

IAFL Introduction to European Family Law Conference

Tirana, Albania

15 & 16 October 2026

Session Resources Pack

Session 1 - Thursday, 15th October 2026: 10:30 -11:45

1996 & 1980 Hague Convention and Movement of Children

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 - Paper – Eniana Qarri

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Profile

Jemma is the partner in the Adoption, Surrogacy and International Child Care department. She specialises in and has extensive experience of complex international adoption, surrogacy and children cases as well as being highly regarded for her expertise in cases involving children who are conceived by way of artificial insemination under the Human Fertilisation and Embryology Act 2008. She successfully represented more than 30 families after her landmark success in the Human Fertilisation and Embryology Act 2008 (A & Ors) 2015 EWHC 2602 concerning the acquisition of legal parenthood in respect of children conceived using donor sperm. Jemma is also a member of the Association of Lawyers for Children (ALC), Resolution, the IBA and she is accredited as a specialist in adoption and private law children cases. IBA Family Law Committee Newsletter, Family Law Week and Lexis Nexis and Stonewall. Jemma was interviewed for The Times Lawyer of the Week.

Languages Spoken: English

Practice Areas: Adoption, Appeals, Child Care/Public Law, Child Custody/Residence/Visitation/Contact, Hague Convention/Child Abduction, Parentage/Paternity, Relocation/Removal from Jurisdiction, Same Sex Partnerships, Surrogacy

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Profile

Eniana Qarri graduated with highest honours from the Faculty of Law, University of Tirana, in 2008. She completed her PhD at the same faculty in 2014, with a doctoral thesis focusing on matrimonial property regimes. Since 2026, she has held the academic title of Associate Professor.

Eniana has been a lecturer at the Faculty of Law, University of Tirana, since 2008. She teaches Family Law and European and Comparative Family Law. Her main research interests include family and marriage law from national, European, international, and comparative perspectives, as well as succession law and private international law.

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Profile

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Katrin's practice focuses on family law, including divorce, division of matrimonial property, parental responsibility, child residence and contact matters, maintenance and succession. She regularly represents clients in complex family law disputes, including cross-border and international family law matters, and advises clients on the legal and financial consequences of family breakdown.

In 2020, Katrin was awarded the honorary title of "Diamond of the Bar Association" by the Estonian Bar Association, following a nomination by the Estonian Union for Child Welfare.

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Profile

Nataša Plavšić is a Judge at the Constitutional Court of Serbia with extensive experience in constitutional adjudication and the protection of human rights, particularly in the field of family law. She holds an LL.M. and a PhD in Public International Law, with academic research focused on both domestic and international mechanisms for the protection of human rights.

She previously served as Agent of the Republic of Serbia before the European Court of Human Rights, where she represented the State in complex cases, particularly those concerning Article 8 of the European Convention on Human Rights. She also coordinated the execution of ECtHR judgments in close cooperation with national authorities and the Committee of Ministers.

Her judicial work includes deciding on constitutional complaints in family law matters, including parental rights, child protection, enforcement and non-enforcement of judicial decisions, as well as cross-border disputes under the Hague Convention on International Child Abduction.

Languages Spoken: Serbian, English, Bosnian, Croatian

Practice Areas: Adoption, Appeals, Child Care/Public Law, Child Custody/Residence/Visitation/Contact, Child Support, Domestic Abuse/Violence/Protection Orders, Emergency Procedures/Injunctions, Enforcement: Child Custody, Enforcement: Child Support, Hague Convention/Child Abduction, Modification/Variation: Child Custody, Modification/Variation: Child Support, Parentage/Paternity, Relocation/Removal from Jurisdiction, Same Sex Partnerships, Surrogacy

18th Regional Conference on Private International Law - Celebrating the first 20 years (2003-2023)

Faculty of Law University of Niš

16-18 November 2023

***Private International Law and International Organizations
- achievements and challenges-***

17 November

Welcome and Opening Session

08:45-10:15

- **Welcome speeches**

Moderator: Toni Deskoski, LL.D. (Full Professor), Law Faculty *Iustinianus Primus*, University Ss. Cyril and Methodius, Skopje

- **Reflections on the Complementarity of Global and Regional Unification of Private International Law**, *Hans van Loon* (Former Secretary General of the Hague Conference on Private International Law), The Hague, the Netherlands, *Inaugural lecture*
- **Characterisation in the CJEU Case Law: Unity or Diversity?**, *Vesna Lazić, LL.D.* (Associate Professor), Utrecht University; Asser Institute, The Hague, the Netherlands
- **Centennial of the Hague Academy of International Law**, *Maja Stanivuković, LL.D.* (Full Professor), Faculty of Law University of Novi Sad, Serbia
- **Discussion**

Part I

10:15-12:05

Private International Law Unification - From The Hague to Brussels

Moderator: *Maja Kostić Mandić*, LL. D. (Full Professor), Faculty of Law University of Montenegro

- **Two Faces of Habitual Residence - a Masterpiece of the HCCH and a Challenge**, *Dragana Damjanović*, LL.D. (Assistant Professor), Faculty of Law University of East Sarajevo, Bosnia and Herzegovina
- **International Protection of Adults - From a Caterpillar to a Butterfly**, *Ines Medić*, LL.D. (Full Professor), Faculty of Law University of Split, Croatia
- **Does Codification of Private International Law by International Organizations Lead Towards the Unification of Private International Law? - The Example of the 2019 Hague Judgments Convention**, *Dora Zgrabljic Rotar*, LL.D. (Associate Professor), Faculty of Law University of Zagreb, Croatia
- **Embracing the States' Positive Obligation to Recognize and Enforce under the Hague Judgments Convention**, *Toni Deskoski*, LL.D. (Full Professor) & *Vangel Dokovski*, LL.D. (Associate Professor); Faculty of Law *Iustinianus Primus*, University *Ss. Cyril and Methodius*, Skopje, North Macedonia
- **Public Policy Exception Under the 2019 HCCH Judgments Convention**, *Milana Ranković* (Teaching Assistant), University of Montenegro, Faculty of Law, Montenegro
- **When to Serve Abroad - the EU and The Hague Perspective**, *Boriana Musseva*, LL.D. (Full Professor), Faculty of Law University of Sofia, Bulgaria
- **Discussion**

12.05-12.25 Coffee break

Part II

12.30-14.20

Private International Law Unification - From The Hague to the National PIL Systems

Moderator: Christa Jessel Holst, LL.D. (Max Planck Institute for Comparative and Private International Law)

