International Academy of Family Lawyers
IAFL
European Chapter

IAFL Introduction to European Family Law Conference

Tirana, Albinia

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Session Resources Pack

Session 4 - Friday, 16th October 2026: 10:00 -11:15

Comparative Law and Comparative Law Perspectives

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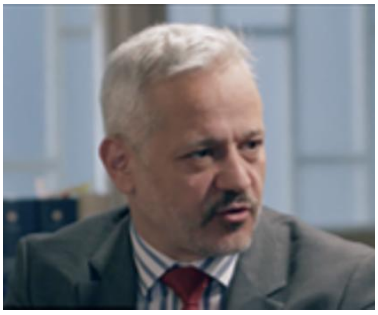
Dr Konstantinos Rokas



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Konstantinos Rokas after his undergraduate studies in law at the University of Athens, he went on to obtain two LLM degrees from the University of Athens (in private international law and EU law) and the University of Paris II-Panthéon Assas (in international commercial law and private international law), finishing second in his class. He completed his PhD on "Medically assisted reproduction in comparative private international law" in the University Paris 1 Panthéon-Sorbonne under the supervision of Professor Étienne Pataut. He has received scholarships for his research from the French Ministry of Higher Education and Research, the Swiss Institute of Comparative Law and the Max-Planck Institute for Comparative and International Private Law. His Doctorate in Private International Law (Paris I – Panthéon-Sorbonne), along with numerous publications both in Greek and international law reviews, evidence a deep knowledge in matters of international family law and especially law of Artificial Reproductive Techniques (ART). He is admitted to the Athens Bar Association since 2004 and admitted to the Supreme Court of the Country. Konstantinos handles a wide range of international family law issues, focusing on matrimonial property, parentage in ART, international abduction, international successions to the benefit of international clients. He has advised and represented before Greek courts several individuals and couples that had access to a cross-border surrogacy. He has been a Lecturer in Private International Law at the University of Nicosia in Cyprus (2018-2023). As of September 2023, he assumed his duties as Assistant Professor of Private International Law and International Transactions Law at the Faculty of Law of the Aristotle University of Thessaloniki. He is a co-opted member of the IAFL European Chapter Management Committee. As of July 2026, he is Vice President of the European Association of Private International Law. He is fluent in English, French. He has a good level of German and he is learning Chinese.

Languages Spoken: English, French, German and Chinese

Practice Areas: Adoption, Appeals, Arbitration, Child Care/Public Law, Child Custody/Residence/Visitation/Contact, Child Support, Enforcement: Child Custody, Enforcement: Child Support, Collaborative Law, Divorce, Domestic Abuse/Violence/Protection Orders, Emergency Procedures/Injunctions, Enforcement: Property Division, Enforcement: Spousal Support, Hague Convention/Child Abduction, Mediation, Modification/Variation: Child Custody, Modification/Variation: Child Support, Modification/Variation: Property Division, Modification/Variation: Spousal Support, Parentage/Paternity, Pre-nuptial/Post-nuptial Agreements, Relocation/Removal from Jurisdiction, Same Sex Partnerships, Spousal Support/Maintenance/Alimony, Succession Law, Surrogacy

Sarah Casto

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Sarah Casto is a German attorney-at-law who has focused on family law since 2016. She is also a certified Family Lawyer (Fachanwältin für Familienrecht). Her areas of practice include binational marriages and partnerships, international custody and contact disputes as well as Hague 1980 cases. She also works in matters of parentage, adoption and surrogacy.

Sarah Casto regularly publishes commentaries on German Appeal-Court decisions in a well-known German Law magazine, Familienrechtsberater (FamRB), covering current case law and developments in national and international family law. Her contributions include case notes and practical commentaries in international family law, with a particular focus on the 1980 Hague Convention.

She studied law at the University of Hamburg and gained professional experience in London before completing her legal traineeship in the district of the Higher Regional Court of Celle. She practises in Berlin and divides her time between Berlin and Paris, where she lives with her husband and daughter.

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Profile

Alex Kolitsi is an Attorney at Law and a member of the Kilkis Bar Association in Greece. He holds an LL.B. from Democritus University of Thrace and an LL.M. in International and European Legal Studies, specialising in Private International Law and Law of International Transactions, from Aristotle University of Thessaloniki.

His legal practice is principally focused on International and European Family and Succession law, particularly in matters presenting a cross-border dimension. His professional and academic interests lie at the intersection of Private International Law, European Union Law and international judicial cooperation, with particular emphasis on questions of jurisdiction, applicable law, and the recognition and enforcement of judgments across borders.

His Master's thesis, entitled "Judicial Cooperation and the Circulation of Judgments through International Conventions and European Law: The 1993 Greek-Albanian Treaty on Mutual Legal Assistance in the Light of the EU Accession Process of the Western Balkan States", examined the interaction between bilateral treaty frameworks, European law and the evolving legal landscape of the Western Balkans.

Born in Albania and having built his legal practice in Greece, Alex has developed a sustained academic and professional interest in Greek-Albanian legal relations and in the evolving interaction between the legal systems of the Western Balkans and the European Union. This perspective informs his broader interest in judicial cooperation and in the legal challenges arising from the increasing mobility of individuals, families and assets across jurisdictions.

Prof. As. Dr. Jorida Xhafaj

Albania

Jorida Xhafaj is a law professor at the University for Business and Technology in Prishtina, with 19 years of experience in legal education and academic leadership as Dean and Head of Department. Her teaching and research span Civil, Family, and Inheritance Law. Her academic background is inherently comparative, as she holds a PhD in Data Protection, with doctoral research examining legal approaches, reflecting her broader interest in legal reform and the interaction between national legal systems and international standards.

Her professional experience extends beyond academia into legislative drafting and law reform, contributing to the drafting and analysis of primary and secondary legislation, and legal reform proposals in Albania and Kosovo. She has served as a senior legal expert in projects supported by the EU, USAID, GIZ and other international organisations, including work on civil legislation and the development of the Civil Code of Kosovo.

