*Insights & Analyses*

# Prenuptial Agreements and Evidence in Civil Proceedings: The Albanian Experience in Comparative European Context (Germany, Italy, and France)

Brunela Kullolli*

**Abstract**

This study aimed to examine and compare the specific features of proving prenuptial agreement terms in civil proceedings, focussing on Albania and assessing how it aligns with European legal standards by comparing it to Germany, Italy, and France. The study employed a comprehensive approach that combines comparative legal analysis of legislation, analysis of court practice, and statistical data. The findings of the study showed that Albanian legislation, albeit prescribing a mandatory written form of a prenuptial agreement, demonstrates flexibility in the admissibility of evidence, allowing, apart from the written text of the agreement, for such evidence as correspondence between the parties, witness statements, audio and video recordings. This distinguishes the Albanian approach from the more formalised systems of Germany and France, where the principal evidence is a notarised agreement. The Italian approach is intermediate, combining formalisation requirements with some flexibility in terms of admissibility of evidence. The conclusions of the study suggest that the flexibility of the Albanian system of evidence enables the court to more fully establish the circumstances of the case and protect the rights of the parties, considering the diversity of life situations. At the same time, it is necessary to develop clear criteria for the admissibility and evaluation of supplementary evidence, as well as procedural safeguards to prevent abuse and ensure the reliability of evidence. The harmonisation of legal provisions of European countries in the field of family law will help to ensure legal certainty and predictability for participants in family relations.

## I. Introduction

The process of Albania's integration into the European Union (EU) is an essential stage in the country's development, requiring profound changes in various areas of public life, including the legal system. One of the key aspects of this process is the harmonisation of Albanian legislation with EU legislation. Considering that the European Union pays great attention to the protection of human rights, including in family relations, it is significant to examine the Albanian family law for its compliance with European standards. A prenuptial agreement is a key element in the regulation of property relations between spouses, enabling the parties to define their rights and obligations in relation to property acquired before and

* Full Doctor, Lecturer, Faculty of Political and Legal Sciences, Aleksander Moisiu University of Durres, Durres, Albania.

during marriage. In the context of growing international marriages and population mobility, the issue of proving the terms of prenuptial agreements in civil proceedings is of particular relevance. The diversity of legal systems and approaches to proof in European countries creates certain challenges in law enforcement and requires a detailed analysis. One of the key problems in proving the terms of prenuptial agreements is determining the admissibility of various types of evidence. S. Marino and J. Carrascosa González[1] investigated the admissibility of emails as evidence. The researchers concluded that emails may be admissible as evidence under certain conditions, specifically if they are authentic and relevant. However, uncertainty still exists as to the standards for proving the authenticity of emails in various jurisdictions. One of the challenges in this area is the legal regulation of marriage and divorce for women who divorced outside of a religious court.

I. Sujono[2] explored this issue in the context of Indonesian legislation and Islamic law. The researcher found some discrepancies between legal and religious provisions, which can lead to legal uncertainty for women remarrying after a divorce outside of a religious court. This highlighted the necessity of further research into this issue and the development of clear legal mechanisms to protect women's rights in such situations. N. Dacev and E. Miska[3] studied the process of codification of civil law in the Republic of North Macedonia and the Republic of Albania. The researcher analysed the historical development of civil law in these countries and its current state. The study demonstrated the diversity of approaches to codification of civil law in various countries, which is also relevant for the field of family law. This topic is crucial for understanding how various countries approach the systematisation and improvement of their legislation, considering their historical context and European standards. E. Lila and A. Lila[4] examined the compatibility of Albanian legislation with EU legislation. The researchers concluded that the harmonisation of legislation is a complex process, but essential for successful integration. Specifically, in family law, including prenuptial agreements, Albania must adapt its rules to European standards, which includes both substantive and procedural aspects.

I. Dhamo and A. Dhamo[5] examined the evolution of Albania's European integration process, focusing on legislative and institutional reforms. The researchers examined the compliance of Albanian legislation with the Copenhagen criteria and

[1] S. Marino and J. Carrascosa González, 'Marriages across borders within the European Union: Private international law vs. Mutual recognition perspectives' 16(1) *Cuadernos De Derecho Transnacional*, 403 (2024).

[2] I. Sujono, 'Legal review of marriage for divorced women outside the religious courts' 1(1) *International Journal of Islamic Thought and Humanities*, 1 (2022).

[3] N. Dacev and E. Miska, 'Civil law codification process in the republic of north Macedonia and the Republic of Albania' 10(29) *Law And World*, 15 (2024).

[4] E. Lila and A. Lila, 'Compatibilty of Albanian Legislation with European Union – EU Legislation' 11(1 S1) *Interdisciplinary Journal of Research and Development*, 194 (2024).

[5] I. Dhamo and A. Dhamo, 'Albania and the European integration' 11(1 S1) *Interdisciplinary Journal of Research and Development*, 198 (2024).

EU standards. The study found that Albania has made great strides in harmonising its legislation with the European acquis, especially in the areas of justice, public administration, and fundamental rights, but that certain challenges still need to be addressed. The significance of this study is that it underlines the necessity of extensive reforms for countries seeking EU integration and indicates the need for continuous monitoring and evaluation of this process. D. Gowler and K. Legge[6] investigated hidden and open contracts in marriage. The researchers considered marriage as a contract that undergoes changes under the influence of social and economic factors. Increased geographical mobility and shifting social values lead to a redefinition of roles in marriage and the allocation of resources between work and family. This study highlighted the need for clear communication and agreements between partners for a successful marriage to function in the modern context. C. von Bary[7] explored the distribution of family assets in Germany, specifically the issue of ensuring fair compensation to each spouse after divorce. The researcher pointed out gaps in the legislation and the role of judicial practice in filling these gaps. The courts, relying on the principles of contract and corporate law, have developed mechanisms to ensure equal distribution of property acquired during the marriage, even in cases where couples have changed the standard community property regime. This study highlighted the significance of a flexible legal system and an adequate response to various life situations. The problem of determining the legal consequences of divorce in the context of European integration.

E. Kalemaj and K. Marku[8] investigated the effects of divorce on children in Albania, focusing on legal aspects. The researchers analysed Albanian legislation and judicial practice, as well as international agreements such as the Convention on the Rights of the Child. The study revealed certain shortcomings in ensuring the rights of children during divorce, despite the existence of a legal framework. Specifically, the best interests of the child are not always a factor in court decisions, and informal divorces are widespread. This study highlighted the need to improve judicial practice and harmonise it with European standards in the context of Albania's European integration. S. Afhami[9] explored the legal implications of mixed marriages in Indonesia, focusing on prenuptial agreements and land ownership. The researcher analysed the legal framework of marriage in Indonesia and found that prenuptial agreements entered into during marriage, especially in mixed marriages, can pose risks to the legality of land ownership. The study found that

[6] D. Gowler and K. Legge, 'Hidden and open contracts in marriage', in R. Rapoport, J. Bumstead and R.N. Rapoport eds, *Working Couples* (New York: Routledge, 1978), 47-61.

[7] C. von Bary, 'Distribution of family property in Germany: Family law and beyond', in M. Briggs and H. Hayward eds, *Research Handbook on Family Property and the Law* (Cheltenham: Edward Elgar Publishing, 2024), 278-292.

[8] E. Kalemaj and K. Marku, 'Marriage dissolution and its effects on children: A legal view' 11(3) *Interdisciplinary Journal of Research and Development*, 25 (2024).