- **Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters: The Normative Crossroads in Bosnia and Herzegovina**, *Jasmina Alihodžić, LL.D. (Full Professor, Faculty of Law University of Tuzla) & Anita Duraković, LL.D. (Full Professor, Faculty of Law University Džemal Bijedić, Mostar);* Bosnia and Herzegovina
- **Practical Implications of HCCH Conventions in Albania: Dissolution of Marriage and Its Consequences**, *Aida Gugu Bushati, LL.D. & Eniana Qarri, LL.D. (Lecturers);* Faculty of Law University of Tirana, Albania
- **Evaluation of Turkish Court Practice Regarding the Hague Convention on Child Abduction**, *Z. Derya Tarman, LL.D. (Full Professor, Koç University Law School) & Ceyda Sürat Efeçinar, LL.D. (Full Professor, Faculty of Law, Piri Reis University);* Turkey
- **To Hague or Not to Hague? A Recent Experience of Intercountry Adoption in Croatia**, *Tena Hoško, LL.D. (Assistant Professor),* Faculty of Law University of Zagreb, Croatia
- **HCCH Conventions or Bilateral Treaties in the Serbian PIL - Everything Everywhere All at Once?**, *Sanja Marjanović, LL.D. (Associate Professor) & Sanja Đorđević Aleksovski, LL.D. (Assistant Professor);* Faculty of Law University of Niš, Serbia
- **Architecture of the Bilateral Agreements on International Judicial Assistance in the Republic of North Macedonia and the Republic of Serbia – What is normal for the spider is chaos for the fly!** *Slavko Đorđević, LL.D. (Full Professor, Faculty of Law University of Kragujevac, Serbia) & Ilija Rumenov, LL.D. (Associate Professor, Faculty of Law Iustinianus Primus, University Ss. Cyril and Methodius, Skopje, North Macedonia)*
- **Discussion**

14.20-15.25 Lunch

Part III

15.30-18.30

Private International Law and International Dispute Resolution

Contemporary challenges

Moderators: *Toni Deskoski*, LL.D. (Full Professor), Faculty of Law *Iustinianus Primus*, University
Ss. Cyril and Methodius, Skopje

&

Petar Đundić, LL.D. (Full Professor), Faculty of Law University of Novi Sad

- **Personal Status Continuity - a Long-term Challenge**, *Mirela Župan*, LL.D. (Full Professor), Faculty of Law University *Josip Juraj Strossmayer*, Osijek, Croatia
- **Considering the Application of the EU PIL System to Climate Change Litigation**, *Vassiliki Koumpli* (Senior Research Fellow), Hellenic Institute of International and Foreign Law, Athens, Greece
- **Private International Law Aspects of Foreign Direct Investment Protection**, *Marko Jovanović*, LL.D. (Associate Professor), Faculty of Law University of Belgrade, Serbia
- **Private International Law Aspects of Blockchain Technology**, *Jura Golub* (Research Assistant), Faculty of Law University *Josip Juraj Strossmayer*, Osijek, Croatia
- **Application of Foreign Law in Turkish Courts**, *Esra Tekin*, LL.D. (Assistant Professor), Faculty of Law Dicle University, Turkey
- **Third-Party Funding in Cross-Border Litigation**, *Dženana Radončić*, LL.D. (Assistant Professor), Faculty of Law University of Zenica, Bosnia and Herzegovina
- **Deference to the Arbitrators' Jurisdictional Determinations in International Commercial Arbitration**, *Dennis Solomon*, LL.D. (Full Professor), University of Passau, Faculty of Law, Germany
- **Receptum Arbitri in Private International Law**, *Davor Babić*, LL.D. (Full Professor), Faculty of Law University of Zagreb, Croatia
- **Pathology Diagnosis in Arbitration Clause**, *Sevleta Halilović*, LL.M. (Research and Teaching Assistant), Faculty of Law University of Sarajevo, Bosnia and Herzegovina
- **Impact of the UNCITRAL's Texts on Legal Framework for Arbitration in SEE**, *Milena Đorđević*, LL.D. (Assistant Professor), Faculty of Law University of Belgrade, Serbia
- **Discussion**

20:00 Dinner in the Hotel

**18th Regional Conference on Private International Law
- Celebrating the First 20 years (2003-2023) -**

Private International Law and International Organizations - achievements and challenges -

Conference Proceedings



Niš, 2024.



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 **CENTER FOR
PRIVATE INTERNATIONAL LAW
OF THE HAGUE CONVENTIONS**

Deutsche Gesellschaft für Internationale Zusammenarbeit
Faculty of Law University of Niš
Center for Private International Law of the Hague Conventions

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THE PRACTICAL IMPLICATIONS OF HCCH CONVENTIONS IN ALBANIA: DISSOLUTION OF MARRIAGE AND ITS CONSEQUENCES

Abstract: The HCCH Conventions on family matters are the most important instruments of the HCCH, embracing a great number of Contracting States in several important elements for cross border family disputes. Albania is a member of the HCCH, and HCCH Conventions are directly applicable in the Albanian legal system. The interplay of Albanian private international law and HCCH Conventions has raised several concerns in practice. Concerns have been raised regarding the application of the *lis pendens* rule for family matters in line with Article 12 of the HCCH (1970) Divorce Convention, or jurisdiction matters on issues involving parental responsibility as provided by Article 5 of HCCH (1996) Child Protection Convention. The discrepancies between jurisdiction rules as provided by the HCCH Conventions and national legislation, affects the free circulation of judgments on family matters. Albanian courts are encouraged to apply the HCCH Conventions whenever applicable and preserve the main principles envisaged by private international law, such as the best interests of the child or avoiding incompatible judgments.

Keywords: divorce, jurisdiction, *lis pendens*, transfer of jurisdiction, recognition of judgments.

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1. Introduction

For more than a century, the Hague Conference on Private International Law (HCCH) has been, and continues to be, a great example of the tangible benefits that multilateralism can yield for family relations around the globe. It improves the day-to-day lives of people and enhance certainty and predictability for cross-border on a highly difficult area, such as international family relations. The HCCH Conventions in family law matters are among the most successful HCCH Conventions, with numerous Contracting States across the globe.¹ The HCCH Conventions have had a great influence on European Union (EU) private international family law and on private international family law of States across the globe, but the reverse effect is also noted.² Albanian legislation on private international law on family matters is a vivid example of such influence. Albania is an active member of the HCCH, since 2002, and it has ratified around 17 HCCH Conventions.³ The HCCH Conventions once ratified become integrated part of the Albanian legal system and they serve as source of law for solving family cases with foreign elements. The proper implementation of the HCCH Conventions becomes more eminent in the edge of EU integration of the country.⁴

However, several shortcomings of the HCCH private international law regime are also noted. Not all HCCH Conventions have been globally embraced, and few of them require treaty relations between the Contracting States. Most HCCH Conventions designate ministries or other administrative authorities as the central authority of the Conventions, rather than courts, although efforts have been made by the HCCH to create direct communication mechanisms between courts.⁵ The uniform implementation of Conventions is also hampered by disparities in the ways in which the Conventions

¹ Baker, H., Groff, M, *The impact of Hague Conventions on European family law*, European Family Law. Vol I. Family law in e European perspective (ed. J. Scherpe), Edward Elgar, 2016, p. 145.

² *Ibid.*, p. 146.

³ <https://www.hcch.net/en/states/hcch-members/details1/?sid=18>, (last access on April 10, 2024).

⁴ Albanian is candidate country for EU membership. It has the obligation to approximate legislation with EU legislation including the international conventions which EU is a member.

