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**ACCEPTANCE AND ENFORCEMENT OF AUTHENTIC INSTRUMENTS FROM THE
PERSPECTIVE OF A NON-EU MEMBER STATE: ANOTHER CHALLENGE AHEAD**

TEAM ALBANIA

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This paper deals with the challenges of the Albanian legislation and national case law concerning the acceptance and enforcement of authentic instruments in civil and commercial matters in today's conditions of increased cross border relations. At first, the paper comparatively explores the concept of authentic instruments in the national legislation of some EU member states. It then continues with the introduction of characteristics of authentic instruments as identified by EU regulations and CJEU case law. A key point of the paper is the analysis of the legal effects of authentic instruments in the EU legal system, with a paramount focus on the lack of *res judicata* and its consequences towards enforcement of some categories of authentic instruments. The paper concludes that the Albanian legislation is closer to the EU regulations in the field of acceptance and enforcement of authentic instruments in succession matters compared to monetary obligations, matrimonial, parental responsibility, or maintenance obligations matters.

KEY WORDS:

Authentic instrument
Acceptance
Enforcement
Matters of succession
Matrimonial matters
Maintenance obligations

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Acronyms

Brussels I bis Regulation	B Ibis
Succession Regulation	SR
Albanian Code of Civil Procedure	ACPC
Albanian Civil Code	ACC
Court of Justice of European Union	CJEU
Republic of Albania	RoA
Stabilization and Association Agreement	SAA

A. Introduction

In the framework of enhancement of cooperation in civil and commercial matters, EU member states have accepted the free circulation of authentic instruments within EU. Several instruments have been adopted, that aim to standardize the notion of authentic instruments, such as the regulation in the field of civil and commercial matters,¹ the regulation related to matters of succession,² the regulation related to maintenance obligations,³ or the regulation related to matrimonial and parental responsibility matters.⁴

In the legislation in force in Albania, the concept of authentic instruments is unknown as such. In this regard, the courts in Albania are facing several challenges, because, on the one hand, the Albanian legislation has not yet adopted the concept of authentic instruments and consequently, based on the Albanian CPC, the courts cannot accept or declare them enforceable. On the other hand, the number of cases requesting recognition⁵ and enforcement of authentic instruments is raising every year.

The main problems arising in the case law, e.g., in the field of matrimonial matters, can be identified from the following situation.⁶ Teuta and Agron, who married in 2003 in Albania, decided to emigrate to Greece. Their life together became impossible due to ongoing conflicts and in 2009 they decided to dissolve the marriage before a notary in Thessaloniki. Shortly after, Teuta returned to Albania. Some years later, she met Gent, who was her colleague, as well. They fixed their marriage date on June 5th, 2019. According to the instructions of the lawyer, Teuta previously submitted to the Tirana Court of Appeals a request for

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20 December 2012.

² Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27 July 2012.

³ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10 January 2009.

⁴ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L 338, 23 December 2003.

⁵ Even though the concept of recognition of authentic instruments is not accepted by the Brussels Ibis Regulation, the solicitors, when presenting the claim in front of the Albanian Courts, refer to the Articles of the ACPC that regulate the recognition and enforcement of foreign court judgements, because there is no legal procedure to address the acceptance and declaration of the enforceability of authentic instruments in Albania.

⁶ This case is hypothetical, but it summarizes the situations described in the following judgements: Judgement No 1, dated 13.01.2021 of Tirana Court of Appeals; Judgement No 3, dated 03.02.2021 of Vlora Court of Appeals; Judgement No 84, dated 28.04.2021 of Vlora Court of Appeals; Judgement No 84, dated 07.06.2021 of Tirana Court of Appeals; Judgement No 119, dated 14.07.2021 of Tirana Court of Appeals; Judgement No 20-2021-802, dated 20.10.2021 of Gjirokastra Court of Appeals; Judgement No 184, dated 26.10.2021 of Vlora Court of Appeals. <http://www.gjykata.gov.al/>, available at 15 May 2022, 14:30.

recognition and enforcement of the notarial marriage dissolution act signed in Thessaloniki. A few weeks before the marriage date, the Court decided to dismiss her request, reasoning that the Albanian legislation does not permit recognition and enforcement of foreign acts that are considered authentic instruments, which are not judgements given by a court. In the given case, it resulted that Greece was not even a Contracting State of The Hague Convention on the recognition of divorces and legal separations.⁷ The said Convention applies to the recognition of divorces and legal separations obtained in another Contracting State, which follow judicial or other proceedings officially recognized in that State and which are legally effective there.⁸

Teuta was surprised since she did not understand why it was legally necessary to file a lawsuit for the dissolution of the first marriage, when that marriage was already dissolved ten years ago. Teuta and Gent were obliged to postpone the marriage date. Teuta's lawsuit for marriage dissolution is under trial before the Tirana Court of First Instance. Agron, her former husband, is not willing to sign another agreement in Albania for marriage dissolution and considering the heavy workload of the courts, a final judgement may be given around 2025. Until then, Teuta and Gent have no choice, but to wait.

Although Albania has signed several Conventions that cover issues of recognition and enforcement of foreign acts, such as The Hague Convention on the recognition of divorces and legal separations, these issues still remain unresolved, since some of the countries that Albania has closer connections within the matters of divorces and legal separations have not signed the said Convention, e.g. Greece⁹. Even in the cases related to countries that have signed the abovementioned Convention, the latter is not applicable on matters closely interconnected to divorces or legal separations, such as matters of parental responsibility or maintenance obligations. As a result, these acts too are unenforceable in Albania.

The above-mentioned situation served as a starting point for this paper, to further studies on authentic instruments, which are unknown as such by the legislation of some countries, including Albania. The same problem has also emerged in Albania in succession or even in contractual obligation matters.

This paper aims at providing a comparative analysis of the Albanian national legislation and EU law, in the field of authentic instruments, the acceptance and enforcement challenges encountered in the Albanian

⁷ Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, concluded on 01.06.1970. <https://assets.hcch.net/docs/bdb59a0f-9405-4910-9dc3-b7e5310405cc.pdf>, available at 15 May 2022, 15:41.

⁸ Article 1, para. 1 of The Hague convention on the recognition of divorces and legal separations.