[9] S. Afhami, 'Legal implications of mixed marriages: Examining marriage agreements and property rights' 12(1) *Journal of Law and Sustainable Development*, 3100 (2024).

unfair agreements aimed at circumventing restrictions can be invalidated, leading to the return of land to state ownership. This study highlighted the need for careful legislative regulation of prenuptial agreements and protection of property rights in mixed marriages.

The analysis of the scientific literature has led to the conclusion that the issue of evidence in civil proceedings concerning prenuptial agreements is insufficiently developed in a comparative perspective. Most studies focus on certain aspects of family law or on the analysis of legislation of concrete countries. The purpose of the present study was to investigate and compare the specific features of proving the terms of prenuptial agreements in civil proceedings, with particular emphasis on the Albanian legal system in comparison with the frameworks of Germany, Italy, and France. Based on this, the study objectives were formed, namely: specific features of proof in civil proceedings concerning prenuptial agreements in various EU countries; types of evidence recognised as admissible in cases concerning prenuptial agreements; problems and prospects for harmonisation of approaches to proof in civil proceedings concerning prenuptial agreements in Europe.

## II. Materials and Methods

The study employs a comparative international methodology, concentrating on four European civil law systems, Albania, France, Germany, and Italy, while using common law concepts solely for contextual comparison. The primary emphasis is on the Albanian legal system, which is analysed in comparison to other European jurisdictions. The choice of these countries was based on their affiliation with different subgroups of the Romano-Germanic legal family: Albania combines the traditions of this system with socialist influences, Germany and Italy are its classic representatives, while France, albeit part of the same legal tradition, has unique features stemming from the historical development of its legislation. The comparative legal method was employed for the study, which helped to identify shared and distinctive features in the regulation of prenuptial agreements in the selected countries.

The materials studied included the key legislative acts governing the issue of prenuptial agreements in each of the selected countries. In Albania, these include the Constitution of Albania[10] and the Civil Code of the Republic of Albania,[11] specifically Chapter IV 'Contracts' of Book Five and articles relating to family law. In Germany, the Bürgerliches Gesetzbuch (BGB),[12] specifically Arts 1408-1413, which regulate the conclusion, content, and validity of prenuptial agreements, and the Zivilprozessordnung.[13] In Italy – The Family Property Regime (2024),

[10] Constitution of Albania 1998.
[11] Civil Code of the Republic of Albania 1994 no 7850.
[12] Bürgerliches Gesetzbuch (BGB) 1896.
[13] Zivilprozessordnung 1950.

particularly Arts 162-165, which define the form, content and procedure for conclusion. In France – French Civil Code: Book III. Of The Different Modes Of Acquiring Property (Arts 711 to 2278),[14] specifically Arts 1387-1389, 1394, 1395, 1397, which regulate marriage regimes, the form and procedure for concluding prenuptial agreements. The study also examined the works of such researchers as A. Padoa-Schioppa,[15] A. Hassan.[16] The following cases and judgements were also used to analyse the judicial practice: Supreme Court United Sections Judgment,[17] Court of Cassation,[18] Court of Cassation – Civil Section I, Bundesgerichtshof.[19] For regional differences in the marriage behaviour of Europeans and analysis of the factors influencing the prevalence of prenuptial agreements, Eurostat statistics were used.[20] When processing the statistical data, descriptive statistics methods were used, including the calculation of averages.

## III. Results

### 1. Historical Context and Specific Regional Features of Prenuptial Agreements

Prenuptial agreements as a tool for regulating property relations between spouses have a long history that can be traced back to the Roman law, where they were used to determine property rights and obligations of spouses, inheritance, and division of property in case of divorce. In Europe, two principal models of prenuptial agreements have historically developed since the 12th century, reflecting various legal traditions and approaches to family relations: the continental model based on Roman law and the Anglo-American model based on common law principles. The common law family, exemplified mostly by the United Kingdom and the United States, is defined by the supremacy of court precedent, significant contractual freedom for spouses, and the employment of equitable principles in resolving property disputes. In this system, prenuptial agreements are seen as private contracts that undergo judicial examination during enforcement, with courts evaluating their fairness, voluntariness, and adherence to public policy, rather than merely their legal validity. The focus on equity and judicial discretion facilitates the modification of contractual conditions to suit the unique circumstances of the

[14] French Civil Code: Book III. Of the Different Modes Of Acquiring Property 1803.

[15] A. Padoa-Schioppa, *A History of Law in Europe: From the Early Middle Ages to the Twentieth Century* (Cambridge: Cambridge University Press, 2017).

[16] A. Hassan, *Developing Pakistani Contract Law Regarding Gender Equality Issues: the Lessons of Comparative Contract Law Questions of Anglo-Saxon and Continental European Legal Systems* (PhD thesis, University of Pécs, 2022).

[17] Corte di Cassazione-Sezioni Unite 11 July 2018 no 18287, available at *www.dejure.it*.

[18] Corte di Cassazione, Civil Section I, 2016.

[19] Bundesgerichtshof 14 May 2014, available at https://www.bundesgerichtshof.de.

[20] European Commission, 'Marriage and divorce statistics' (Eurostat, 2023), available at https://ec.europa.eu/eurostat.

spouses, guaranteeing that neither party is subjected to significant disadvantage.

The continental model, prevalent in most countries of continental Europe, traditionally favours shared ownership of property by spouses, treating marriage as a union where property acquired during marriage belongs to both spouses regardless of which of them actually acquired it. In this model, prenuptial agreements are used primarily to modify the joint regime, for instance, to establish separate ownership, where each spouse retains ownership of their property acquired before and during the marriage, or a participation regime, which provides that each spouse is entitled to a share in property acquired by the other spouse during the marriage in proportion to their contribution to its acquisition. The Anglo-American model, which is dominant in countries of the Anglo-Saxon legal tradition, such as the United Kingdom and the United States, is characterised by a presumption of separate ownership, according to which each spouse retains ownership of their property acquired before and during the marriage. In this model, prenuptial agreements are used to define the rights and obligations of spouses with respect to property acquired during the marriage and to divide property in case of divorce, giving spouses the opportunity to agree on terms of property division other than those provided by law.[21]

In 2025, there is a tendency for these models to converge, driven by the growing mobility of the population, the individualisation of society and the increasing number of international marriages, which leads to the need to consider different legal systems and cultural traditions when concluding prenuptial agreements. In Figure 1 shows the Eurostat statistics for 2022, which indicate significant regional differences in the marriage behaviour of Europeans, due to various factors, including cultural traditions, religious norms, economic development, and the level of women's emancipation. The lowest marriage rates are recorded in Slovenia, Italy (3.2 marriages per 1000 people) and Portugal (3.5), which may be associated with later marriage, the spread of unregistered cohabitation and the secularisation of society, which leads to a decrease in the importance of marriage as a social institution.