Professor Xhafaj has particular experience in capacity-building projects, providing training for the Kosovo Judicial Academy, the Notary Chamber, and public Institutions. She has served as a member of the State Commission for the Notary Examination in Kosovo and the Evaluation Commission for the Allocation of Funds under the Category Subsidies, Office of the President of the Republic of Kosovo. Her work brings together comparative legal scholarship, practical law reform, and the experience of legal systems in transition, particularly across the Western Balkans.

Selected relevant and ongoing research includes:

- Xhafaj, J., & Thaqi, T. (2022). *Lifelong Maintenance Contract in Kosovo: Regulatory Framework, Implementation, and Judicial Challenges*[1]. *Available at: https://knowledgecenter.ubt-uni.net/cgi/viewcontent.cgi?article=4376&&context=conference&&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C5%2526q%253Dxhafaj%252Bthaqi%2526btnG%253D#search=%22xhafaj%20thaqi%22*
- Jorida Xhafaj J, Niethammer-Juergens K., Gashi H. *Examining Underage Marriage in Balkan Jurisdictions and Germany: Considerations and Prospects for Future Prohibition* (under review SIL-Poland)
- Xhafaj J., Dimova-Severinova, Thaqi T. *Right to Choose, Obligation to Protect: Marital Property Regimes and Spousal Agreements across the Civil Law Jurisdictions* (Article in press)
- Xhafaj, J., Osmanaj, E. *Cohabitation in Transition: Societal Perceptions and Comparative Legal Responses* (Article in press)
- Xhafaj, J. (2021). Defending child marriages in Kosovo or children from underage marriages. 10th UBT International Conference on Law, Prishtina.

[1] The article examines the family-law implications addressed by the Constitutional Court of Kosovo.

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Ms. Kasmi has been an attorney – at – law from 2001 and on and is specialized in media law and international private law. She is currently the managing and funding partner of AFortiori-legal-counsels law studio. Her experience includes civil society and project management; public administration and private law firm.

In addition, Ms. Kasmi has more than 12 years of experience as a professor and lector in the university and is author of more than 38 articles on human rights in national and international journals. Ms.Kasmi holds PhD in media law and has doctorated under the thesis of “commercial activity of media companies” from 2016. She is the author of academic books “Media law –General part (i) and Detailed part (ii). She is co-author of mediation law commentary, co-author of the prevention of the conflict of interest law manualand commentary and has participated in the drafting of more than 98 legal acts including (i) the law on registration of real estate with the focus of women property rights; (ii) the criminal and civil code with the focus of libel and defamation; (iii) the mediation and arbitration law with the focus of establishing procedures on lawyer appointment; (iv) the criminal procedures code with the focus of reform of preliminary procedures, etc.

Her native language is Albanian. She speaks excellent in Italian and English and medium level in Spanish language.

From International Convention to German Family Law – A German Perspective between The Hague, Brussels and Berlin

Cross-border family relationships frequently involve more than one legal order and raise questions of jurisdiction, applicable law, recognition, enforcement and administrative cooperation.

This contribution examines the practical interaction between international treaty law, European family law and German law. Rather than providing a comprehensive doctrinal analysis of individual Hague Conventions or EU Regulations, it addresses a practical question: **How do international and European family-law instruments become effective in Germany?**

The German framework operates on several levels. At the international level, relevant instruments include, in particular, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1996 Hague Convention on the Protection of Children, the 1993 Hague Convention on Intercountry Adoption and international instruments on maintenance. At the European level, the Brussels IIb Regulation and the EU Maintenance Regulation are of particular importance. These instruments interact with national German law, including the Basic Law for the Federal Republic of Germany (Grundgesetz – GG), the Introductory Act to the Civil Code (EGBGB), the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (FamFG), the German Civil Code (BGB) and specialised implementing legislation such as the Act on Proceedings in International Family Matters (IntFamRVG) and the Foreign Maintenance Act (AUG).

A key issue is the different domestic operation of international treaties and EU Regulations. International agreements may require domestic approval under Article 59(2) GG, whereas EU Regulations are generally directly applicable in Germany. Direct applicability, however, does not by itself resolve the practical questions arising in individual cases. It remains necessary to identify the competent court, determine the applicable procedural framework and, where necessary, the applicable substantive law, allocate responsibilities among authorities, organise cross-border cooperation and ensure enforcement. National law therefore remains essential to the practical operation of international and European family-law instruments.

The contribution illustrates this interaction through selected practical constellations in international child abduction and cross-border maintenance. In child-abduction proceedings, the 1980 Hague Convention and Brussels IIb operate alongside the IntFamRVG and the competent German courts, with the German Federal Office of Justice (Bundesamt für Justiz) acting as Central Authority. In maintenance matters, the EU Maintenance Regulation and relevant international instruments interact with the AUG and administrative cooperation mechanisms.

The presentation traces the route from an international or European rule to its practical application in Germany: questions of jurisdiction, applicable law and procedure, as well as, where German law applies, the relevant substantive legal framework. Within this framework, the EGBGB, FamFG and, where applicable, the BGB perform distinct but complementary functions.

The central observation is that international harmonisation does not make national law redundant. Rather, national law performs a coordinating function by connecting international and European rules with courts, procedures, authorities and enforcement mechanisms. The German experience may therefore provide a useful basis for comparative discussion—not as a model to be transferred unchanged, but as an example of the institutional and procedural conditions required to make international family law effective in practice.

Alex Kolitsi (Greece)

Cross-Border Circulation of Family Judgments between an EU Member State and a Candidate Country: The Greece–Albania Case Study

This contribution examines the cross-border circulation of family judgments between an EU Member State and a candidate country, using Greece and Albania as a case study. The analysis focuses on the interaction between the 1993 Greek-Albanian Convention on Mutual Legal Assistance, domestic private international law and the relevant multilateral instruments.

Particular attention is given to the interpretation of this multi-layered framework. The principle of *favor recognitionis* is considered as an interpretative orientation towards the effective circulation of judgments, while public policy serves as a practical example of how broad concepts in older bilateral conventions may be approached in light of more recent European and international developments.

The contribution also considers the role of the national judge in avoiding an overly domestic reading of treaty concepts and in ensuring coherent application of the relevant sources. It concludes with the position of pre-existing bilateral conventions following Albania's eventual accession to the European Union, including the extent to which the 1993 Convention may retain relevance for matters not governed by EU law.

