



## Marriage Dissolution and its Effects on Children: A Legal View

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### Abstract

*This study analyzes the impact of divorce on parental responsibilities, focusing on the legal, psychological, and social consequences for children. While the dissolution of a marriage does not change the fundamental responsibilities of parents toward their children, it does alter how these duties are carried out, directly influencing the children's well-being. This research is grounded in the Family Code of the Republic of Albania, Article 154, as well as international agreements like the Convention on the Rights of the Child, which form part of the Albanian legal framework. The methodology includes a review of Albanian legislation, international conventions, and an analysis of court decisions regarding children's rights in divorce cases. Additionally, the psychological impact of divorce on children is assessed, highlighting that different age groups exhibit varying behaviors, such as increased aggression and difficulties in social integration. The findings show that while the Albanian legal framework and ratified conventions safeguard children's rights during parental separation, there are shortcomings in how these rights are enforced by judges and lawyers. The best interests of the child are not consistently reflected in judicial practices, and informal separations based on customary codes continue to be widespread. The study recommends improving the enforcement of legal standards and integrating psychological support for children to address the emotional impact of divorce and ensure the full protection of their rights.*

**Keywords:** *divorce, children's rights, parental responsibilities, psychological consequences, legal framework, social integration etc*

### 1. Introduction

Marriage is often regarded as a foundational institution within society, embodying not only a legal contract between two individuals but also a commitment to shared responsibilities, mutual support, and familial stability. However, the dissolution of marriage—commonly understood as divorce—presents complex challenges that extend far beyond the couple involved. Particularly concerning are the profound implications for children, whose lives and futures can be significantly impacted by the separation of their parents.

Under the Family Code of the Republic of Albania, the legal framework governing marriage clearly delineates that the dissolution of marriage does not affect the rights and obligations of parents toward their children (Article 154). This legal assertion seeks to safeguard the continued parental rights and responsibilities despite the change in marital status. However, the stark reality is that the end of a marital relationship inherently alters the dynamics of parental responsibility, affecting not only the logistical arrangements regarding custody and support but also the emotional and psychological

well-being of the children involved.

Research indicates that the effects of divorce on children can be far-reaching, often resulting in emotional distress, behavioral issues, and difficulties in academic performance. These psychological impacts can lead to long-term consequences, influencing their future relationships and emotional health. The transition from a two-parent household to one that may involve co-parenting, joint custody, or even single-parent dynamics introduces additional complexities that children must navigate.

This paper will delve into the intricate interplay between legal standards governing divorce and the psychological impacts on children, shedding light on how existing legislation attempts to protect children's rights during and after the dissolution of marriage. It will explore key aspects such as custody arrangements, visitation rights, and the provision of child support, alongside examining the psychological support mechanisms available to children facing the challenges of parental separation. Ultimately, understanding this intersection of law and psychology is crucial for ensuring that the rights and needs of children are prioritized during and after divorce proceedings, fostering an environment conducive to their healthy development and emotional resilience.

## 2. Methodology of the Study

This study employs a combined methodological approach, integrating legal analysis and psychological research to better understand the impact of divorce on children and the role of legislation in protecting their rights. The methodology includes the analysis of legal provisions in the Family Code of the Republic of Albania and international documents, as well as a review of psychological literature addressing the emotional and developmental consequences of divorce on children.