⁹ List of contracting parties <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>, available at 15 May 2022, 15:50.

court judgements on these matters, to find out if the Albanian legislation needs certain amendments in order to simplify the process of acceptance and enforcement of authentic instruments issued by foreign member states authorities according to the provisions of EU Regulations.

B. Authentic Instruments under National Law versus Authentic Instruments under EU Law: Diversity versus Unity

Even though authentic instruments can be found in the legislation of EU member states, most of these legislations do not provide a sharp definition of them.¹⁰ However, most of EU member states identify a list of acts they consider as authentic instruments.¹¹ In these lists, the following categories of authentic instruments prevail: notarial acts, public deeds, documents authenticated by lawyers or registrars,¹² other acts related to succession and wills, changes made to the statutes of the companies or documents granting legal powers of court representation.¹³

In the framework of EU, contrary to most national laws of EU member states, a definition of authentic instruments can be found in several legal instruments. Under Article 2 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (*hereinafter referred to also as "B Ibis"*), an authentic instrument means a document, which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority

¹⁰ According to National Report Austria, at 13, National Report Croatia, pg. 9, National Report Netherlands, at 7 and National Report Portugal, at 13, published in the framework of the Project EU-En4s - JUST-AG-2018/JUST-JCOO-AG-2018, it results that there is no definition on authentic instruments in these EU member states legislations. <https://www.pf.um.si/en/acj/projects/pr09-eu-en4s/results/national-reports>, available at 08 May 2022, 20:12.

¹¹ According to National Report Poland, at 14, published in the framework of the Project EU-En4s - JUST-AG-2018/JUST-JCOO-AG-2018, <https://www.pf.um.si/en/acj/projects/pr09-eu-en4s/results/national-reports>, available at 08 May 2022, 21:02, it results that: "Under Polish law, authentic instruments include a notarial act wherein the debtor voluntarily submits to the enforcement of an obligation involving the payment of a specific sum of money or the handover of property, a judgment issued by the National Board of Appeals, excerpts from a list of debts, approved by an official receiver, etc."

According to National Report Croatia, at 8-9, *supra*, it appears that: "Notarial deeds (*javnobilježnički akt*), are documents on legal transactions and statements drawn up by notaries, and private deeds solemnized by notaries would all into this category." Meanwhile, according to National Report Austria, *supra*, it is stated that: "A list of which Austrian authentic instruments fall under the euro-autonomous concept does not exist or is not meaningful."

¹² According to National Report Portugal, *supra*.

¹³ Council of Bars and Law Societies of Europe, *Comparative study on authentic acts and instruments with comparable status and effects according to national legislation within the EU, considering in particular the role of lawyers*, at 8, https://www.ccbe.eu/NTCdocument/Report_Authentic_Act1_1302619714.pdf, available at 08 May 2022, 23:05.

or other authority empowered for that purpose.¹⁴ From the wording of the above-mentioned article, the core cumulative characteristics of an authentic instrument can be distinguished that are: its form, the procedure it undergoes before being transformed into an authentic instrument and the involvement of a public authority.¹⁵ Hence, an authentic instrument should be materialized as a document, even in an electronic form, following a two-steps authentication procedure in the state of origin. This procedure simultaneously covers control on formal and substantial components of authentic instruments and is made by a competent authority that can be a notary or another public official.¹⁶ In addition, the CJEU has also had the opportunity to elaborate one of the main characteristics of authentic instruments, in the case *Unibank A/S v Flemming G. Christensen*,¹⁷ concerning the interpretation of Article 50 of the Brussels Convention.¹⁸ The CJEU held that an acknowledgment of indebtedness enforceable under the law of the State of origin, whose authenticity has not been established by a public authority or other authority empowered for that purpose by that State, does not constitute an authentic instrument.¹⁹ Another characteristic element of authentic instruments, in the context of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order, is enforceability as addressed by the CJEU in the case of *K.H.K v. B.A.C & E.E.K.*²⁰

¹⁴ Article 2 of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20 December 2012.

¹⁵ Peter Stone, *EU Private International Law*, Second Edition, ISBN 978 1 84844 083 8, 2010, where is explained that: “Such an instrument is one which is drawn up by a public officer, such as a notary, signed by the parties in his presence, and witnessed by him, thus establishing an especially formal and probative record of the transaction, and enabling a party in whose favor an obligation evidenced by the instrument is undertaken to proceed directly to measures of execution on the basis of the instrument, as if it were a judgment, without bringing an action before a court”, at 228.

¹⁶ Magnus Ulrich, Mankowski Peter, ed., *Brussels Ibis Regulation – Commentary, Chapter IV: Authentic Instruments as Court Settlements*, 2016, at 983.

¹⁷ C-260/97, *Unibank A/S v Flemming G. Christensen*, (EU:C:1999:312), at para. 21.

¹⁸ 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41968A0927%2801%29>, available at 08 May 2022, 23:45.

¹⁹ Lawrence A. Kogan, *The Creeping ‘Authenticity’ of Europe’s Intrusive Civil Law System*, at 5, argues that: “Fundamental problems arise with universalizing any type of official instrument that, in the eyes of a judge, has “a greater probative value than a private agreement.”

<http://nebula.wsimg.com/bcb1adacf17baedeb2d200cafc85b20?AccessKeyId=39A2DC689E4CA87C906D&disposition=0>, available at 09 May 2022, 01:20.

²⁰ C-555/18, *K.H.K v. B.A.C & E.E.K.*, (EU:C:2019:937), at para. 45 states: “In the light of the foregoing, the answer to the first question is that Article 4(10) of Regulation No 655/2014 must be interpreted as meaning that an order for payment, such as that at issue in the main proceedings, which is not enforceable, does not constitute an ‘authentic instrument’ within the meaning of that provision”. See also, Peter Stone, *supra*, where has been elaborated the criteria of enforceability also in the framework of Brussels Ibis Regulation stating that: “The instrument or settlement must be enforceable (without a confirmatory judgment) in the State of origin.”