⁵ For a deeper analysis of the mechanism on direct communication between courts see: Lortie, Ph, *Direct judicial communications and the international Hague network of judges under the 1980 Child Abduction Convention*, Private International Law in the Jurisprudence of European Courts – Family at Focus (ed. M. Župan), Osijek: Faculty of Law Osijek Josip Juraj Strossmayer University of Osijek, 2015.

are understood and applied in different Contracting States.⁶

This paper will briefly discuss the interplay between HCCH Conventions and Albanian national legislation in cross-border family law cases. It will analyse the position of HCCH Conventions within the Albanian legal system and their practical implications. The Albanian jurisdiction will serve as a source of inspiration for the issues analysed in this paper.

2. Dissolution of marriage and its consequences – legal overview

Albania is experiencing a high degree of migration. Almost 1/3 of Albanians are living and working in EU countries or North America.⁷ Some have migrated permanently but maintain strong ties with Albanian and some share their life between several countries. For such people, a divorce may have global implications. For spouses with significant assets, the division of property is a real challenge. But while money is divisible, children are not. The determination or choice of the appropriate jurisdiction may prove crucial for proper safeguarding of litigants' interests.⁸ This fact has exposed the Albanian courts with many challenges when rendering divorce judgments with foreign elements. As there is always an interplay between national and international law, judges are often perplexed on what to decide.

2.1. Divorce and its consequences under national law

Divorce in Albania is governed by the Family Code of 2003 (AFC).⁹ AFC has a liberal approach regarding divorce. There are three grounds for divorce: the divorce by spouses' mutual consent (Art. 125 of AFC¹⁰); divorce

⁶ For a deeper analysis see: Schuz, R, *Comparative Law and the Work of The Hague Conference on Private International Law in relation to Family Law*, *IusComparatum*, 2, 2022, pp. 6-27 [Retrieved from, International Academy of Comparative Law: aidc-iacl.org].

⁷ *How migration, human capital and the labour market interact in Albania*, European Training Foundation, 2021, p. 13.

⁸ Olejniczak-Michalska, A, *Jurisdiction in divorce cases with an international element*, [Electronic version], 2024, Retrieved March 16, 2024, from <https://codozasady.pl/en/p/jurisdiction-in-divorce-cases-with-an-international-element>.

⁹ Family Code of the Republic of Albania is approved by law No. 9062, dated 8.5.2003, Official Gazette No. 49 (2003); amended by law No. 134/2015, dated 5.12.2015, Official Gazette No. 220 (2015).

¹⁰ According to Art. 125 of AFC, when spouses agree on the dissolution of marriage, they submit to the court for approval, together with the request, a settlement agreement that stipulates the terms for the dissolution of the marriage. Spouses are obliged to submit to the court an agreement for the regulation of the parental responsibility after the dissolution of marriage.

by unilateral request upon the irretrievable breakdown of the matrimonial life caused by circumstances foreseen by the law (Art. 132 of AFC¹¹); divorce by unilateral request upon a *de facto* separation for a period of at least three years (Art. 129 of AFC¹²).

Divorce can be obtained only through a judicial decision rendered by a court. A court decision is necessary to dissolve the marriage even in the case of consensual divorce. The claim requesting the dissolution of the marriage may also contain other requests, such as the request for parental responsibility, request for child maintenance, as well as for the division of matrimonial property. The court must adjudicate the claim for dissolution of marriage together with the other requests with one exception, which is the division of matrimonial property. The court may separate the division of matrimonial property requests for obvious reasons (the complication of the process) and that is becoming a rule in practice (Art. 138 of AFC).¹³

2.2. Divorce and its consequences under Albanian private international law

Cross-border divorce is governed by Albanian law "On private international law" of 2011 (PILA),¹⁴ HCCH Conventions ratified by Albania and other relevant national legislation such as AFC and the Albanian Civil Procedure Code¹⁵ (ACPC).

¹¹ According to Art. 132 of AFC, either spouse can request the dissolution of marriage when, due to continuous quarrels, maltreatment, severe insults, adultery, incurable mental illness, lengthy penal punishment of the spouse or due to any other cause constituting repeated violations of marital obligations, a joint life becomes impossible, and the marriage has lost its purpose for one or for both spouses.

¹² According to Art. 129 of AFC, either spouse can request dissolution of their marriage when they have lived separately for a period of 3 years.

¹³ In practice the court always separates the matrimonial property proceeding as they are more complicated and may delay the divorce proceedings.

¹⁴ Law No. 10 428, dated 2.6.2011 "On private international law", Official Gazette No. 82 (2011).

¹⁵ Civil Procedure Code of the Republic of Albania, adopted by Law No. 8116, dated 29.3.1996, Official Gazette No. 9,10,11 (1996); amended by Law No. 8431, dated 14.12.1998, Official Gazette No. 30 (1998); Law No. 8491, dated 27.5.1999, Official Gazette No. 20 (1999); Law No. 8535, dated 18.10.1999, Official Gazette No. 29 (1999); Law No. 8812, dated 17.5.2001 Official Gazette No. 32 (2001); Law No. 9062, dated 8.5.2003, Official Gazette No. 49 (2003); Law No. 9953, dated 14.7.2008, Official Gazette No. 122 (2008); Law No.10 052, dated 29.12.2008, Official Gazette No. 205 (2008); Law No. 49/2012, dated 19.4.2012, Official Gazette No. 53 (2012); Law No. 122/2013 dated 18.4.2013, Official Gazette No. 67 (2013); Law No. 160/2013, dated 17.10.2013, Official Gazette No. 180 (2013); Law No. 114/2016, dated 3.11.2016, Official Gazette No. 219 (2016); Law No. 38/2017, dated 30.3.2017, Official Gazette No. 98 (2017).

PILA determines international jurisdictions of the Albanian courts for divorce and its consequences under Art.75 of PILA and applicable law to divorce and its consequences under Arts. 25 – 29 of PILA.¹⁶ The recognition of foreign divorces is governed by ACPC (Arts. 393-396), which is applicable to all foreign court judgments.

The HCCH Conventions play an important role in the dissolution of marriage in Albania. The HCCH Conventions has influenced the PILA and most of the solutions provided there in are in line with the HCCH Conventions. PILA provides for the habitual residence as a connecting factor in family matters, however the latter is a secondary connecting factor, while nationality remains the main one.¹⁷ Hidden in the provisions of the PILA, the best interest of the child becomes the general rule that governs both issues of court jurisdiction and applicable law concerning child personal and property protection¹⁸.

The position of the international conventions in the Albanian legal system is provided by Art. 116 of the Albanian Constitution¹⁹ and Art. 2 of PILA. Both acts stipulate that international law have priority over national legislation, and it is directly applicable when its content and purpose allow to do so (Art. 122 of the Albanian Constitution). As stated above, Albania has ratified the most relevant HCCH Conventions in the field of family law.²⁰

¹⁶ Bushati Gugu, A., Qarri, E, *Albanian Private International Law in Family Matters*, Private International Law in the Jurisprudence of European Courts – Family at Focus (ed. M. Župan), Osijek: Faculty of Law Osijek Josip Juraj Strossmayer University of Osijek, 2015, p. 367.