1. **Analysis of Literature and Legal Sources:** This study is based on an extensive review of academic and legal literature to provide a comprehensive framework for the topic. It explores legal and judicial sources, such as the Family Code of the Republic of Albania, the Constitution of the Republic of Albania, and international conventions ratified by Albania that are relevant to children's rights in divorce cases. Analyzing these laws and international agreements aids in understanding the legal safeguards provided to children in divorce situations and how these principles are applied in Albanian judicial practice.
2. **Analysis of Court Decisions:** A part of the methodology involves the examination of court decisions from the First Instance Courts and the Court of Appeal of Tirana, dealing with issues of divorce and child custody. This helps in identifying how judges apply legal provisions in practice and the challenges encountered during their interpretation. This review includes monitoring decisions and reports on the rulings issued by these courts to observe how children's rights are respected and to what extent the principles of the child's best interest are considered.
3. **Study of Psychological Literature:** To analyze the psychological impact of divorce on children, studies and psychological literature addressing the emotional, behavioral, and developmental effects on children after parental divorce are reviewed. These studies help in understanding the short-term and long-term consequences experienced by children and provide a basis for recommendations regarding the inclusion of psychological support during and after the divorce process. The studies are selected based on their relevance to the topic and are used to compare findings with the Albanian context.
4. **Comparative Approach:** A part of the methodology also includes a comparative approach to observe the differences and similarities between Albanian legislation and international standards for children's rights. This approach helps in identifying possible improvements to Albanian legislation to better harmonize it with international best practices.
5. **Interviews with Legal and Psychological Experts(optional):** As a potential additional method, interviews with lawyers, judges, and psychologists with experience in divorce and child custody issues can be used to gather firsthand information on the challenges and practical experiences of implementing the law in this field.

## 3. Parental Rights and Responsibilities

Marriage as a legal action, even though it does not bring any consequences in terms of the content of the parental relationship - rights and obligations towards the children, it brings some consequences in terms of the way of exercising these rights and fulfilling the relevant obligations and in addition to these legal consequences, for children there are also consequences with psychological effects.

In the Family Code of the Republic of Albania, (Article 154) it is stated that the dissolution of marriage does not

undermine the rights and obligations that parents have towards their children. Parental responsibility for a child born out of marriage not only belongs as an obligation to both parents, but is also exercised jointly. (Family Code of The Republic of Albania, Article 154) Both parents have equal rights and simultaneously exercise parental responsibility. This joint exercise of obligations towards the child is primarily based on the shared life of the parents with the child during marriage. In these circumstances, the dissolution of marriage, which is accompanied by the termination of the shared life between the parents of the child, will also affect the joint exercise of parental responsibility.

In the event of a marriage dissolution, the individuals most affected are the children born from that marriage, as they are deprived of the right to live and grow up with both parents. In this regard, there are numerous ratified conventions. According to the Constitution, these instruments are considered part of domestic legislation and are mandatory for implementation. What is observed is that the level of recognition and application of these rights by judges, prosecutors, and lawyers is limited. This results in their non-application directly by the justice system and the failure to utilize them for the benefit of those seeking access to justice. Monitoring of judicial decisions in Albania has shown that, in general, the reference to these conventions is at extremely low levels. (Arta Mandro Balili, 2009)

Article 4 of the Convention on Contact Concerning Children stipulates that a child and his or her parent shall have the right to obtain and maintain regular contact with each other. Such contact may be restricted or excluded only where necessary in the best interests of the child. Where it is not in the best interest of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact will his parent shall be considered. ((The Convention on Contact Concerning Children, Article 4) )

This implies that both parents continue to hold the status of being responsible for parental duties. Regarding the matter of child custody and maintenance, parents may reach an agreement between themselves. However, the court must evaluate whether this agreement is in the best interests of the children; following this assessment, the court may either fully endorse the agreement, modify or harmonize it in the interests of the children, or reject it entirely. Thus, spouses in an agreement that determines which parent the children will reside with cannot evade the rights and obligations arising from parental responsibility. Additionally, the subjects of this agreement include: • the material contributions of each parent for the well-being of the child ; • the manner of exercising legal representation and management of the child's assets; • the decision-making processes regarding the child's education and academic pursuits; • the rules for exercising personal relationships with the child concerning the parent who does not live with them, etc. (Save the Children & School of Magistrates, Manual on the Implementation of the Family Code and Civil Legislation Regarding Issues Concerning Minors, 2009, p. 70)