Taking into consideration the scope of application of B Ibis,²¹ which does not cover any civil or commercial matter, some other regulations have been adopted in EU level,²² which complete the notion of authentic instruments in the fields of succession, matrimonial and parental responsibility matters and maintenance obligations. In the field of succession matters, recital 62 of Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (herein after referred to also as “SR”), was written in consistence and following the *Unibank* judgement of the CJEU. Furthermore, the CJEU in the case *E.E*²³ upheld that it is necessary to adopt an autonomous interpretation of the authenticity of an authentic instrument. Therefore, if a document in the matter of succession covers elements such as: (i) the genuineness of the instrument, (ii) the formal prerequisites of the instrument, (iii) the powers of the authority drawing up the instrument and (iv) the procedure under which the instrument is drawn up, it can be considered as an authentic instrument.

Aspects of maintenance obligations arising from a family relationship, parentage, marriage and affinity, have been regulated through the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (herein after referred to also as “MOR”), The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (herein after referred to also as “The Hague Convention 1973”) and the Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance 2007 (herein after referred to also as “The Hague Convention 2007”). These acts do not define what represents a maintenance obligation. It results that The Hague Convention 2007 intentionally does not specifically define maintenance

²¹ Article 1, para. 2 (e), (f) of B Ibis states that: “*This Regulation shall not apply to: ... (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity; (f) wills and succession, including maintenance obligations arising by reason of death.*”

²² Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27 July 2012.

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

²³ C-80/19, *E.E*, (EU:C:2020:569) at para. 73.

obligations, so that the interpretation can be as broad as possible, in order to guarantee wider application of the Convention.²⁴

The concept of maintenance obligations or maintenance claims in civil law²⁵ represents a category of claims related to the payment of a contribution intended to cover the basic needs of the applicant, or to compensate state bodies,²⁶ due to payments already made by them for that purpose.²⁷ The criteria set out to categorize an act as an authentic instrument under the MOR provisions are the same as those provided in B Ibis, with two differences. First, this instrument must be specifically linked to a maintenance obligation, and second, authentic instruments in maintenance obligation matters may also appear in the form of an arrangement between parties, relating to maintenance obligations, which (i) has been concluded with administrative authorities of the member state of origin or (ii) has been authenticated by them.²⁸ A broader description of involvement of administrative authorities on arrangements relating to maintenance obligations is provided by the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,²⁹ which considers the arrangement as a written agreement concerning the payment of a maintenance obligation, which either (i) has been drawn up or

²⁴ Jonathan Fitchen, *The Private International Law on Authentic Instruments*, Hart Publishing, 2020, ISBN e-pub 978-1-50990-764-9, at 295.

²⁵ For example, referring to articles 212-214 of the French Civil Code, maintenance claims include claims between spouses, claims for housing, clothing, food or children education, addressed by children against their parents and/or grandparents. Moreover, they encompass similar claims, requested by parents against their children, grandchildren or great-grandchildren for comparable basic needs, other than the needs related to education. These claims can also be requested by categories such as e.g. a mother-in-law, extending also to certain sons or daughters-in-law, Walter Pintens, *Marital Agreement and Private Autonomy in France and Belgium*, in JM Scherpe, *Marital Agreements and Private Autonomy in Comparative Perspective 1st*, Oxford, Hart Publishing, 2012, at 68-88.

Comparably, German legislation contains the same provisions but does not include in the maintenance claims non-linear family relationships, such as parents-in-law or step-children. In both these member states, there are legally known care related maintenance obligations, provided to the sick and elderly persons, Anatol Dutta, *Marital Agreement and Private Autonomy in Germany*, in JM Scherpe, *Marital Agreements and Private Autonomy in Comparative Perspective 1st*, Oxford, Hart Publishing, 2012.

²⁶ Preamble of the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, at para. 14.

²⁷ Jonathan Fitchen, *supra*, at 264.

²⁸ Article 2, para. 1, point 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

²⁹ In accordance with point 8) of the preamble of the Council Regulation (EC) No 4/2009, the Convention on the International Recovery of Child Support and other Forms of Family Maintenance and the Protocol on the Law Applicable to Maintenance Obligations, are taken into account.

registered by the competent authorities of the member state of origin or (ii) has been authenticated, registered, concluded or filed, being subject of review and modification by a competent authority.³⁰

In matters concerning matrimonial matters, the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,³¹ (herein after referred to also as “MMPRR”) does not define authentic instruments. Nevertheless, it has been accepted that the autonomous *Unibank* criteria would be *mutatis mutandis* applicable, as expressed in the subsequent regulations that since 2004 sought to define authentic instruments for the purposes of EU private international law.³²

In conclusion, despite the different definitions of authentic instruments that each member state might have in their national legislation, the EU regulations that define the autonomous nature of authentic instruments have priority when compared to national legislations.

C. Acceptance and Enforcement of Authentic Instruments in EU: Between Enforcement and Lack of Res Judicata

In order to analyze the issues of acceptance and enforcement of authentic instruments within the B Ibis, reference should be made to its Articles 36, 58 and 61.³³ With regard to the MOR, reference should be

³⁰ Article 3, letter (e) of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance stipulates that: “*e*) “*Maintenance arrangement*” means an agreement in writing relating to the payment of maintenance which: *i*) has been formally drawn up or registered as an authentic instrument by a competent authority; or *ii*) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority.”

³¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. In accordance with Article 101 of Regulation 2019/1111 of 25 June 2019, the Regulation No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements, which have become enforceable in the Member State where they were concluded before 1 August 2022 and which fall within the scope of that Regulation. For the legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022, the Regulation 2019/1111 of 25 June 2019, shall be applicable.

³² Jonathan Fitch, *supra*, at 350.

³³ Article 36 of B Ibis stipulates that: “1. A judgment given in a Member State shall be recognized in the other Member States without any special procedure being required. 2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45. 3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.”