¹⁷ But there are also cases in which habitual residence is the main connecting factor. As an example, Art. 29 of PILA has been drafted under the influence of HCCH 1996 Child Protection Convention. Art. 29 of PILA, that governs the law applicable to parental responsibility, provides for two alternative connecting factors: child nationality or child habitual residence; that are alternatively applicable based on the child's best interest principle.

¹⁸ Art. 29 (relations between parents and children) of PILA stays that: Relations between parents and children are governed by the law of the country where the child has his habitual residence, or the law of the nationality of the child if that is in the child's best interest.

¹⁹ The Constitution of the Republic of Albania, approved by law no. 8417, dated 21.10.1998.

²⁰ Hague Convention of 1 June 1970 On the Recognition of Divorces and Legal Separations, ratified by Law No. 109/2012, Official Gazette No. 157 (2012) (Konventa e Hagës "Përnjohjen e divorcit dhe ndarjeve ligjore"); Hague Convention of 2 October 1973 On the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, ratified by Law No. 10398, dated 17.3.2011, Official Gazette No. 34 (2011) (Konventa e Hagës "Për Njohjen dhe Zbatimin e Vendimeve në Lidhje me Detyrimet Ushqimore"); Hague Convention of 2 October 1973 On the Law Applicable to Maintenance Obligations, ratified by Law No. 10397, dated 17.3.2011, Official Gazette No. 34 (2011) (Konventa e Hagës "Për Ligjin e Zbatue shëm për Detyrimet Ushqimore"); Hague Convention of 25 October 1980 On the Civil Aspects of International Child Abduction, ratified by Law No. 9446, dated 24.11.2005, Official Gazette No. 97 (2005) (Konventa e Hagës "Për Aspektet Civile të Rrëmbimit Ndërkombëtarë Fëmijës";

Recently Albania has signed the HCCH Maintenance Protocol²¹ but it has not taken any action to ratify the HCCH Adult Protection Convention.

2.3. Divorce and its consequences under HCCH Conventions

As mentioned above Albanian is a member of the most important HCCH Conventions on family matter,²² the content of which can be summarised below:

The Hague Convention on Recognition of Divorces and Legal Separations (HCCH 1970 Divorce Convention) aims at regulating the recognition in a Contracting State of a divorce or legal separation obtained in another Contracting State. The HCCH 1970 Convention determines that recognition of divorce or legal separation is conditioned by the existence of some links between the spouses and the state of divorce or legal separation.²³ To ensure this link between the forum and the parties (spouses) the HCCH 1970 Divorce Convention provides for two connecting factors: habitual residence and nationality under certain conditions. Only these decisions are eligible for free circulation under the Convention.

The Divorce Convention has 20 Contracting States, including Albania. The Convention applies only to relations between those Contracting States that has declared the acceptance of the accession made by the acceding State. The Convention does not apply to divorces granted by non-Contracting States

Hague Convention of 29 May 1993 On Protection of Children and Co-operation in Respect of Intercountry Adoption, ratified by Law No. 8624, dated 15.6.2000, Official Gazette No. 18 (2000) (Konventa e Hagës “Për Mbrojtjen e Fëmijëve dhe Bashkëpunimin për Birësimet Jashtë Vendlindjes”); Hague Convention of 19 October 1996 On Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, ratified by Law No. 9443, dated 16.11.2005, Official Gazette No. 96 (2005) (Konventa e Hagës “Mbi juridiksionin, ligjin e zbatueshëm, njohjen, zbatimin dhe bashkëpunimin në lidhje me përgjegjësinë prindërore dhe masat për mbrojtjen e fëmijëve”); Hague Convention of 23 November 2007 On the International Recovery of Child Support and Other Forms of Family Maintenance, ratified by Law No. 63/2012, dated 31.5.2012, Official Gazette No. 72 (2012) (Konventa e Hagës “Për rivendosjen ndërkombëtare të detyrimit ushqimor ndaj fëmijëve dhe formave të tjera të mbështetjes për anëtarët e tjerë të familjes”).

²¹ Albania has signed the HCCH Maintenance Protocol in February 2024: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=133> (last access on April 10, 2024).

²² Albania is also a member of the HCCH Convention of 25 October 1980 On the Civil Aspects of International, which do have impact on the divorce cases regarding establishing the habitual residence of the child, but it is not part of the analysis in this paper.

²³ Baker and Groff, *op.cit.*, p. 146; D. Coester-Waltjen, Divorce and personal separation. In *Encyclopaedia of Private International Law* (Vol. 1), Edward Edgar, 2017, p. 547.

or Contracting States that have not accepted Albania.²⁴ Unfortunately, the states with which Albania has more family relations have not accepted it. In this case, the ACPC provisions on recognition of foreign court decisions will apply instead.

The HCCH Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (HCCH 2007 Child Support Convention) aims at creating an effective, accessible, and simple system for the international recovery of maintenance obligations. The Convention creates a simple and fast-track system for the recognition and enforcement of maintenance decisions.²⁵ The bases for recognition and enforcement of maintenance decisions of other Contracting Parties are broad (Art. 20), the principal bases are the habitual residence of either the respondent or the creditor in the State of origin where proceedings were initiated²⁶. For the purposes of recognition and enforcement, a decision includes a settlement or agreement concluded before, or approved by, a judicial or administrative authority (Arts. 3(e) and 30).

The HCCH Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (HCCH 1996 Child Protection Convention) governs issues of jurisdiction, recognition and enforcement and applicable law on parental responsibility and protective measures. The Convention distinguishes between the protection of the child within his family (parental responsibility *ex lege*) and the institutional protection (measures taken by administrative and judicial authorities). The Convention applies to all children who have their habitual residence in one of the Contracting States of the Convention (Art. 5.1), regardless them being a national of a non-Contracting State.²⁷ The Convention also applies to undocumented immigrant children, refugee children who, due to problems in their

²⁴ Art. 28 of the HCCH 1970 Divorce Convention. The accession of Albania has been accepted by 5 Contracting States, namely: Czech Republic, Finland, Slovakia, Switzerland, and United Kingdom. The Convention has practical application with Switzerland and UK.

²⁵ Beaumont, P, *International family law in Europe – the maintenance project, the Hague Conference and the EC: A triumph of reverse subsidiarity*, *Rabel Journal of Comparative and International Private Law* (Rabelsz), 73 (3), 2009, pp. 509-546, p. 514.

²⁶ *Outline of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*. [Electronic version]. Retrieved March 26, 2024, from <https://assets.hcch.net/docs/70cda9de-283c-4892-80ec-292daec4f667.pdf>.

²⁷ Lagarde, P, *Explanatory Report of the HCCH 1996 Child Protection Convention*. [Electronic version], 1996, Retrieved March 20, 2024, from <https://assets.hcch.net/docs/5a56242c-ff06-42c4-8cf0-00e48da47ef0.pdf>.

country, have moved to one of the Contracting States of the Convention, as well as to children whose habitual residence cannot be determined (Art. 6). The Convention is based on the habitual residence of the child as a connecting factor to determine both jurisdiction and applicable law (the unity of *jus* and *forum*).