It should also be emphasized the psychological effect of divorce and its impact on children's behavior, as these have been the focus of several studies and discussions. The divorce of parents and children's behavior can be viewed from multiple perspectives. Psychologists and sociologists believe that divorce affects children's behavior. Some reach this conclusion by comparing the behavior of children with divorced parents to that of children with non-divorced parents. Others have studied children's behavior before and after divorce. Divorce brings consequences that affect children's lives and their further development, having a greater impact on the behavior of children aged 6-10 than on those aged 11-14 and 15-18. Children mainly exhibit aggressive behavior, become unsocial, develop dependencies, struggle to integrate into their social circles, and tend to withdraw into themselves. Parental divorce influences later behavior, contributing to emotional symptoms, attention deficit or hyperactivity, antisocial behavior, group behaviors, behavioral issues, and increased stress levels. Generally, children with divorced parents show a decline in self-esteem, social competence, and display emotional and behavioral problems.

It is worth noting that many couples experiencing marital conflict in Albania do not necessarily turn to the courts as a solution; rather, many of these separations are not processed in court but are based on customary codes in the country and oral agreements between families. Currently, a mediation agreement has come into force in Albania, which serves as a form of conflict resolution between spouses, under Law No. 10385 dated February 24, 2011, "On Mediation in Resolving Disputes." (Law No. 10385 dated February 24)

- **Statistics about divorce and its effects on children**

In 2020, the number of marriages in Albania hit its lowest point, while the number of divorces reached its highest in five years. Approximately 17,300 couples tied the knot, but more than 4,200 couples got divorced. According to statistics from INSTAT, for every 100 marriages, 24.4 couples ended their relationship in divorce. Compared to five years earlier, around 5,000 more couples got married, while the number of divorces remained the same. One factor is the COVID-19 pandemic, which paralyzed all activities in the country, but sociologists suggest other reasons as well. Sociologists say that the number of divorces increases each year, which is also reflected in the many cases seen in courtrooms. Statistics for 2021 have not been made public, but the trend appears to be on the rise. (<https://abcnews.al/divorci-ben-kerdine-ne>

shqiperi-1-ne-4-cifte-ndahe/, n.d.)

According to INSTAT data, in the 1990s there were 9 divorces per 100 marriages, while in 2016, there were 24.7 divorces per 100 marriages, a record level.

Paradoxically, the lowest number of divorces in the 26 years of transition was in 1997, where only 5.9 divorces per 100 marriages were registered. As it seems, due to the great crisis created by the bankruptcy of the pyramid firms, the Albanian families kept the compact to face the situation that almost degraded into a civil conflict. (<https://dritare.net/zbulohe-shifrat-alarmante-te-divorceve-ne-shqiperi-ja-si-kane-ndryshuar-ne-26-vite>, n.d.)

#### 4. Legislation for the Protection of Children's Rights in the Context of Parental Divorce

From a historical perspective, the Albanian State, since its inception, has prioritized family and children through various legal initiatives. During the reign of King Zog (1920-1939), several laws were enacted to ensure the protection of families and children within the cultural context and overall development of society at that time. Notable among them are:

- The 1929 Civil Code of the Albanian Kingdom (Family Law was included in the Civil Code)
- Law No. 15190 dated March 16, 1931, "On the Prohibition of Divorces Occurring Before the Entry into Force of the New Civil Code"
- Law No. 15180 dated March 16, 1931, "On the Prohibition of Cohabitation as Illegal Spouses"
- Decree No. 13730 dated August 11, 1930, "On the Celebration of Marriages"
- Law No. 590 dated June 24, 1922, "Law on Weddings and Funerals"
- Law No. 21830 dated April 15, 1934, "On the Regulation of Engagements"

The approval of these laws aimed primarily at regulating family relations, avoiding negative social consequences such as divorce, and providing the necessary legal means for family creation, family life, and care for children.