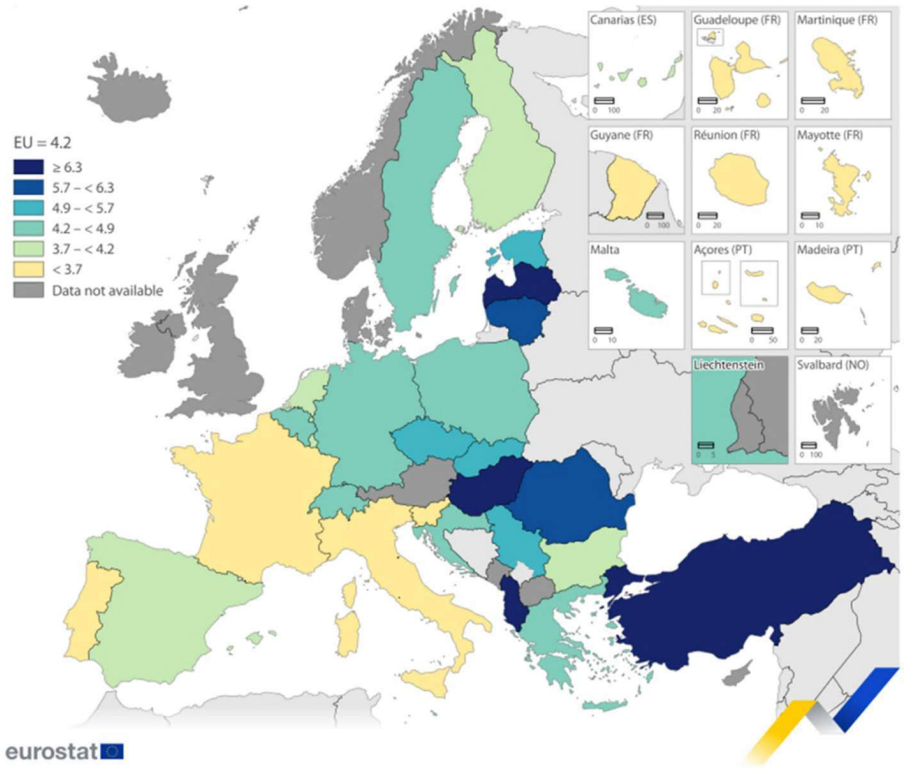
In contrast, the highest marriage rates are observed in Hungary (6.6 marriages per 1000 people) and Latvia (6.3), which may be attributed to traditional values, religious factors, and government policies aimed at supporting the family, which encourage marriage and childbearing. In 7 EU countries (Bulgaria, Estonia, France, Portugal, Spain, and Sweden, Slovenia), the number of births outside of marriage exceeds the number of births within marriage, indicating a change in social norms and attitudes towards marriage as the only acceptable form of family relationship, as well as the growing popularity of alternative forms of family relationships, such as cohabitation without marriage registration and same-sex marriage. The decline in the number of marriages and divorces recorded by Eurostat is linked to a series of factors,[22] including economic instability, the COVID-19 pandemic and the growing

[21] A. Padoa-Schioppa, n 15 above.

[22] European Commission, 'Marriage and divorce statistics' (Eurostat, 2023), available at https://ec.europa.eu.

popularity of other forms of family relationships, which affects people's attitudes towards marriage and their decisions to enter into it.

**Figure 1.** Crude marriage rates, 2022




Historical context and specific regional features play a significant role in shaping the use of prenuptial agreements, influencing their prevalence, content, and perception in society. Different legal traditions, religious norms, cultural values, and socio-economic conditions shape the diversity of approaches to prenuptial agreements in different countries and regions. Modern trends, such as a decline in the number of marriages and divorces, changing social norms and increasing population mobility, are making adjustments to the perception and use of this tool for regulating family relations. Alternative forms of family relationships, such as cohabitation without marriage registration and same-sex marriage, are becoming more popular. Prenuptial agreements are becoming increasingly common not only among wealthy individuals, but also among ordinary citizens seeking to protect their property rights and avoid possible conflicts in the future. There is a tendency for the continental and Anglo-American models of prenuptial agreements to converge, due to the growth of international marriages and the need to accommodate

different legal systems.[23] Prenuptial agreements are adapting to new social realities, accounting for the changing role of women in society, growing individualism, and the desire for financial independence. Overall, prenuptial agreements continue to be a relevant tool for regulating property relations between spouses, providing legal certainty and protecting the interests of the parties.

## 2. Evidence in Albanian Law and Other European Countries in Cases of Prenuptial Agreements

The general provisions of contract law in Albania are reflected in the Civil Code of the Republic of Albania,[24] specifically in Chapter IV of Book Five. Art 659 of the Civil Code of the Republic of Albania defines a contract as a transaction by which one or more parties establish, change, or terminate a legal relationship. A prenuptial agreement, as a type of civil law contract, is regulated by the Family Code of the Republic of Albania,[25] as well as international treaties[26] ratified by Albania. Apart from the written text of the agreement and its notarisation, Albanian legislation does not restrict the parties from submitting other evidence that can confirm the circumstances of the prenuptial agreement, the intentions of the parties, and their consent. A crucial aspect is the principle of good faith stipulated in Art 674 of the Civil Code of the Republic of Albania. According to this principle, the parties are obliged to act in good faith when negotiating an agreement. Failure to follow this principle may result in an obligation to compensate for damages if one of the parties knew or should have known about the grounds for invalidity of the contract but failed to notify the other party. Art 675 of the Civil Code of the Republic of Albania imposes an obligation on a party with professional knowledge to provide the other party, which relies on it, with information and instructions in good faith.

This rule is particularly relevant if one of the parties to the prenuptial agreement has a legal education or experience in contract law, while the other does not. Considering the above, correspondence between the parties may be additional evidence in cases involving prenuptial agreements. The authenticity of email correspondence may be confirmed, for instance, by granting access to the email or by means of an expert examination. Testimony of persons present during the discussion of the terms of the agreement or its signing. These may be relatives, friends, lawyers, or other individuals who can confirm the circumstances of the agreement and the free will of the parties. Audio or video recordings of the negotiations or signing of the agreement. Documents confirming that one party provided the other with information and explanations regarding the terms of the

[23] A. Hassan, n 16 above.

[24] Civil Code of the Republic of Albania 1994.

[25] Family Code of the Republic of Albania 2003.

[26] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, available at https://www.ohchr.org/.

agreement. These may include, for instance, written legal advice, brochures, memos. Table 1 provides a description and significance of additional evidence in prenuptial agreement cases in Albania.

**Table 1.** Additional evidence in prenuptial agreement cases in Albania

| TYPE OF EVIDENCE | DESCRIPTION | RELEVANCE TO PROOF |
|---|---|---|
| **Correspondence between the parties (including electronic)** | Exchange of messages, letters, emails between the parties before and during the negotiation of the terms of the agreement. | May indicate the intentions of the parties, their understanding of the terms of the agreement, compliance with the principle of good faith, as well as the presence or absence of pressure on one of the parties. |
| **Third party testimony** | Exchange of messages, letters, emails between the parties before and during the negotiation of the terms of the agreement. | Can confirm the circumstances of the agreement, the free will of the parties, and the absence of coercion or fraud. |
| **Audio or video recordings** | Exchange of messages, letters, emails between the parties before and during the negotiation of the terms of the agreement. | Can serve as clear evidence of the parties' will, the circumstances of the agreement, and the absence of coercion. |
| **Documents confirming the provision of information** | Written legal advice, brochures, memos, and other materials explaining the terms of the agreement and the legal consequences of its conclusion. | Confirm that the parties were duly informed of the terms of the agreement and had the opportunity to make an informed decision to enter into it. |
| **Behaviour of the parties after the conclusion of the agreement** | Actions of the parties that follow the terms of the prenuptial agreement over a certain period. | May indicate that the parties acted according to the terms of the agreement and acquiesced in them, as well as that the terms of the agreement were not challenged for a long time. |
| **Expert opinions** | Opinions of experts in the field of psychology, linguistics, IT technologies, etc, depending on the specifics of the case and the types of evidence. | Can be involved in assessing the psychological state of the parties during the conclusion of the agreement, analysing correspondence for signs of pressure, and authenticating electronic evidence. |