Introduction

Cross-border circulation of family judgments is not always complicated by the absence of rules. Difficulty often arises from the opposite situation: several normative sources coexist, each with a different scope, history and underlying logic. This is particularly visible in relations between an EU Member State and a candidate country, where recognition and enforcement of a family judgment do not yet operate entirely within the integrated framework of EU judicial cooperation.

The relationship between Greece and Albania provides a clear example. Family judgments circulating between the two legal orders may engage domestic private international law, specialised multilateral conventions and the 1993 Greek-Albanian Convention on Mutual Legal Assistance, which expressly covers judgments in family matters. The resulting framework is therefore multi-layered. Its practical operation

depends not only on identifying the formally applicable instrument, but also on determining how its concepts should be understood alongside newer legal developments.

This is especially important when older bilateral conventions employ broad or open-textured concepts. The principle of *favor recognitionis* offers a useful interpretative orientation in this setting. It does not authorise a court to disregard the applicable rules or simply select whichever regime appears most favourable. Rather, once the scope and relationship of the relevant sources have been properly identified, it supports an interpretation that facilitates the circulation of foreign judgments and avoids creating unnecessary barriers to recognition.

Public policy provides a particularly useful illustration. The Greek-Albanian Convention refers in general terms to incompatibility with public policy or the fundamental principles of the law of the requested State. More recent European and national instruments tend to formulate the public-policy exception more restrictively, frequently requiring a manifest incompatibility. The difference is not merely terminological. It reflects the exceptional character increasingly attributed to public policy within modern systems of recognition and enforcement, in which recognition is the starting point and refusal requires specific justification.

The role of the national judge is consequently central. International treaty concepts should not automatically be assimilated to categories of the *lex fori*. Their interpretation should take account of the international character and purpose of the instrument, the structure of the recognition mechanism and the evolution of the legal environment in which the treaty now operates. In this sense, applying an older bilateral convention need not entail a static reading of its provisions.

The same framework also raises a forward-looking question. Albania remains an EU candidate country engaged in accession negotiations, but eventual membership would substantially alter the legal basis of judicial cooperation with Greece. EU family-law instruments would become applicable to matters falling within their scope, while the position of the 1993 bilateral Convention would have to be reassessed in light of the EU acquis, the terms of accession and the rules governing pre-existing international obligations. Its practical relevance could therefore become more limited, while

potentially remaining significant for matters not governed by EU law. The transition from bilateral cooperation to participation in a common European judicial area makes the Greece-Albania relationship an especially revealing context in which to examine continuity, interpretation and change.

The Child's Right to be Heard in Family Law Proceedings: Reflections on Albania and Kosovo Jurisprudence

The child's right to be heard has evolved from a predominantly protective concept into an autonomous participatory right in family proceedings. Decisions concerning custody, parental responsibility, residence and contact directly shape a child's family life and are linked directly to this guarantee and the contemporary question of whether children should be heard, but when, how and with what legal effect their views should enter judicial decision-making.

Under Article 12 of the UN Convention on the Rights of the Child (CRC), a child capable of forming views has the right to express them freely in all matters affecting them, and those views must be given due weight according to age and maturity. Under Article 12 CRC, capacity determines whether the child can form and communicate views, whereas age and maturity primarily determine the weight[1] attributed to those views, assessed on a case-by-case basis[2]. At the European level, Article 24(1) of the Charter of Fundamental Rights of the European Union explicitly asserts that children possess the right to articulate their views, which must be considered in decisions impacting them, commensurate with their age and maturity. Article 24(2) mandates that the paramount consideration must be the welfare of the child.

Albania and Kosovo illustrate different stages of a broader transition from age-based participation towards capacity-based and meaningful participation.

Albanian family law adopts a relatively broad starting point by combining capacity and age. Article 6 of the Family Code[3] recognizes the minor's right to be heard in proceedings concerning them, according to age and capacity to understand. In custody proceedings, the Family Code further requires that the child's views and feelings be assessed with regard to age and maturity, alongside with the opinion of a psychologist or the competent social services after hearing the child. This approach is reflected more specifically in Article 157, related to after-divorce custody. In particular, Article 218 and 267 explicitly provide for obtaining the child's views once the child has attained the age of ten, respectively, in proceedings regarding the return of a child kept by another person and the appointment of a guardian. The Albanian framework thus unites a capacity-based participation with some forms of age-based participation, characterised as a hybrid model. This approach must also be read together with Law No. 18/2017 on the Rights and Protection of the Child, which increasingly treats hearing the child not merely as a mechanism for obtaining evidence but as an element of the child's procedural status.

Kosovo provides an especially instructive comparison, where Article 144(2) of the Family Law concerning decisions on custody specifically requires particular attention to the emotional needs and wishes of a child over ten[4]. Over the past few years, debates in Kosovo (surrounding

[1] European Court of Human Rights, M.K. v. Greece (application no. 51312/16)
[2] Paragraph 28 of Article 12 of CRC
[3] Republic of Albania, *Family Code*, Law No. 9062 of May 8, 2003, as amended by Law No. 134/2015, art. 6.
[4] In *Ac. No. 12/2005*, the Supreme Court of Kosovo set aside the lower court's determination concerning the custody of four children and instructed it, on retrial, to reassess all circumstances relevant to their physical and psychological development, with renewed input from the Centre for Social Work. Significantly, the Supreme Court expressly instructed the lower court to respect the wishes of the child who had reached the age of ten, illustrating an early age-based approach to incorporating the child's views into judicial decision-making. Supreme Court of Kosovo, *Ac. No. 12/2005*, March 30, 2005, in *Bulletin of the Supreme Court of Kosovo 2004–2005*. https://supreme.gjyqesori-rks.org/wp-content/uploads/reports/Buletini%20i%20Gjykates%20Supreme%202004-%202005.pdf

Kosovo's Draft Civil Code) reveal the significance of this transition particularly clearly. The proposed framework therefore maintained participation as the procedural principle while allowing the significance attached to the child's views to vary according to age (6 years old), maturity and psycho-physical development.

However, Kosovo's more recent child-protection framework reflects a broader understanding of participation. Individualized judicial practice illustrates a gradual movement from an age-based consideration of children's wishes towards a more recognizing, individualized understanding of participation.