In terms of legislation for the protection of children's rights in the context of parental divorce, we can mention the following conventions:

- The UN Convention on the Rights of the Child
- The Convention on the Law Applicable to Maintenance Obligations
- The Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- The Hague Convention "On the International Recovery of Child Support and Other Forms of Family Maintenance."

##### 4.1 Constitution of the Republic of Albania

(The Constitution of Albania was adopted on September 12, 1998 through a nationwide referendum. This constitution defines Albania as a parliamentary republic, a unitary and indivisible state, as well as a government based "on a system of free, equal, gener").

The Albanian legislation is drafted and implemented based on the Constitution. The Constitution of the Republic of Albania enshrines the principle of equality of citizens before the law as one of its fundamental principles: "All are equal before the law. No one may be unfairly discriminated against for reasons such as gender..." The Constitution is the fundamental guarantor of every individual's right to marry and have a family, a right that enjoys special protection from the State. It is the duty of the legislator and the Albanian government to take all necessary measures to legally regulate the formation and dissolution of marriage.

Article 53 of the Constitution is dedicated to the protection of the two most important institutions of society that relate to its very existence: marriage and family. The Albanian Constitution guarantees these rights. (Constitution of the Republic of Albania, Article 53) Thus, we find that the entirety of constitutional provisions guarantees the right to form a family; the right to live with/in a family; the right to respect spousal equality; as well as the guarantee of special protection for children, through a legal framework in accordance with these provisions. Bottom of Form Moreover, in the context of family, the Constitution places an article immediately after Article 53 that relates to the protection of children, stating that they enjoy special protection from the state. In this sense, the constitutional concept of family fully aligns with the Family Code, which specifically regulates family relations and the entirety of rights and obligations that arise from such relations. Thus, we observe that the entirety of constitutional provisions guarantees the right to form a family; the right to live with/in a family; the right to respect spousal equality; as well as the guarantee of special protection for children, through a legal framework in accordance with these provisions. (Report on Key Findings from the Monitoring of Decisions of the First Instance Court of Tirana, Regarding the Dissolution of Marriage and Its Consequences, p.7, [Report\\_on\\_Key\\_Findings.pdf](#) (qag-al.org))

#### 4.2 *Convention on the Rights of the Child (Adopted on 20 November 1989 by General Assembly resolution 44/25)*

The United Nations General Assembly adopted the Convention on the Rights of the Child through Resolution 44/25 on November 20, 1989, making it available for signature, ratification, and accession. It officially came into force on September 2, 1990. It was subsequently ratified by the Assembly of the Republic of Albania in February 1992 and came into effect in March of the same year. Its ratification by the Assembly was carried out in accordance with Article 16 of the Fundamental Constitutional Provisions (1991). With the ratification coming into force, the Convention is now part of domestic legislation and takes precedence over the laws of the country. (Article 122, paragraph 2 of the Constitution states: An international agreement that has been ratified by law takes priority over domestic laws that conflict with it. In cases of conflict, the norms established by an international organization take precedence over national law, provided that the agreement ratified by the Republic of Albania for participation in that organization explicitly mandates the direct application of its norms.

Two concepts underpin the Convention:

- The best interest of the child (Article 3), which becomes a binding principle for all measures that focus on children.
- Parents or other responsible persons should be supported in exercising their rights, respecting the child's best interests.

The Convention adds rights for children's participation and recognizes the importance of informing children about their rights. It is the first international instrument to address issues such as the right to rehabilitation for children who have experienced horrific situations and exploitation, as well as the obligation of governments to eliminate traditional practices harmful to children's health.

This Convention encompasses principles and standards that particularly focus on adoption and the treatment of minors. Article 4 of the Convention establishes the obligation of states to take all necessary measures for its implementation and to guarantee the realization of children's economic, social, and cultural rights, using the means available for this purpose. For this reason, the state must take serious measures to ensure financial and human resources.

