-heirs, or property disputes amongst shareholders of family holding companies pursuant to *Legislative Decree No. 5/2003*).

5. PARENTAL CONSENT AND THE COCHEM MODEL

A. The 'Italian-style Cochem model'

The 'Cochem Model' (Germany) derives its effectiveness from early, non-adversarial cooperation between judges, lawyers, mediators and social services to protect children from parental conflict. In the absence of a national framework law, numerous Italian courts (e.g. Milan, Rome, Florence) apply protocols inspired by Cochem:

- Scheduling frequent hearings and summoning the parties jointly;
- Early, mediation-based intervention by social services;
- Limiting aggressive written defences and making use of court-appointed experts with a focus on co-mediation.

However, these practices carry the risk of distorting the proceedings:

- 1) The hearing
 - a. is not governed by the Code of Civil Procedure and is 'added' to the first hearing, taking place
 - b. is necessarily scheduled before the parties have set out all their defences (the time limits for which are, moreover, extremely tight: the defendant must enter an appearance 30 days before the hearing, the claimant has the right to reply within 20 days before the hearing, the defendant may file a rejoinder within 10 days before the hearing, and the claimant finally has a final opportunity to adduce counter-evidence within 5 days before the hearing);
 - c. it frequently takes place not before the presiding judge, but before an honorary magistrate;
- 2) the Code of Civil Procedure explicitly provides for the presiding judge's power to attempt an amicable settlement of the dispute. A hearing devoted solely to conciliation, conducted by another party, risks either being a duplication of effort or undermining the judge's conciliatory power;
- 3) even delegating co-mediation to the court-appointed expert risks being counterproductive: the court-appointed expert must carry out an assessment, and the attempt at co-mediation may compromise the main assessment process.

Finally, it should be noted that consensual models are strictly excluded in cases involving domestic violence, abuse or coercive control (Article 473-bis.40 et seq. of the Code of Civil Procedure).

B. Parental coordination

Parental coordination, on the other hand, is a different tool that is becoming increasingly widespread. Under parental coordination, the parties entrust an impartial third party with managing communication between them in the best interests of their minor children, in relation to both day-to-day matters and more significant decisions. A key feature of this mechanism is that, if the parents cannot agree on a specific matter, the parental coordinator may impose their own decision, having heard the parties and provided both parents consent to the coordinator deciding on their behalf. Co-ordination agreements

generally provide for this power to be conferred upon signature and thus at the time the appointment is made.

The parental coordinator may be appointed either out of court or as part of legal proceedings: pursuant to Article 473-bis.26 of the Code of Civil Procedure, the judge, if both parties so request, may in fact appoint an expert *'to intervene within the family unit in order to resolve conflicts between the parties, provide support for the children and facilitate the restoration or improvement of relations between parents and children'*.

6. CONCLUDING REFLECTIONS

The practical experience emerging from the post-Cartabia Reform landscape in Italy paints a mixed picture. Whilst the figures confirm a clear prevalence of consensual resolutions, the real challenge facing us as legal professionals and solicitors is not the **sheer** increase in the number of agreements, but their **sustainability and quality over the long term**.

The real risk, in the day-to-day practice of our courts, is that the drive to reduce litigation may result in 'apparent consensus', where the agreement is not the result of a shared reconciliation or a shared re-evaluation of parenting, but the outcome of an imbalance of power or one party's weariness with the legal process. When an agreement is imposed or endured, it fails in its primary function: to protect the children and prevent future litigation.

To avoid this drift, the role of the family lawyer cannot be reduced to that of a mere 'certifier' of remote agreements. The post-reform cultural transition requires:

1. **Genuine specialisation and multidisciplinary training**, which avoids both the stifling effects of perpetual legal dispute and the illusion of reconciliation at any cost that disregards the protective powers of public policy and the mandatory safeguards for vulnerable individuals (first and foremost, children).
2. **Strict adherence to methodological boundaries**, clearly separating the activity of technical assessment (the remit of the court-appointed expert and the judge) from attempts at mediation or co-mediation, which, if they overlap, risk compromising the expert's findings and undermining the rights of the defence.
3. **Transparent and rigorous international cooperation, which** is indispensable within the European and global judicial landscape, to ensure that agreements negotiated in Italy can circulate and stand up to scrutiny by foreign courts without becoming legal traps for mobile citizens.

The family justice system of the future is not measured by how quickly a case is closed, but by the stability and substantive fairness of the parenting plan we provide to families. This is the true test for the legal profession and the courts.

Davide Piazzoni

Alternative Dispute Resolution in Austrian Family Law

Legal framework, professional competence and the limits of consensus

IAFL Tirana / Panel contribution 15.10.2026

Emanuel Lerch | Attorney-At-Law / Vienna, Austria

Overview

Austria offers voluntary statutory mediation, court-connected counselling and interdisciplinary family court services, but no general pre-litigation mediation requirement in family cases. Consensual dispute resolution is available through private mediation, subsidised family mediation, judicial settlements, several court-connected procedures and lawyer-led negotiations.

1. Question | ADR in Austria: framework, available mechanisms and mandatory elements

a. Main mechanisms at glance

Mechanism	Setting/facilitator	Participation	Outcome
Lawyer-led negotiation	Outside court; parties and counsel	Voluntary	Private agreement; formalisation through court
Registered civil mediation	Outside court; independent registered mediator	Voluntary	Mediated agreement; formalisation through court
Subsidised family mediation	Outside court; generally legal and psychological co-mediators	Voluntary	Agreement; possible public contribution to fees
Judicial settlement	Before competent court	Voluntary settlement	Enforceable judicial title
“Einigungsverfahren”	Pilot at selected courts; specially trained judge not deciding case	Voluntary referral	Often later formalised as judicial settlement;
Family Court Assistance service	Court-connected psychologists and social workers	Court-directed involvement	Support, reports, clarification, facilitation; not an arbitral award
Parenting counselling under § 95 (1a) AußStrG	Qualified provider before consensual divorce with minor children	Mandatory counselling	Proof of counselling; not compulsory mediation

b. Mediation: legal framework and practical access

Statutory mediation: The ZivMediatG, effective since 2004, regulates registered civil-law mediators. Its framework includes professional duties and confidentiality (§ 18), as well as the suspension of certain limitation periods in relation to the mediated dispute (§ 22). Mediators facilitate party-led negotiations; they do not decide the case or represent either side. A mediation agreement does not, merely by being signed, become enforceable.

Court settlement and enforceability: Parties can conclude a judicial settlement. Under § 433a ZPO, a written agreement reached through mediation may be presented to the district court for recording as a judicial settlement. Formal requirements and judicial scrutiny depend on the subject matter, particularly where children are involved.

Family mediation and public funding: Austria offers publicly subsidised family mediation for eligible families, including disputes over separation, divorce, maintenance, property and contact rights. The funded scheme generally uses co-mediation by professionals with legal and psychosocial backgrounds.

c. Court-connected procedures and the 2013 family-law reform

Counselling before consensual divorce: Under § 95 (1) AußStrG, parents of minor children seeking divorce by mutual consent must receive counselling concerning their children's specific needs arising from divorce and demonstrate this to the court. This is a duty to obtain information and counselling, not an obligation to mediate or agree.

Judicial measures and Family Court Assistance Service: In child-related proceedings, § 107 (3) AußStrG permits specified measures, including parental counselling and an initial meeting concerning mediation, subject to the statutory framework. The Family Court Assistance Service (Familiengerichtshilfe), developed with the 2013 reform, is intended provides interdisciplinary assistance to family courts, particularly in custody and contact matters. Its staff include psychologists and social workers. It may assist in clarification, assessment and conflict management, but the court remains the decision-maker.

In practice, however, the Family Court Assistance Service exercises considerable influence over the outcome of proceedings. Although its findings and recommendations are not legally binding and the court formally retains responsibility for the decision, they frequently carry decisive weight in judicial practice. In many cases, the court relies heavily on the Service's assessments, meaning that an institution formally designed to assist the judiciary may effectively determine the outcome of custody and contact disputes.

“Einigungsverfahren” (court-connected settlement facilitation): At selected court locations, particularly in Vienna, an experimental procedure offers a separate, mediation-inspired settlement process in pending civil proceedings. It is modelled on the German “Güterichter” approach. A specially trained judge who is not responsible for deciding the underlying dispute facilitates discussions, usually with limited time resources. The parties’ participation is voluntary.

2. Question 2 | The role of lawyers in ADR

The Austrian family law system is generally strongly oriented towards consensual solutions. Approximately 90% of divorces in Austria are concluded by mutual consent.

One important reason is the structure of Austrian family proceedings. A consensual divorce allows spouses to reach a comprehensive agreement addressing the consequences of their separation, including maintenance, matrimonial property and arrangements concerning their children.

By contrast, where no overall agreement can be reached, the legal issues may need to be addressed in separate proceedings: the divorce itself, spousal maintenance, child maintenance, parental responsibility and contact arrangements. Following the divorce, the division of matrimonial assets and savings requires a separate proceeding. These proceedings run in parallel and can extend over several years.

Consequently, many cases that begin with a contested divorce action end in a negotiated, consensual divorce. This high proportion of consensual divorces should not be equated with an absence of conflict at the outset. Rather, it reflects, at least in part, the practical advantages of pursuing several separate proceedings.

Effective advocacy and cooperation in family law are not opposites. A family lawyer’s task is to explain the client’s legal position, assess the realistic alternative to settlement, secure adequate disclosure, evaluate proposed terms and protect the client’s interests. Lawyers are not neutral third parties; the mediator has a different role. Neither professional should assume the other’s responsibilities.

Lawyers can contribute to escalation through hostile correspondence or unnecessary procedural steps. However, firm legal representation is not synonymous with conflict escalation. Insisting on financial disclosure, challenging an unsafe parenting arrangement or requesting judicial fact-finding is often essential to an informed resolution.

There is no universally correct level of lawyer involvement in mediation. Some parties may benefit from independent legal advice before and after sessions; complex financial, international or imbalanced cases may require direct lawyer participation. In other matters, lawyer-led settlement discussion without a mediator may be more efficient.

Training should go beyond negotiation techniques. Specialist family lawyers need competence in domestic violence, coercive control, child development, communication and interdisciplinary work, as well as awareness of the limits of their own expertise. The decisive professional skill is judgement: knowing when to negotiate, when to involve other specialists and when judicial intervention is necessary. A settlement is not inherently preferable to a well-founded judicial decision.

3. Question 3 | Cross-border agreements: recognition and enforceability

For parental responsibility, Regulation (EU) 2019/1111 (Brussels IIb) provides a framework for circulation of certain judgments and agreements. Articles 64-66 impose specific conditions, including requirements concerning registration and binding legal effect in the Member State of origin. An ordinary private parenting agreement is not automatically entitled to cross-border recognition simply because it was mediated. The Regulation's scope, certificates and child-welfare safeguards must be considered.

Maintenance is governed separately, principally by Regulation (EC) No 4/2009, including rules on court settlements and authentic instruments (Article 48). Matrimonial property may engage Regulation (EU) 2016/1103 in participating Member States; the UK and other non-participating jurisdictions require separate analysis. International Hague instruments may be relevant depending on the state and issue.

4. Question 4 | Arbitration in Austrian family law

Austria is generally receptive to arbitration in commercial disputes, but § 582 (2) of the Code of Civil Procedure (ZPO) excludes claims in family-law matters from arbitration. The fact that a family-law claim is monetary does not make it arbitrable. Statutory spousal maintenance and matrimonial property division therefore cannot be transferred to a private arbitral tribunal.

While parties can settle financial consequences of separation or divorce, subject to substantive and formal legal requirements, Austrian law draws a deliberate distinction between private settlement and private adjudication.

5. Question 5 | Parental consensus, the Cochem model and interdisciplinary cooperation

a. The Cochem Model

The Cochem Model originated in Germany in the early 1990s, in the district of Cochem. It is an approach to resolving parental disputes based on early intervention, interdisciplinary cooperation and the promotion of parental responsibility.

Its idea is that disputes concerning children should not be approached primarily as adversarial proceedings between two parents. Instead, all professionals involved should work towards enabling parents to find a sustainable solution themselves, with the child's best interests as the guiding principle.

The model is characterised by close cooperation between judges, lawyers, youth welfare authorities, psychologists, mediators and other professions. Rather than working independently, these professionals coordinate their interventions and seek to prevent the escalation of parental conflict.

In practice, this involves early court hearings, a preference for oral communication over lengthy adversarial submissions, the involvement of specialised professionals and an emphasis on restoring the parents' ability to cooperate.

b. Implementation in Austria

Austria has not formally adopted the Cochem Model as a nationwide procedural framework. Nevertheless, several elements of the Austrian family justice system reflect similar principles.

The most significant development was the introduction of the Family Court Assistance Service (Familiengerichtshilfe) in 2013. The Family Court Assistance Service consists primarily of psychologists and social workers who assist family courts in proceedings concerning parental responsibility and contact arrangements.

A central aspect of its work is the attempt to facilitate an agreement between the parents, particularly through the so-called clearing procedure. The Family Court Assistance Service actively seeks to achieve a consensual resolution,

usually through direct discussions with the parents and without their lawyers being present.

If an agreement cannot be reached, the Family Court Assistance Service may also conduct more extensive inquiries and provide professional assessments to assist the court in making a decision.