The available judicial practice in Albania and Kosovo does not appear to have developed a substantial body of case law addressing the child's right to be heard as a distinct procedural right. Rather, issues concerning the child's views and participation tend to be addressed within the broader assessment of the best interests of the child. In this sense, the judgment serves to demonstrate that the determination of a child's best interests and the child's participation in the decision-making process are connected but independent procedural requirements.

In Kosovo, the Supreme Court in *Ac. No. 12/2005* instructed the lower court, when reconsidering custody, to obtain a new assessment from the Centre for Social Work and expressly to respect the wishes of a child who had reached the age of ten[5]. This reflects the traditional age-threshold approach subsequently embodied in Article 144(2) of the Kosovo Family Law, under which particular consideration is given to the emotional needs and wishes of children over ten.

Albanian Supreme Court jurisprudence indirectly suggests[6] a more individualised approach to the child's best interests. In a 2025 parental-responsibility case[7], the Civil Chamber held that a substantial restriction of parent–child contact required concrete justification and proper consideration of psychological evidence concerning the child's need for regular contact. In 2015, the Albanian Supreme Court[8] emphasized that a child's expressed opinion is assessed in light of their age and psycho-physical development; according to Mandro's[9] analysis of this decision, the appropriate accommodation of the child's views also depends on the child's level of emotional and social development, as well as other specific factors, to ensure that it reflects the best interests of the child's needs for education and growth.

In both Albania and Kosovo, higher-court jurisprudence has developed the best-interests principle more visibly than the child's autonomous participatory right. Furthermore, meaningful participation is not satisfied merely by giving the child an opportunity to speak; the manner in which the child is heard must be adapted to the child's individual circumstances and vulnerabilities[10].

[5] Supreme Court of Kosovo, *Ac. No. 12/2005*, March 30, 2005, in *Bulletin of the Supreme Court of Kosovo 2004–2005*.

[6] More broadly, the Unified Decisions and the relevant decisions of the Civil Chamber reviewed for this paper did not reveal a decision addressing a violation of the child's right to be heard as a distinct procedural right.

[7] Supreme Court of the Republic of Albania, Civil Chamber, parental-responsibility and parent–child contact case, reported in *Electronic Informative Bulletin No. 4/2025*.

[8] Supreme Court of the Republic of Albania, Civil College, Decision No. 163, March 24, 2015

[9] Arta Mandro Balili, "The Right of the Child to Be Heard: From CRC Standards to Albanian Law Provisions and Their Application," in *From Human Rights to Essential Rights*, 141–154.

[10] Constitutional Court of the Republic of Kosovo, *Suzana Zogejani-Sekiraqa*, Case No. KI161/21, Judgment of August 7, 2023, para. [144-149], Ref. no. AGJ 2241/23.

1. From the European system perspective, the ECtHR stipulates that a child capable of forming their own views cannot be regarded as sufficiently involved in decision-making affecting their article 8 rights unless they are provided an opportunity to be heard. The ECtHR has also recognized that meaningful participation is an element of procedural protection for children in family proceedings. In *M. and M. v. Croatia*[11], the Court found a violation of Article 8 ECHR in that the child, despite lengthy custody proceedings, had not been allowed to express her views before the domestic court as to which parent she wished to live with. This distinction also prevents the right to be heard from becoming a formalistic exercise and, even less, the child's preference automatically determining the outcome. The judge retains responsibility for determining the child's best interests.

The experience of Albania and Kosovo demonstrates that the pivotal question is not the formal recognition of the child's right to be heard, but the extent and legal significance of his/her participation. Both legal systems formally recognise the relevance of the child's views, even though the participation remains shaped by age thresholds, best-interests assessments and judicial discretion. Crucially, in both countries, judicial reasoning should demonstrate the distinctions between the best interests and the right to be heard as complementary principles and also the means of implementing the child's views and their substantive significance into the decision.

Lastly, meaningful participation of the child and his right to be heard is conceptualized through three interrelated but distinct dimensions: access, appropriate approach, and importance attributed to. First, access to participation should be determined primarily by the child's capacity to form views rather than by a predetermined age. An age threshold can be relevant to the assessment of capacity, but cannot serve as a presumptive barrier. Second, the approach to obtain the child's views should be individualized to the child and to the circumstances of the process, which should enable the child to express views freely and safely, in a child-sensitive environment and without undue influence, whether the child is heard directly or through an appropriate representative or professional. Third, the significance to be attributed to those views requires a case-by-case assessment that combines the child's age and maturity, level of understanding, and the particular circumstances of the case. The cumulative application of these standards leads to the identification and proper consideration of child involvement in judicial decision-making.

[11] European Court of Human Rights, *M. and M. v. Croatia*, no. 10161/13, September 3, 2015, paras. 181–86.

The Albanian legislation related to the co-habitancy *more uxorio* and the marriage invalidity compared to international law

Albanian legislation lacks conflict-of-law rules governing cohabitation *more uxorio* and the invalidity of marriage. Against this background, the connecting criteria of the common habitual domicile is applied as a subsidiary criterion to nationality, particularly in cases where the spouses do not share a common nationality at the time of entering into marriage.

Within the framework of private international law, the issues to be addressed include: the applicable law governing the entry into marriage; the applicable law governing the marriage license; the applicable law concerning the legal effects of the dissolution of the marriage (including the status of each of the spouses); the applicable law concerning the recognition and validation of marriages entered into in a territory outside Albania; and the jurisdiction of the Albanian courts to adjudicate family matters. Spouses entering into marriage require legal certainty regarding the conditions with which they must comply in order to enter into a valid marriage, and they need to be assured that a marriage licensed in a foreign country (outside Albania), i.e. in the state of their common habitual domicile, will also be recognized as valid in other countries, including the country of their nationality, namely Albania.

Under Albanian private international law, there is no single conflict-of-laws rule governing all legal aspects of marriage. Rather, different conflict-of-laws rules apply to each specific legal aspect of marriage, including the substantive conditions for entering into marriage (*Article 21*), the formal requirements (*Article 22*), personal relations between the spouses (*Article 23*), the matrimonial property regime (*Article 24*), and the dissolution of marriage (*Article 25*).