The Convention states in its preamble that the family, as the fundamental unit of society and the natural environment for the growth and well-being of all its members, especially children, must receive the necessary protection and support to fully assume its role in the community. The rights of the Convention are based on fundamental general principles, which are:

- Article 5 on equality and non-discrimination
- Article 3 on the best interests of the child;
- Article 10 on the right to life
- Article 12 on equal recognition before the law. (Report on Key Findings from the Monitoring of Decisions of the First Instance Court of Tirana, Regarding the Dissolution of Marriage and Its Consequences, p. 8, [Report\\_on\\_Key\\_Findings.pdf](#) (qag-al.org))

It states that in all matters involving children, whether handled by public or private social welfare institutions, courts, administrative bodies, or legislative authorities, the child's best interests must be a primary consideration.

#### 4.3 *Convention on the Law Applicable to Maintenance Obligations and the Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations*

A maintenance obligation is the guarantee of providing continuous or periodic services necessary for living to someone in need, closely linked to the economic conditions of the obligor. In the area of maintenance obligations, international institutions have outlined a path towards protecting the creditor as the weaker party in the relationship, which requires secure and swift protection by offering instruments and procedures for recognizing less formal decisions to ensure similar and autonomous resolutions against national legislations.

The international legal framework in the area of maintenance obligations recognized by the Albanian state includes: the Convention on the Law Applicable to Maintenance Obligations (The Republic of Albania acceded to this Convention with Law No. 10397) and the Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations. (The Republic of Albania acceded to this Convention with Law No. 10398, dated March 17, 2011, published in the Official Gazette No. 34, on April 7, 2011, page 1211, and it entered into force for Albania on December 1, 2012.) These Conventions preserve some of the fundamental principles of previous Hague Conventions but

do not provide a concrete definition of what "maintenance obligations" entails; they expand their scope of application to include all maintenance obligations towards adults and regulate all relations arising from family, kinship, marriage, or parental responsibilities.

Regarding the determination of the applicable law, the Convention provides a series of intertwined connections that offer maximum favor to the creditor of the maintenance obligation, who deserves total legal protection.

Thus, the "Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations" defines its scope of application, which includes: "his Convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between (maintenance creditor and a maintenance debtor; or a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor.

It shall also apply to a settlement made by or before such an authority ("transaction") in respect of the said obligations and between the same parties (hereafter referred to as a "settlement")." (Convention, n.d.)

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce

1. a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;
2. a decision or settlement in respect of maintenance obligations
  - a. between persons related collaterally;
  - b. between persons related by affinity;
3. a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation. ( Article 26 of the Convention Chapter VI – Miscellaneous provisions, n.d.)This Convention replaces, for the states that are parties to it, the Convention on the Recognition and Enforcement of Decisions Concerning Maintenance Obligations towards Children, concluded in The Hague on April 15, 1958.

#### 4.4 Family Code

The Family Code has undergone numerous changes over time. Initially, it was part of the Civil Code of 1929, included in its first section, and later was approved separately, undergoing modifications until the current Code, which was adopted by Law No. 9062 on May 8, 2003. The main sources upon which the Family Code is based are the Constitution of Albania, ratified international agreements, the Civil Code, Law No. 8950 dated October 10, 2002, "On Civil Status," Law No. 8876 dated April 4, 2002, "On Reproductive Health," and a long list of laws regulating relationships related to family and children, such as education, health, etc. Additionally, important institutions regulating family law include the Unifying Decisions of the High Court and the decisions of the European Court of Human Rights. The Albanian Family Code is based on the model of four well-known international codes: the French, Italian, German, and Swiss codes. Structurally, the Code is divided into three main parts: General Principles, Spouses, and Children. All three parts are interconnected and regulate family relationships. More specifically, the third part of the Code addresses the institutions of "paternity" and "maternity," the obligation for maintenance and obligated persons, "parental responsibility," "adoption," and "guardianship." The Family Code is founded on several principles for the protection of children and families, specifically:

- The principle of moral and legal equality of spouses.
- The principle of the best interests of the child. (The family Code of republic of Albania)• The principle of parents' obligation to ensure the well-being, development, education, and training of their children. (The family Code of republic of Albania, Article 3)
- The principle of equality for children born within and outside of marriage. (The family Code of republic of Albania, Article 4)
- The principle of the child's right to grow up in a family environment filled with joy, love, and understanding. (The family Code of republic of Albania, Article 5)
- The principle of the child's right to be heard. (The family Code of republic of Albania A. 6.)
- The principle of the mandatory presence of a social worker and psychologist in any procedure involving children. The Family Code establishes the duty and right of parents to care for, educate, and raise children born in or out of marriage, who may receive assistance from the state if needed (Articles 59, 155, 158, 161, n.d.)

In this way, the parent assigned parental responsibility by a court decision must create good family and emotional conditions for the child, provide a stable environment, and demonstrate greater care and commitment regarding this matter. According to Article 158 of the Family Code, the parent who does not have the child for upbringing and education must establish an emotional connection with the child through frequent contact and is obligated to contribute to the child's



upbringing and education, taking into account the family and financial circumstances of both parties.

Article 161 of the Family Code states: "In the decision to dissolve the marriage, the contribution for child support is also determined..." From the wording of this provision, it follows that the amount necessary for the expenses related to the child will be reviewed by the court even if the parties do not request it. Material support is of primary importance for the child's well-being, thus the law considers that its determination cannot be left exclusively to the parents of the child. Protecting the best interests of the child necessitates court intervention, which will resolve any conflict between parents if they cannot agree on the amount of this obligation ( Article 161 of the Family Code, n.d.)

In situations where family law does not specify a minimum or maximum amount for child support, the High Court has ruled that lower courts, when applying the legal criteria outlined in Articles 158 and 201/2 of the Family Code, appropriately consider the income disparity between the plaintiff and the defendant, as well as their respective incomes in relation to the children's needs and the plaintiff's financial capacity. Consequently, the courts determine the child support amount based on the balance between the child's needs, the plaintiff's economic ability to meet those needs, and the defendant's role in providing for the child's upbringing and education.

Article 192 of the Family Code stipulates: "Parents have an obligation to support their children." Article 196 of the Family Code states: "Parents are not relieved of their obligation to support their children, even if parental responsibility has been removed from them."

Article 197/3 of the Family Code provides: "The obligation for support continues even while adult children are attending secondary or higher education, up to the age of 25 ( Article 197 of the Family Code states: "Parents have the obligation to provide for their children when these children do not have sufficient means to live. A minor child can request support from their parents even when they have assets, if the income, n.d.)

#### 4.5 Adoption Law

Within the framework of the adoption process, the Albanian Adoption Committee was established by special law No. 9695, dated March 19, 2007, as a state institution that addresses adoption requests on a case-by-case basis. It decides on these requests while continuously monitoring the progress of the process and the family life post-adoption.

Article 2, paragraph b of this law states that its purpose is to ensure that both domestic and international adoptions are carried out with the best interests of the child as the primary consideration, overriding all other interests.

#### 4.6 Law on the Protection of Children's Rights

In the spirit of the Convention on the Rights of the Child, (Law No. 10,347, dated November 4, 2010, "On the Protection of Children's Rights," has been adopted, n.d.). Article 5 of this law stipulates that the protection of rights is guaranteed by ensuring the best interest of the child as a prevailing consideration in all decisions concerning the child made by public or private providers of social care services, courts, administrative authorities, or legislative bodies.

A core aspect of this law is the principle of the best interest of the child, which takes precedence in all decisions concerning the child made by public or private social care providers, courts, administrative bodies, or legislative authorities. In addition to this principle, the law upholds other fundamental values, including equality and the elimination of all forms of discrimination or punishment against the child based on their status, actions, or the views and beliefs of their parents, legal representatives, or family members.