In Germany, France, and Italy, electronic evidence is recognised and admissible in court proceedings, but there are differences in the standards for authentication. In Germany, electronic evidence such as emails, documents, and digital records are legally binding. Various methods can be used to authenticate them, including electronic signatures and other technologies. Courts assess the reliability of

electronic evidence based on its content and the circumstances of the case.[27] In France, electronic evidence is also legally binding, and courts must consider it. Electronic evidence can be authenticated using various methods, including an electronic signature. Courts assess the authenticity of electronic evidence based on its content and the circumstances of the case. In Italy, electronic documents signed with an electronic signature have the same legal effect as paper documents. Courts also accept other types of electronic evidence, but their authentication may be more complicated. Courts assess the authenticity of electronic evidence based on its content and the circumstances of the case. Common authentication standards include electronic signatures, time stamps, cryptographic methods. An electronic signature ensures the identification of the person who signed the document and confirms its integrity.[28] A time stamp shows when the document was created or modified. Cryptographic methods protect the document from unauthorised access and alteration. Other methods may include expert testimony, metadata analysis, and other ways to confirm the authenticity of electronic evidence. The concrete requirements for authenticating electronic evidence may vary depending on the type of evidence and the circumstances of the case. In prenuptial agreement cases where one of the parties is a lawyer, it is crucial to take particular care in collecting and processing electronic evidence.[29] It is recommended to use a qualified electronic signature to sign documents, and to store electronic correspondence and other evidence in a manner that ensures their authenticity and integrity. If necessary, experts may be contacted to confirm the authenticity of electronic evidence.

Additionally, the Civil Code of the Republic of Albania[30] contains a series of articles regulating the overall validity of agreements, which are applicable to prenuptial agreements. Art 663 sets out the conditions for the validity of contracts, which include the legal capacity and capacity of the parties, compliance with the requirements for the form and content of the contract, and the absence of defects of will, such as mistake, fraud, or duress. Art 666 of the Civil Code of the Republic of Albania sets out the consequences of the invalidity of an agreement, which may include its invalidity from the moment of conclusion or from the moment of establishment of invalidity by a court. Art 667 of the Civil Code of the Republic of Albania prescribes the possibility of partial invalidity of an agreement when only certain provisions are invalid. These provisions prescribe additional protection of the rights of the parties to a prenuptial agreement and contribute to legal certainty in family relations. Behaviour of the parties after the conclusion of the agreement.

[27] V. Mazur et al, 'Application of mediation in civil proceedings in Ukraine and the Federal Republic of Germany' 30(2) *Scientific Journal of the National Academy of Internal Affairs*, 66-75 (2025).

[28] D. Ospanova et al, 'The problem of defining "juvenile justice" concept and its principles in legal science' 8(13) *Journal of Infrastructure Policy and Development*, 9250 (2024).

[29] D. Ospanova et al, 'Legal obligations of a lawyer and standards for the protection of minors in juvenile justice' 7(4) *Social and Legal Studios*, 231-239 (2024).

[30] Civil Code of the Republic of Albania 1994.

Pursuant to Art 681 of the Civil Code of the Republic of Albania, when interpreting an agreement, not only the literal meaning of the words is considered, but also the behaviour of the parties before and after its conclusion. If the parties' behaviour has been consistent with the terms of the prenuptial agreement for a long time, this may serve as additional evidence of their agreement to those terms. Notably, pursuant to Art 682 of the Civil Code of the Republic of Albania, each term and condition of the agreement shall be interpreted in conjunction with the other terms and conditions, giving each of them the meaning that follows from the act as a whole. Thus, when considering a case on a prenuptial agreement, the court will evaluate all the evidence presented in the aggregate, accounting for not only the formal requirements to the agreement, but also the real intentions of the parties and the circumstances of its conclusion. Therewith, pursuant to Art 688 of the Civil Code of the Republic of Albania, the terms contained in the general terms and conditions of the agreement or in models or forms, in case of doubt, shall be interpreted in favour of the other party, which is especially relevant in cases where one of the parties to the prenuptial agreement did not take an active part in the development of its terms. Another provision is Art 689 of the Civil Code of the Republic of Albania, which states that despite the application of the rules of interpretation, if an agreement continues to be unclear, it must be interpreted in the sense least cumbersome to the perpetrator if the contract is gratuitous, and in the case of a paid contract, in the sense that fairly reconciles the interests of the parties. This provision can play an essential role in cases where a prenuptial agreement is challenged by one of the parties as unfair or as such that substantially restricts their rights.

In Germany, Italy, and France, prenuptial agreements are also a powerful tool for regulating property relations between spouses. These agreements enable couples to clearly define their rights and obligations in relation to property acquired before and during the marriage, thereby promoting transparency and predictability in financial matters. However, like any legal document, prenuptial agreements may be subject to disputes that require proof in court. The general rules of evidence in these countries are based on the principles of adversarialism and freedom of evidence, which guarantees a fair trial. In Germany, evidence in prenuptial agreement cases is governed by the general rules of evidence set out in the German Code of Civil Procedure (ZPA).[31] The principal types of evidence are written evidence, witness statements, expert opinions, and on-site inspections. A prenuptial agreement is usually a written proof that must be duly executed and signed by the parties pursuant to Art 126 BGB.[32] In case of a dispute over the validity or interpretation of a prenuptial agreement, the court may consider witness testimony, expert opinions, and other evidence. In Italy, evidence in prenuptial agreement cases is also governed by the general rules of evidence set out in the Italian Code of Civil Procedure.[33] In

[31] Zivilprozessordnung 1950.
[32] Bürgerliches Gesetzbuch (BGB) 1896.
[33] Code of Civil Procedure 1940.

France, evidence in prenuptial agreement cases is governed by the general rules of evidence set out in the French Code of Civil Procedure.[34] A prenuptial agreement is evidence according to the requirements of Art 1369 of the French Civil Code.[35]

When evaluating evidence in prenuptial agreements cases, the courts of Germany, Italy, and France are guided by the principles of admissibility, reliability, and sufficiency of evidence. These principles are valuable guarantees of a fair trial and protection of the rights of the parties. The principle of admissibility requires that evidence be obtained legally, ie, not to violate human rights guaranteed by the Constitution and international treaties.[36] Furthermore, the evidence must be relevant to the case, ie, have a logical connection with the subject matter of the dispute. Inadmissible evidence cannot be considered by the court when making a decision. The credibility principle requires the court to assess whether the evidence is true and accurate. The reliability of evidence can be confirmed or refuted by other evidence, as well as by witness testimony and expert opinions. The court must consider all the circumstances of the case, including the possibility of falsification of evidence or false testimony. The principle of sufficiency means that the evidence must be sufficient to enable the court to make a conclusion about the facts of the case. The sufficiency of evidence depends on the complexity of the case and the nature of the dispute. If the evidence is insufficient, the court may rule in favour of the party with more evidence to support its case.

Apart from these three basic principles, the courts are also guided by the principles of adversarialism, freedom of evidence, immediacy, and orality. The adversarial principle entitles each party to present its evidence and challenge the evidence of the other party. The principle of freedom of evidence enables the parties to present any evidence they consider relevant to the case. The principle of immediacy requires the court to examine the evidence directly, rather than relying on its description or assessment by others. The principle of orality means that the trial should be conducted orally, which enables the court to hear the testimony of witnesses and the explanations of the parties directly. Compliance with the principles of evidence evaluation is an important guarantee of a fair trial. These principles protect the rights of the parties and facilitate the adoption of lawful and reasonable decisions.