The doctrine distinguishes between the law applicable to marriage as a legal act (*matrimonium in fieri*) and the law applicable to marriage as a legal relationship (*matrimonium in facto esse*).

The applicable law governing the conditions for the validity of marriage as a legal act is regulated by Articles 21 and 22 of the Law on Private International Law (hereinafter, "IPL" – Law No. 10428/2011). Against this backdrop, marriage as a legal relationship encompasses the entirety of the rights and obligations arising for the parties as a legal consequence of their declaration of free will to enter into a marital relationship. The applicable law governing the rights and obligations of the parties to a marital relationship, both of a personal (non-property) and property nature, is regulated by Articles 23 and 24 of the IPL.

The verification of compliance with the conditions for entering into marriage is carried out at two different points in time: *first*, the verification is performed *ex ante*, at the stage of entering into marriage; and *second*, the validity of the marriage is assessed *ex post*, after the marriage has taken place *de facto* and its validity becomes subject to dispute. Within the framework of private international law, at the stage of entering into marriage (*ex ante*), the applicable law governing the fundamental conditions for entering into marriage, both substantive and formal, is

determined. Whereas, at the stage of assessing the validity of the marriage (*ex post*), the doctrine examines the applicable law governing the recognition of a marriage entered into in a foreign country, namely a state other than the *forum*. However, these two legal aspects are interconnected and, therefore, as a matter of legal logic, the connecting factors for determining the applicable law should be coordinated.

FROM INTERNATIONAL CONVENTION TO GERMAN FAMILY LAW

A German perspective between The Hague, Brussels – and Berlin

How do international and European rules become effective in Germany?

Sarah Casto | Attorney-at-Law and Certified Specialist in Family Law

1

Why international family law?

Cross-border families

- Marriage and divorce
- Parental responsibility
- Child abduction
- Maintenance and adoption

Practical questions

- Which court has jurisdiction?
- Which law applies?
- Recognition and enforcement

2

Germany: a multi-level legal framework

International law

- Hague Child Abduction Convention (1980)
- Hague Child Protection Convention (1996)
- Hague Adoption Convention (1993)
- Maintenance instruments

EU law

- Brussels IIb Regulation
- EU Maintenance Regulation
- Other European family-law instruments

German law

- EGBGB = conflict-of-laws-rules
- FamFG = Family Procedure Framework
- BGB = Civil Code
- IntFamRVG | AUG = Specific implementing legislation

3

Different routes into German legal practice

International treaties

Parliamentary approval under Article 59(2) GG = Basic Law

National rules may be needed for procedure and institutions

EU Regulations

Generally directly applicable

National rules may still be needed for implementation

4

The implementation chain

1. Rule →

International treaty

or EU Regulation

2. National framework →

Jurisdiction

Procedure

Authorities

3. Practice →

Courts

Enforcement

Administrative cooperation

International harmonisation needs a functioning national legal infrastructure.

5

Case 1: International child abduction

Legal framework

Hague Child Abduction Convention 1980

Brussels IIb Regulation (intra-EU case)

German implementation

IntFamRVG – German procedural legislation for international family matters

Federal Office of Justice *(Central Authority)*

Competent German court

Return proceedings are conducted in Germany.

6

Case 2: Cross-border maintenance

Legal framework

EU Maintenance Regulation
(e.g. Hague Maintenance Convention, Hague Protocol)

International maintenance instruments

German implementation

Foreign Maintenance Act (AUG)

Federal Office of Justice *(Central Authority)*

Cooperation and enforcement

7

From the international rule to the decision

1. Jurisdiction

Which German court?

2. Applicable law

Which law applies?

EGBGB –
German conflict-of-law-rules

3. Procedure and merits

FamFG –
family procedure

BGB –
Civil Code *(where German law applies)*

8

German experience: four practical lessons

Clear allocation of jurisdiction matters.

National procedural rules make international instruments workable.

Central authorities and cooperation are essential.

Coordination across legal levels remains complex.

International harmonisation requires national coordination.

9

What may be relevant for Albania?

International and EU integration create a multi-level legal field.

The challenge is not only harmonisation.

It is also coordination: rules, institutions and practice.

Which German experiences may be useful — and which may not be transferable?

10

IAFL Introduction to European Family Law, Tirana 2026

International Academy of Family Lawyers, European Chapter

Cross-Border Circulation of Family Judgments

between an EU Member State and a Candidate Country

The Greece–Albania Case Study

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Tirana · 15 - 16 October 2026

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02 SOURCES & PRACTICE

International Academy of Family Lawyers, European Chapter

The preliminary problem: which legal framework governs?

Recognition between an EU Member State and a candidate country begins with source selection — particularly in the Western Balkans.

A foreign family judgment is ready to cross the border. Before asking whether it should be recognised, the court must first identify the legal regime that governs that circulation.

NATIONAL LAW	**Greek/Albanian private international law**	fallback rules; domestic recognition procedure
BILATERAL & MULTILATERAL TREATIES	**1993 Greek–Albanian Convention and other binding treaties**	treaty obligations and hierarchy cannot be bypassed
HAGUE CONVENTIONS	**subject-specific family-law instruments**	scope, contracting parties and reservations must be checked
EU REGULATIONS	**Brussels IIb and the broader EU acquis**	not yet the bilateral regime before accession; the decisive future model

➢ **The difficulty is often not the absence of rules, but their coexistence — with different scopes, ranks and underlying logics.**

2

03 SOURCES & PRACTICE

International Academy of Family Lawyers, European Chapter

Greece–Albania today: the 1993 Convention is the general bilateral baseline

1993 GREEK–ALBANIAN CONVENTION ON MUTUAL LEGAL ASSISTANCE

- **1993** signed in Athens
- **1995** entered into force
- **Arts 23–30** recognition / enforcement chapter
- **Art 23** expressly covers civil, family and commercial judgments

ARTICLE 24 — FIVE CUMULATIVE CONDITIONS

1. finality / res judicata and enforceability under the law of origin
2. no obstacle arising from exclusive jurisdiction
3. proper and timely service / representation in default cases
4. no conflicting domestic judgment or prior proceedings
5. no conflict with public policy or fundamental principles

➢ **Domestic procedural law remains relevant for matters the Convention does not directly regulate — not as a licence to replace the treaty.**

3

04 SOURCES & PRACTICE

International Academy of Family Lawyers
IAFL European Chapter

Judicial practice: source selection in action

Greek and Albanian case law shows why treaty priority, domestic supplementation and scope must be addressed in the right order.