This law guarantees respect for the responsibilities, rights, and obligations of parents/legal representatives toward the child. For the child, this law seeks to create conditions for maximum survival and development, ensuring respect for the child's opinion, in accordance with their age and maturity. (Article 5 of The Law on the Rights and Protection of Child, Albania, n.d.)

### 5. The Divorce Process and the Principle of the Best Interest of the Child

Divorce is a factor that significantly impacts the development of families and society. The consequences of dissolving a marriage are primarily suffered by children. In its decision regarding the dissolution of marriage, the court must make a ruling that serves the best interest of the child. The court's decision determines how parental responsibility will be exercised. Evaluating experts in court should assess and reach clear conclusions about what is the best solution for the child, which parent should have primary custody, and must argue before the court and the parties involved in the process why their recommendation is the best possible solution.

During the judicial process, the most challenging moment for the court is determining with which parent the child or

children should stay after the marriage is dissolved. To evaluate the Principle of the Best Interest of the Child, it is necessary for experts to rely on several professional and legal standards that constitute this principle as a concept and specifically indicate how it should be applied.

The problem lies in the fact that the Albanian Legal Framework, including International Conventions, does not specify the factors that need to be analyzed, the criteria, and the standards that must be met by evaluating experts in court for assessing the Principle of the Best Interest of the Child. The organic law only stipulates that courts, in every decision they make regarding children, must consider the Principle of the Best Interest of the Child as a primary consideration, but the law does not define or specify how this principle should be implemented. According to Article 2 of the Albanian Code of Family Law, this primary consideration of the best interest of the child is primarily the duty of parents, as well as of the competent authorities and courts, which must center this interest in all their decisions and activities. ((Article 2, Albanian Code of Family Law) Although there is no standard definition of "the Best Interest of the Child," the term generally refers to the examination the court undertakes when deciding on the types of services, actions, and rules that will best serve the child to determine who is best suited to care for the child.

The best interest of the child is a complex criteria, as it represents the sum of several factors, none of which can be given priority over the others. Therefore, to evaluate the child's interest, the court must take into account a series of factors, among which we can mention:

- The child's age and gender, according to the opinions of psychology experts, indicate that in most cases, during the early years of childhood, the child's affection is strongest towards the mother.
- The emotional bonds of the child with each parent, as well as those of the parents with the children, highlight that the court will typically analyze the child's feelings towards each of their parents and vice versa, those of each parent towards the child.
- The socio-moral profile of each parent is a concept not defined by law but traditionally stems from custom. This profile generally implies the assessment of public opinion regarding the parent's behavior. It is important to highlight that when assessing what is in the best interest of the child, not every behavior of the parent in society is relevant, but only attitudes that may influence the child's upbringing. (Sonila Omari, *The Family Law Book*, Tirane 2012, page 256.)

The best interest of the child is a variable criterion, as its application must be in accordance with the specific circumstances of each case. This criterion will be applied on a case-by-case basis by the court, which must carefully investigate and assess all concrete circumstances. The existence or proof of the culpability of the aforementioned parties is not necessary in every judgment. From this complex of factors, the court will choose, in each specific case, those that form its conviction regarding the assessment of the best interest of the child. Additionally, these factors cannot be analyzed in isolation from one another but must be viewed in interaction with each other.

The best interest of the child is a dynamic criterion; this characteristic refers to the changes that this criterion undergoes over time and space. In this sense, the factors influencing the evaluation of the best interest of the child and the demands for its assessment increase in relation to the development of society and the changing emotional and material needs of the child.

The best interest of the child is a criterion assessed in terms of the child ad personam; in other words, it is an exclusively personal criterion, which therefore refers solely to the child in question. (Sonila Omari, *The Family Law Book*, Tirane 2012, page 256-257).