Under § 107 (3) AußStrG, family courts may also order certain supporting measures, including family, parental or educational counselling and attendance of an initial information session on mediation.

c. Criticism of the Cochem Model/parental consensus: Domestic Violence, Power Imbalances and the Limits of Consensus

Despite its emphasis on cooperation and the child's best interests, the Cochem Model has also attracted criticism.

First, critics question the assumption that the parental relationship can be separated from the former intimate relationship. The model is based on the idea that, even where the relationship between the adults has broken down, they can continue to cooperate as parents. This distinction may be unrealistic in cases involving domestic violence (of any kind), particularly coercive control. Violence and controlling behaviour do not necessarily end when a relationship ends. They may continue through parenting arrangements, financial dependence, repeated litigation or other forms of post-separation abuse.

Second, the emphasis on parental consensus may obscure significant power imbalances. Where one parent has experienced intimidation, threats or violence, negotiations do not necessarily take place between equally autonomous parties. An agreement reached under institutional or interpersonal pressure may therefore not represent genuine consent. Critics argue that a system which repeatedly encourages both parents to cooperate may inadvertently expose victims to further psychological pressure and allow abusive behaviour to continue through the legal process.

Third, critics question the empirical evidence supporting the model. Settlement rates are frequently presented as an indicator of success, although they reveal little about whether agreements were reached voluntarily or under pressure from courts and other professionals. Nor do they establish whether such agreements remain workable over time or lead to a lasting reduction in conflict and litigation. These distinctions are essential when assessing the effectiveness of consensus-oriented approaches.

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FAMILY MEDIATION AND AMICABLE RESOLUTION – THE FRENCH PERSPECTIVE

In France, family mediation sits within a broader amicable policy built over thirty years. This contribution distinguishes mediation, which relies on a neutral third party, from the other amicable routes, in particular those led by lawyers and derived from collaborative law. It follows the five questions of the panel.

1. STATE OF PLAY OF AMICABLE METHODS; MEDIATION, MANDATORY OR VOLUNTARY?

Question: Where does your jurisdiction stand in developing alternative dispute resolution methods – mediation, conciliation, participatory procedure, collaborative law? Which recent reforms have shaped this development, and have they actually changed practice? Several countries require an attempt at amicable settlement before a case can be brought to court. Is such a requirement compatible with the voluntary nature of ADR and with the right of access to justice? What results has it produced where it exists?

Family mediation is firmly anchored in French law. France tested an obligation to try it before going to court, and chose not to make that obligation permanent.

1.1 Key dates for mediation

Date	Text	What it changed
1995	Law of 8 February 1995	Judicial mediation
2002	Law of 4 March 2002 on parental authority	Family mediation enters the Civil Code (art. 373-2-10)
2003	Decree of 2 December 2003	State diploma of family mediator
2004	Law of 26 May 2004 on divorce	Mediation in divorce proceedings (art. 255 Civil Code)
2011	Ordinance of 16 November 2011	Conventional mediation; transposition of Directive 2008/52/EC

Date	Text	What it changed
2016	Law of 18 November 2016, art. 7	Experiment with mandatory prior family mediation (TMFPO)
2019	Law of 23 March 2019	The judge may order a mediation information meeting even in the final decision
2020	Law of 30 July 2020	No mediation where violence or control by one parent over the other is alleged
2024	31 December 2024	End of the TMFPO, not extended nationwide
2025	Decree of 18 July 2025	Amicable rules recodified; conciliating the parties becomes part of the judge's mission (art. 21 CPC)

1.2 Family mediation today

Family mediation relies on a neutral, trained third party. Family mediators can hold a state diploma, created in 2003, although family mediation is not a regulated profession.

Mediation may be conventional, when the parents approach a mediator directly, or judicial. In the latter case, the family judge proposes mediation and, with the parents' consent, appoints a mediator (arts. 255 and 373-2-10 of the Civil Code). The judge may also order the parents to attend an information meeting with a mediator. This order is now a genuine obligation, and failing to comply can be sanctioned.

A family mediation usually unfolds in four stages:

1. **An information meeting**, where the mediator explains the process and the parents decide whether to continue.
2. **Mediation sessions** with both parents, on the children and the practical arrangements of their life.
3. **A written agreement**, reviewed by each parent's lawyer where they have one.
4. **Approval by the family judge**, who checks that the agreement sufficiently protects the child's interests and that consent was freely given (art. 373-2-7 of the Civil Code).

Mediation is excluded where violence is alleged or where one parent is under the other's control. **Family mediation is well anchored in the law; the question today is how to bring more parents to it.**

1.3 The other amicable routes

Mediation must be distinguished from the other amicable routes, which follow different logics.

- **Conciliation**, before a conciliateur de justice, a free volunteer, since 1978. Since 2019, a prior attempt at amicable resolution is mandatory for claims up to 5,000 euros and certain

neighbourhood disputes (art. 750-1 CPC). The Conseil d'État annulled this rule in 2022 because its exceptions were too vague; it was re-established by a decree of 11 May 2023.

- **The lawyer-led routes, derived from collaborative law.** Collaborative law is a contractual method under which the lawyers withdraw if negotiation fails. The participatory procedure, created by the law of 22 December 2010, was inspired by it. Divorce by mutual consent without a judge, since 2017, also rests on the lawyers. Since 2025, conventional case preparation allows lawyers to prepare a case themselves, which is then heard first.
- **The amicable tools before the judge:** the amicable settlement hearing, before a judge who will not decide the case (since 2023), and parental consensus, tested in family courts since 2023 (see question 5).

What sets these routes apart from mediation is simple: either there is no third party and the lawyers negotiate together for their clients, or the judge themselves steers the parties towards an agreement.

1.4 Obligation or freedom? The lesson of the TMFPO

In family matters, French law has explored three degrees of constraint.

An obligation to try: the TMFPO experiment. Created by article 7 of the law of 18 November 2016 and applied from 2017 in eleven courts, the *tentative de médiation familiale préalable obligatoire* required parents to attempt family mediation before asking the judge to change arrangements for their children: parental authority, the child's residence, contact or child support. Without a prior attempt, the application was inadmissible, and the judge could raise this of their own motion. The requirement did not apply in cases of violence or control by one parent over the other. The experiment ended on 31 December 2024 and was not extended nationwide.

An obligation to be informed. The family judge may order the parents to meet a family mediator for an information meeting, since 2019 even in the final decision. Since the decree of 18 July 2025, this order is a genuine obligation: a party who fails to attend the information meeting without a legitimate reason faces a civil fine of up to 10,000 euros (arts. 1533 et seq. CPC). Since 1 October 2026, the order is also an administrative measure that cannot be appealed.

No obligation to agree. Family mediation always requires the parents' consent, and either parent can stop at any time.

Three limits frame any obligation:

- **Violence:** no mediation where violence is alleged or one parent is under the other's control.
- **Access to the judge:** an obligation to try is acceptable only if it does not block access to the court, as the Conseil d'État recalled in 2022.
- **European law:** in *Alassini* (C-317/08 to C-320/08, 18 March 2010) and *Menini* (C-75/16, 14 June 2017), the Court of Justice accepted mandatory prior attempts provided they lead to no binding decision, cause no substantial delay, suspend limitation periods and cost little or nothing.

After the TMFPO, the French choice is information and incentive rather than a general obligation to try family mediation.

2. THE LAWYER IN FAMILY MEDIATION AND THE LAWYER-LED ROUTES

Question: How do lawyers move from an adversarial approach to supporting their clients toward agreement? What skills does this require, and do initial and continuing training prepare them for it? Is the lawyer a full participant in ADR, or merely an adviser alongside the mediator?

In family matters, the lawyer is the partner of the mediator, not a competitor. Through collaborative law and the participatory procedure, the lawyer is also an amicable negotiator in their own right.

2.1 The lawyer's place in family mediation

Before mediation, the lawyer informs the client about family mediation, assesses whether it is suitable, screens for violence or control, helps the client clarify their priorities for the children, and contacts the other parent's lawyer.

During mediation, the process belongs to the parents. The lawyer advises the client between sessions, or attends when useful, and checks the legal consequences of the options discussed.

After mediation, the lawyer drafts or reviews the agreement and secures it, in particular by asking the family judge to approve it. Where needed, the lawyers can continue the work through a participatory procedure or, for spouses, a divorce by mutual consent without a judge.

2.2 Collaborative law and the participatory procedure

Collaborative law and the participatory procedure belong to the same family, distinct from mediation: there is no third party, and the lawyers negotiate together for their clients.

	Collaborative law	Participatory procedure
Nature	A contractual method practised by specially trained lawyers; no specific statute	A procedure set out in the Civil Code (arts. 2062 et seq.) and the Code of Civil Procedure
Origin	Born in the United States around 1990, brought to France by practitioners	Created by the law of 22 December 2010, inspired by collaborative law
Who takes part	The parties and their collaborative lawyers, sometimes with other professionals	The parties, each assisted by a lawyer; no third party
Key commitment	If negotiation fails, the lawyers withdraw and cannot represent their clients in court	Negotiate in good faith for a set period; limitation periods are suspended and the lawyers can continue in court
Outcome	An agreement formalised by the lawyers	An approved or enforceable agreement, or a case prepared

	Collaborative law	Participatory procedure
		by the lawyers and heard first (conventional case preparation, 2025)

Two further instruments rest on the lawyers. **Divorce by mutual consent without a judge** (arts. 229-1 et seq. of the Civil Code), in force since 1 January 2017, requires one lawyer per spouse; the agreement is countersigned by both and deposited with a notary after a fifteen-day reflection period. It is excluded when a minor child asks to be heard by a judge. And since the law of 22 December 2021, settlements reached in mediation, conciliation or a participatory procedure and countersigned by each party's lawyer can be made enforceable by the court registry.

2.3 What the change requires

The shift is above all one of posture:

From	To
Win custody	Build a parenting plan
Write to accuse	Write without grievances
Speak for the client	Help the parents talk to each other
Close the file	Secure an agreement that lasts

Two conditions will make the difference. **Joint training:** lawyers and family mediators trained together, so that each understands the other's role. **Fair pay:** assisting a client in mediation is real work, which must be recognised and paid, including under legal aid. **The lawyer's role is not reduced; it is transformed.**

3. INTERNATIONAL FAMILY MEDIATION AND CROSS-BORDER AGREEMENTS

Question: In cross-border disputes, particularly family disputes, how can the circulation and enforcement of agreements reached through mediation be ensured? Is the current European and international framework adequate?

Within the European Union, the legal tools for the circulation of family agreements now largely exist. The difficulties remain the hearing of the child, relations with third states, and the scarcity of practitioners trained in international mediation.

3.1 The European framework

The Mediation Directive 2008/52/EC covers cross-border civil and commercial disputes. It requires Member States to make written mediation agreements enforceable, to protect the confidentiality of mediation, and to prevent limitation periods from expiring during mediation. France transposed it by Ordinance n° 2011-1540 of 16 November 2011. The Directive gave mediation a common basis across the

Union, but it did not change practice significantly. The European Commission's 2016 report on its application noted that recourse to mediation remained limited.

The Brussels II ter Regulation (EU) 2019/1111, applicable since 1 August 2022, was the decisive step for family agreements. Its articles 64 to 68 cover authentic instruments and agreements:

- agreements on divorce or legal separation that have binding legal effect in the Member State of origin, and that have been registered by a public authority, are recognised in the other Member States without any special procedure;
- agreements on parental responsibility are recognised and enforceable;
- in both cases, circulation relies on a certificate issued in the Member State of origin.

For France, this settled the uncertainty surrounding the divorce by mutual consent without a judge, which is deposited with a notary. Before the Regulation, foreign authorities sometimes questioned whether such a divorce, with no court decision, could be recognised.

The Regulation also strengthens mediation where it is most delicate. In international child abduction cases, the court must invite the parties, as early as possible, to consider mediation or another means of amicable resolution (article 25).

For property matters, the Regulations on matrimonial property regimes (2016/1103), on the property consequences of registered partnerships (2016/1104) and on successions (650/2012) organise the circulation of authentic instruments and court settlements. Agreements on the liquidation of a matrimonial regime or the partition of an estate can therefore travel within the participating Member States. The Maintenance Regulation (4/2009) allows authentic instruments and court settlements on child support to circulate.

3.2 The persisting difficulties

The child's voice. Recognition of an agreement on parental responsibility may be refused if the child, having the capacity to form views, was not given an opportunity to express them. An agreement negotiated between the parents alone, however balanced, may stop at the border. In French domestic law, the issue is handled upstream: a divorce without a judge is excluded when a minor child asks to be heard by the judge (article 229-2 of the Civil Code). But the absence of a request does not necessarily satisfy the standards of other Member States.

Third states. Outside the European Union, recognition depends on the private international law of each state. A French divorce without a judge may not be recognised in states that require a judicial or administrative decision, including the United Kingdom since Brexit. In international situations, French practitioners therefore often recommend a judicial route, or the approval of the agreement by the family judge, so that the outcome takes the form of a judgment.

Beyond the EU framework. The 1996 Hague Convention on parental responsibility and the 2007 Hague Convention on child support provide a basis for circulation with many third states. The Hague Conference has published practical guidance on the recognition and enforcement of cross-border family agreements involving children. By contrast, the 2019 Singapore Convention on mediated settlement agreements expressly excludes family, inheritance and employment matters, and France is not a party to it.