Article 58 of B Ibis stipulates that: “1. An authentic instrument, which is enforceable in the Member State of origin, shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed. The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to

made to its Articles 16, 17, 21, 26 and 48, while under the MMPRR reference should be made to Articles 21, 28 and 46. Specifically, in accordance with article 16 of the MOR, the acceptance and enforcement procedure of authentic instruments is conditioned by the ratification of The Hague Protocol of 2007 by the member state where the authentic instrument has been issued.³⁴ An authentic instrument, issued by a state, which is not bound by The Hague Protocol of 2007, shall be recognized in another member state, without applying any special recognition procedure and shall be enforceable after its enforceability is declared in that state.³⁵ In the contrary, an authentic instrument issued by a state, which is bound by The Hague Protocol of 2007 shall be recognized and enforced in another member state, without applying any special recognition procedure and without any prior declaration of enforceability.³⁶ While, according to the MMPRR, recognition and enforcement of an authentic instrument regarding the exercise of parental responsibility in another member state is conditioned by a declaration of enforceability in that state.³⁷ The precondition to issue the declaration of enforceability is that this authentic instrument should be enforceable in the state of origin.³⁸

In the field of civil and commercial matters that are regulated by B Ibis, a simplified system of enforceability is adopted, abolishing any requirement connected to declarations of enforceability. In the field of succession, it is the SR that lays down the rules for the acceptance and declaration of enforceability of authentic instruments in its Article 60 and Articles 45 - 58. These provisions allow a succession authentic instrument to benefit from a declaration of cross-border enforceability in a manner broadly similar to Article 58 of the B Ibis³⁹. The only difference between enforcement of judgements and enforcement of an authentic instrument according to SR, is related to the refusal grounds. Authentic instrument can be refused in another member state only if such enforcement is manifestly contrary to

authentic instruments. 2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.”

Article 61 of B Ibis stipulates that: “*No legalization or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.*”

³⁴ Article 16 of the Council Regulation (EC) No 4/2009.

³⁵ Article 21 and article 26 in connection with article 48 of Council Regulation (EC) No 4/2009.

³⁶ Article 17 in connection with article 48 of the Council Regulation (EC) No 4/2009.

³⁷ Article 28 and 46 of Council Regulation (EC) 2201/2003.

³⁸ Article 46 of Council Regulation (EC) 2201/2003.

³⁹ Slađana Aras Kramar and Katarina Vučko, *A guide to the implementation of the Succession Regulation (EU) No 650/2012*, Croatian Law Centre, Electronic Edition 2020, available at 16 May 2022; 14:30. <https://www.notariesofeurope.eu/wp-content/uploads/2020/07/Guide-to-Succession-Regulation.pdf>.

public policy in the Member State addressed,⁴⁰ whereas Article 40⁴¹ of the SR provides for an exhaustive list of the grounds for refusal of enforcement of judgements.

An innovative concept introduced by the SR was the creation of the European Certificate of Succession (ECS).⁴² The certificate can produce its effects in each member state without any special procedure needed.⁴³ If the certificate is drawn up in one EU member state as an official document, e.g. as a notarial act, it will have the same effects in the EU member state in which it is presented, as it has in the EU member state in which it was drawn up.⁴⁴

It results from the above that the form of an authentic instrument is a public one since a public authority is involved in the process of drawing it up. An authentic instrument provides conclusive proof of the content of the instrument,⁴⁵ but lacks the *res judicata* effect, because the content of an authentic instrument is a private one. For this reason, an authentic instrument remains indefinitely susceptible to challenge, not only after being drawn up, but even after having been enforced.⁴⁶

The regulations confirms the lack of *res judicata* of authentic instruments, since they provide only for the enforcement, and not the recognition of authentic instruments.⁴⁷ Unlike the B Ibis and SR, the MOR uses the term recognition for authentic instruments, as well. This notion under the MOR, should not be confused with the recognition procedure, which is technically reserved to foreign judgements and sovereign acts.⁴⁸ In this meaning, the concept of recognition provided for authentic instruments, should be understood as recognition by the competent authority addressed of the determination of the legal rights

⁴⁰ See Article 60 paragraph 3 of Regulation (EU) 650/2012.

⁴¹ Article 40 of the SR provides the grounds for non-recognition of judgements that are applied also for the refusal of enforcement of judgements between member states.

⁴² See Article 62 of Regulation (EU) 650/2012.

⁴³ See Article 69 of Regulation (EU) 650/2012.

⁴⁴ European Commission, *Cross-border successions. A Citizen's guide, How EU rules simplify international inheritances*, 2017, <https://www.elra.eu/wp-content/uploads/2017/10/DS0417513ENN.en.pdf>, available at 22 May 2022, 15:57.

⁴⁵ Maria Dymitruk, et al., *Differences between the recognition and enforcement of authentic instruments and the recognition and enforcement of judgments*, University of Wrocławski, Faculty of Law, Administration and Economics, Wrocław, Poland, Published 30. 06. 2021, *Lexonomica*, Vol. 13, No. 1, pp. 1–16, June 2021, at 7.

⁴⁶ Andrew Dickinson and Eva Lein, *The Brussels I Regulation Recast*, Oxford University Press, ISBN 978–0–19–871428–6, 2015, at 533.

⁴⁷ Peter Stone, *supra*, at 228-229.

⁴⁸ H Gaudemet-Tallon and M-E Ancel, *Compétence et Exécution des Jugements en Europe*, 6th Edition, Paris, LGDJ, 2018, at 517, where is explained that French doctrine is unanimous on the impossibility of such recognition being applied to authentic instruments.

and obligations made by the authorities of origin.⁴⁹ An authentic instrument is not subject to such recognition procedures, because the existence of possibilities to legally challenge it in the future, makes this instrument to suffer the lack of conclusiveness.⁵⁰ It results that the concept of mutual recognition cannot simply be transferred from judgments, that have a *res judicata* effect, towards authentic instruments, where that effect is lacking.⁵¹ However, exclusion of authentic instruments from the effects of *res judicata*, does not create any contradiction towards their enforcement.

Interpretation of the authentic instruments regime drives to these common conclusions: (i) the process of recognition is applicable only to judgments, not to authentic instruments;⁵² (ii) authentic instruments are automatically accepted in the system of the addressed member state, meaning that if a document has been treated as an authentic instrument in the state of origin, it will be accepted and enforced in the other member states; (iii) not a single legal procedure is defined to condition the above *ipso jure* acceptance; (iv) existence of prohibition of legalization or other similar formality for each document issued in a member state in the context of the regulation; (v) a *sine qua non* pre-requisite for the enforcement of an authentic instrument outside the state of origin within EU is its formal enforceability in the state of origin. While, in the framework of the MOR regime, the same conclusions are applicable, except the consequences caused by the application of The Hague Protocol of 2007.