### 3. Form of Prenuptial Agreement as the Principal Evidence

In most European countries, including Albania, the written form of a prenuptial agreement is a prerequisite for its validity. This is a fundamental principle stipulated in legislation, particularly in the Civil Code of the Republic of Albania,[37] which aims to guarantee legal certainty and protect the interests of the parties by preventing possible misunderstandings and disputes over the terms of the agreement. The

[34] Code of Civil Procedure 2025.
[35] Code Civil 1803.
[36] European Convention on Human Rights 1950.
[37] Civil Code of the Republic of Albania 1994.

written form of a prenuptial agreement is not only a formality but also has a profound legal significance. It enables a clear record of the parties' will, ensures the stability of the agreement, and simplifies the process of proof in case of conflict. The significance of the written form lies in the fact that it prevents disputes over the existence and content of agreements between future spouses. Clearly defined terms of the agreement ensure predictability and stability of property relations in the marriage, as well as protect the interests of both parties in case of conflicts or divorce.

Furthermore, the written form of the agreement helps the parties to be more conscious about the settlement of their property relations. They can carefully consider the terms of the agreement, consult with lawyers, and ensure that the agreement meets their interests and needs. This is particularly significant in cases where one of the parties has a law degree or experience in contract law while the other does not. In such situations, according to Art 675 of the Civil Code of the Republic of Albania, the party with professional knowledge shall provide the other party, who fully relies on it, with information and instructions in good faith. Furthermore, the written form of a prenuptial agreement simplifies the process of proof in case of disputes. In court, a written agreement will have much greater probative value than oral agreements that are harder to confirm or refute. In case of a dispute over the validity or interpretation of a prenuptial agreement, the court may consider witness statements, expert opinions, and other evidence, such as correspondence between the parties, audio or video recordings of the negotiations or signing of the agreement, documents confirming that one party provided information and clarifications regarding the terms of the agreement to the other, and the conduct of the parties after the agreement was entered into. Overall, the written form of a prenuptial agreement is an integral part of the legal culture and contributes to the stability and predictability of family relationships.

German legislation pays particular attention to the form of the prenuptial agreement, setting out clear and strict requirements for its conclusion. This is driven by the aspiration to ensure maximum protection of the rights and interests of the parties, as well as to prevent possible disputes and conflicts. A prenuptial agreement is a significant tool for regulating property relations between spouses, and it's unclear or incorrect execution can lead to serious legal consequences. In Germany, the requirement for a written form of a prenuptial agreement is set out in Art 1410 of the Bürgerliches Gesetzbuch (BGB).[38] This paragraph clearly states that the prenuptial agreement must be concluded in the simultaneous presence of both parties for notarisation. German legislation requires mandatory notarisation of a prenuptial agreement. The notarisation plays a key role in ensuring the validity and enforceability of the prenuptial agreement. A notary, as an independent official, verifies that all formal requirements for the agreement are met, identifies the parties, explains the content and consequences of the agreement, and certifies their signatures. This minimises the risk of an agreement being entered into under

[38] Bürgerliches Gesetzbuch (BGB) 1896.

the influence of fraud, threat, or mistake, and prevents possible disputes over the authenticity of the agreement.

There are also additional guarantees stipulated by German legislation, particularly in Arts 1408, 1409, 1411, 1412, 1413 of the *Bürgerliches Gesetzbuch*. Art 1408 establishes the principle of freedom of contract in the marriage relationship, enabling spouses to determine their property regime independently. However, this freedom is not absolute and is limited by the requirements of the law. Art 1409 of the BGB prohibits the determination of the property regime by reference to foreign law, which provides legal certainty and simplifies the application of the law. Art 1411 of the BGB regulates the conclusion of prenuptial agreements by persons under guardianship. Such persons may enter into a prenuptial agreement only with the consent of their guardian and, in some cases, with the permission of the guardianship court. This protects the rights and interests of persons with limited legal capacity. Art 1412 of the BGB sets out the conditions under which a prenuptial agreement is effective against third parties. Specifically, a spouse may raise an objection to a third party to a transaction concluded with one of the spouses if the existence of the prenuptial agreement was known to the third party. This prevents possible abuse by third parties. Art 1413 of the BGB regulates the revocation of the transfer of property management by one spouse to the other. Such a revocation is only possible if there is a valid reason that protects the interests of both parties. The strictness of the German approach to the form of a prenuptial agreement is motivated by the commitment to ensure maximum protection of the rights and interests of the parties. Notarisation acts as a guarantee of the validity and execution of the agreement and helps to prevent family conflicts.[39] The notary not only certifies the signatures of the parties but also explains the content and consequences of the agreement to them, which helps to avoid misunderstandings and disputes in the future. The form of a prenuptial agreement in Germany is clearly regulated and requires mandatory notarisation.

In Italy, the legislation also establishes clear requirements for the form of a prenuptial agreement aimed at ensuring its validity and protecting the rights of the parties. A prenuptial agreement is an essential legal document that defines the property relations between the spouses, and therefore its correct execution is of great significance. In Italy, a prenuptial agreement is concluded in the form of a public deed (*atto pubblico*) in the presence of two witnesses. This is stipulated in Art 162 of The Family Property Regime.[40] A public deed is an official document drafted by a notary or other authorised person and has special evidentiary value. The presence of two witnesses during the conclusion of a prenuptial agreement is an added guarantee of the validity of the agreement and the protection of the

[39] Z.A. Khamzina et al, 'Problems of overcoming poverty in the Republic of Kazakhstan' 6(3) *Mediterranean Journal of Social Sciences*, 169-176 (2015).

[40] 'The Family Property Regime' *Altalex*, available at https://tinyurl.com/yf2szf4k (last visited 31 January 2026).

rights of the parties. The witnesses confirm by their presence the fact of the agreement and may testify in case of a dispute. The Italian approach to the form of the prenuptial agreement shares the Europe-wide commitment to legal certainty and protection of the rights of the parties. A public deed and the presence of witnesses guarantee the authenticity of the contract and help prevent family conflicts. Clear requirements for the form of the agreement prevent possible misunderstandings and disputes between the spouses and protect them from possible abuse by third parties.

Apart from Art 162, Italian legislation contains other provisions governing prenuptial agreements. Specifically, Art 163 of The Family Property Regime defines the content of a prenuptial agreement, indicating what issues may be regulated in it. Art 164 of the Code Civile establishes the possibility of changing the prenuptial agreement by mutual consent of the spouses. Art 165 of The Family Property Regime defines the consequences of the invalidity of a prenuptial agreement. A public deed is the main form of a prenuptial agreement in Italy. This is conditioned by its high evidentiary value and guarantee of authenticity. A public deed is drafted by an authorised person (a notary or a judicial officer) in the presence of witnesses, which ensures compliance with all formal requirements and protects the rights of the parties. The form of the prenuptial agreement in Italy is clearly defined by law and requires the conclusion of the agreement in the form of a public deed. This ensures legal certainty, protects the rights and interests of the parties, and helps prevent family conflicts.