GREEK PRACTICE

Supreme Court of Greece (Areios Pagos) — Decision No 670/2013

In a family case concerning recognition of an Albanian judgment, the Court held that the 1993 Convention prevails over Arts 323 and 905 of the Greek CTC by virtue of Article 28 of the Constitution. Domestic procedural rules may operate only supplementarily and only insofar as they do not conflict with the Convention.

ALBANIAN PRACTICE

Court of Appeal of Tirana — Decision No 31, 4 March 2015
Recognition of Thessaloniki CFI Judgment No 5399/2014 on adult adoption was refused on public-policy grounds. The court treated Albania's restriction of adoption to minors as a fundamental principle. The case therefore raises a broader question: can legislative difference alone justify refusal on public-policy grounds?

Supreme Court of Albania — Decision No 00-2024-1198 (153), 27 March 2024
Greek notarial consensual divorce: outside Article 23 because it was not a judicial decision. The Court also rejected reliance on the 1970 Hague Divorce Convention, confirming that scope, reservations and the States bound must be checked first.

PRACTICAL LESSON **Before asking which rule is more favourable, the court must identify the governing instrument, respect its normative rank and define its scope. Only then does interpretation begin.**

4

05 INTERPRETATION

International Academy of Family Lawyers
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The correct sequence: hierarchy and scope come before favor recognitionis

A pro-recognition result is legitimate only if it follows the legal order rather than bypassing it.

1 **Identify the subject matter**	Divorce? Parental responsibility? Maintenance? Status?
2 **Identify the governing instrument**	Bilateral treaty, specialised Hague Convention, or domestic fallback
3 **Respect hierarchy and coordination**	Greek Constitution Art 28; Albanian Constitution Art 122(2); treaty relationship clauses
4 **Use domestic law only where legally available**	Procedure, genuine gaps, or an expressly preserved more-favourable route
5 **Interpret internationally — then apply favor recognitionis**	Autonomous concepts; narrow refusal grounds; recognition-compatible reading

➢ **Favor recognitionis is the final interpretative orientation — not a shortcut around source selection or hierarchy.**

5

06 INTERPRETATION

International Academy of Family Lawyers
IAFL European Chapter

Favor recognitionis: a method of interpretation, not a rule of priority

Its role is to facilitate circulation within the applicable framework — never to reverse the hierarchy of norms.

WHAT IT CAN DO

1. Prefer a recognition-compatible interpretation where the treaty text leaves genuine interpretative space
2. Construe grounds for refusal restrictively
3. Avoid automatic transplantation of domestic procedural categories into international treaty concepts
4. Preserve a more favourable route only where the governing instrument itself permits coexistence

WHAT IT CANNOT DO

1. Displace a binding treaty with a lower-ranking domestic rule merely because the latter is "easier"
2. Create a free choice among legal regimes
3. Extend an instrument beyond its material or personal scope
4. Neutralize an express condition of recognition or a genuine due-process safeguard

✓ *Comparative illustration: HCCH 2019 Arts 15 and 23 preserve national/treaty routes where the Convention allows it — but core family matters are excluded by Art 2.*

6

07 INTERPRETATION

International Academy of Family Lawyers IAFL European Chapter

Public policy: the clearest test of a recognition-oriented methodology

The modern trend is not to abolish the exception, but to confine it to genuinely fundamental conflicts.

1993 BILATERAL CONVENTION

Art 24(e)

"public policy or fundamental principles"

broad, open-textured wording

ALBANIAN PIL ACT 2011

Art 7

"manifest incompatibility"

an interpretative signal; not itself the recognition rule

EU / HAGUE MODEL

Brussels IIb Arts 38–39
HCCH 1996 Art 23(2)(d)

"manifestly contrary"

exceptional refusal; effects-focused control

Different domestic law ≠ manifest incompatibility with fundamental principles

- The question is the acceptability of the foreign judgment's effects — not whether the forum would have reached the same substantive solution.

7

08 MODERNISATION & ACCESSION

International Academy of Family Lawyers IAFL European Chapter

Modernisation before accession: convergence starts now

The Western Balkans do not have to wait for membership to move towards the European model of cross-border circulation.

1 **Legislative approximation**	Domestic PIL rules can adopt modern recognition standards — especially a stricter, "manifest incompatibility" approach to public policy.
2 **International convergence**	Hague instruments provide common terminology and recognition standards; in civil and commercial matters, the 2019 Judgments Convention can function as a broader convergence model.
3 **Judicial methodology**	Treaty concepts should be interpreted autonomously and internationally; domestic categories should supplement, not distort, the international instrument.
4 **Practice and mutual trust**	Access to foreign case law, greater consistency and dialogue between courts are necessary for uniform application — legislative reform alone is not enough.

Modernisation is therefore both legislative and judicial: the acquis is approached not only through new rules, but through a new method of recognition.

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09 MODERNISATION & ACCESSION

International Academy of Family Lawyers IAFL European Chapter

Accession changes the legal architecture

The transition is gradual: the Greece–Albania relationship shows how bilateral cooperation can evolve into participation in a common European judicial area.

BEFORE ACCESSION

Member State ↔ Candidate Country

- Bilateral treaties remain central where applicable
- Specialised Hague Conventions operate by subject matter
- National law fills genuine gaps and governs procedure
- European Regulations function as the principal convergence benchmark

→

AFTER ACCESSION

Member State ↔ Member State

- EU family-law instruments apply directly within their scope
- Brussels IIb governs matrimonial matters and parental responsibility
- Other EU instruments govern their own fields, including maintenance
- older bilateral treaties retain relevance only outside the matters governed by EU law

ALBANIA · 2026 **Candidate country; all 33 negotiating chapters are open and the first three were provisionally closed in July 2026. The legal question is therefore no longer abstract: alignment is moving from preparation towards implementation.**

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10 MODERNISATION & ACCESSION

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Conclusions for the Western Balkans

European integration should modernise not only the applicable rules, but the way courts reason about cross-border recognition.