D. Acceptance and Enforcement of Authentic Instruments in Albania: An “Authentic” Challenge?

Application of a comparative approach helps to individualize that, even though Albania does not explicitly recognize the notion of authentic instruments,⁵³ there are two categories of acts that fall into the concept

⁴⁹ Borrás and Degeling Report, Chapter V at 157. Recognition is distinguished from recognition and enforcement, which is said to refer to ‘the intermediate formalities to which recognition and enforcement of foreign decisions are subject’, <https://assets.hcch.net/docs/09cfaa7e-30c4-4262-84d3-daf9af6c2a84.pdf>, available at 22 May 2022, 16:40.

⁵⁰ Jonathan Fitchen, *supra*, at 280 states that: “Authentic instruments are not subject to such recognition or recognition procedures because nothing in the course of their drawing-up/registration/establishment conclusively determines either their instrumentum or their negotium in a definitive sense comparable with the judicial determination of a final enforceable judgment. The possibilities of challenging either the instrumentum or the negotium of an authentic instrument make this lack of conclusiveness plain.”

⁵¹ Directorate General for Internal Policies, *Comparative study on authentic instruments national provisions of private law, circulation, mutual recognition and enforcement, possible legislative initiative by the European Union* [https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET\(2008\)408329_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2008/408329/IPOL-JURI_ET(2008)408329_EN.pdf), at 134.

⁵² Accepted also for Brussels Convention in Fitchen, at 57, Vol. 7, No. 1, *Journal of Private International Law*, April 2011.

⁵³ C.E.Tuo, L. Carpaneto and S. Dominelli, ed., *Scritti di Diritto Privato Europeo Internazionale, Brussels I bis Regulation and Special Rules: Opportunities to Enhance Judicial Cooperation, Impact of Brussels I bis Regulation and Enforcement of Judgments in Albania*, Aida Gugu Bushati, pg. 392, March 2021.

identified above: i) notarial documents containing monetary obligations;⁵⁴ ii) certificate of succession issued by the notary.⁵⁵

1. Challenges Related to Notarial Documents Containing Monetary Obligations

Notarial documents that contain monetary obligations, which may also arise due to commercial activities between commercial entities, but not limited to, are distinguished as one of the categories of executive titles according to article 510 of Albanian Code of Civil Procedure (herein after referred to also as “ACPC”).⁵⁶ Notarial acts that contain monetary obligations are categorized as executive titles in Albania and presumed to be true, if they meet these cumulative conditions, as they are described by the Supreme Court:⁵⁷ i) do contain a recognized, abstract, unilateral and precisely defined monetary obligation; ii) which is already payable; iii) are not related to certain deadlines; iv) are unconditioned by other circumstances or other mutual obligations. A notarial act with the above characteristics can be executed shortly after the issuance of an executive order by the competent Court of First Instance, following the request of the creditor.⁵⁸ The issuance of an executive order is an indispensable condition in order for each bailiff to start compulsory execution proceedings against the debtor.⁵⁹ Taking into consideration the above mentioned characteristics of notarial acts that contain monetary obligations, it results that they are equivalent to the notion of the authentic instrument. The enforcement of such an instrument in Albania is

https://dispi.unige.it/sites/dispi.unige.it/files/pagine/OPEN%20ACCESS_Brussels%20I%20bis%20and%20Special%20Rules.pdf, available at 20 May 2022, 21:33.

See also: Njohja dhe ekzekutimi i vendimeve të huaja gjyqësore ndërmjet shteteve në Evropën Juglindore dhe perspektivat e Konventës së HCCH-së e vitit 2019 “Për vendimet gjyqësore”, November 2021, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, at 19. <https://assets.hcch.net/docs/2cf8be3f-e579-4f1b-8296-1a2955a29963.pdf>.

⁵⁴ Questionnaire for national reports, Revised, National Report: Albania, Project EU-En4s — JUST-AG-2018/JUST-JCOO-AG-2018, September 2020, at 14.

⁵⁵ Law no. 110/2018 “On notary”, OJ 16, dated 13 February 2019, available at <https://qbz.gov.al/eli/ligj/2018/12/20/110/a1cf6a9f-9536-4dd8-a442-3fdcba930237>.

⁵⁶ Article 510, point “d” of ACPC provides that: “Compulsory execution can be done only on the basis of an executive order. Are considered as executive titles: ...d) notarial acts that contain a monetary obligation”. <https://qbz.gov.al/preview/63ca3bd6-ed1c-42d4-a44f-05c970f7714d>, available at 20 May 2022, 22:30.

⁵⁷ Judgment no. 980, dated 15.09.2000 and 29.09.2000 of Joint Chambers of the Supreme Court of Albania, available at http://www.gjykataelarte.gov.al/web/Vendime_unifikuese_ne_vite_10678_1.php.

⁵⁸ Article 510, para. 3 of ACPC states that: “The Court issues the execution order, based on the documents provided by the applicant”.

⁵⁹ Article 515 of ACPC states that: “The execution order is executed by public or private bailiff service through the executor, based on the request of the creditor.”

still closely linked to court authority, since direct enforcement is not permitted even for national documents that are indeed authentic instruments.

While enforcement of an Albanian notarial act that contains monetary obligations is easily done through the issuance of an executive order by the competent court, enforcement of similar foreign authentic instruments in Albania is problematic, not to say impossible. A recent judgment showed that the request of the interested party for recognition and enforcement of a notarial act issued by a notary in the Republic of North Macedonia, that contained a monetary obligation arising from a contract, was dismissed.⁶⁰ The Court of Appeals argued that: i) the act did not have the characteristics of a judgement in order to be recognized and enforced in Albania; and ii) on the other hand, the agreement signed between RoA and Republic of North Macedonia is applicable only in the context of recognition and enforcement of judgements.⁶¹

In these conditions, a legal solution for the creditor to fulfill his rights against the debtor is the initiation of a contentious judicial process, which does not preclude the risk of the dismissal of the lawsuit. While, another solution that results from the Albanian case law, is that the creditor may request in the state of origin an execution order from the court of origin, in order for the latter to be recognized and enforced in Albania as a court judgement, according to articles 393-399 of the ACPC.⁶²

2. Cross-Border Effects of Foreign Succession Authentic Instruments in Albania

Under the Albanian Civil Code and the Law “On notaries” certain public documents, such as wills and other succession related documents, like the Albanian certificates of succession feature some sort of authentic instruments characteristics, because they (a) are documents drawn up by notaries⁶³ and (b) are

⁶⁰ Judgement no. 55, dated 12.05.2021 of Tirana Court of Appeals, at 3, available at <http://www.gjykata.gov.al/apel-tiran%C3%AB/gjykata-e-apelit-tiran%C3%AB/>.