3.3 What is needed

The tools for circulation exist. What is missing is a practice: mediators trained in international family matters and able to work in several languages, lawyers able to draft agreements that will be recognised abroad, and judges who refer cases to mediation early. France has a dedicated international family mediation service within the Ministry of Justice. **The next step is to build trust between national systems, so that an agreement made in one state is treated as a reliable solution in another.**

4. ARBITRATION AND FAMILIES

Question: What place does arbitration hold in your legal system today? In which fields is it actually used, and what recent legislative or practical developments have shaped it? Does it play any role in family or property matters, such as matrimonial property, succession or estate structures?

For families, the Civil Code excludes arbitration on personal status and divorce, and matters concerning the children are traditionally treated as unavailable. Yet the contractualisation of family law has opened a real debate on the very notion of unavailable rights. For now, mediation remains the natural route.

4.1 What the law allows

Under article 2059 of the Civil Code, parties may arbitrate only on rights they can freely dispose of. Article 2060 excludes questions of personal status and capacity, divorce and legal separation.

- **Excluded by the Civil Code:** personal status, divorce and legal separation (art. 2060), and matters concerning the children, traditionally treated as not freely disposable. These remain with the judge.
- **In principle:** the liquidation of the matrimonial regime once divorce has been pronounced, when the spouses' property rights become freely disposable; the partition of an estate between adult heirs, within public policy and the rules protecting forced heirs.
- **Uncertain:** an arbitration clause imposed by a testator on the heirs, generally considered unenforceable against forced heirs as regards their reserved share.
- **Yes:** an arbitration clause in the articles of association or shareholders' agreement of a family company, such as a property company (SCI) or a family holding.

In practice, family arbitration remains marginal. The liquidation of matrimonial regimes and the partition of estates are handled by notaries and, in case of dispute, by the courts.

A real debate on unavailable rights. The contractualisation of family law calls this exclusion into question. Since 2017, spouses can divorce by an agreement countersigned by their lawyers, without a judge. Parents can have their agreements on the exercise of parental authority and child support approved by the family judge (art. 373-2-7 of the Civil Code). If divorce and the organisation of the children's lives can be settled by agreement, the argument that these rights are unavailable loses much of its force. Some therefore argue for opening arbitration, at least for the consequences of separation. The limit would remain the protection of the child's interests, and the judge's control over it.

4.2 A reform designed for business arbitration

Paris is one of the world capitals of arbitration. It hosts the International Court of Arbitration of the ICC, and French arbitration law (arts. 1442 to 1527 CPC, in the version of the decree of 13 January 2011) is among the most arbitration-friendly. A reform is under way: a working group chaired by François Ancel and Professor Thomas Clay proposed a standalone Arbitration Code in March 2025, and a first decree (n° 2026-741 of 6 August 2026) enters into force on 1 January 2027. It recognises electronic awards and strengthens the supporting judge's powers over interim measures.

This reform concerns sadly only business disputes. Arbitration remains rare between individuals for two reasons: cost, and the rule that an arbitration clause cannot be relied on against a party who did not contract in a professional capacity, unless that party accepts it (art. 2061 of the Civil Code).

4.3 Another path: England and Wales

England and Wales have offered family arbitration for financial disputes on separation since 2012, and for some disputes concerning children since 2016. **For France, mediation is the natural route for families; whether to open an arbitration path for family property is a debate worth having.**

5. PARENTAL CONSENSUS

Question: Drawing on the Cochem model in Germany, parental consensus relies on close cooperation between judges, lawyers, mediators and social workers, with an early first hearing and a non-adversarial approach. The aim is to keep parents cooperating and to shield the child from the conflict. Do similar approaches exist in your jurisdictions? What conditions are needed to develop them?

Parental consensus is developing in France through local court experiments, without a specific statute. It is a change of method rather than a new procedure: a fast first hearing, a non-adversarial posture shared by all professionals, and a referral to mediation when no agreement is reached at once.

5.1 From Cochem to French courts

The approach originates in the local court of Cochem, in Germany. From the early 1990s, its family judge, lawyers, youth welfare services, counselling services and mediators agreed to work together in parental disputes. They committed to act quickly, before the conflict hardens; to avoid written exchanges that blame the other parent; and to steer every professional towards an agreement in the child's interest. German law later generalised part of this approach: in proceedings concerning children, the first hearing must take place within one month, and the court must work towards an agreement between the parents (sections 155 and 156 of the Act on Proceedings in Family Matters, FamFG).

In France, parental consensus relies on general provisions:

- article 21 of the Code of Civil Procedure, as amended in 2025, which asks the judge to determine with the parties the most suitable way to resolve their dispute;

- article 373-2-10 of the Civil Code, which allows the family judge to propose or order family mediation;
- article 373-2-7 of the Civil Code, on the approval of the parents' agreements;
- article 388-1 of the Civil Code, on the hearing of a child capable of discernment.

The courts of Arras (since 2023) and Privas (since 2025), as well as Grenoble, Montpellier and Lille, have experimented with the method. The Ministry of Justice presented it to practitioners on 26 June 2026, and the tribunal judiciaire de Paris has prepared its own experiment from September 2026.

5.2 How a parental consensus hearing works

1. **The application** is written without grievances. It is factual and short.
2. **A first hearing** takes place within one to two months. The parents and their lawyers attend.
3. **A collective session** opens the hearing: the judge speaks to all the families together, about the child.
4. **Each family** then meets the judge with their lawyers, with no pleadings, to look for an agreement.
5. **The outcome:** a full agreement is recorded and approved on the spot; a partial agreement is recorded and the remaining issues are referred; without agreement, the case is referred to mediation, parenting coordination or an expert assessment, with interim measures if needed and a judgment hearing about three months later.

The scheme is intended for unmarried parents and for requests to modify earlier decisions. It excludes divorce proceedings, urgent cases and situations of domestic violence.

5.3 A transformed role, and the conditions for success

For lawyers, parental consensus is a real change of role: assessing with the client whether the case is suitable, contacting the other parent's lawyer, preparing the client for a hearing without pleadings, and helping build solutions. **We don't write to accuse, we don't plead, we help build.**

As President of the Institut du droit de la famille et du patrimoine (IDFP), I promote this approach with two other associations. Experience so far suggests four conditions:

- **Shared commitment:** judges, lawyers and mediators trained together and committed to the same method; it cannot be imposed on the unwilling.
- **Resources:** enough family mediators and parenting coordinators, and court schedules that allow a first hearing within weeks.
- **Clear limits:** never where there is violence, control by one parent over the other, or danger to the child.
- **Evaluation:** agreement rates, durability and timing measured before any generalisation.

The challenge is now to move from successful local initiatives to a national practice, without losing the commitment that makes them work.

CONCLUSION

Three messages emerge from the French experience. First, family mediation is informed and strongly encouraged, never imposed: the experiment with mandatory prior family mediation was not extended, and the judge's tools are information and incentive. Second, lawyers are the mediator's partners, and through collaborative law and the participatory procedure, amicable negotiators in their own right; they must be trained and paid for that role. Third, children come first: no mediation where there is violence, and the child's voice must be heard, including for agreements to circulate across borders.

Family mediation and amicable resolution – Czech perspective

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1. Introduction

Czech family disputes are still commonly resolved through court proceedings, even though the law provides several routes to agreement. In practice, “ADR” is not one unified system. It is a combination of private negotiations between the parties, family mediation, assistance from child-protection authorities and, in some places, interdisciplinary cooperation (inspired by the German Cochem model). Availability and coordination vary by locality and by the professionals involved.

There is no general statutory duty to attempt mediation or to reach an amicable settlement before commencing court proceedings. Access to a court is not conditional on first trying of ADR.

2. Main routes to an agreement

Direct negotiation and agreement

Parents may negotiate directly, with help from lawyers or other professionals. This is often the simplest route where communication between the parties remains possible, and the disputed issues are limited. Lawyers can explain legal consequences, test whether a proposal is realistic, make terms precise and ensure that an agreement is properly formalized.

Negotiation is not a separate statutory procedure and does not require a mediator. However, under the Czech procedural law, the judge has a general obligation to primarily seek to ensure that the dispute is resolved amicably (§ 100 (1) of the Act No. 99/1963 Coll., Czech Civil Procedure Code).

With respect to proceedings concerning the minors, there is a special rule which requires the judge to encourage the parties to reach an amicable resolution of the matter. To this end, the court shall discuss the matter with the parties, communicate its preliminary assessment of the case, and draw their attention to the applicable legal provisions, the opinions of the Supreme Court, relevant decisions published in the Collection of Judicial Decisions and Opinions, and decisions of the Constitutional Court (§ 468b (4) of the Act No. 292/2013 Coll., on Special Judicial Proceedings).

Family mediation

From the perspective of a Czech family lawyer, mediation is a well-established and increasingly encouraged method of resolving family disputes, particularly disputes concerning children. It is fundamentally voluntary, even though the courts can require parties to attend the initial meeting with a mediator.

Mediation is particularly valuable in parenting disputes because it allows parents to develop more flexible agreements than those typically contained in court decisions. However, even agreements reached by parents through mediation must remain consistent with the child’s best interests, and parents cannot use mediation to circumvent mandatory legal requirements.

Apart from parenting disputes, other types of family disputes can be mediated as well. The types of disputes that can be mediated include disputes regarding child maintenance, relocation and international travel, divorce and separation, matrimonial property, international child abduction and succession and inheritance.

Under Act No. 202/2012 Coll., on Mediation, a registered mediator helps the parties communicate and explore options but does not decide the dispute. Mediation is generally voluntary; its success

depends on informed participation, willingness to negotiate and the suitability of the case to this type of dispute resolution. A mediator is impartial, while each party's lawyer protects that client's interests.

To become a mediator, the applicant is required to pass an exam that covers mediation techniques, relevant legislation, psychology and sociology. There is also an oral examination where mediation skills of the applicant are assessed.

In the Czech Republic, a mediator must be registered with the Ministry of Justice to practise as a registered mediator under the Mediation Act. Parties can find mediators in the publicly accessible list of mediators available online.

Court-referred first meeting

Section 100(2) of the Civil Procedure Code allows a court, where appropriate, to order parties to attend an initial meeting with a registered mediator for up to three hours. This is a limited prompt to consider mediation—not an order to complete mediation or reach a settlement, and not a general precondition to filing a family case. There is no general duty to attempt mediation before asking a court to decide a dispute.

Family conferences and support through OSPOD

OSPOD (the local authority for the social and legal protection of children) has a child-protection role and is independent from the court. Apart from protecting the best interest of the child, it also offers social counselling to parents.

Family conferences are one collaborative tool: they bring relevant family members together and help them find a solution that is in the best interest of the child. It must be noted that their use is not uniform across all local authorities.

Educational sessions

In the Czech Republic, parental educational meetings (“edukativní setkání”) are designed to help divorcing or separating parents understand the psychological impact of parental conflict on their children, recognise their shared parental responsibilities and improve communication and cooperation. They consist of a lecture followed by optional personal consultation with a professional in social counselling. The benefit of this service is a reduced price for individual consultation.

Educational sessions became part of the Czech judicial practice in 2016. The legislative framework for court-directed professional assistance was further developed by the family law reform effective from 1 January 2026.

These meetings can be viewed as a very positive development, particularly because parents involved in highly emotional disputes sometimes lose sight of how their conflict affects their children. However, the effectiveness of these meetings will depend on the quality of the professionals involved and the individual circumstances of the family. The meetings should not become merely a formality or a means of pressuring parents into agreements, especially in cases involving domestic violence or serious power imbalances.

Cross-border family mediation

In cases that include an international element, an important role is played by the Office for International Legal Protection of Children (ÚMPOD). This institution actively promotes amicable resolutions in cross-border family disputes.

The experts from ÚMPOD can facilitate communication between parents, explain relevant legal issues and help parents explore settlement options. It also cooperates with mediation professionals and psychologists.

What happens when mediation succeeds

Under § 7 of the Mediation Act, the parties may conclude a written mediation agreement. However, a mediation agreement has to be validated by a court judgment in order to be enforceable.

Practical challenges

First, although judges are increasingly encouraged to promote amicable settlements, mediation cannot be effective without a genuine willingness to cooperate. A mandatory initial meeting does not necessarily lead to meaningful negotiations.

Second, it must be noted that mediation is not appropriate in every case. Particular care is necessary where there is domestic violence, coercive control or a serious imbalance of power between parents.

Third, mediation may produce a comprehensive agreement covering matters that cannot all be incorporated into an enforceable judicial decision. It must be noted that the practice differs: whereas some judge include only enforceable parts of an agreement into a judgment, there have also been cases where judges copy the whole agreement into the judgment. This is not desirable as the judge should always make sure that the judgment is enforceable.

Nevertheless, if a judge refuses to include some of the provisions of the agreement into the judgment, the agreement might still be useful in case of future disputes to demonstrate the will of the parties.

3. Parental agreements and the “family reform” effective from 1 January 2026

On 1 January 2026, a significant reform of Czech family law entered into force through Act No. 268/2025 Coll., amending the Czech Civil Code and related legislation. The reform aims to modernise divorce and child-related proceedings, reduce parental conflict, encourage amicable settlements and strengthen the protection of children's rights and interests.