1 **Keep the hierarchy clear**	Candidate-state courts should begin with the binding international instrument and use domestic law only where the legal framework permits it.
2 **Move from refusal to circulation**	Favor recognition is and a restrictive public-policy exception support recognition as the starting point, without sacrificing due process or fundamental principles.
3 **Use Hague instruments as bridges**	Common international standards can prepare national systems for the logic of the EU judicial area before accession — even where a particular Convention does not cover every family matter.
4 **Modernise judicial practice, not only legislation**	Autonomous treaty interpretation, consistent case law and cross-border judicial awareness are indispensable to real convergence.
5 **Treat accession as continuity plus transformation**	EU Regulations will govern within their scope after membership; bilateral conventions should not be viewed as failures, but as transitional and residual layers in a progressively integrated system.

➢ **The ultimate objective is a recognition culture compatible with the European judicial area before formal membership makes EU law directly applicable.**

10

CLOSING THOUGHT

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One final thought

➢ European integration begins before formal accession — through legislative approximation, international cooperation and, above all, through the way courts identify, rank and interpret the legal sources already in force.

✓ Cross-border recognition is therefore not only a question of new rules, but of legal method.

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International Academy of Family Lawyers
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Thank you for your attention

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IAFL Introduction to European Family Law Conference · Tirana · 15-16 October 2026

12

The Albanian legislation related to the co-habitancy more uxorio and the marriage invalidity compared to international law

Law no. 10428/02.06.2011 “On Private International Law”

Definition for “the foreign element”:

The foreign element implies any legal circumstance that is related to the subject, the content or the object of a juridical-civil relationship (concretely marital relationship) and which is the cause for linking this relationship to a certain legal system

Applicable law for the Conditions for marriage licensing

The conditions for the marriage licensing are regulated based on the law of the state, which citizenship has each of the future spouses in the time of the licensing.

The foreign citizens or persons without citizenship who enter into a marriage in Albania should fulfill the essential conditions specified thereto in the family law.

If, in accordance with the point herein above in this article, any of the required conditions is missing, the marriage can be licensed in accordance with the Albanian law, when one of the spouses has an Albanian citizenship of is has a usual residence in Albania.

A marriage licensed in accordance with point 1 herein above in this article can be recognized in Albania, if it fulfills the conditions for entering into a marriage in accordance with the Albanian law

Connecting criteria of the common habitual domicile

Albanian legislation lacks conflict-of-law rules governing cohabitation *more uxorio* and the invalidity of marriage.

connecting criteria of the common habitual domicile is applied as a subsidiary criterion to nationality, particularly in cases where the spouses do not share a common nationality at the time of entering into marriage.

framework of private international law

- of the Albanian courts to adapplicable law governing the entry into marriage;
- applicable law governing the marriage license;
- applicable law concerning the legal effects of the dissolution of the marriage (including the status of each of the spouses);
- applicable law concerning the recognition and validation of marriages entered into in a territory outside Albania;

Spouses

- entering into marriage
- require legal certainty regarding the conditions with which they must comply in order to enter into a valid marriage,
- A marriage licensed in a foreign country (outside Albania), i.e. in the state of their common habitual domicile, will also be recognized as valid in other countries, including the country of their nationality, Albania.

legal aspects of marriage

Under Albanian private international law, there is no single conflict-of-laws rule governing all legal aspects of marriage.

Different conflict-of-laws rules apply to each specific legal aspect of marriage,

- the substantive conditions for entering into marriage (Article 21)
- the formal requirements (Article 22)
- personal relations between the spouses (Article 23)
- matrimonial property regime (Article 24)
- dissolution of marriage (Article 25).

the conditions for the validity of marriage

The applicable law governing the conditions for the validity of marriage as a legal act is regulated by Articles 21 and 22 of the Law on Private International Law

marriage as a legal relationship encompasses the entirety of the rights and obligations arising for the parties as a legal consequence of their declaration of free will to enter into a marital relationship.

Applicable law governing the rights and obligations of the parties to a marital relationship: a personal (non-property) and property nature,

Articles 23 and 24 of the IPL.

compliance with the conditions for entering into marriage

- *first*, the verification is performed *ex ante*, at the stage of entering into marriage; and *s*
- *econd*, the validity of the marriage is assessed *ex post*, after the marriage has taken place *de facto* and its validity becomes subject to dispute.
- Within the framework of private international law, at the stage of entering into marriage (*ex ante*), the applicable law governing the fundamental conditions for entering into marriage, both substantive and formal, is determined.

The fundamental conditions of the marriage

The material conditions represent the essential components for entering into a marriage.

material conditions are classified in positive conditions and negative ones.

positive conditions include the age of the future spouses (more than 18); the consent; their gender.

negative conditions (the legal obstacles) include: the lack of a previous first marriage in place; the family-in-law connection; gender connection; custody relation; adoption relation; and psychological in capacity

Applicable law for the Conditions for marriage licensing

Is implemented for:

- the enjoy of the right to enter into a marriage;
- consent to enter into a marriage;
- age required to enter into a marriage;
- physical and mental requirements (incapacity)
- the prohibited marriages (family -in-law; blood relation; custody; adoption or polygamy

principle *favor matrimoni*

Article 21.2 of IPL

“if an obstacle arises in the foreign applicable law which prohibits parties to enter into a marriage and if such are conditions non-negative ones as in the Albanian law”

The latter shall be applied when one of the future spouses is of an Albanian nationality.

Form for entering into a marriage

- The form for entering into a marriage is regulated by the law of the state where the marriage is licensed.
- Persons that do not have an Albanian nationality can enter into a marriage in front of an Albanian diplomatic or consular service office in a foreign country, if the law of the state where such service office is placed permits it.
- The form for entering into a marriage which is valid according to the law of the state where it is licensed, may be considered as such (valid) in Albanian as well.