French legislation, in a manner similar to German and Italian legislation, attaches great significance to the form of the prenuptial agreement, setting out clear requirements for its conclusion. This is driven by the commitment to ensure legal certainty and protection of the rights of the parties in the marriage relationship. A prenuptial agreement is an integral legal document that defines the property rights and obligations of the spouses, and its correct execution is essential for the stability and predictability of family relations. In France, a prenuptial agreement must be notarised. This follows from Art 1394 of the Civil Code.[41] The notarial form gives the prenuptial agreement a special status and ensures its high evidentiary value. The notary, as an independent person, plays a key role in the conclusion of a prenuptial agreement. They not only certify the signatures of the parties, but also verify compliance with all formal requirements, identify the parties, and explain the content and consequences of the agreement. This ensures that the agreement is entered into voluntarily, knowingly, and in compliance with all legal requirements.

French legislation establishes a presumption of authenticity for notarised documents. This means that a notarised prenuptial agreement is considered reliable evidence until the contrary is proven. This places the burden of proof on the party disputing the validity or content of the agreement. This approach contributes to the stability of legal relations and reduces the risk of disputes. The notarised form

[41] Code Civil 1803.

of a prenuptial agreement in France helps to ensure legal certainty and protect the rights of the parties. It guarantees the authenticity of the agreement, its compliance with the legislation, and simplifies the process of proof in case of disputes. Clear requirements for the form of the contract prevent possible misunderstandings and disputes between the spouses and protect them from possible abuse by third parties. French law also contains other provisions governing prenuptial agreements. Specifically, Arts 1387-1389 of the French Civil Code[42] define the different marriage regimes that spouses may choose. Art 1395 of the Civil Code[43] establishes the need for an inventory of the spouses' property before entering into a prenuptial agreement. Art 1397 of the Code of Civil[44] sets out the conditions for amending a prenuptial agreement.

In Albania, although there is no mandatory notarisation of a prenuptial agreement, a written document signed by both parties is of primary value as evidence. This means that in case of a dispute, the court will primarily rely on the written text of the agreement. However, Albanian legislation is more flexible than other European countries. It allows for other evidence that may supplement or explain the terms of the agreement, such as correspondence between the parties, witness statements, audio and video recordings. This enables the court to more fully and comprehensively establish the circumstances of the case and protect the rights of the parties. The flexibility of the Albanian approach to proving the terms of a prenuptial agreement is an advantage, as it allows for a variety of life situations and ensures fairness in each case. The requirement for a written form of a prenuptial agreement is a common European standard aimed at ensuring legal certainty and protecting the rights of the parties.

Notarisation, although not mandatory in all countries, gives the agreement additional evidentiary value and guarantees its authenticity.[45] However, it is not only the form of the prenuptial agreement that is subject to proof. It is also crucial to establish the true will of the parties, as well as the circumstances of the agreement. In this aspect, there are certain differences between legal systems. In other European countries, approaches may differ. In Germany, for instance, courts are more sceptical about oral agreements and prefer written evidence. However, exceptions are allowed there, especially when it concerns proving the invalidity of an agreement due to mistake, fraud, or duress. In France, there is also a presumption in favour of a written prenuptial agreement. However, the courts may also consider other evidence, such as correspondence and testimony, to establish the true intention of the parties. Thus, the study confirmed that the Albanian legislation on prenuptial agreements is flexible and in line with current European legal trends, particularly in terms of the admissibility of supplementary evidence. Albania is actively integrating

[42] ibid
[43] ibid
[44] ibid
[45] Z.T. Kumisbekova et al, 'Agreement on share participation in housing construction: Historical aspect and legal nature' 22(1) *Journal of Legal Ethical and Regulatory Issues* (2019).

into the European legal space, and its approach to proving the terms of prenuptial agreements is in line with general European standards, although it has its specific features. An essential element of this approach is a wider range of evidence, which enables a better reflection of the true circumstances of the agreement.

## 4. Analysis of Judicial Practice

The analysis of judicial practice, particularly the decisions of the Court of Cassation[46] and Supreme Court United Sections Judgment,[47] is a vital element in understanding the application of legal provisions in prenuptial agreements and divorce. In this decision, the issue of the validity of a prenuptial agreement was considered. The court of cassation stressed that the prenuptial agreement must satisfy the requirements of the law in terms of form and content and must not violate the mandatory rules governing property relations between spouses. Particular attention was paid to the issue of informing the parties about the consequences of entering into a marriage agreement and the voluntariness of their will. Supreme Court United Sections Judgment concerns the issue of determining the amount of alimony after divorce. The Cassation Joint Sections noted that when determining the amount of alimony, the court must consider not only the financial situation of the parties, but also other factors, such as the duration of the marriage, the age of the parties, their health status, the presence of children, and their needs. The court also emphasised that alimony is not a way of compensating for the loss of the previous standard of living but should ensure that the person receiving it can meet their needs independently. Both decisions demonstrate that the French and Italian courts pay considerable attention to the protection of the rights of the parties in cases of prenuptial agreements and divorce. They approach the consideration of such cases based not only on the formal requirements of the law, but also on the factual circumstances of the case, including the financial situation of the parties, their age, health, and other factors. The courts also emphasise the value of the voluntary nature of the parties will when entering into prenuptial agreements and informing them of the consequences of such agreements.

Germany Bundesgerichtshof[48]. In this judgment, the German Federal Court of Justice considered a case on the division of marital property after divorce. The court emphasised that a prenuptial agreement may prescribe various options for the division of property, but it should not violate the mandatory rules governing property relations between spouses. In this case, the court declared the prenuptial agreement partially invalid, as it stipulated the division of property that was clearly unfair to one of the parties. Italy Court of Cassation – Civil Section I.[49] In this judgment, the Italian Supreme Court considered a case on challenging a prenuptial

[46] Corte di Cassazione, n 18 above.
[47] Corte di Cassazione-Sezioni Unite 11 July 2018 no 18287, n 17 above.
[48] Bundesgerichtshof 14 May 2014, n 19 above.
[49] Corte di Cassazione, n 18 above.

agreement. The court emphasised that a prenuptial agreement may be challenged if it was concluded under the influence of mistake, fraud, or violence. In this case, the court declared the prenuptial agreement invalid, as it found that the husband had forced his wife to sign it by abusing her trust and dependence on him. These examples of court decisions illustrate that courts in different countries pay considerable attention to protecting the rights of the parties in cases involving prenuptial agreements. They consider such cases based not only on the formal requirements of the law, but also on the factual circumstances of the case, including the voluntary nature of the parties' will, their awareness of the consequences of the agreement, and the fairness of its terms.

## IV. Discussion

The study has identified the key aspects of the regulation of prenuptial agreements in European countries and the role of evidence in civil proceedings, which is essential for the legal support of family relations, especially in the context of the growth of international marriages and dynamic changes in social norms. The research findings show that Albanian legislation, with its flexible approach to the admissibility of evidence, is generally in line with the current trends in the European legal system, which seeks to strike a balance between the protection of individual rights and legal certainty. This is in line with the European aspirations to harmonise legal provisions, specifically in the context of Albania's integration into the European Union, which stipulates the adaptation of national legislation to the *acquis communautaire* and the implementation of European standards in the field of family law. The same conclusions are made by B.M. Stjepanović,[50] who, analysing the practice of concluding prenuptial agreements in the Balkan region, emphasises the tendency to liberalise the evidence base in cases of this category.