One of the most significant changes is the abolition of the traditional legal categories of sole, alternating and joint custody. Instead, the law emphasises the child's right to the care of both parents and focuses on determining the actual extent of each parent's involvement in the child's upbringing.

Where parents agree, the court may decide that the child remains in the care of both parents without specifying a detailed parenting schedule. If no such agreement is reached, the court determines the extent of each parent's care based on the child's best interests. Importantly, the reform does not introduce an automatic presumption of equal parenting time.

The reform also simplifies divorce proceedings. The legislation facilitates divorce by mutual agreement, reduces procedural formalities, reduced the court fee and limits the examination of the reasons for marital breakdown. The objective is to make divorce proceedings faster, less adversarial and more focused on resolving the practical consequences of separation.

On the other hand, it should be noted that where spouses have minor children, divorce proceedings and proceedings concerning parental responsibility and child maintenance are combined into a single proceeding, which slows the process down.

In addition, the reform introduces a new procedural mechanism known as a provisional decision (“prozatímní rozhodnutí”), intended to regulate a child's circumstances temporarily while proceedings are pending. Unlike the previous general interim measures, the new procedure

generally requires that both parents be given an opportunity to express their views before a decision is made. Provisional decisions are time-limited, while urgent protective measures remain available where a child is seriously endangered.

Further changes concern child maintenance, enforcement of parenting arrangements and children's protection against violence. Courts are encouraged to consider the financial obligations of both parents, and new enforcement mechanisms allow compensatory parenting time where a parent unjustifiably prevents the other parent from exercising court-ordered care. The Civil Code also expressly recognises that children must be brought up without corporal punishment, psychological suffering or other degrading treatment.

From a practitioner's perspective, the reform represents a shift away from formal custody labels and adversarial litigation towards a more flexible, child-centred approach based on shared parental responsibility and parental cooperation, which can be viewed as a positive step.

However, its practical success will depend on how consistently the courts implement these principles, particularly in highly contentious cases and disputes involving parents living in different countries.

Since January 1, our firm has had experience with around ten divorces. From my experience, the preliminary opinion of the judge together with the discussion about the possibilities with the judge proved to be helpful in the process of finding an amicable solution.

Usually, the problem is not the divorce part, since in my experience both parties want to get divorced. The strongest conflicts arise when it comes to custody. However, even if a case with great animosity of Czech parents, the court was able to lead the parents to an agreement.

What I still perceive as an issue is the problem of the Czech courts to act fast when it is needed. On several occasions we filed for the provisional decisions asking for a fast decision on a pressing matter related to the custody. However, the judges repeatedly take months to issue such provisional decision.

4. Interdisciplinary cooperation and Cochem-inspired practice

The Czech Republic has gradually adopted principles of the Cochem model (Cochemská praxe), an approach to resolving parental disputes that originated in Germany in the early 1990s.

The model is based on interdisciplinary cooperation between judges, lawyers, child protection authorities, mediators, psychologists and other professionals involved in family proceedings. Its primary objective is to reduce parental conflict, protect the child's relationship with both parents and help parents regain their ability to communicate and make decisions together.

An important feature of the model is the emphasis on early intervention and the swift resolution of disputes. Rather than focusing on which parent should win the proceedings, the professionals involved work together to encourage parents to reach an agreement in the best interests of their child. Judges take a more active role in facilitating settlement, while lawyers are encouraged to avoid unnecessarily confrontational litigation strategies.

The principles of the Cochem model have influenced Czech family law practice, although their practical application varies between individual courts. The Czech Office for International Legal Protection of Children has also promoted interdisciplinary cooperation, including its potential application to cross-border parental disputes.

From a practitioner's perspective, I consider this approach particularly valuable because a court decision alone rarely resolves the underlying conflict between parents. However, its success depends on effective cooperation between professionals and must not come at the expense of procedural fairness, the child's individual needs or the protection of vulnerable parents and children.

5. Arbitration and family law

Arbitration has a well-established place in the Czech legal system, although it is predominantly used in commercial disputes, including international trade, construction and contractual disputes.

One of the most significant developments was the restriction of consumer arbitration in 2016, following concerns about unfair arbitration clauses and insufficient consumer protection. Since then, arbitration has become much more clearly associated with commercial and other property-related disputes.

From a family law perspective, however, there is an interesting distinction under Czech law. While matters such as divorce, parental responsibility and child maintenance cannot be resolved through arbitration, disputes concerning matrimonial property can.

In fact, the Czech Supreme Court expressly confirmed in a 2016 judgment that the division of matrimonial property may be submitted to arbitration, because it constitutes a property dispute that the parties are legally entitled to settle by agreement.

Nevertheless, in my experience of Czech family law practice, arbitration is not commonly used even for matrimonial property disputes. Parties generally prefer to negotiate a settlement or, if negotiations fail, bring the matter before the ordinary courts.

As regards succession, probate proceedings and the determination of heirs remain within the jurisdiction of the courts. However, separate commercial or contractual disputes involving family assets may be suitable for arbitration.

I believe arbitration could have greater potential in complex matrimonial property disputes, particularly where the spouses have significant business interests or assets located in several jurisdictions. Its confidentiality and the possibility of appointing arbitrators with specific financial or commercial expertise could be particularly valuable.

However, in cross-border family cases, we must also consider whether an arbitral award concerning matrimonial property would actually be recognised and enforceable abroad.

Ultimately, the Czech experience demonstrates that there is a difference between what the law permits and what practitioners actually use. Although arbitration is legally available for certain family-related property disputes, it has not become an established alternative to court proceedings in Czech family law practice.

6. Cross-border agreements and circulation of decisions

In the Czech Republic, the recognition and enforcement of cross-border family agreements and judicial decisions are governed primarily by EU regulations, international conventions and, where these instruments do not apply, Act No. 91/2012 Coll., on Private International Law.

Within the EU, the principal instruments are Regulation (EU) 2019/1111, governing matrimonial matters and parental responsibility, and Regulation (EC) No 4/2009, governing maintenance obligations. These instruments significantly facilitate the recognition and enforcement of decisions and certain formally recognised agreements between participating Member States.

Under Czech law, parents may reach agreements concerning parental responsibility, parenting arrangements and child maintenance, including through mediation. However, where enforceability is important, particularly in cross-border cases, obtaining court approval is generally the most reliable approach. Once approved by the competent Czech court, the agreement forms part of a judicial decision which may circulate under the applicable European or international instruments.

A particular challenge arises where parents conclude comprehensive agreements covering several matters, such as parental responsibility, international relocation, maintenance and travel arrangements. Not every provision of such an agreement can necessarily be incorporated into an enforceable court decision, and different parts of the agreement may fall under different legal instruments.

Another important consideration is international jurisdiction, particularly where the child's habitual residence changes during the negotiations or before the agreement is approved. Such changes may affect which court has jurisdiction, although the consequences depend on the applicable jurisdictional rules and whether proceedings are already pending.

Outside the EU, the recognition and enforcement of decisions depend primarily on the applicable international conventions, particularly the 1996 Hague Child Protection Convention and the 2007 Hague Child Support Convention, as well as any relevant bilateral treaties.

Where no applicable EU instrument or international convention governs recognition, Czech private international law provides the relevant framework. Depending on the type of decision, recognition may occur without separate proceedings or may require a specific judicial procedure. For example, certain foreign divorce decisions involving Czech nationals require recognition by the Czech Supreme Court.

From a Czech practitioner's perspective, the main challenge is often not reaching an agreement but ensuring that it can be effectively implemented and enforced in all jurisdictions concerned. Therefore, early cooperation between lawyers in the relevant countries is essential, particularly when drafting agreements concerning children. Such cooperation helps ensure that the agreement is approved by the appropriate authority, contains sufficiently precise and enforceable obligations, and can produce the intended legal effects abroad.

7. Conclusion – the Czech perspective

The Czech family law reform, effective from 1 January 2026, represents a significant step towards a less adversarial and more child-centred approach to family disputes. By abolishing the traditional categories of sole, alternating and joint custody, the reform shifts the focus from custody labels to the actual extent of each parent's involvement in the child's life. Where parents agree, the court may leave the detailed arrangements to them; where they disagree, the court determines the extent of each parent's care.

The reform also strengthens the court's role in promoting amicable settlements. Judges are expressly required to discuss the case with the parents, communicate their preliminary assessment and encourage them to reach an agreement. From my recent experience, this more active judicial involvement has already proved helpful, even in highly contentious disputes.

However, the reform's practical impact remains mixed. Although it creates better conditions for negotiated solutions, significant delays persist, particularly when urgent decisions concerning children are needed. The consolidation of divorce and child-related proceedings may also complicate matters where parents disagree about parenting arrangements but agree on the divorce itself.

Ultimately, the success of the reform will depend not only on the legislation, but also on how effectively and consistently Czech courts implement it. The objective should be to achieve timely, sustainable and enforceable arrangements that protect the child's best interests, rather than simply increasing the number of parental agreements.

Selected legislation and further reading

- Act No. 202/2012 Coll., on Mediation — <https://www.e-sbirka.cz/sb/2012/202>
- Code of Civil Procedure, Act No. 99/1963 Coll., section 100(2) — <https://www.e-sbirka.cz/sb/1963/99>
- Act No. 268/2025 Coll. (family-law reform, effective 1 January 2026) — <https://www.e-sbirka.cz/sb/2025/268>
- Act No. 216/1994 Coll., on Arbitration — <https://www.e-sbirka.cz/sb/1994/216>
- Ministry of Justice: Divorces and child care in 2026 – what changes? — <https://msp.gov.cz/web/msp/rozcestnik/-/clanek/rozvody2026>
- ÚMPOD: publications and project outputs, including cross-border mediation and Cochem-inspired practice — <https://umpod.gov.cz/publikace-a-dalsi-vystupy-z-projektu>
- Studničková, “Development of Interdisciplinary Collaboration in the Care of a Minor Child Proceedings”, *Právník* 2/2026 — <https://www.ilaw.cas.cz/casopisy-a-knihy/casopisy/casopis-pravnik/archiv/2026/2026-2.html?a=4005>

IAFL INTRODUCTION TO EUROPEAN FAMILY LAW, TIRANA 2026

ADR IN FAMILY MATTERS – THE ALBANIAN PERSPECTIVE

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1. STATE OF PLAY OF AMICABLE METHODS; MEDIATION, MANDATORY OR VOLUNTARY?

1.1. Available amicable routes for family disputes

Albania has made significant progress in establishing a legal framework for alternative dispute resolution, applicable in a wide range of disputes, including family matters. Several amicable routes are available for family disputes.

- **Reconciliation.** In a contested divorce, the court must first hold a compulsory reconciliation session (art. 134 of the Family Code). If the plaintiff fails to attend without reason, the court may close the case (art. 135); if reconciliation still seems possible, the court may postpone its decision for up to one year (art. 136). Where parents disagree on a matter concerning their child, the court also tries first to reconcile them (art. 221). This is **conciliation by the judge, not mediation**.
- **Divorce by mutual consent.** The spouses file a joint request with an agreement on the children, child support and, where needed, maintenance (art. 125). The judge hears each spouse separately, then together, and checks that consent is real (arts. 126 and 127). If the agreement does not sufficiently protect the children, the judge may suspend the case for three months so that it can be revised (art. 128).
- **Settlement in court.** During proceedings, the judge may seek an agreement between the parties; a court-approved settlement is enforceable (arts. 158/ç and 510 CPC).
- **Mediation.** The Albanian Mediation Law opens mediation to family disputes and asks judges and lawyers to refer parties to it, but it imposes no requirement to attempt mediation before going to court.

1.2 Family mediation today

The first law regulating mediation in Albania, after the change of the political and economic regime in the 90s, was Law No. 8465, dated 11.3.1999 “On mediation for the amicable settlement of disputes”. Law No. 9090, dated 26.6.2003, “On mediation in resolving disputes”, repealed this law. Law No. 10385, dated 24.2.2011, “On mediation in resolving disputes”, abolished it and is currently in force. The Mediation Law in force has been amended twice, in 2013 and 2018.

The 2018 amendments were the most significant and aimed to increase the use of mediation, the professionalism and accountability of mediators, and the capacities of the Chamber of Mediators, as well as to harmonize the law with the broader legal framework and the Code of Civil Procedure.

Scope of application: Mediation covers civil, commercial, labor, family, intellectual property, and consumer disputes, as well as conflicts between public administration bodies and private entities (art. 2 of Law no. 10385). Mediation is also allowed in criminal cases, but only for conflicts examined by the court at the request of the accusing victim or with the complaint of the injured party, under articles 59 and 284 of the Code of Criminal Procedure.

A wide range of family matters may be resolved through mediation, except those the law (Family Code) requires to be resolved through the courts, such as adoption procedures, dissolution or annulment of marriage, etc. However, in recent years, mediation has been used in some dissolution of marriage matters, and courts have taken divergent approaches: some hold that dissolution of marriage can be resolved through mediation, while others maintain the opposite.