Albania has ratified the Convention with the reservation of Art. 55.1(a).²⁸ The applicable law determined by of the Convention applies regardless of whether it is the law of a Contracting State of the Convention or not (Art. 20).

With the aim to promote the best interest of the child, the Convention has established a mechanism of cooperation between the Central Authorities of the Contracting States, including courts. Initially a request to recognise and enforce child protection measures is exchanged between Central Authorities. After the examination of the compliance of the request with the Convention's requirements, the receiving Central Authority initiates judicial or administrative procedures.²⁹

3. Interplay between HCCH Conventions and national legislation

In cross border divorce proceedings, Albanian court are obliged to apply both international and national law. Disparities and confusions between these sources are noticed with the frequently used of HCCH Conventions such as: HCCH 1970 Divorce Convention, HCCH 1996 Child Protection Convention or HCCH 2007 Child Support Convention.³⁰

3.1. Stay, decline or transfer – trilemma

In cross-border divorce cases before Albanian courts, the disputes often reflect similar issues regardless of which party initiates the proceedings. These cases typically involve Albanian nationals who have their habit-

²⁸ According to this reserve, Albania has exclusive jurisdiction to take measures for the protection of the property of the child that is situated in Albania.

²⁹ Arts. 31 and *seq.* of HCCH 1996 Child Protection Convention. The importance of direct communication under the Convention is discussed by Lortie, *op. cit.*

³⁰ In a recent case concerning the child maintenance obligation, the first instance court did not apply the HCCH 2007 Child Support Convention, but reference was made to the HCCH 1996 Child Protection Convention. See: Albanian High Court Decision, Civil Chamber, No. 00-2023 4581, dated 8.11.2023. In another case the court referred to HCCH 1996 Child Support Convention in relation to USA which is only a signatory party of the Convention. See status table of the Convention (<https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>); See Albanian High Court Decision, Civil Chamber, No. 00-2023-2782, dated 31.5.2023.

ual residence in a foreign country. There are two common scenarios: *First seizure*: In this situation, an Albanian national residing in a foreign country initiates divorce proceedings in an Albanian court. They may choose to do so for various reasons, such as convenience, familiarity with Albanian legal procedures, or a desire for a specific outcome that they believe they can achieve more easily in Albania. This scenario brings into consideration the possibility of the Albanian courts to decline and/or transfer the jurisdiction, when children or properties are involved. In the case of child protection, the court's primary concern should be the best interests of the child.

Second seizure: Alternatively, the dispute may be brought before the Albanian courts as a court second seized. This means that divorce proceedings have already been initiated in the courts of the country where one or both spouses have their habitual residence. However, for various reasons, such as dissatisfaction with the length of the proceedings or a desire for a different legal outcome, one of the parties may choose to bring the case to Albanian court as well.³¹ In the second scenario, *lis pendens* issue arises where the same matter is pending before another court, the Albanian court must carefully consider whether to stay, or not the proceeding. The court should prioritize the efficient resolution of the dispute and the preservation of the parties' rights to access to justice.

3.2. The (un)resolved issue of *Lis' alibis pendens* on family matters - does it really matter?

The *lis pendens* provision whenever applicable aims to avert the bringing of contending proceedings and therefore the possibility of irreconcilable judgments, thereby avoiding conflicts in the recognition and enforcement process.³² To produce such effect the rule should be mandatory, leaving no discretion to the court second seized. In theory, this should provide legal certainty to the parties.³³ The (EU) rules, representing the Roman school of thought, typically follow the priority order of the court first seized as man-

³¹ This is particularly the case with divorce proceedings brought before the Italian courts, due to the Italian system which allows legal separation before the final decisions of divorce. See Italian Divorce Law: Law No. 898, dated 1 December 1970 "Disciplina dei casi di scioglimento del matrimonio", amended.

³² Janečková, P, *Lis pendens as the solution of jurisdictional conflicts*, Humanities and Social Sciences Review, 07(01), 2017, pp. 357–362.

³³ Bantekas, I. *The pitfalls of lis pendens in transnational matrimonial jurisdiction disputes before English courts*, [Electronic version], 2014, Retrieved March 20, 2024, from <https://bura.brunel.ac.uk/bitstream/2438/12704/1/Fulltext.doc>.

datory solution,³⁴ while common law systems apply versions of the forum non convenient doctrine.³⁵

The HCCH Conventions provide different solutions as to the priority order and the flexibility of *lis pendens* rules. For example, under the HCCH 1970 Divorce Convention there is no such as explicit principle of the court first seized, although the priority order is implied.³⁶ The purpose of Art. 12 of HCCH 1970 Divorce Convention is to reduce, if not to eliminate entirely incompatible decisions being given.³⁷

In interpreting Art. 12 of the HCCH 1970 Divorce Convention, the High Court of Albania (HCA) has held in several decisions that *"this provision does not have a mandatory character and does not authorize the interruption of proceedings initiated before the Albanian courts, neither by interrupting proceedings nor by suspending them, because the parties have brought the same dispute before a foreign court which may eventually have declared jurisdiction, but it is left as a possible alternative to the court depending on the legal issue being adjudicated before it."*³⁸ Moreover (former) Art. 38 of the ACPC prohibited the stay of proceedings as an option for the Albanian court.³⁹ Reference to Art.12 of the HCCH 1970 Divorce Convention was made regardless of whether the convention was applicable in that case.⁴⁰

³⁴ See Art. 20 (*lis pendens* and depended actions) of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ L 178, 2.7.2019, pp. 1–115 (Regulation Brussels II Recast).

³⁵ McClean, D, *Transfer of Proceedings in International family cases*, Journal of Private International Law, 19 (1), 2023, pp. 1–24, p. 2.

³⁶ See Art. 12 of HCCH 1970 Divorce Convention. Bellet, P., Goldman, B, *Explanatory Report of the Hague Convention on the Recognition of Divorces and Legal Separations*, [Electronic version], 1971, Retrieved March 16, 2024, from, from <https://assets.hcch.net/docs/99ce43e1-b580-4009-9b75-5d88fa4e12f2.pdf>, p. 25.

³⁷ *Ibid.*, p. 25.

³⁸ Albanian High Court Decisions, Civil Chamber, No. 94, dated 23.3.2016; No. 172, dated 24.4.2014; and No. 612, dated 26.11.2014.

³⁹ According to (former) Art. 38 of ACPC, Albanian court does not terminate or suspend the proceedings, when the latter or another issue related to it is being adjudicated by a foreign court.

⁴⁰ This is mostly the situation with divorce cases with Italy. The accession of Albania to the Convention has not been accepted by Italy. According to Art. 28 of the HCCH 1970 Divorce Convention such accession is necessary for the Convention to be applied in divorce cases with Italy. See the Status Table of the Convention: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>.