⁶¹ Agreement between the Government of Albania and the Government of Macedonia on Legal Assistance in the Field of Civil and Criminal Matters, signed on 15.01.1998 approved by Law no. 8304, dated 12.03.1998, OJ 7-1998, <https://qbz.gov.al/eli/ligj/1998/03/12/8304/0be31698-6eed-491e-8823-bed0056e3708>, available at 20 May 2022, 23:20.

⁶² Judgement no. 125, dated 13.09.2021 of Tirana Court of Appeals, which argued that: “*In the given case, the Court of Appeals assessment is that there are no grounds for the refusal of recognition of the judgement no. 700/2020, dated 03.07.2020 given by the Italian court, for the issuance of the execution order, as described by article 394 of ACPC*”.

⁶³ Article 348 of ACC provides that: “*Capacity of heir and the corresponding parts in the succession, are assigned in the certificate of succession, issued by the notary, after submission of the death certificate of the testator, according to certain rules described in this Code and in the law on notary*”. Article 62, point d) of Law no 110/2018 “*On notary*” provides that: “*The notary, in addition to the powers provided in special laws, drafts acts, performs certifications and verifications in all matters, including, but not limited to: d) issues legal/testamentary succession certificates*”.

enforced without the need for a court decision. These acts are automatically registrable in every public registry in Albania, e.g., National Business Center,⁶⁴ State Cadaster Agency, Stock Registration Center, etc. In addition, according to article 61 of the Albanian Law “On cadaster”, foreign acts, that include foreign succession acts, issued by foreign notaries, are registered in the Albanian State Cadaster Agency Registers, after their translation and apostille procedures.⁶⁵ The same approach is evidenced in a decision of the Court of Appeals⁶⁶. In this case, B.T a Greek citizen, in 2016, besides the recognition of seven judgements given from the courts of Croatia and Greece, has also requested the recognition of an act issued by a public notary in Athens that defined the legal heirs of the deceased, where the applicant was listed as an heir, benefiting a part of the inheritance. The applicant was interested to recognize the act, so that he could legally possess properties located in Vlora, Albania. In that case, the Court of Appeals of Vlora ruled that the request should be partially refused because the solicitor had requested the recognition of an act drawn up by a notary in Athens, which is not considered a final judgment in interpretation of article 393 of the ACPC. Furthermore, the Court of Appeals referred to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters⁶⁷ arguing that article 2 of The Hague Convention refers only to court judgements, despite the name that they might have. The Court further argued that these decisions, drawn up by the public officials of a foreign country have the same evidential value as the documents drawn up by a notary in Albania,⁶⁸ accepting their evidential effects. It derives from the reasoning of the Court that since these acts are not court judgements, the *res judicata* effect is lacking, meaning that the content of the succession certificate can be challenged in a contentious judicial process, following the request of any interested party.

⁶⁴ Law no. 131/2015 “*On National Business Center*”, as amended and Law no. 9901, dated 14.04.2008 “*On entrepreneurs and companies*”, as amended, OJ 60, dated 06 May 2008.

⁶⁵ Article 61 of Law no 111/2018 “*On cadaster*” provides that: “*Deeds created outside the territory of the Republic of Albania, which the owner or interested person seeks to register in the cadaster, must be translated and certified according to the requirements of international agreements and special legislation*”.

⁶⁶ Judgement No. 166, dated 04.10.2016 of Vlora Court of Appeals.

⁶⁷ Albania has adhered to The Hague Convention with law no. 10194/2009, OJ 184, dated 30 December 2009.

⁶⁸ Article 253 of the ACPC stipulates that: “*Official acts, which are drafted by a state employee or a person exercising public activity, within the limits of their competence and in the determined form, constitute full evidence of the statements that are made in front of them on the facts and events, which have happened in their presence or on actions performed by them. The opposite is permitted to be proved only when it is claimed that the written matter is forged.*” Article 256 of ACPC stipulates that: “*Documents compiled by the foreign officer or by the foreign person who carries out public activities...have the same evidential value as provided for in Article 253.*”

In another case, the Supreme Court of Albania used the same reasoning in 2016, when dismissed the recognition of a testamentary letter issued by a Court in the State of Georgia in the USA.⁶⁹ The main argument used by the Supreme Court to dismiss the request, was that the court act had only a declaratory effect, being unable to be considered as an executive title in Albania, hence lacking enforceability. However, the Court argued that the above-mentioned argument, does not preclude the interested party to submit the testamentary letter as a proof in separate judicial proceedings or even before other institutions to officially attest the information it contains.⁷⁰

As per the above, we deduce that the acceptance and enforcement of succession authentic instruments, like wills and succession certificates issued by notaries in EU Member States or other foreign countries, is trying to “make the way” in the Albanian legal system. The process of acceptance⁷¹ and declaration of enforcement of succession authentic instruments must go through the apostille procedure. These acts are not directly enforceable or accepted, as in the EU Member States based on the Succession Regulation that stipulates precisely for the abolition of any form of legalization procedure in the acceptance or enforcement of such acts between the Member States. However, after the apostille procedure, they are given the same evidentiary effect as the succession acts issued by the notaries in Albania.

In this regard, this process puts the citizens or businesses, trying to enforce succession authentic instruments in Albania, in bureaucratic procedures that require them to prove that their public documents, as issued by their country of origin, are authentic. The apostille procedure is in fact an old formality that when established⁷² did not consider today's legal developments and the simplified procedures that do exist in the EU Member States, which should be adopted by third countries that aspire integration in the EU. An amendment to the ACPC, by making it compatible with the Brussels Ibis and Succession Regulation, would be a better solution to simplify the cross-border acceptance and enforcement of authentic instruments. The acceptance, as a new notion of the EU legal system, should be adopted in the Albanian system not under the concept of recognition, but as a new simplified way of circulation of the evidentiary effect of succession authentic instruments.