At the same time, the flexibility of the Albanian approach, which allows for a wide range of evidence (including testimony, correspondence, and audiovisual materials), contrasts with the strictness of regulation in France and Germany, where notarisation of prenuptial agreements is mandatory.[51] This difference in approach, on the one hand, reflects the distinct legal traditions and cultural characteristics that have historically prevailed in these countries, and, on the other hand, indicates the existence of distinct models for striking a balance between flexibility and legal certainty in the area of contract law. The French and German models, with their emphasis on formal requirements and the role of the notary as a guarantor of the validity and legality of the agreement, contribute to the prevention of disputes and

[50] B.M. Stjepanović, 'Harmonization of family law in the EU with special reference to the marriage contract' 23(23) *Balkan Social Science Review*, 147 (2024).

[51] R. Vazov, 'Current results of international legal cooperation in combating corruption in Eastern European and Balkan countries in the 21st century: Successes and failures' 35(4) *Foreign Affairs*, 109-120 (2025).

provide a strong level of legal certainty, minimising the risk of misunderstandings and subjective interpretations.[52] However, such strictness may limit the ability of the court to consider the individual circumstances of the case and the specifics of each case.

The Albanian model, by giving the court more discretion in evaluating evidence and allowing a wide range of evidence, allows for greater flexibility in responding to a variety of life situations and ensuring an individualised approach to dispute resolution. At the same time, this flexibility creates risks of subjectivity in the assessment of evidence and legal uncertainty, which can complicate the process of proof and lead to ambiguous court decisions.[53] The study confirmed the significance of the written form of contracts as the main evidence in civil proceedings, which is a generally recognised principle of contract law and ensures the stability of legal relations and protection of the parties' rights. This is in line with the findings of other researchers, such as C.V. Bary,[54] who emphasised the key role of notarisation in German law to ensure legal certainty and prevent disputes over the content of the agreement. Notarisation, as C.V. Bary emphasised, not only confirms the authenticity of the agreement and the will of the parties but also ensures that the content and consequences of the agreement have been properly explained to the parties, which minimises the risk of misunderstandings and future conflicts.

In contrast, in France, according to A. De Guillenchmidt Guignot,[55] the presumption of validity of notarised agreements not only protects the rights of the parties, but also minimises the number of disputes arising from doubts about the content or authenticity of the agreement, contributing to the efficiency of legal proceedings and reducing the workload of the courts. A comparison with the Italian approach, which uses the form of a public deed and also requires the participation of an independent and impartial official (notary or court officer) in the conclusion of the agreement, has confirmed that clearly defined procedural requirements and formalisation of the contracting process contribute to the stability of family relations and prevent conflicts.[56]

A separate aspect of the study was the admissibility of supplementary evidence, such as e-mails, third-party testimony, and audiovisual materials, which are becoming increasingly common in Albania due to the development of information technology and changes in communication methods. This practice, on the one hand, corresponds to the modern realities of the digital society, where electronic documents and

[52] R. Vandzhurak, 'Ancient origins of the methodology of modern evidence law' 27(2) *Scientific Journal of the National Academy of Internal Affairs*, 99-107 (2022).

[53] Z. Khamzina et al, 'Labor disputes in Kazakhstan: Results of legal regulation and future prospects' 23(1) *Journal of Legal, Ethical and Regulatory Issues*, 1-14 (2020).

[54] C.V. Bary, 'Distribution of family property in Germany' n 7 above, 278-291.

[55] A. de Guillenchmidt Guignot, 'France: Cross-border marital agreements' 30(1) *Trusts & Trustees*, 12 (2023).

[56] D. Zaitsev, 'Aspects of implementing the principle of proportionality in the execution of a decision on a search permit for a person's home or other property' 13(4) *Law Journal of the National Academy of Internal Affairs*, 73-82 (2023).

communications are becoming more widespread, and on the other hand, creates new challenges for the legal system related to the need to ensure the reliability and authenticity of such evidence.[57]

S. Marino and J. Carrascosa González[58] study emphasised the significance of authenticating electronic evidence in international marriage cases, considering its specificity and risks of falsification, as well as the need to develop consistent standards for its evaluation and use in court proceedings. However, the Albanian approach to proving the terms of prenuptial agreements, allowing for a wide range of evidence, including electronic documents and communications, is more flexible than the French or German systems, where the primary evidence is a notarised agreement. This is confirmed by the findings of C.L. Gaillard,[59] who examined the evolution of social norms in France and the growing significance of individual agreements, including the use of electronic documents and communications in legal processes. The study also highlighted the influence of social and cultural factors on the legal regulation of prenuptial agreements, as marriage is not only a legal institution, but also a socio-cultural phenomenon shaped by various traditions and values.[60]

The study by O. Sidabutar et al[61] emphasised that laws governing the division of property in mixed marriages should consider cultural specificities and international principles of law, which is in line with the European trend towards unification of legal provisions and ensuring their universality. This is especially significant in the context of the growth of international marriages, when there is a need to ensure the protection of the rights and interests of both parties, considering their cultural and legal traditions.[62] At the same time, the findings of W.A. Handayani and G. Djajaputra[63] suggested that legal uncertainty regarding the invalidity of prenuptial agreements can lead to lengthy litigation and violation of the rights of the parties, which is also relevant for Albania, where the clarity of legal regulation in this area needs to be

[57] B. Yakymenko, 'Formation of the institute of personal data protection and experience of its implementation in the countries of the EU' 28(4) *Scientific Journal of the National Academy of Internal Affairs*, 68-79 (2023); O. Mukhamediyarova et al, 'Compulsory Seizure of the Land Plot in Kazakhstan as the Sanction for Breach Of Land Legislation' 24 (Special Issue-1) *Journal of Legal, Ethical and Regulatory Issues*, 1-9 (2021).

[58] S. Marino and J. Carrascosa González, n 1 above.

[59] C.L. Gaillard, 'Marriages of love and convenience: The French dating market and the revolution of romantic love (19th-20th century)' 29(4) *The History of the Family*, 506 (2024).

[60] Z. Kieliszek, ' "Marriage" in the light of the thought of Immanuel Kant and John Paul II: Commercium sexuale or communio personarum' 105(5) *Pharos Journal of Theology*, 1-10 (2024).

[61] O. Sidabutar et al, 'The effects of mixed marriage laws on the division of property under the marriage law and international civil principles' 6(2) *Awang Long Law Review*, 490 (2024).

[62] Y. Komarynska and P. Polian, 'Criminal offences related to domestic violence: Structure of the investigation methodology' 13(1) *Law Journal of the National Academy of Internal Affairs,* 28-35 (2023).

[63] W.A. Handayani and G. Djajaputra, 'Legal consequences of an unregistered marriage agreement from a marriage agreement deed canceled by the supreme court (Case Study of Marriage in The Decision of The Supreme Court Number 598/PK/PDT/2016)' 4(4) *Journal of Law, Politic and Humanities*, 829 (2024).

further improved to ensure legal certainty and predictability for participants in family relations.

The analysis of trends in family law has also shown that the harmonisation of legal provisions in European countries aimed at creating a single legal space can be an effective step in ensuring the stability of family relations and protecting the rights of citizens in the context of globalisation and migration.[64] According to S. Afhami,[65] the legal regulation of prenuptial agreements should be adapted to the needs of international marriages, which are becoming increasingly common in a globalised world and require consideration of different legal systems and cultural traditions. This implies the development of universal legal principles that can be applied to prenuptial agreements concluded between citizens of different countries, as well as the creation of mechanisms for resolving conflicts of law that may arise in such cases. J. Soraya and M.A. Althafzufar[66] followed a similar approach, emphasising the significance of ensuring fairness and legal certainty in cases of annulment, especially in mixed marriages, where additional complexities arise due to conflicts of law and the need to determine the competent court and applicable law.