The adoption of the new Art. 38 of the ACPC⁴¹ which allowed for the stay of the proceedings in favour of the foreign court did not change much the jurisprudence of HCA for obvious reasons.⁴² The stay of the proceedings is at the Albanian court's discretion. It may be ordered; however, only when certain conditions are met: the foreign court is the court first seized, the decision issued in other country will be recognized in Albania and the stay of the proceedings must appear to be "necessary" in the circumstances "for the proper administration of justice Art. 38 para. 1 (b) and (c) of ACPC."⁴³ Art. 38 of ACPC applies if both the Albanian court and the foreign court have jurisdiction to the matter of the case and the foreign court is the court first seized (*prior temporis*), otherwise *lis pendens* rule will not apply. The court first seized is determined by reference to the ACPC, which means that would be enough that the registration date of the claim is earlier than the one brought before the Albanian court.⁴⁴

Moreover, Albanian court may face difficulties in applying Art. 38 of ACPC for family matters because neither the EU Regulation,⁴⁵ nor the CJEU jurisprudence has cast lights in these regards.⁴⁶ The conditions provided by Art. 38 of ACPC are complex even for civil and commercial matters, as they expose the court to an unknown legal regime.⁴⁷

⁴¹ Law No. 38/2017 amending Art.38 of ACPC. This provision has been copied after Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32 (Regulation Brussels I Recast), Art. 33 (*lis pendens* with third countries), but it is applicable also for family matters as ACPC applies for all type of proceedings. According to Art. 38 para. 1 of ACPC: When the same claim, between the same parties, with the same cause and subject of the lawsuit is being considered simultaneously by a court of a foreign country and the Albanian court, the latter may suspend the proceedings on this dispute when: a) The lawsuit has been filed before in time in the court of a foreign country; b) The decision of a court of a foreign country can be recognized and / or enforced in the Republic of Albania; c) The Albanian court is satisfied that the suspension is necessary for the proper administration of justice.

⁴² In the recent judgments the HCA did not stay the proceedings arguing that the language of the Art. 38 is flexible.

⁴³ The interpretation of Art. 38 is based on the interpretation of Art. 33 of Brussels I Recast Regulation. For a deeper analysis of Art. 33 see Franzina, P, *Lis pendens involving a third country under the Brussels I-bis regulation: an overview*, Rivista di diritto internazionale privato e processuale, L(1), 2014, pp. 23-42.

⁴⁴ Kola (Tafa), F, *Lis pendens ndërkombëtare në juridiksionin gjyqësor shqiptar si risi në ligjin procedural shqiptar*, Jeta Juridike, 3, 2017.

⁴⁵ Brussels II Recast Regulation does not regulate *lis pendens* between EU and third countries.

⁴⁶ Burdová, K, *EU international family law and third states*, Bratislava Law Review, 1(1), 2017, pp. 143-147, p.144.

⁴⁷ Although these cases relate to EU countries, again by not being a member of EU and not

Should the Albanian courts ever apply the *lis pendens* rule and is this important for the fate of the proceedings? In the authors view this is an issue not to be neglected each time is requested by the parties, although we are aware of its complex nature. It is true that the language of Art. 12 of HCCH 1970 Divorce Convention *per se* does not help much, but the spirit of the HCCH 1970 Divorce Convention surely does. If we go back to *raison d'être* of the *lis pendens*, which is the elimination of incompatible decisions, most of the scenarios brought before the Albanian courts would fit in. The results observed in the practice show that in most of the cases someone is left in a *limbo* family status (different matrimonial status in Albania and abroad, different responsibility rights over children and different amount of alimony).⁴⁸

Lis pendens with mandatory priority order is ensured under HCCH 1996 Child Protection Convention, Article 13 and it is directly applicable to Albania.⁴⁹ In this regard a foreign court might have jurisdiction as the court of the habitual residence of the child (Art. 5 of the Convention), while the Albanian court will have jurisdiction as a divorce court under special circumstances as provided by Art.10 of the HCCH 1996 Child Protection Convention.⁵⁰ This situation is known to the HCCH 1996 Child Protection Convention which provide a solution under Art. 13. This is more an issue of concurrent jurisdiction rather than a purely *lis pendens* one.⁵¹ For example, if a divorce proceeding is underway in Albania and the Albanian courts have been asked to decide on parental responsibility of the child, the authority of the state of the habitual residence of the child which was asked to decide on the custody ought to abstain from deciding on this request until the Albanian court assume jurisdiction. If the Albanian court is a divorce court based on Art. 75 of PILA

applying same rules as a Member State, it is difficult for any court including the Albanian court to predict the results in the court first seized.

⁴⁸ See for example: Decision of the First Instance Court of Tirana, No.2680, dated 2.4.2019.

⁴⁹ See Art. 13 of HCCH 1996 Child Protection Convention and its Explanatory Report, Lagarde, *op.cit.*, p. 571.

⁵⁰ According to Art. 10, para.1 of HCCH 1996 Child Protection Convention: Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

⁵¹ Lagarde, *op.cit.*, p. 571.

but does not satisfy the condition of Art. 10, as the court first seized it has to decline or transfer the jurisdiction to another authority which is subsequently seized.⁵² The issue of the transfer of the proceedings will be discussed below as it is very important for deciding on both parental responsibilities.

3.3. Decline or transfer the jurisdiction

Albanian court as a “divorce court” is often asked to decide not only on divorce of the spouses but also on its consequences, i.e., the parental responsibility over children that in most of the case are either born or live abroad. In this case the interplay of PILA, ACPC and HCCH (1996) Child Protection Convention will come into place. Art. 75 of PILA determines the international jurisdiction of the Albanian court for divorce cases when (a) one of the spouses is or was an Albanian citizen (*shtetas*) at the time of marriage, (b) has the habitual residence in the Albanian at the time of divorce.⁵³ Jurisdiction according to Art. 75 of PILA is not limited to divorce but also to the consequences that arise from the dissolution or annulment of marriage.⁵⁴ Art. 75 of PILA represents the unity character of the divorce process which mean that court once assume jurisdiction based on any of the factors listed above will decide also on child custody and matrimonial property regime.⁵⁵ While the court has no dilemma as to separation the proceeding or even decline jurisdiction on the division of property,⁵⁶ it has not been decisive as to the separation or declining the jurisdiction for child custody of children having their habitual residence in a foreign country.

Art. 5 of HCCH 1996 Child Protection Convention determines that: *The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property. Subject to Article 7,⁵⁷ in case of a change*

⁵² *Ibid.*, p. 571.

⁵³ Art. 75 para.1 of PILA: The Albanian courts have jurisdiction in matters relating to marriage if: a) one of the spouses is an Albanian citizen or was at the time the marriage was entered into; b) the spouse against whom the lawsuit is brought, or the plaintiff in a case for dissolution of a marriage, has his habitual residence in the Republic of Albania; c) one of the spouses is stateless and has his habitual residence in the Republic of Albania.

⁵⁴ Art. 75 para. 3 of PILA: Jurisdiction according to point 1 of this article also extends to the consequences that arise from the dissolution or annulment of the marriage, from the marital property or from the temporary measures which have been taken by the courts in such cases.

⁵⁵ Kola Tafaj, F, *Juridiksioni i gjykatave shqiptare në shqyrtimin e çështjeve me elementë të huaja, Komentari i Ligjit për të Drejtën Ndërkombëtare Private*, Tiranë: Ombra GVG, 2019, p. 773.

⁵⁶ Albanian High Court Decision, Civil Chamber, No. 00-2018- 1191, dated 06.11.2018.