⁶⁹ The court has special competences to decide on the validity of testaments and the administration of immovable properties, with the main purpose to liquidate obligations owed state or other parties.

⁷⁰ Judgement no. 92, dated 17.03.2016 of Civil Chamber of the Supreme Court of Albania, available at http://www.gjykataelarte.gov.al/web/Vendime_Seance_Gjyqesore_8588_1.php.

⁷¹ The “Acceptance” notion of authentic instruments in matters of succession, is new and abolished the old concept of recognition. It is not defined by the Succession Regulation but is provided in Article 59 of the Succession Regulation, to simplify the circulation of cross border evidentiary effects of a succession authentic instrument.

⁷² By The Hague Convention of 1961.

3. Challenges Related to Authentic Instruments in Matters of Maintenance Obligations, Matrimonial Matters and Parental Responsibility

According to the Albanian Family Code,⁷³ issues related to marriage dissolution, maintenance obligations⁷⁴ and parental responsibility can be determined only through a judicial process, since the national legislation does not acknowledge authentic instruments in these sensitive fields. Even in those cases where the parties conclude a divorce settlement before a public notary, and in the same document they also agree to solve matters on parental responsibility, maintenance obligations, and compensatory contribution between spouses, this settlement produces effects only after it is approved by a court judgement. Also, a notarial act between private parties, which contains monetary obligations deriving from maintenance obligations, cannot be considered an executive title in the meaning of article 510, point d) of ACPC, as interpreted by the Supreme Court, mostly because these obligations are related to certain deadlines, since they have to be fulfilled periodically.⁷⁵

With regard to enforcement of foreign authentic instruments, which concern matters of maintenance obligations, matrimonial and parental responsibility, the RoA has adhered to several international conventions.⁷⁶ These Conventions provide for the obligation to recognize and enforce not only judgments, but also other acts drawn up by or before public bodies designated by the legislation of the state of origin,⁷⁷ acts which fall under the concept of authentic instruments, according to the national legislation of the state of origin. In this regard, an authentic instrument in the matters of marriage dissolution, given in a contracting party of The Hague Convention 1970, shall be enforceable in the RoA directly, without the intervention of the court. Meanwhile, authentic instruments concerning maintenance obligations cannot

⁷³Law no. 9062, dated 08.05.2003 “The Family Code”, available at <https://qbz.gov.al/preview/615c6db4-cfa8-4800-ba51-0444026e441d>.

⁷⁴ According to Article 129 of Albanian Family Code, in the concept of maintenance obligations, except of the food obligation of parents to children and spouses to each other, the food obligation of children to parents, brothers and sisters to each other, step-parents and the step-children is defined, based on certain conditions provided by law.

⁷⁵ Article 207 of Family Code.

⁷⁶ Convention on the International Recovery of Child Support and other Forms of Family Maintenance, 2007; Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations; Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations; Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children <https://www.hcch.net/en/instruments/conventions>, available at 22 May 2022, 23:50.

⁷⁷ Article 1 of the Convention of 1 June 1970, Article 1 of Hague Convention of 1973, Articles 3, 23, 25 of Convention of 19 October 1996, Article 3, letter (e) and Article 19 of Hague Convention 2007.

be directly executed by the bailiff officer, because of the lack of an executive order issued by the court,⁷⁸ since the authentic instrument cannot be recognized by the latter.

In this meaning, the concerns are not fully addressed even by international conventions since: (i) it results that some states of origin are not contracting parties in the international conventions;⁷⁹ (ii) the RoA and/or the state of origin have ratified the international conventions with some reserves;⁸⁰ (iii) some of the provisions of these conventions have no effects due to the lack of approval of internal legislation in order to make them applicable. Meanwhile, the bilateral international agreements already signed by the RoA⁸¹ do not address these issues. In these conditions, a legal option for the recognition of a marriage dissolution and/or payment of maintenance obligations, settled on the basis of an authentic instrument in the state of origin, is a contentious judicial process. However, this solution does not preclude the risk of the refusal and/or dismissal of the lawsuit. This can be the only legal possibility even for the situation described in the beginning of this paper.

The above conclusions result also from the case law of the Albanian Courts of Appeals. P.K has requested the recognition in Albania of a divorce settlement act drawn up by a public notary in Lamia, Greece,⁸² that is considered an authentic instrument referring to Article 438 of the Greek Code of Civil Procedure.⁸³ The court refused the recognition of this act according to Article 393 of the ACPC, since the notarial act does not represent a judgement. This act, cannot be recognized directly in Albania because Greece is not even a contracting state of The Hague Convention on the recognition of divorces and legal separations.⁸⁴

⁷⁸ Article 515 of ACPC.

⁷⁹ Example: Greece and Romania are not contracting parties of The Hague Convention 1970.

⁸⁰ Reserves of RoA related to The Hague Convention 1970 on the refusal of recognition of the legal separation, are stipulated in articles 3, 4, 5 of Law no 109/2012 “On the accession of the Republic of Albania to the Convention on the Recognition of Divorces and Legal Separations.”

⁸¹ Bilateral Agreement between RoA and Greece on the Mutual Assistance in Civil and Criminal Affaires, 1993, available at https://www.drejtesia.gov.al/wp-content/uploads/2019/03/Konventa-me-Greqine-p%C3%ABr-ndihme-gjyqesore_1993-1.pdf.

⁸² The judgement no 184/2021 of Vlora Court of Appeals, case no. 412, registration date 14.09.2021, requesting “*Recognition and granting of legal effects in the Republic of Albania of the act no. 16249, reg. date 09.10.2020 of the public notary that has approved the divorce settlement between P.K and. M.G.*”

⁸³ Directorate General for Internal Policies, *supra*, at 124 states that article 438 of the GCCP considers all documents drawn up by competent public officials during the execution of their duties, as authentic instruments. In the Greek legislation, the concept of the public officials is wide, because officials that perform public functions are included, e.g. notaries, lawyers, bailiffs, ministers, experts appointed by the court, etc. According to Article 438 of the GCCP, the official, who draws up an authentic instrument shall respect the legal formalities, otherwise the authentic instrument is formally invalid, does not produce any special evidential effect and cannot be enforceable.

⁸⁴ The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, available on <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>.