Mediators: Mediators are licensed by the Minister of Justice after an examination at the end of the initial training program; candidates need to be at least 28 years of age, have a second-cycle university degree, at least three years of professional experience, and a clean criminal record (art. 5). All mediators belong to the National Chamber of Mediators, which adopts the code of ethics, organizes initial and continuous training, and runs a disciplinary board. Family mediators need to have qualifications and experience, preferably in psychology, law, or social work (art. 5).

Procedure: Mediation may be private, when one party invites the other (art. 12), or court-referred. In civil and family cases involving the interests of minors, and in divorce cases, the court must inform the parties about mediation and guide them towards it (art. 2(4)). With both parties' agreement, the court refers the case to a mediator and suspends the proceedings for up to 30 days (art. 158/ç of the Code of Civil Procedure; art. 13 of the mediation law). Either party may ask for the case to resume at any time. In family matters, although the law does not explicitly require it, mediation practice shows that psychologists participate to ensure protection of the child's best interests.

A family mediation usually unfolds in four stages:

1. **An invitation and an agreement to mediate**, where the parties choose a licensed mediator and accept the process.
2. **Mediation sessions** with both parties, mostly on issues relating to parental responsibility, custody, right to visit, maintenance and, where relevant, property.
3. **A written settlement** signed by the parties and the mediator, setting out clear obligations and deadlines (art. 22). It is binding and enforceable in the same way as an arbitral award, i.e., executive title.
4. **Approval by the court** in referred cases: the judge approves the settlement unless it is contrary to law (art. 158/ç CPC), and the approval decision becomes an enforceable title. Where children are concerned, the judge checks that the agreement sufficiently protects their interests (art. 128 of the Family Code).

1.3 Obligation or freedom?

No obligation to try. In Albania, mediation is voluntary, and the parties may withdraw at any time (art. 3(3) of the mediation law). A 2017 proposal to introduce mandatory mediation (family matters where not included) was not adopted. Its main purpose was to increase the use of mediation and to reduce the backlog of cases before Albanian courts. The only exception is contractual mediation: where a contract makes mediation a precondition, the court will not hear the case until it has been attempted (art. 2(6)). However, this hardly concerns family matters.

An obligation to inform. It falls on the courts, which must inform the parties and guide them towards mediation in family cases involving minors and in divorce (art. 2(4) of the mediation law), and on lawyers (art. 8 of Law no. 55/2018). There is no compulsory information meeting with a mediator, and no sanction.

A mandatory judicial step. The reconciliation session in contested divorce is the closest thing to a compulsory amicable attempt. It is led by the judge, and the claimant's failure to attend can lead to the case being closed.

Three limits frame any future mandatory mediation:

- **Violence:** mandatory mediation or conciliation should be prohibited where violence is at stake, and screening is needed before any referral.
- **Access to court:** an obligation to try must not hinder access to the court guaranteed by article 42 of the Albanian Constitution and article 6 ECHR. Although Albania is not an EU member, as a candidate state, it has an obligation to align with EU law, and the *Alassini* (C-317/08 to C-320/08, 18 March 2010) and *Menini* (C-75/16, 14 June 2017) criteria offer a guide on how mandatory mediation can avoid violating access to court: no binding decision, no substantial delay, suspension of limitation periods, little or no cost.
- **Cost and limitation periods:** mediation is paid by the parties (art. 24/1), legal aid covers only advice on mediation (Law no. 111/2017), and the Civil Code does not suspend limitation periods during mediation. Without remedying these gaps, an obligation to try would fall short of the European standards.

Data on the use of mediation and settlement outcomes in Albania are scarce. In its 2026 Rule of Law Report for Albania, the European Commission found that while some steps have been taken to increase the use of mediation services, including training and awareness-raising activities, mediation remains largely underused in practice.

2. THE LAWYER IN FAMILY MEDIATION AND IN AMICABLE SETTLEMENT

In Albania, lawyers play an amicable role mostly in court and in drafting the divorce agreement. The law now requires lawyers to inform clients about mediation. The culture of supporting clients through mediation is still developing.

2.1 The lawyer's place in family mediation

Before mediation, the lawyer must inform the client of the possibility of mediation when reasonable and in the client's interest (art. 8 of Law no. 55/2018). The lawyer assesses whether mediation is suitable, screens for violence, and, where needed, directs the client towards a protection order under the law on measures against violence in family relations (Law no. 9669/2006).

During mediation, the process belongs to the parties. Representation in mediation is expressly part of the lawyer's services (art. 4 of Law no. 55/2018). The lawyer advises the client between sessions, or attends when useful, and checks the legal consequences of the options discussed.

After mediation, the lawyer reviews the settlement. The settlement agreement must identify the parties and set out clear obligations and deadlines, or it may be invalid (arts. 22 and 24 of the Mediation Law).

2.2 The routes in which the lawyer works

Albania has no lawyer-led procedure comparable to collaborative law. Lawyers work within two amicable routes:

	Mediation	Divorce by mutual consent
Legal basis	Law no. 10385 of 24 February 2011 on mediation in dispute resolution	Family Code, arts. 125 to 128
Who takes part	The parties and a licensed mediator; lawyers may attend	The spouses, usually assisted by lawyers, before the judge
Role of the lawyer	Informs, advises between sessions, reviews the settlement	Negotiates and drafts the agreement on the children, support and property
Outcome	A settlement agreement, enforceable as an arbitral award and approved by the court in referred cases.	A divorce judgment approving the agreement, after the judge checks consent and the children's interests

2.3 Lawyers' skills in mediation

Shifting from an adversarial approach to supporting agreement requires a change in professional mindset. Lawyers are traditionally trained to identify their clients' rights, build legal arguments, and defend their positions. In ADR, these skills remain essential, but must be complemented by the ability to uncover clients' underlying interests, explore options, and assess solutions that may serve them better than a judgment. This calls for specific skills: active listening, effective communication, negotiation, conflict management, and helping clients evaluate risks and possible outcomes. Lawyers must also recognize when an agreement is appropriate and when litigation remains necessary. A consensual approach should never mean pressuring a client to settle or compromising their legal rights.

Legal education in Albania traditionally places considerable emphasis on substantive law and procedural advocacy. Although universities support and encourage students to take part in competitions that build students' negotiation and mediation skills, negotiation, mediation advocacy, and interest-based problem-solving still deserve a more systematic place in both university curricula and professional training. Including negotiation and mediation advocacy, ideally alongside mediators and judges in initial training at the School of Advocates (art. 53 of Law no. 55/2018) and in mandatory continuing training (art. 54), would be valuable.

3. INTERNATIONAL FAMILY MEDIATION AND CROSS-BORDER AGREEMENTS

Albania is not a member of the European Union, so European instruments on family agreements do not apply. Albanian family agreements circulate through the Hague Conventions and through the recognition of court decisions, which makes the judge's approval of an agreement essential. With a large diaspora, notably in Italy and Greece, the issue is far from theoretical.

3.1 The framework that applies to Albania

The Hague Conventions are the backbone of cross-border family law for Albania:

- the 1980 Child Abduction Convention, in force for Albania since 1 August 2007; the Central Authority must seek to secure the voluntary return of the child or an amicable resolution (art. 7);
- the 1996 Child Protection Convention, in force since 1 April 2007; measures taken in one Contracting State are recognized in the others (art. 23), and Central Authorities must facilitate agreed solutions by mediation, conciliation or similar means (art. 31);
- the 2007 Child Support Convention, in force since 1 January 2013, Albania being among the first states bound by it; it extends recognition and enforcement to maintenance arrangements (art. 30).

European law reaches Albania indirectly. The mediation law approximates Directive 2008/52/EC: written settlements are enforceable, and mediation is confidential. But the Brussels II ter Regulation (EU) 2019/1111, the Maintenance Regulation (4/2009) and the property and succession Regulations do not apply. For EU Member States, Albania is a third state, and Albanian decisions are recognized under their national law, unless a Hague Convention applies.

Domestic law. The Court of Appeal recognizes foreign judgments in Albania under the Code of Civil Procedure, provided they are final, do not conflict with an Albanian decision, respect the rights of defense, and do not breach public order. While Article 8(2) of the Mediation Law stipulates that its provisions apply as much as possible even in mediation procedures when only one party is resident in Albania, it provides no rules on enforcing cross-border settlements.

3.2 The persisting difficulties

Agreements without a judgment. Albanian recognition rules are designed for court decisions. A mediated settlement not approved by a court, or a foreign divorce obtained without a judge, may therefore raise questions in Albania.

Beyond the Hague system. The 2019 Singapore Convention on mediated settlement agreements expressly excludes family, inheritance and employment matters, and Albania is not a party to it. Outside the Hague Conventions, circulation depends on each state's national law and bilateral judicial assistance treaties.

4. ARBITRATION AND FAMILIES

Albania adopted its first standalone arbitration law in 2023. It is designed mostly for commercial disputes and is limited to property claims, so personal status, divorce, and children remain with the courts. Family property is arbitrable in principle, but families do not use arbitration in practice.

4.1 A law designed for commercial arbitration

From 2013, when the arbitration provisions of the Code of Civil Procedure were repealed, Albania had no arbitration law at all. Law no. 52/2023, adopted on 6 July 2023, fills that gap. It follows the UNCITRAL Model Law, including its 2006 amendments, applies to domestic and international arbitration, and gives the Court of Appeal jurisdiction over applications to set aside. Albania has been a party to the New York Convention and to the European Convention on International Commercial Arbitration since 2001.

In practice, arbitration is used for cross-border projects, foreign investment and contracts involving the State: energy, construction, concessions and natural resources, often before the ICC or ICSID. Domestic disputes still go mostly to court.

4.2 Arbitrability of family matters?

Under Article 7 of Law No. 52/2023, any property claim, or any claim arising from a property relationship, may be submitted to arbitration, unless special legislation prohibits it or imposes specific conditions. Article 8(2) provides that the parties may enter into an arbitration agreement even if a court is considering their dispute, except where the dispute falls within the court's exclusive jurisdiction. Albanian private international law (PIL) stipulates the exclusive jurisdiction of Albanian courts in its Art. 72 (no family matters are included). Article 8(2) is interpreted as indirectly excluding from arbitration disputes for which Albanian courts have exclusive jurisdiction under the PIL.

Whether Art. 7 allows arbitration of family matters depends on whether a family matter is construed as a property relationship. Divorce itself, parental responsibility, and child-related matters, such as a child's residence and contact, are not property claims, and the Family Code reserves them to the judge. The answer is more nuanced in matrimonial property disputes.

In practice, family arbitration is unknown. Courts decide property disputes between former spouses and between heirs.

5. PARENTAL CONSENSUS

Albania does not have an established, systematic model of interdisciplinary cooperation comparable to the Cochem method. However, several building blocks already exist in the law: a judge-led reconciliation session, the mandatory presence of a psychologist when the child is heard,

and child protection workers in every municipality. What is missing is the method that ties them together.

The approach began in the local court in Cochem, Germany. Since the early 1990s, the family judge, lawyers, youth welfare services, counseling services, and mediators have collaborated on parental disputes. They have committed to acting quickly before conflict hardens, avoiding written exchanges that blame the other parent, and guiding every professional toward an agreement that serves the child's interests.

In Albania, a similar approach could rely on existing provisions:

- articles 134 to 136 of the Family Code, on the reconciliation session in divorce, and article 221, under which the court first tries to reconcile parents who disagree on their child;
- article 6 of the Family Code, on the hearing of the child in the presence of a psychologist, and articles 155 and 157, under which the court consults a psychologist or social worker and takes into account the opinion of the municipal social services before deciding on the children;
- Law no. 18/2017 on the rights and protection of the child, which created child protection workers and units in the municipalities;
- Article 2(4) of the mediation law and Article 158/ç of the Code of Civil Procedure, on informing parties about mediation and referring them to it.

Albania also has experience of a non-adversarial approach in juvenile justice: since 2017, the Criminal Justice for Children Code has favored restorative justice and victim-offender mediation.

Looking ahead, Albania could explore pilot programs that bring together family judges, lawyers, mediators, psychologists, and social workers, supported by specialized training and clear referral procedures. Such programs could help us assess whether a coordinated approach reduces conflict, improves compliance with parenting arrangements, and better protects children.

SESSION 3 - ROUND TABLE - 14:30 - 15:45

Alternative Dispute Resolution and Methods

Chair

Elodie Mulon

Avocate - France

Panel

Silvana Cinari

Lecturer in Civil Procedure Law, University of Tirana

Andrea Štásková

Attorney-at-Law - Czech Republic

Emanuel Lerch

Attorney-at-Law - Austria

Davide Piazzoni

Attorney-at-Law - Italy

1

Introduction of our panel

Elodie Mulon – France

A partner and mediator, Elodie is actively involved in the institutional life of the legal profession. A member of the Executive Committee of the National Bar Council and a former member of the Bar Council, she also holds positions of responsibility within several professional bodies. In particular, she is Chair of the Family and Succession Committee of the Council of European Bars, Vice-Chair of the Professional Training School for the Bar within the jurisdiction of the Paris Court of Appeal, Chair of the Institute of Family and Property Law, and Chair of the Centre for Arbitration, Mediation and Conciliation.