⁵⁷ Art. 7 of the HCCH 1996 Child Protection Convention determines the new habitual

of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

There is no doubt that the convention has priority over national law,⁵⁸ and the best interest of child is a predominant consideration. Thus, the court should apply Art. 5 of HCCH 1996 Child Protection Convention instead of Art. 75 of PILA. By doing so, the court must decline jurisdiction for parental responsibility. Nevertheless, the Convention provides for two options of divorce court to adjudicate parental responsibility: (i) the transfer to⁵⁹ or a request for transfer of jurisdiction to be made by the court of divorce provided that the divorce court would qualify as "*better place court*"⁶⁰ as exceptional situation⁶¹ and (ii) the divorce court adjudicates measures related to the protection of person and property of the child under certain conditions⁶² and limitation⁶³.

residence of the child gained as a result of a wrongful removal. The provisions determine the condition when such a new residence is obtained and what is the role of the court in which the child is moved as provided by Art. 11 of the Convention.

⁵⁸ Arts. 116 and 122 of the AC and Art. 2 of PILA: International agreements ratified by law have priority over the provisions of this law when its provisions are incompatible with them.

⁵⁹ Art. 8 of the HCCH 1996 Child Protection Convention.

⁶⁰ Art. 9 of the HCCH 1996 Child Protection Convention.

⁶¹ In CJEU Case C-211/10 PPU, *Doris Povse v Mauro Alpagó* [2010] ECLI:EU:C:2010:400, Advocate General Sharpston, emphasised "By way of exception", do not require, in my view, that the circumstances must be exceptional before the provision may be applied. Rather, they allow a court having jurisdiction to derogate from the general rules of jurisdiction and to transfer the case, or a part thereof, to the court of another member state, with which the child has a particular connection, if it considers that the latter court is better placed to hear the case and that the transfer will be in the best interests of the child – a situation which will, in principle, be exceptional. There is nothing exceptional in the fact that one of spouse decide to divorce before home country court rather in the court of their habitual residence.

⁶² Para. 1 of Art. 10 of HCCH 1996 Child Protection Convention: Without prejudice to Arts. 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

⁶³ Para. 2 of Art. 10 of HCCH 1996 Child Protection Convention: The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

The history of the Convention shows that there had been frequent discussion on the special role of the divorce court primarily based on reasons of “judicial economy”, something that is also supported by Contracting States national legislation,⁶⁴ Albania being one of them.⁶⁵ However, there are several practical problems with these provisions.

First, for the transfer to be successful, it needs that the court making or accepting the request for the transfer of the jurisdiction for parental responsibility be “a better placed court”. The term better placed court has been elaborated by the CJEU, stating that the transfer of the case must provide a genuine and specific added value to the examination of the case taking into consideration *inter alia*, the rules of the procedures applicable in that Member State.⁶⁶

The Albanian court as a divorce court will find it hard to fulfil this test.⁶⁷ The divorce court is not in the best position to and does not have sufficient access to information to hearing the case in the best interest of the child. This would be discriminatory for the child whose parents began matrimonial proceedings as it allows their fate to be decided upon by a court in a state other than the court of their habitual residence while other children would have their right decide upon by the court closed to them, that of their habitual residence.⁶⁸

In the second situation, the availability of the divorce forum is subject to the conditions as provided by Art. 10 of the HCCH 1996 Child Protection Convention; one of his parents that has responsibility for the child must have the habitual residence in the state of the forum, and the jurisdiction should be accepted by both parents. The best interests of the child must be preserved. The divorce court is unavailable if proceedings for and order relating to children are already pending before the court with jurisdiction under the convention, the court of habitual residence of the child.⁶⁹

3.4. Recognition and enforcement

The recognition and enforcement of divorce judgements in Albanian would again require the application of both HCCH Conventions and national

⁶⁴ McClean, *op.cit.*, p. 2.

⁶⁵ See Art. 75 of PILA.

⁶⁶ CJEU Case C-428/15-D, *Child and Family Agency v J. D.* [2016] ECLI:EU:C:2016:819.

⁶⁷ For example, Art. 6 of AFC provides for the right of child to be heard. But this is an almost universal rule that is found in many legislations, as provided by UN Children Rights Convention.

⁶⁸ McClean, *op.cit.*, p. 2.

⁶⁹ Lagarde, *op.cit.*, p. 563.

law. Recognition and enforcement of judgements is regulated by Arts. 393 of ACPC *et seq.*, if the HCCH Conventions does not apply. Disparities might arise again regarding: (i) the eligibility criteria for the decisions to be circulated and (ii) the grounds for refusal. The eligibility requirement means that for a judgment to be recognised and enforced it should be issued: (a) *by a court or administrative authority* (b) *that have jurisdictions under the Conventions*.

(i) a) The HCCH 1970 Divorce Convention does not give a definition of divorce or legal separation; therefore, these notions should be interpreted as they cover all types of divorces and legal separation, including divorces or legal separations resulting from legislative, administrative, or religious acts.⁷⁰ In Albania only divorce obtained by a foreign court decision is recognized, living with unclear possibility of recognition of extra-judicial divorces. However, if HCCH 1970 Divorce Convention applies, the Albanian court should recognise even the extra judicial divorces. The question that arises is if the extra-judicial divorce obtained in Italy or Greece, through Civil Register Official Act (Italy) or notary deed (Greece) can be recognised in Albania. ACPC regulates only the recognition of foreign court decisions, as a result it can be applied for the recognition of divorces obtained abroad by court decision. Can the term “court decision”, provided by Art. 393 of ACPC, be interpreted in the sense that it covers also “extra-judicial” divorces (administrative or notarial divorces)?

Indeed, the recognition of extra judicial divorce has been accepted also by the Court of Justice of the EU (CJEU). The CJEU has decided that the notion ‘court’ and ‘judgement’ provided by Regulation Brussels II Recast should be broadly interpreted, in the meaning that they comprise also extra-judicial divorce act and extra-judicial divorce authorities if certain conditions are fulfilled⁷¹. By denying such recognition, Albanian citizens and Albanian families living in EU countries are left in limping family status.⁷²

Although the Convention is silent, it results from the Explanatory report that if the receiving State does not recognize the type of marriage that has been dissolved, then this State can refuse to recognize the divorce.⁷³ For example, in case of same-sex or polygamous marriages that are not fore-

⁷⁰ Bellet and Goldman B., *op.cit.*, p. 6.

⁷¹ See CJEU Case C-646/20, *Senatsverwaltung für Inneres und Sport* (GC). [2022] ECLI:EU:C:2022:879.

⁷² There are several European jurisdictions that provide for extra-judicial divorce, such as: Italy, France, Spain, Portugal, Greece, Estonia and Danmark. As can be noticed in many of these jurisdictions a large number of Albanian nationals and families. See: *How migration, human capital and the labour market interact in Albania*, *op. cit.*, p. 13.

⁷³ Bellet and Goldman B., *op.cit.*, p. 8.

seen under the Albanian legislation,⁷⁴ Albanian court can refuse to recognize the dissolution of such type of marriages.