Within the context of Albania's EU accession negotiations, specifically regarding Chapters 23 and 24 of the *acquis communautaire* by European Commission,[67] the country has implemented extensive judicial reforms aimed at harmonising its legal system with European Union standards.[68] The reforms fundamentally involve the deliberate integration of essential European legal principles, including proportionality, effectiveness, and judicial discretion, into the national legal framework.[69] This transition has fostered a pragmatic evidential strategy, enabling judges to evaluate a broader spectrum of admissible evidence, including conventional testimony and documentary materials alongside contemporary digital evidence, prioritising substantive justice over strict formality.

Essential elements of these reforms encompass the enactment of a Law no 84/2016 'On the transitional re-evaluation of judges and prosecutors in the republic of Albania'[70] that reevaluates judges and prosecutors to fortify judicial independence

[64] Z. Khamzina et al, 'Gender equality in employment: A view from Kazakhstan' 93(4) *Anais Da Academia Brasileira De Ciencias*, 20190042 (2021); Z. Khamzina et al, 'Is it possible to achieve gender equality in Kazakhstan: Focus on employment and social protection' 20(1) *International Journal of Discrimination and the Law*, 5-20 (2020).

[65] S. Afhami, 'Legal implications of mixed marriages' n 9 above.

[66] J. Soraya and M.A. Althafzufar, 'Legal consequences of annulment of a prenuptial agreement in marriage between individuals of different nationalities' 1(2) *JHK: Jurnal Hukum Dan Keadilan*, 16 (2024).

[67] European Commission, 'Chapters of the acquis', 2025, available at https://enlargement.ec.europa.eu.

[68] M. Bregu and J. Gjinko, 'Structural Reforms in Albania: Political and Legal Challenges in the Framework of EU Integration' 8(1) *Access to Justice in Eastern Europe*, 417-37 (2025).

[69] S.J. Cheesman and A. Badó, 'Judicial Reforms and Challenges in Central and Eastern Europe' 14(2) *International Journal for Court Administration*, 5 (2023).

[70] Law no 84/2016 'On the transitional re-evaluation of judges and prosecutors in the republic of Albania', 2016, available at https://tinyurl.com/945ey9sc (last visited 31 January 2026).

and integrity, alongside the augmentation of procedural safeguards that collectively promote a culture of judicial accountability and transparency. The judiciary's expanding ability to exercise discretion has permeated delicate areas like family law, where flexible judicial reasoning is increasingly endorsed. The EU-supported digital transformation initiative, EU4Digital Justice, represents a significant progression by modernising case management systems and enhancing procedural openness and efficiency within judicial institutions.[71] This empowers judges and prosecutors to manage intricate cases with improved access to evidence and analytical resources, essential for upholding the rule of law.

This harmonisation process goes beyond simple adherence to EU regulations. It represents a sophisticated balance between adopting European legal norms and maintaining the unique characteristics of Albania's national legal identity. The procedural transparency embedded in the system not only indicates conformity with the *acquis communautaire* but also preserves the distinctive legal traditions that support Albania's judiciary.

Albania's judicial reforms, integral to the EU accession process, represent a dynamic integration of European principles of judicial proportionality, discretion, and efficacy, while promoting institutional independence, procedural equity, and a contemporary, adaptable evidential framework aligned with EU standards in Chapters 23 and 24. This extensive reorganisation creates a judiciary more capable of providing substantive justice in accordance with European standards and national circumstances.

Despite the flexibility of the Albanian legal system in terms of European standards, it needs to be further improved in the context of harmonisation with European standards and providing clearer legal regulation of prenuptial agreements. Specifically, the list of admissible evidence in prenuptial agreements cases, the criteria for their evaluation and the procedure for their submission to court should be more clearly defined, considering both the positive experience of Albania and the practices of other European countries. At the same time, the experience of other European countries, such as France, Germany, and Italy, demonstrates that strict requirements to the form and content of prenuptial agreements contribute to legal certainty and dispute prevention, although they may limit the flexibility in considering individual cases and addressing individual circumstances.

## V. Conclusions

Albanian legislation, albeit requiring a written form of the prenuptial agreement, demonstrates flexibility in terms of admissibility of evidence, which sets it apart from other European jurisdictions. Apart from the written text of the agreement,

[71] Delegation of the European Union to Albania, 'EU4Digital Justice, an Integrated Case Management System for the judiciary in Albania', 2025, available at https://tinyurl.com/3wdex8f2 (last visited 31 January 2026).

the courts may also consider the parties' correspondence (including electronic), witness statements, audio and video recordings, which is in line with the reality of the digital society and the growth of electronic communications. This approach is in line with the trends in European civil procedure, which account for the growing relevance of electronic evidence and the need to ensure a comprehensive review of the case, considering all available data. The findings indicate that the Albanian evidence system in family law is progressively conforming to European legal trends, reflecting the overarching goals of EU-orientated harmonisation while also demonstrating a pragmatic flexibility that accommodates national peculiarities and judicial discretion.

The flexibility of the Albanian system of evidence enables the court to more fully establish the circumstances of the case, recognise the diversity of life situations and protect the rights of the parties, without being limited to a formal analysis of the written agreement. At the same time, such flexibility requires the development of clear criteria for the admissibility and evaluation of supplementary evidence, as well as procedural safeguards to prevent abuse and ensure the reliability of evidence, especially electronic evidence. In Germany and France, the legislation imposes strict requirements on the form of the prenuptial agreement, requiring its notarisation to guarantee its validity and legality. This ensures a strong level of legal certainty and helps to prevent disputes, as the notary acts as an independent and impartial official who explains the content and consequences of the contract to the parties. However, such strictness may limit the ability of the court to consider the individual circumstances of the case and the specifics of each case, which may lead to unfair decisions in some situations. The Italian approach, which stipulates the conclusion of a prenuptial agreement in the form of a public deed, is intermediate between the Albanian and German-French approaches, combining formalisation requirements with some flexibility in terms of admissibility of evidence. A public deed, like a notarised agreement, has a high evidentiary value, but at the same time allows for the consideration of supplementary evidence to establish the true will of the parties.

The historical context and specific regional features play a significant role in shaping approaches to proving the terms of prenuptial agreements. Distinct legal traditions, cultural values, and socio-economic conditions lead to a variety of approaches to the admissibility and evaluation of evidence in different European countries, which indicates the need to consider these factors when analysing and comparing diverse legal systems. The harmonisation of legal provisions of European countries in the field of family law, particularly in relation to the proof of prenuptial agreements, is a major area of development of the European legal space and will help to ensure legal certainty and predictability for participants in family relations, especially in the context of the growth of international marriages and population mobility. This will help to avoid conflicts of laws and ensure effective protection of the rights of citizens regardless of their citizenship and place of residence.

The study was limited to analysing the legislation of four European countries. Expanding the sample of countries would enable a more comprehensive picture and more generalised conclusions to be reached, reflecting the diversity of legal systems and approaches to regulating family relations. The study did not address all aspects of evidence in prenuptial agreements cases, including the allocation of the burden of proof and standards of proof. An in-depth analysis of these aspects is a promising area for further research, which would enable the development of more detailed recommendations for law enforcement practice. Further research in this area should focus on analysing the effects of digitalisation on proving the terms of prenuptial agreements, developing common standards for the authentication of electronic evidence, and examining the effects of artificial intelligence on family law, which is relevant due to the development of modern technologies and their influence on the legal sphere.