The same situation is encountered in relation to authentic acts drawn up in Romania,⁸⁵ which is not a party to the Hague Convention.⁸⁶

In another judgement,⁸⁷ the Court of Appeals has rejected the recognition of the foreign act of dissolution of marriage with the consent of the parties drawn up by a notary in Athens, Greece, with the same argument. Specifically, this authentic instrument disposed on issues related to the dissolution of the marriage and its respective consequences, namely the assignment of custody and the maintenance obligation in favor of two minor children of both ex-spouses. Regarding the two latter provisions of the authentic instrument, it results that both Albania and Greece are contracting parties of the Hague Conventions on Maintenance Obligation⁸⁸ and The Hague Convention on Parental Responsibility,⁸⁹ where it is provided for mutual recognition of judgements, but also of other acts on maintenance obligations and measures in matters of parental responsibility. Hence, it seems that the judgement of the Court of Appeal has violated the Convention when refusing the recognition of the authentic instrument related to maintenance obligations. However, on the other hand, it seems difficult to admit recognition of an act that constitutes a consequence of marriage dissolution, when the latter cannot be recognized in Albania, due to the lack of a mutual agreement between the states.

⁸⁵ Numerous transactions can only be validly carried out under Romanian law by using an authentic instrument. The Civil Code (Act no. 287/2009) requires that if the following transactions are to be carried out validly, an authentic instrument must be issued: i) marriage contracts, see article 330; ii) transactions involving registered immovable property rights, see articles 589, 885 (2), 888, 889 (1); iii) any agreement involving immovable properties, see articles 672 and 680 (2); iv) fiduciary contracts, see Article 774; v) contracts of donation, see article 1011; vi) the sale of an entire estate resulting from succession, see article 1747; vii) articles of incorporation when one of the members' contribution is an immovable property, see article 1883 (2); viii) personal care agreements, see article 2255. <https://www.codulcivil.ro/>, available at 22 May 2022, 23:10.

⁸⁶ List of contracting parties <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>, available at 15 May 2022, 23:20.

Judgement no 84, dated 28.04.2021 of Vlora Court of Appeals argues that: *“The fact that this decision according to the Romanian domestic legislation can be considered the same in terms of legal effects with a court judgement, does not make it again subject to recognition under Article 393 of Code of Civil Procedure, since these procedural provisions allow the recognition of foreign judgements of courts, excluding applications on recognition of decisions given by public authorities, such as notaries.”*

⁸⁷ Judgement no 20-2021-802, dated 20.10.2021 of Gjirokastra Court of Appeals.

⁸⁸ Convention on the International Recovery of Child Support and other Forms of Family Maintenance, 2007, Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=85>, available at 22 May 2022, 23:40.

⁸⁹ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>, available at 22 May 2022, 23:59.

E. Conclusions and Recommendations

- There is no legal procedure to address the acceptance and declaration of enforceability of authentic instruments in Albania, and the concept of recognition cannot be transferred from judgments, that have a *res judicata* effect, towards authentic instruments, where that effect is lacking.
- Moreover, the EU regulations have introduced the new concept of *ipso jure* acceptance of the evidentiary effects of authentic instruments from the member state of origin to the receiving one. This notion is not envisaged in the Albanian national law, but, specifically in the field of succession, the evidentiary effect of these documents, when presented in the form requested by law, is the same as the succession acts issued by the Albanian notaries.
- The referred judicial cases demonstrate that the number of requests submitted from interested parties for recognition and enforcement of authentic instruments is increasing every year and that the Albanian legislation has some gaps that are closely related with the acceptance and enforcement of authentic instruments. These gaps not only have created confusion on how the courts should deal with requests for enforcement and recognition of the authentic instruments issued by EU member states, but also are the main cause that, with no legislation in place, the requests of citizens and/or business are not adequately addressed.
- It results that the requests related to enforcement of monetary obligations deriving from a contract, usually are dismissed by the courts, because these obligations are not recorded in judgments, but in acts that cannot be enforced in Albania without a court judgement. The only solution for the parties to enforce these obligations in Albania is to start a contentious judicial process. This solution not only makes it difficult for authentic instruments to circulate between European countries, and is expensive for the parties, but also comes with the risk of the dismissal of the lawsuit.
- Authentic instruments issued in member states in matters of succession, follow a process of acceptance that requires the apostille legalization procedure. The legalization procedure is simpler than the commencement of a judicial proceeding, but it also puts parties through the bureaucratic procedure of proving that their public documents, as issued by their country of origin, are authentic. This is a paradox when we consider that these acts are already authenticated by the authority that has recorded or registered them. However, it should be noted that avoidance of this procedure requires implementation of specific security measures to prevent possible fraud or forgery of acts.
- Meanwhile, in the matters of divorces, legal separations, parental responsibility and maintenance obligations, the enforcement of authentic instruments drawn up in the state of origin, follows the

principles of the conventions where RoA is a contracting party. If these conventions are not applicable because the state of origin is not a contracting party or the conventions are ratified with reserves by RoA, there is no legal procedure for the acceptance and declaration of enforcement of these authentic instruments in Albania. The issue becomes more complex in the case of authentic instruments concerning maintenance obligations and parental responsibility that cannot be directly executed by the bailiff officer. ACPC necessarily requires in the execution phase an execution order issued by the court, and the latter cannot be issued since the authentic instrument cannot be recognized. Therefore, the parties' only solution would be to start a new judicial proceeding on this matter in Albania.

- In order to fill this gap in the Albanian legislation, but also to simplify the cross-border circulation of authentic instruments issued in EU Member States in Albania, we would recommend amendments to the ACPC, by making it compatible with the Brussels Regulation or other Regulations of the EU that provide for acceptance and enforcement of specific authentic instruments in specific fields. The amendments of the ACPC, would lead as well to a better harmonized and approximated national legislation with the EU legislation, on the matters of cross border circulation of authentic instruments between the two parties, an engagement that Albania has taken with the signature of the Stabilization and Association Agreement.⁹⁰

⁹⁰ Stabilization and Association Agreement, approved by Law no. 9590, dated 27.07.2006 “*On ratification of Stabilization and Association Agreement between the Republic of Albania and European Communities and their member states*”, OJ 87, 14 August 2006.