2

Introduction of our panel

Silvana Cinari – Albania

Silvana is an Associate Professor at the Faculty of Law, University of Tirana, where she teaches Civil Procedure Law, ADR and International Arbitration. She's also a member of the Tirana Bar Association since 2009 and is also an Associate at "Kola & Associates" Law Firm, where she advises and represents clients in negotiations, court, and arbitration proceedings in various civil and commercial law matters. She co-authored a textbook on Alternative Dispute Resolution and has published extensively on dispute resolution and related areas. Silvana has participated in international academic and research programs in international arbitration and private international law. She has also served as a legal expert on several national, regional, and international projects addressing dispute resolution and related areas of law.

3

Introduction of our panel

Andrea Štástková – Republic Czech

Andrea Štástková is an attorney at Břiza & Trubač in Prague, with a practice spanning dispute resolution, private international law, contract law and family law. She advises and represents Czech and international clients in complex disputes, with particular experience in cross-border family matters, including international child abduction cases.

4

Introduction of our panel

Emanuel Lerch - Austria

Emanuel is a lawyer based in Vienna, Austria, specialized in family law, with particular focus on child custody disputed, domestic violence and LGBTQ+ matters. Before entering legal practice, he worked as a doctoral researcher and teaching assistant at the Department of Legal Philosophy at the University of Vienna, where he also obtained his doctorate in law. His academic work focuses on human rights and individual autonomy.

5

Introduction of our panel

Davide Piazzioni - Italy

Davide is a lawyer in Rome, Vice-President of CAMMINO – National Chamber of Lawyers for Persons, Family Relations and Minors - and co-founder of FLIN – Family Lawyers International Network. He serves as an expert member of the Family Commission of the Italian National Bar Council and is the Italian expert in the CCBE's Family and Succession Commission. He's also the author of several academic papers and a speaker at specialist conferences in Italy and abroad, he practises exclusively in the field of family law, with a specific focus on transnational families.

6

1

Question 1

CM&A
Chauveau Mulon & Associés

State of play of amicable methods; mediation, mandatory or voluntary?

Where do amicable methods stand in your legal system, and what place does mediation hold among them? Which recent reforms have shaped this development, and have they changed practice? Should mediation remain voluntary, or can parties be required to try it before going to court? What lessons can be drawn from experiences of mandatory mediation?

Elodie Mulon - Session 3 - Alternative Dispute Resolution and Methods7

7

QUESTION 1 - AMICABLE METHODS AND MEDIATION

The French perspective

Elodie Mulon
Avocate Associée
Membre du Bureau du Conseil national des Barreaux
Ancien membre du Conseil de l'Ordre
Présidente du comité famille et successions du CCBE
Présidente de l'IDFP
Présidente du CALIF

CM&A
Chauveau Mulon & Associés



8

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Key dates for mediation in France

CM&A
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Foundations

1995

Judicial mediation (law of 8 February 1995)

2002

Family mediation enters the Civil Code (parental authority, law of 4 March 2002)

2003

State diploma of family mediator

2004

Mediation in divorce proceedings (law of 26 May 2004, art. 255)

2011

Conventional mediation (ordinance of 16 November 2011, EU Directive 2008/52)

Recent reforms

2016

TMPFO experiment created (law of 18 November 2016)

2019

The judge may order a mediation information meeting even in the final decision

2020

No mediation where violence or control is alleged (law of 30 July 2020)

2024

End of the TMPFO on 31 December, not extended

2025

Decree of 18 July: amicable rules recodified, conciliation part of the judge's mission

Elodie Mulon - Session 3 - Alternative Dispute Resolution and Methods9

9

1

State of play: family mediation today

A neutral, trained third party

- Family mediators hold a state diploma, created in 2003
- Conventional, chosen by the parents, or judicial: the family judge proposes it and appoints a mediator with the parents' consent (arts. 255 and 373-2-10 Civil Code)
- The judge may order the parents to attend an information meeting with a mediator
- Never where violence is alleged or one parent is under the other's control

How a family mediation unfolds

1

Information meeting

The mediator explains the process; the parents decide whether to continue

2

Mediation sessions

Both parents, with the mediator, on the children and practical arrangements

3

Written agreement

Reviewed by each parent's lawyer where they have one

4

Approval by the family judge

Who checks the child's interests and free consent (art. 373-2-7)

Where France stands: family mediation is well anchored in the law; the question is how to bring more parents to it.

Slide Mediator - Session 3 - Alternative Dispute Resolution and Methods

10

10

1

The other amicable routes

Conciliation

Since 1978

Before a conciliateur de justice, a free volunteer. A prior attempt is mandatory for small claims (art. 750-1 CPC).

Participatory procedure

Since 2010

The parties and their lawyers negotiate in good faith for a set period, with no third party. Inspired by collaborative law.

Collaborative law

Practice

A contractual method: if negotiation fails, the collaborative lawyers withdraw.

Divorce without a judge

Since 2017

Mutual consent: one lawyer per spouse, an agreement countersigned and deposited with a notary.

Amicable settlement hearing

Since 2023

Before a judge who will not decide the case, in a confidential setting.

Parental consensus

Pilots since 2023

Early hearing, no pleadings, all professionals working towards an agreement for the child.

Distinct from mediation: either no third party, with the lawyers negotiating together, or the judge themselves steering towards an agreement.

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11

11

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Obligation or freedom? The lesson of the TMFP0

Obligation to try: the TMFP0 experiment

2016

Created by the law of 18 November 2016 (art. 7)

2017

Applied in eleven courts

2024

Ended on 31 December, not extended nationwide

Scope: requests to change arrangements for the children (parental authority, residence, contact, child support).

Without a prior attempt: inadmissible, raised by the judge of their own motion.

Exception: violence or control by one parent over the other.

Obligation to meet a mediator

The family judge may order an information meeting, even in the final decision. Since 2025, a real obligation: refusal without good reason, civil fine up to €10,000.

No obligation to agree

Family mediation requires the parents' consent; either can stop at any time.

Violence

No mediation where violence is alleged or one parent is under the other's control.

Access to the judge

An obligation to try is acceptable only if it does not block access to the judge.

Europe

CIEU Alasinski (2010), Merini (2017): no binding outcome, no substantial delay, low or no cost.

Slide Mediator - Session 3 - Alternative Dispute Resolution and Methods

12

12

Tirana, Albania

Session 3 Speaker profiles, Papers and Presentations

47 of 74

4

QUESTION 1 - AMICABLE METHODS AND MEDIATION

The perspective from Albania

Silvana Çinari

Lecturer in Civil Procedure Law, University of Tirana

13

QUESTION 2

State of play of amicable methods

Mediation in Albania: mandatory or voluntary?

14

1.1 AVAILABLE AMICABLE ROUTES

Four amicable routes for family disputes

 **Reconciliation**

Cancellation by the judge – not mediation

Compulsory session in contested divorce (FC art. 134). Absence may close the case (art. 135); decision may be postponed up to one year (art. 136). Also for parents in dispute over a child (art. 221).

 **Divorce by mutual consent**

Judge checks real consent

Joint request with agreement on children, support and maintenance (art. 125). Judge hears spouses separately and together (arts. 126–127); may suspend 3 months to revise (art. 128).

 **Settlement in court**

Enforceable title

During proceedings the judge may seek agreement between the parties. A court-approved settlement is enforceable (arts. 158/ç and 530 CPC).

 **Mediation**

Voluntary

The Mediation Law opens mediation to family disputes and asks judges and lawyers to refer parties to it – but there is no requirement to try it first.

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15

15

Tirana, Albania

Session 3 Speaker profiles, Papers and Presentations

48 of 74

5

1.2 FAMILY MEDIATION TODAY

Three mediation laws in 25 years

1999

Law no. 8465

First mediation law after the regime change

2003

Law no. 9090

Repealed the 1999 law

2011

Law no. 10385

Law currently in force (24.2.2011)

2013 · 2018

Amendments

2018: more use, professionalism, accountability; aligned with CPC

Scope of application (art. 2)

- Civil, commercial, labour, family, IP and consumer disputes
- Public administration vs. private entities
- Criminal cases only on victim's request or complaint (CPC arts. 59, 284)

Which family matters?

- Broad range, except those the Family Code reserves to the courts (e.g., adoption, dissolution or annulment of marriage)
- Dissolution via mediation is now used in some cases – courts are divided on whether it is allowed

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10

16

1.2 FAMILY MEDIATION TODAY

Who mediates, and how cases reach mediation

Mediators (art. 5)

28+

years of age

2nd cycle

university degree

3 yrs

professional experience

Clean

criminal record

Two ways in

Private mediation

One party invites the other (art. 12).

Court-referred mediation

In cases involving minors and in divorce, the court must inform the parties and guide them to mediation (art. 24(3)). With both parties' consent, proceedings are suspended up to 30 days (CPC 158/c; art. 13). Either party may resume the case at any time.

Psychologists in practice

Not required by law, but they often take part to protect the child's best interests.

Licensed by the Minister of Justice after exam; all belong to the National Chamber of Mediators (ethics, training, discipline). Family mediators: preferably psychology, law or social work.

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17

17

1.2 FAMILY MEDIATION TODAY

A family mediation unfolds in four stages

1

Invitation & agreement to mediate

Parties choose a licensed mediator and accept the process.

2

Mediation sessions

Parental responsibility, custody, visiting rights, maintenance and, where relevant, property.

3

Written settlement

Signed by parties and mediator, with clear obligations and deadlines (art. 22). Binding and enforceable like an arbitral award.

4

Court approval

In selected cases, supported during court proceedings (CPC 158(c)), divorce children are concerned, the judge checks their interests (CPC art. 124)

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18

18

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49 of 74

6

1.3 OBLIGATION OR FREEDOM?

Mediation in Albania is voluntary



No obligation to try

Parties may withdraw at any time (art. 3(3)). A 2017 proposal for mandatory mediation was not adopted. Only exception: contractual mediation clauses (art. 2(6)) – rarely relevant to families.



An obligation to inform

Courts must inform and guide parties in cases involving minors and in divorce (art. 2(4)); lawyers must inform clients (art. 8, Law 55/2018). No compulsory information meeting, no sanction.



A mandatory judicial step

The reconciliation session in contested divorce is the closest thing to a compulsory amicable attempt – led by the judge; the claimant's absence can close the case.

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19

19

1.3 OBLIGATION OR FREEDOM?

Three limits frame any future mandatory mediation



Violence

Mandatory mediation or conciliation should be prohibited where violence is at stake; screening is needed before any referral.



Access to court

Must respect Constitution art. 42 and ECHR art. 6. As an EU candidate, Albania can follow Alasini (2010) and Menini (2017): no binding decision, no substantial delay, limitation periods suspended, little or no cost.



Cost & limitation periods

Parties pay for mediation (art. 24(1)); legal aid covers only advice (Law 111/2017); the Civil Code does not suspend limitation periods during mediation.

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20

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2026 Rule of Law Report

"Mediation remains largely underused in practice."

Despite existing and increasingly rising, mediation has not yet reached the level of effectiveness and sustainability seen in Europe

20

QUESTION 1 - AMICABLE METHODS AND MEDIATION

The perspective from the Czech Republic

Andrea Štásková

Attorney-at-Law, Czech Republic

21

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50 of 74

7

1

The main routes to an agreement in Czech family law

Direct agreement and negotiation
Parents may negotiate directly, with help from lawyers or other professionals. This is often the simplest route.

A court-referred first meeting
Code of Civil Procedure allows a court to order parties to attend an initial meeting with a registered mediator for up to three hours.

Family mediation
Mediation is voluntary. A registered mediator helps the parties communicate and explore options but does not decide the dispute.

Family conferences and support through OSPOD and other professionals
OSPOD has a child-protection role and may help parents identify support or consider consensual approaches. Educational meetings are a new collaborative tool introduced by the reform of family law.

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22

22

QUESTION 1 - AMICABLE METHODS AND MEDIATION

The perspective from Italy

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Attorney-at-Law, Italy

23

1

Statistical Data (2022-2025) and Regulatory Framework

Trend in marital breakdown
A gradual nationwide decrease in separation and divorce proceedings (separations dropped to 75,014 in 2024, a 9% decrease compared to the previous year).

Prevalence of agreed solutions
A clear majority of amicable settlements over judicial/contentious ones (around three out of four separations are settled by mutual agreement).

Growth of out-of-court tools
In 2024, 31.9% of separations and over one-third of divorces were resolved through alternative or out-of-court means (assisted negotiation and civil status agreements).

Impact of the Cartabia Reform (Legislative Decree No. 149/2022)
OSPOD has a child-protection role and may help parents identify support or consider consensual approaches. Educational meetings are a new collaborative tool introduced by the reform of family law.

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24

24

1

Regulatory Framework and the Duality of Rights

Fragmentation of Italian family law

- Relational sphere (status and minors): Presence of mandatory rules and inalienable rights (marital status, parental responsibility, child support, and maintenance for vulnerable spouses).

- Property sphere: Spousal property relations characterized by disposable rights, subject (for general property relations) to the mandatory mediation attempt under Legislative Decree No. 28/2010.

Erosion of exclusive state jurisdiction

Broadening of the parties' scope for contractual autonomy alongside judicial powers of conciliation and mediation encouragement.

Exclusion of mandatory mediation:

Confirmation that preliminary mediation is not compulsory (Constitutional Court rulings Nos. 401/2005 and 272/2012) to avoid delays incompatible with the reasonable duration of proceedings.