Good parenting is achieved with both parents. It is crucial for the child to maintain a strong and healthy relationship with both parents, as this benefits the child as well as the parents. Each parent should be as actively involved in the child's life as possible. Both parents need to participate actively in the child's educational, social, and extracurricular activities. It is important for the child to understand that their parents can maintain a relationship even after the marriage is dissolved. (Klodian Gega, Naureda Hasan, *Psychologist's Manual in Court*, p. 36. <http://www.psisociale.org/wp-content/uploads/2014/09/Manuali-i-psikologut-ne-Gjykate.pdf>.)

## 6. Discussions and Conclusions

*Increase Legal Knowledge:* Educate legal professionals, including judges and lawyers, about international conventions that protect children's rights. This can help in better applying these conventions in judicial decisions and in how divorce cases are handled.

*Strengthen Mediation Mechanisms:* Promote mediation as an effective way to resolve conflicts between parents after divorce. This will help maintain positive relationships between parents and children, minimizing the negative effects



of divorce.

*Research on Psychological Consequences:* Encourage deeper research on the psychological consequences of divorce on children to inform policy and legal practice. This could include case studies and statistical analyses to better understand long-term impacts.

*Review of Legislation:* Propose a review of laws governing parental relationships after divorce to ensure they align with international standards and effectively protect children's rights.

*Encourage Recognition of Children's Rights:* Provide educational materials and training for parents and children to increase awareness of their rights. This will empower parents and children to seek and defend their rights.

## 6.1 Conclusions

*Impact of Divorce on Children:* Divorce has significant consequences for children, including psychological and social impacts. This emphasizes the need to protect children's interests in any procedures related to divorce and custody.

*The Importance of Sharing Information:* It is essential to inform both parents and children about their rights to ensure that children's rights are upheld and protected in line with international conventions.

*Role of Judicial Systems:* Judicial systems must carefully apply international conventions and provide adequate protection for children's rights, ensuring that every parental agreement aligns with the best interests of the children.

*Alternative Resolutions:* Dispute resolution mechanisms, such as mediation, should be encouraged to reduce tension and promote better relationships between parents after divorce.

*Importance of Inter-Institutional Collaboration:* A coordinated and collaborative approach among different institutions (judicial, social, and educational) is essential to ensure the protection of children's rights in the context of divorce and its impacts.

These recommendations and conclusions provide a deep understanding of the challenges and opportunities for protecting children's rights in Albania, addressing the legal and psychological needs of those in such situations.

## References

- "Save the Children & School of Magistrates, Manual on the Implementation of the Family Code and Civil Legislation Regarding Issues Concerning Minors, 2009.
- ABC News- Divorci ben kerdine, 1 ne cifte ndahen, marre nga: <https://abcnews.al/divorci-ben-kerdine-ne-shqiperi-1-ne-4-cifte-ndahet/>
- Arta Mandro Balili, Family Law, Tirane 2009
- Convention on the Law Applicable to Maintenance Obligations and the Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- Dritare.Net,Zbulohen shifrat alarmante te divorceve ne Shqiperi ja si kane ndryshuar ne 26 vite, nga <https://dritare.net/zbulohen-shifrat-alarmante-te-divorceve-ne-shqiperi-ja-si-kane-ndryshuar-ne-26-vite>
- Klodian Gega, Naureda Hasan, Psychologist's Manual in Court, <http://www.pskosociale.org/wp-content/uploads/2014/09/Manuali-i-psikologut-ne-Gjykate.pdf>.)
- Law No. 10385 dated February 24, 2011, "On Mediation in Resolving Disputes."
- Regarding the Dissolution of Marriage and Its Consequences, Report\_on\_Key\_Findings.pdf (qag-al.org)
- Sonila Omari, The Family Law Book
- The Civil Code of the Republic of Albania, adopted by law no. 7850, dated 29.07.1994.
- The Constitution of the Republic of Albania, adopted by law no. 8417, dated 21.10.1998.
- The Convention on Contact Concerning Children
- The Family Code of the Republic of Albania, adopted by law no. 9062, dated 08.05.2003.
- The Law on the Rights and Protection of Child, Albania Top of FormBottom of Form