Article 22 marriage valid in a foreign country where it is licensed shall be recognized as valid in Albania

Different jurisdictions there exist a plurality of norms for entering into a marriage:

- license in front of state authorities (the civil form);
- in front of religious authorities; t
- marriage of the spouses that are not present personally;
- the informal marriage (some states in the USA);
- n front of a public notary (some states in the USA);
- marriage in a family ceremony; or in the presence of the families of future spouses which is accompanied afterwards with the signature of an agreement (marriage in Islamic counties)

public policy (order) and prevention of law deceit

- *favor matromonii*
- establish the possibility that marriages are recognized in our sys

the form of the marriage license as in Code of Family is the verification of the compliance of the material conditions, under the prevailing order that of the parties will.

Personal relations in between of spouses

- The personal relations of the spouses are regulated from the law of the common citizenship.
- If the spouses have different citizenship, the applicable law shall be the law of the common usual residence.
- If the applicable law cannot be determined as in accordance with point 1 and 2 of this article, the applicable law shall be the law of the state with which the spouses have the strongest connection

hierarchical list of the connectivity criteria

Article 23 provides a hierarchical list of the connectivity criteria

criteria of the mutual nationality. The Albanian law maintains a priority position for the mutual nationality of spouses as a determinant criterion of the applicable law in terms of relations of a personal character.

alternative criteria In its absence, the other criteria shall be applied in subsidiary.

- mutual domicile
- strongest connections shall apply.

Thank-you

IAFL, Tirana 2026

Dr.Brikena KASMI

IAFL | PANEL PRESENTATION

The Child's Right to Be Heard in Family Law Proceedings. Reflections on Albanian and Kosovo Jurisprudence

Opening question:

Are courts relying on age thresholds, or assessing each child's capacity and maturity in the matter at stake?

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1

INTERNATIONAL AND EU STANDARDS

UNCRC, Article 12: a child capable of forming views has a right to express them freely.

Those views must receive due weight according to the child's age and maturity.

EU Charter, Article 24(1): views are considered in accordance with age and maturity.

Regulation (EU) 2019/1111, Article 21: a genuine and effective opportunity to express views, with due weight according to age and maturity.

The opportunity to participate and the weight of the views are distinct assessments.

2

The Legal Distinction: Participation and Due Weight

ARTICLE 12 CRC | ARTICLE 24 EU CHARTER | ARTICLE 21 · EU 2019/1111

1 CAPACITY TO FORM VIEWS

Can the child form a view about the specific matter affecting them? This does not require legal expertise.

2 DUE WEIGHT

The court considers age and maturity when deciding what weight to give those views.

3

Capacity to Form Views: Interconnected Dimensions

Age may be an indicator, but capacity must be assessed individually and should not be treated as a fixed threshold. The three interconnected considerations help explain capacity.

The UN Committee's General Comment 12 asks that capacity be presumed, as it should not be defeated solely by age.

1. Understanding

An age-appropriate understanding of the issue affecting the child

2 Independent views

Can the child develop and express a view of their own, rather than merely repeat someone else's position?

CAPACITY

3. Appreciation of implications

Some understanding of how the matter may affect the child's life—not a requirement to predict every consequence.

4

NATIONAL LEGAL FRAMEWORKS

Family Legislation: Albania and Kosovo

ALBANIA — a hybrid approach

Family Code, Article 6: Every minor has the right to be heard in proceedings affecting them, according to age and capacity to understand, and the mandatory presence of a psychologist.

Article 157: custody assessment includes the child's opinions and feelings based on age and maturity and evaluation of a municipal psychologist or social service.

Articles 218 and 267 expressly mention the age of 10 for particular proceedings; the court must consider the best interest of the child and his/her opinion when he/she has accomplished ten years old: the age is expressly mentioned for particular proceedings.

KOSOVO — an age-threshold approach with capacity-based participation guarantees

Family Law, Article 140(5): views of a child able to express them; due weight linked to age and understanding. Psychologist presence in all family proceedings affecting children in mandatory.

Article 144(2): particular consideration of the wishes and emotional needs of children over ten in custody decisions.

Both systems combine general participation safeguards with age-specific provisions.

5

KOSOVO AND ALBANIA · SELECTED DECISIONS

Across the higher-court decisions reviewed, best-interests reasoning is more visible than a distinct analysis of the right to be heard.

***

Albania Supreme Court, Decision No. 163/2015

Assessment of the child's opinion in light of age and psycho-physical development.

Albania Civil Chamber, Bulletin No. 4/2025

Restrictions on parent–child contact require reasons and relevant psychological evidence.

Kosovo Supreme Court, Ac. No. 12/2005

Renewed custody assessment; particular respect for the wishes of a child aged ten.

Related procedural safeguard: Kosovo Constitutional Court, KI161/21 (2023), §§144–149.

6

European Jurisprudence: The Comparative Benchmark

ECtHR — M. and M. v. Croatia (2015)

Article 8 violation where the child lacked a meaningful opportunity to express her views during custody proceedings.

ECtHR — M.K. v. Greece (2018)

The wishes of a child with sufficient understanding were a relevant factor; no Article 8 violation was found.

CJEU — Aguirre Zarraga (2010)

A personal judicial interview is not invariably required, but the child must have a genuine and effective opportunity to express views.

ECtHR emphasises the child's meaningful involvement in family proceedings, requiring participation appropriate to their capacity and the circumstances of the case.

EU Regulation 2019/1111/ Article 21 expressly distinguishes the child's capacity to form views, which governs the opportunity to express them, from age and maturity, which determine the weight attributed to those views.

7

Results

Albania: the general participation guarantee coexists with age-ten criteria for particular proceedings, presenting a hybrid statutory model.

Kosovo: capacity-based definition coexists with special reliance on age over ten in articles related to family proceedings affecting children.

In the reviewed jurisprudence, the child's views are usually considered through the best-interests inquiry rather than examined as an autonomous procedural guarantee.

The issue is therefore not simply a lack of rights on paper, but coherence between statutory criteria and the need for transparency in judicial reasoning.

8

Conclusion: From Age Thresholds to Reasoned Assessment

UNCRC Article 12 and EU Regulation 2019/1111 use capacity to form views for participation and age and maturity for due weight; neither fixes a universal minimum age.

Albania and Kosovo have provisions reflecting both principles, alongside age-specific rules that require careful interpretation.

The practical challenge is to explain separately whether the child could express views, how those views were obtained, and what significance the court attributed to them.

The child's does not decide the case, but the judge must show how the child's views affect the best-interests assessment.

9