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25

25

QUESTION 1 · AMICABLE METHODS AND MEDIATION

The perspective from Austria

Emanuel Lerch
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26

QUESTION 1

ADR in Austria: the landscape

Voluntary routes

Lawyer-led negotiation · registered mediation · publicly subsidised family mediation

Court-connected mechanisms

Judicial settlement · Family Court Assistance Service · pilot Einigungsverfahren

Mandatory elements — but not mandatory mediation

Child-focused counselling before consensual divorce (§ 95(1a) AuBStrG); specified court-directed measures (§ 107(3) AuBStrG)

WPL Trends | Austria | 10 October 2025

27

QUESTION 1

From agreement to enforceability

Mediation
Registered mediators facilitate negotiations; they do not adjudicate. Confidentiality and limitation-period rules under the ZivMediatG.

Formalisation matters
A private agreement is not automatically an enforceable title. Judicial settlement may be available, including under § 433a ZPO.

Einigungsverfahren
Voluntary, court-connected settlement facilitation by a trained judge other than the trial judge; pilot practice at selected courts.

IMJ, Thème | Austria | 15 October 2025

28

2

Question 2

The lawyer in amicable dispute resolution

How do lawyers move from an adversarial approach to supporting their clients toward agreement? What skills does this require, and do initial and continuing training prepare them for it? Is the lawyer a full participant in ADR, or merely an adviser alongside the mediator?

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29

QUESTION 2 - THE LAWYER

The French perspective

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Présidente du comité famille et successions du CCBE
Présidente de l'IDFP
Présidente du CALIF

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30

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The lawyer's place in family mediation

Before

- Inform the client about family mediation
- Assess whether it is suitable, and screen for violence
- Prepare the client's priorities for the children
- Contact the other parent's lawyer

During

- Mediation is the parents' process
- The lawyer advises between sessions, or attends when useful
- Checks the legal consequences of the options discussed

After

- Draft or review the agreement
- Secure it: approval by the family judge
- Child support can be paid through the CAF's intermediation service
- If needed, continue with a participatory procedure or a divorce without a judge

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31

31

2

Collaborative law and the participatory procedure

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	Collaborative law	Participatory procedure
Nature	A contractual method practised by specially trained lawyers; no specific statute	A procedure set out in the Civil Code (arts. 2062 et seq.) and the Code of Civil Procedure
Origin	Born in the United States around 1990, brought to France by practitioners	Created by the law of 22 December 2010, inspired by collaborative law
Who takes part	The parties and their collaborative lawyers, sometimes with other professionals	The parties, each assisted by a lawyer; no third party
Key commitment	If negotiation fails, the lawyers withdraw and cannot represent their clients in court	Negotiate in good faith for a set period; limitation is suspended and the lawyers can continue in court
Outcome	An agreement formalised by the lawyers	An approved or enforceable agreement; or a case prepared by the lawyers and heard first

Common ground: no third party. The lawyers negotiate together for their clients, which sets both apart from mediation. In family matters, both can lead to a parenting agreement or a divorce by mutual consent without a judge.

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32

32

2

What the change requires

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From	To
Win custody	Build a parenting plan
Write to accuse	Write without grievances
Speak for the client	Help the parents talk to each other
Close the file	Secure an agreement that lasts

Joint training

Lawyers and family mediators trained together, so each knows the other's role.

Fair pay

Assisting a client in mediation is real work: it must be recognised and paid, including under legal aid.

The lawyer's role is not reduced; it is transformed.

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33

33

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54 of 74

11

QUESTION 2 - THE LAWYER

The perspective from the Czech Republic

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34

2

Role of a lawyer in negotiations

- Representing the client's interests while promoting amicable solutions
- Identifying underlying interests rather than focusing solely on legal positions
- Assessing litigation risks and setting realistic expectations
- Facilitating constructive communication and preventing unnecessary escalation
- Drafting legally sound, enforceable and sustainable agreements

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35

35

2

Role of a lawyer in mediation

- Advising clients before mediation on their rights, obligations and possible outcomes
- Preparing clients for mediation and helping them identify priorities and acceptable compromises
- Participating in mediation sessions where appropriate, while respecting the mediator's impartial role
- Protecting clients' interests and identifying power imbalances or safeguarding concerns
- Reviewing and formalising mediated agreements to ensure legal validity and enforceability

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36

36

2

Negotiations vs. mediation

	Negotiation	Mediation
Nature	A non-contractual method practised by parties and their lawyers; no specific statute.	A procedure set out in the Mediation Act and supported by the Code of Civil Procedure.
Who takes part	The parties and their lawyers, sometimes with other professionals.	The parties, each assisted by a lawyer and a mediator who is registered in the list of the Czech Ministry of Justice
Key commitment	If negotiation fails, the parties are free to try mediation, go to the court or go back to negotiation again.	Negotiate in good faith for a set period. If the negotiation fails, the parties can go to the court or try negotiations again.
Outcome	An agreement formalised by the lawyers which must be submitted to the court for approval.	An agreement formalised by the lawyers which must be submitted to the court for approval.

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37

37

QUESTION 2 - THE LAWYER

The perspective from Albania

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38

QUESTION 3

The lawyer in family mediation and amicable settlement

Lawyers act amicably mostly in court and in drafting divorce agreements; the culture of supporting clients through mediation is still developing

39

2.1 THE LAWYER'S PLACE IN FAMILY MEDIATION

Before, during and after mediation

Q

Before

Inform the client of mediation when reasonable and in their interest (art. 8, Law 55/2018). Assess suitability and screen for violence; where needed, seek a protection order (Law 9669/2006).

🗣️

During

The process belongs to the parties. Representation in mediation is part of the lawyer's services (art. 4). Advise between sessions, attend when useful, check legal consequences of options.

📄

After

Review the settlement: it must identify the parties and set clear obligations and deadlines – or it may be invalid (arts. 22 and 24, Mediation Law).

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40

40

2.2 THE ROUTES IN WHICH THE LAWYER WORKS

No collaborative law – two amicable routes

	Mediation	Divorce by mutual consent
Legal basis	Law no. 10385 of 24 February 2011 on mediation in dispute resolution	Family Code, arts. 125–128
Who takes part	The parties and a licensed mediator; lawyers may attend	The spouses, usually assisted by lawyers, before the judge
Role of the lawyer	Informs, advises between sessions, reviews the settlement	Negotiates and drafts the agreement on children, support and property
Outcome	Settlement enforceable as an arbitral award; court-approved in referred cases	Divorce judgment approving the agreement, after the judge checks consent and children's interests

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41

41

2.3 LAWYERS' SKILLS IN MEDIATION

From adversarial advocate to agreement builder

A change in professional mindset: rights and arguments remain essential, but must be complemented by uncovering interests, exploring options and assessing solutions that may serve clients better than a judgment.

👂

Active listening

🗣️

Effective communication

🤝

Negotiation

⚖️

Conflict management

📊

Risk & outcome evaluation

⚠️

A consensual approach never means pressuring a client to settle or compromising their rights – lawyers must recognise when litigation remains necessary.

🎓

Recommendation: give negotiation, mediation advocacy and interest-based problem-solving a systematic place in university curricula, at the School of Advocates (art. 53) and in continuing training (art. 54) – ideally alongside mediators and judges.

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42

42

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57 of 74

14

QUESTION 2 · THE LAWYER

The perspective from Austria

Emanuel Lerch
Attorney-at-Law, Austria

43

QUESTION 2

Why Austrian family law is consensus-oriented

Almost 90% of divorces are consensual

Requirements: A joint application, cessation of marital cohabitation for at least six months, and an agreement on the consequences of divorce (division of assets, maintenance, custody and contact, child support).

A comprehensive solution is possible by agreement

Divorce, maintenance, matrimonial property and arrangements for children can be addressed together.

Without agreement, proceedings fragment

Divorce · spousal maintenance · child maintenance · custody · contact · post-divorce property division — potentially years of litigation.

WFL Trieste | Austria | 10 October 2020

44

QUESTION 2

The lawyer’s role

Many contested filings end in settlement

A consensual outcome does not mean there was no conflict.

Advocacy and cooperation are compatible

Counsel evaluates alternatives, obtains disclosure, safeguards rights and negotiates workable terms.

Specialisation is essential

Domestic violence · coercive control · child development · international issues · knowing when adjudication is necessary.

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45

QUESTION 2 · THE LAWYER

The perspective from Italy

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Attorney-at-Law, Italy

46

2

Role of a Lawyer and Negotiation Tools

Cultural paradigm shift: The necessity of moving beyond a purely adversarial approach to manage the quality of agreements and avoid "apparent consents" or long-term imbalances.

Professional ethics: The duty to provide clients with prior information regarding alternative dispute resolution methods (Cartabia Reform and Code of Professional Conduct).

Formal negotiation tools:

Assisted Negotiation (Decree-Law No. 132/2014, converted by Law No. 162/2014): Applicable to separations, divorces, unmarried couples, financially non-independent adult children, and civil partnerships, subject to Public Prosecutor review (formal or minor-protection check) and granting the agreement the force of a court judgment.

Collaborative Negotiation: Based on contractual freedom (Article 1322 of the Civil Code) and the commitment to withdraw if negotiations fail, though not widely used.

Joint Application pursuant to Article 473-bis.51 of the Code of Civil Procedure: Streamlined access to judicial review and reduced formal requirements (including via written submissions).

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47

47

3

Question 3

Cross-border amicable agreements

In cross-border disputes, particularly family disputes, how can the circulation and enforcement of agreements reached through mediation be ensured? Is the current European and international framework adequate?

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48

48

QUESTION 3 - CROSS-BORDER AGREEMENTS

The French perspective

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49

3

International family mediation: agreements now travel

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A French mother, an Italian father, an agreement on the children. He moves back to Milan. Is it worth anything there?

Agreement

On divorce, legal separation or parental responsibility

➤

Registration

By a public authority, e.g. deposit with a French notary

➤

Certificate

Issued in the Member State of origin

➤

Recognition

In every other Member State, and enforcement for parental responsibility

Brussels II ter Regulation (EU) 2019/1111, arts. 64-68, applicable since 1 August 2022. It settled the doubts about the French divorce without a judge.

Child abduction

The judge must invite the parents to consider mediation as early as possible (art. 25).

Property

Matrimonial property (2016/1103), partnerships (2016/1104), successions (850/2012), maintenance (4/2009): authentic instruments and court settlements circulate.

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Where agreements still stop at the border

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The child's voice

Recognition may be refused if the child was not given a chance to express their views. In France, a divorce without a judge is excluded when a minor child asks to be heard, but that may not satisfy other states.

Third states

Outside the EU, including the UK since Brexit, a divorce without a judge may not be recognised. Practice tip: in international cases, prefer a judicial route or approval by the family judge. A judgment travels better.

Weak general tools

The 2008 Mediation Directive set a common basis but changed little in practice. The 1996 and 2007 Hague Conventions help; the Singapore Convention excludes family matters.

What is needed: mediators trained in international family cases and able to work in several languages, lawyers who draft agreements that will be recognised abroad, judges who refer early, and trust between national systems.

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51

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60 of 74

17

QUESTION 3 - CROSS-BORDER AGREEMENTS

The perspective from Italy

Davide Piazzoni

Attorney-at-Law, Italy

52

3

Cross-Border Agreements and the Circulation of Decisions

The European framework (Common Judicial Area):
Regulation (EU) 2019/1111 (Brussels II ter): Applicable from August 2022, simplifying the circulation of decisions and public-authority-registered agreements in matrimonial matters and parental responsibility.
The 19th October 1996 Hague Convention and Regulation (EU) No. 4/2009: Reference pillars for international cooperation and maintenance obligations.

Non-EU Countries: The requirement of exequatur (dellibazione) before the Court of Appeal to recognize foreign orders or agreements (checking for respect of due process and international public policy).

Practical challenges: High risk of cross-border "legal traps"; continuous and early coordination with foreign colleagues is indispensable – **The Network is paramount!**

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53

53

QUESTION 3 - CROSS-BORDER AGREEMENTS

The perspective from Austria

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54

QUESTIONS 3 & 4

Cross-border agreements and arbitration

Cross-border agreements
Brussels Ibis (EU 2019/1111) for parental responsibility; Maintenance Regulation (EC 4/2009); different formalities and recognition routes.

Private agreement ≠ internationally enforceable title
Plan jurisdiction, approval, registration and enforceability from the outset.

Arbitration: a clear Austrian limit
§ 582(2) ZPO excludes family-law claims from arbitration, including statutory matrimonial property division.

IMF, Vienna | Austria | 15 October 2025

55

QUESTION 3 · CROSS-BORDER AGREEMENTS

The perspective from the Czech Republic

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56

4 Cross-border agreements

Applicable legal framework

- EU: Brussels 2019/1111 for parental responsibility
- EU: Maintenance Regulation 4/2009
- Outside EU: 1996 and 2007 Hague Conventions
- Fallback: Czech Private International Law Act

Making agreements effective

- Parents can negotiate or mediate arrangements
- Court approval is generally the safest route
- Approved terms can circulate as judicial decisions
- Different issues may require different legal instruments

Key cross-border risks

- Changing habitual residence may affect jurisdiction
- Not all agreed terms can be enforced abroad
- Different states apply different recognition rules
- Precision, coordination and network is essential

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57

57

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Office for International Legal Protection of Children

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58

58

3

Office for International Legal Protection of Children

Úřad pro mezinárodněprávní ochranu dětí

a specialised central authority

dealing with cases that have an international element,

including cross-border parental disputes and contact arrangements

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59

59

QUESTION 3 - CROSS-BORDER AGREEMENTS

The perspective from Albania

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60

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63 of 74

20

POINT 3

International family mediation and cross-border agreements

Not an EU member, Albania relies on the Hague Conventions and recognition of court decisions – a live issue given the large diaspora in Italy and Greece.