The same would apply for HCCH 1996 Child Protection Convention⁷⁵ which states that no distinction is made in this connection based on whether the authorities having jurisdiction over child protection are judicial or administrative authorities or for HCCH 2007 Child Support Convention which states that the recognition chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation.⁷⁶

(i) b) The HCCH Conventions provide for both direct and indirect jurisdiction rules. Direct jurisdiction rule is provided under HCCH 1996 Child Protection Convention, while indirect jurisdiction rule is included in HCCH 1970 Divorce and HCCH 2007 Child Support Conventions. Having said that any direct or indirect jurisdiction rule of national private international law rules that are in line with the HCCH Conventions would render the judgment more flexible for recognition and enforcements and *lis pendens* rule easier applicable.

As mentioned above the indirect jurisdiction rules provided by the HCCH 1970 Divorce Convention determines that recognition of divorce or legal separation is subject of two connecting factors: habitual residence and nationality under certain conditions. Only these decisions are eligible for free circulation under the Convention.⁷⁷ On the other hand, the Albanian rules on direct jurisdiction provide the nationality of one of the spouses as a main connecting factor and the habitual residence of the defendant as the second option under Art. 75 of PILA for divorce. Although the Albanian court will be obliged to rely on the indirect jurisdiction rules (that are different from national ones) because of the application of the HCCH 1970 Divorce Convention, providing courts with two different grounds of jurisdiction might create problems in practice.⁷⁸ The same arguments remain also for maintenance obligation. The indirect jurisdiction filters are also provided under the HCCH

⁷⁴ See Art. 7 of AFC stating that marriage is concluded between a man and women of age 18 years.

⁷⁵ Lagarde, *op. cit.*, p. 561.

⁷⁶ Borrás, A., Degeling J, *Explanatory Report of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*. [Electronic version]. 2013, Retrieved April 4, 2024, from <https://www.hcch.net/en/publications-and-studies/details4/?pid=4909>.

⁷⁷ Baker and Groff, *op. cit.*, p. 146; Coester-Waltjen, *op. cit.*, p. 547.

⁷⁸ Art. 394 (a) requires that a foreign court decision to be recognised should be rendered by a competent court which in our case has to be determined by reflexive rules of jurisdiction as determined by PILA.

2007 Child Support Convention. The judgment to be recognised under the convention should be rendered by the court of the habitual residence of the creditor, and this is applicable for both children and spouses. PILA makes a different qualification of the international jurisdiction of the Albanian court depending on the specific requests. If the claim for maintenance is auxiliary to a divorce claim, Art. 75 of PILA would apply, and if it arrives as a separate request, Art. 80 Art. 75 of PILA is not fully in line with the Convention.

(ii) ACPC provides for grounds of non-recognition like the ones of the HCCH Conventions. In general, the grounds of non-recognition include (see table 1):

- no sufficient links between the claimant and the court that has rendered the judgment;
- the respondent was not given adequate notice of the proceedings-due process;
- incompatible with a previous decision;
- public policy ("ordre public").

Table 1. Grounds of Refusal

Grounds of non-recognition	
Albanian Civil Procedure Code	HCCH Conventions
Art. 394 ACPC: all types of court decisions: - lack of jurisdiction of the court that has granted the decision; - the defendant was not given notice of the proceedings; - an incompatible decision of the Albanian courts; - a pending case in the Albanian courts; - public policy.	HCCH 1970 Divorce Convention Arts. 7, 8, 9, 10: - at the time the divorce was obtained both spouses were nationals of a country which does not provide for divorce; - the respondent was not given adequate notice of the proceedings; - incompatible with a previous decision determining the matrimonial status; - public policy.

	HCCH 1996 Child Protection Convention Art. 23: - the child was not provided the right to be heard - the decision interferes with a person's parental rights - public order - incompatible with a later decision taken in a non-Contacting state of child's HR Reserve – not to recognize the measures taken to protect the property of the child that are incompatible with any measure taken by its authorities in relation to that property (Art. 55.1(b).
	HCCH 2007 Child Support Convention Art. 22: - public policy ("ordre public"); - decision obtained by fraud in connection with a matter of procedure; - proceedings pending before an authority of the State addressed and those proceedings were the first to be instituted; - incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State; - the respondent has neither appeared nor was represented in proceedings in the State of origin, under certain conditions; - violation of Art. 18.

Similar grounds of non-recognition help Albanian judges to have a better understanding of the language of the Conventions and at the same time make the judgments recognised and enforced even if Conventions do not apply. Nevertheless, one the most problematic grounds of non-recognition

remain the public order clause under which the court has a wide discretion⁷⁹.

4. Conclusions

The HCCH regime of private international law was established to facilitate dispute for family cases with cross-border elements, either by establishing direct rules to be applied in the national system or by influencing national law. Nevertheless, as explained in this article, the interplay between HCCH Conventions and national law does not always yield the desired results in practice. Judges are left with options, and their tendency is to apply national law over the conventions. Even though this attitude is recognized in international regimes and often justified by economic and forum affiliation related to the parties involved, it cannot be tolerated at the expense of general principles of private international law, such as the *best interest of the child* or *avoidance of irrevocable judgments*. National judges should apply the conventions and ensure its proper implementation whenever applicable. Fostering cooperation and mutual acceptance under HCCH auspice is something that should be also promoted by HCCH and the EU in the framework of the EU integration of Albania.

Summary

This article provides an in-depth examination of the interaction between the HCCH Conventions and Albanian national legislation concerning cross-border family law cases, particularly divorce and its consequences. It highlights the significant influence of HCCH Conventions on Albanian law, emphasizing the importance of international law in resolving family disputes with foreign elements. The paper discusses the challenges faced by Albanian courts in rendering judgments with foreign elements and analyzes the application of HCCH Conventions in the Albanian legal system.

The first section introduces the role of HCCH Conventions in enhancing international family relations and outlines their influence on Albanian legislation. Despite their benefits, the text acknowledges shortcomings in the HCCH private international law regime, such as inconsistent implementation and reliance on administrative authorities rather than courts.

The second section provides a legal overview of divorce and its consequences under both Albanian national law and private international law.

⁷⁹ Albanian courts have refused to recognise foreign court decisions that grant rights not foreseen under Albanian substantive law on grounds of public order. See Albanian High Court Decisions, Civil Chamber, No. 34, dated 27.10.2009; No. 179, dated 2.4.2015; and Appellate Court of Vlora Decision, No. 115, dated 12.9.2012.

It discusses grounds for divorce under the Albanian Family Code, jurisdictional issues, and the influence of HCCH Conventions on cross-border divorce proceedings.

The third section delves into the interplay between HCCH Conventions and Albanian national legislation, focusing on practical challenges faced by Albanian courts in handling cross-border divorce cases. It explores issues such as the *lies pendent* principle, jurisdictional dilemmas, and the recognition and enforcement of foreign judgments.

Overall, the text highlights the complexity of cross-border family law cases and the importance of harmonizing national legislation with international conventions to ensure effective resolution of disputes involving foreign elements. It underscores the need for further research and collaboration to address the challenges posed by globalization and international mobility in family law matters.

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