61

3.1 THE FRAMEWORK THAT APPLIES TO ALBANIA

The Hague Conventions are the backbone

1980

Child Abduction Convention
In force 1 Aug 2007

Central Authority seeks voluntary return or an amicable resolution (art. 7).

1996

Child Protection Convention
In force 1 Apr 2007

Measures recognised across Contracting States (art. 23); Central Authorities facilitate mediated solutions (art. 31).

2007

Child Support Convention
In force 1 Jan 2013

Albania among the first states bound; covers recognition and enforcement of maintenance arrangements (art. 30).

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62

3.1 – 3.2 EUROPEAN AND DOMESTIC LAW; PERSISTING DIFFICULTIES

Where cross-border agreements still struggle

European law – indirectly

Mediation Law approximates Directive 2008/52/EC (enforceability, confidentiality). Brussels II ter, Maintenance and property/succession Regulations do not apply: for EU states, Albania is a third state.

Domestic law

Court of Appeal recognises foreign judgments that are final, consistent with Albanian decisions, respect defence rights and public order: Art. 8(2) Mediation Law covers one-party-resident cases but sets no enforcement rules.

Agreements without a judgment

Negotiation leads to court decision, or unapproved mediated settlement or non-public, though enforceable, mediation.

Beyond the Hague system

The 2013 Support Convention excludes family matters, and Albania is not a party. Otherwise, parental time and contact disputes.

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63

4

Question 4

Arbitration: where does it stand?

What place does arbitration hold in your legal system today? In which fields is it actually used, and what recent legislative or practical developments have shaped it? Does it play any role in family or property matters, such as matrimonial property, succession or estate structures?

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64

64

QUESTION 4 · ARBITRATION

The French perspective

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Arbitration and families: a real debate

Excluded

Personal status, divorce, legal separation (art. 2060 Civil Code): matters concerning the children, traditionally treated as unavailable.

In principle

Matrimonial property once divorce is pronounced; partition of an estate between adult heirs, within public policy and forced heirship rules.

Uncertain

An arbitration clause imposed by a testator: generally considered unenforceable against forced heirs on their reserved share.

Yes

Arbitration clauses in the articles of shareholders' agreement of a family company (SC, holding).

Another path: England and Wales

Family arbitration for financial disputes since 2012, and for some children's matters since 2016.

A real debate on unavailable rights: If spouses can divorce by contract without a judge (since 2017) and parents can have their agreements approved (art. 373-2-7), why exclude arbitration? The limit: the child's interests and the judge's control.

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66

66

QUESTION 4 - ARBITRATION

The perspective from the Czech Republic

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67

Arbitration and Family Law

Established commercial role

Mainly commercial, construction and contractual disputes.

Consumer arbitration restricted since 2016.

Separate property disputes may be arbitrable.

Family law boundaries

Divorce, parental responsibility and child maintenance: not arbitrable.

Matrimonial property division: arbitrable (Supreme Court, 2016).

Probate and determination of heirs: for the courts.

Practice and potential

Rarely used for matrimonial property in practice.

Potential for complex business assets and cross-border property.

Foreign recognition and enforcement require advance review.

Practitioner's takeaway: Although sometimes legally possible, not commonly used. Consider arbitration for complex matrimonial assets, but verify enforceability abroad.

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68

68

QUESTION 4 - ARBITRATION

The perspective from Albania

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69

70

Arbitration and families

Albania's first standalone arbitration law (2023) is commercial in design. Family property is arbitrable in principle, but families do not use it.

71

4.1 A LAW DESIGNED FOR COMMERCIAL ARBITRATION

Law no. 52/2023 filled a ten-year gap

2013

CPC arbitration provisions repealed – no arbitration law at all

6 July 2023

Law no. 52/2023 adopted, following the UNCITRAL Model Law (incl. 2006 amendments)

2001

Party to the New York Convention and the European Convention on International Commercial Arbitration

 In practice

- Applies to domestic and international arbitration
- Court of Appeal hears set-aside applications
- Used for cross-border projects, foreign investment and State contracts: energy, construction, concessions, natural resources – often ICC or ICSID
- Domestic disputes still go mostly to court

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71

72

4.2 ARBITRABILITY OF FAMILY MATTERS?

Arbitrable only where a property claim is at stake

Art. 7: any property claim, or claim arising from a property relationship, may go to arbitration unless special law prohibits it. Art. 8(2) indirectly excludes matters within the exclusive jurisdiction of Albanian courts (PIL art. 72 – no family matters listed).

 Not arbitrable

- Divorce itself
- Parental responsibility
- Child's residence and contact

– not property claims; reserved to the judge by the Family Code

 Nuanced

- Matrimonial property disputes
- Depends on whether the matter is construed as a property relationship and the exclusive jurisdictional rules

 In practice

- Family arbitration is unknown
- Courts decide property disputes between former spouses and between heirs

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72

QUESTION 4 - ARBITRATION

The perspective from Austria

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73

QUESTIONS 3 & 4

Cross-border agreements and arbitration

Cross-border agreements

Brussels Iib (EU 2019/1111) for parental responsibility; Maintenance Regulation (EC 4/2009); different formalities and recognition routes.

Private agreement ≠ internationally enforceable title

Plan jurisdiction, approval, registration and enforceability from the outset.

Arbitration: a clear Austrian limit

§ 58(2) ZPO excludes family-law claims from arbitration, including statutory matrimonial property division.

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74

QUESTION 4 - ARBITRATION

The perspective from Italy

Davide Piazzoni

Attorney-at-Law, Italy

75

4

Limits of Arbitration

Non-arbitrability of inalienable rights:
Article 806(2) of the Code of Civil Procedure and Article 2060 of the Civil Code exclude personal status, marriage validity, separation, divorce, child measures, and maintenance rights from arbitration. Admissibility is strictly limited to disposable property rights arising post-dissolution (e.g., division of statutory community property or inherited estates).

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76

76

5

Question 5

Parental consensus

In France, several associations, including the IDFP which I chair, are promoting parental consensus. Drawing on the Cochem model in Germany, it relies on close cooperation between judges, lawyers, mediators and social workers, with an early first hearing and a non-adversarial approach. The aim is to keep parents cooperating and to shield the child from the conflict. Do similar approaches exist in your jurisdictions? What conditions are needed to develop them?

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77

77

QUESTION 5 - PARENTAL CONSENSUS

The French perspective

Elodie Mulon

Avocate Associée

Membre du Bureau du Conseil national des Barreaux

Ancien membre du Conseil de l'Ordre

Présidente du comité famille et successions du CCBE

Présidente de l'IDFP

Présidente du CALIF

CM&A

Chauveau Mulon & Associés

PROFESIONEI IN COLLABORAZIONE CON SOCIETÀ



78

5

From Cochem to French courts

The Cochem model (Germany)

From the early 1990s, the local court's judge, lawyers, youth services, counsellors and mediators agreed to work together.

- Act first, before the conflict hardens
- No written blame of the other parent
- Every professional pulls towards an agreement in the child's interest

German law later generalised part of it: first hearing within one month, court works towards agreement (PamfG §§ 135–156).

In France: no specific statute

- Art. 21 CPC: the judge chooses with the parties the most suitable way
- Art. 373-3-10 Civil Code: propose or order family mediation
- Art. 373-2-7: approval of parents' agreements
- Art. 388-1: hearing the child

Pilot courts

Aix 2023	Privas 2025	Grenoble
Montpellier	Lille	Paris Sept. 2026

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79

79

5

How a parental consensus hearing works

1. Application

Written without grievances, factual, short

2. Hearing

Within one to two months; parents and lawyers attend

3. Collective word

The judge speaks to all families, about the child

4. Each family

With the judge and lawyers: no pleadings

5. Outcome

Full agreement

Recorded and approved on the spot; case closed

Partial agreement

Points agreed are recorded; the rest is referred

No agreement

Mediation, parenting coordination or expert; interim measures; judgment about 3 months later

Conditions: shared commitment of judges, lawyers and mediators · never where there is violence · a real evaluation before any generalisation.

For lawyers: we don't write to accuse, we don't plead, we help build.

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80

80

QUESTION 5 · PARENTAL CONSENSUS

The perspective from Austria

Emanuel Lerch

Attorney-at-Law, Austria

81

Tirana, Albania

Session 3 Speaker profiles, Papers and Presentations

70 of 74

27

QUESTION 5 - OPENING

What is the Cochem Model?

Origin and purpose
Developed in Cochem, Germany, in the early 1990s; prioritises early intervention and parental agreement.

Interdisciplinary cooperation
Judges, lawyers, youth welfare services, psychologists and mediators coordinate rather than act in isolation.

Core idea
Help parents reach their own child-focused arrangements rather than treating the case primarily as adversarial litigation.

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82

QUESTION 5

Austria: similar principles, different framework

No nationwide adoption of the Cochem Model
But comparable consensus-oriented elements exist in Austrian family proceedings.

Familiengerichtshilfe — introduced in 2013
Psychologists and social workers; clearing includes direct attempts to achieve agreement, generally without lawyers present.

Considerable practical influence
Although the court decides formally, assessments and recommendations may carry decisive weight in practice.

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83

QUESTION 5

Where consensus-oriented models face criticism

Violence does not necessarily end at separation
Coercive control and post-separation abuse may make an assumption of equal parental cooperation unrealistic.

Agreement is not always freely reached
Institutional pressure and unequal bargaining power may affect whether consent is genuine.

Settlement rates are not enough
Ask how agreement was reached — and whether it remains workable, safe and sustainable over time.

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84

DISCUSSION

The central question

Promote cooperation where appropriate
Early intervention and interdisciplinary support can be valuable.

Preserve safeguards
Clear professional roles, independent advice, procedural fairness and sensitivity to domestic violence.

A question for the panel
How can family justice systems encourage parental consensus without turning agreement into an end in itself?

IPA, Trieste | Austria | 15 October 2025

85

QUESTION 5 · PARENTAL CONSENSUS

The perspective from the Czech Republic

Andrea Štásková
Attorney-at-Law, Czech Republic

86

5 Local examples of interdisciplinary cooperation

The Cochem model and its variations



COCHEM.CZ

The Czech Republic has local examples of interdisciplinary cooperation inspired by the German Cochem model, but it is not a uniform nationwide system.

Necessary conditions

- early intervention, reliable cooperation between professions, clear referral routes, appropriate training and sufficient resources
- Professionals must also identify cases where consensus-seeking is unsafe or inappropriate. (domestic violence, coercive control or a serious power imbalance)

87

Tirana, Albania

Session 3 Speaker profiles, Papers and Presentations

72 of 74

29

QUESTION 5 - PARENTAL CONSENSUS

The perspective from Italy

Daide Piazzoni

Attorney-at-Law, Italy

88

5

Italian-style Cochem Model

The Cochem model and its variations

The "Italian-style Cochem Model": Protocols applied in various courts (Milan, Rome, Florence) fostering early, non-adversarial cooperation between judges, lawyers, mediators, and social services.

Procedural vulnerabilities of local protocols: Risks of overlapping with the strict rules and timelines of the Code of Civil Procedure (Article 473-bis c.p.c.), duplicating conciliation hearings before honorary magistrates, and creating potential conflicts between court experts and co-mediation.

Parental Coordination: Appointment of an impartial third party (Article 473-bis.26 c.p.c.) to manage communication and make delegated decisions on daily matters (subject to parental consent)

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89

89

QUESTION 5 - PARENTAL CONSENSUS

The perspective from Albania

Silvana Çinari

Lecturer in Civil Procedure Law, University of Tirana

90

Parental consensus

The building blocks exist in Albanian law – what is missing is the method that ties them together.

91

5. INTERDISCIPLINARY COOPERATION

From Cochem to Tirana: the pieces are already here

Cochem, Germany – since the early 1990s

- Judge together, judge unified, consultation with the court's collaboration
- First justice, before conflict resolution
- No written exchanges during the other parties
- Some professional steps towards an agreement in the court – required

Albanian building blocks

- Reconciliation
FC arts. 134–136 (divorce) and art. 221 (parents in disagreement over a child)
- Hearing the child
FC art. 6: psychologist present; arts. 155, 157: psychologist, social worker and municipal social services consulted
- Child protection workers
Law no. 18/2017 created units in every municipality
- Mediation referral
Mediation Law art. 2(4) and CPC art. 158/c
- Juvenile justice
Since 2017, restorative justice and victim-offender mediation

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92

92

SESSION 3 - ALTERNATIVE DISPUTE RESOLUTION AND METHODS

Thank you. Questions from the floor

With warm thanks to our panel

Silvana Cinari
Albania

Andrea Štásková
Czech Republic

Emanuel Lerch
Austria

David Piazzoni
Italy

93
